(2016) 11 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Bench No. 27292 of 2016

C/M Primary Cooperative Bank Ltd. APPELLANT

Vs

Reserve Bank of India RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies (Amendment) Act, 1994 — Section 35, Section 90-B(ii)(iii), Section 91(1)(e)

Citation : (2016) 11 ADJ 377 : (2017) 1 AllWC 319

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : C.S.C, for the Respondent; Rakesh Chandra Tewari, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and Shri D.K. Pathak, learned for the respondents/Bank.

2. A preliminary objection has been taken to the maintainability of this writ petition on the ground that the order impugned dated 28.10.2016 passed by the respondent No.6 is clearly appealable in terms of Section 98 (1) (e) and therefore, this writ petition should not be entertained.

3. Learned counsel for the petitioner submits that the impugned order is not an order in exercise of powers of the nature as defined under Section 35 or based on the ingredients thereof, and to the contrary, it is an order reproducing the directives of the Reserve Bank of India, as such, the order cannot be read to be an order under Section 35 so as to make it appealable under Section 98(1)(e).

4. We have considered the submissions raised. Section 35 is extracted herein under:-

"Supersession or suspension of Committee of Management. - [(1) Where in the opinion of the Registrar the Committee of Management of any Co-operative Society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws of the society or commits any act which is prejudicial to the interest of the society or its members, has failed to conduct the election in accordance with the provisions of this Act before the expiry of the term of the Committee of Management or is otherwise not functioning properly, the Registrar after affording the Committee of Management a reasonable opportunity of being heard and obtaining the opinion of the General Body of the society in a general meeting called for the purpose in the manner prescribed may, by order in writing, supersede the Committee of Management:

Provided that where under the prescribed circumstances it is not feasible to convene a general meeting of the General Body of the society, the Registrar may dispense with the requirement of obtaining the opinion of the General Body of the society:

Provided further that in the case of Central Co-operative Bank or the Uttar Pradesh Co-operative bank, the suspension or supersession of the Committee of Management shall not be made by the Registrar unless the Reserve Bank of India has been consulted:

Provided also that the Committee of Management of the Primary Agriculture Co-operative Credit Society may be superseded by the Registrar only on any of the following grounds-

(i) If a society incurs losses for three consecutive years, or

(ii) If serious financial irregularities or fraud have been committed,

(iii) If there are judicial directives to this effect or thee is perpetual lack of the quorum:

Provided also that the Committee of Management of any such co-operative society shall not be superseded or kept under suspension by the Registrar, where there is no Government shareholding or loan or financial assistant or any guarantee by the Government.]

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the Committee of Management during the period of proceeding is necessary in the interest of the society, he may suspend the Committee of Management which shall thereupon cease to function, and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided that if the Committee of Management so suspended is not superseded it shall be reinstated and the period during which it has remained suspended shall count towards its terms.

[Provided further that the proceeding under sub-section (1) shall be completed within one year with respect to a society carrying on the business of banking and within six months with respect to a society carrying on business other than banking and if it is not completed within stipulated period, the proceeding initiated under sub-section (1) shall be deemed to have dropped and the Committee of Management, if under suspension, shall stand reinstated.]

[(3) Where the Registrar has superseded the Committee of Management under sub-section (1), he may appoint in its place-

(a) a new committee consisting of one or more members of the society, or

(b) an administrator or Committee of administrators who need not necessarily be members of the society:

Provided that if the Committee of Management is superseded under sub-section (1), the Committee of Management shall be reconstituted within three months from the date of supersession after holding the election in accordance with the provisions of this Act.]

(4) The Registrar shall have the power to change the committee or any members thereof or the administrator or administrators appointed under clause (a) or (b) of sub-section (3) at his discretion during the period specified under that sub-section.

(5) The committee, administrator or administrators appointed under sub-sections (3) and (4) shall, subject to any directions which the Registrar may from time to time give, have the power to exercise all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act, the rules and the bye-laws of the society to be the Committee of Management.

[(6) Before the expiry of the period specified under sub-section (3), the committee, administrator or administrators, appointed under sub-sections (3) and (4), shall arrange for the reconstitution of the Committee of Management in accordance with this Act, the rules and the bye-laws of the society to take over the management of the co-operative society on the expiry of the said period:

Provided that the committee or an administrator or administrators whose term has expired before the commencement of (the Uttar Pradesh Co-operative Societies (Amendment) Act, 1994 shall arrange for reconstitution of the Committee of Management by December 31, 1994].

[(7) The provisions of Section 29 shall apply in respect of reconstitution of the Committee of Management under this section.]

[(8) The members of the superseded Committee of Management shall not be entitled to contest the election again for a period of three years from the date of supersession.]"

Section 90-B(iii) is extracted herein under:-

"if the Reserve Bank is of opinion that it is necessary so to do in the public interest or for preventing the affairs of an insured co-operative bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of such co-operative bank, it may require the Registrar to pass an order for supersession of the Committee of Management or other managing body (by whatever name called) of such co-operative bank and to appoint an administrator therefor for such period or periods not exceeding five years in the aggregate as may, from time to time be specified by the Reserve Bank and the Registrar shall pass an order accordingly and the remaining provisions of Sections 35 and 36 shall apply in relation to such an order as if it were an order made under Section 35, but the requirements of that section to afford the Committee of Management an opportunity of being heard and to obtain the opinion of the general body of the society shall not applicable;"

5. The order passed under Section 35 is clearly appealable under Section 98(1) (e) which is extracted herein under:-

"an order of the Registrar superseding the Committee of Management or a co-operative society under Section 35;"

The question is as to whether the order impugned which has been passed in terms of Section 90-B (iii) read with Section 35 would also be appealable under the aforesaid provisions of Section 98 (1) (e) or not.

6. A perusal of Section 90-B (iii) would leave no room for doubt that an order passed under the aforesaid provisions is also generically an order of supersession. Secondly, the legislature was conscious of this fact and consequently it has mentioned it explicitly that any order passed under the aforesaid provisions would be such an order as if it were an order made under Section 35. Thirdly, the provisions of Section 90-B(iii) are like an exception to the provisions of Section 35 in a different contingency where the Reserve Bank of India steps into where it is of the opinion that it is necessary to supersede the Committee of Management. Consequently, the ingredients which are to be considered for the exercise of such power would be that as mentioned in Section 90-B (iii) and to that extent Section 35 would stand substituted but the nature of the order passed would still remain an order of supersession, as if, passed under Section 35.

7. In such a situation, where an order of supersession under Section 35 is appealable, we are of the opinion that the order passed under Section 90-B (iii) would also be appealable under Section 98 (1) (e). The right of appeal is a statutory right as explained above. This statutory right is clearly available to the petitioner.

8. Consequently, the writ petition is dismissed on the ground of alternative remedy.

9. After the order was passed, learned counsel for the petitioner submits that he

may be permitted to file an appeal.

10. The petitioner in the event files an appeal before the Tribunal, the same may be disposed of as expeditiously as possible.

