

(2011) 04 DEL CK 0079

In the Delhi High Court

Case No : Writ Petition (C) No. 105 of 2010

Anand Prakash

APPELLANT

Vs

The Delhi State Co-Operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3.1
Constitution of India, 1950 — Article 12, 226

Citation : (2011) 6 ILR Delhi 251

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ram Narayan Singh, for the Appellant; Anand Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The question of maintainability of this writ petition against the Respondent is for consideration.

2. The Petitioner claims to have been employed with the Respondent, initially in the year 1993 as a Clerk-cum-Typist and was last working as a Manager. He was charged with misconduct by way of making payments against false credit entries, of misuse of his power by way of cash payment of huge amount, of ignoring of the prescribed banking rules and having acted in excess of his powers and having not taken care of the interest of the Bank and having tampered with the record of the Bank. The inquiry conducted found the Petitioner guilty and the competent authority of the Respondent imposed a penalty of compulsory retirement on the Petitioner. The appeal preferred by the Petitioner was rejected by the Board of Directors of the Respondent. Aggrieved from the said action of the Respondent, the present writ petition has been filed averring the inquiry and the proceedings to be volatile of the service rules applicable to the staff of the Respondent and seeking quashing of the order of his compulsory retirement and mandamus against the Respondent to reinstate the Petitioner into service.

3. Notice of the petition was issued. The Respondent has filed a counter affidavit inter alia disputing the maintainability of the writ petition. It is pleaded that the Respondent is a Co-operative Society registered under the Delhi Co-operative Societies Act, 2003, is not an instrumentality of the State and is not an authority within the meaning of Article 12 of the Constitution of India; that the service rules governing the conditions of service of employees of the Respondent are framed by the Board of Directors i.e. the Managing Committee of the Society in exercise of powers under the bye-laws of the Society and the said service rules / bye-laws are not statutory and therefore cannot be held to be law or have the force of law and cannot be enforced through a petition under Article 226. It is further pleaded that the conditions of service between the Respondent and the Petitioner are a matter of contract; that the affairs of the Respondent are administered by the Management in accordance with the democratically expressed will of the members and u/s 30 of the Co-operative Societies Act also, the final authority of a Co-operative Society vests in the General Body of the members. Rejoinder to the counter affidavit has been filed by the Petitioner stating that since the Registrar of the Co-operative Societies has the control of the Respondent and who in turn is under the Control of the Respondent No. 2 Government of National Capital Territory of Delhi, the writ petition is maintainable. It is further pleaded that under the service rules aforesaid, the punishment of compulsory retirement could not have been meted out to the Petitioner without the approval of the Registrar of Co-operative Societies and which had not been taken. Yet another reason given for maintainability of the writ petition is the list of judgments adjudicating writ petitions preferred against the Co-operative Societies. It is further contended that the service rules and bye-laws of the Respondent are statutory in character. Yet another reason given for maintainability of the writ petition is that since the Central Civil Services (Conduct) Rules, 1964 and Central Civil Services (Classification, Control and Appeal) Rules, 1965 have, under the service rules, been applied to the Petitioner, the writ petition would be maintainable. Yet further it is pleaded that since the Chairman of the Board of Directors of the Respondent is a MLA, an elected member of the Legislative Assembly of the Respondent No. 2 Government of NCT of Delhi, the writ would lie. It is also suggested that the Respondent having been registered under the Co-operative Societies Act, writ would lie there against. The counsels for the parties have been heard on the aspect of maintainability of the writ petition.

4. I may in this regard at the outset notice that the Apex Court in *Supriya Basu and Others Vs. West Bengal Hsg. Board and Others*, held that a Co-operative Society is constituted on agreement between members thereof who had agreed to abide by the provisions of the Co-operative Societies Act and the Rules framed there under or the bye-laws framed by the Society; that where the society is not a department of the State and is also not a creature of a statute but merely governed by a statute, only if it is established that the mandatory provision of a statute has been violated, would a writ petition be maintainable there against.

Referring to U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , it was held that the question to be considered in determining whether a writ petition would lie against a Co-operative Society is, what is the nature of the statutory duty placed on it and the Court is to enforce such statutory public duty.

5. Reference may also be made to S.S. Rana Vs. Registrar, Co-operative Societies and Another, which was also a case of termination by Kangra Central Co-operative Bank Ltd. constituted under the Himachal Pradesh Co-operative Societies Act, 1968 of the services of its Branch Manager. The contention of the Branch Manager in that case was that the activities of the Co-operative Society being to lend money to the agriculturists, the same would come within the purview of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, and the writ petition alleging the termination to be contrary to rules, bye-laws and principles of natural justice would be maintainable. The Supreme Court held that where a Society has not been constituted under an Act and functions like any other Co-operative Society and is merely regulated by the Co-operative Societies Act and where the State has no say in the functions of the Society, and where the membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act and the State is not the majority shareholder of the Society and does not exercise any direct or indirect control over the affairs of the Society for deep and pervasive control and the State has only to nominate one Director, it could not be said that the State exercises any functional control over the affairs of the Society. It was further held that several other relevant questions required to be considered in deciding whether writ would lie against the Society are, (i) How the Society was created; (ii) Whether it enjoys any monopoly character; (iii) Do the functions of the Society partake to statutory functions or public functions; and (iv) Can it be characterized as public Authority. The Kangra Central Co-operative Bank Ltd. was held to be not answering any of the aforesaid tests. It was held that general regulations like the Companies Act or the Co-operative Societies Act would not render the activities of a Company or a Society as subject to control of the State and the purpose of the provisions of the Companies Act or the Co-operative Societies Act is only to ensure proper functioning of the Society and the State or the statutory authorities as the Registrar Co-operative Societies would have nothing to do with the day-to-day functioning of the Society.

6. I may notice that the writ petition as filed does not contain any pleadings whatsoever as to the nature, character or constitution of the Respondent or as to the maintainability of the writ petition against the Respondent and presumes the writ petition to be maintainable. Upon objection being taken in the counter affidavit, in rejoinder also, the maintainability of the writ petition is justified only for the reason of the control exercised by the Registrar Co-operative Societies under the Co-operative Societies Act qua the Respondent and the Chairman of the Board of Directors of the Society being an MLA and the service Rules of the Respondent providing for the applicability of CCS/CCA Rules to employees of the

Society. In view of the aforesaid dicta of the Supreme Court, the reasons given in rejoinder do not justify the maintainability of the writ petition.

7. The counsel for the Petitioner during the hearing has referred to:

(i) W.B. State Cooperative Bank Ltd. and Others Vs. Paritosh Bagchi and Others, .

(ii) Deokinandan Parashar Vs. The Agra Distt. Co-operative Bank and Others,

to contend that in those cases writ petitions against the Co-operative Banks were maintained. However, neither of the two judgments is found to contain any discussion on the maintainability of the writ petition. The Supreme Court in the judgment cited by me above has not ruled out the possibility of maintainability of a writ petition against a Co-operative Society but has laid down the tests therefore. It may be that the Co-operative Banks in the judgments cited by the counsel for the Petitioner satisfied the said tests and thus the issue of maintainability of the writ petition was not raised. However, merely because writ petitions against another Co-operative Bank were entertained, would still not justify the maintainability of the present writ petition without the Petitioner establishing before this Court that the tests are satisfied qua the Respondent and which has not been done by the Petitioner in spite of opportunity.

8. The counsel for the Petitioner has also handed over another list which appears to have been prepared by the Office of the Registrar of Co-operative Societies, New Delhi of the 32 Societies found in the Bank Zone. He has also handed over the Account Opening Form of the Respondent Bank. I fail to see as to how the same can justify the maintainability of the writ petition. Similarly the counsel has handed over copy of order dated 29th October, 2010 issuing notice of W.P.(C) No. 296/2010 preferred by one Shikha Verma against the Respondent. However merely because notice has been issued in another writ petition preferred against the Respondent would still not make the present petition maintainable. The counsel for the Respondent clarifies that the objection to maintainability is also taken in other writ petitions preferred against the Respondent. He further states that the West Bengal State Co-operative Bank Ltd. and The Agra District Co-operative Bank subject matter of the judgments cited by the Petitioner must be controlled by the respective State Governments and which is not the case over here. He has rather argued and which has not been controverted by the counsel for the Petitioner that the Respondent Bank was not created by the Government.

9. As far as the argument of the Petitioner of the applicability of CCS /CCA Rules to the employees of the Respondent is concerned, Rule 3.1(a) under Chapter III titled "Conduct, Discipline, Punishment and Appeals" of the Service Rules aforesaid of the Respondent provides that the Central Civil Services (Conduct) Rules, 1964 and Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall mutatis mutandis be applicable to the Respondent.

10. I have put to the counsel for the Petitioner whether, if a private company instead of framing its own rules adopts the rules aforesaid applicable to the

government servants to its employees, a writ petition would lie against the private company also. The counsel for the Petitioner has fairly stated that it would not be. Similarly, merely because a Society adopts the rules applicable to Government servants to its own employees would not convert the said Co-operative Society into Government. The said contention of the Petitioner is thus rejected.

11. Similarly, merely because the Respondent is performing banking function would also not make the writ petition maintainable. It is not shown that the function so performed by the Respondent is monopolistic. According to the document handed over by the Petitioner himself there are as many as 32 Co-operative Societies in Delhi performing the banking functions. This is besides the other banks operating in Delhi. Thus the said ground for maintainability of the writ petition is also rejected.

12. It is fair to refer to the judgments cited by the counsel for the Respondent also in this regard. He has relied on:

(i) Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, laying down that bye-laws of Co-operative Societies framed in pursuance to provisions of the Co-operative Societies Act cannot be said to have force of law.

(ii) Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another Vs. N. Seetharama Raju, laying down the obligations of a Co-operative Society qua its employees are contractual and which cannot be enforced by way of writ petition; that mandamus, certiorari and prohibition are public law remedies and not available to enforce private law rights.

(iii) Jagjit Singh Sangwan v. Union of India 1996 (36) DRJ (DB) where a Division Bench of this Court also held that the bye-laws of a Co-operative Society do not have force of law and are meant for internal management of the Society and merely because the bye-laws have the approval of Central Government would not make any difference and breach of the bye-laws cannot be enforced in exercise of writ jurisdiction by the High Court.

(iv) The Bihar State Co-operative Bank Ltd. Vs. The Registrar, Co-operative Societies and Another, also laying down that the bye-laws of a Co-operative Society have no force of law or statute.

(v) Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, laying down that the remedy of Article 226 is not available to enforce a contract.

(vi) The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, though observing a writ petition to be not maintainable against Co-operative Society, but left the question open.

(vi) P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others, where a Full Bench of that High Court also

held that Co-operative Societies are not created by the Co-operative Societies Act and are not statutory bodies and where Government has no shares in the Co-operative Society or deep and pervasive control over its management and affairs, no writ will lie against such society.

(vii) The The Shamrao Vithal Co-operative Bank Limited and another Vs. Padubidri Pattabhiram Baht and another, where a Full Bench of that High Court also held the Multi-state Co-operative Bank registered under the Maharashtra Co-operative Societies Act, 1960 to be not a State within the meaning of Article 12 even though governed by the Banking Regulation Act, 1949 and performing public function and held writ against it to be not maintainable.

(viii) Mohinder Singh and Others Vs. D.P. Khatri and Others, holding the Co-operative Society to be a private body and a writ to be not maintainable against it even though governed by the provisions of the statute.

(ix) Ajmer Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others, where the Full Bench of that High Court also held a Co-operative Society to be not amenable to writ jurisdiction.

(x) Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another, where the Full Bench of that High Court also took the same view.

(xi) Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, laying down that bye-laws of a Co-operative Society can at best have the status of Articles of Association of a company governed by the Companies Act, 1956 and cannot be held to be law or have the force of law.

13. In view of the aforesaid exhaustive exposition of law and in the face of lack of any pleadings on behalf of the Petitioner to constitute the Respondent as a State, need is not felt to observe anything further. The writ petition is dismissed as not maintainable. I refrain from imposing costs on the Petitioner.