

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:061733-DB
CWP-23406-2016 (O&M)
Reserved on : 01.05.2024
Date of Decision: 03.05.2024.

Rajinder Kumar Malhotra ...Petitioner

Vs.

The Registrar, CO-operative Societies, Punjab and others ...Respondents

CWP-37078-2019

Sukhdev Singh ...Petitioner

Vs.

State of Punjab and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Dharam Vir Sharma, Sr. Advocate with
Ms. Shivani Sharma, Advocate and
Ms. Pooja Yadav, Advocate for the petitioner.
in CWP-23406-2016.

Mr. Shivam Malik, Advocate and
Mr. Edward Augustine George Masih, Advocate
for the petitioner in CWP-37078-2019.

Mr. Arjun Sheoran, DAG, Punjab.

Mr. N.S. Vashist, Advocate for respondent Nos.2 to 4
in both cases.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Learned Senior Counsel appearing on behalf of the petitioners submit that the amendment made in the Punjab State Cooperative Financing Institutions Service (Common Cadre) Rules, 1970-71 (for short 'the Rules, 1970-1971'), on 29.11.2010 and the subsequent action taken on the basis of

such amendment is illegal and contrary to the provisions of the Punjab Co-operative Societies Act, 1961 (for short 'the Act, 1961') and the Punjab Co-operative Societies Rules, 1963 (for short 'the Rules, 1963'), framed thereunder.

2. Learned counsel submits that Section 84-A of the Act, 1961 empowers the apex body to constitute a common cadre to make rules for regulation of recruitment and conditions of service of such employees. He submits that the apex body of the bank is not a committee of the Co-operative Society but is to be understood in terms of explanation appended to Section 15A of the Act, 1961. It is submitted that the impugned amendment made vide notification dated 29.11.2010 by the Registrar is illegal and unjustified. The Registrar, Co-operative Societies, Punjab, had appointed himself as an Administrator of the Punjab State Cooperative Banking and while acting as an Administrator, he passed resolution dated 29.11.2010, for amending the rules 2.1(a), 2.1(b), 2.4(b), 2.5(b), 2.5 (c), 2.8 (b), 2.8 (c), 2.9 (a), 2.9 (c) and rule 1.4 (a) and 1.5 of the Rules, 1970-1971 and thereafter while holding the office as a Registrar, he approved his own proposal thereby amending the Rules, 1970-1971, by issuing letter dated 29.11.2010.

3. Learned counsel submit that thus, he has become a Judge of his own cause and that apart he submits that the order/letter dated 29.11.2010, could not have been issued nor rules could have been amended by invoking the provisions of Section 84A of the Act, 1961 and Rule 28 of the Rules, 1963. Learned counsel submit that the impugned action is without jurisdiction and there is no authority available with the Administrator to amend the rules nor could he have made recommendations for amending the rules. It is further submitted that the amendment made in the Rules, 1970-

1971, has resulted in taking away powers of the Administrative Committee of the bank and empowering the Managing Director of all the powers relating to the employees of the bank including appointment, promotion and removal of the employees or common cadre. Learned counsel has also relied on the judgment of Hon'ble the Supreme Court in case of K. Shantharaj and another vs. M.L. Nagaraja and others 1997 (6) SCC 37.

4. Learned counsel have taken this Court to the various provisions of the Act, 1961 and the Rules, 1970-1971, to which we shall refer to later, in support of their submissions.

5. Learned counsel appearing in the connected petition also invited attention to the provisions of the Act and submit that virtually the amendment is of the bye-laws of the society and such an amendment in the bye-laws of the society could have only been done in terms of Rules 9 and 10 of the Rules, 1963.

6. *Per contra*, learned counsel appearing for the State has supported the order passed and submitted that the order of amendment by the Registrar is in conformity with the provisions of Section 84A and Section 85 (2) (xxxviii) of the Act, 1961 as well as Rule 28 of the Rules, 1963. A conjoint reading of Section 85 (2) (xxxviii) and Rule 28, would reflect that the Registrar is empowered to decide or determine the qualifications and conditions of service subject to which any person may be employed by a Co-operative Society and he would, therefore, also be empowered to make amendment in the said qualifications and conditions of service. The order passed by the Registrar impugned in the present petition, therefore, does not warrant interference.

7. We have considered the submissions.

8. Before we advert to the facts of the case, it would be apposite to quote certain provisions of the Act, 1961 and the same read as under:-

Section 2:

Definitions

(b) "committee" means the governing body of a co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted;

(c) "co-operative society" means a society registered or deemed to be registered under this Act.

Section 15A.

15 A. Restrictions on individuals in becoming members of certain co-operative societies.

(1) No individual shall be admitted as member of a central or apex society unless such a society has been exempted by the Registrar in this behalf, by a general or special order.

(2) The Central and apex societies having individuals as members on the date of commencement of the Punjab Co-operative Societies (Amendment) Act, 1969, shall retire the shares of such individuals within a period of three years of such commencement in the prescribed manner.

EXPLANATION - For the purpose of this section, section 26, section 26-B and section 84-A:-

(a) "primary society" means a co-operative society whose membership consists exclusively of individuals ;

(b) "central society" means a co-operative society whose membership includes primary societies;

(c) “apex society” means a co-operative society whose membership includes central societies.

SECTION – 23.

Final authority in a co-operative society :-

(1) The final authority in a co-operative society shall vest in the general body of members;

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[(1-A) Notwithstanding anything in sub-section (1), where a co-operative society consists of not less than one thousand or such greater number of members as may be prescribed, the society may provide in its bye-laws for the constitution of a smaller general body designated as the representative general body, to be designated as the representative general body, to be elected in the prescribed manner for a term of not more than five years, consisting of such number of members of the society and to exercise all or such of the powers of the general body as may be specified in the bye-laws and thereupon any reference in this Act to the general body or meeting thereof shall be construed as a reference to the representative general body or its meetings.

Provided that the representative general body shall not alter any provision in the bye-laws relating shall not alter any provision in the bye laws relating to its constitution or powers.

Provided further that not less than twenty percent of the total members of the co-operative society may requisition a meeting of the general body for re-constitution of the smaller general body. On receipt of such requisition, the committee shall call a

meeting of the general body not later than one month from the date of receipt of such requisition. If in such a meeting of the general body, it is decided by a majority of members present and voting to reconstitute majority of members present and voting to reconstitute the smaller general body, then the election to such smaller general body shall be held within forty five days thereof.

Section 26.

Election and nomination of members of committees.

26 (1-D).

Where any committee has ceased to hold office and no committee has been constituted in accordance with the provisions of this Act and rules and bye-laws made thereunder, the Registrar may, by an order in writing appoint a Government employee as an Administrator for such period as may, from time to time, be specified in the order and the Administrator shall, before the expiry of the period of his appointment, arrange for the constitution of new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder.

26 (1-E).

The provisions of sub-section (3) and sub-section (4) of section 27 shall apply to the Administrator appointed under sub-section (1-D) as if the Administrator had been appointed under that section.

Section 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 on it or him by this Act or the rules or bye-laws made thereunder, or commits any act which is prejudicial to interests 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 function 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 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, 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.

Section 84.

84-A. Constitution of common cadre of employees of certain societies:-

(1) An apex society may suo moto, and when required to do so by the Registrar, shall constitute a common cadre of all or specified class of employees in the service of that society or in the service of the central societies which are members of the apex society or in the service of the primary societies which are members of the apex society or the aforesaid societies.

(2) When a common cadre is constituted under sub-section (1) the apex society shall make rules for the regulation of recruitment and the conditions of service of such employees with the prior approval of the Registrar.

85. Rules.

(1) The Government may, for any co-operative society or class of such societies, make rules to carry out the purposes of this Act purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely –

85 (2) (xxxviii)

Qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by societies.

9. It is also appropriate to quote some relevant rules of the Rules, 1963, which read as under:-

Rule 9.

Amendment of Bye-Laws:-

Subject to the provision of section 10 and rule 8 a Co-op. Society may from time to time amend its bye-laws.

Rule 10.

Resolution For Amendment :-

No amendment under rule 9 shall be carried out save in accordance with a resolution passed at a general meeting of the co-operative society of which due notice of the intention to discuss the amendments has been given;

Provided that no such resolution shall be valid unless it is passed by a majority of members present at the general meeting at which not less than two-third of members for the time being of the co-operative society are present.

Provided further that model bye-laws for amendments previously approved by the Registrar by a majority at an ordinary general meeting.

Rule 11.

Application to Registrar for Registration of Amendment:-

Three copies of the amendment adopted by the co-operative society under rule 10, signed by two officers of the co-op. Society duly authorized by the general meeting in this behalf, shall be submitted to the Registrar along-with an application for registration duly signed as aforesaid. Such copies of the amendments shall be accompanied by the certificate signed by any one of the above two officers of the co-operative society to the effect that the provisions of rule 10 have been complied with.

Rule 28.

Qualifications and Conditions of Service Of Employees:-

(1)- The qualifications and conditions of services subject to which any person may be employed by a co-operative society or a class of Co-operative societies shall be such as may be determined by the Registrar from time to time.

(2) Where the Registrar is of the opinion that it is necessary or expedient so to do, he may by order, for reasons to be recorded in writing relax the provisions of this rule with respect to any Co-operative societies to such extent as he may consider proper.”

10. From the perusal of the aforesaid provisions of the Act, 1961 and the Rules, 1963, it is apparent that the power contained in Rule 84-A (1 & 2) i.e. of forming a common cadre of all or specified class of employees and making rules/regulations for recruitment and conditions of services of the employees, vest with the apex society of the bank and the same shall be brought into force with the prior approval of the Registrar.

11. An administrator can be appointed where any Committee of the society or apex society ceased to hold office and such Administrator who is to be a government employee, would be appointed by the Registrar for such period and the Administrator shall arrange for constitution of a new committee in terms of the rules and bye-laws and the Administrator would not be entitled to function for a tenure more than one year and he would have the powers as that of the Committee in terms of Section 26 (1-E) of the Act, 1961. The apex society has been defined as a cooperative society whose membership includes central societies and the final authority in a co-operative society vests with the general body of the members. Thus, a conjoint reading of all the provisions would, therefore, result only in one conclusion that the apex body represents the general body of the members and is more than a committee/board of the society. In cases where an Administrator has been appointed in place of board/committee, such an Administrator would not have the powers akin to that of an apex society. Therefore, the Administrator could not be empowered either to amend the bye-laws or frame rules for the regulation of recruitments and conditions of service in terms of Section 84-A (2) of the Act, 1961.

12. In the present case, we find a unique situation, wherein, the Registrar appointed himself as an Administrator of the bank and in dual capacity firstly he recommended the amendment in the rules and thereafter acting as a Registrar, he approved the same, while the scheme of the Act empowers the Registrar to be the final approving authority and even Rule 28 of the Rules, empowers the Registrar to approve the rules which are framed by the apex society in terms of Section 84-A (2) of the Act, 1961, however, the scheme nowhere allows the Registrar himself to frame or amend the rules

of the society on his own. In our opinion, such a course adopted by the Registrar is alien to the provisions of the Act, 1961 and Rules, 1963. It is a case of colourable exercise of power by the Registrar. We also find that the amendment proposed and approved by the Registrar has resulted in wresting away the powers available with the apex society and shifting it to the Managing Director, who is an IAS Officer.

13. The very ethos of the cooperative movement is based on the anvil of the role of members of the society in managing their own affairs. The petitioner, who is one of the members of the society has, therefore, rightly taken up the matter challenging the said exercise of power by the Registrar.

14. The doctrine of necessities would have no application in the facts of the present case as an Administrator cannot be allowed to take policy decisions. Snatching the powers of apex body and transferring the same to the Managing Director with regard to framing rules of the cooperative society amounts to taking policy decisions. It is known that the Registrar and the Managing Director are IAS Officers while the powers have been provided to the cooperative society itself through its apex body to take decision and frame rules relating to its employees.

15. The provisions as quoted above are nothing but part of the Constitutional provisions as envisaged under Article 243ZL. It would be apposite to quote the provisions of Article 243ZL(2) of the Constitution which provides as under:-

“Article 243ZL(2).

“In case of supersession of a board, the administrator appointed to manage the affairs of such cooperative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to the election board.”

16. In K. Shantharaj's case (supra), Hon'ble the Supreme Court was examining the judgment passed by the Division Bench of the Karnataka High Court and observed that the Administrator can only exercise all or any of the functions of the committee and can only exercise powers to conduct elections and he was not entitled to roll on new members.

17. Thus, we find that the concept as envisaged by Hon'ble the Supreme Court in K. Shantharaj's case (supra) has been incorporated in the Constitution. The Registrar, therefore, could not have rested in himself the powers of the Cooperative Bank or with the Managing Director.

18. Learned counsel for the respondents has relied on a judgment passed by a Coordinate Bench in Ragh Mohinder Singh vs. State of Punjab, 1998(4) SCT 654, in support of his contention that the Registrar has powers to make amendment in the rules on the recommendations of the Administrator of the bank.

19. However, we find that in the present case, the Registrar himself become the Administrator and made recommendations and the same person while holding the post of Registrar, has approved the said amendment. We have already held such power of exercise as colourable exercise and not *bona fide*. In fact the Court has not considered the definition of '*Apex Society*' and the definition of '*Committee*' as defined under explanation (c) to Section 15A (2) and Section 2(b) respectively. The '*committee*' means only the governing body to whom the society entrusted the management of the affairs of the society and the '*Apex Society*' means a Co-operative Society whose membership includes central societies. Thus, it is a conglomerate of various societies, and therefore, only the general body of such conglomerate can take a decision to frame bye-laws and rules which of course have to be approved

by the Registrar. The government servant who is appointed as an Administrator, cannot be allowed to make amendment in the rules, more so, of a nature which take away the very concept of cooperative movement, as provided under Article 243ZH read with Part IXB inserted by the Constitution Ninety-seventh (Amendment) Act, 2021, w.e.f. 15.02.2012.

20. In view of our findings, we quash the amendments made in the rules by the Administrator and approved by the Registrar, who was one and the same person.

However, the challenge made by the respective petitioners with regard to departmental action taken by the respondents, the same has not examined, as learned counsel for the petitioner(s) does not press the same and prays to allow the petitioner to make a challenge to the same before the learned Single Judge, if need so arises.

21. The writ petitions are accordingly allowed in part. The petitioners would be at liberty to avail legal remedies available to them with regard to departmental action taken by the respondents.

22. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

03.05.2024.
rajesh

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| 1. Whether speaking/reasoned? | : | Yes |
| 2. Whether reportable? | : | Yes |