

(2011) 08 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (C) 4163 of 1992

M.R. Bhardwaj and Another

APPELLANT

Vs

Delhi State Cooperative Bank Ltd. and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 DEL CK 0127

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sunil Malhotra and Rajesh Kaushik, for the Appellant; Anand Yadav and Anita Tomar for R-1, Sujata Kashyap and A.K. Singh for R-2, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—W.P. (C) No. 4163 of 1992 has been filed by Mr. M.R. Bhardwaj on 25th November 1992 seeking quashing of seniority list and office order dated 17th November 1992 issued by Respondent No. 1, Delhi State Cooperative Bank Limited ("the Bank"), in relation to accounts officers of the Bank.

2. Rule was issued in the writ petition on 10th November 1993 and the interim order dated 11th December 1992, to the effect that any promotion made shall be subject to further orders, made absolute.

3. W.P. (C) 396 of 1993 was filed by Mr. Umed Singh Dahiya on 18th January 1993 seeking quashing of the same seniority list dated 17th November 1992. In this writ petition rule was issued on 19th July 1993.

4. In the counter affidavit filed in both the writ petitions, a preliminary objection was raised to the maintainability of the writ petitions against the Bank. Inter alia, it was contended by Respondent No. 1 Bank that the decision to promote Respondents 4 to 11 as accounts officer from the grade of clerk/supervisor was taken by the Board of Directors of the Bank in terms of the rules and bye-laws of

the Bank. The bye-laws of the Bank have No. force of law and the same cannot be enforced by way of a writ petition under Article 226 of the Constitution. Secondly, it is submitted that conditions of service are a matter of contract, and contractual obligations cannot be enforced under Article 226 of the Constitution. It is denied that there is any perversity in the control and affairs of the Bank by the Government of National Capital Territory of Delhi ("GNCTD") or that rules applicable to the central government employees are applicable to the Bank or its employees. Relying on the decisions in *U.P. State Co-operative Land Development Bank Limited v. Chander Bhan Dubey* (1991) 1 SCC 741, *Supriya Basu and Others Vs. West Bengal Hsg. Board and Others*, and *S.S. Rana Vs. Registrar, Co-operative Societies and Another*, it was submitted that writ petition against Respondent No. 1 Bank, which is in fact a co-operative society, is not maintainable. Reliance is also placed on the decisions of this Court in *Mohinder Singh and Others Vs. D.P. Khatri and Others*, *The Shamrao Vithal Co-operative Bank Limited and another Vs. Padubidri Pattabhiram Baht and another*, , *Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another*, , and *P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others*,

5. Countering the above submissions Mr. Sunil Malhotra, learned Counsel appearing for the Petitioners refers to the cases involving the Respondent No. 1 Bank where this Court has entertained the writ petitions. Reference was made to the decision in *DSCO Cooperative Industrial Society Ltd. Vs. Delhi State Cooperative Bank Ltd. and Others*, *Kanak Rastogi v. Delhi State Cooperative Bank* [W.P. (C) No. 112 of 1993 decision dated 27th August 1993] and *N.R. Jyotshi v. The Lt. Governor of Delhi* [W.P. (C) 2122 of 1993 decision dated 6th April 1994]. It is submitted that even if the alternative remedy is available, jurisdiction of the High Court under Article 226 is not ousted. Reliance is place on the decisions in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, , *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, , *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, *Ram Prakash & Company v. New Delhi Municipal Committee* 64 (1996) DLT 625 (DB) and *Anand Prakash v. The Delhi State Cooperative Bank Limited* [W.P. (C) 105 of 2010 dated 20th April 2011]. It is stated that inasmuch as the Bank is performing a public function and public duty, it is amenable to the writ jurisdiction under Article 226 of the Constitution. Reliance is placed on the decisions in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, *Shri Chander Bhan Vs. Delhi State Co-operative Bank Limited*, and *Sanjay Bhaskar v. Union of India* [W.P. (C) 1993 of 1989 dated 20th April 2009].

6. Reliance is also placed upon the decisions in *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, and *Ganga Retreat and Towers Ltd. v. State of Rajasthan* (2003) 12 SCC 91 to urge that rule has been issued in the

writ petition more than eighteen years ago the High Court ought not to reject, at the stage of final hearing, the writ petition only on the ground of maintainability.

7. This Court has heard the arguments of learned Counsel for the parties essentially on the maintainability of writ petition on 16th August 2011. There are a large number of precedents cited in the order dated 20th April 2011 in W.P. (C) No. 105 of 2010 [Anand Prakash v. The Delhi State Cooperative Bank Limited] where a learned Single Judge concluded that writ petition against Respondent No. 1 Bank was not maintainable. The decision appears to turn essentially on the decision in S.S. Rana v. Registrar, Cooperative Societies concerning the Kangra Central Co-operative Bank Limited. The said decision does not however take note of the pronouncement of the Division Bench of this Court in Kanak Rastogi v. The Delhi State Cooperative Bank Limited where a preliminary objection to the maintainability of the writ petition was rejected in view of the earlier decision of this Court in Kuldeep Mehta v. Union of India 1993 (2) DL196. It also does not take into account the decision of this Court in Chander Bhan v. Delhi State Cooperative Bank Limited wherein the writ petition was entertained against Respondent No. 1 Bank.

8. Be that as it may, considering the fact that the two writ petitions were filed more than eighteen years ago and rule was issued in both petitions in 1993 itself, it is not considered expedient to reject these petitions only on the ground of maintainability. After waiting for 18 years in this Court it would be unreasonable to require the Petitioners to seek alternative remedies by way of a civil suit.

9. Consequently, the preliminary objection as to the maintainability of the writ petitions is rejected in the peculiar facts and circumstances of these cases. It is however clarified that it will be open to Respondent No. 1 Bank to urge the ground of maintainability in any other appropriate writ petition against it without the present decision being a precedent.

10. The writ petitions will now be set down for final hearing on 13th October 2011.