(2004) 10 DEL CK 0182

In the Delhi High Court

Case No : WP (C) 15522/04

Prem Chand Jain APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2004) 115 DLT 68 : (2005) 79 DRJ 51

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Arun Bhardwaj, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner a Development Officer of the Respondent Bank by this writ petition seeks quashing of order dated 9.9.2004 By the impugned order petitioner was directed to handover charge and not to attend the Bank w.e.f. 18.9.2004 as his contract had not been extended by the Board of Directors of respondent Bank. Petitioner also seeks direction for payment of his emoluments for the month of July and August,2004.

2. Petitioner had retired from the Central Bank of India as a Manager. Post-retirement he was appointed by the respondent Jain Cooperative Bank as a Development Officer to promote the business of the Bank. Petitioner''s case is that his contract is wrong fully sought to be terminated by the order of 9.9.2004, while the contract stood extended up to 31.12.2004 as communicated by the Secretary of the respondent Bank. The stand of the respondent bank appears to be that contract has not been extended after dts. expiry on 30.6.2004.

3. The question arising for consideration is whether the alleged wrongful termination of the contractual service by the Bank could be the subject matter of a writ petition.

4. Learned counsel for the petitioner submitted that the respondent bank was

discharging public functions and catering to the needs of its members and public, being a cooperative bank. It was a registered society. It was governed by the Cooperative Socieities Act and in particular by the RBI regulations, as far as banking activities were concerned. Counsel urged that it functions had public character, hence it should be regarded as an instrumentality of State and/ or an authority within the meaning of Article 12 of the Constitution of India amenable to writ jurisdiction.

5. Reliance was placed on the judgment of the Supreme Court in U.P.State Co-operative Land Development Bank Ltd. Vs . Chandra Bhan Dubey and Ors, . The said case is completely distinguishable on facts. It was held in the cited case that writ against the U.P. State Co-operative Land Development Bank Ltd. was maintainable. The Court found that the U.P. State Co-operative Land Development Bank Ltd., though registered as a Co-operative Society, had been constituted under the provisions of Bank Act. Further in exercise of the powers conferred under the U.P. State Co-operative Land Development Bank Rules,1971, rules had been framed for the service conditions of the employees of the applicant therein. In brief the Society constituted under the Act was to be governed by the regulations framed pursuant to the statutory powers and the said rules governed the service conditions of the employees. It is in these facts and on consideration of other applicable provisions, the Court found that the control of the State Government on the U.P. State Co-operative Land Development Bank Ltd. was all pervasive and the employees had statutory protection and, Therefore, U.P. State Co-operative Land Development Bank Ltd. was held to be an authority or even instrumentality of the State amenable to writ jurisdiction.

6. This is not the situation in the present case under consideration. It is a private cooperative bank, though registered as a Society under the Societies Registration Act. Mere discharge of public functions by a private banking company would not make it amenable to writ jurisdiction under Article 226 of the Constitution of India. Reference may usefully be made to the following extracts from the recent decision of Supreme Court in the case of Federal Bank Ltd. Vs. Sagar Thomas reported at 2003 (10)CC 733, which squarely applies to the present case:-

"But in the present case the concern is with a banking company which has its own resources to raise its funds without any contribution or shareholding of the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies carrying on banking activity. Banks finance borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have a regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. Banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all the freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by the Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless these are all regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company."

7. Based on the above criteria, the petitioner would not fall within the ambit of instrumentality of State or other authority.

8. In view of the foregoing discussion, it is held that the writ petition as filed against the respondent Cooperative Bank is not maintainable. Petition is dismissed, with no order as to costs.