

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12292 of 2011 (O&M)

Date of decision: 14.07.2016

The Alaknanda Cooperative Group Housing Society Ltd. and another

... Petitioners

Vs.

**Financial Commissioner, Cooperation and Principal Secretary to Govt.
Haryana and others**

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Akshita Chauhan, Advocate
for the petitioners.

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

Mr. Kanwal Goel, Advocate and
Mr. Arun Monga, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant writ petition is directed against the order dated 18.05.2011 (Annexure P-23) passed by the Financial Commissioner and Principal Secretary to Govt. of Haryana, Cooperation Department, whereby the revision petition filed by the petitioner-Society was dismissed and the order dated 21.12.2006 (Annexure P-21) passed by Registrar, Cooperative Societies, Haryana was upheld, holding respondent No.3 eligible to be a member of the petitioner-Society.

Briefly put, facts necessary for disposal of the present writ petition

are that respondent No.3 submitted an application to the petitioner-Society in January, 2003 for his enrollment as member of the petitioner-Society. The Society vide letter dated 03.07.2003 (Annexure P-1) asked respondent No.3 to supply the requisite documents about his eligibility for becoming member of the petitioner-Society, but when respondent No.3 did not supply the requisite documents in response to communication dated 03.07.2003 (Annexure P-1), petitioner-Society wrote another letter dated 29.10.2003 (Annexure P-2). Respondent No.3 vide his letter dated 06.11.2003 (Annexure P-3) supplied the documents along with his affidavit. However, a combined reading of Annexures P-3 and affidavit of respondent No.3, would show that he did not establish his eligibility for membership of the petitioner-Society. It is pertinent to note here that vide communication dated 17.11.2003 (Annexure P-5), Manager of the petitioner-Society informed respondent No.3 that documents sent by him were in order but he did not refer to the eligibility of respondent No.3 for becoming member of the petitioner-Society, because of which this communication dated 17.11.2003 (Annexure P-5) would be of no consequence.

On close scrutiny of the documents supplied by respondent No.3, petitioner-Society found that respondent No.3 was not fulfilling the eligibility criteria for becoming member of the petitioner-Society. Vide communication dated 27.10.2004 (Annexure P-6), respondent No.3 was asked to show his eligibility for membership of the petitioner-Society. This letter dated 27.10.2004 (Annexure P-6) was replied by respondent No.3 vide his letter dated 31.10.2004 (Annexure P-7). Matter remained pending consideration before the petitioner-Society regarding the eligibility of respondent No.3 for becoming member of the

petitioner-Society. Both the parties have been corresponding with each other, which is clear from different communications contained in Annexure P-8 to Annexure P-13.

Finally, case of respondent No.3 regarding his eligibility for membership of the petitioner-Society was considered by the Managing Committee of the petitioner-Society in its meeting held on 12.06.2005. Clarification from Assistant Registrar, Cooperative Societies, Gurgaon was also sought in this regard. Accordingly, respondent No.3 was informed vide letter dated 11.09.2005 (Annexure P-14) that despite repeated requests and reminders, he has not furnished the requisite documents, so as to establish his eligibility for becoming member of the petitioner-Society.

When no response was received from respondent No.3, he was again informed vide letter dated 06.10.2005 (Annexure P-15). However, instead of replying to the abovesaid communications dated 11.09.2005 and 06.10.2005 to the petitioner-Society, respondent No.3 filed his appeal before the Registrar, Cooperative Societies, Haryana-respondent No.2 by way of Annexure P-16. Petitioner-Society filed its reply vide Annexure P-18 and respondent No.3 filed his rejoinder (Annexure P-19). Thereafter, petitioner-Society filed its rejoinder to the replication of respondent No.3 vide Annexure P-20. Case was heard by the Registrar, Cooperative Societies, Haryana-respondent No.2 and he allowed the appeal of respondent No.3 vide impugned order dated 21.12.2006 (Annexure P-21).

Petitioner-Society challenged the order dated 21.12.2006 passed by the Registrar, Cooperative Societies, Haryana before the Commissioner-cum-

Secretary to Govt., Department of Cooperation, Haryana-respondent No.1 by way of revision petition under Section 115 of The Haryana Co-operative Societies Act, 1984 ('1984 Act' for short). During the course of hearing of the revision, petitioner-Society filed its written arguments vide Annexure P-22. After hearing the learned counsel for both the parties, respondent No.1 dismissed the revision of the petitioner-Society vide impugned order dated 18.05.2011 (Annexure P-23). Hence this writ petition at the hands of the Society.

Notice of motion was issued and in compliance thereof, written statements were filed. One written statement was filed on behalf of respondent No.2 and another separate written statement was filed on behalf of respondent No.3.

Heard learned counsel for the parties.

Learned senior counsel for the petitioner-Society submits that since the petitioner-Society did not expel respondent No.3 from the membership, no appeal was maintainable under Section 114 of the 1984 Act before the Registrar, Cooperative Societies-respondent No.2 against the letters dated 11.09.2005 (Annexure P-14) and dated 06.10.2005 (Annexure P-15). He further submits that since the appeal itself was not maintainable under Section 114 of the 1984 Act, respondent No.2 had no jurisdiction to entertain it, much less accepting the same, by passing the impugned order dated 21.12.2006 (Annexure P-21). Placing heavy reliance on Clause 3 of the Model Byelaws, which was adopted by the petitioner-Society about the eligibility for membership, learned senior counsel for the petitioner-Society submits that since respondent No.3 was neither belonging to or a resident of State of Haryana nor he was working in Haryana

State, including Chandigarh, he was not eligible for becoming member of the petitioner-Society. Since respondent No.1 miserably failed to appreciate unambiguous provisions contained in Clause 3 of the Model Byelaws, in correct perspective and has illegally held respondent No.3 eligible for membership of the petitioner-Society, while exceeding his jurisdiction, the impugned order dated 18.05.2011 (Annexure P-23) suffers from patent illegality. He also submits that since respondent No.3 was son-in-law of Sh. M.K. Miglani, IAS, who had worked as Principal Secretary, Department of Cooperation, Haryana and under his influence, respondent No.3 managed to get letter dated 17.11.2003 (Annexure P-5). He concluded by submitting that since both the impugned orders passed by respondents No.1 & 2 were orders without jurisdiction, the same are liable to be set aside. He prays for allowing the present writ petition.

Per contra, learned counsel for the respondents submit that the impugned orders passed by respondents No.1 & 2 deserve to be upheld, as the impugned orders were not suffering from any illegality. Learned counsel for respondent No.3 further submits that respondent No.1 has rightly interpreted Clause 3 of the Byelaws in favour of respondent No.3 declaring him eligible for membership of the petitioner-Society. Learned counsel for respondent No.3 would next contend that since respondent No.3 was resident of Chandigarh, he has fulfilled the eligibility criteria for becoming member of the petitioner-Society. He submits that since the petitioner-Society has received an amount of more than Rs.14 lacs from respondent No.3 from time to time, the impugned orders deserve to be upheld. He denied the allegation of influence qua Annexure P-5. Learned counsel for the State as well as learned counsel for respondent No.3

pray for dismissal of the present writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noticed hereinabove, the impugned orders are liable to be set aside. The writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that petitioner-Society never took any such decision, whereby respondent No.3 might have been expelled from the membership of the petitioner-Society. Communications contained in Annexures P-14 and P-15 were only the letters written by the petitioner-Society to respondent No.3. Respondent No.3 did not reply to these two letters (Annexures P-14 & P-15) with a view to show his eligibility for membership of the petitioner-Society but he challenged these two letters by way of appeal before respondent No.2 under Section 114 of the 1984 Act.

It is relevant to refer to Section 114 of the 1984 Act and the same reads as under: -

“114. Appeals. -- (1) An appeal shall lie under this section against –

(a) an order of the Registrar made under sub-section (2) of section 8 refusing to register a society;

(b) an order of the Registrar made under sub-section (4) of section 10 refusing to register an amendment of the bye-laws of a co-operative society;

- (c) a decision of a co-operative society, other than a producer society, refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;*
- (d) a decision of a co-operative society expelling any of its members;*
- (e) an order of the Registrar rescinding a resolution under section 27;*
- (f) an order of the Registrar removing the committee or a member of the committee of a co-operative society under section 34 or 35;*
- (g) an order made by the Registrar regarding compensation under section 51;*
- (h) an order passed by Registrar regarding costs, etc. under section 95;*
- (i) an order made by the Registrar under section 100 apportioning the costs of an enquiry or an inspection;*
- (j) an order of surcharge under section 101;*
- (k) a decision or award made under section 103;*
- (l) an order granting a certificate under section 104;*
- (m) an order of winding up of a co-operative society under section 105;*
- (n) an order made by the liquidator under section 107; and*
- (o) an order of attachment before award under section 111.*

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order,—

(a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;

(b) if the decision or order was made by the Deputy Registrar or Joint Registrar, to the Registrar or such Additional Registrar, as may be authorized by the Registrar in this behalf;

(c) if the decision or order was made by the Additional Registrar or Registrar or any person upon whom the powers of the Registrar were conferred under sub-section (2) of section 3 of this Act and not covered under clauses (a) and (b) above, to the Government; and

(d) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorized by special or general order of the Registrar in this behalf.

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

(4) Any appeal under sub-section (1) pending before any authority immediately before the commencement of this Act shall stand transferred to the authority to whom such appeal lies under the provisions of this Act.”

A bare perusal of the abovesaid provisions of law contained in Section 114 of the 1984 Act, would show that the appeal filed by respondent No.3 was not maintainable, because he has not been expelled from his membership. Once the petitioner-Society did not take any decision expelling respondent No.3 from his membership, respondent No.2 had no jurisdiction to entertain and decide said appeal filed by respondent No.3 against the letters dated 11.09.2005 (Annexure P-14) and 06.10.2005 (Annexure P-15). It is interesting to note that the Registrar, Cooperative Societies, Haryana-respondent No.2 has recorded in the operative part of his order dated 21.12.2006 (Annexure P-21) that, “although the Society has not expelled him (respondent No.3) from the membership of the Society but the Society appears to expel him from the membership, which was not justifiable and appears malafide”.

The abovesaid observation made by respondent No.2 was wholly unwarranted which runs counter to the official record. He has also observed that if respondent No.3 was not fulfilling the eligibility criteria for becoming member of the petitioner-Society, then the petitioner-Society should not have enrolled him as member. It is pertinent to note here that even if the application furnished by respondent No.3 for membership of the petitioner-Society was entertained, it would never mean that respondent No.3 would be entitled for any kind of exemption about his eligibility for membership. It is so said because there cannot be any estoppel against the law. Since respondent No.2 has exceeded his jurisdiction, while entertaining the appeal of respondent No.3, which was not even maintainable, the impugned order dated 21.12.2006 (Annexure P-21) cannot be sustained.

Similarly, when the matter was brought to the notice of respondent No.1 by way of revision petition under Section 115 of the 1984 Act, at the instance of the petitioner-Society, he also failed to appreciate true facts of the case as well as the relevant provisions of law in the right perspective, while passing his patently illegal order dated 18.05.2011 (Annexure P-23). Relevant part of the impugned order passed by respondent No.1, reads as under: -

“I have gone through the facts of the case and the bye laws of the Society; particularly Condition No.3 (i), interpretation of which is relevant to the present matter. Condition No.3 (i) reads as under: -

“3. A person shall be eligible for admission as a member of the Society, if he;

(i) Belongs to or is a resident of or is working in Haryana State including Chandigarh for the last one year at the time of becoming member of the society and qualifies for any of the following categories of societies.”

The logical inference which can be drawn from the above clause is that a person belonging to or resident or working in Haryana including Chandigarh is eligible to become a member.

It would be erroneous to limit the interpretation in a matter that the first two conditions of belonging or resident relate to Haryana only and it is only in respect of working that Chandigarh is included for eligibility. Accordingly, the respondent was eligible to be a member of the Society because he was a resident of Chandigarh.”

When Haryana Urban Development Authority ('HUDA' for short) floated the Group Housing Scheme in the year 1998 in 14 towns of the State of Haryana including Gurgaon, for allotment of plots to Cooperative Group Housing Societies as well as other categories of societies listed in the brochure issued by HUDA, it laid down conditions of eligibility for becoming a member of a society. The relevant condition No.2 reads as under: -

“2. Eligibility conditions for societies and members: -

The following societies comprising of members who belong to or are residents of or are working in Haryana State including Chandigarh for the last one year are eligible to apply for land under GROUP HOUSING SCHEME 98.

(i) GENERAL: Societies consisting of members who belong to or are residents of Haryana or are working in Haryana State including Chandigarh for the last one year.

(ii) E.W.S.: Societies consisting of such members whose total family income does not exceed Rs.2500/- per month. The member should belong to Haryana, or are residents of or are working in Haryana State or Chandigarh for the last one year;

(iii) HARYANA GOVT. EMPLOYEES: Societies consisting of employees of Haryana Government, its Board & Corporations, retired employees of Haryana Govt., Haryana Universities, employees of Government sponsored coop. organizations such as Hafed, Sugerfed, Coop. Apex Banks and Authorities such as Command Area Development Authority;

(iv) *CENTRAL GOVT. EMPLOYEES: Societies consisting of employees of Central Government, its Corporations and undertakings, University employees, Defence Personnel, Bank employees.”*

This seems to be the reason that abovesaid Clause 3 of the Model Byelaws was based on the eligibility condition put by the HUDA. A bare reading of the abovesaid Clause 3 of the Byelaws, which was in the form of statutory provisions, for governing the eligibility criteria for membership of Cooperative Group Housing Society, would show that there was no scope of any ambiguity in this eligibility condition. Any person aspiring for becoming member of such a Cooperative Group Housing Society, as petitioner-Society herein, was required either belonging to or resident of or working in the State of Haryana, including Chandigarh, for the last one year at the time of becoming member.

It is a matter of record that respondent No.3 was an officer of 1993 batch of Nagaland cadre. Neither he belongs to Haryana nor he was resident of Haryana. Similarly, he had never been working in the State of Haryana, including Chandigarh. However, he was only the resident of Chandigarh as claimed by him. In view of this undisputed fact situation, there was no scope of interpreting the abovesaid Clause 3 of the Byelaws of the petitioner-Society, by respondent No.1 in favour of respondent No.3, holding him eligible for becoming member of the petitioner-Society.

It is so said because the only purposeful and harmonious construction of Clause 3 of the Byelaws is that any person aspiring to become member of the petitioner-Society should have been either belonging to State of

Haryana or should be a resident of State of Haryana. Similarly, he should have been working in the State of Haryana, including Chandigarh. Chandigarh has been rightly included, it being the capital of State of Haryana, because numerous employees of State of Haryana would be working in Chandigarh. Any contrary interpretation of abovesaid Clause 3 of the Byelaws would run counter to the very object of this provision of law.

It is the settled principle of law that there cannot be any estoppel against law. In the present case, respondent No.3 neither submitted the requisite documents showing his eligibility alongwith his application for membership nor he supplied the same at any later point of time, despite having been requested more than once by the petitioner-Society. It goes without saying that eligibility of respondent No.3 was to be considered only after he would have furnished his requisite documents. What to talk of supplying the relevant documents to the petitioner-Society, learned counsel for respondent No.3 could not show any such document to this Court even during the course of hearing. So far as allegation of undue influence leveled against respondent No.3 and denial thereof by him is concerned, this Court would refrain from making any comments thereon, it being avoidable.

In view of what has been discussed hereinabove, this Court feels no hesitation to conclude that the petitioner-Society was well within its rights to insist for establishing his eligibility by respondent No.3. In other words, petitioner-Society could not have been directed to violate Clause 3 of its Bye-laws. Once the petitioner-Society had adopted the abovesaid model bye-laws, said bye-laws and procedure laid thereunder were to be scrupulously observed.

Thus, the petitioner-Society committed no wrong while following the bye-laws.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **B.S. Minhas Vs. Indian Statistical Institute, 1983 (3) SLR 150**. The relevant observations made by the Hon'ble Supreme Court in para 23 and 24, which can be gainfully followed in the instant case, read as under: -

*"The next question that arises for consideration is whether the appointment of respondent No.4 as Director of respondent No.1 is illegal because of non-compliance with bye-law 2. Bye-law 2 does require that before appointment, the vacancy in the post of Director should be suitably publicised. In the instant case, it is admitted on both sides that no publicity whatsoever was given in respect of the vacancy. The contention of Shri Garg, however, is that the bye-law having no force of statute, non-compliance with its requirement can not in any way affect the appointment of respondent No. 4 as Director of respondent No. 1. Shri Tarkunde, however, contended that assuming that the bye-law is not statutory, even so respondent No. 1 was bound to comply with it. In support of his contention he strongly relied upon **Ramana Dayaram Shetty v. International Airport Authority of India, AIR 1979 Supreme Court 1628: (1979) 3 SCR 1014**. The Court in that case held:*

"It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously

*observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in **Viteralli v. Seton, (1959) 3 Law Ed 2d 1012** where the learned Judge said:*

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

*The aforesaid principle laid down by Mr. Justice Frankfurter in **Viteralli v. Seton** has been accepted as applicable in India by this Court in **A. S. Ahluwalia v. Punjab State, (1975) 3 SCR 82** and in subsequent decision given in **Sukhdev v. Bhagatram, AIR 1975 Supreme Court 1331: (1975) 3 SCR 619**. Mathew J. quoted the above referred observation of Mr. Justice Frankfurter with approval.*

In view of the pronouncement of this Court on the point it must be held to be obligatory on the part of respondent No. 1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Respondent No. 1

cannot, therefore, escape the liability for not following the procedure prescribed by bye-law 2.”

Since respondents No.1 & 2 have proceeded on wholly misconceived approach, while passing the impugned orders (Annexures P-21 & P-23), the same are without jurisdiction and cannot be upheld. The impugned orders have been found suffering from patent illegality.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders are liable to be set aside and the same are accordingly set aside. However, striking a balance with a view to do complete and substantial justice between the parties, petitioner-Society is directed to refund the total amount received, along with interest @ 9% per annum, to respondent No.3. Since the amount has been received by the petitioner-Society from time to time, the same shall be returned along with interest from the date of receipt till the date of payment to respondent No.3. The petitioner-Society is also directed to pay the total amount of respondent No.3 along with interest @ 9% per annum, within a period of three months from the date of receipt of certified copy of this order.

Resultantly, with the abovesaid observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

14.07.2016
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