
(1995) 01 P&H CK 0144
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6768 of 1992

Naresh Yadav

APPELLANT

Vs

Sudershan Mohan

RESPONDENT

Date of Decision : 31-01-1995

Acts Referred:

Citation : (1995) 109 PLR 653

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : S.S. Dalal, for the Appellant; Sanjiv Manrai, AAG for Respondent No. 1 and R.S. Lohan, for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this writ petition under Article 226 of the Constitution of India, a prayer has been made for quashing of order dated 25.3.1992 passed by the Deputy Registrar, Co-operative Societies, Karnal, exercising the powers of the Registrar, Co-operative Societies, Haryana.

2. In brief, the facts are that the petitioner, a Junior Accountant in The Karan Urban Co-operative Bank Limited, Karnal was allegedly promoted as Chief Executive Officer by the Board of Administrators in their meeting held on 4.10.1991. One Balbir Singh (respondent No. 3) vide his application dated 29.1.1992 made to the Deputy Registrar exercising the powers of Registrar, complained that the meeting held on 4.10.1991 being illegal, be declared invalid under Rule 110 of the Haryana Co-operative Societies Rules, 1989 (for short the 1989 Rules). The meeting was sought to be annulled or invalidated on the ground that under rule 110 of the 1989 Rules, meeting of the Committee was required to be called after giving fifteen days notice whereas meeting was convened on 27.9.1989 for 4.10.1991. The other ground taken was that as per agenda item No. 4 of the meeting, the only item to be considered was the staff strength but the Board of Administrators promoted the petitioner from the post of Junior Accountant to the post of Chief Executive Officer whereas there is post

of Senior Accountant between the Junior Accountant and Chief Executive Officer. The deputy Registrar exercising the powers of Registrar, vide order dated 25.3.1992 declared the proceedings of meeting dated 4.10.1991 as invalid on both the grounds and directed the Bank to reconsider the matter as per rules. This order is now being impugned here in this writ petition.

3. Respondents No. 1 and 2 have filed separate written statements. Respondent No. 2 in his written statement stated that the petitioner was promoted to the post of Chief Executive Officer by the Board of Administrators against the service rules of Haryana Urban Co-operative Banks Staff Service Rules, 1989. According to appendix "B" of the Rules, Chief Executive Officer can be recruited directly or by transfer on deputation of a person from the Co-operative Department and the qualification for the post of Chief Executive Officer is at least 2nd Class Graduate and CA.II.B. with 5 years experience of bank in supervisory capacity whereas the petitioner is only a third class graduate. Copy of the marks sheet of the petitioner has been attached as Annexure R-2 to the written statement. The filing of the application by respondent No. 3 in collusion with respondent No. 1 has been denied and it has been stated that resolution dated 4.10.1991 was passed by the Board of Administrators in collusion with the petitioner and the act of the Board of Administrators in promoting the petitioner to the post of Chief Executive Officer from that of Junior Accountant is against the rules and against the interest of the Society. It has also been stated that the agenda note, as alleged in the writ petition, was not circulated to the member of the Board of Administrators. Copy of the agenda has been attached as Annexure R-3 to the written statement. It is further stated that the election for the Directors were to be held on 13.1.1992 and in order to help the petitioner and with a view to give undue advantage to the petitioner, the official Administrator of the Board promoted him to the post of Chief Executive Officer in meeting held on 4.10.1991. Respondent No. 1 has denied the allegations of mala fide levelled against him in passing the impugned order.

4. Learned counsel for the petitioner has contended that respondent No. 3 had no locus standi to file an application for setting at naught the proceedings of the meeting held on 4.10.1991. He further contended that seven days notice was required for holding meeting of the Board of Administrators and this having been done, respondent No. 1 was not justified in law in declaring the meeting invalid. In support of his argument, he referred to the judgment in K. Narasimhiah Vs. H.C. Singri Gowda,

5. In answer to the submissions made by the learned counsel for the petitioner, counsel for the respondents submitted that no interference is called for in the order as not only the meeting was held in violation of the Rules but also the petitioner was not qualified for the post of Chief Executive Officer.

6. Having given thoughtful consideration to the contentions raised by the respective counsel for the parties, I am of the view that there is no merit in this petition and the same deserves to be dismissed. For the meeting held on

4.10.1991, the following items were mentioned in the Agenda:-

- 1) To confirm the proceeding of the last meeting held on 17.9.1991;
- 2) To review action taken on the proceeding of the last meeting dated 17.9.1991.
- 3) To approve the newly enrolled members from Serial No. 2969 to 2989; and
- 4) To discuss the staff strength for the smooth running of business of the bank.

There was no item with regard to the promotion of the petitioner from the post of Junior Accountant to the post of Chief Executive officer. However, according to the learned counsel for the petitioner, Agenda note, mention of which has been made in paragraph 4 of the writ petition, was circulated to the members of the Board of Administrator and in the note, it was mentioned "that Sh. Naresh Kumar Yadav, Accountant, Officiating as C.E.O/Manager since March, 1986 and his work and conduct has been adjudged as good by the BOD/BOA from time to time. As there is no permanent CEO since March, 1986, so the case for regularising of services of Sh. Naresh Kumar Yadav as CEO is put before BOA. Moreover, Govt. has also issued directives in this regard that an employee officiates any post for continuous five years could be made regular. Moreover, bank will not force any monetary burden because on regularisation approximately Rs. 300/- ha to be paid more whereas Rs. 150/- is already being paid as officiating allowance. So the case is put before BOA for kind consideration and approval." Thus, has contended that the note being there, the Board of Administrators were fully justified in considering the note and promoting the petitioner. This contention is devoid of any merit and cannot be accepted for the reason that the note, if any, circulated along with the agenda, was totally unrelated to the items of agenda. There were only four items before the Board of Administrators for consideration and those having been mentioned in Annexure R-3, case of promotion of the petitioner, by no stretch of imagination, could be included in the item at No. 4 which was only to discuss the staff strength for smooth running of the business of the bank. Counsel is also not correct in contending that only 7 days notice was required for holding a meeting of Board of Administrators. In this regard, Rule 110 of 1989 Rules framed under the Haryana Cooperative Societies Act, may be noticed :-

"110. Special Rule. - Notwithstanding anything contained in these rules, the procedure laid down in this rule shall apply to a society where the Government has :-

(a) subscribed to the share capital of a Co-operative Society; or

(b) xx xx xx xx xx

(c) xx xx xx xx xx

(d) xx xx xx xx xx

(i) At least fifteen days, clear notice specifying the date, place, time and agenda

for a meeting of a general body, committee and at least seven days clear notice for a meeting of any smaller body set up by either of them, whether, convened by the Registrar, The Chief Executive Officer otherwise, shall be, given to all the members of the general body/committee or smaller body, as the case may be:

Provided that a short notice may be given to all the members of the general body, committee or smaller body, as the case may be with the permission of the Registrar or under his direction.

(ii) The Registrar, may of his own motion or on a reference made to him, declare the proceedings of the meeting referred to in clause (i) as invalid, if he is satisfied that the meeting was held without proper notice or without all the members having received the notice for the meeting or if the meeting was not conducted at the appropriate place and time; and

(iii) No matter shall, except with the permission or direction of the Registrar be considered in a meeting of a general body, committee or in a meeting of any smaller body set up by either of them unless that matter is specifically included in the agenda which is circulated to all members at least fifteen clear days or seven days in advance, respectively.

(2) xxx xxx xxx xxx xxx"

Clause (i) of rule 110 of 1989 Rules framed under the Haryana Co-operative Societies Act provides for 15 days clear notice for a meeting of the general body and Committee and at least 7 days clear notice for meeting of a smaller body set up either by the general body or by committee. The contention that the Board of Administrators was a smaller body as envisaged in clause (i) and 7 days notice was sufficient, cannot be accepted as the rule is very clear and it provides for 15 days clear notice where a meeting of general body or a committee is called. "Committee" has been defined in clause (e) of Section 2 of the Haryana Co-operative Societies Act, 1984 (for short the Act) and reads thus:-

"Committee" means the governing body of co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted."

In the present case, admittedly, Board of Directors was not in existence and the management of the society was being looked after by the Administrator appointed u/s 33 of the Act. Thus, under clause (i) of rule 110 of 1989 Rules framed under the Haryana Cooperative Societies Act, 15 days clear notice was required for a meeting of the Board of Administrators being a committee as defined in clause (e) of Section 2 of the Haryana Cooperative Societies Act, 1984. This was not done in the instant case and under clause (ii), respondent No. 3, on reference made to him, had the jurisdiction to declare the proceedings of the meeting referred to in clause (i) as invalid on having satisfied himself that the same was held without proper notice. He was also justified in declaring the meeting invalid because under clause (iii) of Rule 110 of the 1989 Rule, no matter except with the permission or direction of the Registrar could be

considered in a meeting of the Board of Administrators unless that matter was specifically included in the agenda which was circulated to all members at least 15 days in advance. As already noticed, there was no item in the agenda with regard to the promotion of the petitioner from the post of Junior Accountant to the post of Chief Executive Officer. It may also be noticed at this stage that in exercise of powers conferred by rule 29 of the Haryana Co-operative Societies Rules, 1989 and bye-laws No. 34(xv) of The Karan Urban Co-operative Bank Limited, the Board of Directors/Administrators, with the approval of the Registrar, Co-operative Societies, Haryana, have framed the Haryana Urban Co-operative Banks Staff Service Rules, 1989 (for short the Service Rules) regulating the recruitment and conditions of service of persons appointed in the Bank. Rule 8 of the Service Rules provides that no person shall be appointed to any post in service, unless he is in possession of qualifications and experience specified in Appendix "B" to these Rules. Appendix "B" provides for qualifications for various posts including the post of Chief Executive Officer. The source for appointment to the post of Chief Executive Officer is by direct recruitment and on transfer of a person on deputation from Cooperative Department, State Co-operative Bank or nationalised Bank. The qualifications prescribed are as under-

A) For Direct recruitment:

(i) At least IIInd class graduate in economics or Commerce with 5 years of experience or C.A. II.B with 5 years experience in banking.

(ii) Preference will be given to a person having higher Diploma in Co-operation.

(b) By transfer on deputation of a person from Co-operative Department, State Co-operative Bank or nationalised Bank.

7. The petitioner was working only as a Junior Accountant and had only been officiating as Chief Executive Officer/Manager since March, 1986. Under the Service Rules, from Junior Accountant, promotion is to the post of Senior Accountant and from Senior Accountant, promotion is to the post of Assistant Executive Officer. Thus, under the Service Rules, no promotion could be made for the post of Chief Executive Officer from the post of Junior Accountant. Counsel then submitted that the petitioner would be deemed to have been directly recruited. This contention too has no merit. Petitioner does not possess the prescribed qualifications. It has been specifically averred by respondent No. 2 that the petitioner is a third class graduate and this fact has not been denied by filing any replication. It has also not been stated by the petitioner that he is qualified for the post of Chief Executive Officer. The contention of the learned counsel for the petitioner that under Rule 42 of the Service Rules, the Board of Directors is competent to relax the rules and once the petitioner was promoted/appointed as Chief Executive Officer, the rule with regard to qualification would be deemed to have been relaxed. This contention is without any merit. Rule 42 of the Service Rules gives power to the Board of Directors to relax rules but the same can be exercised only when the Board of Directors is of the opinion that it

is necessary and expedient to do so for the reasons to be recorded in writing and that too with the prior approval of the Registrar. The petitioner has not placed on record the appointment letter which was allegedly issued to him pursuant to the decision taken by the Board of Administrators in its meeting held on 4.10.1991 nor has placed any document on record which would show that the Board of Administrators had sought prior approval of the Registrar and had recorded reasons in writing for relaxing the rule with regard to qualification prescribed for the post of Chief Executive Officer. The learned counsel for the petitioner made a reference to Section 36 of the Act and contended that the defect, if any, in the appointment of the petitioner, cannot be called in question. In order to appreciate the argument of the learned counsel for the petitioner, Section 36 of the Act may be noticed :-

"36. Acts of Co-operative Societies not to be invalidated by certain defects.-

No act of a co-operative society or any committee or any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution of the society or of the Committee or any vacancy in the membership or office thereof or in the appointment or election of an officer or on the ground that such officer was disqualified for appointment or election."

Identical provisions u/s 29 of the Punjab Co-operative Societies Act (Act 25 of 1961) came up for consideration before this Court in Ram Chander Singh v. State of Punjab and Ors. (1967) 69 P.L.R. 362. In para 12 of the judgment, it was held that.

"An analysis of this Section shows that it is only (1) an "act" (2) of the society itself, or of its committee or officers, which is made immune to an attack on its validity on (3) the following grounds and no others:-

- (a) the existence of any defect in procedure; or
- (b) the existence of any defect in the constitution of the co-operative society or its committee, as the case may be; or
- (c) (in a case where the act of an officer of the society is sought to be declared invalid),
 - (i) the existence of any defect in the appointment or election of the officer concerned; or
 - (ii) the existence of any qualification for the appointment of such officers."

8. In view of decision in Ram Chander's case (supra), the contention of the learned counsel for the petitioner that the defect in the appointment of the petitioner cannot be called in question, is not acceptable because only the act of the society, committee or its officer has been made immune to attack on the grounds mentioned therein. The judgment cited by the learned counsel for the petitioner in K. Narasimhia's case (supra) is not relevant to the controversy raised in this petition as in that case, in the context of Mysore Town

Municipalities Act, it was held that u/s 27(3), the requirement of giving three days clear notice for holding special general meeting is not mandatory.

9. For the reasons recorded above, this petition shall stand dismissed with costs, which are quantified at Rs. 2,000/-.