

Delhi High Court

Jagjit Singh Sangwan vs Union Of India And Ors. on 13 December, 1995

Equivalent citations: 1 (1996) CLT 83, 1996 (36) DRJ 192

Author: R Lahoti

Bench: R Lahoti, L Prasad

JUDGMENT R.C. Lahoti, J.

(1) The petitioner, claiming himself to be a director of Krishak Bharti Co-op. Ltd., New Delhi, has filed this petition seeking quashing of the resolution dated 20.4.95 passed by the Board of Directors of Indian Farmers Fertilizers Co-op. Ltd.(IFFCC), for short) followed by a direction restraining the respondents not to interfere in any manner with the petitioner's functioning as a director on the Board of Krishak Bharti Co-op.Ltd. (KRIBHCO, for short)- respondent No.3.

(2) Kribhco and Iffco are both multi state co-op. Societies incorporated under and governed by the provisions of the Multi State Co-operative Societies Act, 1984 (hereinafter 'the Act', for short). According to the petitioner he was nominated by the respondent No.2 by resolution dated 6.7.94 on the Board of Directors of Kribhco in terms of bye-laws No.37 and 38. The term of the nomination was for three years and would come to an end only in December, 1997. However, the petitioner's term as Director on the Board of Iffco expired on 29.3.95. He was then informed that his nomination on the Board of Kribhco has been superseded by the Board of Directors of Iffco in its meeting No.215 dated 20th April, 1995.

(3) The respondents have raised two preliminary objections to the maintainability of the petition. It is submitted that the dispute is one governed by Section 74 of the Act and hence is liable to be referred for decision to the Central Registrar and that being an alternate efficacious remedy available to the petitioner, the present petition does not lie. Secondly, it is submitted that what the petitioner is seeking is in substance enforcement of the bye-laws of the Cooperative Societies which bye-laws do not amount to "law" and hence a writ petition for enforcement of bye laws would not lie.

(4) According to the petitioner, his right to represent Iffco on the Board of Kribhco as director arises by virtue of the provisions contained in Section 32 of the Act and in as much as the bye-laws framed by a multi state cooperative society are required to be approved by the Central Government to be effective, the same have the force of law and hence he is justified in filing the writ petition. It is also submitted that the petitioner is seeking enforcement of his right to remain on the Board of Directors in the capacity of a nominated director (and not an elected one) which dispute would not be covered by Section 74 of the Act.

(5) Section 32 of the Act provides - "Subject to the provisions of this Act and the Rules, there shall be a board of directors for every multi - state co-op. society consisting of such number of members as may be provided for under the bye-laws."

(6) Kribhco has framed the bye-laws. Bye-law No.37 provides for the constitution of the Board of Directors. It provides, inter alia, for 5 directors to be nominated by Iffco of whom one will be the functional director. Bye-law 38 reads as under :-

(I)The term of office of the elected members of the Board of Directors shall be 3 years provided, however, that if for any unavoidable reason, fresh elections are not held before the expiry of their term,they shall continue to hold office for a further period of one year or till the elections are held, whichever is earlier.

(II)The term of office of the Members of the Board who are nominees of the Government of India or Iffco or Financing Institutions shall also be for a period of three years and co-terminus with elected Directors or as indicated from time to time by the Government or concerned Institution;

(III)The term of office of co-opted Director under Byelaw 37(vii) shall be co-terminus with the elected members of the Board.

(7) It is clear that Section 32 of the Act merely speaks of their being a Board of Directors of every multi state Coop. Society. How many will be the members on the Board, what will be the source of their appointment, and what will be the term of each of the category of directors, are all left to be provided by the bye-laws. If there be a dispute whether there would or would not be a Board of Directors of such a Society, the same is referable to Section 32 of the Act. If the dispute be as to the constitution of the Board or the source from which the directors are to be appointed or as to the term of appointment etc, also such disputes are referable to bye-laws.

(8) In Coop. Bank Ltd. VS. Addl Indt. Tribunal A.P, , their Lordships of the Supreme Court have held :- "THE by laws of a co-operative society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of Statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that the contemplated by the Act can be merely those which govern the internal management, business or administration of a Society. They are of the nature of the Articles of Association of a Company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute."

(9) The question also arise before a Full Bench of the High Court of Madhya Pradesh in Seva Ram Vs, Board of Revenue & Ors., 1983 Jlj 627 and the Full Bench opined - "once it was held that the rules have statutory force it was not correct to equate them with the kind of bye-laws framed only for internal management and working of the Society and those not having the force of law."

(10) In the Bihar State Co-op. Bank Ltd. VS. The Registrar Co-operative Societies Bihar, Patna, , the Division Bench has held :- "IF a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They might be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employee of a society, the bye-laws would be

binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. The byelaws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act. Besides, it is well established that the Rules, Bye-laws and Regulations have to be read subject to the provisions of the Act."

(11) It is, therefore, clear that the bye-laws are meant for the internal management of the Society. They have the effect of a contract between the members and the Society. They do not have the force of law. Merely because the bye-laws have the approval of the Central Government it would not make any difference. Breach of the bye-laws cannot be enforced in exercise of writ jurisdiction of the High Court. The first preliminary objection to the maintainability of petition is upheld.

(12) We may now deal with the second preliminary objection. Section 74 of the Act provides as under :-

74.(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of Section 2 of the Industrial Disputes Act, 1947) touching the constitution, management or business of a multi-State co-operative society arises -

(A)among members, past members and persons claiming through members, past members and deceased members, or (B)between a member, past member or a person claiming through a member, past member or deceased member and the multi co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or (C)between the multi-state co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the multi-state co-operative society, or (D)between the multi-state co-operative society and any other multi-state co-operative society, between a multi-state co-operative society and liquidator of one multi state co-operative society and the liquidator of another multi-state co-operative society.

SUCH dispute shall be referred to the Central Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute;

PROVIDED that all disputes in which a national co-operative society is a party shall be referred to the Central Registrar or any officer empowered to exercise the powers of the Central Registrar.

(2)For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi state co-operative society, namely:-

(A)a claim by the multi-state co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives or a deceased member, whether such debt or demand be admitted or not;

(B)a claim by a surety against the principal debtor where the multi state co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(C)any dispute arising in connection with the election of any officer of a multi-State co-operative society.

(3)If any question arises whether a dispute referred to the Central Registrar is or is not a dispute touching the constitution, management or business of a multi-State Co-operative Society, the decision thereon of the Central Registrar shall be final and shall not be called in question in any Court.

(13) SUB-SECTION (1) of Section 74 is a general provision having an overriding effect over the provisions contained in any other law for the time being in force. Any dispute touching the constitution management or business of multi State Co-operative Society, if arising between the parties covered by any of the clauses (a) to (c) of sub-Section (2), is required to be referred to the Central Registrar for decision. Jurisdiction of Courts to entertain such disputes is excluded. Sub-Section (2) enhances and expands the scope of sub-Section (1) by declaring that the disputes referred to in any of the clauses (a) to (c) thereof would also be deemed to be disputes touching the constitution management or business of a multi state cooperative society lest there should be any doubt whether or not they are the disputes covered by sub-Section (1). Clauses (a) to (c) of sub-Section (2) cannot be made use of for restricting the otherwise wide scope of sub-Section (1). If by reference to sub- section (1) a dispute falls within its ken one need not refer to sub-section (2) as sub-section (1) itself provides the answer. It is only in case of doubt as to the meaning or scope of applicability of sub-section (1) when reference may be had to the provisions of sub- section (2) for removal of the doubts. Whether or not one is a member of the Board of Directors of multi state cooperative society or entitled to represent on Board, is a question touching the management of a multi state cooperative society, without regard to the fact whether the mode of appointment consists of selection or election or nomination. Right of a person to be on Board is a dispute covered by Section 74(1) without regard to the mode or mechanism of appointment. The question arising for decision in the present petition is squarely covered by the phraseology used in Section 74(1).

(14) In Gujarat State Co-op, Land Development Bank Ltd. VS. P.R.Mankad , the expression touching the management of the Society' came up for examination. Their Lordships held :- "GRAMMATICALLY,one meaning of the term 'management' is : 'the Board of Directors' or 'the apex body' or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society.' In this sense, it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day business of the Society." "ANOTHER meaning of the term 'management', may be: 'the act or acts of managing of governing by direction, guidance, superintendence, regulation and control the affairs of a Society."

(15) Even if one were to refer to the provisions of clause (c) of sub-section (2) then also the dispute raised by the petitioner would be embarrassed within it by the phraseology used in clause (c). It

would be a dispute arising in connection with the election of any officer of a multi state cooperative society.

(16) The word 'election' is not to be assigned a too technical or restricted meaning in the context in which it has been used. 'Election' as used in Clause (c) of sub-Section (2) of Section 74 has a wider meaning.

(17) Chambers 20th Century Dictionary (New Edition, 1983) gives the following meanings to the following words :-

ELECT- to choose (not preference); to select for any office or purpose; to select by vote.

NOMINATE- to name; to mention by name; to appoint, to propose formally for election.

ADJ.NOMINATED;elect SELECT- to pick out from a number by preference; to free-select.

17.1 In Black's Law Dictionary (Sixth Edition) the word 'election' has been defined, inter alia, as -

"THE act of choosing or selecting one or more from a greater number of persons, The selection of one from a specified class to discharge certain duties in a state, corporation, or society. With respect to the choice of persons to fill public office or the decision of a particular public question or public policy, the term means in ordinary usage the expression by vote of the will of the people or of a somewhat numerous body of electors. "Election" ordinarily has reference to a choice or selection by electors, while "appointment" refers to a choice or selection by an individual".

THE word 'nominate' has been defined as - "to name designate by name, appoint, or propose for election or appointment."

17.2 In Dictionary of Synonyms & Antonyms, the New Lexicon Webster Dictionary of the Indian Languages, (1988 edition at page SA-16) the words - call, choose, cull, decide on, judge, opt, ordain, pick, prefer, select - all have been stated to be synonyms of 'elect'.

(18) Though bye-law No.37(iii) uses the words 'nominate', the power to nominate is not conferred on any single individual, it is conferred on IFFCO. In the very nature of functioning of an institution like Iffco, the 'nomination' of directors would naturally be preceded by an act of ballot in the Board of Directors or the General Body, as the case may be. In any case, the choice shall have to be exercised by a body of persons by choosing one out of several. Whosoever is so elected or selected, would be deemed to be nominated by Iffco as director on the Board of KRIBHCO.

(19) It is crystal clear that the word 'nominate' has to be read and understood in that light which if done it will be included within the meaning of the word 'election' as occurring in Clause (c) of sub-Section (2) of Section 74 of the Act.

(20) Looked at from either angle, the dispute raised in the petition is one falling within the ken of Section 74 of the Act. The petitioner thus has an alternate efficacious remedy available to him.

(21) For the foregoing, reasons the preliminary objections raised by the respondents are sustained. The petition is dismissed as not maintainable in view of the availability of an alternative efficacious remedy to the petitioner. No order as to the costs.