

Before : J. V. Gupta, C.J., S. S. Sodhi & R. S. Mongia, JJ.

JAGDEV SINGH,—Petitioner

versus

THE REGISTRAR, CO-OPERATIVE SOCIETIES, HARYANA,  
CHANDIGARH AND OTHERS,—Respondents.

Civil Writ Petition No. 6009 of 1987.

19th November, 1990.

*Haryana Co-operative Societies Act, 1984—S. 28(4)—Punjab Co-operative Societies Act (XXV of 1961)—S. 26—Punjab General Clauses Act, 1898—S. 14—Constitution of India, 1950—Art. 372—Co-operative Society—Managing Committee—Members of—Power of removal by vote of no confidence—In absence of provision in rules or bye-laws, office-bearers cannot be removed by vote of no confidence—Members have no inherent or implied right to move for a no confidence motion.*

*Held, that there is no power either under the Punjab Co-operative Societies Act or the Haryana Co-operative Societies Act and the by-laws framed thereunder providing that an office-bearer can be removed by vote of no confidence. The legislature never intended to give such a power of removal by vote of no confidence to the members of the Committee or Directors of the Bank.*

(Para 15)

*Held, that section 14 of the Punjab General Clauses Act, 1898 (equivalent to section 16 of the General Clauses Act, 1897) only talks of inherent power of removal in an authority which had the power of appointment. This section is not applicable to an office-bearer or a person who is elected to an office. Section 14 of the Punjab General Clauses Act is to be applied in cases of appointments made in the public service and not to an elected office.*

(Para 18)

*Held, that Article 372(1) of the Constitution has no application as there was no existing law prior to the promulgation of the Constitution, which gave right under the Co-operative Societies Act to pass a no confidence motion, which had to be saved under Article 372(1) of the Constitution.*

(Para 20)

*Held, that in absence of any provision in the Punjab Co-operative Societies Act, 1961, Rules and the Bye-laws made thereunder (as also in the Haryana Co-operative Societies Act, 1984, Rules and the*

**Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)**

Bye-laws made thereunder) for moving a no confidence in the President of a Managing Committee/Chairman of a Board of Directors of a Co-operative Bank, it is not permissible to move such a motion, inasmuch as such a power cannot be inferred nor such a power is inherent in the members of the Managing Committee/Director of the Bank. The Office bearers can only be removed in accordance with Section 27 of the Act read with Rules 25 and 26 of the Rules.

(Para 22)

**Haji Anwar Ahmed Khan v. The Punjab Wakf Board and others A.I.R. 1980 Punjab & Haryana, 306.**

(OVERRULED)

*Case referred by the Division Bench consisting of Hon'ble Mr. Justice S. S. Kang and Hon'ble Mr. Justice M. M. Punchhi on September 15, 1987 to a larger Bench for deciding the important question of law involved in the case, The Full Bench consisting of Hon'ble The Chief Justice J. V. Gupta, Hon'ble Mr. Justice S. S. Sodhi Hon'ble Mr. Justice R. S. Mongia, decided the case finally on 19th November, 1990.*

*Civil Writ Petition Under Section 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to:—*

- (i) *Issue a Writ in the nature of Writ of Certiorari calling for the records of the respondents relating to the Agenda Item No. 1 for meeting to be held on 16th September, 1987 and after a Perusal thereof Agenda Item No. 1, Annexure 'P/1' be quashed;*
- (ii) *Issue an ad interim Order restraining the respondents consider and pass Agenda Item No. 1, Annexure 'P/1' and action thereon during the pendency of this Writ Petition be stayed;*
- (iii) *Issue any other appropriate Writ, Order or Direction as this Hon'ble Court may deem fit and proper in the circumstances of this case;*
- (iv) *Dispense with the issuance of prior notices of motions on the respondents as if the same is insisted upon, the very purpose of this Writ Petition would be frustrated;*
- (v) *Dispense with the filing of certified copies of documents appended as Annexures;*
- (vi) *Award Costs of this petition.*

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

**B. S. Khoji, Advocate, for the Respondent.**

**Roop Chand, Advocate, for Respondent No. 3.**

**Mrs. Sheila Didi, for Respondent No. 3.**

---

JUDGMENT OF FULL BENCH, DATED THE 19TH SEPTEMBER,  
1990

*R. S. Mongia, J.*

(1) While admitting this petition, the Motion Bench desired that this case be decided by constituting a larger Bench, as the view expressed by a Division Bench of this Court in *Haji Anwar Ahmed Khan v. The Punjab Wakf Board and others* (1), required reconsideration. Later on, another petition—C.W.P. No. 2443 of 1989—*Rajwinder Singh v. Registrar, Co-operative Societies and others*, was also admitted and was ordered to be heard with this writ petition (C.W.P. No. 6009 of 1987), as the same law point arose for determination in this case also. The former case, i.e. C.W.P. No. 6009 of 1987 is under the Haryana Co-operative Societies Act; whereas the latter case, i.e., C.W.P. No. 2443 of 1989 is under the Punjab Co-operative Societies Act.

(2) The question of law that requires determination is whether in the absence of any provision in the Punjab Co-operative Societies Act, 1961, Rules and the Bye-laws made thereunder, (as also under the Haryana Co-operative Societies Act, 1984, Rules and the Bye-laws made thereunder) for moving a motion of no confidence in a President of a Managing Committee of a Co-operative Society/Chairman of a Board of Directors of a Co-operative Bank, is it permissible to move such a motion on the assumption that there is such an implied power.

(3) At the outset it may be observed that a similar matter came up for consideration before a Division Bench of this Court in *Haji Anwar Ahmed Khan's case* (supra) which was a case under the Punjab Wakf Act, 1954, wherein it was held that a Chairman of the Wakf Board could be removed by the members of the Board by passing a vote of no confidence, though there was no specific power under the Wakf Act or the Rules made thereunder for the removal of a Chairman by passing a motion of no confidence by the members of the Wakf Board. As stated in the opening paragraph, a later Division Bench doubted the correctness of the law laid down in *Haji Anwar Ahmed Khan's case* (supra) and referred the matter to a larger Bench for reconsideration of the correctness of the said case.

---

(1) A.I.R. 1980 Punjab and Haryana 306.

Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)

---

(4) It is not necessary to state the facts of these two cases in any detail. Suffice it to mention that in C.W.P. No. 6009 of 1987, petitioner Jagdev Singh was elected as a Director of the Board of Directors of the Rohtak Central Co-operative Bank Limited (hereinafter called the Bank) on 8th April, 1985, under the provisions of the Haryana Co-operative Societies Act, 1984 (hereinafter called the Haryana Act) and the Rules made thereunder. Thereafter, the petitioner was also elected as a Chairman of the Board of Directors on 6th June, 1985. Under Section 28(4) of the Haryana Act, the Board of Directors of a Co-operative Bank/Managing Committee of a Co-operative Society, holds office for a period of three years from the date of the election, unless removed by the Registrar under the provisions of the Act, Rules and the Bye-laws of the Co-operative Society. The Managing Director of the Bank issued an agenda for the meeting of the Board of Directors fixed for 16th September, 1987, item No. 1 whereof was to consider and decide the no confidence motion moved by six Directors of the Bank against the Chairman of the Board of Directors i.e. the petitioner. Aggrieved by this, the petitioner had filed the present petition on the plea that there was no provision under the Haryana Act, Rules or the Bye-laws for moving or passing a 'no confidence' motion against the office-bearers including the Chairman of the Board of Directors of the Bank.

(5) Similar are the facts in the other case (C.W.P. No. 2443 of 1989) which is under the Punjab Co-operative Societies Act. Under Section 26 of the Punjab Co-operative Societies Act, 1961 (hereinafter called the Punjab Act) the tenure of the office of the Managing Committee of a Co-operative Society/Board of Directors of a Co-operative Bank, has been fixed as three years. The election of Board of Directors in this case was held on 30th December, 1987 and on 27th January, 1988, petitioner Rajwinder Singh was elected as the President of the said Board of Directors. On 15th February, 1989, seven Directors of the Bank recorded proceedings showing that the petitioner had been removed from the office of the President by a vote of no confidence and another Director had been elected in his place as President. It was this action that was challenged in the said writ petition which as stated above, was ordered to be heard with C.W.P. No. 6009 of 1987.

(6) It may be noticed here that there is no dispute that under the Punjab Act or the Haryana Act or the Rules and the Bye-laws

made under these respective Acts, there is no provision for removal of a Chairman/President or for that matter any office-bearers by a vote of no confidence. The Punjab Act or the Rules made thereunder in fact do not talk of the election of President/Chairman of a Co-operative Society/Bank or for that matter any office-bearer. It is only the Bye-laws of a Co-operative Society which provide for the election of the office-bearers and their tenure. Section 30 of the Haryana Act talks of election of office-bearers, but does not provide for the tenure of the office-bearers. Prior to the promulgation of the Haryana Act, the Co-operative Societies in Haryana were governed by the Punjab Act, as applicable to Haryana. By Act No. 36 of 1976, the Haryana State had added Section 26(7) to the Punjab Act, fixing the tenure of the Chairman, Vice-Chairman and other office-bearers of the Committee to be co-terminus with the Committee's tenure and the tenure of the Committee had been fixed under Section 26(6) of the Punjab Act, as applicable to Haryana, as three years. However, Haryana Act does not specifically fix the tenure of the office-bearers, and, therefore, it can be taken to be co-terminus with the tenure of the Managing Committee of the Society, which has been fixed as three years under Section 28(4) of the Haryana Act.

(7) As far as the Punjab case is concerned (C.W.P. No. 2443 of 1989), Bye-law 30 of the Bank envisages the election of the President and the Vice-President and their tenure. Bye-law 30 is quoted below:—

“30. The Board of Directors shall elect a President, a Vice-President and/or a Managing Director from amongst themselves. They shall hold office for three years.”

(8) The scheme of both Punjab Act and the Haryana Act is that the general body of the Co-operative Society elects a Managing Committee (known as Board of Directors in the case of a Co-operative Bank), whose tenure has been fixed as three years, as stated above. The number of the members of the Managing Committee/Board of Directors vary from Society to Society. (Refer section 26 of the Punjab Act equivalent to section 28 of the Haryana Act). The 'Committee' is defined under Section 2(b) of the Punjab Act and 'Officer' of the Society has been defined under Section 2(h) of the Punjab Act. The members of the Managing Committee or the Directors of the Board of Directors, as the case may be, from amongst themselves, elect a President/Chairman whose tenure is also fixed as has been stated above.

**Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)**

Section 27 of the Punjab Act (equivalent to Sections 34 and 35 of the Haryana Act), provided for the removal or suspension of Committee or members thereof on certain grounds mentioned therein. Under Rule 26 of the Punjab Rules (equivalent to Rule 28 of the Haryana Rules, 1989), it has been provided as to when a member of a Committee ceases to hold office as such. Rule 25 of the Punjab Rules lays down the disqualifications for membership of a Committee. (Equivalent to Rule 27 of the Haryana Rules, 1989).

(9) Sections 2(b), 2(h), 26 and 27 and Rules 25 and 26 of the Punjab Act and the Rules, are quoted below for ready reference:—

“2(b) ‘committee’ means the governing body of a co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted;

2(h) ‘officer’ means the President, Vice-President, chairman, vice-chairman, managing director secretary, manager, member of committee, treasurer, liquidator, administrator and includes any other person empowered under the rules or the bye-laws to give directions in regard to the business of a co-operative society.

26. *Elections and nomination of members of committees.*—  
The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be elected unless he is a share-holder of the society.

(1-A) The committee of any co-operative society may subject to the approval of the Registrar, divide the area of operation of the society into zones for the purpose of election of members of the committee.

(1-B) The term of office of a committee shall be three years:

Provided that a milk producers co-operative society or a society dealing in notified commodity may provide in its bye-laws that as nearly as possible one-third members of its committee shall retire every year in the manner laid down in its bye-laws and in the event of such a provision being made the vacancies caused as a result of retirement shall be filled in the prescribed manner.

*Explanation.*—In the case of a milk producers co-operative society of a society dealing in notified commodity registered before the commencement of the Punjab Co-operative Societies (Amendment) Act, 1978, the first retirement of the aforesaid number of members of the committee shall take place immediately on the expiry of a period of one year of the date on which the amendment in the bye-laws of such of society providing for such retirement comes into force.

(1-C) Each committee shall ninety days before the expiry of its term, make arrangements for the constitution of a new committee in accordance with the provisions of this Act and bye-laws made thereunder.

(1-D) Where any committee has ceased to hold office and no committee has been constituted in accordance with the provisions of this Act and rules and bye-laws made thereunder, the Registrar may, by an order in writing, appoint a Government employee as an Administrator for such period as may, from time to time, be specified in the order and the Administrator shall, before the expiry of the period of his appointment, arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder:

Provided that the total period for which an Administrator may be appointed shall not in any case exceed one year and six months and in case such period is to be extended beyond one year the Registrar shall, except in the case of a co-operative society referred to in the second proviso, record his reasons in writing for such extension:

Provided further that the total period for which an Administrator may be appointed may extend up to four years in the case of a co-operative society where the Government have subscribed to the share capital to the extent of twenty lacs of rupees or more or have guaranteed the repayment of an amount raised by way of loan by that society to the extent of ten lacs of rupees or more and accumulated losses sustained by such a society at any time during a period of five years immediately preceding the date of appointment of the Administrator amount to more than five lacs of rupees, and where in the case of such a

**Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)**

---

society the total period of the three years fixed by this proviso as it existed immediately before the commencement of the Punjab Co-operative Societies (Amendment) Act, 1977, has expired before such commencement an extension in the period of appointment of the Administrator may be retrospectively from the date it expired, so, however, that the total period for which he may hold office shall not exceed four years.

(1-E) The provisions of sub-section (3) and sub-section (4) of Section 27 shall apply to the administrator appointed under sub-section (1-D) as if the administrator had been appointed under that Section.

(1-F) Notwithstanding anything contained in this Section, where the bye-laws of a society so provide the first committee may be nominated by the authority mentioned in those bye-laws.

(2) Notwithstanding anything contained in sub-section (1).—

(a) where the Government have subscribed to the share capital of a co-operative society or has guaranteed the repayment of the principal of and payment of interest on debentures issued for loans raised by a co-operative society, the Government or any person authorised by it in this behalf shall have the right to nominate on the committee such number of persons, not exceeding three or one-third of the total number of members thereof, whichever is less, as the Government may determine:

Provided that where the Government have subscribed to the share capital of a co-operative society to the extent of twenty lacs of rupees or more the Government may, notwithstanding anything contained in the bye-laws of the society,—

(a) appoint one of the members nominated in the aforesaid manner as Chairman of the committee of such society; or

(b) nominate another member in addition to those nominated in the aforesaid manner and appoint him as **Managing** Director:



---

Provided further that no person shall be appointed to act as Managing Director unless he is a member of the Indian Administrative Service, Punjab Civil Service (Executive Branch) or a Deputy Registrar, a Joint Registrar or an Additional Registrar Co-operative Societies.

- (b) where the Industrial Finance Corporation, the State Finance Corporation or any other financing institution notified in this behalf by the Government has provided finance to a co-operative society, the Industrial Finance Corporation, State Finance Corporation or other financing institution as the case may be, shall have the right to nominate one person on the committee.
- (2-A) Where the Government appoints a Chairman or Managing Director under the proviso to clause (a) of sub-section (2), the Chairman or Managing Director, if any, as the case may be, holding office immediately before such appointment shall cease to hold office on such appointment.
- (2-B) The terms and conditions of service of the Managing Director or Chairman, as the case may be, appointed by the Government shall be such as may be determined by the Government and the remuneration payable to the Managing Director or Chairman as the case may be, shall be paid out of the funds of the co-operative society.
- (3) A person nominated under-sub-section (2) shall hold office during the pleasure of the Government or the Corporation or other financing institution, as the case may be.
- (4) Where, in a Co-operative society in which shares have been subscribed for liability by way of guarantee for borrowing exceeding fifty per centum of the working capital of the society has been undertaken by the Government, a difference of opinion in respect of any matter arising between the nominated members of the committee and other members thereof, the matter shall be referred by the committee to the Government whose decision thereon shall be final and will operate as if the same were a decision taken by the committee.

*Section 27. Removal or suspension of committee or member thereof.*—(1) If, in the opinion of the Registrar, a committee or any member of a committee persistently makes

Jagdev Singh v. The Registrar, Co-operative Societies, Haryana,  
Chandigarh and others (R. S. Mongia, J.)

---

default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or bye-laws made thereunder, or commits any act which is prejudicial to the interest of the society or its members, or makes default in the implementation of production or development programme undertaken by the co-operative society, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections, if any, by order in writing—

- (a) remove committee, and appoint a Government servant as an administrator, to manage the affairs of the society for a period not exceeding one year as may be specified in the order;
  - (b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act and rules and bye-laws made thereunder.
- (2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be, and where the committee is suspended, make such arrangements, as he thinks proper for management of the affair of the society till the proceedings are completed:

Provided that if the committee or member so suspended is not removed it or he shall be reinstated and the period of suspension shall count towards its or his term.

- (3) The administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any Officer of the society and take all such action as may be required in the interest of the society.
- (4) The Registrar may fix the remuneration payable to the person appointed as administrator and the amount of

such remuneration and other costs, if any, incurred in the management of the society shall be payable from its funds.

- (5) The administrator shall, before the expiry of his term of office arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws framed thereunder.
- (6) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing bank to which the society is indebted.
- (7) A member who is removed under sub-section (1) may be disqualified for being elected to any committee for such period not exceeding three years as the Registrar may fix.

*Rule 25. Disqualification for membership of committee.—*  
No person shall be eligible for election as a member of the committee if:—

- (a) he is in default to any Co-operative Society in respect of any sum due from him to the society or owes to any Co-operative Society an amount exceeding his maximum credit limit;
- (b) he has directly or indirectly any interest in any contract to which the Co-operative Society is a party except in transactions made with the Co-operative Society as a member in accordance with the objects of the society as stated in the bye-laws;
- (c) he has at any time during a period of one year prior to the date of scrutiny of nomination papers, engaged in any private business trade or profession of any description which is carried on by the society;
- (d) he has committed any offence involving dishonesty or moral turpitude during a period of five years prior to the date of scrutiny of nomination papers;
- (e) he is subject to any of the restrictions contained in **rule 26;**

Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)

---

- (f) he has, during a period of 12 months preceding the date of filing of nomination papers, remained inactive as member or has been carrying on through agencies other than the Co-operative Society of which he is a member, the same business as is being carried on by Co-operative Society;
- (g) he is member of any Co-operative Society which has ceased to function or which has not fulfilled its objects as stated in its bye-laws and has been included in the list of 'D' Class societies maintained by the Registrar or is a member of an elected committee of a society which is under winding up process.
- (gg) he has ceased to be a member of any Co-operative Society within a period of one year, preceding the date of inclusion of such society in the list of 'D' Class societies maintained by the Registrar or in the operation of order of winding up of such society under section 57 of the Act:

Provided that nothing in clauses (g) and (gg) shall be deemed to debar any person from seeking election if the Society under winding up process of which he is a member, is a society with limited or unlimited liability and that person discharges all his liabilities including liability as surety if any in relation to such a society within two months from the receipt of assessment orders;

- (h) he has incurred any other disqualification laid down in the bye-laws of the society.

*Rule 26. Cessation of membership of committee.*—A member of the committee shall cease to hold his office as such if he: —

- (a) continues to be in default in respect of any sum due from him to the Co-operative Society for such period as may be laid down in bye-laws;
- (b) ceases to be a member;

- 
- (c) is declared insolvent;
  - (d) becomes of unsound mind;
  - (e) is convicted of an offence involving dishonesty or moral turpitude; or
  - (f) becomes subject to any disqualification which would have prevented him from seeking election, had he incurred that disqualification before election."

(10) Mr. B. S. Khoji, learned counsel for the writ-petitioner, contended that the tenure of the terms of office of the President/Chairman and other office-bearers having been fixed under the Statute of the bye-laws, could not be curtailed at the pleasure, whim or the fancy of the members of the Managing Committee/Directors of the Bank at any time in absence of a specific power in the Act, Rules or the bye-laws. He argued that the office-bearers are not appointed but are elected and the method and manner of their removal or cutting short their term has to be provided under the Act, Rules or the Bye-laws. Removal of the office-bearers by a vote of no confidence having not been provided in the Statute, Rules or the Bye-laws, that power cannot be read in the Statute, Rules or the Bye-laws and cannot be considered to be an inherent or implied power vested in that authority which had elected the office-bearers. According to the learned counsel, the provisions of the General Clauses Act that wherever any power to make an appointment is conferred in an authority the same authority shall also have the power to suspend or dismiss any person so appointed.

(11) The learned counsel buttressed his argument by submitting that the same Legislature in contemporaneous legislations concerning the Local Bodies like the Punjab Panchayat Samities Act, Punjab Gram Panchayat Act and the Punjab Municipal Act, had provided for removal of the President or the office-bearers by a vote or no confidence. If according to him, the same, Legislature, had not provided such a provision in the Co-operative Act, Rules or the Bye-laws, it cannot be read into it and rather it should be taken that the Legislature never wanted such a power to be conferred on the members of the Committee/Directors of the Bank.

(12) For the above-mentioned submissions, the learned counsel relied on a Division Bench Judgment of Andhra Pradesh High Court in *Veeramachaneni Venkata Narayana v. The Deputy Registrar of*

Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)

---

*Co-operative Societies, Eluru, West Godavari District and others* (2), a Division Bench judgment of the Bombay High Court in *Hindurao Balwant Patil and another v. Krishnaro Parshuram Patil and others* (3), as well as a Division Bench of this Court in *Joginder Singh, President, Rupar Central Co-operative Bank, Ltd., Rupar v. The Registrar, Co-operative Societies, Punjab and others* (4). The learned counsel went on to submit that the Division Bench judgment of this Court in *Haji Anwar Ahmed Khan's case* (supra) does not lay down correct law, inasmuch as the Division Bench had wrongly relied on the provisions of the General Clauses Act as well as Article 372(1) of the Constitution to take a different view than the one expressed by the Division Bench of Andhra Pradesh High Court in *Veeramachaneni Venkata Narayane's case* (supra).

(13) On the other hand, learned counsel for the respondents, submitted that the body which has the power to elect has always the inherent power to remove a person so elected and, therefore, if the majority of the members of the Managing Committee in a Co-operative Society had lost confidence in an office-bearer, the members of the Managing Committee/Directors of the Bank had always the inherent power to remove such an office-bearer and he could not be allowed to continue in spite of the fact that he did not enjoy the confidence of the majority of the members of the Managing Committee, who, in turn were the representatives of the general body. According to him, the Division Bench judgment in *Haji Anwar Ahmed Khan's case* (supra) lays down the correct law and the view of the learned Single Judge of the *Andhra Pradesh High Court in the matter of Nagalingam*, (which had been overruled by the Division Bench in *Veeramachaneni Venkata Naryana's case* (supra), was the correct view. According to the learned counsel, the office-bearers held the office during the pleasure of the members of the Managing Committee. However, the learned counsel tacitly admitted that if the tenure of the office-bearers is fixed under the terms of the Statute or the bye-laws, then there had to be a specific power for their removal by vote of no confidence. According to the learned counsel, the Haryana Act, Rules or the Bye-laws did not fix any tenure of the office bearers.

---

(2) I.L.R. (1975) A.P. 242.

(3) A.I.R. 1982 Bombay 216.

(4) 1977 P.L.J. 310.

(14) After hearing the counsel for the respective parties, we are of the opinion that the arguments of Mr. Khoji must prevail. The view expressed by the Division Bench of Andhra Pradesh High Court in *Veeramachaneni Venkata Naryana's case* (supra) is the correct view. The case before the Division Bench of the Andhra Pradesh High Court was also under the Co-operative Societies Act, where a tenure of the office-bearers had also been fixed by the bye-laws, but there was no power under the Act, Rules or the Bye-laws for the removal of the office-bearers by a vote of no confidence by the members of the Managing Committee. As far as the members of the Committee were concerned, they could only be removed by the General Body. The Judges of the Division Bench then came to the conclusion that the power of removal by vote of no confidence could not be read or inferred in a Statute or could be taken as an implied power. Coming to our own Acts in Punjab and Haryana, Section 27, Rules 25 and 26 in the Punjab Act which have already been quoted above, provided for the removal and the circumstances in which a member of a Committee can be removed, but there is no power providing that an office-bearer can be removed by a vote of no confidence. It can, therefore, be said that an office-bearer can also be removed only on the same grounds as provided in Section 27 read with Rules 25 and 26 of the Rules.

(15) Section 18 of the Punjab Panchayat Samities and Zilla Parishad's Act, 1961, lays down the tenure of the office-bearers as well as a power has been given for removing the office-bearers by a vote of no confidence. Similarly, in the Punjab Gram Panchayat Act, 1952 (Section 9), the term of the office of the Panches/Sarpanches has been specified as also a power of removal by vote of no confidence has been conferred. Even in Punjab Municipal Act, 1911 (Sections 21 and 22), the tenure has been fixed and a power of removal by a vote of no confidence has been specified. If the same Legislature for some other Local Bodies had specifically conferred the power of removal of office-bearers by a vote of no confidence, the omission of such power in the Co-operative Acts of Punjab and Haryana becomes very significant. Omission in Statutes is not to be lightly inferred has been pointed out at Page 33 of Maxwell's Interpretation of Statutes, twelfth edition :—

“It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted

Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)

to express, Lord Mersey said 'It is a wrong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do'. (*Thompson v. Gould and Co.* 'We are not' entitled' said Lord Loreburn L.C., to 'read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself' (*Vickers, Sons, and Maxim, Ltd. v. Evans.*"

In view of this omission in the Co-operative Acts and the Rules, we are of the opinion that the Legislature never intended to give such a power of removal by vote of no confidence to the members of the Committee. Directors of the Bank.

(16) The Division Bench of the Bombay High Court, in *Hindurao Balwant Patil's case* (supra), which was also a case under the Co-operative Societies Act, while dealing with the above proposition, held as under :—

"A right to contest the election and the right to move for setting aside an election or right to recall the person already elected are not common law rights. These rights must be conferred by the statute and therefore can be enforced only in accordance with and subject to the conditions laid down therein by the statute concerned. The right guaranteed by Art. 19 (1)(c) is a fundamental right common to all citizens. It is a right which can be enjoyed by all and everybody. This has not reference to the right conferred or created by a particular statute.

The Co-operative Societies Act has been enacted having regard to the directive principles of the State policy as enshrined in the Constitution of India. Co-operative movement is a socio-economic and moral movement. To say the least it is a part of the scheme of decentralisation and deconcentration of power. Collective power intoxication cannot be equated with co-operation. In the very nature of the said movement it must not be only self-regulated but the constraints and restraints are inherent in the movement itself. The rights conferred or created by the statute are coupled with duty. Fixity of tenure helps proper administration and management of the society. Co-operative



movement cannot be permitted to be polluted or checked by internal or invidual strike nor it can be permitted to be polluted by party politics. Whenever the legislature thought that a person is not fit to continue as a member of the board, specific provisions are made for his removal. A person is elected as Chairman or Vice-Chairman for a particular term. His office is controlled by the provisions of the Act. It is not an office at will and therefore, to such an office at will and therefore, to such an office Section 16 of the General Clauses Act, cannot apply."

The Bombay High Court also relied upon the decision of the Andhra Pradesh High Court in *Veeramachaneni Venkata Narayana's case* (supra). We are in respectful agreement with the proposition of law laid down by the Bombay High Court in the above-noted case.

(17) The Division Bench judgment of this Court in *Joginder Singh's case* (supra) does not really touch the point in issue before us and it is of no assistance one way or the other. There the parties were relegated to file an election petition under the Co-operative Societies Act.

(18) Now coming to the Division Bench judgment of this Court in *Haji Anwar Ahmed Khan's case* (supra), the learned Judges deciding the case relied on the provisions of the General Clauses Act as well as the provisions of Article 372(1) of the Constitution of India, to hold that there was an inherent power with the body which elects an office-bearer to remove him by a vote of no confidence. They distinguished the division Bench of Andhra Pradesh High Court in *Veeramachaneni Venkata Marayana's case* (supra) by taking resort to the provisions of the General Clauses Act and Articles 372(1) of the Constitution of India. At the outset it may be mentioned that this was a case under the Wakf Act, 1954. Though in the judgment reference has been made to the provisions of Section 21 of the General Clauses Act, 1897, but according to us, the reference was supposedly to section 14 of the Punjab General Clauses Act, 1898, which reads as under :—

"14. Power to appoint to include power to suspend or dismiss.—where by any Punjab Act a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being

Jagdev Singh v. The Registrar, Co-operative Societies, Haryana, Chandigarh and others (R. S. Mongia, J.)

---

power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority by it in exercise of that power.”

Identical provision is contained in Section 16 of the General Clauses Act, 1897. According to our considered view. Section 14 of the Punjab General Clauses Act, 1898 (equivalent to Section 16 of the General Clauses Act, 1897), only talks of inherent power of removal in an authority which had the power of appointment. This Section is not applicable to an office-bearer or a person who is elected to an office. Section 14 of the Punjab General Clauses Act is to be applied in cases of appointments made in the public service and not to an elected office.

(19) Article 372 (1) of the Constitution is in the following terms :—

“372(1). Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.”

(20) Article 372 as reproduced above, only provides that notwithstanding the repeal of the enactments by the Constitution, which have been referred under Article 395 of the Constitution, laws in force in the Territory of India immediately before the commencement of the Constitution would continue in force until altered or repealed by competent Legislature/Authority. The Division Bench in *Haji Anwar Ahmed Khan's case* (supra) observed that the Division Bench of Andhra Pradesh in *Yeeramacheneni Venkata Narayan's case* (supra), did not notice the provisions of the above-said article and did not consider the effect of the application of principles of common law as applicable in India. As already observed while discussing the Division Bench judgment of the Bombay High Court in *Hindurao Balwant Patil's case* (supra), the right to contest the election and the right to move to set aside the election or right to recall the person already elected are not common law rights. Otherwise also, we are of the view that Article 372(1) of the Constitution has no application as there was no existing law prior to the promulgation of the Constitution, which gave right under the Co-operative Societies Act to pass a no confidence motion, which had to be saved under Article 372(1) of the Constitution.

(21) We have perused the other Acts of the Local Bodies like the Zila Parishad Act, Punjab Municipal Act and Punjab Gram Panchayat Act, where there are provisions for moving a no confidence motion against the office-bearers. But we find that such provisions have been made very stringent regarding calling of a meeting for such a purpose as also majority required for removing an office-bearer by a no confidence motion. Under these Acts normal resolutions are passed by bare majority, whereas in case of a no confidence motion, the majority required is of 2/3rd. If we were to read such a power in the Co-operative Act, Rules or the Bye-laws that by a majority, an office-bearer could be removed it may lead to a very chaotic condition, inasmuch as the Managing Committee/Board of Directors which always consists of a very small number, every second day there will be a move to pass a no confidence motion against one or the other office-bearer. If such a right to move a no confidence motion is to be inferred or it was to be held that it was inherent in the body that elects the office bearers, then it would follow that even the general body can by a vote of no confidence remove a member from the membership of the Managing Committee. That would be really upsetting the whole concept of the Co-operative movement.

(22) For the foregoing reasons, the answer to the question posed in the beginning of the judgment, is that in absence of any provision in the Punjab Co-operative Societies Act, 1961, Rules and the Bye-laws made thereunder (as also in the Haryana Co-operative Societies Act, 1948, Rules and the Bye-laws made thereunder) for moving a no confidence in the President of a Managing Committee/Chairman of a Board of Directors of a Co-operative Bank, it is not permissible to move such a motion, inasmuch as such a power cannot be inferred nor such a power is inherent in the members of the Managing Committee/Director of the Bank. The Office bearers can only be removed in accordance with Section 27 of the Act read with Rules 25 and 26 of the Rules. With respect we are unable to agree with the law laid down by the Division Bench in *Haji Anwar Ahmed Khan's case* (supra), (which was a case under the Wakf Act), to our mind, does not lay down correct law.

(23) Consequently, both the writ petitions are allowed and the resolutions passed for removing the Chairman/President of the respective Banks are quashed. The parties are left to bear their own costs.

---

R.N.R.