
(2012) 09 RAJ CK 0152
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11825 of 2010

Anil Kumar Shishodia

APPELLANT

Vs

Rajasthan State Cooperative Tribunal and Others

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 105, 2(m), 28, 34, 58

Citation : (2013) 2 RLW 1151

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : M.S. Singhvi, assisted by Manish Shishodia, for the Appellant; Sunil Ranwaha and P.S. Bhati, for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—This writ petition is directed against order dated 1.12.10 of Rajasthan State Cooperative Tribunal, Jaipur ("the tribunal"), whereby an appeal preferred by the petitioner against award dated 22.3.10 passed by the Arbitrator (Secretary, Doongarpur District Cooperative Land Development Bank Ltd., Doongarpur) declaring the petitioner's election as Member and Chairperson of Board of Directors of Chittorgarh District Cooperative Land Development Bank ("respondent bank") invalid and void, stands dismissed. The respondent-bank is a cooperative society incorporated and registered under the Rajasthan Cooperative Societies Act, 2001 (for short "the Act"). Subject to the provisions of the Act and the Rules made thereunder, functions of every cooperative society are regulated by a set of Bye-laws registered under the Act. The final authority in a cooperative society, subject to the provisions of the Act and the Rules, vests in the general body of the members. However, the management of the affairs of the society is entrusted by general body to a Management Committee constituted in accordance with the Bye-laws.

2. The elections of the Management Committee of the respondent-bank i.e. Board of Directors became due in the year 2009. The elections were notified and

the Returning Officer was appointed to conduct the elections. The petitioner, a member of the respondent bank contested the election to the office of Director in election held on 22.9.09 and was declared elected. Thereafter, elections for the office of Chairperson and other office bearers of Management Committee were held. The petitioner contested the election for the office of Chairperson of the Board of Directors of the respondent-bank and was declared elected to the said office defeating respondent No. 6 Narayan Singh.

3. The defeated candidate, respondent No. 6 herein, raised an election dispute challenging the election of the petitioner as Director as well as Chairperson of the respondent-bank before the Joint Registrar, Cooperative Societies, Udaipur Division, Udaipur, under the provisions of Section 58 of the Act. The Joint Registrar exercising the power conferred by Section 60 of the Act referred the dispute for disposal to the respondent No. 2 Shantilal Sharma, Secretary, Doongarpur Zila Bhumi, Vikas Bank Ltd., Doongarpur, as Arbitrator.

4. The election of the petitioner to the office of the Director and Chairperson of the respondent-bank was challenged on the ground that the petitioner was disqualified to contest the election in terms of clause 26(A)(8) of the Bye-laws of the respondent-bank. It was alleged in the petition filed that as per the business certificate issued by the Transport Department in the name of M/s. Sisodia Agro Industrial Services and yet another business certificate issued in the name of M/s. Sisodia Automobiles Pvt. Ltd., the petitioner has been shown as Proprietor/Director of the said business concern/company. The election petitioner alleged that as per the report submitted by the Bank management, the respondent-bank had been making payment to M/s. Sisodia Agro Industrial Services and M/s. Sisodiya Automobiles Pvt. Ltd. and therefore, the petitioner is liable to be declared disqualified to contest the election and consequently, his election deserves to be declared illegal and void. As a matter of fact, an objection against the nomination of the petitioner herein was raised by the election petitioner before the Returning Officer, however, the same was rejected.

5. The election dispute was contested by the petitioner by filing a reply to the election petition preferred on behalf of the respondent No. 6. The averments made in the election petition regarding disqualification of the petitioner were denied stating that clause 26(A)(8) of the Bye-laws of the respondent-bank if read with Rule 34(1)(b) of Rajasthan Cooperative Societies Rules, 2003 (for short "the Rules") makes it abundantly clear that the member contesting the election should have a subsisting interest in any transaction of the Bank. It was submitted that a loan application preferred by a person aspirant for taking loan for purchase of tractor, motorcycle etc. on the basis of the question and other documents produced by him and after the loan is sanctioned by the bank, the payment is made directly to the party applying for loan and not the company whose product the party is purchasing and in case of motor cycle, the payment is made only after instructions/advise is received from the said person and not before. Precisely, the petitioner contended that there was no Privity of contract

between the petitioner's business concern/ company and the bank, there was no direct or indirect interest in transaction involved and therefore, the petitioner cannot be said to have acquired disqualification in any manner at the time of filing of nomination papers.

6. A rejoinder to the reply was filed on behalf of the respondent No. 6.

7. On the basis of the pleadings of the parties, the Arbitrator framed the points of determination on 22.2.10 and the matter was adjourned to 9.3.10 for further proceedings. On 9.3.10, the petitioner appeared before the Arbitrator and made an application for adjournment stating that he has to return back on account of some urgent work. The Arbitrator while taking certain documents submitted on behalf of the election petitioner on record and observing that on account of absence of the petitioner herein, the matter could not be heard and decided, adjourned the matter to 16.3.10 for arguments and judgment. However, on 12.3.10, the date of hearing was changed from 16.3.10 to 22.3.10 inasmuch as, the Arbitrator was required to attend the training programme pursuant to the order passed by the Joint Registrar. The petitioner raised objections against the procedure adopted by the Arbitrator in conducting the proceedings, however, the objection was rejected by the Arbitrator observing that the petitioner herein intend to unnecessary delay the proceedings. The respondent No. 6- election petitioner produced certain documents which were taken on record. The petitioner raised objection regarding the admissibility of certain documents produced on record but to no avail. The time was sought by the petitioner by way of an application for filing written arguments, which was also not acceded to. Since the applications preferred by the petitioner were being ignored by the Arbitrator, the petitioner made an application before the Joint Registrar, Cooperative Societies as well so as to bring on record the above mentioned facts. However, the Arbitrator proceeded with the matter and on the basis of the material on record, pronounced the judgment on 22.3.10 itself, holding the petitioner disqualified to contest the election as Member and Chairperson of the Board of Directors and accordingly, declared his election as illegal and void.

8. Even after efforts being made by the petitioner, the copy of the award passed was not furnished to him and therefore, the petitioner preferred a writ petition being No. 3088/10 before this court seeking a mandamus to make him available, the copy of the award so as to enable him to avail the remedy of appeal. Later, a certified copy of the award was sent to the petitioner and therefore, the writ petition was dismissed as withdrawn.

9. Aggrieved by the award dated 22.3.10, the petitioner filed an appeal u/s. 105 of the Act before the tribunal. After consideration of the rival submissions, the tribunal dismissed the appeal by the order impugned. Hence, this petition.

10. Learned counsel for the petitioner contended that impugned award has been passed by the Arbitrator in flagrant violation of principles of natural justice" as also mandatory provisions contained in Rule 78 of the Rules. Learned counsel

submitted that Rule 78 mandates upon the Arbitrator to record the evidence of the parties to the dispute and on consideration of the documentary evidence produced by the parties to give his decision or award in accordance with justice, equity and good conscience. Learned counsel submitted that the respondent No. 6 except for production of copies of certain documents, did not produce any evidence and the documents so produced were also not proved by adducing evidence. Learned counsel submitted that the objection raised by the petitioner regarding admissibility of the documents was brushed aside by the Arbitrator. Learned counsel submitted that a bare perusal of the proceedings of the Arbitrator, reveals that the Arbitrator has proceeded with a priori conclusion regarding the disqualification of the petitioner with the bent of mind to declare the petitioner's election as illegal and void and therefore, the entire proceedings stands vitiated.

11. Learned counsel urged that the disqualification for holding the office of the Management Committee of the respondent-bank have been provided in Rule 34(1) of the Rules. Relying on Rule 34(1)(b) of the Rules, learned counsel submitted that a person shall be disqualified to be a member of the Management Committee if he has directly or indirectly any subsisting interest in contract made with the society or any property sold or purchased by the society or in any other transaction of the society, except in any investment made in, or any loan taken from, the society. Learned counsel submitted that it was not even the case of the respondent No. 6 before the Arbitrator that the petitioner had any subsisting interest in any transaction of the society. It is submitted that merely because some of the borrowers of the bank had purchased the vehicles from the ventures, wherein the petitioner was proprietor/director and therefore, some payments were made by the bank against the vehicle purchased to the said ventures, by no stretch of imagination it can be said that the petitioner had any direct or indirect interest in the transaction of loan between the borrower and the respondent-bank. It is submitted that admittedly, there was no Privity of contract in respect of those transactions in between the respondent-bank and the petitioner's ventures and therefore, the question of petitioner being declared disqualified in terms of Rule 34(1)(b) or by the clause 26(A)(8) of the Bye-laws does not arise. Accordingly, it is submitted that the award given by the Arbitrator, affirmed by the tribunal is ex facie erroneous.

12. Learned counsel submitted that even otherwise, there was no averment in the election petition that on the date of submission of nomination paper or on the date of election as member of the Management Committee of the respondent-bank or as Chairperson of the respondent-bank, the petitioner suffered disqualification mentioned in Rule 34(1)(b) of the Rules or the bye law 26(A)(8) of the Bye-laws and therefore, the dispute raised was absolutely misconceived. Learned counsel submitted that as a matter of fact, the Arbitrator as also the tribunal has miserably failed to appreciate the scope of expression "except in any investment made in, or any loan taken from the society" used in Rule 34(1)(b) of the Rules. Learned counsel submitted that the matter with regard to

disqualification of a member to contest the election as member of the Management Committee of the respondent-bank is obviously governed by Rule 34(1)(b) of the Rules and therefore, the provisions of bye law 26(A)(8) of the Bye laws to the extent runs contrary to the provisions incorporated in the Rules cannot operate. In this regard, learned counsel has relied upon the decisions of this Court in the matters of *Devi Chand Vs. State of Rajasthan and Others*, and a decision of the Hon''ble Supreme Court in the matter of *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, . Learned counsel submitted that admittedly, the transactions were in respect of the loans obtained by the borrowers and neither by the proprietorship business concern of the petitioner nor by the company, in which the petitioner was Director. Accordingly, it is submitted that the findings recorded by the Arbitrator, affirmed by the tribunal are ex facie erroneous and perverse and therefore, the orders impugned deserve to be set aside.

13. On the other hand, learned counsel appearing for the respondent No. 6 submitted that it is not in dispute that the payments were made by the respondent bank to petitioner's firm M/s. Sisodiya Agro Industrial Services, Chittorgarh and the company M/s. Sisodiya Automobiles Pvt. Ltd., Chittorgarh wherein the petitioner is Director, Learned counsel submitted that it is also not in dispute that M/s. Sisodia Agro Industrial Services, Chittorgarh was registered with the respondent-bank and the security amount of Rs. 5000/- was also deposited by it with the respondent bank on 27.12.95 which was returned with interest of Rs. 3,860/- vide cheque No. 0693460 dated 26.10.06 and therefore, the interest of the petitioner in the transaction entered into with the respondent-bank, cannot be disputed. Learned counsel submitted that the provisions of Rule 34(1)(b) of the Rules and clause 26(A)(8) of the Bye-laws of the respondents-bank are not contradictory to each other, rather these are supplementary to each other and therefore, there is no question of the provisions of clause 26(A)(8) of the Bye-laws being contrary to the provisions of Rule 34(1)(b) of the Rules, Learned counsel submitted that a conjoint reading of the provisions of Rule 34(1)(b) of the Rules and clause 26(A)(8) of the Bye-laws of the respondent-bank, it is manifestly clear that even indirect interest in any transaction with the bank is sufficient to render a member disqualified from contesting the election to any office of the Management Committee of the respondent-bank. Learned counsel submitted that the directives of the bank issued vide communication dated 9.4.09, whereby the respondent-bank and all similar bank have been directed to make payment from the sanctioned loan directly to the loanee/agriculturist and not to the dealer of agriculture equipments has no bearing in the matter inasmuch as, even the loan disbursed prior to 9.4.09, payment whereof was made to the petitioner as dealer would also attract the disqualification in terms of provisions of bye law 26(A)(8) and Rule 34(1)(b) of the Rules. Learned counsel urged that as a matter of fact, even today, the loan is being paid by the respondent-bank through the dealer and not directly to the purchaser. Learned counsel submitted that merely because the petitioner ceased to be the proprietor

of the business concern, in no manner obliterate the disqualification inasmuch as, in terms of clause 26(A)(8) of the Bye-laws, the direct or indirect interest in the transaction with the bank at any point of time renders the member ineligible to contest the election of the Management Committee of the respondent bank. Learned counsel submitted that the petitioner is trying to emphasise on expression "except in any investment made in, or any loan taken from, the society" but the present case is not covered by this expression because the sufficient documentary evidence was produced by the respondent before the Arbitrator which shows that there was transaction of the petitioner's business concern with the bank. Drawing the attention of this Court to Annexure R/1 containing the list of transactions made by the bank with the petitioner's business concern M/s. Sisodiya Agro Industrial Services, learned counsel submitted that the factum of transaction having been proved on the basis of documentary evidence, the decision of the Arbitrator declaring the petitioner as disqualified in terms of Rule 34(1)(b) of the Rules and bye law 26(A)(8) of the Bye-laws of the respondent-bank cannot be faulted with. Learned counsel submitted that as per provisions of Rule 34(2) of the Rules, a member of a society who carried on business of kind carried on by his society is not eligible to be a member of the Committee of that society without the general or special sanction of the Registrar and therefore, even otherwise, the petitioner was ineligible to contest the election. Learned counsel submitted that the petitioner was extended adequate opportunity to defend the petition but he indulged in adopting delaying tactics and did not avail the opportunity to lead evidence and therefore, the contention raised regarding alleged violation of principles of natural justice is devoid of any merit. Learned counsel submitted that the concurrent finding arrived at by the two adjudicatory authorities on the basis of the appreciation of evidence on record cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its extraordinary jurisdiction. Accordingly, it is submitted that the petition deserves to be dismissed.

14. No arguments were advanced by the learned counsel appearing on behalf of the respondent No. 3.

15. I have considered the rival submissions and perused the material on record.

16. The controversy involved in the present writ petition rolls around Rule 34 of the Rules which deals with disqualification for membership of committee and bye law 26(A) of the Bye-laws, which deals with eligibility and ineligibility of the members for election as a member of the Management Committee of the respondent-bank, which may be beneficially quoted to the extent necessary:

34. Disqualification for membership of Committee:-

(1) No person shall be eligible for election or appointment as a member of the committee of a cooperative society, if he suffers from any of the disqualifications mentioned in the Act, or if,

(a) xxx...xxxx.....xxxx

(b) he has, directly, or indirectly, any interest in any subsisting contract made with the society or in any property sold or purchased by the society or in any other transaction of the society, except in any investment made in, or any loan taken from, the society; or

.....XXXX.....XXX.....

(2) A member of a society who carried on business of the kind carried on his society, shall not be eligible to be a member of the committee of that society without the general or special sanction of the Registrar. Where any person not eligible to be a member of the committee without general or special sanction of the Registrar is elected to be a member of such committee without the sanction of the Registrar, he shall cease to be a member of the committee on receipt of a written requisition by the Committee in that behalf from the Registrar.

(3) A member of the committee of a society shall cease to be such member if he incurs any of the disqualifications mentioned in sub-rule (1) or (2) or incurs any of the disqualifications specified by the Act or ceases to be member of the society (unless he is a member nominated by the Government).

Bye law 26(A)

17. Indisputably, subject to the provisions of the Act and the Rules made thereunder, functions of every cooperative society are regulated by set of Bye-laws registered under the provisions of the Act, the subject matter of which is specified in the Schedule B of the Act. Clause (1)(i) of the Schedule B, empowers a cooperative society to frame the bye-laws with regard to terms, qualification and conditions of admission of members and their rights and liabilities. Likewise, Clause 1(r) of the Schedule B empowers a cooperative society to frame the Bye-laws with regard to the privileges, rights, duties and liabilities of members including nominal and associate members. However, none of the subject matter specified specifically empowers a cooperative society to frame bye-laws as regard to disqualification for membership of a Committee of a cooperative society. It appears that bye law 26 of the Bye-laws, which deals with the eligibility and ineligibility of the members to contest the election of Management Committee of the cooperative society has been framed in purported exercise of power conferred u/s 8 read with clause 1(i) and 1(r) of the Schedule B of the Act.

18. As notice above, the Bye-laws framed are subject to the provisions of the Act and the Rules framed thereunder and therefore, the same cannot travel beyond the provisions of Act and the Rules or whittle the effect thereof by incorporating any provision contrary thereto. That apart, the Bye-laws of the society are neither statutory in character nor they have statutory force and therefore, it goes without saying that the Bye-laws of the society to be framed must be in conformity with the provisions of the Act and the Rules and cannot travel beyond the subject matters specified under Schedule B.

19. As a matter of fact, the position of law in this regard stands well settled by the decisions of the Hon''ble Supreme Court and this court.

20. In the matter of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , the Hon''ble Supreme Court held as under:

The bye-laws 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 and such Articles of Association have never been held to have the force of law. The bye-laws that are contemplated by the Act can be merely of those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute.

21. In Babaji Kondaji Garad's case (supra), relying upon the earlier decision in the Cooperative Central Bank Limited's case (supra), the Hon''ble Supreme Court reiterated the same principle in the following terms:-

Bye-law of a co-operative society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and as held by this Court in Co-operative Central Bank Ltd. vs. Additional Industrial Tribunal, Andhra Pradesh the bye-laws of a cooperative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored.

22. In Pukhraj Mehta's case (supra), this court while relying upon the decisions of the Hon''ble Supreme Court referred supra, held that the essential requisite of a bye law should be that a bye law must not be in excess of the statutory power authorising it to frame such Bye-laws and secondly it must not be repugnant to the statute or general principle of law. Accordingly bye law No. 31 of the Bye-laws of Jodhpur Nagrik Bank Sahkari Bank limited adding additional eligibility for contesting the election for the office of Board of Directors was held redundant to the extent of its transgression of the provisions of sub-section (4) of Section 34 of the Rajasthan Cooperative Societies Act, 1965.

23. Thus, there exists no quarrel with the proposition that the Bye-laws, which transgress the provisions of the Act or the Rules made thereunder has to be treated redundant and non est.

24. This takes this court to consider whether there exists a conflict between Bye-law 26(A)(8) of the Bye-laws and rule 34 (1)(b) of the Rules and whether it transgresses the provisions incorporated in the Rules.

25. A bare perusal of Rule 34 and Bye-law 26 reveal that they operate in a little

different sphere inasmuch as, Rule 34 deals with the "Disqualification for membership of Committee," whereas Bye-law 26 deal with "Eligibility and ineligibility of members of the Board of Directors". But then, Rule 24(1)(b) of the Rules and Bye-law 26(A)(8) of the Bye-laws both deal with the disqualification for membership of Management Committee in respect of the contract entered into by a member with the society or the direct or indirect interest of the member in any other transaction of the society with the exception specified. Rule 34 makes a member disqualified to contest the election if he has directly or indirectly any interest in any subsisting contract made with the society or in any property sold by the society or in any other transaction of the society except in any investment made in or any loan taken from the society, whereas under the Bye-law 26(A)(8), direct or indirect interest of the family members of the member of the Bank, as defined by Section 2(m) of the Rajasthan Cooperative Societies Act, 1965 (since repealed and substituted by the Rajasthan Cooperative Societies Act, 2001) is also included. That apart, as per Rule 34, the interest of a member in any investment made in the Bank falls within the exception carved out whereas, the same has not been included as an exception under the Bye-law 26(A)(8). Be that as it may, the provision with regard to disqualification for membership of a Committee having been prescribed by Rule 34 of the Rules, any provision incorporated in the Bye-laws regarding the disqualification for the said purpose, which transgresses, restricts or curtails the ambit and scope of the provision incorporated in the Rules in this regard has to be treated redundant and non est and therefore, the matter with regard to the petitioner's disqualification, which is subject matter of the present petition shall be governed by Rule 34 of the Rules and not by Bye-law 26(A)(8) which is not found to be in conformity with the provisions of Rule 34(1)(b) of the Rules,

26. The next question which requires consideration of this court is whether on the facts of the case, the petitioner was disqualified to contest the elections as Director and the Chairperson of the Board of Directors of the respondent Bank in terms of Rule 34(1)(b) of the Rules.

27. It is to be noticed that the allegations against the petitioner are that he as a proprietor of the business concern M/s. Sisodia Agro Industrial Services and Director of the company-Sisodia Automobiles Private Limited had acquired interest in the transaction entered into by the loanees with the respondent-Bank. That apart, it is averred that M/s. Sisodia Agro Industrial Services, a proprietorship concern of the petitioner was registered with the respondent-Bank in respect of the loan advanced to the loanees, who purchased the tractors and their parts from the said concern and on purchase of the vehicles, on behalf of the loanees, the cheques of the sale consideration of the vehicles were directly handed over by the respondent-Bank to the said business concern. It is not in dispute that in respect of the transaction of the loan with the loanee, there was no Privity of the contract between the said business concern and the respondent-Bank. The loan agreement used to be executed between the loanee and the respondent-Bank and therefore, so far as the transaction of loan is concerned,

the said business concern was only a third party. Merely because, a loanee purchases a vehicle from a business concern or a company and so as to keep track over the transaction of loan entered into and to safeguard the interest of the Bank, and lest loan advanced may not be misused, the cheques are directly given by the respondent Bank to a business concern in no manner creates any direct or indirect interest of the business concern in the transaction entered into between the loanee and the respondent-Bank.

28. Moreover, from bare perusal of the provision of Rule 34(1) (b), it is manifestly clear that any direct or indirect interest should be a subsisting interest and it cannot in any manner cover a concluded contract or transaction. It is not the case of the respondents that the petitioner had any subsisting direct or indirect interest in the transaction entered into by the loanee with the respondent-Bank. It is pertinent to note that even the registration of the petitioner's business concern M/s. Sisodia Agro Industrial Services, Chittorgarh stood terminated with the refund of the deposits with interest way back on 26.10.06. The payments made by the Bank to M/s. Sisodia Agro Industrial Services against the vehicle purchased by the loanees, list whereof is furnished as Annexure R/1, relate to the period 26.10.93 to 18.6.05. It is not in dispute that on the payments being made, the same were debited in the loan account of the respective loanee and thereafter, the said business concern of the petitioner had nothing to do with the loan transaction entered into by the loanee with the respondent-Bank. In considered opinion of this Court, the connection of the learned counsel that if the member had direct or indirect interest at any point of time in a contract or transaction entered into by any person with the Bank, he will stand disqualified for contesting the election as member of the Management Committee for all times to come, to say the least, is absolutely fallacious. If the contention of the learned counsel is accepted then any person acquiring the membership of the society, who had any direct or indirect interest at any point of time in the contract made or the transaction entered into with the respondent-Bank even prior to acquiring the membership shall also not be eligible to contest the election as member of the Management Committee. In other words, though he will be inducted as member but he will have no right to contest the election as member of the Management Committee of the respondent-Bank. In this view of the matter, this court is firmly of the opinion that where a contract has been fully performed and/or the transaction wherein, the member had any direct or indirect interest stand concluded and the member has no obligation to perform towards the contract or any other transaction, the disqualification, if any attached to the member in terms of Rule 34(1)(b) or Bye-law 2(A)(8) shall stand obliterated. In other words, the interest of the member referred to under Rule 34(1)(b) of the Rules or for that matter under Bye-law 26(A)(8) must be a subsisting interest and it does not include within its purview the interest in concluded contract or transaction. Any other interpretation of the said Rule leads to absurdity, which cannot be countenanced by this court. Admittedly, the petitioner had no subsisting direct or indirect interest in any contract or other transaction entered

into with the Bank, as on the date of filing the nomination papers or declaration of result, and therefore, the petitioner cannot be said to have acquired disqualification in terms of Rule 34(1)(b) or for that matter in terms of Bye-law 26(A)(8) of the Bye-laws, as alleged.

29. There is yet another aspect of the matter. As per provisions of subsection (3) of Section 28 of the Act, no person shall be eligible for being elected or appointed as member of the Committee or for continuing as member on the Committee if he is in default to the society or to any other society in respect of loan or loans taken by him for such period as is specified in the Bye-laws of the society concerned or in any case, for a period exceeding three months. As per Bye-law 26(A)(7), a person who has not taken the loan from the bank is not eligible to contest the election. That apart, as per Bye-law 26(6), if a member has taken the loan from the Bank or other Cooperative society and did not repay the same within time shall be ineligible for contesting the election as member of Management Committee. Suffice it to say that in respect of the loan transaction of a member himself with the Bank, he will be disqualified to contest the election only if he has defaulted in repayment of the loan. Thus, it is astounding to suggest that in respect of the loan transaction entered into by the member himself, the member shall be disqualified to contest the election only if he is in default but, in respect of the loan transaction entered into by other loanees with the Bank, the member shall render himself disqualified for contesting the election of the Management Committee of the society for all times to come merely because, he had some interest in the remote past in a transaction entered into by some other loanee with the Bank, which stands concluded and in respect whereof the member was not guilty of committing any default at any point of time.

30. Further, it is pertinent to note that the direct or indirect interest of a member in any investment made or any loan taken, stands specifically excluded from the purview of disqualification envisaged by Rule 34(1)(b) of the Rules and the Bye-law 26(A) (8) find therefore, looking to the nature of transactions, which are subject matter of the present election dispute, the provisions of. Rule 34(1)(b) or Bye-law 26(A)(8) of the Bye-laws cannot be invoked for holding the petitioner disqualified to contest the election.

31. Coming to the contention raised by the learned counsel for the respondent No. 6 regarding petitioner's disqualification in terms of Rule 34(2) of the Rules, it is pertinent to note that no such ground was ever raised by the petitioner before the Election Tribunal and therefore, he cannot be permitted to raise altogether a new ground before this court. Moreover, the said ground appears to have been raised only for rejection. Admittedly, the petitioner's ventures are engaged in the business of automobiles whereas the respondent-Bank is obviously engaged in the business of finance and therefore, by no stretch of imagination, it can be said that the petitioner is canning on business of the kind carried on by the respondent-Bank. Thus, the provisions of Rule 34(2) of the Rules are simply not

attracted in the matter.

32. Lastly, coming to the contention regarding denial of adequate opportunity of hearing to the petitioner by the Arbitrator, it is to be noticed that on the basis of the pleadings of the parties, the points of determination was framed by the Arbitrator on 22.2.10 and the matter was adjourned for further proceedings to 9.3.10. On the said date, the petitioner prayed for the adjournment which was granted, the matter was adjourned to 16.3.10, straight away for final arguments and judgment. However, the date was preponed to 12.3.10 by the Arbitrator on account of his non availability on the date fixed and the matter was adjourned to 22.3.10. It has come on record that the petitioner had questioned the admissibility of the document produced on behalf of the election petitioner. The petitioner had also raised objection regarding the procedure adopted by the Arbitrator in conducting the proceedings. The petitioner also prayed for some time for filing written arguments. The application preferred by the petitioner were being ignored and therefore, he had made a complaint to the Joint Registrar, Cooperative Society as well in this regard. As noticed above, no opportunity was extended to the petitioner to lead evidence. The documents produced by the election petitioner admissibility whereof was questioned by the petitioner were not proved by the election petitioner by adducing evidence. Thus, the proceedings taken by the Arbitrator, placed on record, does not inspire confidence and this court is firmly of the opinion that adequate opportunity of hearing was not extended to the petitioner to defend the matter against him. In this view of the matter, the order passed by the Arbitrator was liable to be set aside being violative of principles of natural justice, as well.

33. In the democratic set up, the rights of the elected member cannot be permitted to be dealt with by the Arbitrator entrusted with the responsibility to decide the election dispute in such a slip shod manner. Suffice it to say that the proceedings for removal of an elected person must satisfy requirement of natural justice and therefore, the Arbitrator was under an obligation to conduct the proceedings strictly adhering to the procedure laid down, which is apparently lacking in the instant case. For the aforementioned reasons, the writ petition succeeds, it is hereby allowed. The order dated 22.3.10 (Annex. 22) passed by the Arbitrator and order dated 1.12.10 (Annex, 24) passed by the Rajasthan State Cooperative Tribunal, Jaipur are quashed. The election petition filed by the respondent No. 6 election petition shall stand dismissed. The petitioner shall be permitted to assume the charge of the office as Director and Chairperson of the respondent Bank forthwith. No order as to costs.