

was accepted and the lease was cancelled. This was challenged on the ground that the Gram Panchayat was not an aggrieved party from the decision of the Collector and thus no appeal lay to the Commissioner at the instance of the Gram Panchayat. As already pointed out, this plea of the lessees was accepted and it was held by the Division Bench that the Gram Panchayat was not an aggrieved party as the order of the Collector had not worsened its position in any manner. I am thus satisfied that the ratio of this judgment completely covers the contention of the learned counsel for the petitioner that the appeal before the Additional Commissioner was not maintainable.

(6) For the reasons recorded above I allow this petition and set aside the impugned order of the Additional Commissioner, Annexure P. 6, with costs which I determine at Rs. 1,000. However, since no relief has been claimed against respondents 6 to 8, the petition *qua* them stands dismissed but with no order as to costs.

N.K.S.

Before : S. P. Goyal and Pritpal Singh, JJ.

SUBHASH CHANDER JAIN,—Petitioner.

versus

HARYANA STATE FEDERATION OF CONSUMERS CO-OPERATIVE WHOLESALE STORES and others,—Respondents.

, Civil Writ Petition No. 3297 of 1979.

February 26, 1986.

Constitution of India, 1950—Articles 12 and 226—Writ of mandamus—Co-operative Society—When amenable to writ jurisdiction of the High Court.

Held, that normally Co-operative Societies are not amenable to the writ jurisdiction of the High Court, but whenever a Society fails to perform any statutory requirement to the prejudice of someone, the latter is entitled to approach the High Court for seeking the writ of *mandamus* to direct the Society not to commit breach of the statutory requirement. In other words, so long no case is made out of

Subhash Chander Jain v. Haryana State Federation of Consumers
Co-operative Wholesale Stores and others (Pritpal Singh, J.)

any breach of statutory provisions, which a Society is obliged to comply with, no writ can be issued against it. But whenever it is pointed out that any statutory provision requiring the Society to act in a particular manner creates a right or interest in favour of a person, it will be permissible for such person to seek remedy of writ against the Society. It may well be understood that the Co-operative Society will be amenable to the writ jurisdiction only in cases relating to performance of legal obligation and duties imposed by a statute creating a corresponding legal right in the writ petitioner. In other words, a Co-operative Society will be amenable to writ jurisdiction of the High Court only where according to the provisions of the statute or rules framed under the Act, by which the Society is governed, there is a statutory or public duty imposed on it and the enforcement of which is being sought.

(Para 5).

Civil Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to :

- (i) call for the records of the case and after its perusal issue a writ in the nature of Certiorari quashing the appointment of respondent No. 2, annexure P-10 to the writ petition.
- (ii) Issue a writ in the nature of Mandamus or any other appropriate writ, order or direction for the consideration of the case of the petitioner by the appointing/competent authority of the Society; or in the alternative a writ of qua warrant directing respondent No. 2 to show his legal authority to hold the office as he is not fulfilling the requisite qualification under the Statutory Service Rules framed under Section 84-A of the Act.
- (iii) Issuance of notice of motion and filing of certified copy of the annexures may be exempted.
- (iv) the civil writ petition may kindly be allowed with costs.

It is further prayed that pending hearing of the Writ Petition, ad-interim stay of the operation of the impugned order may kindly be stayed or in the alternative the functioning of respondent No. 2 be stayed.

K. S. Kundu, Advocate with R. S. Tacoria, Advocate, for the Petitioner.

Prem Singh, Advocate with H. C. Rathee, Advocate, for respondent No. 2.

B. S. Khoji, Advocate, for respondent No. 1.

Kuldip Singh, Senior Advocate with Virenderpal Singh, Advocate, also for respondent No. 2.

JUDGMENT

Pritpal Singh, J.

(1) One post of Accounts Officer was advertised by the first respondent—the Haryana State Federation of Consumers Co-operative Wholesale Stores, Ltd., Chandigarh, on June 10, 1979, to be filled by direct recruitment. A number of candidates applied for the same. After interviewing the candidates the Board of Directors initially selected one Shri S. K. Narwania but he refused to join. Thereafter, one Shri V. K. Bountra was selected but he too decided not to take up this post. Eventually the second respondent—Avtar Singh was appointed from the waiting list. He did not fulfil the requisite qualifications but the Registrar, Co-operative Societies, granted relaxation in respect thereof. The appointment of Avtar Singh has been challenged in this writ petition by Subash Chander Jain who was one of the candidates for this post but was not selected. The grounds of challenge are two-fold. Firstly, that the respondent Avtar Singh was not qualified for appointment and secondly, that the post of Accounts Officer belonged to the quota of promotees and so it could not be filled by direct recruitment.

(2) At the very outset it is objected by the learned respondents' counsel that the writ petition is not maintainable because that respondent-Society is not a statutory body or a public authority envisaged under Article 12 of the Constitution of India. In support of this contention a Full Bench judgment of this Court in *Ajmer Singh v. The Registrar, Co-operative Societies, Punjab, Chandigarh and others*, (1) it was held that a Co-operative Society being a non-statutory body a writ petition against it is not maintainable.

(3) Placing implicit reliance on this judgment the learned counsel contended that the respondent-Society being merely registered under the Co-operative Societies Act is not amenable to the writ jurisdiction of this Court.

(4) The learned petitioner's counsel on the other hand placed reliance on an earlier Division Bench judgment of this Court in *Kulwant Singh versus State of Punjab and others*, (2), wherein it was held that writ is maintainable against a Co-operative Society if

(1) A.I.R. 1981 Punjab and Haryana 107.

(2) 1972 P.L.J. 399.

Subhash Chander Jain v. Haryana State Federation of Consumers
Co-operative Wholesale Stores and others (Pritpal Singh, J.)

there is a failure to carry out the duties placed on it by a statute. This judgment is based on a decision of the Supreme Court in *Praga Tools Corporation v. C. V. Imanuel and others* (3) wherein it was held :

“It is well understood that a *mandamus* lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest.”

The pertinent observations of the Supreme Court in this judgment are as follows:—

“Therefore, the condition precedent for the issue of *mandamus* is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of *mandamus* is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A *mandamus* can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings.”

(5) The Full Bench in the case of *Ajmer Singh (supra)* noticed the judgment in *Kulwant Singh's case (supra)* and did not disagree with the same. The Full Bench observed that a close analysis of the Division Bench judgment would indicate that the view taken by the learned Judges was not inconsistent with the view taken by the Full Bench. Reading the two judgments conjunctively, the legal proposition which emerges is that normally Co-operative Societies are not amenable to the writ jurisdiction of the High Court but whenever the Society fails to perform a statutory requirement to the prejudice of someone, the latter is entitled to approach the High

Court for seeking the writ of *mandamus* to direct the Society not to commit breach of the statutory requirement. In other words, so long no case is made out of any breach of statutory provisions, which a Society is obliged to comply with, no writ can be issued against it. But whenever it is pointed out that any statutory provision requiring the Society to act in a particular manner creates a right or interest in favour of a person, it will be permissible for such person to seek remedy of writ against the Society. It may well be understood that the Co-operative Society will be amenable to writ jurisdiction only in cases relating to performance of legal obligation and duties imposed by a statute creating a corresponding legal right in the writ-petitioner. Putting it succinctly a Co-operative Society will be amenable to writ jurisdiction of the High Court only where according to the provisions of the statute or rules framed under the Act, by which the Society is governed, there is a statutory or public duty imposed on it and the enforcement of which is being sought.

(6) In the present case, it is not controverted that employees of the respondent-Society are governed by the statutory rules known as the Staff Service Rules of the Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. (hereinafter called 'the Rules'). The petitioner's contention is that he and the respondent Avtar Singh had applied for the post of Accounts Officer by direct recruitment, and whereas his candidature was spurned, the respondent Avtar Singh was appointed in violation of the Rules. The matter for consideration, therefore, is whether there is any truth in this allegation.

(7) Rule 6(1) read with Annexure (I) makes it clear that a candidate aspiring for the post of an Accounts Officer by direct recruitment must have two qualifications. Firstly, he should be a 1st Division B.Com. and secondly, he should have five years' experience in accounts in a supervisory capacity. At the same time the Registrar, Co-operative Societies is empowered under Rule 28 of the Punjab Co-operative Societies Rules, 1963, to give relaxation in the qualifications. This Rule reads as under:—

"28(1) No Co-operative Society shall appoint any person as its employee unless he possesses such qualifications and furnishes such security as may be specified by the Registrar from time to time.

Subhash Chander Jain v. Haryana State Federation of Consumers
Co-operative Wholesale Stores and others (Pritpal Singh, J.)

(2) The Registrar may, in any case for special reasons relax the provisions of this rule to such extent as he may consider proper."

(8) Admittedly the respondent Avtar Singh did not strictly fulfil the requisite qualifications, as he is a Second Division B. Com. and did not have five years' experience in accounts in a supervisory capacity at the time of appointment. But the fact that the Registrar granted relaxation in respect of qualifications in his case is not denied. Moreover, the validity of the order of relaxation passed by the Registrar has not been challenged by the petitioner in this writ petition. The Registrar was fully competent to give relaxation in the matter of qualifications and he exercised this right in favour of the respondent Avtar Singh. In such circumstances it cannot be said that the appointment of Avtar Singh was in violation of the statutory rules in the matter of qualifications.

(9) The second objection that the post of Accounts Officer belonged to the quota of promotees and, therefore, could not be filled by direct recruitment, is equally mis-conceived. It is no doubt provided in Rule 9.4 of the Rules that 66 $\frac{2}{3}$ per cent of the posts of the Accounts Officers will be manned by promotees and the remaining 33 $\frac{1}{3}$ per cent by direct recruitment. But no procedure has been laid down in the Rules to indicate the manner in which the appointments from these two sources are to be made. Meaning thereby that the respondent-Society has been authorised to tap both the sources while making appointments while ensuring that the *inter se* quota is not disturbed. In the present case it is not even alleged that the quota of the direct recruits had already been filled up when the disputed post was advertised. There is absolutely no material to indicate that this post had necessarily to be filled by promotion. In such circumstances it is not possible to hold that by the appointment of the respondent Avtar Singh the statutory requirement of Rule 9.4 had been violated.

(10) For aforesaid reasons, we find no merit in this petition and dismiss the same. No order as to costs.

N.K.S.