



CWP-19254-2024

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

(132)

**CWP-19254-2024
RESERVED ON 07.11.2024
DATE OF DECISION:- 20.11.2024**

RAJBIR AND OTHERS**...PETITIONERS****VERSUS****STATE OF HARYANA AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. B.S.Rana, Senior Advocate with
Mr. Harshit Singla, Advocate,
Mr. Nayandeep Rana, Advocate and
Mr. Jagjeet Beniwal, Advocate
for the petitioners.

Mr. Sharad Aggarwal, DAG, Haryana
for respondents No.1 to 3.

Mr. Pritam Singh Saini, Advocate with
Ms. Parul Panchal, Advocate and
Ms. Vamika Johar, Advocate
for respondent No.4.

Mr. Surender Singh Dalal, Advocate
for respondent No.5.

SUVIR SEHGAL, J.

1. This writ petition has been filed under Article 226/227 of the Constitution of India *inter-alia* for issuance of a writ in the nature of certiorari for setting aside order dated 24.07.2024, Annexure P-10, passed by the Registrar Cooperative Societies (RCS), Haryana-respondent No.2, whereby order dated 02.02.2024, Annexure P-4, has been reviewed and direction given to conduct a meeting for considering the No Confidence Motion, has been withdrawn. Another prayer has been made for issuance of a



direction to the respondent No.2 for convening a meeting for considering the No Confidence Motion of the Board of Directors (BOD) of respondent No.4 under Section 30-A of the Haryana Cooperative Societies Act, 1984 (for short “the 1984 Act”).

2. A brief summary of facts leading to the filing of the petition are that the petitioners are members of some primary societies, who in turn are members of the Central Society-respondent No.4, the Jhajjar Central Cooperative Bank Limited (for short “Jhajjar Bank”). On 28.11.2021, elections to the BOD of Jhajjar Bank were held and the petitioners were elected as Directors of the Board. Elections to the office of Chairman and Vice Chairman were held on 24.12.2021. Respondent No.5 and petitioner No.1 was elected as the Chairman and Vice Chairman of Jhajjar Bank. Alleging that respondent No.5 was misusing her position, vide letters dated 03.01.2024, Annexures P-2 and P-3, petitioners moved a requisition for convening a meeting to consider a No Confidence Motion against respondent No.5. By order dated 02.02.2024, Annexure P-4, respondent No.2 appointed respondent No.3 as the Presiding Officer for meeting of BOD of Jhajjar Bank. When the meeting was not convened, petitioners approached this Court by filing a writ petition. In the meanwhile, respondent No.5 filed a revision petition before the Additional Chief Secretary, Haryana impugning order, Annexure P-4, and by order dated 07.02.2024, Annexure P-6, the revision petition was admitted and the RCS, Haryana was directed to review/confirm the decision taken vide order, Annexure P-4, after inquiring into the allegations levelled against respondent No.5. Another writ petition was filed challenging order, Annexure P-6, passed by the revisional authority. Both the writ petitions were dismissed by



this Court vide order dated 23.04.2024, Annexure P-7, granting liberty to the petitioners to move an appropriate application before the revisional authority for being impleaded as a party. In Letters Patent Appeal, a Division Bench of this Court on 29.05.2024, Annexure P-9, directed the revisional authority to decide the petition in a time bound manner. Impugned order dated 24.07.2024, Annexure P-10, passed by the Registrar Cooperative Societies was produced before the revisional authority, whereby it reviewed its earlier order dated 02.02.2024, Annexure P-4, withdrawing the appointment of a Presiding Officer to conduct a meeting for considering the No Confidence Motion. Revision petition was dismissed as infructuous on 25.07.2024, Annexure P-12.

3. On the direction of this Court, a specific affidavit dated 19.09.2024 was filed by the Additional Chief Secretary to the Government of Haryana-respondent No.1. Writ petition has been contested by the Jhajjar Bank-respondent No.4 by filing a short reply dated 20.09.2024.

4. While referring to Section 30-A of the 1984 Act, Mr. B.S.Rana, learned senior counsel for the petitioners has contended that there is no provision in the statute for conducting an inquiry into the allegations levelled in the No Confidence Motion. He asserts that once a No Confidence Motion is signed by a majority of the elected members of a Committee and is moved, levelling specific allegations against the Chairperson, the respondent authorities are obligated to appoint a Presiding Officer and convene a meeting to consider the motion. Reliance has been placed by him upon the judgment of the Supreme Court in Vipulbhai M. Chaudhary Versus Gujarat Cooperative Milk Marketing Federation Limited and others, (2015) 8



SCC 1 as also the instructions dated 24.09.2019, Annexure P-11, issued by the RCS in compliance with the directions passed by the Supreme Court.

5. Opposing the petition, Mr. Sharad Aggarwal, DAG, Haryana, learned State counsel has argued that in compliance with the order passed by the revisional authority, an inquiry officer was appointed to inquire into the complaint, Annexure P-2, who had submitted a report vide e-mail dated 09.07.2024 to the effect that the charges against respondent No.5 have not been proved and in view of the findings, order, Annexure P-2, was withdrawn vide order dated 24.07.2024, Annexure P-10. He submits that as the General Manager of Jhajjar Bank, some other officials were responsible for omissions, a copy of the report has been sent to MD, Harco Bank as well as DCCB, Jhajjar for taking disciplinary action against the said officials. It is his argument that conducting an inquiry into the allegations levelled in the motion is inherent in Section 30-A of the 1984 Act. Further, he has contended that the impugned order, Annexure P-10, is revisable under Section 115 of the 1984 Act and as the petitioners failed to avail the alternative remedy, the writ petition deserves to be dismissed.

6. Mr. Pritam Singh Saini, learned counsel for respondent No.4, while supporting the arguments addressed by the State counsel contended that the second writ petition is not maintainable after the dismissal of earlier petition vide order, Annexure P-7. This would mean seeking review of the earlier order, which is impermissible under the law.

7. Mr. S.S.Dalal, who is appearing for respondent No.5, has placed reliance upon a Full Bench judgment of this Court in CWP-4922-1989 titled as Jasbir Singh and others Versus Commissioner (Appeals), Jalandhar



Division and others to submit that the petitioners cannot be permitted to bypass the alternative statutory remedy.

8. Countering them, Mr. B.S.Rana, learned senior counsel has asserted that the availability of alternative remedy would not oust extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India when there is blatant misuse of power by the authorities. Reference has been made by him to the judgments of this Court in:-

- i) **Tarsem Singh Versus State of Punjab and others, 1973 PLR 770;**
- ii) **Nachhattar Singh Versus State of Punjab, 1993 (2) PLR 147** and
- iii) **Kuber Cooperative Housing Building Society Limited Versus State of Haryana, 2001 (2) PLR 276.**

9. I have heard counsel for the parties and considered their rival submissions, besides examining the documents placed on the record with their able assistance.

10. The question to be determined in this writ petition is as to whether Section 30-A of the 1984 Act permits the holding of an inquiry into allegations levelled against the Chairperson in a No Confidence Motion moved by the elected members? In order to answer this question, it is necessary to examine the statutory provision, which is reproduced hereunder:-

“30A No Confidence Motion against Chairman and Vice-Chairman

The elected members of the committee may bring a motion of no confidence against the elected office bearers i.e. Chairman and Vice-Chairman other than the Government nominees by leveling specific allegations against such Chairman



and Vice-Chairman. If the motion of no confidence is passed by a resolution of 2/3rd majority of total number of elected members of the society concerned at a meeting specially convened for the purpose, the Chairman or Vice-Chairman shall cease to function as such with immediate effect and the election of new office bearers shall be held within two months of the removal in accordance with section 30 of the Act:

Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the Chairman or Vice-Chairman, as the case may be, was notified and no further meeting shall, at any time thereafter, be convened for considering a similar motion against such office bearer/bearers unless a period of one year intervenes between the last failure and the date on which such further meeting is convened.”

11. A brief analysis of the above provision highlights that Section 30-A of the 1984 Act postulates that elected members of the Committee may bring in a motion of no confidence against the elected office bearers, i.e., the Chairperson and Vice Chairperson, other than the government nominees, by levelling specific allegations against such incumbent. If the motion of no confidence is passed by a resolution of 2/3rd majority of the total number of elected members of the Society convened at a meeting specifically held for this purpose, the incumbent shall cease to function as such with immediate effect and the election of new office bearers shall be held within a period of two months from their removal in accordance with Section 30-A of the 1984 Act. A conjoint reading of this provision exhibits that levelling of specific



allegations against such Chairperson and/or Vice-Chairperson is the only sine qua non for moving in the requisition of no confidence. The statutory provision does not allow holding of an inquiry into the allegations. There is no scope of addition or deletion of any expression in the statutory provision. Once there are specific allegations in the requisition, the authorities are obligated to convene a meeting of the Board for the requisition to be tested. The argument of the respondents is fallacious and is rejected.

12. After examining the relevant statutes of the various States, in Vipulbhai M. Choudhary's case (supra), Supreme Court found that there was no uniformity with regard to the procedure and process regarding the motion of no confidence in local self-governments. The Apex Court, therefore, laid down some guidelines in para 52.2, which are reproduced hereunder:-

“52.2 Having regard to the set up in local self-governments prevailing in many of the States as above, we direct that in the case of cooperative societies registered under any Central or State law, a motion of no confidence against an office bearer shall be moved only after two years of his assumption of office. In case the motion of no confidence is once defeated, a fresh motion shall not be introduced within another one year. A motion of no confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the cooperative society concerned. The motion of no confidence shall be carried in case the motion is supported by more than fifty per cent of the elected members present in the meeting.”



13. Following the directions, RCS, Haryana issued instructions dated 24.04.2019, Annexure P-11, incorporating these directions. An examination of the representation, Annexure P-2, shows that it has been submitted more than two years after the election of the Chairperson. It is supported with more than 1/3rd of the elected members of the BOD and there are specific allegations against respondent No.5. The representation, therefore, meets the mandate of Section 30-A of the 1984 Act and has to be dealt with in accordance of law. A meeting is, therefore, required to be convened for testing the resolution.

14. This Court will now deal with the objection raised by the respondents that the impugned order, Annexure P-10, is revisable under Section 115 of the 1984 Act. It cannot be denied that petitioners have a remedy of revision against this order, which lies before the Additional Chief Secretary to Government of Haryana-respondent No.1. Pursuant to an order passed by this Court, respondent No.1 had filed an affidavit dated 19.09.2024, wherein he had expressly stated that levelling of specific allegations against the Chairperson is mandatory condition in No Confidence Motion, therefore, inquiry into such allegations is inherent in Section 30-A of the 1984 Act. A perusal of this affidavit shows that respondent No.1 has expressed its view on the matter. It has given a definite opinion that the inquiry has to be conducted under Section 30-A, *ibid*. As the opinion of respondent No.1 is already on the record, forcing the petitioners to avail the statutory revisional remedy would be a futile exercise. In these circumstances, this Court is of the view that the remedy of a revision petition would not be effective. Such a remedy would not bar this Court from



exercising the extraordinary power vested in it under Article 226 of the Constitution of India.

15. In **Nachhattar Singh Versus State of Punjab, 1993 (2) PLR 147**, a Division Bench of this Court held that the remedy for the purpose of challenging the result of an election by way of an election petition may be available under the statute, yet in the facts and circumstances of a particular case, the High Court could interfere under Article 226 of the Constitution. The mere availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate and efficacious. Strength can also be drawn from the observations of Division Bench of this Court in **Nachhattar Singh's case (supra)**. The relevant observations are reproduced hereunder:-

“8. On a consideration of the judgments quoted above, it is clear that while the remedy for the purpose of challenging the result of the election by way of an election petition under Section 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court would interfere under Article 226 of the Constitution. The mere availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate and efficacious. It bears repetition that there is no constitutional bar to the maintainability of such a writ petition with respect to local bodies such as Municipal Committees, District Boards or Gram Panchayats in the manner indicated by the Constitution under Article 329(b) with respect to the elections held to the State Assemblies or Parliament and, in the absence of such a restraint, the scope of Article 226 is all pervasive and wide



enough to reach and remove an injustice suffered. This Court would not, therefore, throw out the writ petition at the very threshold and compound the sense of and injustice inflicted on the petitioners with another one at the hands of the Court by circumscribing artificially the scope of Article 226. The Court in exercising restraint must not clip its wings, though interference should be made, to use the repeated words in the "rarest of rare" cases. We, therefore, hold that though an alternative remedy by way of an election petition is available to the petitioners yet we find that it is not an efficacious one in the facts and circumstances of the present case which now proceed to enumerate."

16. In view of the facts and legal position, this Court is of the view that the writ petition is maintainable and deserves to be entertained. The objection of the respondents regarding the non-maintainability of the writ petition is rejected.

17. For the above mentioned reasons, writ petition is hereby allowed. Impugned order, Annexure P-10, is set aside. As a corollary, order dated 02.02.2024, Annexure P-4, passed by the RCS, Haryana is revived and a direction is issued to convene a meeting of the BOD, Jhajjar bank within a period of three weeks from the date of receipt of this order.

18. Writ petition is disposed off with the above directions.

(SUVIR SEHGAL)
JUDGE

20.11.2024
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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No