AIR 2013 P&H 155

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 12201 of 2011

Gurcharan Singh	APPELLANT
Vs	
Joint Registrar, Cooperative Societies and Others	RESPONDENT

Date of Decision: Feb. 1, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Co-operative Societies Act, 1961 - Section 55, 56

Citation: AIR 2013 P&H 155

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: I.S. Saggu, for the Appellant; Pankaj Mulwani, DAG, Punjab, Suvir Kumar, Aditya Pal Sharma and R.M. Sharma, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rameshwar Singh Malik, J.
The present petition is directed against order dated 27.6.2011 (Annexure P2) passed by the Joint Registrar, Cooperative Societies, Patiala upholding the order dated 10.11.2010 (Annexure P1) passed by the Deputy Registrar, Co-operative Societies, Sangrur whereby the petitioner was ordered to be ceased to be a committee member of the respondent-co-operative society, i.e. respondent No. 4-The Mehlan Co-operative Multi Purpose Agricultural Service Society Limited. The brief facts of the case which are hardly in dispute are that the petitioner contested the election of the respondent-co-operative society held on 23.8.2010 and he was elected as committee member. Since as per the provisions of bye-law 36 of the Registered bye-laws of the society, the elected committee members were to elect the president and the vice president amongst themselves, petitioner was elected as Vice President of the society. It is pertinent to note here that

during the election process, no body raised any kind of objection, pointing out any ineligibility in the candidature of the petitioner. His nomination papers were duly scrutinized and thereafter, duly accepted. Instead of challenging the election of the petitioner u/s 55/56 of the Punjab Co-operative Societies Act, 1961 (for short, "1961 Act") read with Rule 51 and Rule 12(2) of the Appendix "C" Part-1 of the Punjab Cooperative Societies Rules, 1963 (for short, "1963 Rules") within 90 days of the date of declaration of result, impugned order dated 10.11.2010 (Annexure P1) came to be passed by the Deputy Registrar, Co-operative Societies, Sangrur-respondent No. 2, whereby he ordered that the petitioner shall cease to be a committee member. This impugned order was passed by respondent No. 2, exercising his powers under Rule 26 of the 1963 Rules, on the report of Assistant Registrar, Co-operative Societies, Sunam-respondent No. 3. Dissatisfied with the impugned order dated 10.11.2010 passed by respondent No. 2, petitioner filed his revision petition before respondent No. 1 who, dismissed the same vide impugned order dated 27.6.2011 (Annexure P2).

2. Feeling aggrieved against the above said impugned orders, petitioner has approached this Court invoking its writ jurisdiction under Articles 226/227 of the Constitution of India, by way of filing the instant writ petition. That is how, this Court is seized of the matter.

3. While issuing notice of motion on 14.7.2011, this Court passed the following order:

Learned counsel for the petitioner has submitted that Rule 26 deals with the post election disqualification and not disqualification incurred prior to election. The petitioner was defaulter before the election and hence, the election could be challenged by raising a dispute u/s 55 of the Punjab Co-operative Societies Act, 1961. Learned counsel for the petitioner has placed reliance on " Kuldeep Singh Mangewal Vs. The State of Punjab and Others,

Notice of motion for 18.8.2011.

In the meantime, operation of the impugned orders dated 10.11.2010 (Annexure P1) and dated 27.6.2011 (Annexure P2) shall remain stayed.

4. In response to the notice of motion having been issued vide above said order, reply by way of affidavit of Naib Singh, Assistant Registrar, Co-operative Societies, Sunam, was filed on behalf of respondent Nos. 1 to 3.

5. Learned counsel for the petitioner vehemently contended that the impugned orders passed by the respondent-authorities were without jurisdiction, against the relevant statutory provisions of law and also against the law laid down by this Court. He further submits that election of the petitioner could have been challenged, pointing out his alleged ineligibility only u/s 55 of the Act. Since the petitioner admittedly did not incur any disqualification after the election, Rule 26 will not apply. He concluded by submitting that since the impugned orders were without jurisdiction, the same were liable to be set aside. Finally, he prays for acceptance of the writ petition.

6. Per contra, learned counsel for the State submits that since the petitioner was a defaulter for not repaying the loan which was advanced to him by the Sunam Primary Cooperative Agricultural Development Bank Limited, at the time of his election, he was not eligible for the election in view of the provisions of Rule 25 of the 1963 Rules. He relies upon Rule 26 to contend that since the petitioner was ineligible to contest the election, the respondent-authorities did not commit any error of law while passing impugned orders, vide which the petitioner was ordered to be ceased to be a committee member. He prays for dismissal of the writ petition.

7. Similarly, learned counsel for respondent No. 4 as well as learned counsel for respondent No. 5, while supporting the arguments raised by learned State counsel, submit that the impugned orders were passed in accordance with law and the writ petition was without any merit, hence liable to be dismissed.

8. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned orders are not sustainable in law and the writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter. The short but important question of law, that falls for consideration of this Court is, as to whether Rule 26 would be attracted, in a situation when admittedly no disqualification has been incurred by the committee member, after his election.

9. As noticed above, it is the admitted position on record that petitioner was already a defaulter before he filed his nomination paper, for contesting the election of the respondent-society. It has also gone undisputed on the record that no body raised any objection to the nomination paper filed by the petitioner, pointing out his alleged ineligibility to contest the election. Petitioner got elected as committee member and thereafter, in the further election amongst the committee members, he was also elected as Vice President of the respondent Society.

10. It is further an admitted position on record that election of the petitioner was not challenged u/s 55 of the Act. On the other hand, respondent No. 2 while exercising his powers under Rule 26 of the 1963 Rules, passed the impugned order dated 10.11.2010(Annexure P1) and petitioner was ordered to be ceased to be a committee member. In the revision filed by the petitioner, respondent No. 1 also fell into similar error of law while upholding the above said order dated 10.11.2010, vide his impugned order dated 27.6.2011 (Annexure P2). The respondent-authorities did not address themselves on the scope and applicability of Rule 26 in the present case. Having said that, this Court feels no hesitation to hold that the impugned orders are without jurisdiction.

11. The issue is no more res Integra. A Division Bench of this Court in Kuldeep Singh Mangewal Vs. The State of Punjab and Others, after elaborate discussion on the scope of Rules 25 and 26 of 1963 Rules, held as under:--

5. We are now left to decide the question whether the petitioner could cease to hold office as member of the governing body of the Society to which post he was elected on 26.7.1995 for a term of five years. The answer to this question depends upon the interpretation of Rules 25 and 26 of the Rules. Rule 25 prescribes the disqualifications for membership of a committee and no person is eligible for election as a member of the committee if he incurs any of those disqualifications. A person who suffers from any of those disqualifications would be ineligible to contest the election and his nomination papers would be rejected at the time of scrutiny. Rule 25(a) of the Rules with which we are concerned in the present case is reproduced hereunder for facility of reference:--

25. Disqualification for membership of committee.--No person shall be eligible for election as a member of the committee if --

(a) he is in default to any Co-operative Society in respect of any sum due from him to the Co-operative Society or owes to any Co-operative Society an amount exceeding his maximum credit limit;

xxxx

Rule 26 of the Rules, on the other hand, provides for the post-election disqualifications and if a person incurs any of those disqualifications after he has been elected a member of the Committee he shall cease to hold his office as such. Rule 26 of the Rules reads as under:--

26. Cessation of membership of committee.--A member of the committee shall cease to hold his office as such if he:--

(a) continues to be in default in respect of any sum due from him to the Co-operative Society for such period as may be laid down in the bye-laws;

(b) ceases to be a member;

(c) is declared insolvent;

(d) becomes of unsound mind;

(e) is convicted of an offence involving dishonesty or moral turpitude; or

(f) becomes subject to any disqualification which would have prevented him from seeking election, had he incurred that disqualification before election.

A reading of all the clauses of the aforesaid Rule makes it clear that the disqualifications referred to therein must be incurred by a person after he has been elected a member of a committee and it is on the incurring of any of those disqualifications that he will cease to hold his office as such. It is not in dispute that the petitioner was a defaulter of the Nizampur Society since 31.1.1992 and he paid back the debt on June 6, 1997. When he

contested the election as President of the Society on 26.7.1995 he was in default to that Society and therefore, he was not eligible to contest. He, however, contested the election successfully and became the President. The argument of the learned counsel is that Rule 26 prescribes the post-election disqualifications i.e. disqualifications which a person should incur after he became a member of the committee but since the petitioner had incurred the disqualification prior to his election, Rule 26 would not apply. There is merit in this contention. Clause (f) of Rule 26 under which action has been taken against the petitioner provides that a member of a committee shall cease to hold his office as such if he "becomes" subject to any disqualification which would have prevented him from seeking election had he incurred that disqualification before election. The word "becomes" in Clause (f) leaves no room for doubt that the disqualification has to be incurred after he was elected a member of the committee. If a person had incurred the disqualification even prior to his election as member of the committee then Clause (f) of Rule 26 of the Rules would not apply. Rules 25 and 26 deal with disqualifications of persons to become members of a committee or to continue as members thereof and, therefore, in the very nature of things the provisions of these Rules have to be construed very strictly. In the case before us the petitioner was already a defaulter when he contested for the membership of the committee and, therefore, Clause (f) of Rule 26 of the Rules will not be attracted. It is not the case of the respondents that the petitioner incurred the disqualification under Clause (a) of Rule 26. It is contended by the learned Deputy Advocate General that the petitioner was ineligible when he contested the election as President of the Society and, therefore, he was subject to a disqualification which prevented him from seeking election. This is so but having successfully contested the election as member of the committee of the society and thereafter its President even though he was ineligible, his election could be challenged by raising an election dispute u/s 55 of the Act but his membership could not be ceased under Clause (f) of Rule 26 of the Rules. It must, therefore, be held that Clause (f) of Rule 26 has no applicability to a case where a person though ineligible to seek the election has yet been elected as a member of a Committee when he has not incurred the disqualification after the election. In this view of the matter, the impugned order dated 29.9.1997 holding that the petitioner had ceased to be the President of the Society cannot be sustained.

12. Similarly, another Division Bench of this Court while following the law laid down in Kuldeep Singh Mangewal"s case (supra) held in Tehal Singh Vs. The Additional Secretary Cooperation, , that when a person was already a defaulter at the time of contesting election for membership of the society and not eligible to contest, succeeded in election and became President of Society, would not be ceased to be a member under Clause (f) of Rule 26 because the disqualification was incurred by him prior to election. The observations made by the Division Bench in Kuldeep Singh Mangewal"s case (supra) reproduced hereinabove, aptly apply in the present case.

13. During the course of hearing, learned counsel for the respondents could not substantiate their arguments. They were also unable to distinguish the above said two

judgments of this Court. Thus, the judgments of Kuldeep Singh Mangewal (supra) and Tehal Singh (supra) squarely apply in the instant case.

14. No other argument was raised.

15. Respectfully following the law laid down by the two Division Benches of this Court, in the cases of Kuldeep Singh Mangewal (supra) and Tehal Singh (supra) it is unhesitatingly held that the impugned orders not only suffer from patent illegality and perversity but they also suffer from jurisdictional error, which strikes at the root of the case. In view of the above, the irresistible conclusion is that the impugned orders are liable to be set aside.

16. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the answer to question posed above, has to be an emphatic one and the same is answered, accordingly. Thus, the impugned orders are declared illegal and hereby ordered to be set aside. Resultantly, the instant writ petition stands allowed, however, no order as to costs.