

*Before Mehinder Singh Sullar, J.*

**INDERJIT SINGH,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**C.W.P. No. 10099 of 2009**

13th January, 2011

*Constitution of India, 1950—Art. 226—Punjab Cooperative Societies Act, 1961—S.26-B—Election of petitioner as Director of Cooperative Bank—Petitioner also elected Director of another Cooperative Union—Resignation from Directorship of Cooperative Union accepted—Joint Registrar issuing show cause notice to petitioner for violating provisions of S.26-B—Disqualification—Resignation of petitioner from membership of Cooperative Union already accepted —Disqualification cannot legally be made applicable to directorship/membership of Cooperative Bank—Registrar illegally ceasing membership/directorship of Cooperative Bank—Impugned order is against statutory provisions and cannot be sustained in eyes of law—Petition allowed.*

*Held*, that the restrictions as contemplated under Section 26-B of the Punjab Cooperative Societies Act, 1961 would only be applicable to the directorship/membership of Cooperative Union (2nd society), in respect of which, the disqualification was incurred. In the instant case, the disqualification, which the petitioner had incurred, was in regard to his membership of the Cooperative Union (2nd Society), from which, his resignation had already been accepted, vide resolution dated 13th June, 2009 and this disqualification cannot legally be made applicable to the directorship/membership of the Cooperative Bank (1st society), as has been done by the Registrar by virtue of impugned order.

(Para 16)

*Further held*, that Section 26-B of the Act only deals with the restrictions to the membership of Cooperative Union (2nd Society) and the membership of the petitioner of Cooperative Bank (1st Society) will not incur the disqualification contained therein. The impugned order is having

the effect of removal/cessation of the petitioner from membership/directorship of the Cooperative Bank (1st Society). Section 27 of the Act posits the grounds for removal. Sequently, Rule 26 of the Punjab Cooperative Societies Rules deals with the cessation of membership, which envisaged that a person can only be removed or his membership can be ceased only on the grounds mentioned in Section 27 and Rule 26 of the Rules, that too, after following the due procedure and rules of natural justice and not otherwise.

(Para 18)

*Further held*, that the restrictions contained in Section 26-B of the Act are only relevant in regard to the membership of Cooperative Union (2nd society) from which, the resignation of the petitioner had already been accepted, much prior to the passing of the impugned order and the disqualification contained under Section 26-B cannot legally be made applicable to the directorship/membership of the petitioner of the Cooperative Bank (1st society). Thus, as the Registrar has illegally ceased the membership/directorship of the petitioner of the Cooperative Bank (1st Society), therefore, the impugned order is against the indicated statutory provisions and cannot possibly be sustained in the eyes of law, in the obtaining circumstances of the case.

(Paras 19 & 20)

Vikas Singh, Advocate *for the petitioner.*

Sartaj Singh Gill, Deputy Advocate General, Punjab *for respondent Nos. 1 to 3.*

Harit Sharma, Advocate, *for respondent Nos. 4 and 6.*

### **MEHINDER SINGH SULLAR, J. (ORAL)**

(1) The compendium of the facts, which needs a necessary mention for a limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that petitioner Indefjit Singh son of Bachan Singh, was duly elected as Director of the Gurdaspur Central Cooperative Bank Ltd., Gurdaspur (hereinafter to be referred as “the Cooperative Bank”) (1st society) in the elections of Board of Directors, held on 26th July, 2006, in view of the provisions of the Punjab Cooperative

Societies Act, 1961 (for short "the Act"). According to the petitioner, ever since then, he has been performing his duties honestly. He was also elected as Director of the Gurdaspur Cooperative Labour and Construction Union Ltd. (for brevity "the Co-operative Union") (2nd society) on 18th August, 2008. Subsequently, he tendered his resignation (Annexure P1) on 6th March, 2009 from the Co-operative Union (2nd Society), which was duly accepted by the authorities in its meeting held on 13th June, 2009 (Annexure P4).

(2) In the wake of report dated 11th June, 2009 of District Manager (respondent No. 4) of the Cooperative Bank (1st society), the Joint Registrar, Cooperative Societies, Jalandhar Division (respondent No. 2) issued show cause notice dated 11th June, 2009 (Annexure P5) of the same date, to which, the petitioner sent reply (Annexure P6), informing that he has already resigned from the directorship of the Co-operative Union (2nd society) on 6th March, 2009. The resignation has been accepted by its Board in its emergent meeting dated 13th June, 2009. At present, he is Director of only of the Cooperative Bank (1st Society). However, the Joint Registrar, while exercising the powers of Registrar, Cooperative Societies, ceased the membership of the petitioner of the Board of Director of Cooperative Bank (1st society) as well for alleged violation of section 26-B of the Act, by virtue of impugned order dated 24th June, 2009 (Annexure P7).

(3) The petitioner did not feel satisfied and filed the instant writ petition, challenging the impugned order (Annexure P7), invoking the provision of Articles 226 and 227 of the Constitution of India.

(4) The case set up by the petitioner, in brief in so far as relevant, is that as his resignation has already been accepted by the Board from the Directorship of Co-operative Union (2nd society), much prior to the passing of impugned order, therefore, the provisions of section 26-B of the Act will not be attracted to his membership/directorship of Co-operative Bank (1st society). Hence, the impugned order is illegal and without jurisdiction.

(5) Not only that, the impugned order was stated to have been passed by respondent No. 2 under the pressure of Ravi Karan Singh Kahlon son of Nirmal Singh Kahlon, Speaker of Punjab Vidhan Sabha (respondent No. 5). Some allegations of *mala fides* have also been levelled

by the petitioner against the District Manager (respondent No.4), who reported the matter to the Joint Registrar (Respondent No.2). On the basis of aforesaid allegations, the petitioner sought the quashment of the impugned order (Annexure P 7), in the manner indicated here-in-above.

(6) The respondents contested the claim of the petitioner. Respondents No.1 to 3 have filed their joint written statement, while respondent Nos. 4 and 6 filed their separate joint written statement, inter-alia pleading certain preliminary objections of maintainability of the petition, locus standi and cause of action of the petitioner. The contesting respondent claimed that the petitioner became the member of the two societies and the matter was reported by respondent No.4 to respondent No.2, who ceased the Directorship of the petitioner from the Cooperative Bank (1st society) after following the due procedure, by way of impugned order (Annexure P7), which is stated to be legal. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal. That is how, I am seized of the matter.

(7) Having heard the learned counsel for the parties, having gone through the record and relevant provisions of the Act with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant petition deserves to be accepted in this context.

(8) As is evident from the record that petitioner was elected as Director of Cooperative Bank (1st society) by way of elections held on 26th July, 2006. He was also elected as Director of Co-operative Union (2nd society) on 18th August, 2008. Subsequently, on 6th March, 2009, he submitted his resignation (Annexure P1) from the Directorship of Co-operative Union (2nd society) on the ground that he wanted to continue as Director of Cooperative Bank (1st society). In pursuance of resignation (Annexure P1), the Registrar, Cooperative Societies, circulated the order/agenda (Annexure P2) and duly convened a meeting on 13th June, 2009, vide notice (Annexure P 3). On 13th June, 2009, the resignation of the petitioner from the Co-operative Union (2nd society) was duly accepted, vide resolution dated 13th June, 2009 (Annexure P 4).

(9) In this manner, the District Manager (Respondent No.4) was stated to have reported the matter to the Joint Registrar (Respondent No.2) on 11th June, 2009 and he in a very hasty manner, issued show cause notice dated 11th June, 2009 (Annexure P5) on the same date to the petitioner, calling his explanation, as to why his membership be not ceased from the directorship of one central society. Petitioner sent reply (Annexure P6) to the notice (Annexure P5), wherein, it was stated that he (petitioner) had already resigned from the Directorship of Co-operative Union (2nd society) on 6th March, 2009 and his resignation had already been accepted on 13th June, 2009. At present, he is only the Director of Co-operative Bank (1st society) and requested to drop the show cause notice. Still, the Joint Registrar, exercising the powers of Registrar, passed the impugned order (Annexure P7), whereby the membership of the Board of Directors of Cooperative Bank (Ist society) of the petitioner was ceased. The main ground, which appears to have been weighed with the Registrar while passing the impugned order, is the alleged violation of section 26-B of the Act.

(10) Above being the position on record, now the sole question, that arises for determination in this case, is as to whether the provisions of section 26-B of the Act are attracted to the membership/directorship of the petitioner of Co-operative Bank (Ist society) or not ?

(11) Having regard to the rival contentions of the learned counsel for the parties, to me, the Registrar has slipped into a legal error in this relevant connection in ceasing the membership/directorship of the petitioner of the Cooperative Bank (Ist society) against the concept of Cooperative movement.

(12) *Ex facie*, the celebrated argument of the learned counsel for contesting respondents that as the petitioner remained a member of two societies with effect from 18th August, 2008 till 13th June, 2009 when his resignation from the Co-operative Union (2nd society) was accepted therefore, the Registrar has rightly ceased his directorship from the Cooperative Bank (Ist society), *vide* impugned order (Annexure P7), is neither tenable nor the observations of this Court in case **Sukhpal Singh Khaira versus State of Punjab and others (1)** are at all applicable to

the facts of the present case, wherein the election of the petitioner therein as Director of Kapurthala Central Cooperative Bank Ltd., Kapurthala was set aside by the Additional Registrar, while deciding the election dispute under section 55 of the Act, in an election petition preferred by respondent No. 4 therein, whose nomination paper was rejected. The Additional Registrar allowed the election petition. The appeal under section 68 of the Act filed by the petitioner was also dismissed by the Registrar. The revision filed by him also met with the same fate.

(13) Not only that, in that case, the only question arose for consideration was as to whether the disqualification occurring under section 26-B of the Act can be applied at the stage of nomination or not? On the peculiar facts and circumstances therein, it was observed that the disqualification occurring under section 26-B can be attracted at the stage of nomination, as the intention of the law cannot be to permit a person to violate and then punish him.

(14) Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the respondents in the instant controversy in this context.

(15) What is not disputed here is that Section 26-B of the Act postulates that (1) No individual shall, at any time, be a member of committee of—

(a) xxx      xxx      xxx

(b) more than one central and one apex society.

Proviso to this section further posits that nothing in this sub-section shall apply to a member nominated under sub-section (2) of Section 26 or a member of the committee of an apex or central society nominated to serve on the committee of another or central society, as the case may be, in accordance with the provisions of their bye-laws. It is not a matter of dispute that section 26-B only deals with a restriction of membership etc. while removal or suspension of committee or member thereof is provided under section 27 of the Act on the grounds mentioned therein and not otherwise.

(16) A co-joint reading of these provisions would reveal that the restrictions as contemplated under section 26-B of the Act would only be applicable to the directorship/membership of Co-operative Union (2nd society), in respect of which, the disqualification was incurred. In the instant case, the disqualification, which the petitioner had incurred, was in regard to his membership of the Co-operative Union (2nd society), from which, his resignation had already been accepted, *vide* resolution dated 13th June, 2009 (Annexure P4) and this disqualification cannot legally be made applicable to the directorship/membership of the Cooperative Bank (1st society), as has been done by the Registrar by virtue of impugned order (Annexure P7).

(17) An identical question arose before the Hon'ble Supreme Court in case **Jagdish Singh versus Lt. Governor of Delhi and others (2)**. Having interpreted the similar provisions of section 97 and Rules 25 and 28 of the Delhi Coperative Societies Act, it was ruled that the deemed cessation of the person concerned from the meembership of the society is the society in respect of which, the disqualification was incurred. Such disqualification obviously attaches to the membership of second society and has no concern with the membership of first society. It was also observed as under (para 8) :—

*“Apart from the aforesaid harmonious construction of sub-rule (2) of R. 25 and R. 28, on a plain construction of R. 25 also the same conclusion has to be arrived at. Sub-rule (1) disqualifies a person for admission as a member of a housing society if he or his spouse or any of his dependent children is a member of any other housing society. The disqualification in question obviously attaches to membership of the second society and has no connection with his membership of the first society. In view of the aforesaid embargo contained in sub-rule (1) to R. 25, sub-rule (2) by its operation bring in the fiction of deemed cessation from the membership of such society from the date when the disqualaification was incurred and such fiction of deemed cessation has nothing to do with the membership*

*of the first society. This being the position, sub-rule (2) of R. 25 when read with sub-rule (1) of the said Rule is not susceptible of a construction that the person concerned ceased to be a membership of both the societies. In view of our aforesaid construction of sub-rule (2) of R. 25, the conclusion is irresistible that the Registrar while passing the impugned order dated 23rd February, 1993 and Lt. Governor while dismissing the appellant's Revision by his order dated 25th August, 1993 as well as the High Court in the impugned judgment dated 20th March, 1996 committed gross error in holding that the appellant ceases to be a member of both the societies under sub-rule (2) of R. 25. The aforesaid orders, therefore, are wholly unsustainable and cannot be sustained."*

(18) There is another aspect of the matter, which can be viewed from a different angle. As discussed here-in-above, Section 26-B of the Act only deals with the restrictions to the membership of Cooperative Union (2nd society) and the membership of the petitioner of Cooperative Bank (1st society) will not incur the disqualification contained therein. The impugned order (Annexure P7) is having the effect of removal/cessation of the petitioner from membership/directorship of the Cooperative Bank (1st society). Section 27 of the Act posits the grounds for removal. Sequently, Rule 26 of the Punjab Cooperative Societies Rules (for short "the Rules") deals with the cessation of membership, which envisaged that a person can only be removed or his membership can be ceased only on the grounds mentioned in Section 27 and Rule 26 of the Rules, that too after following the due procedure and rules of natural justice and not otherwise.

(19) Therefore, to my mind, the restrictions contained in section 26-B of the Act are only relevant in regard to the membership of Cooperative Union (2nd society), from which, the resignation of the petitioner had already been accepted (Annexure P4), much prior to the passing of the impugned order (Annexure P7) and the disqualification contained under section 26-B cannot legally be made applicable to the directorship/membership of the petitioner of the Cooperative Bank (1st society). Thus, the contrary arguments of learned counsel for contesting respondents "*stricto sensu*" deserve to be and are hereby repelled under the present set of



circumstances and the law laid down by the Hon'ble Apex Court in **Jagdish Singh's case** (supra) "*mutatis mutandis*" is applicable to the facts of the present case and is the complete answer to the problem in hand.

(20) Thus seen from any angle, to me, as the Registrar has illegally ceased the membership/directorship of the petitioner of the Cooperative Bank (1st society), therefore, the impugned order (Annexure P7) is against the indicated statutory provisions and cannot possibly be sustained in the eyes of law, in the obtaining circumstances of the case.

(21) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(22) In the light of the aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned order (Annexure P7) is hereby set aside in this context.

---