

220

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

1)

CWP-10527-2020

Date of decision: 22.03.2021

Bhupinder Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

2)

CWP-16923-2020

Date of decision: 22.03.2021

Bhupinder Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. D.V. Sharma, Senior Advocate with
Mr. Harit Sharma, Advocate and
Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Suveer Sheokand, Addl.A.G., Punjab
for respondents No.1 and 2-State.

Mr. Ashwani Prashar, Advocate
for respondent No.3 (in CWP-16923-2020).

Ms. Sukhmani Patwalia, Advocate and
Mr. Bikramjit Singh Patwalia, Advocate
for respondent No.5 (in CWP-10527-2020) and
for respondent No.4 (in CWP-16923-2020).

FATEH DEEP SINGH, J.

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The above two detailed civil writ petitions are being filed by one and the same person-Bhupinder Singh erstwhile elected Director and at the time of present proceedings, a Chairman of the Milk of Ludhiana District Milk Producers Co-operative Union Limited Verka Milk Plant, Ferozepur Road, Ludhiana (in short 'Milk Union').

On account of both the matters akin to each other and having their ramifications over the status of the petitioner, need to be disposed off together for the sake of convenience.

It is not disputed that at the elections to the Board of Directors of the Milk Union, Ludhiana, held on 29.04.2016, the petitioner was elected as a Director being a representative of Kular Milk Producers Cooperative Society Limited Kular and, subsequently, on 13.11.2017 became Chairman through Election to the Milk Union, Ludhiana. In the first petition, the allegations levelled by the petitioner are that with the coming into power of the State Regime headed by Congress Government and allocation of portfolio of Cooperation to one of the Ministers, there has been political witch hunting leading to illegal wrangles. In the first petition, the petitioner has sought quashment of order dated 16.06.2020 (Annexure P-8) passed by respondent No.3, Joint Registrar Cooperative Societies, Patiala, removing the petitioner as Chairman of the Milk Union and

subsequent orders dated 14.07.2020 (Annexure P-11) passed by respondent No.1-State of Punjab dismissing the same. The petitioner had adverted on to the provisions of the Punjab Co-operative Societies Act, 1961 (in short 'the Act') and Rules, 1963 framed therein (in short 'the Rules') to drive home the point, in short, that the Act of the respondents was mere vendetta against the provisions of the Statute and the law. As no reasonable opportunity of hearing was ever granted to the petitioner nor due consultation process was undertaken by the respondents and the only allegations that have been levelled by the respondents against the petitioner is a mere mirage, unsustainable in the eyes of law. The petitioner has termed each and every action in this regard by the respondents to be *mala fide* capricious. The unison reply of the respondents, in their different sets of the same, harbor around the fact that the orders of dismissal of the petitioner as well as his revision, were in consonance with the law. The respondents have primarily displaced the contentions of the petitioner regarding vendetta political witch hunting and has set up the plea of misstatement, twisting of facts and terming that the action of the respondents was fair, legal and as per the procedure laid down in the Act and the Rules and sought dismissal of the petition.

In the second petition, the petitioner-Bhupinder Singh has challenged the order dated 06.06.2019, passed by the Joint Registrar, Co-operative Societies-respondent No.2 on the petition of

Dharamjit Singh-respondent No.3, under Rule 26 of the Rules, resulting in the claim of the then petitioner-Dharamjit Singh for holding cessation of the then respondent No.1, present petitioner, Bhupinder Singh, from Board of Directors of Milk Union and which, by the impugned order (Annexure P-6) was to the effect that the present petitioner has ceased to be Chairman/Director by virtue of Rule 26 (f) of the Rules. The challenge has been laid on the premise that the petitioner was fully eligible to contest the elections as a representative of Kular Milk Producers Cooperative Society Limited, Kular and, therefore, with the amendment of the Rule 26 (f) to Rule 26 (i), the Joint Registrar, being unaware of the provisions has passed a wrong order and that the petitioner did not earn any disqualification which would prevent him from seeking elections to the Milk Union. The petitioner had tried to lead scathing attack on the outcome of the various proceedings against the petitioner-Bhupinder Singh and sought quashment of the order dated 06.06.2019 (Annexure P-6) and order dated 07.09.2020 (Annexure P-10) passed by respondent No.2 Joint Registrar, Co-operative Societies, in the appeal of the petitioner.

The unison stand of the respondents in the two sets of written replies is virtually akin to each other. The respondents have taken the stand that due opportunity of hearing was given to the petitioner and upon adopting of due process of law, has led to the passing of the impugned orders. It is specifically pleaded that by

virtue of Section 26 (B) (2) claiming that under these statutory provisions, no person is eligible to be elected to a Committee of any Cooperative Society after he has served on the Committee of that Cooperative Society for two continuous terms and unless there is a lapse of one term in between and thus, the respondents have sought dismissal of the petition.

Heard both the sides and perused the records of the case.

It is not displaced by the petitioner the claim of the respondents and is so the pleadings of the petitioner that Bhupinder Singh got elected as a Committee member of Kular Milk Producers Cooperative Society Limited, Kular on 15.05.2007 and, thereafter, on 20.07.2012 and on 14.07.2017 obtained 3rd consecutive term, Under Section 26-B {(2) which is reproduced as below to lay emphasis:-

“(2). No person shall be eligible for being elected to the committee of any co-operative society after he has served on the committee of that co-operative society for two continuous terms, unless a period of not less than one term has expired since he last so served.”

The plain look at these statutory provisions ensures that no person can become eligible for being elected to the Committee of any Co-operative Society after he has served on the Committee of that Cooperative Society for two continuous terms.

To the specific query of the Court, Sh. Dharam Vir Sharma, Senior Advocate for the petitioner could not displace the fact that there is no gap in between the present election and the previous one of period of one term. Since, the petitioner, right from 2007, had continuously fought and got elected for three terms and, therefore, has clearly transgressed these mandatory provisions of the Act, applicable to the case of the parties. Furthermore, Section 85 of the Act deals with the Rules ensuring that the Government may for any Co-operative Society or class of such societies, make Rule to carry out the purposes of this Act and by virtue of Section 85 (2) (x) which is reproduced as below:-

“subject to the provisions of Section 26, the election and nomination of members of committees, the appointment or election of officers and the suspension and removal of the members and other officers, and for the powers to be exercised and the duties to be performed by the committees and other officers;”

It pertains to the elections and nominations of the members of the Committee, suspension and removal as well as duties to be performed by the Committees *et cetra*. Section 26 of sub section 1-B provides that term of elected members of the Committee and its office bearers shall be 05 years from the date of election and the term of the office bearers shall be coterminous with the term of the

Committee and even Section 19 ensures that a member appointed by Society to vote on its behalf in the affairs of another Society, for which, such Society is a member, gets elected to the Committee of that Society and his term of office shall be coterminous with the term of Committee of that Society. Though, Mr. D.V. Sharma, Senior Advocate has sought to lay much emphasis that with the substitution and amendment of Section 19 with effect from 29.12.2017, the petitioner is bound to continue with his term being that of coterminous with the Society. These submissions of the counsel do not impress the Court much and as has been the stress laid by Ms. Sukhmani Patwalia, Advocate and Mr. B.S. Patwalia, Advocate for respondents No.4 and 5 in respective petitions and Mr. Ashwani Parashar, Advocate for respondent No.3, that these provisions cannot override the mandate of Section 26-B (2) and who have further argued that by virtue of Section 32 of the Act, the petitioner already stands removed as Director of the Society and how can he be elected as the Chairman subsequent thereto his removal. Further, bears out as to the illegality of the petitioner in sticking to such an office, the continuing of the petitioner as Chairman, certainly beyond his second continuous term, is rendered otiose and nullifies consequently any proceedings carried on by him by virtue of that post. The petitioner by virtue of order dated 16.06.2020 (Annexure P-8) in first petition, ceases to hold office on account of his removal by the orders of competent authority and which order is perfectly

legal and valid and his election, as such, is non-est in the eyes of law. The ratio laid down in the judgment passed in 'Kuldeep Singh Mangewal versus The State of Punjab and others' (2000) 125 PLR 232, does not come to the aid of the petitioner and, therefore, the election is void *ab initio*. The impugned order, subject matter of challenge in both these writ petitions, are by due application of mind, in consonance with the provisions of Statute and there is nothing convincing brought to the notice of this Court to show any indulgence in the matter. Both the writ petitions, being wholly devoid of merit, stand dismissed.

22.03.2021

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No