

Before D. S. Tewatia and M. R. Agnihotri, JJ.

RAIKOT CO-OPERATIVE MARKETING-CUM-PROCESSING  
SOCIETY LTD.—*Petitioner.*

*versus*

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 6264 of 1986.

May 21, 1987.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 19(2), 23, 27 and 29—Elections to the Board of Directors of 'MARK-FED'—Primary Societies being represented by a member each—Such voting members nominated either by Managing Committees or by Administrators functioning pro tem in place of superceded committees, without calling a General Body Meeting—No provision in By-laws of a Society vesting authority for nomination of a member in the General Body—Whether Managing Committees and Administrators have power to nominate members.*

*Held*, that the Managing Committee of the primary society (which are members of the Markfed) were competent to appoint in terms of sub-section (2) of Section 19 of the Punjab Co-operative Societies Act, 1961 a members of that Society to represent the Society in the election of the Directors of the Board of Directors of Markfed. In the light of the statutory provisions of the Act, the rules and the bye-laws, the conclusion is inescapable that the Managing Committee is entitled to act for the Society in areas which are not specifically reserved for the Society to act. Further, the perusal of sub-section (3) of Section 27 of the act would show that the Administrator would be competent to exercise all or any of the powers of the Managing Committee. Consequently, the Administrator too, by virtue of this provision would be entitled to appoint a Member of the Society in terms of sub-section (2) of Section 19 of the Act. (Paras 12, 15 and 18).

*Petition under Articles 226/227 of the Constitution of India praying that election of the Board of Directors of respondent Federation scheduled to take place on 25th November, 1986 may kindly be quashed being illegal and ad interim stay be granted.*

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

H. S. Riar, D.A.G. (Pb.), for respondent Nos. 1 and 2.

M. S. Khaira, Sr. Advocate, B. S. Shant and J. S. Bhatti, Advocates with him), for respondent No. 4.

B. S. Shant, Advocate, for respondent No. 3.

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### JUDGMENT

*D. S. Tewatia, J.*

(1) These three writ petitions (C.W.P. No. 6264, C.W.P. No. 6350 and C.W.P. No. 6859 of 1986) project a common question of law of considerable importance as to whether the General Body of the Co-operative Society or its Managing Committee, or in the case of the supersession of the Managing Committee, the Administrator is competent to appoint a Member to represent the Society in the apex Society of which the given Society is an institutional Member. These petitions are, therefore, disposed of by a common judgment. Reference to facts wherever necessary having a bearing on the aforesaid proposition of law shall be taken from Civil Writ Petition No. 6264 of 1986.

(2) The Punjab State Co-operative Supply and Marketing Federation, Limited ("Markfed" for short) is an apex body of which the Co-operative Marketing-cum-Processing Society, Limited and Co-operative Agricultural Service Society, Limited, being the primary Societies, are its institutional Members. The election of such Directors of the Board of Directors of Markfed, as were to be elected by the Member Societies mentioned above had been fixed for 25th November, 1986. The Member Societies, which were to elect the said Directors had been grouped into 10 Zones. The Registrar, Co-operative Societies, while approving the election programme reserved two Zones, namely Zone No. 9 and Zone No. 10 for the election of the Directors out of the Co-operative Marketing Societies alone. Zone No. 9 comprised 63 Co-operative Marketing Societies falling in Districts Amritsar, Gurdaspur, Jullundur, Kapurthala, Hoshiarpur and Ropar and Zone No. 10, comprised of 74 Co-operative Marketing Societies spread over Districts Bhatinda, Sangrur, Faridkot, Ferozepore, Ludhiana and Patiala. In Zone 9 as many as 50 Societies were run by the Administrators, instead of by their Managing Committees, whereas in Zone 10 as many as 60 Societies were under the Administrators. In District Patiala, all the 13 Co-operative Marketing Societies were said to be under the Administrators; that in terms of sub-section (2) of section 19 of the Punjab Co-operative Societies Act, 1961 (hereinafter called 'the Act'), the Member of Primary Society, who was to represent that Society in the election of the Directors of the Board of Directors, Markfed had either been nominated by the Managing Committee of the Member Society or

the Administrator, functioning in place of the Managing Committees and not by the Society, i.e. by the General Body of the Society.

(3) It is further alleged in the petition that only Society in its General Body Meeting could appoint one of its Members to represent it in the election to the Board of Directors of the Markfed by virtue of the provisions of sub-section (2) of section 19 of the Act. Therefore, the action of the Managing Committee or the Administrator in appointing a Member to represent the Society in the said election is void *ab initio* and such Members are not entitled to take part in voting.

(4) In the written statement filed on behalf of Markfed, respondent No. 4, it is averred that any challenge to the election at a time when nomination papers stood filed is belated; that the election programme had been advertised on 17th September, 1986, in English, Urdu and Punjabi newspapers and zonal-list of share-holders (Member Society) had been exhibited in Markfed Office and the office of the District Headquarters along with notice of election; that Sh. Jaswant Singh, who had been authorised to file the petition by the petitioner-Raikot Co-operative Marketing-cum-Processing Society, Limited was himself a candidate from Zone-10 and he was estopped from filing the petition; that from Zones 4, 5 and 8, the candidates had been declared elected unopposed within the meaning of the Election Rules contained in Appendix 'C' of the Punjab Co-operative Societies Rules, 1963 (hereinafter called 'the Rules') and that their election had not been challenged in the election petition; that any procedural defect in the electoral process is saved by the provisions of section 29 of the Act; that the Managing Committee of the Member Society was competent to nominate one of the Members of the Society to represent the said Society in the election of the Director of the Board of Directors; that in the absence of the Managing Committee, the Administrator in his capacity as such in view of the provisions of section 27 of the Act, the rules and the bye-laws, was competent to nominate a Member of the Society to represent the said Society in the aforesaid election.

(5) Bye-law 6 of the Markfed provides that the membership of the Federation shall be open to Supply Co-operative Societies and those Co-operative Societies engaged in marketing and processing of Agricultural and allied produce and Government. Bye-law 16 of the Markfed provides that the management of the affairs of the Federation shall vest in a Board of Directors, which *inter alia* shall comprise of 10 representatives of Member Society to be elected on zonal-basis by dividing the area of operation into 10 Zones.

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(6) Section 19, sub-section (2) of the Act, which is in the following terms, provides for appointment of one of its members to vote on its behalf in the affairs of another Co-operative Society, of which it is a Member :—

“S. 19(2) : Notwithstanding anything contained in sub-section (1), a co-operative society which is a member of another co-operative society, may, subject to the rules, appoint one of its members to vote on its behalf in the affairs of that other society.”

Perusal of sub-section (2) of section 19 of the Act would show that it is the Co-operative Society which is authorised to appoint one of its Members. The question, therefore, that falls for consideration is as to what is the import and meaning of the expression “Co-operative Society”.

Clause (c) of section 2 of the Act defines the “Co-operative Society” as meaning a Society registered or deemed to be registered under this Act.

(7) The above definition obviously renders no help in the quest for the meaning of the expression “Co-operative Society.” There can, however, be no dispute about the fact that Co-operative Society is different from the Committee which had been defined by clause (b) of section 2 of the Act, as meaning the governing body of the Co-operative Society, by whatever name called, to which the management of the affairs of the Society is entrusted. Section 23 of the Act, which is in the following terms, gives an indication that the general body of Members of the Co-operative Society is synonymous with the Co-operative Society.

“S. 23. *Final authority in a co-operative society.*—(1) The final authority in a co-operative society shall vest in the general body of members :

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Section 23 of the Act in clear terms tells us that the authority and power that vest in the Co-operative Society in terms vest in the

general body of Members of that Society, that is, the power and authority of the Co-operative Society is to be exercised by the general body of its Members.

(8) The perusal of sub-section (2) of section 19 of the Act, however, envisages that the action of the Co-operative Society in terms of said sub-section (2) is subject to the Rules. Section 85 of the Act provides for the framing of the Rules by the Government to carry out the purposes of the Act. Clause (iv) of sub-section (2) of section 85 of the Act, which is in the following terms, authorizes the Government to specify the matters in respect of which the Society may or shall make bye-laws:—

“S.85. Rules.—(1) The Government may, for any co-operative society or class of such societies, make rules to carry out the purposes of this Act.

(2) \*\*\*

(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 the abrogating bye-laws and the conditions to be satisfied prior to such making, alteration or abrogation.”

Clause (1) of rule 8 of the Rules, which is in the following terms specifies powers and duties of the committee as one of the topics regarding which the Society can frame bye-laws :

“R.8. Subject matter of bye-laws.—(S.85(2)(2)(iv)) (1) A co-operative society shall make bye-laws in respect of the following matter:—

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(1) power and duties of the committee and the officers of the co-operative society; and

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(9) Bye-law 28 of the Model Bye-laws of the Co-operative Agricultural Service Society, Limited (hereinafter referred to as ‘the Model Bye-laws’) provides that unless otherwise provided in these bye-laws, the ultimate authority in all matters, relating to the administration of the Society shall vest in the General Body.

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(10) Bye-law 29 of the Model Bye-laws provides that without prejudice to the general provisions of the preceding bye-laws, the general body shall have the following powers and duties:—

- (i) the election of the Managing Committee in accordance with the procedure laid down in the Act, Rules and these bye-laws;
- (ii) the consideration of the annual report of the Society, its audited balance sheet, profit and loss account, trading account and the inspection notes;
- (iii) disposal of profits ;
- (iv) amendment of bye-laws ;
- (v) transaction of any other business with the permission of the Chairman of the General Body.

Bye-law 38 of the Model Bye-laws, the relevant portion of which is in the following terms, spells out the powers and duties of the Managing Committee :

“38. The Managing Committee shall exercise all the powers and discharge all the duties of the society, except those reserved for General Body, subject to any regulations or restrictions duly laid down by the society in General Meeting or in the bye-laws.

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(11) A combined reading of Bye-laws 28, 29 and 38 of the Model Bye-laws, read with clause (1) of rule 8 of the Rules clause (iv) of sub-section (2) of section 85 and sub-section (2) of section 19 of the Act would show that the Managing Committee would be entitled to exercise all the powers and discharge all the duties of the Society except those reserved for general body, subject to any regulations or restrictions duly laid down by the society in a general meeting or in the bye-laws. Bye-law 29 of the Model Bye-laws provides the powers and duties, which are specifically reserved for the general body of the Society.

(12) Perusal of Bye-law 29 of the Model Bye-laws would show that appointment of a Member to represent the Society in the affairs of another Society is not mentioned. By virtue of the provisions of Bye-law 38, all such powers and functions that are not enumerated by Bye-law 29 have to be performed and exercised by the Managing Committee. There can be thus no manner of doubt that the Managing Committee of this Society (which are Members of the Markfed) were competent to appoint in terms of sub-section (2) of section 19 of the Act a Member of that Society to represent that Society in the election of the Director of the Board of Directors of Markfed.

(13) To the similar effect are the corresponding Bye-laws of the Co-operative Marketing Cum-Processing Society, Limited (herein-after referred to as the Society's Bye laws). The relevant Society's Bye laws are reproduced below:

*Bye-law 27.*

"Unless otherwise provided in these by-laws the ultimate authority in all matters relating to the administration of the society shall vest in the General Body."

"*Bye-law 28* : Without prejudice to the general provisions of the preceding by-law, the General Body shall have the following powers and duties:—

- (i) the election, suspension, and removal of the elected members of the Managing Committee ;
- (ii) the consideration of the annual report of the Society, its audited balance sheet and profit and loss account and the inspection notes;
- (iii) disposal of profits;
- (iv) the fixing of maximum credit limit of the society consistent with these by-laws, subject to the approval of Registrar;
- (v) amendment of by-laws;
- (vi) expulsion of members;
- (vii) transaction of any other business with the permission of the Chairman of the General Body.

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“Bye-law 29 : All business discussed or decided at a general meeting shall be recorded in a proceedings book which shall be signed by the Chairman of the meeting.”

“Bye-law 36 : The Managing Committee shall exercise all the powers and discharge all the duties of the society except those reserved for General Body subject to any regulations or restrictions duly laid down by the society in a general meeting or in the bye-laws.”

(14) Mr. G. S. Sandhu, Advocate, for the petitioners, has referred us to a judgment of Chinnappa Reddy, J. (as he then was) reported in Co-operative Law Journal (1969) at page 12 (relevant excerpt from which was reproduced in the petition), wherein his lordship had observed that “Society” means the general body of the Society and not the Board of Management.

(15) There is no dispute with the aforesaid interpretation of the expression “Society”. The question that here arises for consideration is as to whether the general body of the Society is to exercise the functions of the Society or the Managing Committee can also do so. In the light of the statutory provisions of the Act, the rules and the bye-laws, the conclusion is inescapable that the Managing Committee is entitled to act for the Society in areas which are not specifically reserved for the Society in areas which are not specifically reserved for the Society to act.

(16) The important question that now survives for consideration is as to whether the Administrator of the Society, who administers the affairs of the Society on supersession of the Managing Committee of the Society can also exercise like the Managing Committee the powers and functions of the General Body of the Society.

(17) Sub-section (3) of section 27 of the Act, which is in the following terms, provides that the Administrator shall have powers *inter alia* to perform all or any of the functions of the committee :

“S. 27. Removal or suspension of committee or member thereof.—(1) \*\*\*

(2) \*\*\*

(3) The Administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may



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from time to time give, have powers to perform all or any of the functions of the committee or of any officer of the society and take all such action as may be required in the interest of the society.”

(18) Perusal of sub-section (3) of section 27 of the Act would show that the Administrator would be competent to exercise all or any of the powers of the Managing Committee. We have already held that the Managing Committee can exercise the powers and functions of the Co-operative Society envisaged by sub-section (2) of section 19 of the Act. Consequently, the Administrator too by virtue of the provisions of sub-section (3) of section 27 of the Act would be entitled to appoint a Member of the Society in terms of sub-section (2) of section 19 of the Act.

(19) The insinuation in the petition, which was particularized in paragraph 4 thereof, and which was reiterated by Mr. G. S. Sandhu, Advocate, for the petitioner, during arguments that the large number of the Societies had been put under the Administrators with a *mala fide* reason to get such persons nominated as representatives of the given Societies in terms of sub-section (2) of section 19 of the Act, as were to toe the line of the ruling party, has not only been denied, but facts stated in the written statement on behalf of Respondents 1 and 2, would show that the insinuation, in question, is without any foundation and basis. While replying to paragraph 4 of the petition, it is mentioned that in Zone 9, only six nominations were sent up by the Administrator, meaning thereby, that with regard to only six Societies, the representatives had been nominated by him in terms of sub-section (2) of section 19 of the Act and regarding Zone 10, only 13 representatives had been nominated by the Administrator.

(20) In view of the above, we are not satisfied in this case that there had been any deliberate attempt to appoint Administrators of the Societies, having an eye on the impending elections of the Board of Directors of Markfed.

(21) If this Court is convinced that the large number of Societies had been put under the Administrators at a time when the elections to the Markfed, in question, were looming large on the horizon, then this Court may unhesitatingly hold that there has been abuse of

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power on the part of the concerned authorities and may quash the election on that ground because *mala fides* and fraud vitiate everything.

(22) Power is a trust. It is to be exercised to advance the public interest, and we trust that like any other power, this power of appointing Administrators too would be exercised in that spirit.

(23) Mr. G. S. Sandhu, next urged that the Zones had not been framed equitably. It was contended that whereas Amritsar Zone had 350 Members, Ferozepore had only 183 Members. In our view, it is a matter for the concerned authority, which is authorised to frame the Zones. It has to see administrative convenience and other matters. It is expected that it would divide the operational area of the Markfed in 10 Zones in a manner that as far as possible each Zone has nearly equal number of Members. Flagrant disparity of numbers between one Zone and the other is likely to excite suspicion, which the concerned authority would do well to avoid.

(24) For the foregoing reasons, we find no merit in these writ petitions (C.W.P. No. 6264, C.W.P. No. 6350 and C.W.P. No. 6859 of 1986) and dismiss the same, with no order as to costs.

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R.N.R.

Before Ujagar Singh, J.

HAKAM SINGH,—Appellant.

*versus*

UNION TERRITORY, CHANDIGARH,—Respondent.

Criminal Appeal No. 235-SB of 1987.

May 22, 1987.

*Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)—Sections 41, 42, 50, 52 and 55—Whether mandatory—Non-compliance with said provisions—Effect on trial.*

Held, that sub-section (2) of section 41 of the Narcotic Drugs and Psychotropic Substances Act, 1985, empowers the officer to arrest a person if he has reason to believe from personal knowledge or information given by a person and taken in writing that