
(1992) 02 DEL CK 0087

In the Delhi High Court

Case No : Civil Writ Petition No. 2686 of 1986

Delhi State Cooperative Bank Ltd.

APPELLANT

Vs

Jagdish Singh and Others

RESPONDENT

Date of Decision : 19-02-1992

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 63

Citation : (1992) 46 DLT 436 : (1992) 23 DRJ 173 : (1992) RLR 172

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : V.P. Singh, Arjun Bhandari, Ramesh Chandra and Anand Yadav, for the Appellant;

Judgement

S.C. Jain, J.

(1) The facts giving rise to this petition are that Jagdish Singh, hereinafter referred to as respondent No. 1 was employed by Delhi State Cooperative Bank Ltd., here in after referred to as the petitioner bank for the first time in 1962. A few months after his appointment in the bank, he was granted emergency commission in the Indian Army. After serving for about five years he was released from the army in 1967 and he rejoined his duties with the petitioner bank. The period of service spent by the respondent No. 1 in the army was counted towards the service of respondent No. 1 in the bank as he had the lien on his post in the bank. He was promoted as the Executive Officer in 1967 and Manager Grade I in 1969. He was appointed as the acting General Manager of the Bank by the then Administrator of the bank in December, 1977 and he continued to officiate as Acting General Manager till 23rd March, 1980. Respondent No. 1 was given the substantive rank of Deputy General Manager in the petitioner bank vide order dated 2.2.80 by the then Administrator of the petitioner bank. Respondent No. 1 however, continued to act as the Deputy General Manager.

(2) Elections were held on 31.3.1975 for electing the managing committee of the

petitioner bank and respondents 6 to 21 were elected as the Directors of the Board of Directors of the petitioner bank. Certain persons filed writ petitions in this court challenging the validity of the election of the managing Committee of the petitioner bank held on 31.3.1975. The writ petitions were withdrawn on 11.2.1980. Respondents 6 to 21 took the charge of Board of Directors on 23.2.1980. Shri Dalip Singh was appointed as its honorary Secretary on 23.2.80. The respondent No.1 was suspended on 17-12-1980. An Establishment Sub Committee of the Board of Directors of the petitioner bank was constituted on December 18,1980 by the Board of Directors. Shri Jagdish Singh respondent No. 1 was informed that the Establishment Sub Committee of the Board of Directors had in its meeting held on 20.12.80 cancelled his appointment as Deputy General Manager and he was ordered to be reverted to the post of Manger Grade 1. On 29.12.1980 he was served with a charge sheet and was called upon to reply to the charges contained in it. An enquiry officer was also appointed to enquire into the charges who submitted his report and he was informed on 27.1.81 that his services were terminated as a result of the disciplinary proceedings with immediate effect . Respondent No. 1 filed an appeal before the Board of Directors but he was informed on 17.3.81 that his appeal was considered and was rejected by the managing committee.

(3) The case of respondent No. 1 was that there was no competent Board of Directors at all material times. According to him out of 16 directors elected ten had ceased to be the directors of the Board of Directors under Rule 59,60,63 of the Delhi Cooperative Societies Rules 1973 (hereinafter referred to as the Rules). Shri Dalip Singh had vacated his seat under Rule 63. Further Jai Narain was defaulter to the tune of Rs. 10,000.00 and ceased to be a Director under Rule 59 read with Rule 60. Thus out of sixteen members of the board 12 had ceased to be the Directors of the Board of Directors and there was no Board of Directors at all, at under the bye laws five Directors are required to form the quorum at any meeting. According to respondent No.1 in view of the fact that only four Directors were left they did not constitute the quorum and no valid Board of Directors existed and as no Board of Directors existed and as no Board of Directors existed on December, 1980, the alleged Establishment sub Committee had no existence in the eyes of law and all decisions taken by the said sub Committee are void, without jurisdiction and do not effect his rights in any way whatsoever. With these allegations, respondent No., 1 raised a dispute within the meaning of Section 60 of the Delhi Cooperative Societies Act by sending a Memorandum of claims on September 1,1981 to the Registrar Cooperative Societies, but the Deputy Registrar Coop Societies vide his order dated 28.1.1988 expressed an opinion that since respondent No. 1 was a paid employee of the bank working as Deputy General Manager/Manager Grade 1 is not permitted to raise dispute u/s 60 and the order of termination of his service is nothing but a disciplinary action taken by the bank against its employee. The appeal filed by respondent No. 1 was rejected as not maintainable. Aggrieved, respondent No.1 filed a writ petition in this court on 14.11.82 and Chadha J. vide

his detailed order dated 21.1.85 allowed the writ petition, set aside the order passed by the Deputy Registrar Cooperative Societies and Direction was given to the Registrar Cooperative Societies so as to admit the claim of respondent No.1 and to decide the disputes raised by him in the Memorandum of claims in accordance with the Act and the rules. However, it was observed that it was not obligatory on the Registrar to determine the procedural irregularity or illegalities in the enquiry, the findings of the Enquiry officer or the quantum of the punishment imposed by the disciplinary authority in case he holds that the Board of Directors or the Establishment Sub Committee was properly constituted.

(4) In pursuance to that order passed by Chadha, J. the Registrar Cooperative Societies nominated Shri S.P. Govil as an Arbitrator and the disputes raised by respondent No.1 were referred to him for arbitration. Shri S.P. Govil, nominee of the Registrar after summoning all the parties to the case and considering the matter came to the conclusion that the Board of Directors was non est during the relevant period and that all proceedings meeting, decisions and acts of the Board of Directors on the Establishment Sub Committee and removal of respondent No.1 by the Establishment Sub Committee on 27.1.81 was held illegal and void.

(5) Aggrieved, the petitioner bank filed an appeal before the Cooperative Tribunal and the Tribunal also vide order dated 5.11.1986 confirmed the award given by Shri S.J. Govil nominee of the Registrar and dismissed the appeal filed by the petitioner bank.

(6) Aggrieved, the petitioner bank has filed this writ petition challenging the order of the Arbitrator and the Tribunal.

(7) According to the learned counsel for the petitioner bank, the Registrar Cooperative Societies vide letter dated 16.12.1980 informed the General Manager of the petitioner bank that ten elected members of the Board of Directors were disqualified to remain on the Board under the provisions of the Cooperative Societies Rules, 1973 and a request was made to take action in this regard and to communicate the same within 15 days. That order of disqualification was not a final order as it was without giving notice to those members and without hearing them. It was an expression of opinion of the Registrar. Whether these members had actually incurred disqualification, the matter was thoroughly examined and it was found that except P.P.Gaur, and Narinder Singh other eight members had incurred disqualification and this intimation was sent to the Registrar Cooperative Societies who did not respond further meaning thereby that only eight members ceased to be the members of the Board of Directors. Declaration of P.P.Gaur and Narinder Singh as disqualified to hold the post of a member of the Board of Directors by the Arbitrator and the Tribunal without any evidence is illegal and unjust counsel submitted.

(8) He also challenged the finding of the Arbitrator and the Tribunal that J.N. Vats and Ch. Dalip Singh also ceased to hold the post of members of the Board of Directors. According to the learned counsel even the Registrar Cooperative

Societies had not found them to be so disqualified. According to the learned counsel for the bank on 18.12.80 when the Board of Directors of the bank constituted an establishment sub committee there was a competent Board of Directors and the establishment sub committee was rightly constituted. Under the bye laws of the bank five directors are required to form a quorum at any meeting of the board. As disqualification of members P.P.Grover, Narinder Singh, J.N.Vats and Dalip Singh is unjust and illegal so the quorum of the meeting was complete as members present were more than five. Proceedings of the meeting were legal and the Arbitrator has gone wrong while declaring Dalip Singh, J.N. Vats, P.P. Grover and Narinder Singh as disqualified to remain on the Board of the Directors of the Petitioner Bank. Even otherwise the counsel submitted that qualification of a member does not relate back. It takes effect only from the date when he is declared disqualified. At the most their disqualification could be from the date of the award dated 26.1.1986.

(9) The other point raised by the counsel is that even assuming but without admitting that if at all the Arbitrator had come to the finding that the Board of Directors was not properly constituted in that event the action or the acts of the Board of Directors could not be deemed to be invalid in view of the provisions of Section 34 of the Cooperative societies Act, 1972 and also on the principle of defacto doctrine. Reliance has been placed on the decisions *Immedisetti Ramkrishnaiah Sons, Anakapalli and Others Vs. State of Andhra Pradesh and Another*, and on *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, . The last submission made by the counsel is that the Arbitrator had been directed by this court on 21.1.85 to decide the dispute raised by the claimant in accordance with the Act and the Rules. He could not have granted the relief of reinstatement as claimed by the claimant respondent No. 1. Without prejudice to the contention of the petitioner the counsel submitted that if this court is of the view that the writ petition cannot be allowed then in view of the fact that respondent No. 1 has to retire on 31.1.1994 and since 27.1.1991 he has been out of work so such relief of reinstatement would not be proper. Respondent No. 1 has already received Rs. 3,56,128.56 since the date of termination from the bank. Reliance has been placed on the decisions reported in the Labour 1991 LR 824 : 1992 (1) J.T. 188 and *Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another*,

(10) Counsel for the respondent countered the argument of the counsel for petitioner and submitted that the petitioner bank is not a public body and its Directors are not public servants and Therefore, the defacto doctrine would not be applicable in this case. According to him the defacto doctrine is applicable to public servants only. According to the counsel all the four members ceased to be the members of the Board of Directors from the date they committed default and not from the subsequent date when they were declared as such. Reliance has been placed on Rules 60 (a) and 63(c) of the Cooperative Societies Rules, 1973 which provide that a member of a society shall cease to hold office as such if he continues to be in default in respect of any sum due from him to the society for such period as may be laid down by the bye laws or if the society of which he is a

delegate becomes defunct or commits default and continues to be defaulter for a period exceeding three months. According to the learned counsel, in this case Narinder Singh was a nominee of Madanpur Dabas Cooperative Society Ltd. That society had taken loan from the bank and according to the books the society was defaulter in payment of dues from 1975 to 1985 and Therefore under rule 63(c) of the Cooperative Societies Rules, 1973 he stands disqualified from 1975. Regarding Prem Parkash Gaur he was representative of Navodit Urban Cooperative Thrift and Credit Society Ltd. In the year 1975, when he was elected to the Board of Directors of the bank, his society made default. Shri Jai Narain Vats was a member of Dabri Cooperative Multi Purpose Society Ltd which society was heading towards liquidation and he represented that society at the Board of Directors of the bank. As per the order passed by the liquidator u/s 67(2) of the Cooperative Societies Act 1972 dated 12.10.1978 Vats himself was debtor of the Society. Dalip Singh represented Narela Marketing Society Ltd. which was superseded on 21.3. 1978 after his election in March. 1975 and remained so suspended till 21-3-1982. According to Rule 63(b) a member of the bank has to vacate his seat when his society is superseded.

(11) The constitution of the Board of Directors on 18.12.1980 was not proper as it included some members who were found disqualified and Therefore, the proceedings taken in that meeting and the appointment of disciplinary sub committee is illegal. According to the learned counsel the action against respondent No. 1 is non est.

(12) The first question which needs consideration is whether P.P.Grover, J.N.Vats, Narinder Singh and Dalip Singh or any one of them ceased to be the member of the Board of Directors of the petitioner bank and if so from which date. Shri P.P. Gaur represented Navodit Urban Thrift & Credit Society Ltd. The reasons given by the Arbitrator while holding him as disqualified to remain on the Board of Directors of the bank is that the Navodit Urban Thrift & Credit Society Ltd of which he was the delegate became a defaulter under bye law 30(8) of the Bye Laws of the bank in May, 1980 and under Rule 63 (c) of the Delhi Cooperative Societies Rules he had acquired disqualification. This finding of the Arbitrator and the Tribunal is patently wrong and illegal. The bye laws of a Society cannot override the statutory rules made under the Act. Rule 63(c) of the Delhi Cooperative Societies Rules 1973 provides that delegate of one society sitting on the committee of another society shall vacate his seat in such a committee if the society of which he is the delegate becomes defunct or defaulter and continues to be a defaulter for a period exceeding three months. As per own finding of the Arbitrator, Navodit Urban Thrift & Credit Society Ltd was not a defaulter on 23.2.80 when P.P. Gaur, its delegate, took charge as a member of the Board of Directors. The said society was no. 1 in default on 18.2.80 when he attended the meeting of the Board. There is no finding of the Arbitrator that the Society had become defunct or remained defaulter for a period exceeding three months at any time and as such P.P. Gaur never ceased to be, member of the Board of Directors.

(13) Regarding J.N. Vats, the Arbitrator declared him disqualified to remain as a member of the Board of Directors of the petitioner bank under Rule 59 read with Rule 60 of the Rules. Rule 59 mentions certain situations under which a person is not eligible for election as a member of the Committee. Mr. Vats was elected on 31.3.1975. Validity of that election was challenged by filing a writ petition in this court. Ultimately that writ petition was dismissed as withdrew on 11.2.80 and he took charge as a member of the Board of Directors of the petitioner bank on 23.2.1980 meaning thereby that he was fully eligible as a member of the committee. Rule 59 had not barred Mr. Vats from being a member of the committee. Rule 60(a) provides that a member of the Committee, shall cease to be a member if he continues to be in default for a sum due to the Cooperative Society for such period as may be laid down in the bye laws. The Arbitrator has himself admitted that Vats had paid Rs. 11578.00 by depositing this amount in the bank on 17.12.80 i.e. before the meeting of the Board and subsequently on 18.1.85 he remitted Rs.1119.00 . The Arbitrator has gone wrong in not accepting the clearance certificate from the liquidator. In such circumstances it cannot be said that Vats continued to be in default in respect of a sum due to the Society and as such he cannot be termed as disqualified for holding the post of a member of the Board of Directors of the bank. .Even the Registrar Cooperative Societies has not mentioned the name of Mr. Vats as disqualified to be the member of the Board of Directors. The finding of the Arbitrator holding Mr. Vats as disqualified and ceased to be member on 3.2.80 cannot be said to be legal and justified.

(14) Regarding Dalip Singh, the Registrar Cooperative Societies has not mentioned his name in his letter dated 16.12.80 as disqualified to be the member of the Board of Directors. It was for the first time that he was held disqualified by the Arbitrator holding that he had ceased to a member on 21.3.1978 under Rule 63(b) of the Rules. It was on 23.2.80 that the Board of Directors took charge. On that day, Dalip Singh was a member of Narela Cooperative Marketing Society Ltd as is evident from letter dated 22.2.1980 and resolution dated 25.1.79 of Narela Cooperative Marketing Society Ltd. which says "Ch. Dalip Singh is the nominee of our society to the Delhi Cooperative Society Ltd. He will as usual continue to be on the General body as well as the sittings of the managing Committee of the Cooperative Bank." The act of the Arbitrator ignoring the resolution passed by the said Society and declaring Dalip Singh as disqualified to hold membership of Board of Directors is illegal and unjustified. It is nowhere on record that Narela Cooperative Marketing Society Ltd of which Dalip Singh was the delegate was still under supersession on 25.1.79 when this resolution was passed. Regarding Narinder Singh the counsel did not advance any argument. The quorum of the meeting of the board of Directors is five and if we hold that Narinder Singh was not qualified on that day to remain as a member of the Board of Directors of the Petitioner Bank, even then seven members of the Board of Directors were present and the proceedings of that meeting were legal. Even otherwise the action and acts of the said Board of

Directors cannot be deemed invalid in view of the provisions of Section 34 of the Delhi Cooperative Societies Act, 1972. Section 34 reads as under:

"NO act of a co-operative society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution of the society or of the committee or in the appointment of election of an officer or on the ground that such officer was disqualified for his appointment."

(15) The Arbitrator has overlooked the fact and law while giving his award and the order of the Tribunal confirming the said award is also illegal and not sustainable. In these circumstances, the impugned award and the order of the Tribunal was quashed. All the proceedings, impugned decision and Acts of the Board of Directors of the petitioner bank were held legal and enforceable including the proceedings of the impugned meeting held on 8th December, 1980. Writ is allowed. Rule is made absolute. No order as to costs.