

(1996) 05 DEL CK 0112

In the Delhi High Court

Case No : Civil Writ Appeal No. 5740 of 1993

Indraprastha Sehkari Bank Ltd.

APPELLANT

Vs

Satish Kumar Gupta

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Citation : (1996) 3 AD 316 : (1996) 63 DLT 204 : (1996) 38 DRJ 163

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : Rajiv Nayar, R.K. Gupta, Ramesh Chandra and R.K. Yadav, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) Indraprastha Sahkari Bank Ltd., the petitioners No. 1 (hereinafter referred to as "the Bank") is a co-operative bank, governed by the provisions of the Delhi Cooperative Societies Act, 1972 and the Rules framed thereunder. Satish Kumar Gupta, the respondent No.1, has been a promoter member of the Bank. He was elected a director of the Bank on 27.9.92. The Bank received a complaint dated 2.9.93 alleging that the respondent No. 1 was carrying on a competing business with that of the Bank within the local limits of Delhi as he was engaging in the business of providing finance to its members from Umang Leasing & Credit Company Pvt.Ltd. The complaint so received was included in the Agenda dated 3.9.93 drawn up for the meeting of the Board of Directors scheduled to be held on 6.9.93. A show cause notice was also issued to the respondent No.1 to appear before the Board of Directors on 6.9.93 and to explain his position on the allegation of his carrying on a similar business as that of the Bank. The respondent No.1 filed a reply on 6.9.93. He remained present before the Board of Directors and was heard. It may be noted that the respondent No.1 being a director of the Bank was present in the meeting of the Board in the capacity of the Director and participated in other business, though he divested himself from such participation when the complaint dated 2.9.93 against him was taken up for

discussion by the Board of Directors.

(2) The respondent No. 1 admitted that he was a shareholder in the Umang Leasing & Credit Company. When he was asked whether he had been the promoter/director of the said leasing and credit company, as stated in the certificate of incorporation of the said company, then respondent No.1 stated that he had at a later point of time stopped working as a Director of the said Company though he was unable to state specifically as to by which point of time he had so stopped. The Board of Directors by a majority of 9 as against 3 formed an opinion that Umang Leasing & Credit Company Pvt.Ltd. was carrying on an identical business of financing and allied services which was competing and conflicting with the business of the petitioners Bank and as such the respondent No.1 had incurred disqualification for membership of the Bank. The respondent No.1 was informed by the Bank vide letter dated 7.9.93 that the Board had terminated his membership w.e.f. 6th September, 1993.

(3) The respondent No.1 preferred an appeal u/s 76(I)(e) of the Delhi Co-operative Societies Act, 1.972 to the Registrar of Co-op. Societies against the resolution of the Board of Directors.

(4) Before the Registrar Coop. Societies, it was contended by the petitioners Bank that an appeal u/s 76-(1)(e) of the Act was not maintainable as against the impugned resolution of (he Board of Directors. It was also contended that the appeal if any lay to the Lt. Governor and not to the Registrar.

(5) The Registrar Coop. Societies formed an opinion that in as much as the letter dated 7.9.93 issued by the Managing Director of the Bank to the respondent No.1 used the word "terminated" in the context of the membership of the respondent No.1, the appeal u/s 76(1)(e) of the Act was competent. The Registrar Coop. Societies further held that the item in agenda "to hear the reaction of the Director Shri Satish Gupta against the complaint" did not satisfy the requirement of the respondent No.1 having been put to the notice that the subject of termination of his membership would be taken up for consideration by the Board of Directors and the rules of natural justice were also violated in as much as copy of the complaint received against the respondent No.1 was not enclosed Along with the notice to show cause against given to him. The Registrar Coop. Societies also held that power to expel/remove/terminate the membership of any person lies with the general body of a Society and not with the Board of Directors and Therefore the decision of the Board of Directors terminating the membership of the respondent No.1 was liable to be set aside.

(6) Learned counsel for the petitioners has raised the following contentions attacking the appellate order of the Registrar Coop. Societies.

(I)That the respondent No.1 cannot be said to be carrying on the business which was the business of a private limited Co.? (ii) That no appeal lay to the Rcs against the resolution of Board of Directors and as such the decision given by the Rcs holding the appeal competent u/s 76(1)(e) of the Act is without jurisdiction;

(iii) that the membership of the respondent No.1 was not terminated as such; the respondent No.1 had incurred a disqualification which had resulted into automatic cessation of his membership and the Board of Directors had merely recognised the factum of cessation of membership; (iv) that there was no violation of principles of natural justice in as much as the facts were fully known to the respondent No.1; the charge that he was indulging into a competing business was made known to him; and he had participated in the hearing before the Board of Directors fully posted with the knowledge of the charge against him and the consequences flowing there from.

(7) Before we may proceed to deal with the contentions so advanced we may notice a few facts which are either not disputed or cannot be disputed.

(8) From the Articles of Association of Umang Leasing and Credit Co. Pvt.Ltd., it is clear that Satish Kumar Gupta, the respondent No.1 has been a promoter Director of the Company. The Memorandum of Association states the following objects, inter alia, of the Company which are certainly a competing business with the Bank :-

"3.To carry on the business of providing long term finance to any person or co-operative society or associations of person or body of individuals either at interest or without and/or with or without any security for construction, purchase, enlarge or repair of any houses, flats, raw houses, bungalows, rooms, huts, used for residential purpose either in total or part thereof or to purchase any free hold or lease hold lands, estate or interest in any property to be used for residential purpose. 4. Subject to the Banking Regulation Act, 1949 to carry on all types of financing operations, and performing all types of financing services, financial and business advisory or consulting services to customers or acting as leasing/financing agents or brokers of other entities and or other entities for carrying on leasing or other financial activities and to render leasing, consultancy and advisory services to clients."

(9) It may be useful to notice the objects of the petitioners Bank as stated in its byelaws. They are, amongst others :-

(II) To accept deposits of money from the public, repayable on demand or otherwise, and withdraw able by cheque, draft, order or otherwise for the purpose of lending or investment. (iii) To borrow or raise money. (iv) To lend or to advance money either upon or without security; to members and others as permitted by the Registrar. (xii) To collect and transit money and securities. (xiii) To negotiate loans and advances.

(10) BYE-LAW 9(b) (iii) of the petitioners-Bank provides that an individual to be a member of the Bank must not engage in business competing with or conflicting with the business of the Bank. Bye-law 14 provides for the membership to cease on breach of any condition prescribed under bye-law 9.

(11) In as much as the respondent No. 1 was a director-promoter of a leasing

and credit Company carrying on business competing with the business of the petitioners- Bank he would certainly attract the ire of bye-law 9 read with 14 of the petitioners- bank and his membership would cease. We do not find any force in the argument of the learned counsel for the respondent No.1 that it was the Umang Leasing & Credit Co. Pvt. Ltd. which was carrying on the competing business and by merely being a promoter-Director of the Company it cannot be said that he was he who was carrying on the business of the Company. A Company is an in animate person and it has to act through someone for its activity. A person who promotes and acts as a director of such a Company, is certainly doing the business of that Company. The respondent No.1 having been a promoter-Director of a Pvt.Ltd. Company carrying on a business competing and conflicting with that of the petitioners-bank would certainly be deemed to be carrying on such competing and conflicting business himself so as to attract the applicability of bye-laws 9 and 14 aforesaid. Questions NO.(ii) & (iii)

(12) Section 76(1)(e) provides for an appeal to lie against a decision of a co-operative Society expelling any of its members. u/s 76(2)(c) the forum of appeal shall be the Lt. Governor or the Registrar according as the decision or order was made by the Registrar or any other person. In short, if the impugned resolution falls within the ken of Section 76(1)(e) then the decision being of the Co-operative Society, an appeal would lie to the Registrar; else, not an appeal to the Registrar but only a revision to the Lt. Governor u/s 80 of the Act would have been the remedy available to the respondent No.1.

(13) A decision by a Board of Directors of a Co- operative Society is a decision by a Co-operative Society. The crux of the problem is whether the resolution of the Board of Directors dated 6.9.93 amounted to a decision "expelling any of its members". The learned counsel for the petitioners has submitted that in law, specially in the law relating to co-operative societies, there are several situations in which membership of a Co-operative Society may come to an end. This snapping of relationship by membership may take the form of cessation, termination or expulsion. Cessation may occur by death or resignation. Termination and expulsion would also both result in cessation of membership. But every cessation of membership is not necessarily a termination or expulsion. Clause (e) of Sub-Section (1) of Section 76 of the Act contemplates an appeal against expulsion. Having incurred a disqualification, the respondent No.1 had ceased to be a member automatically and the resolution of Board of Directors had merely recognised such automatic cessation from membership of the respondent No.1, which could not be called "an expelling" submitted the learned counsel for the petitioners.

(14) We do not agree with the learned counsel for the petitioners. A member may incur a disqualification which may lie admitted and consequently he may cease to be a member of the Society. But there may lie a disputed situation. While a complainant may allege and the Society may form an opinion that a member has incurred a disqualification, the member may dispute having incurred

the alleged disqualification. In that case the member would not be prepared to accept his membership having ceased. Some forum shall have to record a finding of his having incurred a disqualification with consequences to follow. The word expel means - to drive out, to eject, to discharge in disgrace, to keep off. Recording of a finding by the society that a member has incurred a disqualification would result in driving out the person from membership resulting in his membership ceasing automatically from the date of disqualification. The Society is not required to go further ahead and drive out/eject/discharge or keep off the member disqualified. The resolution dated 6.9.93 by the Board of Directors, holding the respondent No.1 disqualified from membership and declaring his having ceased to be a member of the Society did not amount to a decision of a Cooperative Society "expelling any of its members". The decision was not appealable u/s 70(1)(e). The appeal before the Registrar of Co-operative Societies was Therefore not competent. Question NO.(iv):

(15) Whether there was any violation of the principles of natural justice? It is true that copy of the complaint received by the petitioners-Bank was not delivered to the respondent No.1. However, the notice dated 3.9.93 Annexure P-2 which was given to the respondent No.1 slated :-

"IT has been reported that you being member of Indraprastha Sehkari Bank Ltd., A-101, Wazirpur Group Industrial Area, Delhi - 110 052 had/have been carrying on similar business as a Promoter/share holder/Director/ Manager of M/s. Umang Incasing & Credit Co.(P) Ltd., Sector 8, Pocket F/17, Plot No.157, Rohini, Delhi-110 085, dealing in financing operation and performing all types of financing service including advancing/investing company"s money etc. competing with that of the Bank business within the Union Territory of Delhi. You are advised to appear in person before the Board of Directors in its emergent meeting fixed for Monday, the 6th September, 1993 at 18/00 hrs. at the Bank premises and explain your position. in case, you fail to appear, the matter will be determined in your absence."

(16) It was not material who had made the complaint. The facts Constituting the charge against the respondent No.1 and Constituting his disqualification were all stated in the notice. The respondent No.1 gave a reply. As discussed hereinabove the facts resulting into disqualification of the respondent No.1. were either not disputed or could not have been disputed. The Board of Directors gave a hearing to the respondent No.1. The respondent No. 1 did not ask for a copy of the complaint or for any other information. The principles of natural justice were all complied with and there was no failure. The rules of natural justice are not a straitjacket formula. They are flexible and vary from facts to facts of each case. In the case at hand they were complied with. The Rcs was not at all justified in arriving at a finding of the principles of natural justice having been violated. The finding of the Rcs is perverse and liable to be set aside.

(17) All the material questions thus stand answered in favor of the petitioners. Faintly it was contended on behalf of the respondent No. 1 that it was only the

General Body of the Society which could have assembled and recorded a finding on the disqualification of the respondent No.1. The learned counsel for the petitioners pointed out that the Society has 8000 members. The General Body meets once in a year. Every issue cannot be left to be decided by the General Body. By reference to Section 28 of the Act and the bye-laws of the Society, the Board of Directors was competent to adjudicate upon the disqualification of the respondent No.1.

(18) In as much as the appeal filed by the respondent No. 1 before Rcs was wholly incompetent and not maintainable, the decision therein has to be set aside as one without jurisdiction.

(19) The petition is allowed. The decision (Annexure P-8) dated 2.12.93 given by Registrar of Co- operative Societies in appeal No.47/Appeal/RCS/93/1650 is hereby quashed and set aside. No order as to the costs.