
(1972) 03 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 655 of 1972

Gobind Ram and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-03-1972

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : AIR 1972 P&H 471 : (1974) 2 ILR (P&H) 540

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Judgement

1. The petitioners, thirteen in number, are agriculturists, and are members of the Primary Land Mortgage Bank Ltd., Bhatinda (hereinafter called the Bank). The Bank is a society registered under the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act) and Punjab Co-operative Societies Rules, 1963 (hereinafter called the Rules) and the bye-laws of the Bank (hereinafter called the bye-laws). Bye-law 5 lays down the objects of the Bank and the purposes for which loans can be granted. One of the purposes, for which a loan can be granted, is construction and repair of ordinary wells and tube-wells, installation of pumps and other water lifting appliances. The Bank cannot grant any loan without the approval of the Punjab State Co-operative Land Mortgage Bank Ltd. (hereinafter to be referred as the State Bank). A meeting of the Executive Committee of the State Bank was held on October 27, 1971, when the following resolution was passed:--

"In view of the advice from R. B. I. and also on the basis of experience gained during last two years it has been considered that there is need to review loaning policy in respect of advances for diesel engines and electric motors. In fact there is need to fix prices of various standard types of diesel engines. The committee is of the view that a committee consisting of the following may be constituted to fix prices of various types of engines after getting quotations from various manufacturers within the State. In view of the experience of the members of the

Committee it is possible that three to four standard types of diesel engines should be asked for manufacturing/assembling so that the farmers should be assured about the price and the quality of the engine. The scheme may be put up to the Board of Directors. Simultaneously the M. D. is advised to discuss the scheme with the R. C. S. and also to make a request that the Government may be requested to revise the instructions issued earlier in respect of loaning policy for diesel engines. The Committee, as suggested above may constitute the following:--

1. R. C. S.
2. The Director of Agriculture.
3. The Director of Industries.
4. Two nominees of the State Co-operative Land Mortgage Bank. One of the nominees should be the President.

The above-mentioned committee may also approve the dealers."

2. On February 8, 1972, the Registrar, Co-operative Societies, Punjab, issued a letter to all the Deputy Registrars and Assistant Registrars of Co-operative Societies in the State on the subject of "Supply of Diesel Engines." Since the authority of the Registrar to issue this letter has been challenged, it will be helpful to give the contents of this letter in full. The letter reads as under:--

"Till recently there had been certain complaints about the price and the availability of the suitable Diesel Engines. The State Government have appointed a committee to rationalize the whole procedure so that the agriculturist can be provided good engines at a very reasonable price and he is not to suffer at the hands of the commercial firms in competition.

As an interim measure to overcome the present situation seven engines have been approved for sale as per price list enclosed. Henceforth all the loans issued by the Primary Co-operative Land Mortgage Banks and the Central Co-operative Banks through the Primary Societies for the purchase of Diesel Engines will be given only for these seven engines. The payment by the loaning agency will be made to the Marketing Federation of those engines who will be supplying these engines to the loanees through the D. W. Ss./ Marketing Societies in the field. However, it must be very clearly understood that the farmer should be allowed to choose the engines of his own choice. The loaning agency will issue an authority letter to the loanee addressed to the D. W. Ss./Marketing Societies for the delivery of the Diesel Engines as per choice of the farmer. The name of the engines should not be written on the authority letter."

On that very day the Registrar, Co-operative Societies, Punjab, Chandigarh, issued another letter to the Assistant Registrars and Deputy Registrars of Co-operative Societies in the State on the subject--"Distribution of loans for diesel engines and pumping sets." This is a short letter and reads as under :--

"As per decision taken in the meeting held under the Chairmanship of Mrs. Sarla Grewal, I.A.S., Development Commissioner, Punjab, on 5-1-1972, the loan for diesel engines should henceforth be given in kind and not in cash please."

Copies of both these letters were endorsed to the Managers of all the Central Co-operative Banks in the State, Managers of all the Primary Co-operative Land Mortgage Banks, General Manager, Punjab State Co-operative Bank Ltd. Chandigarh, Managing Director of the State Co-operative Land Mortgage Bank Ltd., and the Managing Director, Markfed. The petitioners have also challenged the substitution of the State Government to decide the matter contained in the second letter of the Registrar. Written statements have been filed by respondents 2 and 3 in which the issuance of these letters has been justified.

3. The learned counsel for the respondents have raised two preliminary objections, namely: (1) that the petitioners have no legal right to file the petition, and (2) that no manifest or gross injustice had been done to them. I find no merit in these preliminary objections. The petitioners are members of the Bank, which is a co-operative society, run on co-operative basis, which means one for all and all for one. Any co-operative society or a Bank is a body corporate governed by the provisions of the Act and the rules. The members of a co-operative society have a right to obtain loans from the society in accordance with its bye-laws. It is that right which has been interfered with by the impugned letters or instructions. The petitioners have, therefore, a right to maintain the present petition; more so because under Article 226 of the Constitution any direction can be issued to any person and for any purpose. As will be seen presently, I am of the opinion that neither the State Government nor the Registrar, Co-operative Societies, had the jurisdiction to take the decisions they took or to issue instruction contained in the impugned letters. As regards the second objection, it has been stated on behalf of the petitioners that petitioners 7 and 8 have already executed agreements in respect of the loans sanctioned in their favour for the purchase of diesel engines, while the cases of the other petitioners for the grant of loans by Bank are under consideration. Because of the impugned instructions, the petitioners are being deprived of utilising the loans that may be granted to them for the purchase of diesel engines which they want to purchase. The grant of a loan to them is of no use if they cannot utilize it in the manner they want. The Bank does not advance loans on the security of the diesel engines to be purchased, but on the security of the immovable property that is mortgaged with the Bank before the loan is disbursed to the loanee. If these instructions are allowed to stand, manifest and gross injustice will be done to the petitioners who will be deprived of their rights to utilize the loans granted to them in the manner they like. These preliminary objections are, therefore, repelled.

4. The question that really arises is under what statutory power did the Registrar, Co-operative Societies, issue the letter containing his decision and the other letter containing the decision of the Government and also the statutory provision

under which the Government took that decision. The only statutory provisions relating to this matter, according to the learned counsel for the parties, are Sections 45 and 85 of the Act and Rule 45 of the Rules. Section 45 reads as under:--

"Restrictions on loans:--

(1) A co-operative society shall not make a loan to any person other than a member;

Provided that with the general or special sanction of the Registrar a co-operative society may make loans to another co-operative society.

(2) Notwithstanding anything contained in sub-section (1), a co-operative society may make a loan to a depositor on the security of his deposit."

This section does not empower the Registrar, Co-operative Societies, or the State Government to issue any instructions with regard to the manner, security and purpose of granting loan to a member of the Society. The sanction of the Registrar, Co-operative Societies, is required only for one co-operative society to advance a loan to another co-operative society. The impugned instructions cannot come within the purview of Section 45 of the Act.

5. Section 85 of the Act empowers the Government to make rules to carry out the purposes of the Act and in sub-section (2) thereof particular items are mentioned for which the State Government can make rules, one of them being item (xxi), which relates to the payments to be made and conditions to be complied with by members applying for loans, the period for which any loans may be made and the maximum amount which may be lent to any member. It is the admitted case of the parties that no rule has been framed by the State Government on this subject except Rule 45 which reads as under:--

"Directives by Registrar for the successful conduct of the business:--

The Registrar may, from time to time, issue such directives as he considers necessary for the successful conduct of the business of a co-operative society or class of co-operative societies."

Item (xxi) of sub-section (2) of Section 85 gives power to the State Government to make rules with regard to the matters stated therein and has not given the State Government any power to delegate its rule making power further to the Registrar, Co-operative Societies. Rule 45 gives the Registrar a general power without indicating any guideline for his actions in issuing directions. So the Registrar has been given an arbitrary power to issue directions as to the manner in which co-operative societies shall carry on their business without any fetter and without any guideline. This rule is, therefore, not consistent with the power vested in the State Government by the Legislature u/s 85 of the Act. The State Government, of course, can make rules on the subject but it has not done so. The rule making power is subject to the draft rules being placed before the State

Legislature for a period of ten days and if no objection is raised to those draft rules by the members of the Legislature, they become statutory rules. The proper way to exercise power u/s 85 of the Act is to frame rules in accordance with Section 85(3) of the Act, and not by issuing executive directions by the State Government or the Registrar. Their Lordships of the Privy Council have laid down in *Eshuqbayi Eleko v. Officer Administering the Government of Nigeria* AIR 1931 PC 248 as under:--

"The executive can only act in pursuance of the powers given to it by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice."

This rule applies to the executive in this country also. It was, therefore, necessary for the respondents to point out the statutory power under which the impugned letters have been issued, which they have failed to do.

6. It has been very strenuously argued by the learned counsel for the respondents that the impugned letters were issued with the object of preventing an illiterate agriculturist from being defrauded by traders, who may sell sub-standard diesel engines to him, whereby he would suffer loss. The object is no doubt laudable and advice can be tendered to the illiterate person as to what is good for him, but he cannot be forced to buy a certain "Make" of a diesel engine and from a particular dealer thereby leaving no choice to him. It is, of course, open to the Bank whether to grant or not to grant a loan to member, but it is not for the Registrar or the State Government to lay down conditions for the utilization of the loan granted by it to the loanee without framing rules u/s 85 of the Act. The State Government or the Registrar have, by issuing the impugned directions become agents or canvassers for the manufacturers and dealers of some of the Diesel engines leading to the creation of monopolies in their favour which is against the principle of freedom of trade enshrined in Article 19 of the Constitution.

7. For the reasons given above, this petition is accepted with costs and the impugned letters, dated February 8, 1972, copies of which are Annexure "C" and "C/1" to the writ petition, issued by the Registrar are hereby quashed. The costs will be paid by respondent 1. Counsel's fee Rs.100/-.

8. Impugned letters were quashed.