

perform it under relevant circumstances. The fact that the exercise of the power is left to the discretion of the authorized person does not exonerate him from discharging his duty. If the discretionary power so conferred is exercised arbitrarily, capriciously or unreasonably or by taking into consideration extraneous and irrelevant considerations, in the eye of law the authority concerned must be deemed not to have exercised the discretion at all, that is, he has not discharged his duty. If the Court on the facts placed before it comes to a definite conclusion that a particular authority has not exercised his duty for one or other of the aforesaid reasons, it will compel the authority to discharge his duty, or, to put it differently, to exercise his discretion honestly and objectively."

(15) Viewing the circumstances of the case in hand, in the light of these observations, I am of the opinion that even if the Income-tax Officer had the jurisdiction to make an order in the petitioner's favour under section 45, the discretion that he has exercised in not making that order in petitioner's favour does not call for interference by this Court. The petition is accordingly dismissed with costs.

K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

DAULAT RAM,—*Petitioner*

versus

THAKAR SINGH AND OTHERS,—*Respondents*

Civil Writ No. 1771 of 1967

March 12, 1968

Punjab Co-operative Societies Act, 1954 (XIV of 1955)—S. 16—Punjab Co-operative Societies Rules (1956)—Rules 34 and 43—Punjab Co-operative Societies Rules (1963)—Rule 26(6)—Registrar, Co-operative Societies, Punjab—Whether has the power to frame election rules—Model by law not adopted by the society—Framing of election rules under—Whether valid.

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Held, that a reading of the Rules 34 and 43 of Punjab Co-operative Societies Rules, 1956, would show that no power has been given thereunder to the Registrar for framing election rules and for prescribing the qualifications and disqualifications of the candidates seeking election to the managing committees.

(Para 6)

Held, that a model by-law authorising society registered under the Co-operative Societies Act to frame election rules has to be adopted by the Society before it can frame the election rules under that by-law. The election rules framed by a society without adopting the by-law have no validity.

(Para 6)

Petition under Articles 226 and 227 of the Constitution of India praying that writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the illegal and void orders passed by the Inspector, Co-operative Societies, Respondent No. 2, dated 31st July, 1967, and directing the respondent not to hold any meeting for the purpose of co-opting/electing a Director in place of the petitioner except in accordance with law.

SURINDER SARUP, ADVOCATE, for the Petitioner.

G. S. CHAWLA, ADVOCATE, for ADVOCATE-GENERAL (PB.), for the Respondents Nos. 1 and 2.

A. S. BAINS, ADVOCATE, for Respondents, No. 3.

ORDER

PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Daulat Ram, President of the Abohar Co-operative Marketing Society Ltd., Abohar, district Ferozepore, challenging the legality of the order, dated 31st July, 1967, passed by the Inspector, Co-operative Societies, Abohar, respondent No. 2.

(2) The petitioner was elected director and president of the Abohar Co-operative Marketing Society Ltd., Abohar (hereinafter called the Abohar Society), in his capacity as a representative of his village society, namely Rajanwali Co-operative Agricultural Service Society (hereinafter referred to as the Rajanwali Society) of which also the petitioner was the president. The Rajanwali society, due to some reasons, could not pay the dues of the Fazilka Co-operative Central Bank Ltd., Abohar Branch, for a short period, but according to the petitioner, it made up the deficiency within about a fortnight and cleared the overdues amounting to Rs. 7,000 on 7th of August,

1967. On 31st of July, 1967, however, respondent No. 2, sent the impugned order to the Manager of the Abohar Society informing him that the petitioner had ceased to be the director of the said society. The order said: —

“Subject. Removal from Directorship.

As the Ranjanwali Co-operative Agricultural Service Society has become defaulter of the Central Co-operative Bank, Abohar Branch on 20th July, 1967.

Hence Shri Daulat Ram, Director of the Abohar Co-operative Marketing Society Limited, Abohar, who has represented the aboe-noted society and also the members of the Society ceased to be the Director of the Abohar Co-operative Marketing Society Limited, Abohar, under Rule 26(f) read with Election rules of the Managing Committee of the Co-operative Marketing Societies qualification (e).”

(3) After issuing the impugned order, respondent No. 2 called a meeting of the Board of Directors of the Abohar Society for 29th August, 1967, and one of the items on the agenda was mentioned as ‘retirement of Director’. According to the petitioner, respondent No. 2 was illegally calling the meeting for the purpose of electing a Director after retiring him from directorship. Thereupon on 24th August, 1967, he approached the Fazilka Central Co-operative Bank Ltd., Abohar Branch, to ascertain the exact position as to whether the Rajanwali Society did actually come within the definition of ‘defaulter’ or not. The Senior Accountant of the said Bank informed the petitioner that the Rajanwali society had remained a defaulter for 18 days i.e., from 20th July, 1967 to 6th August, 1967 and on 7th August, 1967, it had cleared the overdues amounting to Rs. 7,000 and thereafter the society was not a defaulter. The petitioner then filed the present writ petition on 26th August, 1967.

(4) From the impugned order quoted above, it would be apparent that according to respondent No. 2, the petitioner had ceased to be a director of the Abohar society under rule 26(f) read with qualification (e) of the rules of election to the Managing Committee of the Co-operative Marketing/Marketing-cum-processing Societies in the Punjab (hereinafter referred to as the election rules). It is common

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ground that rule 26(f) mentioned in the impugned order is of the Punjab Co-operative Societies Rules, 1963. It reads:—

“26. Cessation of membership of committee.—A member of the committee shall cease to hold his office as such if he:—

* * * * *

(f) becomes subject to any disqualification which would have prevented him from seeking election, had he incurred that disqualification before election.”

(5) According to this rule, a member of the committee shall cease to hold office, if he became subject to any disqualification which would have disentitled him to seek election when he did so. In the election rules, where the qualification of candidates is given, it was mentioned in clause (e) that no individual member of the society or representative of an affiliated co-operative society would be eligible for election if he was a representative of the affiliated society which was a defaulter to the financing bank or the society. It was contended by the learned counsel for the petitioner that election rules had no validity in law, because the Registrar of the Co-operative Societies, Punjab, who had framed them, had no jurisdiction to do so. In the rules, it was mentioned that they had been made in exercise of the powers conferred by rules 34 and 43 of the Punjab Co-operative Societies Rules, 1956, framed under section 16 of the Punjab Co-operative Societies Act, 1954. Rules 34 and 43 of 1956, rules lay down:—

“34. The Registrar may issue such directions as he considers necessary for ensuring zonal representation on the committee or the board of directors of a society.”

“43. The Registrar may, from time to time, issue such directives as he considers necessary for the successful conduct of the business of a society or class of societies.”

(6) A reading of these two rules would show that no power has been given therein to the Registrar for framing election rules and for prescribing the qualifications and the disqualifications of the candidates seeking election to the managing committees. This was also frankly conceded by the counsel appearing for the State. He, however, submitted that the election rules had been framed under bye-law 32-A of the Model Bye-laws of Co-operative marketing-cum-processing societies Ltd., which laid down that “the election of managing committee by the general body shall be conducted in such

a manner as may be laid down in the rules of election to be framed by the Registrar." This model bye-law 32-A was not adopted by the Abohar Society. This was stated at the bar by the learned counsel appearing for the petitioner. It is common ground that this bye-law had to be adopted by the Abohar Society and then registered under the Punjab Co-operative Societies Act. That was not done. That being so, the election rules referred to in the impugned order had no validity so far as the Abohar Society was concerned. It follows that the petitioner did not incur the disqualification relied upon by the State, and consequently, he did not cease to be a member of the committee under rule 26(f).

(7) In view of what I have said above, this petition is accepted and the impugned order is quashed. There will, however, be no order as to costs.

K.S.

CIVIL MISCELLANEOUS

Before Tej Chand, J.

BHUPINDER SINGH VOHRA,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ No. 1710 of 1967

Civil Misc. No. 795 of 1968.

March 13, 1968.

The Punjab Tehsildari Rules, 1952—Rules 3, 13 and Appendix 'A'—Suspension pending enquiry of a Tehsildar—Whether can be ordered by Financial Commissioners—"Malice"—Meaning of—Whether can be implied from wrongful act without justification—Code of Civil Procedure (Act V of 1908)—Order 19, Rule 3(1)—Affidavit in violation of—Whether to be ignored—Revenue Departmental instructions—Breach of—Whether justiciable.

Held, that Appendix 'A' under the Punjab Tehsildari Rules, 1952, relates to suspension by way of punishment and does not purport to deal with suspension pending enquiry. A public servant is liable to be suspended either pending departmental enquiry in which case the suspension is *ad interim* and if as a result of the enquiry he has been found guilty, the suspension may be imposed as a