

**Ranbir Singh v. The Cane Commissioner, Haryana and others**  
(M. R. Sharma)

Court held that the appellant could seek remedy against the respondent in the Civil Court if so advised. The appellant did not feel satisfied and filed appeal asserting their right to make recovery by coercive process under section 259 of the Act. The same right has been asserted in this second appeal. It being the case the appellant cannot justifiably raise the plea of prematurity.

(9) The respondent had prayed for a perpetual injunction restraining the Board from realising Rs. 8,512 or any part thereof from him on account of land rent for the unauthorised period of occupation. The trial Court granted the decree prayed for in spite of holding that the Board could seek remedy in the civil Court if so advised. The District Judge in appeal also held likewise but dismissed the appeal of the Board upholding the decree of the trial Court. The decree of the trial Court as upheld in appeal by the learned District Judge debars the Board from realising Rs. 8,512 from the respondent which means either by filing a civil suit or by adopting coercive process. It was neither the intention of the trial Court or of the appellate Court to restrain the Board from effecting recovery of Rs. 8,512 or any part thereof from the respondent by filing a civil suit against him. It being the case, the decree granted to the respondent by the trial Court and upheld in appeal by the learned District Judge requires modification. The decrees of the lower Courts are accordingly modified to the extent that the Board is restrained from realising Rs. 8,512 or any part thereof from the respondent on account of land rent for the unauthorised period of his occupation by coercive process provided in section 259 of the Act. The appellant shall otherwise be competent to maintain a suit for the recovery of the amount from the respondent. The parties are left to bear their own costs.

H.S.B.

*Before M. R. Sharma, J.*

RANBIR SINGH—*Petitioner*

*versus*

THE CANE COMMISSIONER, HARYANA and others—*Respondents.*

*Civil Writ Petition No. 1315 of 1977.*

November 22, 1978.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 26, 27 and 85 (XXXVIII)—Employment Exchanges (Compulsory Notification of Vacancies) Act (XXXI of 1959)—Section 2(2)(f) (3)—Co-operative Society registered under the 1961 Act—Whether*

*'controlled' by the State Government within the meaning of section 2(2)(f) (3)—Word 'qualifications' in section 85(XXXVIII)—Meaning of—Filling of posts in a Co-operative Society—Reference to employment exchange—Whether necessary.*

*Held*, that it cannot be said that each and every Co-operative Society registered under the Punjab Co-operative Societies Act, 1961 is in substance controlled by the State Government. The Society may be established under a State Act but it cannot be said to be owned, controlled or managed by the State Government. It is true, that the Registrar is competent to register a Co-operative Society on the basis of approved by-laws and is invested with the jurisdiction to supersede its Managing Committee if such a Committee acts in contravention of the provisions of the Act. It is also true that the Registrar is invested with the powers to refer the disputes between two members of a Society for arbitration, to hear appeals against the awards and his decision is subject to the exercise of revisional jurisdiction by the State Government. All these provisions when collectively considered only show that the Registrar is essentially invested with the jurisdiction to see that a Co-operative Society is properly registered and works on co-operative principles in accordance with the provisions of the Act. Within the specified field of its activities, the Managing Committee of a Co-operative Society has unbridled discretion to conduct its business for which it has been registered. The words "owned, controlled or managed by the Government" essentially connote that the Government should have a majority control in the Managing Committee of a Society or a Company. Where the Government has subscribed the share capital of a Co-operative Society to a certain extent or has advanced loans to it of a particular category it would have the right to nominate its own Chairman or Managing Director of such a Society and it is in case of such Societies that it might be said that the Government does control them. But where the Managing Committee of a Society is elected only by its own members, such a Society cannot be said to be under the control of the Government within the meaning of sub-section 2(f) of section 2 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. (Paras 2 and 3)

*Held*, that the word 'qualification' appearing in section 85 (xxxviii) of the 1961 Act signifies the personal attainment of a candidate. It is his distinctive quality to hold a particular post. If a candidate for a post routes his application through an Employment Exchange that does not add to his personal attainments. This word cannot mean that the Government could frame a rule laying down that a particular class of servants of the Society should be recruited through an Employment Exchange only. It is, thus, obvious that to fill up posts in a Co-operative Society, it is not necessary to make a reference to an employment exchange for calling names of eligible persons to be employed. (Paras 5 and 6)

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*Petition under Articles 226/227 of the Constitution of India praying that :—*

- (i) *a writ in the nature of certiorari quashing the Order of respondent No. 1, dated 28th of March, 1977, Annexure P. 3, be issued ;*
- (ii) *a writ in the nature of mandamus directing the respondent No. 1 not to withhold the approval to the appointment of the petitioner, as Secretary of the Society, respondent No. 3, on erroneous and non-existent grounds, be issued.*
- (iii) *any other writ, order or directions as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued.*
- (iv) *the records of the case be ordered to be sent for ;*
- (v) *the costs of the petition be awarded to the petitioner as he has unnecessarily been harassed.*

Kuldip Singh, Advocate, for the Petitioner.

Balwant Singh Malik, Advocate, for A. G. Haryana.

JUDGMENT

M. R. Sharma, J. (Oral)

(1) The Mustafabad Cane Growers Co-operative Society Limited, Mustafabad, respondent No. 3 (hereinafter referred to as the 'Society') is a Society registered under the Punjab Co-operative Societies Act, 1961 (hereinafter called the 'Act'). This Society advertised the post of a Secretary in the pay-scale of Rs. 225—430 and the said advertisement appeared in the 'Daily National Herald' of January 8, 1977. The petitioner applied to the Society for this post and after interview he was selected for the same. By-law 27 of the by-laws governing the Society lays down that the Managing Committee of the Society shall appoint a suitable person as Secretary, subject to the approval of the Registrar. The petitioner was tentatively appointed to the post and his case was referred to the Cane Commissioner exercising the powers of the Registrar under the Act for accord of the approval. The Cane Commissioner did not accord the approval to the appointment of the petitioner on the ground that his name had not been recommended by the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the '1959 Act'). The petitioner has filed the

instant petition challenging the non-accord of the approval by the Cane Commissioner to his appointment to the post of Secretary of the Society on the ground that the 1959 Act was not attracted to the facts of the case. Sub-section 2(i) of section 2 of this Act reads as follows :—

“2(f) “establishment in public sector” means an establishment owned, controlled or managed by :—

- (1) the Government or a department of the Government ;
- (2) a Government company as defined in section 617 of the Companies Act, 1956 ;
- (3) a Corporation (including a co-operative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government ;
- (4) a local authority.”

(2) The Society does fall within the ambit and scope of word ‘corporation’ but it is to be seen whether it is owned, controlled and managed by the Government or not. It is not disputed that the Society was registered as a public sector institution and is managed by a Managing Committee elected by its members in accordance with the provisions of the Act. The difficulty has arisen on account of the word “controlled” used in sub-clause (8) of clause (f) of sub-section (2) of section 2 of 1959 Act. Can it be said that each and every Co-operative Society registered under the Act is in substance controlled by the State Government. Mr Malik, learned counsel for the respondents, has drawn my attention to section 27 of the Act which enables the Registrar to supersede the Managing Committee of a Co-operative Society. On this basis it has been argued by him that a Co-operative Society should be deemed to be a corporation controlled by the State Government within the meaning of sub-clause (3) of clause (f) of sub-section (2) of section 2 of the 1959 Act.

(3) After hearing the learned counsel for the parties, I am of the view that the meaning which Mr. Malik assigns to word ‘control’ appearing in the afore-mentioned 1959 Act is not the correct meaning to be assigned to this word. The Society in the instant case is, no doubt, established under a State Act but it cannot be said to be

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owned, controlled or managed by the State Government. It is, no doubt, true that the Registrar is competent to register a Co-operative Society on the basis of approved by-laws and is invested with the jurisdiction to supersede its Managing Committee if such a Committee acts in contravention of the provisions of the Act. It is also true that the Registrar is invested with the powers to refer the disputes between two members of a Society for arbitration, to hear appeals against the awards and his decision is subject to the exercise of revisional jurisdiction by the State Government. All these provisions, when collectively considered, only go to show that the Registrar is essentially invested with the jurisdiction to see that a Co-operative Society is properly registered and works on co-operative principles in accordance with the provisions of the Act. Within the specified field of its activities the Managing Committee of a Co-operative Society has the unbridled discretion to conduct its business for which it has been registered. It would be useful to draw on the analogy of a Company registered under the Indian Companies Act for understanding the meaning of the words "owned, controlled or managed by the Government". Under the Indian Companies Act also it is the Registrar of Companies who is responsible for registering a Company and for seeing that the Company conducts its business strictly in accordance with the provisions of the Act under which it is incorporated. By exercising his statutory powers, the Registrar of Companies cannot be said to be the Controller of a Private Limited Company. Such a Company has also unbridled discretion to transact business in accordance with the Articles of Association. The words "owned, controlled or managed by the Government" essentially connote that the Government should have a majority control in the Managing Committee of a Society or a Company. In that behalf it would be useful to refer to section 26 of the Act wherein it has been specifically provided that where the Government has subscribed the share capital of a Co-operative Society to a certain extent or has advanced loans to it of a particular category it would have the right to nominate its own Chairman or Managing Director of such a Society. In case of those Co-operative Societies, it might be said that the Government does control them. But where the Managing Committee of a Society is elected only by its own members such a Society cannot be said to be under the control of the Government within the meaning of sub-section 2(f) of section 2 of the 1959 Act.

(4) Faced with this situation Mr Malik drew my attention to section 85 (xxxviii) of the Act, which is reproduced below :—

“qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by society.”

(5) The learned counsel argued that the word qualifications of its employees used in the above provisions shall be that the Government could frame a rule laying down that a particular class of the servants of the Society should be recruited through the employment exchange only. The word ‘qualification’ has different shades of meaning in Shorter Oxford English Dictionary. It is defined as under :—

“*Qualification.*—The action of qualifying the condition or, fact of being qualified; that which qualifies 1. Modification, limitation, restriction; a modifying or limiting element or circumstance. 2. The distinctive quality of a person or thing; condition, character, nature.

(6) Mr Malik, counsel for the respondent, has argued that if the word ‘qualification’ means placing of a limitation or a restriction then it would be open to the State Government to place a restriction that Co-operative Societies should employ only those person whose names are forwarded by the Employment Exchange. I am, however, not inclined to accept this argument. The word ‘qualification’ appearing in the afore-mentioned rule signifies the personal attainment of a candidate. It is his distinctive quality to hold a particular post. If a candidate for a post routes his application through an Employment Exchange that does not add to his personal attainments. Even otherwise the Employment Exchange normally sorts out the names of various applicants for posts and recommends them to prospective employers on the basis of qualification which inhere in them or which they have affirmed. The mere routing of the application of a person through a particular channel does not add to his capacity in any manner. For all these reasons I am of the considered view that the word ‘qualification’ used in section 85 (xxxviii) of the Act cannot be given that meaning which according to the submission of Mr. Malik be assigned to it. Once it is so held it becomes obvious that it is not open to the Cane Commissioner to insist that the name of the petitioner should have been forwarded to the Society by an Employment Exchange. He

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has advanced no other reason for withholding the approval of the name of the petitioner.

(7) In the circumstances, I allow this petition and direct the Cane Commissioner to reconsider the name of the petitioner for appointment to the post of Secretary of the Society in accordance with law regardless of the fact that his name has not been forwarded by the Employment Exchange. The petition is allowed to the extent indicated above, with no order as to costs.

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N.K.S.

*Before D. S. Tewatia & A. S. Bains, JJ.*

GURBAX SINGH—*Petitioner*

*versus*

STATE OF PUNJAB and others—*Respondents.*

*Criminal Writ Petition No. 34 of 1978*

**November 22, 1978.**

*Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (LII of 1974)—Section 3(1)—Constitution of India, 1950—Article 166(1)—Rules of Business of the Government of Punjab, 1977—Rule 9(1)—Order of detention under section 3(1) expressed in the name of the Governor and authenticated by a Deputy Secretary—Such order—Whether invalid—Secretary to State Government—Whether the only competent authority to authenticate detention orders on behalf of the Government.*

*Held*, that a perusal of the provisions of section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, would show that a detention order can be passed by the State Government or any officer of the State Government not below the rank of a Secretary to that Government specially empowered for the purpose of the said section by the State Government. That means that the orders can be passed by the State Government as also by the Secretary of the State Government, if so specially authorised. Wherever an executive order is passed by the State Government, the order has to be passed in the name of the