

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.22670 of 2015 (O&M)
Date of Decision: 02.08.2017

Kanwaljit Singh

....Petitioner

Vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Harit Sharma, Advocate,
for the petitioner.

Mr.Saurav Khurana, DAG, Punjab.

Mr.Vikas Singh, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the election programme, published in the newspaper 'Jagbani' on 9.10.2015, issued by the Election Manager of the Batala Cooperative Sugar Mills Limited, Batala [for short 'the Society'].

It is submitted that the present membership of the sugar mill comprises 300 societies and 28411 individuals. It is further submitted that total seven Directors are to be elected out of which five Directors have to be elected from individual zone and two from the societies zone.

Learned counsel for the petitioner has submitted that as per Section 15-A of the Punjab Cooperative Societies Act, 1961 (for short the Act), no individual shall be admitted as member of the central or apex society but it can be exempted by the Registrar by a general or special order.

Section 15-A of the Act is reproduced as under: -

“15-A. Restrictions on individuals in becoming members of certain co-operative societies.- (1)- No individual shall be admitted as member of a central or apex society unless such a society has been exempted by the registrar in this behalf, by a general or special order.

(2) The Central and apex societies having individuals as members on the date of commencement of the Punjab Co-operative Societies (Amendment) Act.1969.shall retire the shares of such individuals within a period of three years of such commencement in the prescribed manner.

EXPLANATION - For the purpose of this section, Section 26, Section 26B and Section 84-A.

(a) “primary society” means a co-operative society whose membership consists exclusively of individuals;

(b) “central society means a co-operative society whose membership includes primary societies;

(c) “apex society” means a co-operative society whose membership includes central societies.”

It is submitted that the Society was given exemption by the Registrar for allowing the individuals also member and on account of that as many as 28411 individual became members besides 300 societies as members. Section 26 of the Act deals with the procedure for election and nomination of members of the Committee. Section 26(1) of the Act, read as under: -

“The members of the Committee of a cooperative society shall be elected in the manner prescribed & no person shall be so elected unless he is a share holder of the society.”

Section 26(1) was amended by the State Government in terms of the 97th amendment in the Constitution and the said amendment read as: -

“26(1) The members of the Committee of a co-operative society shall be elected in the manner prescribed & no person shall be so elected unless he is a share holder of the society.

Provided that the maximum number of members of the committee of a co-operative society shall not exceed twenty one;

Provided further that there shall be reservation of one seat for the scheduled castes and two seats for women on the committee of every co-operative society

*consisting of individuals as members and
having members from such class or category
of persons.”*

Pursuant to this amendment, the election programme was issued by the respondents in which it was provided that *“the elections of seven directors of the Board of Directors of the Batala Co-operative Sugar Mills Ltd., Batala, District Gurdaspur shall be as per the election programme given for electing five Directors out of individual zones and two directors from the member societies zone”*.

The grievance of the petitioner is that the respondents have not cared to comply with second proviso to Section 26(1) of the Act as amended as they have reserved two seats for women and one for the Scheduled Castes. This fact is admitted that no reservation is made for the Scheduled Castes and women for the post of Director from the individual zone.

Learned counsel for the respondents has submitted that the second proviso to Section 26(1) of the Act do not apply to the central society and it applies only to the primary society of which the individuals are the members. It is thus submitted that the election programme has rightly been issued as there was no requirement of reserving the seats in the Scheduled Castes and in the women category because the society in question is a central society.

Learned counsel for the State has also supported the arguments of the private respondent contending that Section 26(1) of the Act operates in different field, much less, in respect of the societies which comprises only of individual members.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the election programme is patently erroneous, illegal and deserves to be set aside.

Section 15A of the Act specifically debars the entry of individual member in the central or apex society but for the exemption granted by the Registrar by general or special order. Meaning thereby, no individual can become the member of the central or apex society as a matter of right until and unless it is exempted by the Registrar by general or special order. There is no dispute that primary society is a society exclusively of individuals, central society is a society includes primary societies and apex society is a society includes central societies. There cannot be a Scheduled Caste a women member in a central or apex societies as it would be in the case where there are individual members. The Society in question is of different colour as not only it is called a central society but also has larger number of individual members i.e 28411, on the basis of a specific order or general order issued by the Registrar. On account of this fact, five directors were sought to be elected from the individual zone and two directors for the societies zone.

Since there is an election of the members from the individual zone, I am of the considered opinion that the amendment in Section 26(1) of the Act, to which we are concerned, would definitely apply and for that matter the respondents were required to reserve the seat for the Scheduled Caste and women candidate.

Faced with these observations, learned counsel for the respondents has submitted that as per their datas, there is no Scheduled

Caste Member and insofar as women are concerned those are also negligible.

Be that as it may, the fact remains that the respondents are to comply with the provisions of law and in that matter they should have at least reserved the seat and in case the reserved seats are not consumed then they would take recourse of law to fill up the vacancy.

Thus, in my considered opinion, election programme (Annexure P-2) deserves to be set aside and hence, the present writ petition is allowed, election programme (Annexure P-2) is hereby set aside and direction is issued to the respondents to issue fresh election programme in accordance with Section 26(1) of the act as amended.

02.08.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*