

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

CWP No.7557 of 2015 (O&M)

Date of decision:28.04.2017

The Ramgarh Sandhuan Multipurpose Cooperative
Agricultural Service Society Ltd. and others

... Petitioners

Vs.

The Special Secretary, Cooperation Department,
Punjab, Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Jagdeep Bains, Advocate
for the petitioners.

Mr. T.N.Sarup, Addl.A.G.Punjab.

Mr. A.S.Khaira, Advocate
for respondent No.4.

AMIT RAWAL J. (Oral)

The contention of Ms.Jagdeep Bains, learned counsel appearing on behalf of the petitioners is that owing to the election for the Managing Committee of the Society held on 21.10.2013 and disqualification for a person is prescribed in Rule 26 of Punjab Cooperative Societies Rules 1963 read with provisions of bye-laws, in essence, a person who is continuing to be in default in respect of any sum due from him to the Cooperative Society for a period, i.e., 3 months prescribed in bye-laws would be ineligible/disqualified for becoming a member. Since respondent No.4 was defaulter for an amount of ₹29,946/-, therefore, he was not eligible to hold

the post. All the authorities below for cancellation of the membership of a member except the Special Secretary had upheld the order of dismissing his membership. The second revision petition filed against the order dated 25.08.2014 (Annexure P-3) of the Joint Registrar, was not maintainable as per the provisions of Section 69 of Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "1961 Act"). The deposit of amount at the instance of respondent No.4 itself shows the default and therefore, it is a pointer of admitting the default and thus, restoration of membership is wholly erroneous and vitiated in law.

Mr. A.S.Khaira, learned counsel appearing on behalf of respondent No.4 submits that the impugned order of the Special Secretary leaves no manner of doubt, is based upon the preponderance of evidence, much less certificate of the petitioner-Society indicating of the fact that respondent No.4 was not defaulter and therefore, no fault can be found with the same and thus, the writ petition deserves to be dismissed. As regards the maintainability of second revision petition, he submits that provisions of Section 69 of 1961 Act, do not take away his right as the Special Secretary can always summon the record and set aside the order, in case suffers from illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book. The operative part of the order dated 03.03.2015 passed by Special Secretary Cooperation, Punjab, Chandigarh reads as under:-

"I have heard the arguments of both the counsels and perused the record available on the file. The petitioner had taken

M.T.loan of Rs.2,20,000/- from the Society. When the election of the Society had held on 21.10.2013, the petitioner was admittedly not a defaulter. The Secretary of the Society and the Manager of the Bank had given certificate to this effect. Therefore, no one raised any objection to the nomination papers of the petitioner and the Returning Officer found him eligible to contest the election. The Assistant Registrar on 5.6.2014 recommended to the Deputy Registrar that the petitioner was a defaulter of Rs.29,946/- w.e.f.31.3.2013 therefore, he was may be ceased as a committee member. The Deputy Registrar, without affording any opportunity of being heard to the petitioner, vide order dated 2.7.2014, ordered to cease the petitioner as a committee member. A perusal of the order shows that no enquiry whatsoever has been made before ceasing the petitioner. Therefore, it is a clear violation of the principles of natural justice and also the Act and the Rules. There is nothing on record to show that the Society has made any demand from the petitioner for any amount prior to the date of his election. Once no demand has been raised then it cannot be said that the petitioner is a defaulter. Moreover, the petitioner has deposited Rs.30,000/- on 31.05.2013 i.e. before the date when the Assistant Registrar recommended to the Deputy Registrar for cessation of the petitioner. Therefore, in my view the petitioner was not a defaulter on the date of his

election as a member of the Managing Committee nor on the date when he was ceased. Therefore, this revision petition is accepted and the order dated 2.7.2014 of the Deputy Registrar, Cooperative Societies, Sangrur and order dated 25.08.2014 of the Joint Registrar, Cooperative Societies, Patiala are set aside.”

The factum of certificate issued by the petitioner-Society to the fact that respondent No.4 was not a defaulter at the time of election held on 21.10.2013, would not be disqualification for holding the post and therefore, the provisions of Rule and bye-laws cannot be pressed into service. It has also been brought on record that the alleged amount found to be due towards respondent No.4 has been deposited on 31.05.2013, i.e., much before the date of election. All the aforementioned facts are matter of record and therefore, cannot be tinkered with until and unless there is gross illegality and perversity. Moreover, the period of elected members is going to expire next year. No ground is made out for interference in the order under challenge. Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

April 28, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No