
(2014) 05 RAJ CK 0166
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6237/2011

Derama Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 05 RAJ CK 0166

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Harish Purohit and Mr. T.S. Rathore, Advocate for the Appellant; P.R. Singh, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Vineet Kothari, J.—These writ petitions have been filed essentially against the communication of the respondent-Central Cooperative Bank dtd. 19.5.2011, Annex. 1, by the petitioners, who are working as Managers or in other capacities with the Credit Societies with a prayer that the respondents-Credit Societies who are independent and working autonomously had decided to increase their pay scale, but intervening the matter, the respondent-the Barmer Central Cooperative Bank directed that these managers may not be released the payment of such enhanced pay of the employees-petitioners of the respondent-Credit Societies because the Resolutions of these credit societies increasing the pay of Managers was not in accordance with the guidelines and the Circulars issued on 9.5.2011 and 5.5.2011 referred to in the said communication by the Cooperative Department of the State and the NABARD. The said impugned communication of Barmer Central Cooperative Bank dtd. 19.5.2011 is quoted below for ready reference:

2. The learned counsel for the petitioner, Mr. Harish Purohit submitted that in view of amendment in law by enactment of Section 30B in the Rajasthan Cooperative Societies Act, 2001, which is quoted below for ready reference, the

respondent-Central Cooperative Bank has no jurisdiction to interfere in such autonomy and independent decision taken by the Credit Societies, which although have not been impleaded as respondents in the writ petition and the respondent-Bank is bound to pay the increased salary in pursuance of said Resolutions of the credit Society and thus impugned order of the Bank being without jurisdiction, the said impugned communication Annex. 1 dtd. 19.5.2011 deserves to be quashed by this Court. Section 30B of the Act of 2001 reads as under:

30B- Autonomy in all financial and internal administrative matters:- Notwithstanding anything contained in this Act or any other law for the time being in force, a short term cooperative credit structure society shall have autonomy in all the financial and internal administrative matters including the following areas, namely:-

- (a) personal policy, staffing, recruitment, posting and compensation to staff;
- (b) issues relating to affiliation and disaffiliation with any federal structure of its choice including entry and exit at any level.
- (c) area of operation according to its business recruitment; and
- (d) internal control systems.

3. These writ petitions have been contested by the respondent-State and Barmer Central Cooperative Bank and in para 3 of the reply it has been contended that as per the Circular dtd. 15.2.2010, 7.2.2011 and 9.5.2011, the Society has to fulfill the conditions of NABARD issued vide letter dtd. 5.1.2009 with regard to expenditure and staff strength of PACS before granting new pay scales. The society was under obligation to obtain certificate in this regard from the District Selection Committee stating the society payment capacity and its eligibility for new pay scale. Society has passed the Resolution without obtaining the certificate as aforesaid and therefore, the fixation of pay done by the Chairman of the Credit Society was contrary to the instructions of NABARD.

4. Having heard the learned counsel for the parties, this Court is of the opinion that the present writ petitions do not call for any interference by this Court under Article 226 of the Constitution of India since several factual matrix involves determination of certain question of facts for which necessary material has not been placed by the parties in the writ petitions. The guidelines of Cooperative Department (State) and NABARD, whether they come into conflict with avowed autonomy given to these credit Societies u/s 30B of the Act of 2001, whether the pay fixation done by the Chairman or by way of Resolution of the Credit Society can be protected by the said autonomy u/s 30B of the Act or not, necessarily depends upon the comprehensive consideration of the several questions of facts touching this aspect of the matter. What is the extent of autonomy and extent of control of Central Cooperative Bank which finances the working of the respondent-Credit Society, is also a mixed questions of facts and law which are

required to be decided because the impugned order has been passed by the respondent-Barmer Central Cooperative Bank Ltd. only, but the same is based on the Circulars issued by the State Government and also NABARD.

5. The increase in the pay by Credit Society thus is a decision of the Society which has to be passed on its profit and loss position, availability of cash flow, requirement of such increase etc. These are all questions of facts in a broad spectrum which are required to be decided by the competent authority of the respondent-State and not by this Court much less under Article 226 of the Constitution of India. In fact, the autonomy of the Society u/s 30B of the act does not take these societies in the realm of *laizze faire*, but these societies necessarily work within the four corners of Rajasthan Cooperative Societies Act, 2001 and are not only bound and guided by the Circulars and guidelines issued by the State from time to time, but also by NABARD and Central Cooperative Bank which provide them the life blood finances.

6. In fact, this Court possibly cannot find any patent lack of jurisdiction with the respondent-Barmer Central Cooperative Bank Ltd. finding such Resolution for increase in the pay of Managers being in conflict with the guidelines issued by the respondent-State and NABARD. While this Court would decline to interfere with the subject matter under Article 226 of the Constitution of India, the way out for the petitioners or employees seems to be to approach the respondent-State itself by way of a suitable representation either by the petitioners-employees themselves or at their instance by the respondent-Credit Society for implementing the Resolution for increase in the pay under their Resolution and the competent authority of the respondent-State after taking a comprehensive view of the relevant guidelines and Circulars may pass suitable orders in this regard.

7. Therefore, these writ petitions are disposed of with a liberty and direction to the petitioners or the Credit Societies to file suitable representations before the respondent No. 1 - Secretary, Department of Cooperative Societies of the Government of Rajasthan, Jaipur and the said authority is expected to decide such representation in accordance with law preferably after giving an opportunity of hearing to the concerned persons expeditiously. No order as to costs. A copy of this order be sent to the parties concerned forthwith.