

(1999) 01 AHC CK 0021
In the Allahabad High Court
Case No : C.M.W.P. No. 43087 of 1998

Mechanical Department, Primary Co-operative Bank Ltd.,
N.E.R., Gorakhpur and another

APPELLANT

Vs

Joint Secretary, Ministry of Agriculture and Co-operation,
G.O.I., New Delhi and others

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 All 173 : (1999) 1 AWC 900 : (1999) 1 UPLBEC 566

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : R.P. Singh, N.C. Tripathi and Murlidhar, for the Appellant; S.C. and Ashok Bhushan, for the Respondent

Judgement

O.P. Garg, J.—The petitioner No. 1, Mechanical Department, Primary Co-operative Bank Limited, N.E. Railway, Gorakhpur [hereinafter referred to as "the Bank"] is a Multi-State Co-operative Society governed by the provisions of the Multi-State Cooperative Societies Act, 1984 (hereinafter referred to as "the Act") and the rules framed thereunder. it is admittedly a non-notified society and is run and managed by a Board of Directors who are elected by the delegates. There is, therefore, two tier system of election, i.e.. firstly, the delegates are elected to represent their respective branches of the society and then the Board of Directors of the Bank are elected. The term of the Board of Directors is three years. The Chief Mechanical Engineer of North Eastern Railway is the ex-officio President of the Bank. Deputy Chief Mechanical Engineer, or for that matter, any other person, nominated by the Chief Mechanical Engineer is to act as ex-officio Vice Chairman.

2. A Board of Director was duly elected on 18.1.1993 and on expiry of the period of three years, its term came to an end on 17.1.1996. it appears that no steps were taken by the outgoing Board to hold fresh elections in spite of the fact that

the Registrar of the U. P. Co-operative Societies, who also acts as the Central Registrar, has insisted for fresh elections. Since the elections were not in offing, the Central Registrar by his order dated 10.4.1997 superseded the outgoing Board of Directors by Invoking the provisions of Section 48 of the Act of 1984. By the same order, a committee of three members was constituted comprising of Smt. Manju Singh-respondent No. 4 as the Chairman and S/Sri Sita Ram and Durga Prasad as its members. The compendious name of this committee is "Board of Administrators". Subsequently, by order dated 21.4.1997, Smt. Manju Singh, the chair-person of the Board of Administrator was replaced by one Sadhu Saran. The two other members were also substituted by S./Sri Ram Adhar Prasad and Ram Pyare by order dated 17.5.1997. Both these orders were challenged by Smt. Manju Singh, Sita Ram and Durga Prasad by means of Civil Misc. Writ Petition No. 19308 of 1997 in this Court. An interim order dated 30.5.1997 was passed, staying the operation of the aforesaid two orders. The said writ petition, in which an application for vacating the stay order was moved, is still pending.

3. The case took a sharp turn when election programme was published on 3.6.1997 by one B. K. Trivedi who was the Vice President in the superseded Board of Directors. it was challenged by filing Civil Misc. Writ Petition No. 20099 of 1997. which was dismissed on 17.6.1997. i.e.. a day before the election was to be held. On 18.6.1997, a new Board of Directors was elected and is said to have taken charge on the same day. The Central Registrar recognised the election on 10.7.1997. No sooner recognition was granted to the newly elected directors of the Board, a Writ Petition No. 24199 of 1997 was filed by Smt. Manju Singh. A Division Bench of this Court dismissed the writ petition on the ground that in view of the provisions of Sections 74 and 75, there was an alternative remedy available by making a reference to the competent authority. Consequently, Smt. Manju Singh and others approached the Central Registrar by making a reference. The said reference was rejected by the Central Registrar on 18.7.1998. Against the order of the Central Registrar, an appeal was filed by Smt. Manju Singh with two other members of the Administrative Board under the provisions of Section 90 (1) of the Act of 1984. The Joint Secretary, Government of India--respondent No. 1, exercising powers of appellate authority, allowed the appeal on 18.9.1998. The election of the Board of Directors held on 18.6.1997 and the order passed by the Central Registrar dated 18.7.1998 have been set aside with the following further direction :

".....However, as new Managing Committee has taken charge and, as told the writ petition filed by the appellant challenging their removal from Board of Administrators is pending before the Court, it is hereby directed that the elections of the Board of Directors of the respondent Bank should be held afresh within a period of three months. in the meantime, the existing Board will manage the day-to-day affairs of the Bank and will not take any policy decision including appointments of , staff etc."

The order of appeal which is dated 18.9.1998. Annexure-1 to writ petition was issued on 20.11.1998 and is alleged to have been served on the present petitioners on 26.11.1998. The Board of Administrators of which Smt. Manju Singh--respondent No. 4 was claiming to be the chair-person. moved the district executive authorities to place them in charge of the Bank. Accordingly, the District Magistrate, Gorakhpur wrote to City Magistrate to ensure that the functioning of the Board of Administrators is not. in any manner, Interfered with or Impeded by any person. There was an allegation that Ajai Kumar Singh--petitioner No. 2 who is Secretary of the Bank was not co-operating with the Board of Administrators. The City Magistrate took appropriate steps and addressed various authorities, including the local police to extend help to the Board of Administrators. The lock of the Bank premises was broken open and ultimately the Board of Administrators came to be fully saddled.

4. The Board of Administrators took a decision on 2.12.1998 that Ajai Kumar Singh, Secretary was acting against the interest of the Bank, and, therefore, he should be suspended. Accordingly, an order dated 3.12.1998. Annexure-3. placing Ajai Kumar Singh under suspension was passed.

5. The present writ petition has come to be filed on behalf of the Bank through Ajai Kumar Singh. its Secretary under Article 226 of the Constitution of India with the prayer that the order dated 18.9.1998 passed in appeal filed u/s 90 (1) of the Act of 1984 and all consequential orders, including those of the executive authorities of the district be quashed and the respondent Nos. 4 to 7 be commanded not to interfere with functioning of the petitioner No. 1 and its "existing" Board of Directors. The order of suspension passed against Ajai Kumar Singh was also challenged and it was also prayed that the aforesaid respondent be restrained from interfering with the functioning of the petitioner No. 2--Ajai Kumar Singh as the Secretary of the Bank.

6. Counter and rejoinder-affidavits have been exchanged. Three persons, namely. Hanuman Prasad Shukla, Anand Srivastava and Suresh Tewari who were elected as directors in the meeting held on 18.6.1997 have also moved an application for their impleadment. They have also filed their affidavits.

7. Since the counter, rejoinder and supplementary affidavit have come on record, learned counsel for the parties made a statement that this writ petition be finally disposed of "on merits. Accordingly, Sri Murlldhar, senior counsel, appearing on behalf of the petitioners and Sri Ashok Bhushan. learned counsel for the respondent Nos. 4 and 5, as well as learned standing counsel, who appeared for respondent Nos. 6 and 7, were heard at considerable length.

8. Sri Ashok Bhushan raised a preliminary point that the present writ petition is, in effect, the writ petition on behalf of Ajai Kumar Singh to vindicate his personal grievance, Inasmuch as. he has challenged the order of his suspension and under garb of this writ petition, he has chosen to challenge the order in appeal by which the election of the Board of Directors has been nullified. According to Sri

Ashok Bhushan, Ajai Kumar Singh, who is a paid employee, has no authority to challenge the order passed in appeal as well as the legality or otherwise of the restoration of the Board of Administrators. This submission was repelled by Shri Murlidhar on the ground that under clause of the bye-laws of the Bank, the Secretary is the person, who can sue and be sued. As a matter of fact, the controversy whether the suit is maintainable at the instance of Ajai Kumar Singh alone has paled into insignificance for one simple reason that at least three persons who were elected as the directors and whose elections have been set aside have come forward for being impleaded. These three persons are undoubtedly the aggrieved persons. It would also not be out of place to mention that the traditional concept of focus standi has now been jettisoned by a number of decisions of the Apex Court and a new dimension to this concept has been given by evolving new strategies to overcome the technical rules. Even though a belated attempt has been made to meet the objection raised on behalf of the contesting respondents about the maintainability of the writ petition at the instance of Ajai Kumar Singh only, the fact remains that the defect, if any, stands cured on account of the intervention of the three persons, whose election as directors of the Board has been set aside in appeal.

9. Now, it is the time to consider the merits of the case, Sri Murlidhar, learned counsel for the petitioners raised two specific points of dispute firstly, that the election of the Board of Directors held on 18.6.1997 was valid and it could not be set aside by the appellate authority in a mechanical manner and the defect, if any, in the election shall stand cured in view of the provision of Section 51 of the Act of 1984, and, secondly, that after passing of the order of appeal, the Board of Administrators, i.e., Smt. Manju Singh and two other members could not be given charge of the Bank and that it is a case in which the executive authorities of the district have indulged in high-handedness by taking keen personal interest in favour of the respondents No. 4 who has been successfully pulling the wires with the blessings of her political mentor. It was also urged that the present Board of Administrators, in whose charge the Bank has been put, is plundering and squandering the resources of the Bank and illegal appointments are being made resulting in wasteful expenditure. Both these submissions have been repelled by Sri Ashok Bhushan.

10. I have given thoughtful consideration to the matter. The rivalry between the parties is of no consequence. Irrelevant facts, allegations and counter allegations, the veracity of which is hidden in the penumbral zone, far away from the judicial scrutiny, are not likely to improve the case of either of the parties. Without being swayed either way with the motives which impelled the parties to move forward in a particular direction, the controversy is to be tested with the legal yardstick. With these words of caution, I proceed to analyse the controversy.

11. As said above, the Bank is a non-notified society. Its affairs are managed by an elected Board of Directors. After the expiry of the term of the Board of

Directors in January, 1996, elections, of necessity, were to take place to elect the new directors. There is ample material on record to indicate that the elections were not being- held. in a situation where the outgoing Board of Directors was not prepared to hold the elections, the only course left open to the Central Registrar was to invoke powers u/s 48 of the Act of 1984. As a matter of fact, this power was exercised by the Central Registrar and the Board, term of which expired on 17.1.1996. was superseded on 10.4.1997. The order passed u/s 48 was unsuccessfully challenged by means of Civil Misc. Writ Petition No. 13951 of 1997 by Nand Lal Singh. As an interim measure, till the new Board of Directors is elected, a Board of Administrators of three persons was appointed. Initially Smt. Manju Singh respondent No. 4 was appointed as Chairman, besides two other persons as members. The Chairman and the members of the three members Board of Administrators with replaced by orders dated 21.4.1997 and 17.5.1997. The operation of these orders was stayed by this Court and the order dated 30.5.1997 passed in Civil Misc. Writ Petition No. 13951 of 1997 is still operative. Admittedly, the aforesaid writ petition is pending. The effect of the stay order dated 30.5.1997 is that the two orders, by which the Chairman and the members were replaced are in abeyance and the original Chairman and the members have continued to function. This legal position cannot be assailed.

12. The whole difficulty has arisen on account of the election programme published by B. K. Trivedi, who was Vice Chairman in superseded Board. The moot point for consideration is whether B. K. Trivedi was competent to hold the elections with a view to constitute new Board of Directors, which could replace the Board of Administrators. Even if the various submissions made by Shri Murlidhar are accepted, the election was to be held by a Returning Officer, to be appointed by the Central Registrar. in the instant case, there is nothing on record to establish that B. K. Trivedi was, at any point of time-appointed by the Central Registrar as the Returning Officer to hold the elections. On the basis of some correspondence. Sri Murlidhar frankly (sic) that inference may be drawn that the Central Registrar had appointed B. K. Trivedi as Returning Officer and in any case, there has been any irregularity, it would stand cured in view of provision of Section 51 of the Act of 1984. A short and swift reference may be made to the provisions of Section 51 of the Act of 1984, which runs as follows :

"51. Acts of Multi-State Co-Operative Societies not to be invalidated by certain defects.--No act of a Multi-State Co-operative Society or of any board of any committee or officer of the society shall be deemed to be invalid for reason only of the existence of any defect in the constitution of the society or of the board or of the Committee thereof or in the appointment or election of an officer or on the ground that such officer was disqualified to hold office."

A bare reading of the aforesaid provision would indicate that invalidity in the election is not such a defect which would be cured by the aforesaid provision. The validity or otherwise of the election of the Board of Directors is clearly beyond the scope of the object of the provisions of Section 51 of the Act of 1984

which cannot, therefore, be pressed Into service to fortify the submission that if there was any defect in election, it stands cured. Sri Murlidhar, learned counsel for the petitioner also made reference to the two decisions of the Apex Court in Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, and K.D. Deshmukh Vs. Amritlal Jayaswal, , with a view to assert that the various pleas which were taken by Smt. Manju Singh and others in the reference or in appeal could not be sifted. I have given my anxious thought to the matter and have minutely studied the two decisions, and find that the observations made in those cases cannot be transplanted to the facts of the present case. One cannot lose sight of the fact that a Division Bench of this Court in Civil Misc. Writ Petition No. 24199 of 1997 has given the liberty to Smt. Manju Singh and others to raise all those pleas which were available to them to challenge the election before the competent authority in the reference u/s 74 of Act of 1984. The various provisions dealing with the election process have to be construed and interpreted strictly. Either a provision is to be followed or it has to be altogether ignored. There is nothing in the midway which may be reconciled. in the instant case. obviously B. K. Trivedi was never appointed as the Returning Officer, and therefore, he had no competence, authority, or power to publish the programme for election on 3rd June, 1997. it sounds ridiculous that a person who was an ex-officio office bearer of the superseded Board would be summoned to hold the elections.

13. The procedure to hold the elections of a non-notified society is prescribed and detailed in the schedule appended to the Multi-State Co-operative Societies (Regulation, Membership) Rules. 1985. Para 8 of the said schedule is relevant for the purpose. in sub-para 3 of Para 8 of the schedule, it is provided that Board of Directors or the administrator or administrators appointed under sub-section (1) of Section 48. as the case may be. shall prepare a list of individual members and delegates of member-societies as it stood on the date, 30 days prior to date on which elections are to take place and affix a copy thereof on the notice board of the society not less than 15 days prior to the date fixed for the election. This provision clearly contemplates that the election could be held either by the outgoing Board of Directors or the Board of Administrators. The Board of Directors, the term of which expired on 17.1.1996, stood superseded and the Board of Administrators presided by Smt. Manju Singh came into being. if at all elections were to be held. process could be set in motion only by the Board of Administrators as the earlier Board of Directors stood superseded. The appellate authority has rightly taken, the view that the election programme published by B. K. Trivedi was against the provisions of law and that the elections held on 18.6.1997 were illegal, futile and uncalled for. The order of the appellate authority, i.e.. Joint Secretary. Government of India, does not suffer from any illegality or irregularity which may warrant interference by this Court. On the basis of the material placed before this Court, one cannot escape from the finding that the elections held on 18,6.1997 were illegal and, therefore, the Board of Directors which came into being as a result of the said election could not be recognised.

14. With all vehemence at his command, Sri Murlidhar, learned counsel for the petitioners argued that in the present case, executive authorities of the district have exhibited blatant, obtrusive, and offensive exercise of their powers, Inasmuch as they have, by use of force, put Smt. Manju Singh and its members in charge of the affairs of the Bank. Not only this, according to Sri Murlidhar, the district authorities have taken unashamed and flagrant steps to break open the locks of the Bank with a view to saddle Smt. Manju Singh--respondent No. 4 in office of Chairman of the Board of Administrators on wrong interpretation of the directions of the appellate authority, it was submitted that in view of the directions contained in the order of the appellate authority dated 18.9.1998, Annexure-1 to the writ petition, the existing Board was to manage the day-to-day affairs of the Bank. The direction of the appellate authority has been quoted above. it provides that the elections are to be held afresh with a view to constitute the new Board of Directors and that till the elections are held, the "existing Board will manage the day-to-day affairs of the Bank. The entire controversy centers round the interpretation of the expression "existing" and used by the appellate authority. According to Sri Murlidhar, this expression has the reference to the Board of Directors that have taken charge and whose election has been set aside while according to Sri Ashok Bhushan. the appellate authority cannot be presumed to have committed the absurdity of entrusting the management of the Bank to the Board of Directors, which stands deposed on account of nullification of its elections. The submission made by Sri Ashok Bhushan appears to be within the realm of reality. Before the election, which was held on 18.6.1997, a Board of Administrators appointed u/s 48 of the Act of 1984 was functioning. The orders with regard to replacement of the Chairman and Members of the Board have been stayed by this Court and as said above, on account of the stay order of this Court, the original members of the Board of Administrators, viz., Smt. Manju Singh--respondent No. 4 and others were continuing in office, if the elections held on 18.6.1997 are totally ignored as they have been illegally held and are no elections in the eye of law, the expression "existing Board" will have a reference to the Board of Administrators which was functioning on the date of alleged illegal election. it cannot be expected that the appellate authority intended to clothe the same Board with the power to manage the affairs of the Bank, the election of which had been declared illegal. The term "existing Board" used by the authority has reference to the Board which was in existence prior to the illegally elected Board of Directors Smt. Manju Singh and her two members constituted the Board of Administrators and it was this Board which was authorised by the appellate authority to manage the day-to-day affairs of the Bank.

15. it has come on record that Ajai Kumar Singh--petitioner No. 2 was not co-operating with the Board of Administrators and was acting against the interest of the Bank. Not only this, he had disappeared after locking the Bank premises. in these circumstances, the district executive authorities had to render due assistance and help to put the Board of Administrators, of which Smt. Manju

Singh--respondent No. 4 is Chairman, in office so that the order passed by the appellate authority may be carried out. Therefore, no exception can be taken to the various steps taken by the district administration in affording support to the Board of Administrators, after the election of the Board of Directors held on 18.6.1997 had been declared illegal.

16. The order that "existing Board" will manage the day-to-day affairs of the Bank is supposed to be an Interim arrangement till the elections are held to constitute the new Board of Directors.

17. in view of the prescription of time given by the appellate authority, the elections are to be held in the month of February. 1999. The appellate authority was conscious of the fact that during this interregnum, some safeguards have to be applied so that interim body may not abuse its power and it was for this reason that it was directed that the existing Board which will manage day-to-day affairs of the Bank will not take any policy decision, including appointment of staff, etc. There are allegations that the present Board of Administrators is indulging in large scale bungling by withdrawing, for no rhyme or reasons, substantial amounts and making unwarranted appointments resulting in wasteful expenditure. it is not within the province of this Court to investigate the credibility or otherwise of these allegations but the fact remains that unguided and unrestricted powers cannot be allowed to be exercised by the existing Board of Administrators, which has to function only by way of stop-gap arrangement. After all, it is hard earned money of the members of the society which is likely to be squandered or wasted and. therefore, with a view to balance the rights and keeping in view the ultimate and supreme interest of the beneficiaries of the society and the direction Issued by the appellate authority, it is necessary to put a safety valve on the powers of the Board of Administrators with certain restrictions as ordered below.

18. in the conspectus of the above facts, it may be concluded that the appellate authority has rightly set aside the elections, which were held on 18.6.1997 as recognised on 10.7.1997 and that consequent upon the ouster of the Illegally elected Board of Directors, the Board of Administrators headed by Smt. Manju Singh. has been legally put in office. No interference with the order passed by the appellate authority and the consequential orders passed to implement the same is warranted in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

19. However, the existing Board of Administrators, which is functioning only till such time the newly elected Board of Directors is constituted by the close of the month of February, 1992, shall merely manage day-to-day affairs of the Bank. it shall not take any policy decision and shall also not make any fresh appointments. All the appointments made by the Board of Administrators, the withdrawals of various amounts and the expenditure made after the order of the appellate authority till the date of this order shall be subject to review by the newly constituted Board of Directors, it is further directed that till the new Board

of Directors is elected, all the financial transactions shall be carried out with the concurrence/ approval of the Chief Mechanical Engineer. North Eastern Railway, Gorakhpur and his counter signatures shall also be obtained before making any withdrawals. The Chief Mechanical Engineer. North Eastern "Railway, Gorakhpur as well as the Central Registrar shall ensure that the elections to constitute new Board of Directors take place and the present Board of Administrators is relieved of its responsibilities positively by the end of February, 1999.

20. in the light of the above observations, the writ petition is accordingly disposed of.