
(1996) 05 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 670 of 1996

Kanwar Rajeshwar Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 15-05-1996

Acts Referred:

Citation : (1997) 1 ShimLC 85

Hon'ble Judges : S.N. Phukan, C.J; L.S. Panta, J

Bench : Division Bench

Advocate : L.C. Kapoor, for the Appellant; Indar Singh, General for Respondents 1 and 2, Ramakant Sharma and Devyani Kuthiala for Respondent No. 3 and O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Panta, J.—In this writ petition, Petitioner Kanwar Rajeshwar Singh has challenged the validity of order (Annexure A-7) dated 15-11 1995 passed by the Registrar Co-operative Societies (Respondent No. 2) and confirmed in appeal by Commissioner-cum-Secretary (Co-operation) to the Government of Himachal Pradesh on 4-4-1996 (Annexure A-10), whereby the election of the Petitioner as Chairman President of the Joginder Central Co-operative Bank Ltd. (Respondent No. 3) has been set aside.

2. The Petitioner was elected as Director of 3rd Respondent-Bank from Dharampur Block on 15-9-1995. He alongwith other four Directors sent a requisition on 16-9-1995 requesting Managing Director to call emergent meeting of the Board of Directors immediately vide Annexure A-1. The Managing Director of the Respondent-Bank immediately acted upon the call of the Directors and fixed the meeting on 18-9-1995 at 10 a.m., in the Head office of the Respondent-Bank. A notice Annexure A-2 was sent to the eight Directors on 16-9-1995, calling upon them to attend the meeting on 18-9-1995 at 10 a.m. sharp. The agenda of the notice was: (i) Election of the President; (ii) Election of the Vice-President and (iii) Any other item with the permission of Chair. In pursuance of

the notice only five persons attended the meeting including the Managing Director.

In the said meeting the Petitioner was unanimously elected as Chairman/President, Shri Gurcharan Singh was elected as Vice-President and Shri K.D. Sharma was unanimously nominated as representative of the Apex Bank. The copy of the proceedings of the meeting is annexed as Annexure A-3. One of the Directors namely Shri Mohan Mehta (Respondent No. 4) approached the second Respondent by filing election petition u/s 11 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter "the Act") read with Rule 38 (6) of the Himachal Pradesh Co-operative Societies Rules, 1971 (hereinafter "the Rules 1971") for quashing the election of the Chairman/Vice-Chairman, praying postponing the said meeting of the Board of Directors on the ground that he had not received the notice of the meeting. The Petitioner claims that 4th Respondent personally met the second Respondent at his residence at 9.00 a.m. on 18-9-1995 and despite his best efforts the meeting could not be postponed even with active support of certain politicians of the Ruling Party. The Petitioner maintains that 4th Respondent had signed the notice on 17-9-1995 in the name of "Durga Singh" who is the nephew of 4th Respondent. According to the averments of the Petitioner, 4th Respondent intentionally signed notice in the name of "Durga Singh" with a view to approach the second Respondent to have the meeting of the Board of Directors postponed till he would succeed to manipulate supports from other members. The second Respondent vide order dated 18-9-1995 granted stay order restraining the Petitioner from functioning as President of the Respondent-Bank till the next date of hearing which was fixed on 30-9-1995. Copy of the order dated 18-9-1995 is annexed and marked as Annexure A-4.

3. The Petitioner challenged these two orders in this Court by way of C.W.P. No. 2102 of 1995. This Court on 1-11-1995 modified the order of the Registrar to the extent that for proper functioning of the Bank, Chairman and Vice-Chairman were allowed to continue to function as such and second Respondent was directed to dispose of the election petition within 15 days. Second Respondent decided the election petition on 15-11-1995 vide Annexure A-7. The writ petition came up for orders on 2-1-1996 before the Court on which date it was observed that there is alternative remedy to the Petitioner under "the Act" to approach the State Government. The Petitioner was allowed to file an appeal before the competent authority within 7 days. Accordingly, the Petitioner filed an appeal before the State Government (Respondent No. 1) with an application for stay of operation of the order of second Respondent. The first Respondent declined to grant the stay in favour of the Petitioner and he had approached this Court again by way of C W.P. No. 197 of 1996. This Court on 24-1-1996 (Annexure A-8/1) stayed the operation of the impugned order of the first Respondent. The appeal of the Petitioner was rejected by first Respondent vide impugned order dated 4-4-1996 (Annexure A-10).

4. The Petitioner has challenged the impugned orders dated 15-11-1995 and 4-4-1996 inter alia on the grounds that second Respondent while deciding the election petition of the 4th Respondent has acted beyond jurisdiction in taking into consideration the points which were never raised in the election petition. He stated that some of the issues were decided by the second Respondent which were never raised before him by the 4th Respondent in his election petition nor during the course of arguments. The Appellate Authority has also dittoed the order of the second Respondent without applying its mind independently and the points raised by the Petitioner have not been properly appreciated and decided by first Respondent as well. According to the averments of the Petitioner an emergent meeting can be called under Clause 35 of the Bye-laws of the Respondent-Bank by the Managing Director by giving 24 hours notice atleast quorum of 5 members was required. The Managing Director of the Respondent-Bank called an emergent meeting of the Board of Directors on the requisition of 5 Directors out of whom 4 elected and one was nominee of the Apex Bank and there is no legal flaw in convening that meeting. The Petitioner alleged that provisions of Rule 48 of the Co-operative Societies Rules have no relevance in the present case and such provisions only apply if special meeting has to be called and for calling such meeting 7 days notice has been provided for.

5. The Petitioner has alleged that the finding of the Appellate Authority that meeting of the Board of Directors should not have been convened without constitution of the Board of Directors as per Rule 38 read with Bye-law No. 30 of the Respondent-Bank, is illegal as it was for the State Government and second Respondent to take action in this behalf by nominating the Directors and till such action is taken, functioning of the elected members of the Board of Directors could not be stopped.

6. A short reply has been filed by Respondents 1 and 2 on the affidavit of Shri Sanjay Gupta, Joint Secretary (Co-operation) to the Government of Himachal Pradesh. In this affidavit, it is stated that Petitioner alongwith 5 other members were declared elected on 15-9-1995 as Electors on the Board of Directors of Respondent-Bank by the concerned Returning Officers of their respective zones. The result of election was to be communicated to the second Respondent and other concerned authorities in pursuance of Rule 6 (3) of "the Rules" of election to the Committee "Appendix A" attached to the H.P. Co-operative Societies Rules, 1971. The Managing Director of the Respondent-Bank instead of sending intimation of the persons elected on the Board of Directors to the second Respondent and other concerned authorities in the first instance, decided to convene a meeting of the Board of Directors on 18-9-1995 on the basis of the requisition of the Petitioner and Ors. . Letter (Annexure A-1) was directly handed over to the Managing Director of the Respondent Bank on 16-9-1995 who issued notices to eight Directors to attend the emergent meeting of the Board of Directors on 18-9-1996. On perusal of the despatch register of the Respondent-Bank, copies of the notices were shown delivered to Managing Director for effecting service upon the Directors and an extract is annexed as Annexure R-1

to the reply. It is stated that at the time of cross examination of the Managing Director during the pendency of election petition, he stated that he personally went to Rajgarh to effect service of notice on one of the Directors in the vehicle of Respondent-Bank and notices on the other four Directors were served by him in the Bank itself. The remaining notices were served through the Bank officials. It is also stated that the General Manager of the Respondent-Bank in his statement dated 9-11-1995 has however, stated that he had no knowledge of the requisition notice and subsequent notices issued to the Directors for attending the meeting. It is also stated that from the conduct of the Managing Director of the Respondent-Bank, it is apparent that there had been some understanding in between the Managing Director and the other elected Directors to get the Petitioner elected as President of the Respondent-Bank before nominations are made on the Board of Directors by the State Government/Registrar under the respective provisions of the Act/Rules with the obvious reasons that Petitioner apprehended that he might not be able to garner sufficient support from the nominees of the State Government/Registrar.

7. The averments of the Petitioner that the meeting was convened to discuss demand charter of the Employees Union are denied. It is stated that no decision was taken to discuss problems of the staff except that a Committee was constituted to go through the demands of the employees. Moreover, this was an emergent meeting but no important decision was taken by the Board on that day and the sole object of the meeting was to get the Petitioner elected as President of the Respondent-Bank. It is admitted that 4th Respondent approached the second Respondent on 18-9-1993 at 9 a.m. at his residence and submitted an application in which he had mentioned that no notice for a meeting being convened was issued to him. The second Respondent immediately contacted the Managing Director of respondent-Bank and directed him to postpone the said meeting to some other date and serve proper notice on all the Directors. The Managing Director did not postpone the said meeting and himself participated in it by disobeying the order of the second Respondent. The Managing Director subsequently was placed under suspension and disciplinary proceedings against him are in progress. It is denied that the impugned orders passed by the authorities concerned are contrary to the provisions of law or illegal. The second Respondent framed two issues to decide the election petition and after recording evidence of the parties decided the matter in accordance with the provisions of law. The State Government has contributed a sum of Rs. 29.841 lakhs share capital of the Respondent-Bank and the State Government has every right to nominate its representatives on the Board of Directors of Respondent-Bank u/s 35 of "the Act" read with Bye-law No. 30. On 18-9-1995 there was only one official nominee of the State Government who continues to hold office by virtue of official position. The State Government appointed two of its non-official nominees vide notification dated 16-9-1995 (Annexure R-2). Similarly, second Respondent also appointed two Additional Directors under Rule 39 of the Societies Rules, 1971 vide order dated 18-9-1995 (Annexure R-3). It is

submitted that in view of this position it is clear that the meeting of the Board of Directors on 18-9-1995 was convened prior to the constitution of Full Board of Directors as provided under Rule 38 of the Societies Rules, 1971 and Bye-law No. 30 and no notice for the meeting was served on the non-official nominees appointed by the State Government on 16-9-1995. It is submitted that no requisitioned meeting can be held under Bye-law No. 35 and it can be convened only in those cases where urgent decision is required to be taken by the Board in connection with the affairs of the Bank. In the present case the Managing Director convened the requisitioned meeting for 18-9-1995 in complete violation of Rule 48 of "the Rules" and even for holding regular meeting of the Board of Directors 3 days clear notice to the Director is mandatory as per provision of Rule 44 of "the Rules". The Board of Directors can function without regularly appointed President by appointing the President for the day of the meeting and the Managing Director by calling an emergent meeting had debarred the nominees of the State Government/Registrar from exercising their right of vote in the election of President/Vice-President. Lastly, it is stated that the impugned orders have been passed by the authorities concerned after carefully considering the respective contentions of the parties and complying the relevant provisions of law.

8. The other Respondents have not filed separate reply and adopted the reply of first and second Respondents. No rejoinder has been filed by the Petitioner.

9. We have heard learned Counsel for the parties and perused the material placed on record.

10 Shri L.C. Kapoor, learned Counsel for the Petitioner contended that under Bye-law No. 35 an emergent meeting of the Board of Directors can be called at notice of not less than 24 hours and atleast five Directors shall form the quorum for the meeting of the Board and the meeting held on 18-9-1995 had not been convened in accordance with the said provision. He next contended that service of summon on 4th Respondent was properly effected as per Rule 141 of the Societies Rules, 1971. He urged that 4th Respondent in his statement before the second Respondent has admitted that his nephew received the notice of the meeting on 17-9-1995 and the said Respondent himself knew of the meeting by 8.30 a.m. on that day and could have attended the same if he so desired. According to his submission, quorum consisting of six Directors was complete, the meeting could not be postponed as it was an emergent Meeting and the transaction of the meeting was to decide the demand chartered of the Employees' Union who have threatened direct action if their demands are not accepted. He stated that provisions of Rule 48 will not apply in the present case and the meeting was called by invoking Bye-law No. 30 of the Respondent-Bank as the meeting was "an emergent meeting and not "Special Meeting". He also contended that the impugned orders have been passed by first and, second Respondents simply to help 4th Respondent to contest the election of the President and to get time for mustering his support. The learned Counsel for the Respondents strictly opposed

the contentions of the learned Counsel for the Petitioner and they have supported the orders of the authorities concerned.

11. It is an admitted case of the parties that elections of the Directors of the Respondent-Bank were completed on 15-9-1995. The State Government has contributed a sum of Rs 29.84 lakhs towards the share capital of Respondent-Bank out of total share capital amounting to Rs 76.84 lakhs upto 31-3-1994. Rule 38 of the Himachal Pradesh Co-operative Societies Rules, 1971 deals with the constitution of a Managing Committee "which reads as under:

38 Constitution of Managing Committee-(1) The managing committee of a Co-operative Society shall be constituted by

(a) election from amongst the members of the society at the annual/special general meeting;

(b) appointment by the Registrar in the manner provided in the Rule 39;

(c) nominees of the Government u/s 35 of the Act; and

(d) nominees of the other Co-operative Societies as provided in the bye-laws.

(2) The managing committee of a society shall have not less than five or more than twenty-one members, including the Government nominees as may be fixed in the bye-laws.

3. Members of the committee shall continue in office for such period as may be specified in the bye-laws or until Anr. committee is constituted but no one shall hold office of the President, Vice-President or the Director continuously for more than two terms not exceeding 6 years. A person who holds the office of the President, "Vice-President or the Director for six years continuously, shall not hold such office for at least 2 years after the completion of such a term.

A person holding the office of the President, Vice-President in a society immediately before the enforcement of these rules may, however, continue to hold such office till the expiry of his present term as provided in the existing bye-laws.

4. The committee shall, as soon as may be possible, elect from among its members as President, Vice-President and such other officers as are specified in the bye-laws unless they provide for such election by general meeting.

5. A casual vacancy in the office of an elected member shall be filled up by co-option from amongst the members of the society by the managing committee. The managing committee member so co-opted shall qualify all the conditions laid down in the rule for membership of the committee of a society and shall retire Within 90 days or at the next annual general meeting, Whichever is earlier, and the vacancy thus caused shall be filled up at such meeting by election of a managing committee member in whose place the vacancy originally occurred.

6. Any dispute relating to the election to a committee of a member or an officer

shall be referred to the Registrar u/s 72 of the Act within 30 days from the date of declaration of the result of such election.

12. A bare reading of this rule shows that the President and Vice-President of the Respondent-Bank will be elected by the Committee. In the present case the State Government appointed two of its non official nominees only on 16-9-1995 and similarly, second Respondent also appointed two Additional Directors under Rule 39 on 8-9-1995. When the meeting was held by the six Directors on 18-9-1995, admittedly the other Directors were not present. It has come in the evidence of the then Managing Director of the Respondent Bank that the completion of the election and composition of the Board was communicated by him to second Respondent only on 16-9-1995. The 4th Respondent made a statement before the second Respondent that he heard about the meeting around 8 or 8.30 a.m. in Shimla on being informed on the telephone by one Gita Ram and he denied that he has falsely signed on the notice Exhibit DW-2-IV, "as Durga Singh". He deposed that the said notice was received by his nephew "Durga Singh". The learned Counsel for the Petitioner wanted to examine said Durga Singh who was summoned but did not appear. The Petitioner took time on 3-11-1995 from second Respondent with the request that he would make his own efforts for appearance of said Durga Singh on 9-11-1995. On 9-11-1995 Durga Singh did not appear and the learned Counsel for the Petitioner again requested for Anr. opportunity for producing Durga Singh in evidence, but his request was disallowed by the second Respondent by stating that due to the time constraints imposed by the order of the High Court no further adjournment could be granted.

13. From close examination of the impugned orders of second Respondent, it is clear that he has dealt with the case very minutely and exhaustively and discussed the evidence elaborately. It has come in the evidence of Shri Vaidya Sagar, General Manager of Respondent-Bank that there was no record with the bank to show when the requisition Annexure A-1 was received and when the notices Annexure A-2 were issued. He deposed that the Bank's records do not show who was assigned the task of delivering the notices and only a photostat copy of the requisition is available with the Respondent-bank and not the original. The original of the notices Annexure A-2 issued to eight Directors whose names are mentioned therein is also not available with the Respondent-Bank. He unequivocally stated that as per records available with the Respondent-Bank, there is nothing on any file regarding either the requisition or the notices, though both these documents find entered into the Diary and Despatch register. He deposed in cross-examination conducted on behalf of the Petitioner before the second Respondent that a letter was written to the Ex-Managing Director who convened the meeting, for 18-9-1995 regarding the whereabouts of the original record to which the Ex-Managing Director replied that the record was in his personal custody and had been handed over to his counsel.

The fourth Respondent has specifically denied the receipt of notice Annexure A-2 of the meeting and it has not also been proved by the Petitioner on record that in

fact he received the notice and signed it in the name of his nephew "Durga Singh". On a bare reading of requisition for calling emergent meeting dated 16-9-1995 (Annexure A-1) five Directors requested the Managing Director of the Respondent-Bank to call an emergent meeting of the Board of Directors immediately to elect the President/Vice-President and to decide other problems. The then Managing Director immediately on the same day issued notice Annexure A-2 calling upon eight Directors to attend an emergent meeting on 18-9-1995 at 10 a.m. sharp in the Head Office of Respondent-Bank at Solan. The agenda of this meeting was: (i) Election of President; (ii) Election of Vice-President and (iii) Any other item with the permission of the Chair. It is very clear from the extract taken from the despatch register of the Respondent-Bank (Annexure R-1) that the Managing Director took the notices to the elected Directors including 4th Respondent by hand on 16-9-1995 and intimation regarding the meeting of the Board of Directors was sent to the second Respondent and other authorities by Fax messages. This action of the then Managing Director prima facie shows that he was very much interested in holding the meeting of the Board of Directors without verifying the fact that the 4th Respondent was never served by him personally nor he was got served in accordance with law. He has not even cared to wait for the appointment of the Directors by Respondent No. 2 and nominees of the State Government who were appointed on September 16, 1995 and 18th September, 1995 through Annexures R-2 and R-3 respectively. In the meeting held on 18-9-1995 out of five elected Directors who were, present most of them have been assigned some office. One of the Directors namely R.D. Sharma was also unanimously nominated representative of the Respondent- Bank on the Board of Directors of the Apex Bank under resolution No. 4 under other item. The meeting of the Board of Directors held on 18-9-1995 was convened prior to the constitution of Full Board of Directors and was, absolutely contrary to the provisions of Rule 38 of the Co-operative Societies Rules and Bye-laws No. 30 of the Respondent-Bank.

14. Rule 48 of the Himachal Pradesh Co-operative Societies Rules, 1971 provides for requisition for Special Committee Meeting. Under Sub-rule (1) of Special Meeting of the Managing Committee can be convened by any three committee members or such larger numbers as may be laid down in the Bye-laws by giving 7 days" clear notice. A proviso is added in the said sub-rule which says that no such notice shall be necessary in the case of special meeting requisitioned by the Registrar, or by any officer duly authorised by him in this behalf. Under Sub-rule (2) the requisition shall specify the object of the meeting, and shall be signed by the requisitionists, and should be delivered at the office of the Society. It is also provided in Sub-rule (3) that at such special meeting no business other than that specified in the notice shall be transacted.

15. A bare reading of this rule in clear and unambiguous words says that special committee meeting can only be requisitioned by the committee members by giving 7 clear days" notice. In the present case the meeting was requisitioned on the request (Annexure A-1) of elected Directors. Therefore, this requisition

covers only special committee meeting which is provided under Rule 48 and the contention of the learned Counsel for the Petitioner that this meeting cannot be termed to be requisitioned meeting is absolutely baseless and deserves to be rejected. The then Managing Director of the Respondent Bank has ignored the provisions of this rule and the meeting held on 18-9-1995 is not legally held and business transacted in the said meeting has been rightly and legally quashed and set aside by the authorities in the impugned orders. No distinction can be drawn from the language of the word, "emergent meeting" used in Bye-laws 35 and "special committee meeting" used in Rule 48 of the Rules or on bare reading of these provisions. We have specifically asked Shri L.C. Kapoor, learned Counsel for the Petitioner to point out the distinction between the words "emergent meeting" and "special committee meeting", but he could not give us satisfactory reply. We find that there was no delay on the part of the Government or second Respondent in nominating the other Board members. The then Managing Director has not apparently cared to comply the mandate of 7 days notice as provided under Rule 48 and undue haste has been shown by him in calling the meeting on 18-9-1995. The resolution passed in the special meeting on 18-9-1995 clearly brings out that most pressing issue before the Board of Directors in the said meeting was to elect the President/Vice-President and nominate one of the Directors on the Board of Directors of Apex Bank and the most important issue of demand charter of the Employees' Union was postponed by constituting a committee of the Directors present in the said meeting.

16. In the result, for the aforesaid discussion, the writ petition has no merit and is accordingly dismissed. The orders dated 15-11-1995 (Annexure A-7) and dated 4-4-1996 (Annexure A-10) passed by 1st and 2nd Respondents are maintained.

17. On the facts and circumstances of the case we make no orders as to costs.

C.M.P. No. 1521 of 1996:

18. In view of the dismissal of the writ petition, the stay order passed on 1st May, 1996 shall stand vacated.