

Before : J. V. Gupta, J.

KULWINDER PAL SINGH AND OTHERS,—Petitioners.

versus

THE SATORA CO-OPERATIVE CREDIT AND SERVICE SOCIETY LTD., KURUKSHETRA AND OTHERS,—Respondents.

Civil Writ Petition No. 101 of 1988.

September 5, 1989

*Haryana Co-operative Societies Act, 1984—Ss. 29 & 102—Right of government to nominate three members if it has subscribed not less than rupees one lac—Government share less than one lac—Nomination by State Government—Validity of.*

Held, that S. 29 of the Haryana Co-operative Societies Act, 1984 empowers the State Government to nominate not more than three members or one third of the total number of elected members of the Managing Committee which ever is less, where the Government has subscribed to the share capital or guaranteed the principal and interest in respect of debentures or guaranteed the principal and interest in respect of loans and advances or assisted the society with loans and grants by not less than one lac rupees. Of course, the four clauses are independent, but as regards the words “by not less than one lakh rupees” that does govern all the four clauses and is not applicable to cl. (iv) only as argued on behalf of the respondents. As observed earlier, this was made clear by the Registrar himself to all the Assistant Registrars,—*vide* letter Annexure P/2 dated January 7, 1988. Since the factual position given by the petitioners in paragraph 5 that in the present case the Government has a share of Rs. 16.490 only in the respondent society and the Government loan is Rs. 1.125 has not been denied in the return filed on behalf of the respondents. It is, therefore, evident that the condition of “by not less than one lakh rupees” is not fulfilled as provided under S. 29 of the Act. That being so the nomination, if any, made by the State Government was violative of the provisions of S. 29 of the Act.

(Para 8)

*Petition under Articles 226/227 of the Constitution of India praying that the notice (Annexure P-1) dated 19th December, 1987 issued by respondent No. 2 for 8th January, 1988 for cooption a woman Haryana member may be quashed.*

*It is further prayed that the cooption of Harijan Member and a woman member, scheduled to take place on 8th January, 1988 may be stayed or in the alternative respondent No. 3 to 5 be restrained from participating in the Cooption of Harijan and a woman member of the managing Committee.*

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G. S. Sandhu, Advocate, for the Petitioners.

S. S. Dalal, Advocate, for Respondents No. 1 to 5.

#### JUDGMENT

J. V. Gupta, J.

(1) This judgment will also dispose of Writ Petition Nos. 10741 of 1988, 1586 of 1988, 10064 of 1989 and 5979 of 1988 as the question involved is common in all these cases.

(2) The facts giving rise to Civil Writ No. 101 of 1988 are that the petitioners are members of the Satora Co-operative Credit and Service Society Limited, Satora. After the term of the earlier Committee expired the election of the new Committee had taken place. The petitioners as-well-as Jagir Singh, Phuman Singh and Sarup Singh were elected as members of the Committee. According to the bye-laws, applicable to the Society, if a woman and a Harijan members are not among the elected persons, they are to be coopted and as such the Manager of the Society had called the meeting for January 8, 1988. The notices were issued to the elected members as-well-as to respondents Nos. 3 to 5, who were the nominees of the Government and that of the Financing Institution, that is, the Kurukshetra Central Cooperative Bank Limited for the purpose of coopting a Harijan as-well-as woman member. These three members were nominated as provided under Section 29 of the Haryana Cooperative Societies Act, 1984 (hereinafter shall be referred to as the Act).

(3) As per the petitioners, according to Section 29 of the Act, the Government has the right to nominate not more than three members or one third of the total members elected on the managing committee of the Society if it has subscribed the share capital to the Society not less than rupees one lac. Similar is the position of the Financing Institution. In paragraph No. 5 of the Writ Petition, it has been averred that in the present case the Government had a share of Rs. 16490 only in the respondent Society and the Government loan is Rs. 1125 and according to the petitioners, as such, the Government nominees have no right to participate and to vote in the affairs of the Society nor the Government was legally competent to nominate them. The petitioners also moved Civil Misc. No. 1527 of 1988 and along with it they placed on record a copy of Annexure

P/2 which was a letter from the Registrar, Cooperative Societies dated January 7, 1988 written to all the Assistant Registrars of Co-operative Societies in Haryana State. The letter was written on the subject of appointment of Government nominees in Cooperative Credit and Service Societies (Mini Banks).

(4) According to the petitioners, in view of the said letter, Annexure P/2, the Government was not competent to nominate any person unless it has contributed the share capital to the society or assisted the society by way of loans and grants to the extent of Rs. 1 lac. Since the Government has not contributed to the extent of Rs. 1 lac, the provisions of Section 29 of the Act were not complied with and the nomination, if any, of respondents 3 to 5 was without jurisdiction. It was also submitted that the seemed question to be decided in this petition is that the Government nominees or the Financing Institution nominees have no right to take part in the cooption of the Society. According to the petitioners, only the members elected are competent to coopt a Harijan or a woman member and for that purpose a nominee of the Government, if any, could not be allowed to take part in the said cooption. In support of this contention, reference was made to *Ram Kishan Hooda v. The Registrar Cooperative Societies Haryana and others* (1), and *Lashkar Singh and others v. The State of Punjab and others* (2).

(5) In the Return filed on behalf of respondents 1 to 3 and 5, one of the preliminary objections taken is that the petitioners have not exhausted the alternative remedy available to them under Section 102 of the Act and thus the present petition was not maintainable. On merits, it has been submitted that since the Government has subscribed share capital, it has the right to nominate and the persons so nominated have the right to participate in the affairs of the Society including the cooption.

(6) The main controversy revolves around the interpretation of Section 29 of the Act which reads as under :—

Section 29(1) Notwithstanding anything contained in subsection (1) of section 28,—

(a) where the Government has—

(i) subscribed to the share capital of a co-operative society; or

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(1) 1981 P.L.J. 481.

(2) 1985 P.L.J. 503.

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- (ii) guaranteed the principal and interest in respect of debentures issued by the society; or
  - (iii) guaranteed the principal and interest in respect of loans and advances to the society; or
  - (iv) assisted the society with loans and grants; by not less than one lakh rupees, the Government or any person authorised by it shall have the right to nominate on the managing committee of such society not more than three members or one-third of the total number of elected members of such committee whichever is less;
- (b) Where the Industrial Finance Corporation, the State Finance Corporation, any other Financing Institution or an employer notified in this behalf by the Government has provided finance to a co-operative society the Industrial Finance Corporation, the State Finance Corporation or the other financing institution or the employer, as the case may be, shall have the right to nominate one person on the committee.
- (2) A person nominated under sub-section (1) shall hold office during the pleasure of the authority who nominated him.
- (3) Where a difference of opinion in respect of any matter arises between any member nominated by the Government or the Managing Director appointed under section 31 and other members thereof, the matter shall be referred by the society to the Government whose decision thereon shall be final and deemed to be a decision taken by the committee.
- (4) Notwithstanding anything contained in the bye-laws of a society, the Government may, by general or special order, direct that on the committee of such society or class of societies, as the Government may specify, there shall be coopted by members of the committee of such society one-third members belonging to the weaker section out of whom atleast one such member shall belong to the Scheduled Caste:

Provided that such co-option shall not be made if one-third members belonging to the weaker section including that of Scheduled Caste have been elected on such committee.

Provided further that in case no such co-option is made, the Registrar may nominate such number of members."

(7) According to the petitioners, all the four clauses are governed by the provisions, that is, "by not less than one lakh rupees". Since the Government has not subscribed to the share capital of the Society to the extent of rupees one lakh, it has no jurisdiction to nominate as contemplated under Section 29 of the Act. Whereas, according to the respondents the said words "by no less than one lakh rupees" only governs clause (iv) of sub-section (1) of Section 29 of the Act and not all the other three clauses, that is, (i), (ii) and (iii). There seems to be force in the contention raised on behalf of the petitioners. All the four clauses are governed by the said words, that is "by no less than one lakh rupees" as is evident from the reproduction of the Section. That is why the Registrar,—*vide* Annexure P/2 made it clear to all the Assistant Registrars that "Section 29 of the Haryana Cooperative Societies Act, 1948 empowers the State Government to nominate not more than three members or one third of the total number of elected members of the Managing Committee which ever is less, where the Government has subscribed to the share capital or guaranteed the principal and interest in respect of debentures or guaranteed the principal and interest in respect of loans and advances or assisted the society with loans and grants by not less than one lac rupees." Of course, the four clauses are independent, but as regards the words "by not less than one lakh rupees" that does govern all the four clauses and is not applicable to clause (iv) only as argued on behalf of the respondents. As observed earlier, this was made clear by the Registrar himself to all the Assistant Registrars.—*vide* letter Annexure P/2, dated January 7, 1988. Since the factual position given by the petitioners in paragraph 5 that in the present case the Government has a share of Rs. 16,400 only in the respondent society and the Government loan is Rs. 1,125 has not been denied in the return filed on behalf of the respondents. It is, therefore, evident that the condition of "by not less than one lakh rupees" is not fulfilled as provided under Section 29 of the Act. That being so the nomination, if any, made by the State Government was violative of the provisions of Section 29 of the Act.

(8) Apart from that, after every clause i.e., (i), (ii), (iii) and (iv), there is a semi colon, which makes it abundantly clear that the

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words "by not less than one lakh rupees etc." apply to all the four clauses. Moreover, if it would not have been so, then why the Government should ever resort to clause (iv) and will be satisfied by subscribing a nominal amount under the other clauses.

(9) However, no fault could be found with the nominees made by the State Financial Corporation in view of the provisions of Section 29 of the Act as there is no limit of amount in their case.

(10) On this short ground alone, the cooption made of the Harijan and the woman members is liable to be quashed.

(11) The second question is whether the Government nominees or the financing institution nominees have the right to take part in the cooption of the Cooperative Society or not? As regards the bye-laws of the Society it makes it abundantly clear as under:—

**R. 34 (A) The Managing Committee shall consist of the following :—**

(a) Seven elected members of whom five shall be farmer members and two non-farmer members;

(b) Not more than three nominees of the Government where it has contributed to the share capital of the society; and

(c) Not more than one nominee of the financing institution where the latter has provided finances to the society.

(B) Of the elected members one shall be a Harijan and one a woman. Where either a Harijan or a woman or both have not been elected, either or both of them, as the case may, so shall be Coopted by the Managing Committee out of the members of the society. The number of the members of the Committee may accordingly increase by one or two, as the case may be.

(C) The members of the committee shall be so elected that, as far as possible, there is one member from every village falling within the area of operation of the Society and having atleast 50 members."

(12) In view of the said by-laws, it could not be successfully argued on behalf of the petitioners that the nominees of the State Government or of the financing institution will not take part in cooption since they form part of the Managing Committee, as provided under bye-rule 34(A) reproduced above. The position in the State of Punjab in this behalf is different in view of Rule 80-A, which provides that "Bar on voting by Government nominated unless on certain matter (Section 85 (x) and Section 26(2) the members nominated by the Government to the committees of a Cooperative Society under clause (a) of sub-section (2) of section 26 shall not vote in the election of office bearers of the Cooperative Society." Admittedly, there is no such rule as regards the State of Haryana. Faced with this situation, the learned counsel for the petitioners referred to sub-section (4) of Section 29 of the Act, as reproduced above to contend that notwithstanding anything contained in the bye-laws of a society, the Government has been given power to coopt one-third members belonging to the weaker section out of whom atleast one such member shall belong to the Scheduled Caste. Thus, argued the learned counsel that since the said sub-section is over-riding the bye-laws and therefore, in view of that provision the bye-law 34-A will also be deemed to have been overridden and the members thus nominated by the State Government will not be allowed to take part in the cooption. I do not find any merit in this contention nor the judgments referred to above in this behalf have any applicability on the facts of the present case. In *Ram Kishan Hooda's case* (supra) the cooption that was from the members of the weaker section of the Society under Section 26 of the Punjab Cooperative Societies Act, as applicable to the State of Haryana, it was in that context when it was observed by this Court that "a reading of this sub-section, i.e., sub-section (5) of Section 26 of the Act makes it amply clear that for purposes of co-option, the Government figures nowhere and has no jurisdiction to make any co-option. In a given situation when the members of the committee fail to co-opt the members from the weaker sections of the society, the Registrar may exercise his authority in terms of second proviso noticed above." In the present case, it is a co-option of a Harijan and a woman under the Bye-rules of the Society and has nothing to do with sub-section (4) of Section 29 of the Act which is equivalent to sub-section (5) of Section 26 of the old Act.

(13) Moreover, there cannot be an absolute bar that the nominees of the State Government cannot take part in co-option. It will always depend upon the statute and the bye-laws under which the co-option is made.

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(14) The result of the above discussion is that any nomination by the State Government, where it has subscribed to the share capital of a Co-operative Society or guaranteed the principal and interest in respect of debentures issued by the society or guaranteed the principal and interest in respect of loans and advances to the society or assisted the Society with loans and grants by less than one lakh rupees is violative of Section 29 of the Act and any such nomination was, therefore, wrong and illegal. Any co-option thus made by these nominated members, of the Harijan and a woman will thus stand quashed and fresh co-option will be made in accordance with law. All the petitions stand disposed of accordingly with no order as to costs.

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P.C.G.

Before : M. M. Punchhi & A. L. Bahri, JJ.

M/S. CHANDIGARH FOOD & SERVICES LTD.,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

Civil Writ Petition No. 9672 of 1989

7th September, 1989

*Constitution of India, 1950—Arts. 226, 227—Government contract—Tenders not floated—Contract granted by negotiations—No discrimination—Executive flexibility—Whether can override contractual obligation.*

*Held*, that all what we are required to see here is whether there has been any unfairness on the part of the respondents or any unfair discrimination *vis-a-vis* the petitioner in the matter of grant of contract.

(Para 2)

*Held*, that in the matter like this, some element of “executive flexibility” is to be left with the respondents. Everything is not that mechanical as in a contractual obligation.

(Para 3)