
Clause (h) of Section 2. In this situation, we cannot accept the contention that the assessment orders are valid. These are based on the finding that there was transfer of property in the goods. Factually, it is not so. Legally, the order of assessment cannot be sustained.

(8) Faced with this situation, learned counsel for the respondents contended that the matter should be remitted to the assessing authority. We do not think it is necessary for us to do so. We shall only set aside the order. It is, however, clarified that in case, the assessing authority is legally entitled to do so, it shall be competent to pass fresh orders in accordance with law.

(9) No other point has been raised.

(10) In view of the above, the impugned orders of assessment are set aside. In the circumstances, there will be no order as to costs.

S.C.K.

Before N.K Sodhi & S.C. Malte, JJ

SURINDERJIT SINGH,—Petitioner

versus

**REGISTRAR, COOPERATIVE SOCIETIES, HARYANA AND
OTHERS,—Respondents**

CWP 16061 of 1997

The 3rd March, 1998

Constitution of India, 1950—Arts. 226/227—Haryana Cooperative Societies Act, 1984 (22 of 1984)—Haryana Co-operative Societies Rules, 1989—Rls. 27 & 28—Bye-laws of the Bank—Bye-law 33 (ix)—Elections to governing body—Respondent elected—Challenge thereto on account of his relationship with an employee of the Bank—Respondent already had a son working in Bank when he filed nomination papers—Election upheld—There is no rule making a person ineligible from contesting election on account of a relationship with an employee of the Bank.

Held that there is no rule making a person ineligible from contesting the election on account of his relationship with an

employee of the Bank. Relationship with an employee of the bank is also not a post election disqualification prescribed by rule 28. Clause (ix) of bye-law 33 of the bye-laws is the only provision that provides that an elected member of the Board of Directors shall cease to hold office if he becomes related to an employee of the Bank. This is a post election disqualification and does not render the person ineligible from contesting the election. If a person after his election as a member of the Committee becomes related to an employee of the Bank, it is then only that he would cease to hold office. The use of the word 'becomes' in clause (ix) of bye-law 33 leaves no room for doubt that the relationship must come into existence after the election so as to disentitle him to continue as a member of the Committee.

(Para 3)

Constitution of India, 1950—Arts. 226/227—Haryana Co-operative Societies Act, 1984—S. 102—Alternate remedy—If election is to be challenged—Proper remedy is to raise an election dispute—Not open to petitioner to approach Court in writ jurisdiction.

Held that even if the election was to be challenged it was open to an aggrieved party to raise an election dispute under Section 102 of the Act. This remedy not having been resorted to, it is not open to the petitioner to approach this Court directly under Article 226 of the Constitution.

(Para 5)

S.S. Dalal, Advocate, *for the Petitioner*

S.K. Bishnoi, Advocate, *for Respondent No. 1 & 2*

G.S. Sandhu, Advocate, *for Respondent No. 3*

S.P. Laler, Advocate, *for the Respondent No. 4*

JUDGMENT

N.K. Sodhi, J.

(1) The Ambala Central Co-operative Bank Limited, Ambala (for short the Bank) is a Central Co-operative Society deemed to be registered under the Haryana Co-operative Societies Act, 1984 with different Co-operative Societies as its members, Elections to the governing body of the Bank (hereinafter referred to as the Committee) were held in March, 1997. Respondent 4 as a

representative of Chaur Mastpur Co-operative Credit and Service Society Ltd. which is a member of the Bank contested the election. When he filed his nomination papers, an objection was raised before the Returning Officer by one Joginder Singh a representative of another member of the Bank that he (respondent 4) was not eligible to contest the election because his son was an employee of the Bank. The objection was over-ruled and the nomination paper of respondent 4 accepted. The Returning Officer was of the view that the relationship of respondent 4 with an employee of the Bank was a post election disqualification in view of bye-law 33 (ix) of the bye-laws of the Bank (hereinafter called the bye-laws) and, therefore, he was not ineligible from contesting the election. Elections were held on 14th March, 1997 and respondent 4 was elected a Director of the Bank. After the elections were over, one Surjit Singh a representative of another member society of the Bank filed an application before respondents 1 & 2 praying that respondent 4 being ineligible under the aforesaid bye-law should be removed from the membership of the Committee. The petitioner who is a member of the Rasulpur Co-operative Credit and Service Society Ltd. Rasulpur, District Ambala which in turn is a member of the Bank also filed an application under Rule 28 of the Haryana Co-operative Societies Rules, 1989 (hereinafter referred to as the Rules) seeking removal of respondent 4. Since no action was taken by respondents 1 & 2 for the removal of respondent 4, the petitioner filed the present petition under Article 226 of the Constitution for a *mandamus* directing respondents 1 to 3 to remove respondent 4 from the membership of the Committee.

(2) In response to the notice the respondents have filed their written statements. It is not disputed that the son of respondent 4 is an employee of the Bank. The case set up by the respondents is that his son was already in the employment of the Bank when he filed his nomination papers and, therefore, bye-law 33 (ix) of the bye-laws was not attracted and the said respondent was eligible to contest the elections. It is also urged on behalf of the respondents that the aforesaid bye-law would have come into operation only if the son of respondent 4 had become an employee of the Bank after his election. On the other hand, it is contended on behalf of the petitioner that since respondent 4 is related to an employee of the Bank, he was not eligible to contest the election and, in any case, after the election is over he is not eligible to continue as a member of the Committee.

(3) In order to resolve the controversy between the parties, it is necessary to refer to the provisions of Rules 27 and 28 of the Rules and Clause (ix) of bye-law 33 of the bye-laws. These provisions are reproduced hereunder for facility of reference :—

“Rule 27. Disqualification for membership of committee.
Section 131(2) (xiii).—No person shall be eligible for election as member of the committee if :—

- (a) he is in default to any Co-operative Society in respect of any sum due from him to the society or owes to any Co-operative Society an amount exceeding his maximum credit limit;
- (b) he has directly or indirectly any interest in any contract to which the Co-operative Society is a party except in transactions made with the Co-operative Society as a member in accordance with the objects of the society as stated in the bye-laws.
- (c) he has at any time during a period of one year prior to the date of scrutiny of nomination papers, engaged in any private business, trade or profession of any description which is carried on by the society;
- (d) he has committed any offence involving dishonesty or moral turpitude during a period of five years prior to the date of scrutiny of nomination papers;
- (e) he is subject to any of the prohibitions contained in rule 28;
- (f) he has, during a period of 12 months preceding the date of filing of nomination papers, remained inactive as member or has been carrying on through agencies other than the co-operative society of which he is a member, the same business as is being carried on by the co-operative society;
- (g) he is a member of an elected committee of any co-operative society which has ceased to function or which has not fulfilled its objects as stated in its bye-laws and has been included in the list of ‘D’ class societies maintained by the Registrar or is a member of an elected committee of a society which is under winding up process;

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- (h) he has ceased to be a member of an elected committee of any co-operative society within a period of one year, preceding the date of inclusion of such society in the list of 'D' Class societies maintained by the Registrar or in the operation of order of winding up of such society under section 105 of the Act; provided that nothing in clauses (g) and (h) shall be deemed to debar any person from seeking election if the society under winding up process of which he is a member, is a society with limited liability and that person discharges all his liabilities including liability as surety, if any, in relation to such a society within two months from the receipt of assessment orders;
 - (i) he is a paid employee of the co-operative society provided that this shall not apply in case of producers society.
 - (j) he incurs any other disqualification laid down in the Act, Rules and the bye-laws of the society.

Explanation.—For the purpose of clause (f), a person shall be deemed to be inactive as a member of a society where he has not participated in the activities aimed at achieving the objects for which the society has been registered”.

“Rule 28. Removal from membership of committee. Section 131 (2)(x).—(1) A member of the Committee shall cease to hold office as such if he :—

- (a) continues to be in default in respect of any sum due from him to any Co-operative Society for a period of three months;
 - (b) ceases to be member;
 - (c) is declared insolvent;
 - (d) becomes of unsound mind;
 - (e) is convicted of an offence involving dishonesty or moral turpitude; or
 - (f) becomes subject to any of the disqualifications specified in rule 27.
- (2) The Committee shall inform the Registrar that a member has incurred the disqualification under sub-rule (1) and as such is liable for removal from the office.

- (3) On the receipt of information of a Committee under sub-rule (2), or the application of any member of the society or *suo moto*, the Registrar may order the removal of the member from office after giving an opportunity to hear the committee and the member concerned.”

“Bye-law 33. An elected member of the Board of Directors shall cease to hold office if :—

XXX

XXX

XXX

- (ix) he becomes related to any employee of the bank;

XXX

XXX

XXX

A perusal of Rule 27 would show that it prescribes disqualifications for membership of the committee. According to this Rule any person who possesses any of the disqualifications mentioned in clauses (a) to (j) of this Rule is ineligible to seek election as a member of the Committee. Rule 28, on the other hand, prescribes the post election disqualifications and a member of the Committee who comes to acquire any of the disqualifications referred to in clauses (a) to (f) of this Rule after his election would cease to hold office as such. Similarly, bye-law 33 of the bye-laws prescribes the post election disqualification for a member of the Committee who shall cease to hold office if he comes to acquire any of the disqualifications mentioned therein. There is no rule making a person ineligible from contesting the election on account of his relationship with an employee of the Bank. Relationship with an employee of the Bank is also not a post election disqualification prescribed by Rule 28. Clause (ix) of bye-law 33 of the bye-laws is the only provision that provides that an elected member of the Board of Directors shall cease to hold office if he becomes related to an employee of the Bank. This is a post election disqualification and does not render the person ineligible from contesting the election. If a person after his election as a member of the Committee becomes related to an employee of the Bank, it is then only that he would cease to hold office. The use of the word ‘becomes’ in clause (ix) of bye-law 33 leaves no room for doubt that the relationship must come into existence after the election so as to disentitle him to continue as a member of the Committee. This clause, therefore, did not disentitle respondent 4 from contesting the election as a member of the Board of Directors of the Bank. Since this respondent has not become related to an

employee of the Bank after his election, he is not liable to be removed from office either. The argument of the learned counsel for the petitioner has, therefore, to be rejected.

(4) In the result, it must be held that respondent 4 was eligible when he contested the election as a member of the Committee and that he has not incurred any post election disqualification so as to render him ineligible from continuing as a member of the Committee.

(5) It may be observed that the petitioner has to be non-suited on another ground as well. He is a member of the Rasulpur Co-operative Credit and Service Society Ltd. and has no *locus standi* to challenge the election of respondent 4 muchless to ask for a direction to remove the said respondent from his office. Rasulpur Co-operative Society is one of the members of the Bank and the petitioner is not an authorised representative of that society who could participate in the elections as he is not a voter. Moreover, even if the election was to be challenged, it was open to an aggrieved party to raise an election dispute under Section 102 of the Act. This remedy not having been resorted to, it is not open to the petitioner to approach this court directly under Article 226 of the Constitution.

(6) For the reasons recorded above, there is no merit in the writ petition and the same stands dismissed with no order as to costs.

J.S.T.

Before Dr. Sarojnei Saksena, J.

VED PARKASH AND ANOTHER,—*Petitioners*

versus

THE STATE OF HARYANA,—*Respondent*

Crl. R. 638 of 1997

The 16th April, 1998

Code of Criminal Procedure, 1973-S. 319—Power to proceed against other persons—Such power to be exercised on evidence recorded during trial—Evidence—Meaning of.