In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 16927 of 2000
Date of Decision: February 11, 2015

Hazur Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present: Mr. Ravinder Malik, Advocate,
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Lalit Rishi, Advocate,
for Mr. Anurag Goyal, Advocate,
for respondent nos. 3 and 4.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing order dated 07.12.1999 passed by Financial Commissioner and Secretary to Government of Haryana, Cooperation Department, under Section 29(3) of the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as the "Act").

Brief facts of the case are that petitioners are members of the Shahabad Cooperative Sugar Mills Ltd., Shahabad Markanda, District Kurukshetra (hereinafter referred to as the "Sugar Mill) and the elected Board of the Sugar Mill is not working because its tenure has already elapsed and no elections have been held so far. For this purpose, instant writ petition has been filed by the shareholders of the Sugar Mill. The Sugar Mill had its elected Board of Directors in the year 1997. Agenda Item No.6 was put up before the Board of Directors for decision. The Directors of the Sugar Mill unanimously passed a resolution to the effect that loan amount given to the Kaithal Cooperative Sugar Mills Ltd., Kaithal should not be converted into equity share. Sh. R.S. Saluja, Technical Advisor, Sugarfed, Chandigarh had given a dissenting note (Annexure P/2), as a result of which the matter was referred to the Financial Commissioner and Secretary to Govt. of Haryana, Department of Cooperation. Vide order dated 07.12.1999 (Annexure P/3), the Financial Commissioner and Secretary to Govt. of Haryana, exercising his powers under Section 29(3) of the Act held that decision of the Government nominees in respect of resolution no. 6 of the meeting of the Sugar Mill held on 16.12.1997 shall be considered as decision of the Board of Directors, which is impugned in the present writ petition specifically on the ground that the same has been passed in an arbitrary manner and is a non-speaking order. It is further alleged that there are number of shareholders of the Sugar Mill and the share of the public is Rs.14,60,00,000/- and the share of the Government is only to the extent of Rs.1,47,00,000/- The Government is compelling the Sugar Mill to give this huge amount of Rs. 3,00,00,000/- (Rs. Three crores) for purchasing the share from the Kaithal Cooperative Sugar Mills Ltd., Kaithal, which is against the interest of the Sugar Mill in question.

In pursuance of notice of motion, respondents no. 1 & 2 and 3 & 4 have filed separate written statements. In the written statement filed by respondent nos. 1 and 2, it is averred that the Financial Commissioner under Section 29(3) of the Act has taken a decision which is legal and valid and he has rightly affirmed the dissenting Note given by Sh. R.S. Saluja, Technical Advisor (Engineering) of Sugarfed, in the interest of the Sugar Mill and the amount of Rs.2,66,28,200/- has already been converted into share capital of Kaithal Sugar Mills and share certificates from Kaithal Sugar Mills have already been received by respondent no.4.

Respondent nos. 3 and 4 filed separate written statement on the similar line as filed by respondent nos. 1 and 2 and supported the order passed by the Financial Commissioner and Secretary to Government of Haryana.

I have heard learned counsel for the parties and perused the record.

Section 29(3) of the Act reads as under:-

"(3) Where a difference of opinion in respect of any matter arises between any member nominated by the Government or the Managing Director appointed under Section 31 and other members thereof, the matter shall be referred by the Society to the Government whose decision thereon shall be final and deemed to be a decision taken by the Committee."

Perusal of the impugned order (Annexure P/3) indicates that the same is *per se* non speaking order. No reasons have been recorded for agreeing with the dissenting note. Order of the Financial Commissioner (Annexure P/3) reads as under:-

"*Whereas a meeting of the Board of Directors of the Shahabad Cooperative Sugar Mills Ltd., Shahabad was held on 16.12.1997.*

Whereas the Agenda Item No.6 in the above said meeting regarding the loan advanced to Kaithal Sugar Mill by Shahabad Cooperative Sugar Mills, was discussed.

Whereas after discussion, the aforesaid resolution number 6 was put to vote and the elected members of the Board of Directors voted against the resolution, but keeping in view the larger interest of the Mill, the Government nominees gave a dissenting note supporting the resolution and against the decision of the elected members of the Cooperative Sugar Mills, Shahabad.

Whereas the Managing Director, Haryana State Federation of Cooperative Sugar Mills Ltd., Chandigarh has *forwarded the aforesaid resolution for taking a decision on the dissenting note under Section 29(3) of the Haryana Cooperative Societies Act, 1984.*

Now, therefore, I, L.M. Goyal, IAS, Financial Commissioner & Secretary to Government of Haryana, Cooperation Department, by virtue of the powers conferred upon me under Section 29(3) of the Haryana Cooperative Societies Act, 1984, do hereby order that the decision of the Government nominees in respect of resolution number 6 of the meeting of the Shahabad Cooperative Sugar Mills Ltd., Shahabad held on 16.12.1997 shall be considered as decision of the Board of Directors."

The dissenting note of the Technical Advisor (Engineering) Sugarfed, Chandigarh reads as under:-

"<u>Agenda Item No.6</u>

The elected Directors have expressed the views that the loan plus interest at simple flat rate (instead of compound interest) given to M/s Kaithal Coop. Sugar Mills Ltd., Kaithal by Shahabad Coop. Sugar Mills Ltd., Shahabad should not be converted into equity. But the view of the State Federation is that the loan along with interest at simple flat rate (instead of compound interest) should be converted into equity and the orders of Hon'ble Chief Minister of converting loan into equity should be complied with.

This may be treated as dissenting Note from my side."

Perusal of dissenting note (Annexure P/2) clearly indicates that the same has been given by the Technical Advisor under the orders of the Chief Minister to convert the loan into equity share and the same has been affirmed by respondent no.1. It has not been mentioned in the dissenting note (Annexure P/2) as well as in the impugned order dated 07.12.1999 (Annexure P/3) as to how the conversion into equity will be in the interest of Sugar Mill in question. The impugned order does not disclose the grounds. It apparently appears that dissenting note by technical person is under the influence of Chief Minister and the order passed by the Financial Commissioner and Secretary to Government of Haryana is result of non application of mind and is *per se* illegal and arbitrary, as such is not sustainable. The authority exercising the powers under the Act is required to pass a speaking order supported by reasons. The dissenting note itself is not clear as to how conversion the loan amount into equity share is in the interest of Sugar Mill, nor any reasons have been recorded in the impugned note.

In view of above, instant writ petition is allowed. Impugned order (Annexure P/3) is set aside. However, liberty is granted to the Financial Commissioner and Secretary to Government of Haryana to pass a fresh speaking order by recording reasons in accordance with law.

February 11, 2015 **[Paramjeet Singh]**
vkd **Judge**