

I. L. R. Punjab and Haryana

(1967)2

CIVIL MISCELLANEOUS

*Before Inder Dev Dua and Harbans Singh, JJ.*SHIAM SINGH,—*Petitioner**versus*THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1712 of 1966.

October 28, 1967

Punjab Co-operative Societies Act (XXV of 1961)—S. 85—Punjab Co-operative Societies Rules (1963)—Rule 18(3)—Co-operative Societies to which applicable—Rules 18(3) and bye-law 7(2)—Conflict between—Whether any—Rule 18(3)—Whether supersedes bye-law 7(2).

Held, that there can be no manner of doubt that whereas sub-rules (1) and (2) of Punjab Co-operative Societies Rules (1963) deal with co-operative society with unlimited liability, it is sub-rule (3) which deals with a co-operative society with limited liability. The words limited co-operative society cover a co-operative society, the liability of whose members is limited by its bye-laws either to the unpaid amount of the shares, if any, or to the amount that they have individually undertaken to contribute to the assets of the society in the event of its being wound up. In either case the basic idea of such societies is that the members undertake to pay only a fixed sum of money and it does not matter whether that amount is fixed by reference to the value of the shares taken by them or the liability otherwise undertaken by them to contribute to the assets of the society. Sub-rule (3) of Rule 18, therefore, does not deal only with those co-operative societies in which liability is limited by shares. The apparent object of laying some restrictions on the withdrawal of a particular member from such society is that the security of the possible creditors is not reduced. Be that as it may, when sub-rule (3) states that no member of a co-operative society with limited liability shall ordinarily be permitted to seek withdrawal of refund of the shares, it obviously deals with members of all types of societies with limited liability and 'withdrawal' must be taken to have been used in the general sense, not necessarily of the withdrawal of the shares.

Held, that Rule 18(3) of the Rules does not elaborate the circumstances in which the withdrawal shall or shall not be allowed. This has to be governed by the bye-laws as provided by rule 8(1)(g). The only bye-law relating to the question of withdrawal is 7(2) which, however, does not give an absolutely unrestricted right to a member to withdraw. That being the case, it cannot be said to be in conflict with sub-rule (3) of rule 18. Hence rule 18(3) does not come into conflict with bye-law 7(2) and it does not supersede the same.

Shiam Singh v. The State of Punjab, etc. (Harbans Singh, J.)

Case referred by the Hon'ble Mr. Justice Inder Dev Dua, dated October 11, 1966 to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Harbans Singh, dated 28th October, 1966.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari or any other appropriate writ order or direction be issued quashing the order, dated 25th June, 1966, passed by respondent No. 2.

H. L. SIBAL AND N. N. GOSWAMY, ADVOCATES, for the Petitioner.

M. R. SHARMA, H. L. SARIN, B.R. L. LYANGOI, B. S. MALIK, G. C. MITTAL, MOHINDER SINGH AND BALRAJ BAHAL, ADVOCATES, for the Respondents.

ORDER OF THE DIVISION BENCH

HARBANS SINGH, J.—This petition under Article 226 of the Constitution has been filed by Shiam Singh challenging the directions issued by the Cane Commissioner, Punjab, exercising the powers of the Registrar, Co-operative Societies, to the Naharpur Cane Growers Co-operative Society Ltd. (hereinafter referred to as the society) not to accept the resignation submitted by Shiam Singh from the membership of the society, which resignation was submitted according to the terms of the bye-laws of the society, and seeking a writ or direction directing the respondent society and the Cane Commissioner not to interfere with the right of the petitioner to withdraw from the membership of the society. In view of the necessity for a final decision in the matter at an early date the matter was referred by my learned brother to be heard in the very first instance by a Division Bench and it is in these circumstances that the matter has been placed before us.

The facts have been given in the referring order need not be reproduced *in extenso*. The society was registered on 1st of October, 1954, with limited liability. There was no share capital; each member (apart from the persons who were *ex-officio* members with whom we are not concerned) was to pay a sum of Re. 1 as admission fee. The main object of the society was that the members were to supply sugarcane, grown by them in the villages which were within its area of operation (the details of which were given as an appendix to the bye-laws of the society) to the Saraswati Sugar Mills Ltd., Yamunanagar (hereinafter referred to as the factory or the mill). According to the bye-laws, each member was liable to pay a sum upto

Rs. 25 to meet its liabilities in case of the winding up of the society
Bye-law 7 provided that a membership shall cease—

- (1) on death;
- (2) by submitting his resignation in writing to the society before 30th June. In case of failure to resign before 30th of June, the member remains liable for the supply of all his sugarcane through the society during the year following;
- (3) on expulsion;
- (4) on permanent incapacity; and
- (5) on ceasing to cultivate sugarcane in the area of operation of the society;

Bye-law 8 provided the circumstances under which a member could be expelled and was to the following effect:—

“8. A member may be expelled;

- (1) On conviction of a criminal offence involving dishonesty or moral turpitude;
- (2) On bankruptcy or on application for bankruptcy; and
- (3) On any other action which may be held by the managing committee to be dishonest or contrary to the stated objects of the society or to the interest of co-operation such as not observing the rules, etc.”

Under bye-law 4 providing for membership, apart from the persons who join the society originally at the time of its registration and the persons who are subsequently admitted in accordance with the bye-laws, under sub-clause (3), sugar factory or factories purchasing cane from the society were also to be members, and similarly a representative of the Co-operative Department nominated by the Registrar and one official of the cane development staff nominated by the Cane Commissioner, and better farming or other co-operative societies cultivating cane were also to be members. It appears that the mill had nominated two members on the managing committee of the society. Apparently sometimes before June, 1966, they ceased to be members of the managing committee, and being dissatisfied with the working of the society on this ground Shiam

Shiam Singh v. The State of Punjab, etc. (Harbans Singh, J.)

Singh submitted his resignation from the membership on 9th of June, 1966. This resignation is annexure 'B' to the petition and the relevant portion thereof runs as follows:—

“* * * * *

“2. The factory nominated directors on the managing committee of the society used to give impartial advice in regard to cane development as well as marketing and thus the work of the society was going on smoothly.

3. Since the removal of factory nominated directors, party frictions and irregularities are increasing. Therefore, I have no confidence now in the said society. Hence, I hereby tender my resignation from the membership of the Naharpur Cane Growers Co-operative Society Ltd., Naharpur. My name be cancelled from the membership of the said society. In future, there will be no responsibility of any kind upon me of the said society. This is being written for your information.”

Copies of this were sent for information, *inter alia*, to the Cane Commissioner. It appears that not only Shiam Singh, who was a member of the society, but a large number of other persons, who were members of this society as well as of other similar cane-growers co-operative societies in the area from which the mill purchased its sugarcane, submitted similar resignations on similar grounds. In fact, it is not disputed that all these resignations, which ran into four figures, were submitted on a printed letter in Hindi containing exactly the same words except for the name, parentage and description of the member concerned which were to be filled in, in the blank spaces provided. This move was considered to be an attempt by the mill to almost bring to a standstill the working of these co-operative societies. Consequently, on 25th of June, 1966, the Cane Commissioner, purporting to exercise his authority under rule 45 of the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the rules), passed an order giving directions to all the cane-growers co-operative societies functioning in the area of the mill that no withdrawal from the membership of any of these societies “shall be permitted by the managing committees of the said societies”. A copy of this order is annexure 'C' to the petition. In view of the aforesaid directions, Puran Ram, acting for the Secretary of the society, informed Shiam Singh as follows:—

“* * * your resignation * * cannot be accepted by us in view of the Cane Commissioner's directive addressed to this society,—vide his order received by

us under his office No. CC/S/5883-97, dated 25th June, 1966.”

It is the directive issued by the Cane Commissioner and the action taken by the managing committee on the basis thereof that is being challenged by the present writ petition.

Mr. Hira Lal Sibal, learned counsel for the petitioner, addressed arguments at great length. Before enumerating these contentions and dealing with the same it would be necessary to refer to the relevant provisions of the Punjab Co-operative Societies Act, 1961, (hereinafter referred to as the Act) and the rules.

Section 2 of the Act gives the definitions. Clause (d) defines “co-operative society with limited liability” as “a co-operative society the liability of whose members is limited by its bye-laws to the amount, if any, unpaid on the shares individually held by them or to such amount as they may individually undertake to contribute to the assets of the society, in the event of its being wound up.” Chapter III contains sections from 15 to 22, and the heading of the chapter is “Members of Co-operative Societies and their Rights and Liabilities”. There is no provision in this chapter how a person shall cease to be a member of the society except that section 21 provides for transfer of interest on the death of a member. Section 22 deals with the liability of a past member and is as follows:—

“* * *the liability of a past member or of the estate of a deceased member of a co-operative society for the debts of the society as they existed,—

(a) in the case of a past member, on the date on which he ceased to be a member;

(b) in the case of deceased member, on the date of his death; shall continue for a period of two years from such date.

* * * * *

“Management of Co-operative Societies” is dealt within Chapter IV (sections 23 to 29). Section 23 lays down that the final authority in a co-operative society shall vest in the general body of members, provided that if the bye-laws provide for the constitution of a smaller body, then that smaller body could exercise the powers of the general body as may be specified in the bye-laws. Under section 27 the Registrar is given the power to supersede a committee of a society which is guilty of persistent default or negligence in the

Shiam Singh v. The State of Punjab, etc. (Harbans Singh, J.)

performance of its duty and order fresh election or appoint an administrator, etc., Chapter V (sections 30 to 40) relates to privileges of co-operative societies. Chapter VI deals with properties and funds of co-operative societies; Chapter VII with audit, inquiry, inspection etc., Chapter VIII with settlement of disputes, Chapter IX with winding up of co-operative societies, Chapter X with execution of awards, decrees, orders and decisions, Chapter XI with appeals and revisions and Chapter XII with offences and penalties, etc., and under this very chapter there is section 85 authorising the Government to make rules in respect of any co-operative society or class of such societies to carry out the purposes of the Act. While dealing with particular matters under sub-section (2) of section 85, clauses (iv) and (xix) provide as follows :—

“(iv) the matters in respect of which the society may or shall make bye-laws and for the procedure to be followed in making, altering and abrogating bye-laws and the conditions to be satisfied prior to such making, alteration or abrogation;

(xix) the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liability of past members and of the estates of deceased members;”

Under this rule-making power, Punjab Co-operative Societies Rules, 1963, were promulgated. As provided in sub-clause (iv) of sub-section (2) of section 85, reproduced above, rule 8 laid down the matters, regarding which the co-operative societies shall make bye-laws and clause (g) relates to withdrawal and expulsion of members and the payments, if any, to be made to such members. Rule 18 deals with withdrawal from membership, which is provided in clause (xix) of sub-section 2 of section 85, reproduced above. This may be reproduced *in extenso* :—

“18(1) In a co-operative society with unlimited liability, a member who is not indebted to a co-operative society and is not a surety for an unpaid debt, may withdraw from the co-operative society after giving such notice to the secretary of the society as may be laid down in the bye-laws of the co-operative society.

(2) In a co-operative society with unlimited liability, a member, who withdraws or is otherwise removed or expelled

from the society, shall be entitled to repayment without interest of any money paid by him or his predecessor-in-interest towards the purchase of shares after such periods as may be laid down in the bye-laws.

- (3) No member of a co-operative society with limited liability shall ordinarily be permitted to seek withdrawal or refund of his share:

Provided that where the society has created a share transfer fund out of its earned profits, its managing committee may, keeping in view the over-all interests of the society, allow withdrawal of shares :

provided further that such withdrawal of shares at any time shall not exceed five per cent of the aggregate paid up share capital of the society, excluding Government contributions, as it stood on the 30th June, of the preceding years.

- (4) * * * *

Rule 45 is made under sub-section (1) of section 85 giving the Government a general power to make rules and relates to the directives which can be issued by the Registrar for the successful conduct of the business and is in the following terms :—

“The Registrar may from time to time, issue such directives as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies.”

Now, I may revert to the arguments urged by the learned counsel for the petitioner in support of his contention that the Cane Commissioner acted beyond his jurisdiction in issuing the directive asking the managing committees of all the co-operative societies not to accept the resignation of any member.

In the first place, he contended that sub-rules (1) and (2) of rule 18 have obviously no application because they relate to societies with unlimited liability, sub-rule (3) in terms applies only to societies having a share capital and, therefore, it has nothing to do with a society of the type with which we are dealing because this society has no share capital. The main argument was that sub-rule (3)

Shiam Singh *v.* The State of Punjab, etc. (Harbans Singh, J.)

states that no member of a co-operative society with limited liability shall ordinarily be permitted to seek withdrawal or refund of his share and that the words 'withdrawal' and 'refund' both relate to the share and that the words used in the provisos further make this point clear because in the first proviso it is laid down that under certain conditions, a managing committee may "allow withdrawal of shares". There can be no manner of doubt that whereas sub-rules (1) and (2) deal with co-operative society with unlimited liability, it is sub-rule (3) which deals with a co-operative society with limited liability. The words limited co-operative society cover a co-operative society, the liability of whose members is limited by its bye-laws either to the unpaid amount of the shares, if any, or to the amount that they have individually undertaken to contribute to the assets of the society in the event of its being wound up. In either case the basic idea of such societies is that the members undertake to pay only a fixed sum of money and it does not matter whether that amount is fixed by reference to the value of the shares taken by them or the liability otherwise undertaken by them to contribute to the assets of the society. I am, therefore, of the view that the contention of the learned counsel that sub-rule (3) of rule 18 deals only with those co-operative societies in which liability is limited by shares, does not appear to be correct because that will be giving too narrow a meaning to sub-rule (3). The apparent object of laying some restrictions on the withdrawal of a particular member from such society is that the security of the possible creditors is not reduced. Be that as it may, when sub-rule (3) states that no member of a co-operative society with limited liability shall ordinarily be permitted to seek withdrawal or refund of the shares, it obviously deals with members of all types of co-operative societies with limited liability and 'withdrawal' must be taken to have been used in the general sense, not necessarily of the withdrawal of the shares. Though the language of this rule could have been more happily worded, yet I do not think that it is possible to give this rule the restricted meaning that is sought to be given by the learned counsel for the petitioner, more particularly because of the use of both the words 'withdrawal' and 'refund'. The mere fact that in the proviso 'withdrawal' is also used in connection with withdrawal of the shares, would not be a ground for restricting the meaning in the main rule.

The next argument of the learned counsel is that even if this rule is applicable to this society, it in no way comes into conflict

with the bye-law 7(2). He urged that clause (g) of rule 8 specifically provides that a co-operative society can make bye-laws, *inter alia*, with regard to withdrawal of members, and rule 18 only gives a general direction that "ordinarily" a member shall not be allowed to withdraw. It does not altogether prohibit the withdrawal and does not further give the circumstances under which such a permission shall be given or refused. So far as bye-law 7(2) is concerned, under which withdrawal is to be allowed, it provides for the circumstances, i.e., where the resignation is after 30th of June, the withdrawal is to be refused. There is, therefore, according to the learned counsel, no conflict between rule 18(3) and bye-law 7(2). Whereas rule 18(3) provides that withdrawal should not be as a matter of course and should not ordinarily be permitted, bye-law 7(2) gives power to a member to withdraw only in the stated circumstances and the power to withdraw is not unrestricted.

The argument on the other side, however, is that there was no rule corresponding to sub-rule (3) in the previous rules (Punjab Co-operative Societies Rules, 1956), which were promulgated under the Punjab Co-operative Societies Act, 1956. There, rule 15(a) and (b) dealt only with a case of a society with unlimited liability and there was no provision relating to a society with limited liability. The present society was registered under that Act when the rules of 1956 were in force and, consequently, under bye-law 7(2) a member was given unrestricted power to withdraw from the membership on his submitting a resignation before a particular date. Neither the society in its general meeting nor the managing committee had any discretion to refuse this resignation, and the resignation submitted before the date provided, had the automatic result of the person ceasing to be a member. Sub-rule (3) of rule 18, for the first time, laid down that "ordinarily" members of such societies are not to be permitted to seek withdrawal. Now, this rule must take precedence over any bye-law to the contrary, and inasmuch as there is no provision in the bye-laws dealing with the question of any managing committee or the society exercising its discretion whether to permit or not to permit to withdraw, sub-rule (3) of rule 18 must be taken to have been impliedly incorporated in the bye-laws. No doubt, sub-rule (3) does not mention as to whose permission is required, but inasmuch as, under the law, the working of the society vests in the society in its general meeting, the grant or refusal of such permission, must be taken to have been vested in the society and inasmuch as the managing committee, under the bye-laws, has to manage the affairs of the society, by inference the managing committee is the body which must apply its mind whether to grant or refuse the permission. In other words, it was urged that

Shiam Singh v. The State of Punjab, etc. (Harbans Singh, J.)

the effect of sub-rule (3) is that no member can automatically cease to be a member by merely submitting a resignation, as provided in bye-law 7(2); and that it is further subject to the exercise of the discretion—no doubt to be exercised in a *bona fide* manner—by the society. If this contention is accepted, it was urged, then the Registrar, under rule 45, is given authority to issue such directives to the society or its management as, in his opinion, are necessary to be issued for the proper functioning of the society and, consequently, the Cane Commissioner was well within his jurisdiction in issuing the directive as he has done because there was a feeling prevailing among the members that by mere submission of the resignation, they automatically ceased to be members and if this impression was acted upon, the result would have been that the functioning of all the cane growers societies in the area would almost come to a standstill.

It was not seriously disputed that the way in which mass resignations were submitted on the alleged ground that the directors of the mill, who had been working on the managing committee, had ceased to do so, could convey the impression, as it has done to the Cane Commissioner, that all these resignations were manipulated at the instance of the mill and were intended to bring about a failure of all the co-operative societies in the area over which the mill apparently lost its control because of its directors not being allowed to work on the managing committees of the societies. The contention, therefore, is that that being the case, it was clearly open to the Registrar to point out to the societies working in the area that in view of the new sub-rule (3) of rule 18, no member could claim, as a matter of right, to withdraw from the membership of the society and that the withdrawal must be with the permission of the society. In the impugned directive (annexure 'C'), however, in the last paragraph the Cane Commissioner has issued an unqualified direction to the societies not to accept any resignation. The societies, therefore, were left with no discretion whatever, whether to permit a withdrawal or not, and, to this extent, it was conceded on behalf of the respondents, the Cane Commissioner over-stepped his jurisdiction. Even, according to the argument of the learned counsel for the respondents, the only change brought about by sub-rule (3) was that each application for resignation or withdrawal from the membership had to be scrutinised by the society in order to see whether it was a *bona fide* application which, in the circumstances, should be accepted or not, and in giving directions to the societies that they should not accept any resignation, the Cane Commissioner left no discretion with the society even to accept a resignation submitted for *bona fide* reasons, by any member. The directive issued by the Cane Commissioner, therefore, must be quashed

as being beyond the jurisdiction of the officer concerned. In view of this it is not necessary to go into the question raised by the learned counsel for the petitioner as to whether before passing such an order, which was going to adversely affect the right of an individual, it was necessary to give him an opportunity to be heard.

This, however, leaves the main question still to be decided whether bye-law 7(2) gives sufficient indication about the circumstances in which a resignation is to be accepted or whether, notwithstanding this bye-law, in view of sub-rule (3), the discretion now vests in the managing committee to accept or reject a resignation which may be submitted prior to 30th of June.

The first point for consideration is whether there is any conflict between rule 18(3) and bye-law 7(2) and the former overrides the provisions of the latter, as has been held by the Cane Commissioner in the impugned order. So far as the societies of the type, with which we are dealing, the provisos to sub-rule (3) of rule 18 do not apply and the main rule only directs that ordinarily a member shall not be allowed to withdraw. At best, this sub-rule can be taken to have been incorporated into the bye-laws and, thus, binding on the members. It does not elaborate the circumstances in which the withdrawal shall or shall not be allowed. This has to be governed by the bye-laws as provided by rule 8(1)(g). The only bye-law relating to the question of withdrawal is 7(2) which, however, does not give an absolutely unrestricted right to a member to withdraw. That being the case, it cannot be said to be in conflict with sub-rule (3) of rule 18. It was, however, open to the society to add other bye-laws elaborating the circumstances in which in spite of the fact that a resignation is given before 30th of June, the same may or may not be accepted. This amendment could have been done in the manner provided in bye-law 18 and in rule 10. In this connection it may be that the Cane Commissioner, under rule 45, could have issued directions making suggestions as to the manner in which the bye-laws may be modified. However, no such modification has been made by the society and, therefore, we are not concerned with the same. I am, therefore, of the view that rule 18(3) in no way comes into conflict with bye-law 7(2) and it does not supersede the same. Consequently, the second paragraph in the directive issued by the Cane Commissioner must also be quashed because that does not represent the correct state of law.



However, it does not mean that once a document purporting to be a resignation is received by the society, that must, without any further consideration, be accepted with the result that the person

Shiam Singh v. The State of Punjab, etc. (Harbans Singh, J.)

concerned would cease to be a member. As stated above, the resignations in this case were submitted *en masse* on printed forms and the Cane Commissioner felt that these have been got signed at the instance of third parties and thumb-marks or signatures had been obtained without the persons putting these thumb-impressions or signatures really realising what they were doing. In other words, such resignations were not voluntary acts of the persons, who purported to have submitted them on account of any real dissatisfaction with the working of the society. This, I feel, is a matter which the society or, in other words, the managing committee, which is invested under the bye-laws, with the day-to-day working of the society, is entitled to consider in respect of each resignation and if it comes to the conclusion that the so-called resignation does not represent a voluntary act of a member done with full knowledge of its import, it would certainly be entitled to reject the resignation. The reason would be that the document, which purports to be a resignation, would in fact, not be such a resignation and, therefore, cannot be considered to be a document which can be termed as a resignation put in by a member under bye-law 7(2).

Before leaving this case, it is necessary to note another argument that was addressed by the learned counsel for the petitioner namely that rule 45 gives unguided discretion to the Registrar to interfere in the working of the societies. There appears to be no force in this argument for the simple reason that the words used in the rule make it clear that the directions can be issued only for the successful conduct of the business of a co-operative society or class of co-operative societies, and this, in my opinion, is sufficient guidance for the exercise of the discretion vested in the Registrar.

The result, therefore, is that both the interpretation put on the effect of sub-rule (3) of rule 18 as overriding the provisions of bye-law 7(2), as well as the directions given in the last part of the impugned order to the managing committee of the society not to accept any resignation cannot be sustained, and the rule is, consequently, made absolute and the impugned direction given by the Cane Commissioner quashed. The resignation submitted by the petitioner will now be considered, by the managing committee of the society concerned in the light of the observations made above, on merits. There will be no order as to costs.

INDER DEV DUA, J.—I agree.

K.S.K.