

(1995) 10 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 14349 of 1995

Pala Ram Nain

APPELLANT

Vs

The Financial Commissioner and
Secretary to Govt., Co-operation
Deptt. and Others

RESPONDENT

Date of Decision: Oct. 5, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1996) 112 PLR 462

Hon'ble Judges: M.L. Koul, J; Harphul Singh Brar, J

Bench: Division Bench

Advocate: S.S. Dalal, for the Appellant;

Final Decision: Dismissed

Judgement

Harphul Singh Brar, J.

Election to the Board of Directors of Haryana Co-operative Housing Federation Ltd. Manimajra, U.T. Chandigarh (hereinafter referred to "HOUSEFED") was held on 30.6.1993. There were 10 Zones and from each Zone one Director was to be elected. The petitioner Pala Ram Nain was challenged before the Additional Registrar, Co-operative Societies, Haryana, Chandigarh, by one Niranjana Dev on the ground that he was not eligible to contest the said election as he was paid employee of the society. It may be noted here that there is no dispute between the parties about Pala Ram Nain's being a paid employee of the society.

2. Additional Registrar, Co-operative Societies, vide its order dated 28.11.1994 accepted the Election petition of Niranjana Dev and set-aside the election of Pala Ram Nain on the ground that as per bye-law 38(i)(b) of the Bye-laws of the HOUSEFED the petitioner Pala Ram Nain was not eligible for being elected as a member of the HOUSEFED because he has a paid employee of a cooperative society. Pala Ram Nain

petitioner filed an appeal u/s 114 of the Haryana Co-operative Societies Act 1984 against the order of the Additional Registrar, Co-operative Societies but without any success.

3. The appellate authority while dismissing the appeal of the petitioner vide its order dated 9.7.1995 again held that the election of the petitioner was rightly set-aside as he was not eligible for election as a member of the HOUSEFED being a paid employee of any co-operative society. The petitioner has thus come in this writ petition under Articles 226/227 of the Constitution of India seeking quashing of the orders dated 28.11.1994 and 9.7.1994 (annexed as Annexure P-3 and P-5 with the petition) of the Additional Registrar as well as Financial Commissioner respectively and he has further prayed that petition may be declared as legally elected.

4. The main contention of the learned counsel for the petitioner to set-aside the impugned orders that the petitioners candidature was not in his individual capacity but as a representative of the Co-operative Society on behalf of which he was nominated to contest the election. Therefore, according to the learned counsel provisions of Bye-laws 38(l)(b) which provide for disqualification of being a member of HOUSEFED are not attracted to his case.

5. It will be advisable to reproduce the relevant portion of the Bye-Laws of the HOUSEFED under:-

"Bye-laws No. 1.

The society shall be called the Haryana State Co-operative Housing Federation Ltd. Further amendment of this Bye-laws reads as under :-

(i) The society shall be called the Haryana State Co-operative Housing Federation Ltd. and the word Finance Society or Society wherever it occurs in the bye-laws in any context shall be treated as Federation".

BOARD OF DIRECTORS

Bye-law 37. The business of the society shall be carried on and managed by a Board of Directors constituted as hereunder :-

(i) A nominee of the State Co-operative Bank;

(ii) Not more than three officials to be nominated by the State Govt. as share holder;

(iii) Registrar or his nominee;

(iv) Ten Directors to be elected by the member societies.

(v) One representative of the Life Insurance Corporation of India.

Bye-Law 38 (i) No person shall be eligible for election as a member of the Board if he

(a) is below 21 years of age; or

- (b) is paid employee of the State Finance Society or of any Co-operative Society, or
- (c) is convicted of any offence involving dishonesty or moral turpitude; or
- (d) has applied for insolvency or is declared insolvent; or
- (e) is of unsound mind; or
- (f) is in default in the payment of the debts due for a period exceeding three months to any Society;
- (g) does not represent any Cooperative Society.

Bye-Law 41-An elected member of the Board shall cease to hold office if he

- (a) applies for bankruptcy; or
- (b) is convicted of any offence involving dishonesty or moral turpitude; or
- (c) becomes of unsound mind; or
- (d) becomes a paid employee of the society or of any co-operative society; or
- (e) to (k).....

6. Bye law 37 provides for the Constitution of the Board of Directors which shall manage the business of the Board. Bye-law 38 lays down the qualifications of persons eligible for election as a member of the Board. Bye-law 41 provides that even an elected member of the Board shall cease to hold office if he becomes a paid employee of the society or of any co-operative society after his election to the board.

7. The reading of these bye-laws leads us to one and the only on conclusion that a person who is paid employee of the society cannot be elected as a Director of the Board as he is not eligible to be elected so in accordance with the bye-law 38(i)(b). Bye-law 41 further fortifies the position declared in bye-law 38 by providing that even an elected member of the Board shall cease to hold office if later on he becomes a paid employees of the Board or of any society.

8. We thus find no fault with the finding of the Additional Registrar Co-operative Societies, as well as of the Financial Commissioner, Haryana. The rulings referred to in the order of the Financial Commissioner and reiterated again by the learned counsel for the petitioner are not helpful to him in view of the clear cut provisions of bye-laws of the society holding that a person is not entitled to be elected as a member of the Board it he is a paid employee of the society or the board. This writ petition is consequently dismissed.