(1984) 12 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2294 of 1983

Lashkar Singh APPELLANT

Vs

State Punjab and others RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Citation : (1986) 1 LLR 522 : (1985) PLJ 503 : (1985) Rent LR 269 : (1985) RRR 481

Hon'ble Judges : D.S.Tewatia, J

Advocate : Mr. M. J. S. Sethi, Advocate.Mr. Faqir Singh, Advocate, Mr. Kuldip Singh, Senior Advocate, with Mr. G. C. Gupta, Advocate., Advocates for appearing Parties

Judgement

D.S. Tewatia, J.

1. On 5th of August, 1983, thirteen Directors were elected to the Jullundur Central Coop. Bank Ltd. and three Directors were nominated by the government to the said bank. The Manager of the said bank summoned them to a meeting fixed for 25.8.1982. The agenda for the said meeting inter alia, included the election of the officebearers namely, President, Vice President and the Managing Director besides the members of the executive committee. On the day of the meeting all the sixteen Directors were present in the meeting. In that meeting petitioner No. 3 was elected President, Shri Vishwa Mitter as VicePresident and petitioner No. 5 Managing Director besides electing requisite members of the executive committee. In the meeting an objection was raised to the validity of the said meeting at the very outset on the ground that the said meeting could have been summoned only by the Chief Executive Officer of the bank and not by the Manager. This objection was overruled by a majority vote. Nine of the sixteen Directors voted against the objection. Out of the three nominated members, two sided with the objectors and one with those who opposed the objection. Deputy Registrar Cooperative Societies Jullundur brought to the notice of the Government the objection which was raised to the validity of the meeting in

terms of section 26(4) of the Punjab Coopertive Societies Act, 1961 (hereinafter referred to as the Act). On 24.4.1983 the Government passed the order whereby it agreed to the dissenting note of the nominated Directors to the validity of the said meeting.

2. This order has been impugned in the present writ petition by the petitioners on the ground that the meeting of the Directors was validly summoned by the Manager; firstly because the post of the Chief Executive Officer was vacant and under Byelaws of the Jullundur Central Coop. Bank Ltd. (hereinafter referred to as the ByeLaws) Manager alone had the authority to perform the functions of the Chief Executive Officer; that nominated Directors had no right to participate in the meeting of the Board of Directors when electing its officebearers and therefore, they had no right to strike a note of dissent; that, in any case, election could not be set aside by the Government under section 26(4) to intervene. It could do so only when subject matter of the resolution of the meeting pertained either to the transaction of the financial business of the bank or a matter of policy having financial implication for the bank and not in other matter.

3. On behalf of the respondentState the stand taken is that only the Chief Executive Officer could have summoned the Directors into a meeting and not the Manager of the bank; and that the post of the Chief Executive Officer was not vacant as Shri Puran Singh, Assistant Registrar, Cooperative Societies, Jullundur, had been directed by the Registrar, Cooperative Societies to discharge the functions of the Chief Executive Officer of the bank in addition to his own duties as Assistant Registrar.

4. Mr. Mohinderjit Singh Sethi, learned counsel for the petitioners had drawn attention to clause (vii) Bylaw 44(C) which deals with the functions of the Chief Executive Officer as also to clause (X) and the explanation thereunder. The relevant portion of ByLaw 44(c) is in the following terms :

"44.(c) The Chief Executive Officer of the bank shall have the following powers and duties : ... ...

(vii) To summon meetings of General Body, Board of Directors, Executive Committee and other committees in consultation with the Managing Director and attend these meetings without having any right to vote; ...

(x) to act as member secretary of the committee constituted to govern the common cadre of secretaries and other employees of the affiliated societies;

In case no Chief Executive Officer is appointed these duties will be performed by the Manager.

Explanation. For the purpose of the byelaws of the Central Cooperative Bank the Chief Executive Officer (C.E.O.) will mean an officer appointed by the government or by the bank as the case may be to perform the functions as laid down in these byelaws."

Perusal of clause (vii) would show that the Chief Executive Officer was authorised to summon the meeting of the Board of Directors etc. in consultation with the Managing Director. The requirement of consultation with the Managing Director presupposes the existence of the Managing Director. That means, the Chief Executive Officer could call the meeting of the Board of Directors and other bodies mentioned therein only when the Managing Director was in position. The provision in question thus leaves no doubt indeed regarding the fact that the Chief Executive Officer had no role to play in the summoning of the meeting of the Board of Directors for the election of the officebearers including the Managing Director.

5. Rule 23 of the Punjab Cooperative Societies Rules, 1963 (hereinafter referred to as the Rules) provides for the election of the committee of a Co operative Society in accordance with the rules given in Appendix ''C''. In Appendix ''C'' ''election'' is defined as election to the committee and ''voter''is defined to mean a person entitled to vote under these rules. Expression ''committee'' is defined by section 2(b) of the Act as meaning the governing body of a cooperative society by whatever name called, to which the management of the affairs of the society is entrusted. The governing body of a society like the present one comprises of the Board of Directors and its officebearers including the executive committee. The election of the governing body is not complete unless its officebearers and the members of the executive committee are also elected. That means election of the office bearers and the members of the executive committee also form part of the election of the governing body which in view of the definition of expression ''committee'' means the committee and they are to be elected in the manner provided in Appendix ''O''. Clause (iv) of Appendix ''C'' charges the Manager of the Bank to arrange for election to the committee. The ''Manager'' in Appendix ''C'' is defined to be a person either appointed as such by the Registrar for the purpose of the provisions contained in Appendix ''C'' or where no such person is specifically appointed, then the head of office of a cooperative society, by whatsoever name called, to whom the management of the society is entrusted. It is not disputed that the Manager is the head of the cooperative bank in question and he is designated as the Manager of the Bank.

6. For the reasons aforementioned, there is no escape from the conclusion that a meeting of the Board of Directors for the purpose of electing office bearers could be summoned by the Manager alone and not by the Chief Executive Officer and therefore, objection to the summoning of the meeting of the Board of Directors for the purpose of election of the officebearers on the ground that the said meeting had not been summoned by the Chief Executive Officer was clearly baseless.

7. So far as the present case is concerned, the post of Chief Executive Officer, in any case, was vacant and therefore, by virtue of clause (X) it was the Manager who had to perform the functions of the Chief Executive Officer, if for the sake of argument it is assumed that the meeting of the kind could have been called only

by the Chief Executive Officer.

8. There is no merit in the contention advanced on behalf of the respondents by their learned counsel Mr. Kuldip Singh, that Puran Singh Registrar, Co operative Societies, Jullunder, stood impliedly appointed to the post of Chief Executive Officer by virtue of Part 2 of the posting and transferring order of the Registrar dated 4.11.1980, Annexure R.3 to the written statement of the Deputy Registrar, Cooperative Societies, Jullundur, dated 19.5.1983 filed on behalf of the said respondents in which, inter alia, Assistant Registrar Cooperative Societies, Jullundur was required to look after the work of the Chief Executive Officer. Central Cooperative Bank, Jullundur in addition to his own duties without any remuneration. A Chief Executive Officer can be appointed either by the Government or by the bank as is clear from the explanation to ByLaw 44C already reproduced above. The Registrar had no power to appoint a Chief Executive Officer. It was, however, asserted by Mr. Kuldip Singh, learned counsel for the said respondents that by virtue of the provisions of Rule 45 of the Rules, the Registrar could give directions regarding any matters to the bank including the one to appoint a Chief Executive Officer. He could also direct an official of the cooperative societies'' department to perform the functions of the Chief Executive Officer and if the given society permitted him to perform the functions of the Chief Executive Officer, then it had to be taken by implication that such an officer had been appointed by the bank as the Chief Executive Officer in pursuance of the direction of the Registrar, Cooperative Societies. Mr. Kuldip Singh asserted that ByLaw 44C would have no force of law to the extent it runs counter to the powers of the Registrar implied in Rule 45 of the Rules. Mr. Kuldip Singh sought to sustain his aforementioned submission from a judgment of Supreme Court in Cooperative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh Hyderabad and others, AIR 1970 S.C. 245.

9. Rule 45 is in the following terms :

"45. 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 Co operative Society or class of Cooperative Societies."

Perusal of Rule 45 would show that it envisages the Registrar to give such directions to a Cooperative Society or a class of Cooperative Societies as he may consider necessary for the successful conduct of the business of the concerned society. A Chief Executive Officer performs vital functions as is evident from clause (vii) of ByLaw 44(C) and therefore, the absence of such a functionary could adversely affect the conduct of the business of such a society. The Registrar, therefore, in my opinion, could issue direction to the bank to appoint a Chief Executive Officer, if for some reason the Government failed to appoint the Chief Executive Officer within a reasonable time of the occurrence of the vacancy. If the Registrar could give such a direction, then he could also suggest an official to the bank to be appointed as such. However, the Registrar in exercise of such a power could not require the bank to appoint as Chief Executive Officer any official that he liked i.e. he could not ask for the appointment of an official who could not perform the functions of a Chief Executive Officer, as is the case here. Puran Singh, Assistant Registrar, who is claimed to have been appointed impliedly to the post of the Chief Executive Officer could not perform the functions of a Chief Executive Officer, for the reason that as Chief Executive Officer he is debarred to exercise right of vote in a meeting. Puran Singh admittedly had also been nominated as one of the nominated Directors in which capacity he was entitled to participate in the voting. Puran Singh, therefore, after he was nominated as Director could not have held the post of Chief Executive Officer as well. The fact that, in fact, he did not act as Chief Executive Officer is evident from the fact that no meeting of any kind was ever called by him. This fact was demonstrated by showing to the Court the register of meetings which showed that all the meetings had been called by the Manager or the Administrator, that the post of Chief Executive Officer was vacant is further made clear by the fact that the Government vide Annexure P.8 dated 4.11.82 appointed Satya Parkash Gill, Assistant Registrar, Cooperative Societies, Jullundur, as Chief Executive Officer of the Central Coop. Bank, Jullundur, against a vacant post. If Puran Singh, Assistant Registrar, Cooperative Societies, Jullundur, was virtually appointed to the post of Chief Executive Officer of the Central Coop. Bank, Jullundur then there was no question of describing the said post vacant and appointing Shri. Gill against the post.

10. As regards the ratio of Cooperative Central Bank''s case (supra), it may be observed that their Lordships in that case held that for the internal governance of the Society its ByLaws did not have the force of law. In fact, their Lordships in that case observed that the Registrar, Cooperative Societies was bound by the ByLaws. Their Lordships only in the context of the powers of the Industrial Tribunal held that the ByLaws of the society could not construct the wide jurisdiction of the Industrial Tribunal and the same qua its jurisdiction did not have force of law.

11. Mr. Mohinderjit Singh Sethi, counsel for petitioners, on the other hand places reliance on B.S. Minhas v. Indian Statistical Institute and others, (1983) 4 S.C.C. 582. In Minhas''s case (supra) the legality of appointment of a Director of the Indian Statistical Institute was impugned on the ground that the said appointment had been made in noncompliance with By Law 2. It was canvassed on behalf of the Institute that the ByLaws having no force of statute, noncompliance with its requirement could not, in any way, affect the appointment of a Director in question. Their Lordships repelled the contention and held that the respondentInstitute was bound to comply with it. Reference in this regard was made to the following observations of the Court in Ramana Dayaram Shatty v. International Airport Authority of India, (1979) 3 S.C.C. 489, on which Mr. Tarkunde had placed reliance :

"It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Vitaralli v. Seaton, 359 U.S. 535, where the learned Judge said :

An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed ... ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

In view of the ratio of Minhas''s case (supra), there is no escape from the conclusion that a ByLaw framed by a body for the conduct of its business and management is bound by the same. The Registrar too is bound by the ByLaws and had to act in accordance with the same unless the said ByLaws run counter to the provisions of the rules or the statute. In the present case, none of the provisions of the rules or the statute provide expressly or impliedly for the appointment of the Chief Executive Officer of the Society. Rule 45 can at best be stretched to the extent already indicated i.e. to the extent of giving direction regarding the desirability on the part of the bank to fill up vacant post of the Chief Executive Officer. He could also suggest a name and issue directions but he with his own hand could not pass an order appointing a person as Chief Executive Officer of the society. That order has to be passed by the society itself in the light of the direction issued by the Registrar. In the present case, the bank had not passed an order appointing Puran Singh as the Chief Executive Officer and therefore, Puran Singh Assistant Registrar cannot at any stage be held to be appointed as Chief Executive Officer of the said bank.

12. For the reasons aforementioned, the objection raised by some of the Directors to the validity of the meeting of the Board of Directors on the ground that the same had not been conveyed by the competent authority i.e. Chief Executive Officer was clearly baseless and untenable. Therefore, the Government in exercise of its powers under subsection (4) of section 26 of the Act had no power to declare the said meeting and the proceedings conducted by it in that meeting as illegal.

13. It may also be further observed that by virtue of subsection (4) of section 26 no power inheres in the Government to take notice of any dissent by the nominated members to the validity of a meeting summoned for the purpose of electing the officebearers because the nominated members had no right of voting in such a meeting as is clear from section 80A of the Act. The validity of such a meeting if it had any bearing on the valid election of the officebearers could be examined only if a dispute was raised regarding the validity of the election of the officebearers in terms of section 55 of the Act. Subsection (4) of section 26 is in the following terms :

"26. Election and nomination of members of committees. ... ... (4) Where, in a cooperative society in which shares have been subscribed for liability by way of guarantee for borrowing exceeding fifty per centum of the working capital of the society has been undertaken by the Government, a difference of opinion in respect of any matter arises between the nominated members of the committee and other members thereof, the matter shall be referred by the committee to the Government whose decision thereon shall be final and will operate as if the same were a decision taken by the committee."

14. Provision of subsection (4) of section 26 could be brought into picture for the purpose of scrutinising a resolution of a society if such a resolution had financial implication for the bank and in turn to the Government which has subscribed shares in the bank for liability by way of guarantee for borrowing exceeding fifty per cent of the working capital of the society and not in each and every matter notwithstanding the use of expression ''in respect of any matter'' by the said provision for, in my opinion, the expression ''in respect of any matter'' has to be allied to the nature of financial responsibilities that the Government had taken qua the financial stability of the bank.

15. In view of the aforesaid interpretation of subsection (4) of section 26 of the Act, it has to be held that the Government was not competent to pass the impugned order dated 24.4.1983, Annexure P.1.

16. For the reasons aforementioned, this writ petition is allowed, the impugned order dated 24.4.1983, Annexure P.1 is quashed with costs which is fixed at Rs. 300/ and to be paid by the respondentState only.

17. Before parting with the judgment, I may observe that allegations of mala fide were also alleged against the Chief Minister and against Darshan Singh, that these functionaries were instrumental behind the dissent of the nominated members and to the passing of the impugned order as they had wanted that the officebearers of their choice should have been elected. In support of such allegations, no material is placed on the record. The support for the allegation was sought inferentially from the fact that the Manager who had called the meeting was later on suspended. Such allegations of mala fide surely cannot be sustained on the basis of such a fact, because the suspension of the Manager cannot be related to the annoyance on the part of the Chief Minister on account of the Manager summoning the said meeting. Had that been a fact then one of the Government nominees who had sided with the Directors who had opposed the objection raised to the validity of the meeting, in fact should have come in for more severe display of displeasure on the part of the Chief Minister. Admittedly, no action whatsoever had been taken against the said nominated member. Hence, the suspension of the Manager even inferentially cannot be attributed to his act of summoning the meeting of the Board of Directors to the dislike of the Chief Minister and Shri Darshan Singh. Hence, I find no merit in the allegations of mala fide against the said two respondents.

