

*Before N.K. Sodhi & N.K. Sud, JJ*

*SULTAN SINGH,—Petitioner*

*versus*

*STATE OF HARYANA & OTHERS,—Respondents*

*C.W.P. 18294 of 1997*

*7th September, 1999*

*Constitution of India, 1950—Art. 226—Haryana Co-operative Societies Act, 1984—Ss. 27 & 114—Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959—Ss. 2(f) & 4—Bye laws of the Society—Bye law 40(vi)—Instructions dated 5th April, 1994 issued by the Registrar—Managing Committee of the Society appointing the petitioner as Clerk-cum-Cashier by passing a resolution—Respondent No. 5 challenging the appointment before the Registrar—Addl. Registrar dismissing the petition holding that the Managing Committee was within its right to appoint the petitioner—In appeal before the State Government respondent contending that the appointment was in contravention of the provisions of S. 4 of the 1959 Act, Bye-law 40(vi) and instructions dated 5th April, 1994—Secretary to State Government allowing the appeal of respondent—Challenge thereto—S 4(1) of the 1959 Act does not attract the ‘Society’ because it is neither owned nor controlled nor managed by the Government — Appointment of the petitioner was also not in contravention of Bye law 40(vi)—Instructions dated 5th April, 1994 do not apply to the Society—Orders of the State Government quashed.*

Held, that Section 4(1) of the 1959 Act deals with the notification of vacancies to Employment Exchanges. It requires that an employer before filling up any vacancy in any employment in every establishment in public sector shall notify that vacancy to such Employment Exchanges as may be prescribed. This requirement of notification of vacancies is mandatory in so far as establishments in public sector are concerned. The term ‘establishment in public sector’ has been defined in clause (f) of Section 2 of the 1959 Act, which makes it clear that a corporation including a Cooperative Society established by or under a Central, Provincial or State Act would be an establishment in public sector provided it is owned, controlled or managed by the Government. In the present case, the society is a Primary Cooperative Society registered under the State Act but is

neither owned nor controlled nor managed by the Government. It is a Primary Society having its own Managing Committee which is elected in terms of the Act and the Rules framed thereunder. The society is managed by its Managing Committee and not by the Government and is, therefore, not covered by clause (3) of Section 2 (f) of the 1959 Act. It is also not covered under any clause of S. 2(f) of the 1959 Act. It is, therefore, not an 'establishment in Public sector'. Section 4(1) of the 1959 Act is thus not attracted.

(Paras 4 and 5)

Further held, that the Secretary erred in law in allowing the appeal and rescinding the resolution on the ground that the vacancy had not been notified to the Employment Exchange. Since the provisions of 1959 Act are not applicable, it was not necessary for the society to notify the vacancy to any Employment Exchange.

(Para 5)

Further held, that Bye law 40 of the Bye laws of the Society enumerates various powers of the Managing Committee and clause (vi) thereof states that the Managing Committee may make appointments of the staff from time to time subject, of course, to the conditions, if any, imposed by the Registrar. The instructions issued on 5th April, 1994 have been addressed to all the Cooperative Apex Institutions, all the Cooperative Sugar Mills and all the Central Cooperative Banks in the State of Haryana. These instructions do not apply to any other institution. The Society in the instant case is neither a Cooperative Apex Institution nor a Cooperative Sugar Mill nor a Central Cooperative Bank. The instructions were not meant to govern the society. This being so, the appointment of the petitioner cannot be said to be in contravention of Bye law 40(vi) of the Bye laws or of any instruction issued by the Registrar.

(Para 6)

S.S. Dalal, Advocate *for the petitioner.*

Aman Dahiya, DAG, Haryana, *for respondents No. 1 & 2.*

Jaivir Yadav, Advocate *for respondent No. 6*

S.P. Singh, Advocate *for respondent No. 7.*

## JUDGMENT

*N.K. Sodhi, J.*

(1) The Sarsa Cooperative Credit & Service Society Ltd., Sarsa, tehsil Pehowa, district Kurukshetra (for short the society) is a Primary

Cooperative Society registered under the Haryana Cooperative Societies Act, 1984 (hereinafter called the Act). Petitioner who is a resident of village Sarsa applied for the post of a Clerk-cum-Cashier with the society. This application was put up before the Managing Committee of the society in its meeting held on 10th January, 1996 and by a resolution passed by the Managing Committee in the said meeting the petitioner was appointed to the post. Prithvi Singh respondent moved a petition before the Registrar under section 27 of the Act for rescinding the resolution dated 10th January, 1996 passed by the Managing Committee appointing the petitioner as Clerk-cum-Cashier. This petition was heard by the Additional Registrar (Credit) Cooperative Societies, Haryana who by his order dated 30th September, 1996 dismissed the same holding that the Managing Committee was within its rights to appoint the petitioner. Feeling aggrieved by this order Prithvi Singh filed an appeal under section 114 of the Act which was heard by the Commissioner and Secretary to Government, Haryana, Cooperative Department, Chandigarh. It was contended before the State Government that the appointment of the petitioner made by the society was in contravention of the provisions of Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the 1959 Act) because the vacancy had not been notified to any Employment Exchange. It was also contended that the appointment contravened Bye law 40 (vi) and also the instructions dated 4th April, 1994 issued by the Registrar requiring the Cooperative Societies to make appointments only from the surplus pool. After noticing the contentions of the parties, the Secretary by his order dated 12th November, 1997 allowed the appeal and made the following observations :

“In view of the above discussion, I agree with the contention made by Ld. counsel for the appellant. The order dated 30th September, 1996 passed by the Addl : R.C.S., Haryana and resolution dated 10th January, 1996 passed by the Managing Committee of Sarsa Coop. C&S Society are set aside and the appeal is accepted.”

(2) It is against this order that the present writ petition has been filed.

(3) Having heard counsel for the parties, we are of the view that the writ petition deserves to succeed.

(4) Section 4 (1) of the 1959 Act deals with the notification of vacancies to Employment Exchanges. It requires that an employer before filling up any vacancy in any employment in every establishment

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in public sector shall notify that vacancy to such Employment Exchanges as may be prescribed. This requirement of notification of vacancies is mandatory in so far as establishments in public sector are concerned. The term 'establishment in public sector' has been defined in clause (f) of Section 2 of the 1959 Act which reads as under :

(f) "establishment in public sector" means an establishment owned, controlled or managed by —

(1) the Government or a department of the Government.

(2) a Government company as defined in Section 617 of the Companies Act, 1956 ;

(3) a Corporation (including a cooperative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government ;

(4) a local authority ;

(5) A reading of the aforesaid definition makes it clear that a corporation including a Cooperative Society established by or under a Central, Provincial or State Act would be an establishment in public sector provided it is owned, controlled or managed by the Government. In the case before us, the society is a Primary Cooperative Society registered under the State Act but is neither owned nor controlled nor managed by the Government. It is a Primary Society having its own Managing Committee which is elected in terms of the Act and the Rules framed thereunder. The society is managed by its Managing Committee and not by the Government and is therefore, not covered by clause (3) of Section 2 (f) of the 1959 Act. It is also not covered under any clause of Section 2 (f) of the 1959 Act. It is, therefore, not an 'establishment in public sector', Section 4 (1) of the 1959 Act is thus not attracted. Section 4 (2) of the 1959 Act, however, deals with establishments in the private sector. This sub-section provides that the appropriate Government may by notification in the official gazette require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed and the employer shall thereupon comply with such requisition. It is clear that establishment in the private sector would be governed by the 1959 Act

only if the State Government has issued a notification under section 4 (2) of that Act. It is not the case of the respondents that any such notification has been issued by the State of Haryana under section 4(2) of the 1959 Act. This being so, the provisions of 1959 Act are not applicable to the society which, as already observed, is a Primary Society registered under the Act and falls in the private sector. In this view of the matter, the Secretary erred in law in allowing the appeal and rescinding the resolution dated 10th January, 1996 on the ground that the vacancy had not been notified to the Employment Exchange. Since the provisions of 1959 Act are not applicable, it was not necessary for the society to notify the vacancy to any Employment Exchange. Learned counsel for respondent No. 5 referred to various judgments of the Apex Court and also of this Court to contend that the provisions of Section 4 of the 1959 Act are mandatory. There is no quarrel with this proposition but the only question is that provisions of the 1959 Act are not applicable to the society before us. In the cases cited on behalf of respondent No. 5 the vacancies had to be notified because those cases pertained to establishments in the public sector. We do not, therefore, think it necessary to refer here to those judgments in detail.

(6) It was then contended by the learned counsel for respondent No. 5 that appointment of the petitioner was in contravention of Bye-law 40(vi) of the Bye-laws of the society and contrary to the instructions dated 5th April, 1994 issued by the Registrar. A copy of the printed Bye-laws and also that of the instructions dated 5th April, 1994 was produced at the time of hearing. We have perused the same. Bye-law 40 of the Bye-laws enumerates various powers of the Managing Committee and clause (vi) thereof states that the Managing Committee may make appointments of the staff from time to time subject, of course, to the conditions, if any, imposed by the Registrar. The instructions issued on 5th April, 1994 have been addressed to all the Cooperative Apex Institutions, all the Cooperative Sugar Mills and all the Central Cooperative Banks in the State of Haryana. These instructions do not apply to any other institution. The society in the instant case is neither a Cooperative Apex Institution nor a Cooperative Sugar Mill nor a Central Cooperative Bank. The instructions referred to by the learned counsel for respondent No. 5 were not meant to govern the society. This being so, the appointment of the petitioner cannot be said to be in contravention of Bye-law 40 (vi) of the Bye-laws or of any instructions issued by the Registrar.

(7) No other point was raised before us.

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(8) For the reasons stated above, the impugned order cannot be sustained and the same is hereby quashed. The writ petition stands allowed with no order as to costs.

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**R.N.R.**

*Before N.K. Sodhi & N.K. Sud, JJ*

THE KOT SHAMIR COOPERATIVE AGRICULTURAL  
SERVICE SOCIETY LTD.,—*Petitioner*

*versus*

THE STATE OF PUNJAB & OTHERS,—*Respondents*

*C.W.P. No. 18138 of 1997*

16th November, 1999

*Constitution of India, 1950—Art. 226—Punjab Cooperative Societies Act, 1961—Ss. 13, 55, 56, 63(b) & 69—Punjab Co-operative Societies Rules, 1963—Rl. 72—Awards passed by the Arbitrator against respondent No. 3 for embezzlement—Appeals dismissed—Writ of demand issued—Commissioner allowing the appeal of the respondent holding that the petitioner—Society not competent to recover the amounts of another Society after bifurcation—Auction of property of respondent—Respondent failed to challenge the sale of property within a prescribed period—Deputy Registrar exercising the powers of Registrar confirming the sale under section 72 (14)(iii) in favour of auction purchaser—Order of the Registrar entertaining the revision petition of the respondent under section 69 against the order of Deputy Registrar is without jurisdiction—Orders of the Registrar as well as the Financial Commissioner quashed.*

Held that the order dated 8th May, 1995 confirming the sale had been passed by the Deputy Registrar by exercising powers of the Registrar under section 63 of the Act. The said order, therefore, would be deemed to have been passed by the Registrar and as such no revision against such an order could be filed before the Registrar.

(Para 6)

Further held, that the Deputy Registrar had passed the order dated 8th May, 1995 as a delegatee of the Registrar and as such the revision petition under section 69 against this order could lie only before the State Government and not before the Registrar himself. Thus, the order of the Registrar Co-operative Societies passed on