

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

CWP-14618-2020

Date of decision: 21.01.2022

Rajender and others

.....Petitioners

versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sachin Gupta, Advocate
for the petitioners.

Mr. Gaurav Jindal, Addl.A.G., Haryana
for the official respondents-State.

FATEH DEEP SINGH, J.

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

The instant civil writ petition by virtue of Articles 226/227 of the Constitution of India has been preferred by seven petitioners, who happen to be the different functionaries of the Kilo Primary Agricultural Cooperative Society, Kilo, Tehsil and District Rohtak (in short 'the Society') so framed under the

Haryana Cooperative Societies Act, 1984 and Rules framed therein (in short 'the Act and the Rules'). In their petition, the petitioners claim that earlier a civil writ petition was filed by employees of different Cooperative Societies before this Court over the stoppage of salary of the employees and the CWP No.10 of 2020 was disposed off by this Court vide order dated 10.02.2020 as well as CWP No.25971 of 2019, copies of which have been annexed as P-1. It is claimed by the petitioner that they made a representation to the Assistant Registrar Cooperative Societies-respondent No.5 for implementation of the orders of this Court along with resolution of the Managing Committee (Annexure P-2). It is claimed that the Additional Chief Secretary in his orders dated 11.05.2018 in Revision Petition No. 32 of 2017 titled as 'Dalbir Singh versus The Registrar, Co-operative Society, Haryana, Panchkula', had observed that Registrar Cooperative Societies cannot make rules for recruitment and conditions of services of such employees but in terms of Section 34 (4) of the Act and Rule 29 of the Rules can certainly frame guidelines. Aggrieved over the orders (Annexure P-5) dated 04.09.2020 passed by respondent No.2, whereby, suspending the management of the Society, the present invocation has come about.

The stand of the respondents in unison is of total denial. It has been denied that the Staff Service Rules, 2020 (Annexure P-4) were never framed in pursuance of resolution of the Society dated 28.05.2020 and no such resolution to that effect was ever passed, claiming that no detailed procedure has been passed by the Society which has led to the illegality of these Rules and has sought to displace the contentions of the petitioners that these Rules were legitimately passed or were applicable to the Society in question terming that there has been objection over the wrong exercise of powers under Section 37 of the Act as well as Rule 29 by the Society and there was no legal validity of the same and in its comprehensive reply, has sought to term the act of the petitioner to be illegal and the service Rules being ultra vires of the bye-laws of the Society sought dismissal of the petition.

Heard counsel of both the sides and perused the records.

The lengthy arguments which were vociferously and hotly debated by the counsel for the two sides decants to a residual effect as to whether there is any extraordinary circumstances for the petitioners to have immediately invoked the constitutional jurisdiction of this Court in terms of Articles 226/227 of the Constitution of India by-passing the provisions of the Act and the

Rules so framed governing such societies as of the petitioners. Section 34 of the Act provides for supersession and suspension of Committee and in the exercise of which, powers under Section 34 sub Section 2 orders (Annexure P-5) were passed by the Assistant Registrar, Cooperative Societies, Rohtak. Under the Scheme of the Act Chapter XVIII lays down the provisions of appeal and under Section 114 (1) (f) any order of the Registrar removing the Committee or a member of the Committee of the Cooperative Societies under Section 34 or 35, an appeal against any such decision or order under sub Section 1 or Section 34, shall be made within a period of 60 days from the date of decision or order and both these provisions are as follows to lay emphasis:-

33. *Power of Registrar to appoint Administrators in certain cases:-* (1) *Where in any co-operative society, a committee constituted in accordance with the provisions of this Act. Rules made thereunder or bye-laws of the society does not exist or has ceased to exist, the Registrar may, notwithstanding anything to the contrary contained in the Act, rules or bye-laws, appoint administrators not exceeding five for a period of six months or one year, as the case may be, as specified under Section 34 of the Act or till a committee is constituted under section 28, whichever is earlier:*

Provided that the Managing Director appointed under section 31, if any, shall be one of the administrators.

Provided further that the election authority shall cause the election to be held within the period of six months or one year, as the case may be, as specified in Section 34 of the Act]; and

(2) If the number of administrators so appointed is less than five, the Registrar, may from time to time, add an administrator or administrators.

(3) The Registrar may fix such remuneration for the administrators as he may think fit. Such remuneration shall be paid out of the funds of the society.

(3A) [Omitted]

(4) The administrators shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to exercise 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.”

Section 114- *Resolution of expulsion passed by the members of society-in appeal, Registrar findings the meeting to be not valid and quashed the order of expulsion and allowed the society to proceed fresh-Registrar not exonerated the petitioner-only procedural effects notice-Contention that Registrar erred in granting society to proceed afresh cannot be sustained-No question of retrial or petitioner being tried twice for same charge.*

Since, the Statute specifically provides a remedy of appeal before the Registrar against the order of the Deputy Registrar under Section 27 of the Act as well and without having recourse to such provisions which are specifically envisaged in the Act and the Rules and directly invoking the jurisdiction of the Court under the Constitution of India and which powers are to be sparingly used in the rarest of the cases to prevent abuse of the process, Courts need to be slow in invoking its jurisdiction under these constitutional provisions. No doubt suspension/removal of a Society is a serious matter having ramifications on the very object of creation of societies but at the same time, the Courts have to keep a balance and ensure that not every situation demands such invocation where there is bye-passing of the Act and the Rules.

In light of what has been come across to this Court and in view of the discussions detailed above, the petitioners are relegated of availing of alternate remedy under the Haryana Cooperative Societies Act, 1984 and the Rules 1989 (as amended up to date) and they may choose of that remedy, as per law.

The present petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

21.01.2022

Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No