
(2016) 03 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 20295/2013

Nand Lal Kalal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Citation : (2016) 03 RAJ CK 0013

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : R.M. Jain, for the Appellant; Bhuvnesh Sharma, Dy. Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—1. By this writ petition, a challenge is made to the order dated 17th October, 2013 issued by the Deputy Register, Cooperative Societies, Jhalawar. It is by invoking Section 125(1) of the Rajasthan Cooperative Societies Act, 2001 (in short "the Act of 2001"). A challenge to the orders dated 4th June, 2013 and 30th August, 2013 has also been made.

2. Learned counsel for petitioner submits that in view of provisio to Section 125 of the Act of 2001, the Registrar is not having authority to pass order against a resolution taken by the Short Term Cooperative Credit Structure Society (in short "the Structure Society"). The impugned orders have been passed by invoking Section 125 of the Act of 2001, whereas the autonomy has been given to the structure society for financial & internal administrative matters under Section 30B of the Act of 2001. In view of above, impugned orders deserve to be quashed having been passed in ignorance of Section 30B and provisio to Section 125 of the Act of 2001. The issue raised herein has already been determined by the Division Bench of this court in the case of Tej Singh v. Hanumangarh Central Co-operative Bank Ltd. & Ors., D.B. Civil Special Appeal No. 52/2013, decided on 21.01.2013. In view of above, writ petition deserves to be allowed.

3. Learned counsel appearing for the State Government so as Central Cooperative Bank have opposed the petition.

4. Shri Ganesh Meena appearing for the Central Cooperative Bank submits that cooperative society took a resolution contrary to the circular issued by the Registrar. They were under an obligation not to give pay scale or any benefit to the employees without approval of the Registrar and without applying the provisions of the circular. They have violated terms and conditions of the circular while applying it for the benefit of salary to the employees. In pursuance to the order under Section 125 of the Act of 2001, the matter is now pending before the Rajasthan State Cooperative Tribunal where the society has already put in appearance. In the light of the aforesaid, this court may not interfere in the order passed by the Deputy Registrar.

5. I have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The respondent - cooperative society passed a resolution to give benefit of pay scale to the petitioner. The Joint Registrar thereupon passed an order on 4th June, 2013 to initiate action against the society under Section 30 of the Act of 2001 and even by invoking Section 125 of the Act of 2001. It directed for revocation of the resolution. The letter dated 30th August, 2013 gives the same directions. The impugned order dated 17th October, 2013 has been passed by invoking Section 125(1) of the Act of 2001. The resolution of the cooperative society has been stayed and the matter is referred to the Tribunal.

7. The question for my consideration is as to whether Section 125(1) of the Act of 2001 can be invoked against the structure society. Sections 30B and 125 of the Act of 2001 are relevant thus quoted hereunder:

"30B- Autonomy in all financial and internal administrative matters.- Notwithstanding anything contained in this Act or any other law for the time being in force, a short term cooperative credit structure society shall have autonomy in all the financial and internal administrative matters including the following areas, namely-

- (a) personal policy, staffing, recruitment, posting and compensation to staff;
- (b) issues relating to affiliation and disaffiliation with any federal structure of its choice including entry and exit at any level.
- (c) area of operation according to its business requirements; and
- (d) internal control systems."

"125. Power of Registrar to rescind certain resolutions -

(1) If in the opinion of the Registrar, any resolution passed at the meeting of any cooperative society or committee thereof is opposed to the objects of the society or is prejudicial to the interests of the society or its members at large, or is in

excess of the powers of the society, the Registrar, may staying execution of the resolution interimly, propose to rescind the resolution:

Provided that the Government or the Registrar shall not do anything or take action or issue any order or directive which has effect of curtailing any of the freedom or powers given under this Act to any short term cooperative credit structure society or adversely affect the provisions of this Act.

(2) In case where the Registrar has interimly stayed execution of any resolution under sub-section (1), he shall, within a period of forty five days, send the proposal of rescinding the resolution to the Tribunal for consideration.

(3) The Tribunal shall, after giving the society an opportunity of being heard, decide upon the proposal of the Registrar and pass its final orders."

8. As per Section 30B of the Act of 2001, autonomy has been given to the structure society in financial & internal administrative matters. Sub-clause (a) refers to the staffing, recruitment and other matters which includes compensation for the staff. The proviso to Section 125 excludes the jurisdiction of the Registrar for the decision taken by the Structure Society in financial & internal administrative matters. In view of aforesaid, the Deputy Registrar ought not to have invoked Section 125(1) of the Act of 2001.

9. The aforesaid issue has been considered by the Division Bench in the case of Tej Singh (supra). The issue of salary came up for consideration before this court in the case of Rajasthan Sahkari Bank Karmchari Sangh Unit Ajmer v. Rajasthan State Co-operative Tribunal, Jaipur, S.B. Civil Writ Petition No. 20229/2012 along with connected matters, decided on 19th November, 2013. The word "compensation" was considered. The judgment of the learned Single Judge has not been interfered by the Division Bench. The relevant paras of the judgment in the case of Rajasthan Sahkari Bank Karmchari Sangh Unit Ajmer v. Rajasthan State Co-operative Tribunal, Jaipur (supra) are quoted hereunder:

"The perusal of Section 30-B reveals autonomy in all financial and internal administrative matter to a short term co-operative credit structure society. It is not disputed by either of the counsel that so far as the respondent Cooperative Bank is concerned, it falls in the definition of Short Term Credit Structure Society. In view of above, it becomes clear that Section 30-B applies to the respondent Cooperative Society being a Short Term Co-operative Credit Structure Society. The autonomy has been given under sub-section (a), (b), (c) and (d) of Section 30-B of the Act of 2001. It is not only for personal policy, staffing, recruitment but also for compensation to the staff. The word "compensation to the staff" clarifies the pay benefit to its employees. It is in view of the definition of compensation given under the Black's Law Dictionary and even by High Powered Committee Report of Co-operative by Ministry of Agriculture, Government of India. The word "compensation" as defined under the Black's Dictionary is quoted hereunder for ready reference:

"Compensation - 1. Remuneration and other benefits received in return for services rendered; esp., salary or wages [Cases: Labour and Employment]

Compensation consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expenses reimbursement."

The definition of compensation includes wages and salary. The financial autonomy has been given to the Cooperative Society by way of amendment in the said act. Section 125 of the Act of 2001 excludes powers of Registrar in regard to the Credit Structure Society. It is in view of proviso added to Section 125 of the Act vide Notification dated 16.10.2009. The proviso added to the Section 125 of the Act of 2001 read with Section 30-B has taken away the jurisdiction of the Registrar. Rule 39 of the Rules of 2003 cannot nullify amended provision of Section 30-B. It is no doubt that Rules of 2003 provides about officers and the employees of the Co-operative Society but then 30-B has given autonomy to Credit Structure Society and cannot be substituted by the rule, if it is in contradiction. The position of fact in regard to Section 60 and 104 of the Act of 2001 is also same. Section 60 can be invoked by Registrar for reference of dispute, if it is under Section 58. The same is the position in regard to Section 104 of the Act of 2001.

In view of discussion aforesaid, I am of the opinion that Registrar had no power to act in violation of Section 125, more specifically, the proviso appended to it by amendment of 2009. Accordingly, the order of Registrar so as the order passed by the Tribunal pursuant to reference cannot be allowed to stand."

10. In the light of the aforesaid, the Registrar which includes the Deputy Registrar was not having authority to pass order under Section 125(1) of the Act of 2001. If at all circular or the instructions issued by the Registrar were not followed by the society, the Registrar was having authority to proceed against the society, if so permissible. The perusal of the orders dated 4th June, 2013 and 30th August, 2013 makes a reference for action against the society by invoking Section 30 of the Act of 2001. The reply and the documents on record do not show any action against the society under the said provision but an order under Section 125(1) to stay the resolution passed by the Society though not permissible. In view of above, impugned order dated 17th October, 2013 is set aside however it would not preclude the non-petitioner to take action against the society if same is permissible.

11. Shri Ganesh Meena learned counsel further submits that salary needs to be regulated by Condition No. 26(A) of the Primary Agricultural Credit Societies/ Large Agricultural Multipurpose Co-operative Societies Employees Selection, Appointment & Service Conditions, 2008 (hereinafter referred to as "the Conditions of 2008"). As per the Conditions of 2008, pay scale of the employees

is to be first approved by the Registrar or is to be given as per his direction. The resolution of the cooperative society is in violation of Condition No. 26(A) thus the Registrar had rightly invoked the jurisdiction.

12. I have considered the submission made by the counsel for the Central Cooperative Bank in reference to Condition No. 26(A). If resolution of the cooperative society is in violation of the Condition No. 26(A), the Registrar can proceed against the society for violation. In fact, orders dated 4th June, 2013 and 30th August, 2013 make a reference of Section 30 to proceed against the cooperative society but no order exists against the cooperative society thereupon. The issue further remains that even if there is violation of Condition No. 26(A), whether Section 125(1) of the Act of 2001 can be invoked against the Structure Society. The answer of the question lies in the proviso to Section 125(1) which has been quoted earlier.

13. The violation of the rule by the structure society cannot be taken up under Section 125(1) but can be under Section 30 of the Act of 2001. The respondents have defaulted in taking action under the provision where jurisdiction does not exist. Undisputedly, the cooperative society herein is Short Term Cooperative Credit Structure Society as none of the party has disputed the status of the society covered by Section 30B of the Act of 2001. Even if the impugned order dated 17th October, 2013 is quashed, the respondents would be at liberty to proceed against the society in accordance to the provisions of law.

14. The argument has been made that the case is now pending before the Rajasthan State Cooperative Tribunal and appearance of the Society. The petitioner-employee is not a party to it. When the petitioner-employee is not a party, pendency of the case before the Tribunal cannot come in his way and otherwise the order passed under Section 125 itself is without jurisdiction then reference to the issue to the Tribunal itself is not maintainable. The impugned order dated 17th October, 2013 is quashed.

15. Accordingly, writ petition is allowed with the aforesaid.