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(1997) 07 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 384 of 1985

Baldev Singh Gajneja and Others — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Citation : (1997) 117 PLR 416 : (1998) 1 RCR(Civil) 185

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : None, for the Appellant; Rupinder Khosla, DAG, for Respondent Nos. 1 to 4 and B.S. Khoji, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Having failed to persuade the learned Single Judge to nullify the decision of the Government contained in Annexure P-2 dated 1.9.1978 whereby the promotions of the appellants as Junior Accountants were nullified, the writ petitioners have filed this appeal.

2. The facts which were necessary for deciding whether the impugned decision of the Government is illegal or not are that the Board of Directors of the Ferozepur Central Co-operative Bank Ltd., Ferozepur (for short ''the Bank'') passed a resolution on 3.11.1977 that the registrar, Co-operative Societies, Punjab, may be requested to sanction the creation of eight posts of Junior Accountants for Head Office as well as branches. However, before the Registrar could take a decision on the request made by the Board of Directors, the Executive Committee of the respondent Bank, in its meeting held on 28.11.1977 resolved that the appellants be promoted as Junior Accountants against the posts which became available due to the opening of three branches, upgrading of old branches and one vacant post of Field Inspector which was stated equivalent to the post of Junior Accountant. The manager of the respondent-Bank requested the Registrar, Cooperative Societies, Punjab, to approve the resolution dated 28.11.1977, At the same time, the Bank again wrote to the Registrar for sanction

of the posts of Junior Accountants.

3. While the matter was pending approval of the Registrar, the resolution passed by the Executive Committee on 28.11.1977 came up for confirmation along with the resolution dated 23.12.1977 and 30.1.1978 in the meeting of the Board of Directors held on 6.4.1978. Two nominated members of the Board of Directors, namely, Shri Karam Singh and Shri Harcharan Singh recorded the following note:

"Executive Committee meeting Agenda No. Item No. III dated 28.11.1977 is disapproved. There was no posts of Junior Accountant. The Board had already decided in its meeting dated 3.11.1977, Item No.21 that prior approval of R.C.S. be obtained and these promotions be made afterwards. But the Executive Committee promoted the Clerks illegally. The implementation of the decision of the Executive Committee should not be done till the approval of R.C.S. is obtained for the creation of posts of Junior Accountants."

This note of dissent was forwarded by the Chief Executive Officer of the Bank to the Registrar, Cooperative Societies, who submitted the matter to the Government. After examining the entire case, the Government accepted the opinion expressed by the nominated Directors and passed the impugned order dated 1.9.1978.

4. In the writ petition filed by them the appellants assailed the decision of the Government on the following grounds:-

"(i) the note of dissent recorded by the nominated Directors could not have been forwarded by the Chief Executive Officer of the Bank because only the Chairman of the Bank is empowered to do so. Therefore, the decision taken by the Government is contrary to Rule 80(iii) of the Punjab Co-operative Societies Rules, 1963; and

(ii) in terms of Rule 3 of the Punjab Co-operative Financing Institutions Services Rules, 1958, which stood amended in the year 1978, there is no need to take prior sanction of the Registrar for creation of the posts. Therefore, the Executive Committee of the bank was within its jurisdiction to decide about the promotion of clerks to the posts of Junior Accountants.

After hearing the parties, the learned Single Judge rejected the challenge to the decision of the Government.

No one has appeared to argue the case on behalf of the appellants.

5. We have heard Shri Rupinder Khosla and Shri B.S. Khoji and have gone through the impugned judgment as well as record of the case and in our opinion the view taken by the learned Single Judge does not suffer from any error of law requiring interferences by us.

6. In order to decide whether the Government could take a decision on the note of dissent recorded by the nominated Directors on the basis of reference made by the Chief Executive Officer, it will be useful to make reference to Section 26(4)

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of the Act 1961 and Rule 80(iii) of the Punjab Co-operative Societies Rules, 1963 which read as under:-

"26. Election and nomination of members of committees.

XX XX XX XX XX

(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 arises 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."

80. Special Rule. (Sections 85(1) and 85(2)(1) and (xxxv) - Notwithstanding anything contained in these rules, the procedure contained in this rule, shall apply to a co-operative society whose working capital exceeds Rs. 50,000/-.

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(iii) Should a difference of opinion in respect of any matter arise between a nominated member of the committee and other members thereof the opinion of the nominated members shall be recorded in the minutes of the proceedings of the meeting in the words of the nominated member and the proceedings shall also be got signed from the nominated member. As required by Sub-section (4) of Section 26 the chairman shall, as soon as possible, make a reference to the Government and if no reference is made within seven days or the date of the meeting, the Registrar may, on receipt of a report from a nominated member, make a reference to the Government for getting its decision."

7. A conjoint reading of Section 26(4) and Rule 80(iii) shows that in terms of Section 26(4) the matter is to be referred by the Committee to the Government in case of difference on opinion on any matter between the nominated members and other members and the decision of the Government will operate as if the same was a decision taken by the Committee, Rule 80(iii) requires the chairman to make reference to the Government as required by Section 26(4). It is therefore, reasonable to take the view that when chairman makes reference to the Government he acts on be-half of the committee. In other words, the chairman acts as representative of the committee when he makes reference in case of difference of opinion between the nominated members and other members. This, however, does not mean that no officer other than the chairman can make reference. In fact the language of Rule 80(iii) itself postulate making of reference by the Registrar to the Government on receipt of a report from a nominated member in case no reference is made within seven days of the date of meeting. It is, therefore, clear that the reference can be made to the Government even though the chairman may have failed to act in consonance with Rule 80(iii). In our opinion the mode prescribed under Rule 80(iii) to apprise

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the Government of the difference of opinion between the nominated members and other members of the committee is not mandatory and even if the Government receives the information from any other official of the committee it can take a decision in terms of Section 26(4). The Learned Single Judge has held that there is nothing in Rule 80(iii) to suggest that the chairman alone is competent to communicate the note of dissent of the nominated members to the Government. We not only concur with his views but add that the Government can take a decision on the basis of communication sent by any other officer of the committee. In the present case, the reference was made by the Chief Executive Officer to the Registrar, who forwarded the case to the Government. Thus, in our view, the impugned order in any manner, be termed as illegal or without jurisdiction.

8. We also agree with the learned Single Judge that the doctrine of de facto incorporated in Section 29 of the Act is a complete answer to the challenge to the legality of the decision of the Government. The irregularity, if any, committed due to the alleged breach of Rule 80(iii) is cured by Section 29 of the Act. Thus, there is no ground to invalidate the decision of the Government merely because the chairman of the Bank did not refer the matter to the. Government.

9. There is another reason why the decision of the Government does not call for interference by the Court. As head of the Executive Committee, the chairman of the Bank was interested in getting the resolution dated 28.11.1977 implemented. Being an interested party, he would not have referred the matter to the Government and the illegality committed by the Executive Committee would have been perpetuated for all times to come. Such a situation is not countenanced by the Act, 1961 and the Rules of 1963. Therefore, we do not find any reason to upset the decision taken by the Government.

10. The appellants'' plea that sanction of the Registrar was not necessary in view of the amended Rule 3 of the Rules, 1958 has no merit what so ever. Dehors the provisions of Rule 3, we find that the Board of Directors held unequivocally resolved on 3.11.1977 that the Registrar, Co-operative Societies may be requested to accord sanction. The letter Annexure P-9 written by the Bank to the Registrar contains a reiteration of the request made earlier. Thus, there was no occasion for the Executive Committee to have ordered the promotion of the appellants without the sanction of the posts.

11. For the reasons mentioned above, we hold that the appeal is without merit and it is liable to be dismissed. Ordered accordingly. The appellants shall pay costs of Rs. 5,000/- to the respondents. Of these, Rs. 2,500/- shall be paid to the respondents No.1 to 4 and the remaining amount shall be paid to the respondents No. 5 and 6.

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