**(2015) 09 RAJ CK 0063**

**In the Rajasthan High Court**

**Case No :** Civil Misc. Stay Appl. No. 9073/2015 in Civil Writ Petition No. 10356 of 2015

Ajay Chopra and Others APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

**Date of Decision :** 29-09-2015

**Acts Referred:**

**Citation :** (2015) 09 RAJ CK 0063

**Hon'ble Judges :** Alok Sharma, J

**Bench :** Single Bench

**Advocate :** Kamlakar Sharma, Senior Advocate, S.R. Joshi and Rahul Joshi, for the Appellant; Rajendra Prasad, A.A.G, Advocates for the Respondent

**Final Decision :** Dismissed

## Judgement

Alok Sharma, J—Heard on the stay application.

2. Mr. Kamlakar Sharma Sr. Advocate with Mr. Rahul Joshi has submitted that the order dated 6.7.2015 passed by the Addl. Registrar, Cooperative Societies, Jaipur Division, Jaipur appointing an Administrator to the Rajasthan Urban Cooperative Bank Limited (hereinafter ''the Cooperative Bank''), a society registered under the Rajasthan Cooperative Societies Act, 2001 (hereinafter ''the Act of 2001'') superseding its Board of Directors is in contravention of section 30 of the Act of 2001. It has been submitted that the said order is violative of Rule 36 of the Rajasthan Cooperative Societies Rules, 2003 (hereinafter ''the Rules of 2003'') which requires an opportunity of hearing to the Board of Directors prior to its supersession. It has been further submitted that the impugned order dated 6.7.2015 has been passed on a misapprehension that it was so warranted under the award dated 26.6.2015 passed in pursuance to the Judgment dated 11.2.2015 in D.B. Special Appeal (Writ) No. 1287/2014. The Judgment of the Hon''ble Division Bench could be invoked, as it was vide order dated 30.4.2015 for supersession of the Board of Directors and for appointing an Administrator only till the passing of the award, which was so passed on 26.6.2015- not

thereafter. It has been submitted that in the award dated 26.6.2015 the Arbitrator has specifically found on issue No. 3 before him that the processes for the election of the Board of Directors of the Cooperative Bank during the elections of 2014 were duly adhered to and nothing improper or illegal was attributable thereto. It has been submitted that following the decision of the Administrator over the Cooperative Bank on 27.11.2008 invoking the powers of the Board under Clause 9(b)(v) of the Bye-laws of the Cooperative Bank - registered society, the minimum share capital rendering a member eligible to vote at an election of the Cooperative Bank was 150 shares of Rs. 100/- each and the said resolution had been duly accepted by the Registrar, Cooperative Societies. It has been submitted that in any event the private respondents were inactive members of the Cooperative Bank and had not participated in the affairs of the society. By way of an additional affidavit it has been pointed out that at no point between 1961 and 2014 more than 110 members of the Cooperative Bank ever participated in the Annual General Meeting and hence to set up a case based on the invalidity of the elections of the Cooperative Bank in 2009 and 2014 for reasons of unlawful exclusion of the private respondents and others is wholly mischievous and a mere attempt to embarrass the Board of Directors and prejudice the lawful functioning of the Cooperative Bank.

3. Mr. Rajendra Prasad - learned Addl. Advocate General appearing for the respondents has submitted that the Hon''ble Division Bench of this Court in D.B. Special Appeal (Writ) No. 1287/2014 had an occasion to consider the issue of exclusion of members of the Cooperative Bank in the elections of the Board of Directors in the year 2009 and 2014. In para 12 of its Judgment rendered on 11.2.2015 after recording the contentions of the parties, the Judgment of the learned Single Judge holding the challenge to the elections of 2009 as infructuous, was set aside and it was clearly recorded that the Single Judge has failed to appreciate that 4500 odd members were ousted and deprived from casting their votes at the elections of Board of Directors of the Cooperative Bank "on the false pretext" of their failing to contribute Rs. 15,000/- each as share capital. It was further held that the administrative decision of the then Administrator of the Cooperative Bank seeking to enhance the share capital as also mandatorily the minimum shareholding of the members was not carried out as per the Bye-laws nor the decision had any approval of the Registrar of the Societies consequent to which it could neither have been implemented nor any member who had failed to acquire 150 shares of the face value of Rs. 100/- each could not have been held to be a defaulter and thus deprived of his voting rights in the 2009/2014 election of the Board of Directors. It has been submitted that the Registrar of Cooperative Societies was on the findings of the Hon''ble Division Bench to consider appointing an Administrator of the Society during the pendency of the challenge to the elections of 2014 before the Arbitrator in terms of the Act of 2001. The Division Bench further directed that the Arbitrator seized of the dispute with regard to the elections of the Board of Directors of the Bank in 2014 would decide the dispute before him within a period of three months

taking note of the observations in the Judgment.

4. The learned Addl. Advocate General submitted that following the aforesaid Judgment, the Board of Directors of the Cooperative Bank elected in 2014 were superseded and an Administrator appointed on 30.4.2015. Thereafter, the Arbitrator seized of the dispute qua the elections of the Rajasthan Urban Cooperative Limited in 2014 on issue No. 1 pertaining to the wrongful exclusion of thousands of members from voting rights at the elections of 2014 concluded that such voters could not have been excluded on the plain language of clause 26(1) of the Bye-laws of the Bank as they were members of the society and entitled to cast votes, particularly as Clause 26(1) aforesaid had not been amended/modified by the Cooperative Bank as per the Bye-laws and the amendment also was thus not obviously approved by the Registrar of Cooperative Societies.

5. The learned Addl. Advocate General then submitted that section 30 of the Act of 2001 provides that where a Committee of a Cooperative Society, as the Bank is, inter-alia commits any act prejudicial to its interests or its members or there is a stalemate in the constitution or the functioning of the Committee, the Committee (BOD) can be superseded and an Administrator appointed to manage the affairs of the society till the elections are held afresh for the Committee of the society. It has been submitted that in the obtaining situation, with the Arbitrator finding that the thousands of members of the Cooperative Bank were wrongly excluded from casting their votes at the elections of 2014 despite Clause 26(1) of the Bye-laws of the Cooperative Bank so mandating, it is apparent that there is an evident stalemate in the constitution and the functioning of the Committee/Board of Directors by its underlying invalidity and the affairs of the Cooperative Bank are being run in a manner prejudicial to the interests of its members. Hence the Administrator has been rightly appointed under the impugned order dated 6.7.2015, submitted the learned Addl. Advocate General.

6. Mr. S.D. Khaspuria appearing for the private respondents has substantially adopted the arguments of the learned AAG. He has further brought to the notice of the Court that in terms of Clause 8 of the Bye-laws of the Cooperative Bank the authorized share capital could only be increased by a General Body Resolution subject to the approval of the registering authority. Counsel has submitted that no such resolution was passed by the General Body and instead enhancement of the share capital and the minimum requirement of each member acquiring 100 shares of the face value of Rs. 150/- was based on the arbitrary and an ultra vires decision purportedly taken by the Administrator of the Cooperative Bank on 27.11.2008. A reading of the said decision itself shows so-as no reference to the AGM of the Cooperative Bank having enhanced the share capital at a duly convened meeting has been made therein. The resolution dated 27.11.2008 was therefore of no effect. Drawing of an electoral roll based thereon and the following elections to the Board of Directors (Committee) were thus invalid and a nullity. Reference has been made to Clause 26(1) of the Bye-laws of

 

the Cooperative Bank dealing with voting rights which provides that each member shall have a one vote irrespective of the number of the shares held.

7. Mr. Khaspuria appearing for the private respondents has also submitted that under section 16 of the Act of 2001 once a person is inducted as member of a society, his membership does not cease without his resignation, death or removal or expulsion resulting from incurring any of the disqualifications specified under the Act, Rules made there-under and the Bye-laws of the concerned Society. It has been submitted that the petitioner has not placed on record, either before the Arbitrator or before this Court, any material to show that the membership of the private respondents in the Cooperative Bank had come to an end i.e. ceased, owing to which they were disentitled to participate in the elections of 2014 for the Board of Directors/Committee. It has been submitted that in the circumstances the Board of Directors/Committee''s election in 2014 held excluding the private respondents and others similarly placed was challenged by laying a dispute under the Act of 2001 which was referred to the Arbitrator. The Arbitrator vide his award dated 26.6.2015 has held that the private respondents and others similarly placed members/shareholders of the Cooperative Bank were entitled to cast votes as members at the elections for the Board of Directors and were wrongly excluded. It has been submitted that the fraud in the election to the Board of Directors/Committee had also been earlier conclusively found by the Hon''ble Division Bench in its order dated 11.2.2015 in D.B. Special Appeal (Writ) No. 1287/2014. In the circumstances it is evident that the affairs of the society were being conducted in a manner prejudicial to the interest of its members and in view of the underlying invalidity of the elections of 2014 to the Board of Directors/Committees of the Cooperative Bank there was an obvious stalemate in its management consequent to which the power under section 30 of the Act of 2001 has been rightly invoked. The tenure of the Administrator first appointed on 30.4.2015 as per the directions of the Hon''ble Division Bench in its Judgment referred to above has been rightly extended by the impugned order dated 6.7.2015 and corrective steps as directed by the Arbitrator on his finding an issue No. 1 underway. It has been submitted that the petitioner has no case whatsoever for interim protection from this Hon''ble Court in the circumstances as also the law obtaining.

8. Having heard counsel for the parties on the stay application, I am of the considered view that no case of interim relief is made out. The findings of the Hon''ble Division Bench in its Judgment dated 11.2.2015 as upheld upto the Hon''ble Supreme Court with the dismissal of Special Leave to Appeal (Petition) No. 9851/2015 on 6.4.2015 are very material. The Hon''ble Division Bench has in no uncertain terms held that over 4500 members of the Cooperative Bank were ousted and deprived of their right to vote at the election for choosing the Board of Directors/Committee on the false pretext of their failing to contribute Rs. 15,000/- towards share capital as the administrative decision purportedly enhancing the share capital and mandating a minimum holding of 100 share of the face value of Rs. 150/- each was not carried out by way of an amendment as

 

per the Bye-laws and operative law. The Division Bench further held that consequently the decision to enhance the share capital of the Cooperative Bank as also the minimum shareholding requirement of members could not have been implemented nor any member declared to be a defaulter and deprived of his voting rights in the elections for the Board of Directors merely on the failure to purchase 150 shares of the face value of Rs. 100/- aggregating to Rs. 15,000/-. The finding of the Hon''ble Division Bench have been in large measure reflected in the award dated 26.6.2015 where the Arbitrator has held that the private respondents as members of the Cooperative Bank had a right to vote under clause 26(1) of the Bye-laws of the Cooperative Bank in the election to the Board of Directors in the year 2014. In the circumstances, there was prima-facie material available with the State Government in holding that the affairs of the Cooperative Bank were being conducted in a manner prejudicial to its members and further that the dispute as to the validity of the election of the Board of Directors in the year 2014 created a situation where constitution of the Board with its very legitimacy being in question was in effect a stalemate which warranted the appointment of an Administrator.

9. It is on record that the Administrator was first appointed on 30.4.2015 and the said order is not under challenge before this Court. The impugned order dated 6.7.2015 is a mere continuation thereof. Aside of the aforesaid, prima-facie I do not find any traction in the submissions of the Sr. Counsel for the petitioner that the order dated 6.7.2015 is vitiated for denial of principles of natural justice. In the facts obtaining, with the finding of the Division Bench''s Judgment dated 11.2.2015 as also that of the Arbitrator on issue No. 1 in his award dated 30.6.2015, providing an opportunity of hearing to the petitioner prior to the extension vide order dated 6.7.2015 of the first appointment of the Administrator on 30.4.2015 would have been an idle exercise in futility. No prejudice at this stage, in the facts and circumstances of the case, therefore can be prima-facie found to have been occasioned to the petitioner in the passing of the impugned order dated 6.7.2015.

10. It is not for this Court to address the issue on the legality and validity of the elections of 2014 to the Board of Directors/Committee of the Cooperative Bank as the matter is formally under challenge by way of an appeal filed by the petitioner against the award dated 26.6.2015, under section 105 (10)(d) of the Act of 2001. The private respondents having approached this Court against the award dated 26.6.2015 as to some of its findings, by way of a writ petition, have also been relegated vide order dated 5.5.2014 to their remedy of an appeal there-against. Address on the issue of validity of elections of Board of Directors/ committee of the Cooperative Bank in 2014 would only entail prejudice to one of the two disputant parties in their appeals against the award dated 26.6.2015.

11. In the circumstances detailed here-in-above, as earlier recorded, no case for interim relief to the petitioner is made out. The stay application is accordingly dismissed.

 