

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 11124 of 2020 (O&M)

Date of Decision: 28.01.2021

Amrik Singh and Others

... Petitioner(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harbans Sharma, Advocate
for the petitioner(s).

Ms. Maloo Chahal, Deputy Advocate General,
Punjab for respondent No.1 to 5.

Mr. Subhash Jindal, Advocate
for respondent No.6.

Mr. Ashwani Prashar, Advocate
for the applicants.

Anil Kshetarpal, J.

Although learned counsel for the respondents have pointed out that the petitioners do not have an alternative remedy, however, keeping in view the facts of the case, this Court is of the considered view that the petitioners cannot be relegated to the alternative remedy at this stage, particularly when the writ has already been entertained and the parties have filed their pleadings.

The petitioners are the elected members of the Phapre Bhai Ke Multipurpose Co-operative Agriculture Service Society Limited (hereinafter referred to as “the Society”). The Managing Committee of the Society passed a resolution dated 04.11.2019 appointing one of its member as Driver on payment of commission/honorarium of ₹2,500/- inspite of the opposition

by five committee members of the Society. This led to an order passed by the Assistant Registrar, Co-operative Societies, Mansa, removing the petitioners under Section 27(1)(b) of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as “the 1961 Act”) from the Managing Committee of the Society.

Learned counsel for the petitioners has drawn the attention of the Court to Section 27(1)(b) of the 1961 Act, which enables the Registrar to remove a committee or any member of a committee, if he/they make persistent default or is/are negligent in the performance of the duties imposed on him/them or he/they commit any act, which is prejudicial to the Society or its members. Section 27 of the 1961 Act, is reproduced as under:-

“27. Removal or suspension of committee or member thereof. - (1) 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 on 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 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 of 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 co-operative 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.*

Explanation 1. - Co-operative societies which have been allotted land at concessional rates or at reserve price by any statutory authority or Government organization shall be deemed to have taken financial assistance from the Government.

Explanation 2. - The delay caused in constitution of an elected committee due to judicial proceedings in civil courts in this regard, shall be excluded at the time of computing the period for which an Administrator is appointed as provided in clause (a).

(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 proceedings 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 the management of the affairs of the society till the proceedings are completed.

Provided that if the committee or member so suspended is to be removed, it or he shall be reinstated and the period of suspension shall count towards its or his term.

(3) The Administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.

(4) The Registrar may fix the remuneration payable to the person appointed as Administrator and the amount of such remuneration and other costs, if any, incurred in the

management of the society shall be payable from its funds.

(5) The Administrator shall, before the expiry of his term of office arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws framed thereunder.

(6) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing bank to which the society is indebted.

(7) A member who is removed under sub-section (1) may be disqualified for being elected to nay committee for such period not exceeding three years as the Registrar may fix”.

As noticed above, the Assistant Registrar, while exercising the powers of the Registrar, has passed the order only on the ground that one member of the Society on 11.12.2019 has been appointed as a driver on an honorarium of ₹2,500/- only. The members of the Society were removed vide order dated 09.03.2020 i.e. after a period of 3½ months. Learned counsel for the petitioners contends that the petitioners are the elected members and there is no persistent default on their part. He further submits that the petitioners are ready to deposit the honorarium drawn by the member.

Ms. Maloo Chahal, Deputy Advocate General, Punjab, has contended that the petitioners do have an alternative remedy. On a Court question, she admits that this is the only default committed by the petitioners.

Mr. Ashwani Parashar, Advocate, has filed an application for

impleading the applicants as party. He has also been heard.

Keeping in view the facts of the case, this Court is of the considered view that the order, passed by the Assistant Registrar on 09.03.2020, is not in accordance with the provisions of Section 27 of the 1961 Act. There was only a minor default of the members of the committee in appointing one of its member as a driver on an honorarium of ₹2,500/-. In such circumstances, it was the duty of the Assistant Registrar to give an opportunity to the members of the committee to rectify the mistake. The action of removal of the Managing Committee of the Society was not called for. Such an order should not have been resorted to, in the facts of the present case, in the first instance.

Keeping in view the aforesaid facts, the writ petition is allowed and the order dated 09.03.2020 is set aside. The Committee is restored to its original position. However, the person appointed as a driver shall stand removed. The members of the Committee would deposit the amount of an honorarium, paid to the driver and if the amount is not deposited by him, in the accounts of the Society.

(Anil Kshetarpal)
Judge

January 28, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No