

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

**CWP No.8596 of 2021
Decided on: 20.04.2021**

Rajiv Bassi & others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Harbans Lal Sharma, Advocate, for the petitioners.

Mr.D.V.Sharma, Sr.Advocate
with Mr.Tushar Sharma, Advocate, for respondents No.8 to 12.

G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the resolution dated 12.04.2021 (Annexure P-9) whereby petitioner No.1 has been removed as President of the respondent No.7-Society on account of passing of a motion of no confidence against him by respondents No.8 to 12.

Challenge has also been made to the order dated 17.03.2021 (Annexure P-5), passed by the Deputy Registrar, Co-operative Societies, Ludhiana wherein directions have been issued for holding of meeting of the Managing Committee. Similarly, challenge has been raised to the order dated 09.04.2021 (Annexure P-8) passed by the Joint Registrar, Co-operative Societies, Patiala Division whereby the petition filed against the order dated 17.03.2021 was dismissed as not maintainable on account of the fact that the earlier orders had been passed while exercising the powers of Registrar, Co-operative Societies.

Counsel for the petitioners has vehemently submitted that the procedure which has been adhered to is against the Act, Rules and Bye-Laws of the Society and the directions to hold elections vide order dated 17.03.2021 was wrongly issued vide ex-parte proceedings.

A perusal of the paperbook would go on to show that private-respondents No.8 to 12 had filed the petition on 07.03.2020 (Annexure P-1) under Rule 8 Part-B of Appendix B of the Punjab Cooperative Societies Rules, 1963 (for short, the 'Rules') for convening the meeting of the Managing Committee of the respondent-Society, to discuss the agenda submitted as per the representations dated 29.11.2019 and 25.01.2020. As per the agendas, the change of office bearers of the Society, Manager/Secretary were also to be done. Similarly, representation dated 15.12.2020 (Annexure P-2) had also been moved for change of the President which had been replied on 24.12.2020 (Annexure P-3) by petitioner No.1 that legal advise would be taken on the agenda as to whether elections could be held or not since the President of the Society had been elected unanimously by all members.

It is apparent that the petitioner did not appear before the Court of the Deputy Registrar on 17.03.2021 when the hearing took place in the petition (Annexure P-1) and resultantly, order was passed (Annexure P-5) for holding of the meeting of the Managing Committee on 12.04.2021, to consider the agenda of change of the President, after following the COVID-2019 guidelines issued. The Secretary of the Society had been directed to convene the meeting of the Managing

Committee and to put all the members of the Committee for the said purpose to notice since the elections of the office bearers had been held on 10.09.2018. The necessary action was taken on 24.03.2021 (Annexure P-6) by the Secretary while fixing the meeting on 12.04.2021. In the meantime, petitioner also challenged the order dated 17.03.2021 which was dismissed as not maintainable on 09.04.2021 (Annexure P-7) apart from the fact that on merits, it was found that the order was passed while exercising the powers of Registrar, Co-operative Societies and was legal. In pursuance of the said meeting held, petitioner's election as President had been set aside and he had been removed by 5 members against the 4 non-consenting members on 12.04.2021 (Annexure P-9), which is now sought to be agitated.

It is to be noticed that while passing the order dated 17.03.2021 (Annexure P-5), respondent No.4 had placed reliance upon the judgment of the Apex Court in **Vipulbhai M.Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Limited & others 2015 (8) SCC 1**, in which, while relying upon Article 243ZH(b) of the Constitution of India, the Apex Court had held that even if there was no express provision under the Act or Rules or Bye-Laws, an office bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to the office. It was further held that motion of no-confidence shall be carried out if it has the strength of more than 50% of the elected members and it can be moved against the office bearer only after 2 years. Specifically the judgment of the Full

Bench in **Jagdev Singh Vs. The Registrar, Cooperative Societies, Haryana & others AIR 1991 P&H 149** was distinguished on the ground that the decision dealt with the pre 97th Amendment of the Cooperative Societies.

Mr.D.V.Sharma, Sr.Counsel has put in appearance on behalf of the private respondents No.8 to 12 to oppose the writ petition. It is his case that there is an alternative and efficacious remedy available to the petitioners under Section 55(2)(c) of the Act which provides that the dispute may be referred to arbitration and under Section 56, statutory authorities were to decide such references.

Keeping in view the above background, as noticed above, that the private-respondents have been agitating for holding of the meeting for removal of the President by filing representations and approaching the relevant authorities. Prima-facie, petitioner No.1 has been trying to avoid the decision on the same, which would be clear from his letter dated 24.12.2020 (Annexure P-3). The official respondents have expedited the action by issuing necessary directions of holding of the meeting in which, as noticed above, by majority of the members, election of petitioner No.1 as President has been disturbed by passing a no confidence motion.

Thus, this Court is of the opinion that there is an alternative and efficacious remedy available to the petitioners to approach the authorities and therefore, the jurisdiction of the Writ Court would not lie, at the first instance. Reliance can be placed upon the judgment of the

Apex Court in **United Bank of India Vs. Satyawati Tondon & others (2010) 10 SCC 110**, which view has been followed in **Authorized Officer, State Bank of Travencore & others Vs. Mathew K.C. 2018 (3) SCC 85**.

Resultantly, keeping in view the above facts and circumstances, this Court is loath to interfere with the resolution which has been passed against petitioner No.1 and is of the opinion that the petitioner is liable to be relegated to the alternative remedy under the Act, to approach the authorities for the necessary relief. Needless to say that any observations made herein or in the earlier round of litigation need not prejudice the said authority(s) which shall examine the validity of the resolution, in accordance with law, in case the same is questioned by petitioner No.1.

Resultantly, in view of the above discussion, the present writ petition stands dismissed.

20.04.2021
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No