

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9018-2019

Date of Decision:-04.04.2019.

Manjeet Kaur and others

.....Petitioner

Versus

Registrar Cooperative Societies, Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. M.S. Bedi, Advocate for the petitioners.

AUGUSTINE GEORGE MASIH, J. (Oral)

Petitioners have approached this Court challenging the order dated 04.01.2019 (Annexure P-7) passed by the Deputy Registrar, Cooperative Societies, Faridkot, whereby the appeal filed by the petitioners has been dismissed wherein they had challenged the order of removal dated 03.08.2018 (Annexure P-5) passed by the Assistant Registrar, Cooperative Societies, Moga.

2.) It is the contention of the learned counsel for the petitioner that the provisions of Section 27 of Punjab Co-operative Societies Act, 1961 (hereinafter referred to as “the 1961 Act”) have wrongly been invoked in the present case, as there has been no persistent default on the part of the members of the committee. He contends that Section 27 of the 1961 Act is limited to the extent of removal/suspension of the committee and is dependent upon the working of the committee of the Society. He contends that default on the part of an individual member of the committee cannot be

a ground for removing or suspending that member of the committee from the said responsibility. He submits that in case of default on the part of a member, the provision which would be applicable would be Rule 26 (A) of the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the “1963 Rules”) which deals with cessation of the membership of committee. Referring to Rule 26 (A) of the 1963 Rules, he contends that a member will cease to hold office if he continues to default in respect of any sum due from the date he becomes a defaulter beyond the period fixed under the bye-laws of the Society. He, thus, contends that invoking Section 27 of the 1961 Act by the Assistant Registrar, Co-operative Societies cannot sustain. He asserts that even the Appellate Authority has not taken into consideration this aspect and proceeded to uphold the order without referring to these provisions. Counsel for the petitioner emphasizes upon the fact that Section 27 of the 1961 Act deals with the working of the Managing Committee of the Society as a whole and has nothing to do with the working and default in individual capacity of a member for which there is a separate provision provided under the 1963 Rules. In support of his contention that Section 27 of the 1961 Act relates to the working of the Managing Committee of the Society, he places reliance upon the judgment of this Court passed in the case of “The Uksi Cooperative Agricultural Service Societies Uksi Vs. The Assistant Registrar, Cooperative Societies, Package Programme, Ludhiana” reported in (1977 PLJ 24)

3.) I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through records of the case.

deciding the present case reads as follows:-

“[27. Removal or suspension of committee or member thereof:- [If, in the opinion of the Registrar, a committee or any member of a committee persistently makes default or is negligent in the performance of the duties imposed upon it or him by this Act or the rules or bye-laws made thereunder, or commits any act which is prejudicial to the interest of the society or its members, or makes default in the implementation of production or development programmes undertaken by the co-operative society, or there is stalemate in the constitution or functions of the committee, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections, if any, by order in writing,-

(a) remove the committee, and appoint a Government servant as an administrator, to manage the affairs of the society for a period of not exceeding six months, as may be specified in the order; and

(b) remove the member and get the vacancy filled up through election for the remaining period of the outgoing member, according to the provisions of this Act and rules and bye-laws made there under:

Provided that the committee or any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee given by the Government:

Provided further that in case of a cooperative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (10 of 1949) shall also apply:

Provided further that in case of a cooperative society carrying on the business of banking,

the period of six months mentioned in clause (a) shall be one year.

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the committee or member during the period of proceeding is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be, and where the committee is suspended, make such arrangements as he thinks proper for management of the affairs of the society till the proceedings are completed:

Provided that if the committee or member so suspended is not removed, it or he shall be reinstated and the period of suspension shall count towards its or his term.” (underlining is of the Court)

- 5.) The language as has been used in the above reproduced Section starting from the heading clearly indicates that the power of removal or suspension can be exercised by the Registrar not only qua the committee but its member as well. Further the language of the Section itself deals specifically with the individual member and/or the committee as a whole as a unit. What it means is that the committee or a member, if persistently makes default or is negligent in performance of the duties as imposed under the Act or the Rules, or commits any act prejudicial to the interest of the society or defaults in implementation of production or development programmes or there is stalemate in continuation or function of the committee, can be removed or suspended after giving notice and reasonable opportunity to state objections. The words which have been underlined in the section above deal with the individual member of the committee. The requirement is, therefore, not only relatable to the Managing Committee of

the Society but to its members in their individual capacity as well.

6.) Learned counsel for the petitioner has emphasized upon the factum that there must be persistent default on the part of the Society as well as the member which is not present in the case in hand as the petitioners, at the time of issuance of notice, had cleared the loan amount although beyond the period which was fixed as per the requirement. He states that the bye-laws do not specify any period.

7.) Be that as it may, the factum that the loan had to be repaid within a specified period of time which has not been adhered as the repayment of the loan is beyond the period so specified. This fact having been admitted by the counsel for the petitioner, Court has to deal with a situation where a member of the Managing Committee who although had cleared the loan but beyond the period specified can be said to be persistently making default or not?

8.) As is apparent, a time has been specified for repayment of the loan amount and if a member of the Managing Committee fails to adhere to the schedule which has been fixed, it is not difficult to guess as to what type of leadership he would provide to the Society as he is supposed to lead by example. This conduct of the member of a committee would encourage others to not make repayment of loans taken which amounts to not working in the interest of the Society, rather it would be working against it by not returning the loan which has been given to him. Single default on the part of the member of the Managing Committee of the Society over a period of time can be termed as persistent default which is good enough for invoking the provisions of Section 27 of the 1961 Act.

passed by the Assistant Registrar, Cooperative Societies and upheld by the Deputy Registrar, Cooperative Societies, the period of default has been much beyond the time specified for return of the loan. Loan was forwarded to them amounting to ₹ 9,000/- on 06.06.2016 qua petitioner No.1 and on 09.06.2016 to petitioner No.3 which he had to repay till 31.12.2016 but actually repaid by them on 11.06.2018. They have defaulted by 1 ½ years. Whereas, in the case of petitioner No.2, there has been a default on her part for about more than 6 months as the loan was disbursed on 11.06.2017 which was to be repaid by 31.12.2017 but repaid on 11.06.2018.

10.) There has apparently been default on the part of the petitioners in repaying the loan and each day's/month's default can be taken into consideration to come to a conclusion regarding persistent default on the part of the member of the Managing Committee as the liability would stand on day to day/month to month basis. Petitioners who are supposed to be and required to under the statute protect and forward the interest of the Society, by defaulting in making payment of the loan, have as a matter of fact worked against the interest of the Society and, therefore, have no right to continue as members of the Managing Committee of the Society. The order, therefore, passed by the Assistant Registrar, Cooperative Societies which has been upheld by the Appellate Authority cannot be faulted with.

11.) The plea of the learned counsel for the petitioners with reference to Rule 26 (A) of the 1963 Rules, which according to him would be applicable to the case in hand may not be fully wrong but suffice it to say that the said rule has the same effect and is consistent with Section 27 of the 1961 Act. It goes without saying that the framed rules are to be looked into

itself as they are subservient to the provisions of the statute.

12.) As per Rule 26 (A) of the Punjab Cooperative Societies Rules, 1963, a committee member will cease from its posts, if the loan payable to the cooperative society, which is payable as per the byelaws, has not been repaid. As per bye-law 35 (g) of the Multipurpose Cooperative Society Ltd. a member will not remain as an office bearer if the amount standing against him of the society or some other society has not been paid by him. Thus, there is no inconsistency between the rules and bye-laws. Seen from any angle, removal of the petitioners from the membership of the committee cannot be faulted with as the impugned orders are in accordance with the Act, statutory rules and bye-laws applicable.

13.) As regards the judgment referred to by the learned counsel for the petitioner i.e. ***The Uksi Cooperative Agricultural Services Societies Uksi*** (supra), suffice it to say that the said case is totally different as far as the facts and issue involved therein are concerned. In the said case, the Society itself was a defaulter and it is in that context that the judgment has been rendered wherein observation has been made that the conduct of the Managing Committee of the Society in performance of their duties has to be taken note of. It may be added here that the Court had concluded that the order which has been passed by the Registrar was a non-speaking order and passed without application of mind. The said judgment, therefore, would not be of any help to the petitioners.

14.) In view of the above, the impugned order dated 04.01.2019 (Annexure P-7) passed by the Deputy Registrar, Cooperative Societies, Faridkot and the order dated 03.08.2018 (Annexure P-5) passed by the

15.) The writ petition being devoid of merit, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 04, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.