

---

**(1980) 09 RAJ CK 0005**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 499 of 1980**

Akal Raj Mehta

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

---

**Date of Decision :** 03-09-1980

**Acts Referred:**

Rajasthan Co-operative Societies Act, 1965 — Section 128, 34(7), 36

**Citation :** (1980) WLN 345

**Hon'ble Judges :** D.P. Gupta, J

**Bench :** Single Bench

---

## Judgement

D.P. Gupta, J.—In this writ petition the petitioner has challenged the order passed by the State Government on 3-12-1979. The circumstances, which have led to the filing on the present writ petition may be briefly narrated.

2. Jodhpur Nagrik Sahakari Bank Ltd, Jodhpur (hereinafter called) "the Bank") is a co-operative society duly registered under the provisions of the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as the Act"). A Board of Directors of the Bank was elected on December 21, 1975 which consisted of 9 Directors and the petitioner Shri Akal Raj Mehta was elected as the Vice-Chairman of the Board of Directors of the Bank Later on a suit was filed by the petitioner in the court of Munsiff, Jodhpur City for the removal of the Chairman of the Board of Directors of the Bank and in that such, an interim injunction was issued by the learned Munsiff on June 12, 1979 restraining the Chairman of the Bank from performing the functions and duties of such Chairman. Subsequently, a general meeting of the members of the Bank took place on July 22, 1979 by which the Board of Directors was superseded and it was decided that the election of new Board of Directors should take place on August 26, 1979 and until the election of the new Board of Directors took place, the petitioner, Shri Akal Raj Mehta was authorised to perform the functions of Directors, as an ad-hoc Chairman.

3. Joint Registrar. Co-operative Societies, Jodhpur region, apparently acting

under the provisions of Section 36 of the Act, by his order dated August 10, 1979 held that the existing Board of Directors of the Bank has been superseded and in order to carry on the functions of the Bank, he appointed Shri Avinash Chandra Ranwah, Special Auditor, Co-operative Societies as the Administrator of the Bank for a period of six Months. An appeal was preferred by the petitioner against the aforesaid order passed by the Joint Registrar which was heard by the Deputy Secretary, Co-operative, Department of the State Government. The State Government by its order dated 3-12-1979, held that the Joint Registrar acted in haste and did not take proceedings in accordance with the provisions of Sub-section (6) of Section 36 of the Act and as such the order passed by the Joint Registrar was defective. The State Government also held that the Administrator appointed by the Joint Registrar also acted in a hasty manner, because when the ad hoc Chairman refused to give over charge, then proceedings in accordance with the provisions of Section 37 of the Act should have been resorted to. The State Government took notice of the fact that the earlier Board of Directors had already been superseded by the general body of the Bank and the power and authority of the Board of Directors was vested in the ad hoc Chairman appointed by the general body. Thus, the only course open was to hold fresh election of the Board of Directors. However, the State Government held that as there was no Board of Directors functioning it would be proper to confirm the order passed by the Joint Registrar appointing an Administrator for carrying on the functions of the Bank. The State Government also directed that the Regional Auditor, Jodhpur, may be appointed as the Administrator of the Bank and that should take over charge with immediate effect. The Assistant Registrar, Co-operative Societies was directed to hold fresh elections of the Board of Directors without any avoidable delay.

4. So far as the taking of proceedings u/s 36 of the Act are concerned, the finding of the State Government is that the procedure laid down u/s 36 was not followed by the Joint Registrar. The State Government did not give any finding as to whether any one of the conditions specified in Sub-section (1) of Section 36 existed, which alone could have necessitated the appointment of an Administrator under the provisions of Section 36. The State Government, having taken notice of the fact that the Board of Directors of the Bank had already been superseded by the general body, and the management of the Bank was vested for the time being in an ad-hoc Chairman, felt that proper arrangement should be made for carrying on the work of Bank and as such the State Government thought it fit to appoint an Administrator. Learned Deputy Government Advocate frankly stated at the Bar that the appointment of an Administrator by the State Government in these circumstances cannot be considered to have been made under provisions of Section 36 of the Act. Although the Joint Registrar purported to act u/s 36, but when the State Government came to the conclusion that the procedure laid down in Section 36 was not followed, then any action u/s 36 (1) could not have been taken. Consequently, there could be no valid order removing the Board of Directors or appointing an Administrator to manage the affairs of

the Bank, within the meaning of Section 36 of the Act. As I have already pointed out above, the Board of Directors was not functioning at the time when the Joint Registrar passed his order, purported to be u/s 36 of the Act, because the Board of Directors had already been superseded by the general body of the Bank. As such the question of removal of the Board of Directors, therefore, by passing an order u/s 36 did not arise. Moreover, when the State Government did not find that any one of the conditions specified in Section 36 existed at the time when the Joint Registrar passed his order, no action u/s 36 could possibly or lawfully be taken either by the Joint Registrar or the State Government. Learned Deputy Government Advocate candidly accepted the contention of the learned Counsel for the petitioner that there was no order of removal of the Board of Directors within the meaning of Section 36. The impugned order passed by the State Government is rather confusing because while on the one hand the State Government observed that the provisions of Section 36(b) were not followed and the order passed by the Joint Registrar was defective, yet on the other hand it proceeded to confirm the action taken by the Joint Registrar. The State Government having held that the procedure prescribed in Section 36 was not complied with, as such the Joint Registrar could not have passed a valid order under Sub-section 1(1) of Section either removing the Board of Directors or appointing an Administrator under that Sub-section.

5. It was however, argued by the learned Deputy Government Advocate that the order of appointment of the Administrator may be considered to have been made under the supervisory jurisdiction of the State Government u/s 128 of the Act. On the other hand, learned Counsel for the petitioner contends that no proceedings u/s 128 were taken and the appointment of the Administrator made by the order of the State Government could not be considered to be one under the provisions of Section 128. According to the learned Counsel, the proceedings u/s 128 could be taken only by the Additional Registrar to whom the powers under that provision have been delegated by a notification. The notification issued by the State Government and relied upon by the learned Counsel for the petitioner does not relate to the power of the State Government u/s 128 but concerns only to the power of Registrar. However, on the showing of the State Government itself, action u/s 36 could not have been taken as such the order passed by the Joint Registrar u/s 36 of the Act should have been set aside by the State Government instead of its being confirmed. A reading of the entire order passed by the State Government dated 3-12-1979 leads to the conclusion that there was no proper or valid order passed by the Joint Registrar u/s 36 and that the State Government also did not purport to act either under the provisions of Section 36 or u/s 128 of the Act. The consequence thereof is that the order of removal of the Board of Directors of the Bank and the appointment of Administrator u/s 36 is illegal and must be set aside. The State Government cannot be said to have confirmed the order of Joint Registrar in this respect but if it purported to do so, the order of the State Government in this respect also deserves to be set aside. It may be pointed out that the disqualification

mentioned in Sub-section (7) of Section 34 of the Act, barring members of the Board of Director from taking part in the election of such members can only become effective if there is an order of removal passed u/s 36. As in the present case, no valid order of removal of any member of the Board of Directors nor even the ad-hoc Chairman has incurred the disqualification specified in Sub-section (7) of Section 34 and as such they are not debarred from taking part in the elections to the membership of the Board of Directors.

6. The only question which now remains to be decided is as to where the management of the Bank should be allowed to rest for the time being. It is not in dispute between the parties that it would be conducive to the interests of the Bank that fresh elections of the members of the Board of Directors should take place at the earliest so that the Bank may be able to manage its own affairs according to the democratic process. It has been submitted that before the elections to the Board of Directors could take place, a list of the members of the general body of the Bank should be published on or before September 30, 1980. Such a step is necessary before the elections of the governing body or the Board of Directors can take place. It is also agreed by the learned Counsel for the parties that the elections of the Board of Directors may be held within a maximum period of 2 months from today. The State Government also in its order dated 3-12-79 expressed the view that the election should be held at the earliest and delay should be avoided. However, the elections of the which was passed in this writ petition. But now there appears to be no impediment in holding the elections to the Board of Directors and it is directed that the elections of the members of the Board of Directors should be held within a period of two months from today.

7. The question which now remains is of the management of the affairs of the Bank for a period of two months until the elections to the Board of Directors are held. Even if the State Government did not purport to appoint an Administrator u/s 128 of the Act, still it would be conducive, in the interests of free and fair elections of the Board of Directors, that such elections should be held under the supervision of a Government official. The petitioner has not made any grievance so far as the Regional Auditor, Jodhpur is concerned, who was appointed as the Administrator by the State Government and in my view it would be just and proper if the elections are held under his supervision and if he is allowed to act as the interim Administrator of the Bank during this period of 2 months till the fresh elections of the Board of Directors take place. Therefore, the petitioner is directed to hand over charge to the Regional Auditor forthwith so as to facilitate the holding of elections and also in order to shorten the litigation that may unnecessarily arise in the matter. The Regional Auditor, Jodhpur, who was appointed as the Administrator by the State Government should take charge forthwith of the affairs of the Bank and the petitioner should hand over charge to him without any delay. It is no doubt expected that the Regional Auditor, who will thus act as an interim Administrator, shall act fairly and impartially and shall hold the elections to the Board of Directors without any avoidable delay for carrying on the duties and functions of the Board of Directors during the intervening period. The

publication of the list of the members of the general body of the Bank as well as the holding of elections of the members of the Board of Directors shall be take place under the supervision of the Regional Auditor, who shall be responsible for carrying the aforesaid directions of this Court. Counsel for both the parties have agreed to the arrangement which has been specified above in this order.

8. The writ petition is accordingly decided as Indicated above and the parties are left to bear their own costs.