

other than the previous year during which the assessee obtains an amount or the value of the benefit accrues to him. It is in the latter year that the amount obtained or value of the benefit accrued to him is to be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of allowance has been made is in existence from that year or not. It is the conceded case of the assessee that in the preceding years during which the sums as sales-tax were recovered from the parties transacting business with it, allowance or deduction has been claimed for those sums in those years. On the assessee's own case, section 41(1) of the Act was thus attractable. The mere fact that the assessee followed the mercantile system in the method of accountancy in contrast to the cash-credit system would not, it seems, distract the applicability of section 41(1) of the Act, especially when the amount was transferred by the assessee to its profit and loss account in the previous year and had by fiction to be deemed to be profit and gain of business or profession and accordingly chargeable to income-tax as the income of that previous year. Thus on the finding recorded by the Tribunal whether or not section 41(1) of the Act was attracted was obviously a question of law and the Tribunal fell in error in not referring the question to this Court for opinion.

(6) For the forgoing reason, this petition is allowed. The Tribunal is directed to make a statement of the case and refer above-noted question of law for opinion to this Court. No costs.

H.S.B.

Before I. S. Tiwana, J.

SHER CHAND,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1648 of 1985.

May 17, 1985.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 15A and 26A—Co-option of members of the managing committee of Co-operative Societies—Registrar directing committees of all the Co-operative Societies to co-opt two persons from amongst the categories of persons mentioned in Section 26-A(2)—Such a direction—Whether could apply to a Central Society as well—Primary society consisting of individuals—Central Society having primary society consisting of individuals as its members—Representative of a member

Sher Chand v. State of Punjab and others (I. S. Tiwana, J.)

primary society—Whether could be deemed to be a member of the Central Society for the purposes of co-option.

Held, that in terms of sub-section (1) of Section 26A of the Punjab Co-operative Societies Act, 1961, the Registrar is competent to direct the Committee of a Co-operative Society or any class of Co-operative Societies to co-opt in the prescribed manner for serving on the Committee such number of members, not exceeding two, as may be specified in the direction. It is again beyond dispute in the light of the opening words of sub-section (2) of this section that such co-options have to be made from amongst members of the Co-operative Society to the Committee of which the co-option has to be made. The use of the words 'the' before Co-operative Society clearly denotes a particular society. The only other requirement being that such member or members to be co-opted must belong to the category of persons specified in this sub-section, i.e., Scheduled Castes, Scheduled Tribes or Backward Classes or from amongst members who as landowner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfil the other prescribed conditions. The representatives of the member primary society co-opted to the committee of the central society are certainly not the members of the central society. According to the provisions of sub-section (1) of Section 15-A of the Act no Central Society can have or has any individual members. This sub-section injuncts the Central Society from having an individual as its member. Representative of a member Primary Co-operative Society undoubtedly represents the society which alone is the member of the Central Society as an agent or a delegate. Merely because the representative or the delegate of a society happens to be a Scheduled Caste, does not and cannot mean that the society itself is to be treated as a Scheduled Caste or a member of the Backward Classes. The Society in law has an individuality or identity which is different from its individual members. It is, thus, patent that Section 26-A envisages co-option to the Committee of a Society which has individuals as its members or, in other words, the Primary Societies. There being no individual members of Central or apex Societies, none of their members can be co-opted as members belonging to the Scheduled Caste or Backward Classes. The Primary Societies do not derive their colour or caste from their representatives. It is, therefore, plain that the direction which can be issued under Section 26-A is only referable to co-option to the Committees of Primary Societies and in case it means anything more than that, the same is without jurisdiction.

(Para 3).

Petition Under Articles 226/227 of the Constitution of India praying that:—

- (i) *that Section 26(A) be interpreted to mean that no Director can be co-opted out of Scheduled Castes in the Central and Apex Societies.*

- (ii) Complete records of the case be summoned;
- (iii) An appropriate writ, order or Direction quashing the Co-option of respondents No. 5 and 6 as Directors of the Bank respondent No. 2, be issued;
- (iv) It is also prayed that the resolution of the Bank respondent No. 2, dated 18th March, 1985. Annexure P-1 be declared nullity and be quashed and as a consequence the election of the Office Bearers held in the said meeting be also declared nullity and be quashed;
- (v) costs of the petition be also awarded to the petitioner against the respondents;
- (vi) requirement regarding service of advance notice of the writ petition be dispensed with;
- (vii) condition regarding filing of certified copies of the Annexures may also kindly be dispensed with;
- (viii) any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case be issued;

It is, further prayed that during the pendency of the Writ Petition respondents No. 5 and 6 be restrained from functioning.

Kuldip Singh, Senior Advocate with S. S. Nijjar, Advocate, for the Petitioner.

J. S. Mann, D.A.G., Punjab, for respondent Nos. 1 to 3.

Sukhbir Singh, Advocate, for respondent Nos. 5 and 6.

H. S. Mattewal, Advocate, for respondent Nos. 2, 7 and 8.

JUDGMENT

I. S. Tiwana, J.—

(1) The short but interesting point of law raised in this petition relates to the interpretation of section 26A of the Punjab Co-operative Societies Act, 1961 (for short, the Act). The part of the section relevant to the controversy raised reads as follows:—

“26-A. Co-option of members,—

- (1) Notwithstanding anything in section 26, the Registrar may, by an order in writing, direct the committee of

Sher Chand v. State of Punjab and others (I. S. Tiwana, J.)

any co-operative society or any class of co-operative societies to co-opt, in the prescribed manner for serving on the committee such number of members not exceeding two as may be specified in the directions.

- (2) Where a direction is issued under sub-section (1), co-option shall be made from amongst members of the co-operative society belonging to scheduled castes, scheduled tribes or backward classes or from amongst members who as landowner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfil the prescribed condition."

What precisely is impugned herein is the co-option of respondent Nos. 5 and 6 as Directors or members of the Governing Body or the Committee of the Ferozepur Central Co-operative Bank, Ltd., (hereinafter referred to as the Bank) and election of office bearers of the Bank on the basis of these co-options. The proceedings concerning the co-option and the election referred to above are contained in the impugned Resolution No. 15, dated March 18, 1985, of the Directors of the Bank (Annexure P. 1). Though the co-option and election referred to above have been assailed in the petition on grounds more than one, yet Mr. Kuldip Singh, learned Senior Advocate for the petitioner has confined the challenge to the following solitary ground as contained in paragraph 10 of the petition:—

- "10. That, as mentioned in para above, the general body of the Ferozepur Central Co-operative Bank only consists of primary Societies. There are only Societies which are members of the general body of the Bank. There are no individual members at all. Under the circumstances the applicability of the provisions of Section 26-A of the Act, 23-A of the Rules and of the executive instructions, annexure P-2, regarding co-option to the Bank which is a Central Society does not arise. No Society can be Scheduled Castes or Backward Classes, etc. The above mentioned provision can only be made applicable to the primary Societies where there are individuals as members. In this view of the matter, there can be no co-option at all the Ferozepur Central Co-operative Bank from amongst Scheduled Castes/Scheduled Tribes, etc., under the above mentioned provisions of law. The action of the respondents in co-opting individuals as a member of the Board of Directors is thus wholly illegal and cannot be sustained in the eyes of law."

Rule 23-A only regulates the mode or manner in which the co-option referred to above has to be made. It says that after the receipt of the direction from the Registrar in terms of the above noted section, the Committee of the Co-operative Society concerned shall immediately call a meeting of its members in accordance with the Rules and the bye-laws and shall then co-opt to its Committee the number of members specified in the direction. This attack is sought to be met by the Bank as well as the private respondents with the following plea as contained in paragraph 10 of the written statement of the Bank:—

“10. Contents of para 10 are admitted to the extent that the Central Body of the Ferozpur Central Co-operative Bank consists of primary societies and nine members have to be elected from nine zones (one from each zone). The rest of the contents are denied because the two members who have been co-opted were never enrolled as individual members to the society but they have been co-opted as the representatives of the member societies in the operational area of Bank and these societies represent the cause of the Scheduled Castes, Backward Classes and other weaker sections. They have been legally co-opted. The membership of the Talwandi Bhai Boot and Labour Workshop Co-operative Society, of which Ram Sarup is a member, is confined only to the members of the Scheduled Castes. The membership of Mahansinghwala Co-operative L/C Manasinghwala Society, of which Banta Ram, respondent No. 5, is confined to the members of the Scheduled Castes, Backward Classes and weaker sections of the society.”

Besides this it is also contended that the petitioner should be relegated to his remedies under section 55 of the Act, i.e., by assailing the co-option and election of the private respondents through arbitration.

(2) The parties are not at variance in accepting that the co-option of respondent Nos. 5 and 6 has taken place as per the written direction of the Registrar, dated March 8, 1984, copy of which is Annexure P. 2 to the petition. The substance of this direction meant for all the Co-operative Societies in the State is that at least two persons be co-opted in accordance with the provisions of section 26A

Sher Chand v. State of Punjab and others (I. S. Tiwana, J.)

of the Act from amongst the categories of persons specified in sub-section (2) of this section. Having heard the learned counsel for the parties I find that the petitioner must succeed.

(3) In the light of sub-section (1) of section 26-A it cannot possibly be disputed that the Registrar is competent to direct the Committee of a Co-operative Society or any class of Co-operative Societies to co-opt in the prescribed manner for serving on the Committee such number of members, not exceeding two, as may be specified in his direction. It is again beyond dispute in the light of the opening words of sub-section (2) of this section that such co-options have to be made from amongst members of *the* Co-operative Society to the Committee of which the co-option has to be made. The use of the word 'the' before Co-operative Society clearly denotes a particular Society. The only other requirement being that such member or members to be co-opted must belong to the category of persons specified in this sub-section, i.e., Scheduled Castes, Scheduled Tribes or Backward Classes or from amongst members who as landowner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfil the other prescribed conditions. The question then is, are respondent Nos. 5 and 6 who have been co-opted to the Committee of the Bank, members of the Bank? Concededly they are not. It is the accepted position in the light of the provisions of sub-section (1) of section 15-A that no Central Society like the Bank can have or has any individual members. This sub-section injuncts the Central Society from having an individual as its member. It reads thus:—

“No individual shall be admitted as member of a central or apex society unless a society has been exempted by the Registrar in this behalf, by a general or special order.”

Concededly there is no order—general or special,—by virtue of which an individual or respondent Nos. 5 and 6 can claim to be the members of the Bank. It is the undisputed position that only various Primary Societies in the area of operation of the Bank are its members. The case of the Bank and the private respondents, however, is that respondents 5 and 6 being representatives of their respective Primary Societies and members of which Societies has only been confined to the members of the Scheduled Castes, Backward Classes or other weaker sections of society, have to be treated as members of the Bank for purposes of their co-option to its Managing Committee or the Board of Directors. This argument on the face of it, is

fallacious. Representative of a member Primary Co-operative Society undoubtedly represents the Society which alone is the member of the Bank as an agent or a delegate. Merely because the representative or the delegate of a Society happens to be a Scheduled Caste, does not and cannot mean that the Society itself is to be treated as a Scheduled Caste or a member of the Backward Classes. The Society in law has an individuality or identity which is different from its individual members. The learned counsel for the respondents are not a position to refer to any provision, principle, precedent or a legal fiction by virtue of which the Society which, as already pointed out, is a legal entity, has to be treated as belonging to the Scheduled Castes or Backward Classes. This is in spite of the fact that all the individual members of a given Society may be members of such Classes. It cannot be that then a Primary Society is represented by a Scheduled Caste, it becomes a Scheduled Caste Society even if there is no other Scheduled Caste member of that Society and it has to be treated as non-Scheduled Caste Society when its representative happens to be a non-Scheduled Caste or non-Backward Classes person. It is thus patent that this section 26-A envisages co-option to the Committee of a Society which has individuals as its members or, in other words, the Primary Societies. There being no individual members of Central or apex Societies, none of their members (they essentially being Primary and Central Societies respectively) can be co-opted as members belonging to the Scheduled Caste or Backward Classes. The Primary Societies do not derive their colour or caste from their representatives. The representatives of such Societies cannot make the Societies themselves as Scheduled Caste or members of the Backward Classes on account of their own being members of such Classes. It is, therefore, plain that the direction contained in Annexure P. 2 is only referable to co-option to the Committees of Primary Societies and in case it means any thing more than that, the same is without jurisdiction in the light of the plain phraseology of section 26-A. The submission of Mr. Mann, learned Deputy Advocate General that since as per sub-section (1) of this section the Registrar is competent to issue direction for such co-options to any Co-operative Society or any class of Co-operative Societies, it should be taken to mean or include that he is competent to issue direction to Central or apex Societies also, does not appear to be sound in the light of the clear language of sub-section (2) of this section. The members who can be co-opted to the Committees of the Societies referred to in sub-section (1) have been specified in sub-section (2). Since only individuals can belong to Scheduled Castes or Scheduled

Tribes or Backward Classes, the Societies referred to in sub-section (1) would essentially mean the Societies of which such individuals are the members. As there are no individual members of Central and apex Societies, it cannot possibly be held that any of the primary or the Central Societies which are their members, belongs to the Scheduled Castes or Backward Classes. Further it is not unknown that there are a number of types or classes or primary Co-operative Societies themselves. The words 'class of Societies' as used in sub-section (1) only refer to those Societies and not to Central or apex Societies.

Besides all this I have my doubts about the validity of this direction (P. 2) if the matter is examined from another angle. Can there be a general or omnibus direction to all the Societies to co-opt two of their members to their respective Committees as has been done by the Registrar? Was it ever intended by the Legislature or was it that he had to apply his mind to the case of each and every Society, or class of Societies and take a conscientious decision with regard to the co-option of members to the Committees of those Societies in the light of the attending facts and circumstances? For example, can the Primary Co-operative Societies of the type to which respondent Nos. 5 and 6 belong, i.e., whose membership is confined to Scheduled Castes and Backward Classes people only, also be required or expected to co-opt Scheduled Castes and Backward Classes people to their Committees? The instruction in question surely governs even such Societies. But since no arguments have been addressed by the learned counsel for the parties on this aspect of the matter, I refrain from expressing myself on that.

(4) So far as the contention that the petitioner should be relegated to his remedy of arbitration under section 55 of the Act is concerned, I see no substance in that for the simple reason that the very instruction issued by the Registrar who alone is competent to refer the matter for arbitration, is under challenge. No arbitrator appointed by him or he himself could examine the validity of these instructions.

(5) Yet another aspect of the matter which finds a mention in the pleadings of the parties and cannot be ignored is as follows.

(6) The Committee of the Bank is constituted of nine elected members, i.e., one from each of the nine zones into which the electorate and the area of operation of the Bank has been divided.

There was a dispute with regard to the election from Zone No. 8 and it was the subject matter of *The Harijan Tanner and Shoe Makers Co-operative Industrial Society, Limited and others v. The State of Punjab and others* (1). In that petition I had directed,—*vide* my order of the same date that fresh election be held from that Zone, i.e., No. 8, after framing the voters list afresh in accordance with law. Admittedly no election from this zone was held prior to the impugned co-option and election in spite of the clear direction in that petition. The explanation offered by the Bank is that the matter “regarding holding of election in Zone No. 8 were put up by the respondent No. 2 to the Board of Directors in the meeting held on 19th November, 1984,—*vide* item No. 30. The Board of Directors noted the contents of the decisions. A date for election of a Director from Zone No. 8 could not, however, be fixed due to disturbed conditions in the district. This item will again be put up before the Managing Committee shortly in one of its next meetings.” The learned counsel for the Bank accepts that till today no such election has been held. The explanation offered by the Bank for not holding the election in terms of the direction issued by me on September 18, 1984, appears to be simply ridiculous. Firstly, it is being proclaimed by the State Government time and again that law and order situation in the State, including the zone concerned, is under control and secondly, I see no reason as to why the present election and co-option could be held and not from Zone No. 8. The whole effort appears to be to avoid the 9th elected member on the Board of the ‘Bank’.

(7) In the light of the discussion above, while allowing this petition and setting aside the co-option of respondent Nos. 5 and 6 and also the election of office bearers based on those co-options, I direct the Bank to hold the election from Zone No. 8 within a period of eight weeks from today in accordance with the direction contained in my order dated September 18, 1984, in C.W.P. No. 620 of 1984 (*supra*) and it would only be thereafter that the election of the office bearers of the Bank would be held. The petitioner is also allowed Rs. 1,000/- by way of costs from the Bank, i.e., respondent No. 2.

N.K.S.

(1) CW 620 of 1984 decided on 18th September, 1984.