

Before Suvir Sehgal, J.

DHARAM SINGH @ MOHAN—Petitioner

versus

STATE OF HARYANA—Respondent

CRM-M No.37147 of 2020

November 25, 2020

Constitution of India, 1950—Arts. 226 and 227—Haryana Co-operative Societies Act, 1984—S. 2(1)(a), (d) and (o) and 28—Removal from Post of Chairman of Rohtak Co-operative Milk Producers Union Limited, Rohtak—Held, eligibility for membership is being an elected Chairman of primary society—Petitioner ceased to be Chairman of Primary Society on 15.08.2019, cannot continue and ceases to be Director of Board—Therefore, order of removal from post proper.

Held that, Still further, this matter can be examined from yet another perspective. It is apparent that to become eligible to be a member of the Board of Directors, one has to be the elected Chairman of the primary society. The petitioner ceased to be the Chairman of the Primary Society on 15.08.2019. Thus, the petitioner ceased to be a member of the Board of Directors with effect from 15.08.2019. Hence, in any case, the petitioner cannot continue as a Chairman because the Board of Directors elect the chairmen among themselves. Once the Director has ceased to be the Director of the Board of Directors of the Union then the petitioner cannot continue under any circumstance.

(Para 17)

Surinder Singh Dalal, Advocate and
Kulbir Dalal, Advocate
for the petitioner.

Harish Nain, AAG, Haryana
for respondent no.1.

Baldev Raj Mahajan, Senior Advocate with
Sandeep Moudgil, Advocate
for respondent no.2 and 3.

ANIL KSHETARPAL, J.

(1) Through this writ petition, filed under Article 226/227 of the Constitution of India, the petitioner prays for the issuance of a writ in

the nature of certiorari to quash the order dated 18.05.2019, by which it has been declared that he has ceased to be the Chairman of the Rohtak Co-operative Milk Producers Union Limited, Rohtak (hereinafter referred to as 'the Union'), with effect from 18.05.2019, being in violation of Section 28 of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as 'the Act of 1984').

(2) The petitioner is a member of the Gochi Milk Producers Co-operative Society Limited (hereinafter referred to as 'the Society'). By virtue of having been elected as the Chairman of 'the Society', the petitioner became a member of the Board of Directors of respondent no.3 i.e. 'the Union'. Thereafter, he was elected on 19.02.20218 as the Chairman of the Board of Directors of the Union by the Board itself.

(3) The petitioner has woven his case entirely on the basis of the provision of Section 28 of the Act of 1984.

(4) In response, respondent no.2 and 3 have filed their written statement claiming that the provision of Section 28 of the Act of 1984 is not applicable. It has further been pointed out that the petitioner has ceased to be the member of the Board of Directors of the Union (respondent no.3) as he ceased to be the Chairman of the Society. It is further contended that the tenure of office bearers is governed by Section 30 and not by Section 28. It is further asserted that the petitioner has also earned disqualification as per Rule 28 of the Haryana Cooperative Societies Rules, 1989 and Clause 17 and 17.1 of the Bye-laws being a chronic defaulter to the tune of Rs.21,47,028/- of the Jhajjar Central Co-operative Bank Limited, Branch Dighal, Jhajjar. The respondents have also objected to the maintainability of the writ petition.

(5) The petitioner has filed a replication reiterating that the term of the elected Chairman as per Section 28 of the Act of 1984 is 5 years and therefore, the petitioner could not be removed.

(6) This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book.

(7) Learned counsel representing the petitioner has submitted that as per Section 28(4) of the Act of 1984, the petitioner is entitled to continue as the Chairman for a period of 5 years and therefore, the respondents have erred in removing him. Learned counsel in support of his argument relies upon a judgment passed by a Division Bench in

***Prithvi Singh and others versus State of Haryana and Others*¹.**

(8) Per contra, Sh. Baldev Raj Mahajan, learned Senior Advocate, ably assisted by Sh. Sandeep Moudgil, Advocate, has drawn the attention of the court to Clause 16.1 of the Bye-laws of 'the Union' and submits that only 9 elected Chairmen of the affiliated societies are entitled to become members of the Board of Directors of 'the Union'. It was further contended that Section 28 of the Act of 1984 provides for election and tenure of the Committees and not of the Board of Directors or office bearers. It was further contended that the petitioner has ceased to be the Chairman of the primary society and therefore, he can neither continue to be a Director nor Chairman of the Board of Directors of 'the Union'. It was further asserted that the petitioner has also incurred disqualification as noticed above.

(9) Having heard learned counsel for the parties at length, this Bench now proceeds to analyze the respective contentions.

(10) On careful perusal of the provisions of the Act of 1984, it is apparent that the Act envisages 3 different types of Co-operative Societies. Under section 2(1)(a) 'the apex society' has been defined to mean a Cooperative Society whose area of operation extends to the whole of the State. Section 2(1)(d) defines 'the central society'. It means a co-operative society the primary object of which is to facilitate the working of other co-operative societies who are its members. Section 2(o) defines 'the primary society'. Section 2(1)(a), (d) and (o) are extracted as under:-

2. Definitions

(1) In this Act, unless the context otherwise requires :-

(a) “**apex society**” means a cooperative society whose area of operation extends to the whole of the State and the primary object of which is the promotion of the objects and the provision of facilities for the operation of other co-operative societies which are its members; * (aa) “area of operation” means an area from which the persons are admitted as members;

(b) XX XX XX
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(c) XX XX XX

¹ 2014 (4) R.C.R.(Civil),45; 2014(3) P.L.R., 729

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(d) “**central society**” means a co-operative society the primary object of which is to facilitate the working of other co-operative societies which are its members;

(o) “**primary society**” means a cooperative society, object of which is to promote the common interests of its members and whose membership consists exclusively of individuals.”

Thus, it is apparent that there is a mark distinction between the 'primary society', 'central society' and 'apex society'. Respondent no.3 'the Union' is not a primary society but a central society.

(11) Now let's examine Section 28 and 30 of the Act of 1984 which are extracted as under:-

28. Election and tenure of committees:

(1) The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be so elected unless he is a member of the society: Provided that at least one member belonging to the Scheduled Caste and one woman member shall also be represented through election in every committee of a co-operative society in the manner prescribed : Provided further that at least one member belonging to Backward Class shall also be represented through election in the committee, if their number is ten per centum or more of the total membership of the society, in the manner prescribed.

(2) The election process once started shall not be postponed and disputes, if any, pertaining to the election, shall be entertained after the completion of the election process, in accordance with the provisions of this Act.

Explanation:- The election process shall be deemed to have started from the date of the order of the Registrar fixing the date of election.

(3) The committee of each society shall, before the expiry of the term of its committee arrange for the election of a committee in accordance with its byelaws failing which the Registrar shall arrange to hold such elections within a period of ninety days after the expiry of the term of the committee at the cost of the society and the elected members of the

outgoing committee shall be debarred from contesting the elections of the committee of any co-operative society for a period of five years from the date of the expiry of the term of the outgoing committee: Provided that no such order shall be passed by the Registrar unless an opportunity of being heard has been given.

(4) The committee shall, unless removed earlier by the Registrar, hold office for a period of five years from the date of election : Provided that if tenure of a committee already constituted has expired on 1st day of January, 1995, or till the promulgation of the Haryana Co- operative Societies (Amendment) Ordinance, 1995, it shall be deemed to have been continued for a period of five years from the date of election: Provided further that the tenure of the committee of Primary, Central & Apex Milk Producers Co-operative Societies shall be as specified in the Bye-laws of such societies. (5) Notwithstanding anything contained in the Bye-laws of a co-operative sugar mills, the members who are employees in the mills, shall constitute one separate zone for the purpose of election to the members of the committee thereof. In case no such member has been elected, the members of the committee shall co-opt one such member. If no such member is elected or coopted as a member of the committee, the Registrar may nominate one such member as a member of the committee.

(5) No individual shall, at any time, be a member of a committee of more than two primary societies, one central society and one apex society : Provided that nothing in this sub-section shall apply to a member nominated under sub-section (1) of section 29 or to a member of the committee of an apex or central society nominated to serve on the committee of another apex or central society, as the case may be, in accordance with the provisions of their Bye-laws.

30. Election of office bearers:

Notwithstanding anything contained in the Bye-laws of a co-operative society, the members of the committee including those nominated under section 29, shall elect from amongst themselves office bearers within sixty days of the date of election of the members of the committee. The meeting for such election shall be summoned and presided over by the

Presiding Officer appointed by the Registrar:

Provided that the election of office bearers shall not be postponed in case no person is nominated under section 29 to the said Committee :

Provided further that the election of office bearer of a primary, central and apex milk producers societies shall be conducted in accordance with their Bye-laws : Provided further that where the Government have subscribed to the share capital of an apex co-operative society or co-operative sugar mill to the extent of ten lakh rupees or more the Government may, notwithstanding anything contained in the Bye-laws of the society, appoint one of the members nominated under section 29 as chairman of the committee of such society :

Provided further that no committee member shall be eligible for election as Chairman or Vice-Chairman of any co-operative society if he has served as such, whether before or after or partly before and partly after the commencement of this Act, for a continuous period of ten years unless a period of not less than five years has expired since he last so served.”

(12) On careful perusal of Section 28, it is apparent that Section 28(1) provides for election of the members of a Co-operative society and their tenure. Section 28 does not deal with the tenure of the office bearers. Further, on careful perusal of Section 30, it is apparent that it provides for a procedure to elect the office bearers. Further, second proviso to Section 30 provides that the election of the office bearers of a primary, central and apex milk producers society shall be conducted in accordance with their Bye- laws. It is not in dispute that respondent no.3, which is a central society has notified and adopted its Bye-laws. Under by-law 2(e) 'the Union' has been defined. Bye-law 7 provides for membership of the Union. It provides that primary Milk Producers Co-operative Societies would be entitled to become the member of the Union. By-law 7.4 provides that a registered Milk Producers Co-operative Society in the area of operation of the union shall apply in writing alongwith a copy of the resolution of their Managing Committee seeking admission as a member of 'the Union'. By-law 12 provides for organization and management of the Union. By-law 16 defines the Board of Directors, which is extracted as under:-

16. Board of Directors.

The Board of Directors of the Union shall consist of:-

- a) Nine elected Chairman of the affiliated Societies
- b) One nominee of the National Dairy Development Board so long as loan or interest of the above Board if not fully repaid.
- c) One nominee of the Federation.
- d) Chief Executive Officers of the Milk Union
- e) Other members to be nominated/coopted as per provisions of the Act.”

(13) It is apparent from the reading of Clause 16.1 that the Board of Directors of the Union shall consist of 9 elected Chairmen of the affiliated Societies apart from the nominee members and other members. Thus, before someone can become a member or a director of the Board of Directors of 'the Union', he has to be the elected Chairman of an affiliated Society-the primary society. Thus, the *sine-qua-non* to become a director of the Board of Directors of the Union is that he should be elected as the Chairman of an affiliated primary Society.

(14) Further, Bye-law 16.3 provides that the elected members of the Board shall hold the office for a period of three years and 1/3rd members shall retire by rotation every year. Further, Bye-law 16.2 provides that the election of the members of the Board of Directors shall be conducted in a manner given in the Election Rules contained in Annexure-A of these Bye- laws. Bye-laws 16.2 and 16.3 are extracted as under:-

“16.2 Election of the members of Board of Directors shall be conducted in a manner given in Election Rules contained in Annexure A of these Bye-laws.

16.3 The elected members of the Board shall hold office for a period of three years and, 1/3rd members shall retire by rotation every year. The elected members shall retire either by mutual consent or by drawing lots for the first two years and thereafter the elected members shall retire on their turn. Subject to the provisions of Act and Rules, the retiring members shall be eligible for re-election.”

Bye-law 25 deals with the Chairman of 'the Union', which is

extracted as under:-

“25.0 Chairman

A Chairman shall be elected from amongst the elected members in the Board meeting every year in the month of September. The retiring Chairman shall be eligible for re-election as per provision of the Act and Rules.

Chairman elected by the Board shall hold office at the pleasure of the Board.

The powers, duties and responsibilities of the Chairman shall be as under:-

- a) To preside over the meetings of the General Body, Board of Directors and Personal Committee.
- b) To ensure implementation of policy decisions of Board.
- c) To undertake such other functions as are specially entrusted to him by the Personnel Committee or Board.”

(15) On a plain reading of Bye-law 25, it is apparent that a Chairman shall be elected from amongst the elected members of the Board in the meeting to be held every year in the month of September. Still further, in Annexure-A, Rules for election as provided under Bye-law 16.2 have been notified. Rule 36.2 provides that a Chairman elected shall hold the office till a new Chairman is elected but not exceeding the period of 15 months from the date of his election as a Chairman. Rule 36 is extracted as under:-

“36.0 Election of the Chairman.

36.1 Within 30 days of the date of declaration of result the members of the B.O.D. Including those nominated by the Government under Section 26 of the Act and coopted by the B.O.D, if any, shall elect a Chairman out of the elected members of the B.O.D. of the Union.”

(16) On a careful perusal of the aforesaid provisions, it is clear that Section 28 has no applicability in the present case. Section 28 provides for the tenure of the committees and not the office bearers. The election of the officer bearer is governed by Section 30 which in turn provides that the election of the office bearers of a Primary, Central and Apex shall be conducted in accordance with their Bye-laws. Still further, it is apparent from reading of the Bye-law 25.1 that the

election of a Chairman of the Board of Directors of a Central Society/Union is to be held every year. Further, Rule 36 provides that a Chairman elected shall not hold the office for a period exceeding 15 months from the date of his election as a Chairman. Thus, the petitioner who has ceased to be the Chairman on completion of 15 months period has no right to continue.

(17) Still further, this matter can be examined from yet another perspective. It is apparent that to become eligible to be a member of the Board of Directors, one has to be the elected Chairman of the primary society. The petitioner ceased to be the Chairman of the Primary Society on 15.08.2019. Thus, the petitioner ceased to be a member of the Board of Directors with effect from 15.08.2019. Hence, in any case, the petitioner cannot continue as a Chairman because the Board of Directors elect the chairmen among themselves. Once the Director has ceased to be the Director of the Board of Directors of the Union then the petitioner cannot continue under any circumstance.

(18) Learned counsel representing the petitioner relies upon the judgment passed by a Division Bench in *Prithvi Singh's* case (supra). On careful reading of the judgment, it is apparent that, with greatest respect, it has no applicability to the facts of the case. In that case, the petitioners challenged the correctness of the second proviso to Sub-section 4 of Section 28 of the 1984 Act and Bye-law 16.3 of the Bye-laws of the Milk Producers Union relating to the tenure of the committee. In that case, the tenure of the office bearers of the Milk Producers Union was not in dispute. Still further, the aforesaid judgment does not interpret Section 30 of the 1984 Act. In the present case, it is section 30 which is applicable because the petitioner claims that he has a right to continue as a Chairman of the Union'.

(19) Keeping in view the aforesaid discussion, this Bench does not find it necessary to examine the objections of the respondents with respect to the petitioner having become ineligible being a defaulter of the Co-operative Bank and with regard to the non-maintainability of the writ petition.

(20) For the reasons stated above, this bench does not find any merit in the petition.

(21) Consequently, the writ petition is dismissed.
