

(6) The Schedule item takes note of seven barbiturates and these drugs, though having different compositions and international names will fall in the larger term of 'barbiturates'. The learned Sessions Judge was not justified in recording a finding that the tablets which contained barbiturates could not fall within the list of psychotropic substances, included in the Schedule. The prosecution should be given an opportunity to show that barbiturates found in the recovered tablets form part of one of the items specified in the Schedule. The order of discharge is, thus, not justified.

(7) I hereby accept the revision and after setting aside the impugned order of discharge direct the trial Court to proceed with the trial in light of the directions.

S.C.K.

Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.

INDERJIT SINGH & OTHERS,—Petitioners

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ Petition No. 8676 of 1994

19th July, 1994

Constitution of India, 1950—Arts. 226/227—Punjab Co-operative Societies Act (25 of 1961)—S. 26 (1-B)—Term of office—Petitioners elected on July 14, 1991—However Board of Directors constituted only on August 25, 1991—Term of Directors only for 3 years—Whether petitioners would retire three years after the date of election or after completion of Board of Directors—Held that no directions had been issued by Registrar of Co-operative Societies not to assume office or hold meetings—Tenure of office to commence from date of election and term to end three years thereafter.

Held, that the ratio of the decisions earlier referred to clearly indicates that normally the term of Board of Directors is to commence from the date of election, it is only when the election of the members of the Committee/Board of Directors is challenged and either the Registrar, Co-operative Societies or the High Court issue directions not to hold the meeting of the Board of Directors that their term would commence when such directions are vacated. In the present case since there were no such directions given to members of the Board of Directors not to assume office, it is held

that their tenure of office commenced from the date of election and their tenure completed on expiry of three years therefrom.

(Para 7)

D. V. Sharma, Advocate, for the Petitioners.

S. S. Shergill, Deputy Advocate General, Punjab.

M. S. Kang, Advocate for respondent No. 3.

ORDER

A. L. Bahri, J.

(1) *Vide* this order two writ petitions (CWP No. 8676 of 1994 and CWP No. 9127 of 1994) are being disposed of. Judgment is prepared in CWP No. 8676 of 1994 which is otherwise complete as written statements have been filed. The other writ petition is being disposed of without getting written statement as notice in this case was not issued.

(2) In this petition filed under Articles 226 and 227 of the Constitution the petitioners who were working as Directors of Punjab State Co-operative Supply and Marketing Federation Ltd. known as Markfed, claim directions to the respondents to allow them to complete three years' tenure of Board of Directors and to quash the clarification/instructions contained in Annexure P-10 issued by the Registrar, Co-operative Societies, that 3 years' tenure of the Committee (Board of Directors of the Co-operative Society) shall start from the date of election, as provided under section 26(1-B) of Punjab Co-operative Societies Act, as amended. The term of Board of Directors of the Markfed commenced from July 15, 1991 and the three years would end by July 14, 1994. A representation was filed by the petitioners, copy Annexure P-11, that their tenure would end on August 25, 1994. Clarifying, it was pointed out that meeting of the Board of Directors was held on July 15, 1991, Remaining directors were nominated on July 25, 1991 and the apex Society nominated its members on August 9, 1991. The Managing Director was sent by the Government on deputation on August 26, 1991. Thus the Board of Directors constituted the Committee on August 26, 1991. In para 5 of the writ petition it was further mentioned that declaration of result of Gurbachan Singh from Zone No. 7 was stayed by the High Court in a civil writ petition and his result could not be declared on July 15, 1991. A meeting was scheduled to be held on August 13, 1991 for election of the office bearers, copy of the agenda is Annexure P-3. Gurbachan Singh aforesaid was allowed by the High Court to participate in

the election. The meeting was postponed. Another meeting was scheduled to be held on August 26, 1991. In the said meeting Shri Rameshinder Singh, IAS, was nominated as Director. In this manner the constitution of Board of Directors was completed on August 26, 1991. Since in the present case the Board of Directors were elected in 1991, the amended provisions of the Act would not be applicable to determine the term of office of the Committee. The old provisions of the Act would be applicable and under section 26(1-B) the term of the office of the Committee would be three years.

(3) On notice of motion written statement on behalf of respondents Nos. 2 and 3 has been filed. Broadly the facts stated above are admitted therein.

(4) After hearing counsel for the parties we are of the view that in the facts of the present case the term of Board of Directors of the Markfed commenced from the date of the election of its members. Election of all the elected members were was not challenged. Neither the High Court nor the Registrar Co-operative Societies issued any interim directions not to hold the meeting of the Board of Directors or postponing any such meeting scheduled to be held. If any such directions were given in the case where election of one of the members was being challenged, it could not be said that the remaining members were not in a position to resume office. The persons who had been elected but waited for the persons to be nominated could position themselves to constitute the Board of Directors, as is the stand in para 10 of the written statement, the High Court had allowed Gurbachan Singh to participate in the meeting which was scheduled on August 19, 1991. However, proceedings of the meeting held on that day Annexure P.4 shows that on the request of the members the meeting was adjourned.

The question as to when the period of three years of Executive Committee of a Co-operative Society would commence has been the subject matter of judicial pronouncement. A brief reference to the same be made. In *The State of Punjab and another v. The Managing Committee of the Patti Primary Co-operative Land Mortgage Bank Ltd. Patti* (1), the Division Bench considered the scope of Section 26(1-B) of the Act. Election were held on September 30, 1973. Before the Managing Committee could assume charge, Civil writ petition was filed in the High Court challenging the election

of the Managing Committee. The Court passed the order injuncting the Managing Committee from assuming charge of the Managing Committee. Ultimately writ petition was dismissed on May 7, 1994 and the Managing Committee assumed charge and started functioning thereafter. It was asserted that the three years' tenure of the Managing Committee started from May 7, 1974. After referring to the provisions of the Act in para 7 of the judgment it was observed as under :—

“Accordingly, a reading of the provisions as a whole clearly shows that the term of three years would start, not from the date of election but from the date of assuming charge and in the words of the various provisions of the section from the date of entering office of the committee. If this interpretation is not placed, then the tenure of every newly elected committee, elected in strict compliance with the provisions of the section, would be less than three years at least by ninety days.”

(5) In para 9 it was held that the term of the office of a committee under sub-section (I-B) of three years would start from the date of assuming charge by the Committee and not from the date of election of the Committee. At this stage it may be observed that was a case where holding of the meeting of the Committee duly elected was stayed by the High Court and when High Court orders stood vacated on dismissal of the writ petition in May 1974, that date was considered on which the Committee could assume charge. The matter was again considered by the Division Bench in *The Punjab State Co-operative Supply and Marketing Federation Limited, Sector 17, Chandigarh v. The Additional Registrar (Industrial) Co-operative Societies, Punjab, Chandigarh and others* (2). The question involved was with regard to the order passed by the Board of Directors, whether the same was within 3 years of its tenure or not. Election of the Board of Directors was held on December 9, 1979. The result was not declared as stay order was passed by the High Court in a writ petition. After disposal of the writ petition election was declared on May 23, 1980. The first meeting of the Board of Directors was held on July 7, 1980, after the Government nominated 3 directors on June 26, 1980. The contention was that constitution of the Committee was completed only when the Government nominated three Directors and

the tenure of the Board would be deemed to commence from the date of the first meeting held. As regards nomination of members of the Committee envisaged under section 21 of the Act it was argued that there was no obligation on the part of the Government to make such nomination. It was held that the tenure of the Board of Directors commenced from May 23, 1980 and should have expired on May 23, 1983. The meeting of the Board of Directors on June 1980 was not a valid one. It may be observed that election of Board of Directors were declared on May 23, 1980 after the disposal of the writ petition and the three years commenced therefrom. *Kartar Singh and others v. State of Punjab and others* (3), is another case which has been relied upon. Election of the Managing Committee of the Society was held on March 15, 1984. Petitioners Nos. 1 to 5 were elected. The election was challenged. Two members of the society challenged the election of the Managing Committee. The Additional Registrar Co-operative Societies stayed the election of the office bearers and the co-option of the two members. He ultimately set aside the election of the Managing Committee on April 30, 1985. On appeal the Registrar set aside the order on February 18, 1986. This order was further challenged in the revision petition which was dismissed on July 24, 1986. An order was issued by the Assistant Registrar on March 30, 1987 that the term of the Managing Committee expired on March 14, 1987 and an Administrator was appointed for 3 months which was challenged in the writ petition *inter alia* asserting that the first meeting of the Committee was held on May 26, 1986 and they had a right to continue in office till May 26, 1989. While referring to the different provisions of the Act it was observed that :

“The period of three years as envisaged by sub-section (1-B) of Section 26 shall commence from the date of election or when it enters into office. The constitution of the committee and its entering into office is not dependent upon the association of the office-bearers or the co-option of the members. The committee is the one which is envisaged under section 2 of the Act, and it will be deemed to have entered into office on the day it positions itself in office. The period of three years is to be reckoned from that date. Sub-section (1-B) of section 26 of the Act envisages that the term of the committee cannot be

longer than the one provided therein. The members of the committee cannot extend their term by deferring the election of the President and the Vice-President. If in any event, the election of the office bearers is delayed, the term of the office bearers will be co-extenso with the term of the committee. Similarly if for some reason, the co-option of the members of the committee or nomination thereof is delayed it will not affect the constitution of the committee. The meeting of the elected members of the committee who have been elected in the manner prescribed under rule 23 of the Rules have to take place for co-opting members as envisaged by the Rules and elect office bearers and this step itself will amount to assumption of office by the Committee. The Committee has to co-opt members and elect office-bearers. This will be only after they have assumed office. However, the situation will be different when the members of the committee are not allowed to assume office either by a stay order of the Court or by the Registrar, Co-operative Societies."

(6) Earlier decisions were referred to. In para 10 it was concluded that the committee would be deemed to have entered the office after the election when it takes steps for electing the office bearers or co-opted the members or transacted business of the Society. While referring to the facts of the case, it was observed that since the election were held on March 15, 1984, there was no impediment in the way of the committee from entering the office. Consequently the committee would be deemed to have entered the office on March 15, 1984 and the period of 3 years has to be reckoned from that date which will expire on March 14, 1987. It was further observed in para 11 as under :—

"If for any reason, the committee has delayed the election of the office bearers or the co-option of members it will not mean that the committee has not entered the office. The Committee was in a position to enter the office. Resultantly, the order issued by the Assistant Registrar, Co-operative Societies, Punjab, holding that the term of the Society expired on March 14, 1987, is upheld and the appointment of administrator for holding fresh elections is in conformity with the mandatory provisions of section 26(1-D) of the Act. We do not find any infirmity in the order."

(7) Finally reference be made to the Single Bench decision of this Court in *Surender Singh and others v. The Registrar Co-operative Societies, Haryana and another* (4). In this case election of the Board of Directors of the Co-operative Society was scheduled to be held on October 4, 1989 but was held on September 21, 1989. Six members of the Board were elected un-opposed. The remaining three were elected on January 10, 1990 and one on January 30, 1990. The first meeting was called on July 26, 1990. It was contended that the petitioner thus assumed office on July 26, 1990 and the tenure of three years commenced therefrom. The stand of the Registrar, Co-operative Societies was that in view of Section 28(4) of the Haryana Co-operative Societies Act, the three years tenure of the committee started from the date of election and the term of the Board completed on September 20 1992. In para 6 of the judgment it was observed that the amended provision in Section 28(4) was to be applied which provides the tenure of such committee to be 3 years from the date of election and the term "date of election" pertained to the date of election of which the election process has been completed and not from the date from which the election process shall be deemed to have started. Since the amended provisions were under consideration, no further comment with respect to this case is called for. The ratio of the decision earlier referred to clearly indicates that normally the term of Board of Directors is to commence from the date of election, it is only when the election of the members of the Committee/Board of Directors is challenged and either the Registrar, Co-operative Societies or the High Court issue directions not to hold the meeting of the Board of Directors that their term would commence when such directions are vacated. In the present case since there were no such directions given to members of the Board of Directors not to assume office, it is held that their tenure of office commenced from the date of election and their tenure completed on expiry of three years therefrom.

Finding no merit in the writ petition, the same is dismissed.

J.S.T.
