
(1986) 08 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1051 of 1985

Rampal Agarwal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Co-operative Societies Act, 1965 — Section 36
Rajasthan Co-operative Societies Rules, 1966 — Rule 38

Citation : AIR 1987 Raj 198 : (1986) 2 WLN 569

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : Party in person and S.D. Dangi, for the Appellant; N.L. Jain, General and G.G. Sharma, for the Respondent

Judgement

M.B. Sharma, J.—The petitioner - has challenged Annexure-5 an order of the State Government Department of Cooperative, dated June 12/13, 1985, under which in supersession of the order dated April 10, 1985, by which the Board of Directors of Gangapur Sahkari Spinning Mills Ltd. Gangapur District Bhilwara was constituted. A new Board of Directors was constituted. Earlier the petitioner was a nominated member of the Board of Directors and was also appointed as Chairman of the Board of Directors. Lastly, , the term of the nominated Board of Directors was extended under order dated December 1, 1984 (Annr. 3) up to August 31, 1986. Though, there is no order for removal of the petitioner either as a Director of the Board of Directors or as Chairman of the Board of Directors, but as a result of re-constitution of the Board of Directors and appointment of Shri Badri Tiwari, as Chairman, under order dated June 12/13, 1985, the earlier Board of Directors including its Chairman, the petitioner, stands removed.

2. Gangapur Sahkari Spinning Mills Ltd. Gangapur (for short, the Mills) was established under the bye-laws dated March 10, 1981. A Board of Directors was nominated under the bye-law 35 of those bye-laws for a period of 3 years vide notification 4(22) Sah/Krishi-4/81 dated August 31, 1981, The petitioner was

nominated as its Director and the name of the petitioner appears at No. 7 in that order (Annr. 1). The Registrar, Cooperative Societies Rajasthan Jaipur was Chairman of the nominated Board of Directors. Later on under the notification dated December 24/27, 1982, the petitioner was appointed as Chairman of the Mills and as the Chairman of the Board of Directors in place of the Registrar, Co-operative Societies. by the State Government. The term of the Board of Directors so constituted by the State Government was extended from time to time and the petitioner also continued as such in the capacity of Chairman of the Board of Directors. As stated earlier, vide order dated December 1, 1974 the term of the Board of Directors was further extended for two years till August 31, 1986 by the State Government and the term of the petitioner also ipso facto became up to August 31, 1986 to be continued as Chairman of the Mills.

3. The petitioner has challenged the order of re-constitution of the Board of Directors and his implied removal from the office of the Director as well as Chairman of the Board of Directors of the Mills inter alia on the ground that the same is violative of the principles of natural justice as it came to be made without affording an opportunity of hearing to the petitioner; re-constitution of the Board of Directors under Annexure-5 is nothing but the dismissal of the petitioner or his removal from the office of Director/ Chairman of the Board of Directors and is in contravention of Section 36 of the Rajasthan Cooperative Societies Act, 1965 (for short, the Act) and the Rules made thereunder; that the order was made at the instance of Shri Rampal Upadhyaya, Education Minister, respondent No. 4 to the petition and suffers from lack of bona fides. The petitioner does not belong to the group to which Shri Upadhyaya subscribes and that is the reason he has been removed from the office by reconstituting the Board of Directors. The State Government has no power in the bye-laws to remove any member of the Board of Directors.

4. Show cause notice was issued to the non-petitioners and reply to the same has been filed. Affidavit of Shri Rampal Upadhyaya, Education Minister has also been filed and thereafter the petitioner filed a rejoinder and his counter-affidavit.

5. The contention of the learned counsel for the petitioner is that bye-laws were framed on March 10, 1981 and have been amended on June 10, 1985 and under the amended bye-laws, bye-law 36(3) has been deleted. Therefore, the State Government could not at its will remove a nominated Director/ Chairman and in its place appoint a fresh Director/Chairman of the Board of Directors. I have gone through the concerned file of bye-laws which is available with Shri S. S. Saxena, Dealing Assistant in the Co-operative. Department Government of Rajasthan Jaipur. From the perusal of that file, it cannot be disputed that bye-laws as framed on March 10, 1981 which contained bye-law 36(3) were amended and the amended bye-laws came into force on June 10, 1985 and the amended bye-law does not contain bye-law 36(3). Bye-law 36(3) as it stood prior to June 10, 1985 was as under : --

jkt; ljdkj vius }kjk fd;s x;s euksfur lapkydksa dks fdlh Hkh le; okil ysdj mudh txg

vU; vH;fFkZ;ksa dks euksuhr dj ldrh gS A

Annexure-5 which is under challenge in this writ petition as stated earlier was made by the State Government on June 12/13, 1985 i.e. after coming into force of the amended bye-laws in which the above extracted bye-law 36(3) does not find place. The contention of Mr. Sharma, learned counsel for the non-petitioners Nos. 3 and 5 as well as of Mr. N. L. Jain learned Advocate General for the other non-petitioners is that the deletion of bye-law 36(3) shall not make any difference because one who has power to nominate has also the power to remove and the State Government has the power to remove any person who has been nominated earlier as Director/Chairman of the Board of Directors and to re-nominate in his place any other person. Without entering into controversy as to whether the State Government could do so or not in spite of the fact that bye-law 36(3) does not exist in the amended bye-laws as on June 10, 1985, the question is whether once a Director is nominated or a person is appointed as Chairman of the Board of Director of the Co-operative Society, non-petitioner No. 3, it was necessary to give any opportunity of hearing to him? The contention of the learned counsel for the petitioner is that there is no provision in the bye-laws excluding a right of hearing to the nominated Director/Chairman of the Board of Directors of the Mills and even if there would have been one, in view of the provisions of Section 36 of the Act read with Rule 38 of the Rajasthan Co-operative Societies Rules, 1966 (for short, the Rules) it was necessary that before the petitioner could be removed or before in place of the petitioner any other person could be appointed as Director/Chairman and before the Board of Directors could have been superseded and in its place a new Board of Directors could have been substituted the opportunity of being heard should have been provided to the petitioner and to the Board of Directors.

6. Mr. Sharma, learned counsel for the non-petitioners Nos. 3 and 5 as well as Mr. N.L. Jain, learned Advocate General, have contended that the conduct of the petitioner is such that he cannot be allowed to take this ground in assailing Annexure-5. It has been contended by them that the petitioner himself requested the State Government on many occasions for appointment of persons as Directors in place of earlier Directors and without exception the request of the petitioner was accepted by the Government and new Directors were appointed in place of old ones. The petitioner cannot be allowed to reprobate and approbate. In this connection they have also made reference to Annexures R.3-5/1, R3-5/2 and R3-5/3. From the perusal of those documents, it does appear that the Government did nominate other persons in place of earlier ones as Directors to the Board of Directors of the Mills and it also appears that it was done by and large on the request of the petitioner who was the Chairman of the Board of Directors. But the question is whether on this ground the petitioner can be estopped from challenging the re-constitution of the Board of Directors and his implied removal from the office of Chairman/Director of the Board of Directors and supersession of the Board of Directors under order Annexure 5 dated June 12/13, 1985 u/s 36 of the Act the power of removal of a committee of any co-

operative society or any member of such committee is vested in the Registrar of the Co-operative Societies. Section 36(1) of the Act provides that if in the opinion of the Registrar, the Committee of any co-operative society or any member of such committee persistently makes default or is negligent in the performance of duties imposed on it or him by the Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or its members, or wilfully disobeys directions issued by the Registrar for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government, or is otherwise not discharging its or his functions properly, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections, if any, by order in writing remove the committee and appoint a Government servant as an administrator to manage the affairs of the society and shall submit his report justifying the removal of the committee to the State Government within a period of fifteen days from the date of removal of the committee. Sub-sec. (1A) of Section 36 of the Act gives a right of appeal to any member of the committee so removed to file an appeal against the removal within a period of thirty days from the date of the order of removal. The Registrar is required under Sub-section (1)(a) of Section 36 to submit his report justifying the removal of the committee to the State Government within a period of fifteen days from the date of removal of the committee and if the State Government confirms the order of removal u/s 36(1)(c) of the Act, it may allow the Administrator to continue or may nominate any other committee and where the State Government accepts the appeal, and sets aside the order of removal, the committee so removed shall start functioning to all intents and for all purposes as if it had never been removed. It will therefore be clear from the bare reading of Section 36 of the Act that before a committee or any of its member can be removed, which can be removed on the grounds contained therein it is necessary that a reasonable opportunity to state its or his objections should be provided. The Rules have been framed in exercise of the powers conferred by Sub-sections (1) and (2) of Section 148 of the Act by the Government of Rajasthan. Under Sub-section (1) of Section 148 of the Act and more so under its Clause (xxvii) the State Government may for the whole or any part of the State and for any class of co-operative societies after previous publication make rules to carry out the purposes of the Act and in ; particular and without prejudice to the generality of the power foregoing power such rules may provide for appointment, suspension, removal, term of office and filling of casual vacancies of the members of the committee and other officers and for the appointment of administrator u/s 36 and the procedure at meeting of the committee and the powers to be exercised and the duties to be performed by the committee, administrator and other officers. Rule 38 of the Rules contains the procedure for appointment, suspension and removal of member of the committee and other officers etc. Sub-rule (1) of Rule 38 starts with non obstante clause and it reads as under : --

"Notwithstanding anything contained in the bye-laws of a society but subject to the provisions of Section 36, the Registrar may by an order....."

A member or the committee for the purpose of Section 36(1) will also include nominated committee/Board of Director or nominated Director or Member of the Committee. The contention of Mr. Sharma as well as Mr. Jain, Advocate General that a nominated Board of Directors and nominated Director/ Chairman can be removed by the State Government who nominates him has no force, and once a person is nominated as Director/Chairman before the expiry of the term he can only be removed after giving an opportunity of being heard u/s 36 of the Act and report has to be made by the Registrar, Co-operative Societies to the Government which has to pass the final order. In the instant case it is not even the case of the respondents that any notice to show cause or opportunity of hearing was afforded to the petitioner or to the Board of Directors or to any of its Directors as required u/s 36(1) of the Act. Even the earlier Board of Directors of which the petitioner was Chairman/ Director was not removed and it is only as a result of the re-constitution by nominating fresh Board of Directors that the earlier Board of Directors of which the petitioner was Chairman was superseded. Though, it is argued by Mr. Sharma learned counsel for the non-petitioners Nos. 3 and 5 as well as by Shri N. L Jain, Advocate General for other respondents that the petitioner being a nominated Director was not holding any office and was to only having a privilege which he was having, but I find no substance in this submission. In my opinion, even a person who is nominated to an office for a term holds that office and it cannot be said that only an elected person holds that office and so far as a nominated person is concerned, he will have a privilege. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, the Supreme Court has said that the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. In *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, Chinnappa Reddy J. in para No. 15 observed :

"There is a peculiar and surprising misconception of natural justice in some quarters that it is exclusively a principle of administrative law. It is not. It is first a universal principle and therefore a rule of administrative law. It is that part of the judicial procedure which is imported into the administrative process because of its universality. It is of the essence of most systems of justice -- certainly of the Anglo-Saxon System -- that in litigation both sides of a dispute must be heard before decision."

I have already said earlier that the Act provides in Section 36 an opportunity of hearing to the Committee or its Members before either of them can be removed from the office. The Act is a magna carta for Co-operative Societies and a look at its preamble would show that it was made to consolidate and amend the law

relating to co-operative societies in the State of Rajasthan. Therefore, before any Board of Directors or the petitioner a Director/ Chairman of the Board of Directors could be removed and a new Board of Directors could be nominated it was necessary that an opportunity of hearing should have been given to the petitioner. No doubt the Registrar of the Co-operative Societies is one of the Directors and Vice-Chairman of the Board of Directors, but that will not dispense with the opportunity of hearing to be given to the Board of Directors or one of the Directors/Chairman before the same could be removed or superseded. At any rate, the Registrar was to make the report to the Government and the ultimate decision u/s 36 of the Act was to rest with the Government and it had the power to confirm the order of removal. Therefore, even if the power to remove a committee or Board of Directors/Chairman be assumed to be vested in the Government in case the Registrar is one of the Members of the Board of Directors, it was necessary even for the Government to give reasonable opportunity of hearing to the Board of Directors and/or the petitioner before the implied removal of the Board Directors and of the petitioner as its Director/Chairman. The question of supersession of a public body came up for determination in *S.L. Kapoor Vs. Jagmohan and Others*, In that case in exercise of the powers conferred by Section 12 of the Punjab Municipal Act, 1911 as applicable to New Delhi, the Lt. Governor of the Union Territory of Delhi by a notification dated September 28, 1979 appointed nine non-official members and four ex-officio members to the New Delhi Municipal Committee to hold office for a period of one year with effect from October 4, 1979. However, well before the expiry of the term for which the members were appointed, on February 27, 1980 the Lt. Governor in exercise of the powers conferred by Section 238(1) superseded the New Delhi Municipal Committee with immediate effect and appointed Shri P. N. Behl as the person who may exercise and perform all powers and duties of the New Delhi Municipal Committee until the said Committee was reconstituted. The order contained reasons. The preamble to the order of supersession recited that the Committee was incompetent to perform and had made persistent default in the performance of the duties imposed on it under the law and the duties imposed on it under the law. It was held that supersession entails "civil consequences" and the order had been issued without giving an opportunity to meet the proposed action and the same was set aside being violative of natural justice. The aforesaid decision of their Lordships of the Supreme Court was followed in *Jathedar Jagdev Singh and Others Vs. The State of Punjab*, Though in the reply filed on behalf of the respondents Nos. 3 and 5 it has been stated that the working of the petitioner as Chairman of the Board of Directors was not proper and the petitioner had committed various acts of irregularities, but no such case has been set up in reply filed on behalf of the State, respondent No. 1. Even from the concerned file of the Secretariat, Department of Co-operative it does not appear that the order Annexure-5 dated June 12/13, 1985 was made for any reason whatsoever. Under bye-laws as in force on June 10, 1985 and even under bye-law 34 of the bye-laws of March 10, 1981 which were cancelled and their place was taken over by the bye-laws dated

June 10, 1985 notwithstanding there being any provision in the bye-laws the first Board of Directors could be appointed by the State Government till the end of one year the mills starts production. Under the aforesaid bye-law 34 the term of the nominated Board of Directors could not be extended beyond five years and thereafter election of the Board of Directors was to take place in accordance with the Rules. Thus, under the bye-laws a nominated Board of Directors could be appointed for a period of five years not beyond in any case, August 31, 1986 as the first nominated Board of Directors was appointed under Annexure-1 dated August 31, 1981. Once the Board of Director was nominated or its term was extended up to August 31, 1986, before the expiry of its extended term the same could only beremoved or in its place a new Board of Directors could only be nominated for the remaining term of the nominated Board of Directors after an opportunity of hearing was afforded to its Board of Directors or to the Director/ Chairman of the Board of Directors. As already stated, no such opportunity was ever afforded either to the Board of Directors or to any of the Directors or to the petitioner who was also the Chairman of the Board of Directors. It is therefore a clear case where the principle of Audi Alteram Partem rule has been violated. It has already been said earlier that giving an opportunity of being heard before a Committee or its Member could be removed is envisaged in Section 36 of the Act. Even if there would not have been any rule, still it would have been necessary that before the expiry of the extended term of the Board of Directors i.e. August 31, 1986, if it was proposed to remove or supersede the Board of Directors or remove any of the Directors or Chairman, an opportunity of beingheard should have been given.

7. The next ground on which Annexure 5 is being challenged is that the same came to be made at the behest or at the instance of Shri Ram Pal Upadhyaya, a Minister in the Government of Rajasthan, respondent No. 4 to the petition. The case of the petitioner is that Rampal Upadhyaya, the then Education Minister wanted his son and other relative to be appointed in the Mills irrespective of their qualification, efficiency or suitability. In para No. 12 of the petition it has been so averred. It has been again stated in para No. 15(o) of the petition that there is not an iota of evidence to show and communicate any slurr against the petitioner and hence the order suffers from lack of bona fide more so when the impugned action has been taken at the instance of the Education Minister Shri Rampal Upadhyaya whom the petitioner did not oblige. It is also stated that the petitioner was appointed by the then Chief Minister Shri Shiv Charan Mathur with whom Shri Upadhyaya did not see eye to eye and since there are clear cut groups in the District Congress and the petitioner does not belong to the group to which Shri Upadhyaya subscribes the reason why the petitioner and others have been not only unduly harassed but subjected to removal through this illegal action in the garb of reconstitution of the Board, is obvious. Reply to the show cause notice was filed on behalf of the respondents Nos. 1 and 2 and they have not said anything in respect of Paras 12 and 15(e) of the petition. The respondents Nos. 3 and 5 have also filed separate reply and in reply to the

averments of para No. 12 of the petition it has been stated that the contents of para No. 12 are absolutely wrong and denied, and the petitioner has not explained as to how and when the Hon'ble Minister of Education wanted his sons and relatives to be employed in the Mills. In reply to the contents of para No. 15(e) of the petition it has been stated that the action has been taken in public interest looking to various acts of commission and omission on the part of the petitioner. It has not specifically been denied whether the petitioner was removed at the behest of Shri Rampal Upadhyaya, respondent No. 4. No reply to the writ petition has been filed by the respondent No. 4 Rampal Upadhyaya and only an affidavit of Shri Upadhyaya has been filed on May 3, 1986. It has been stated therein, i.e. in the affidavit of Shri Upadhyaya, that he has gone through the contents of the writ petition. He has denied that he used his influence in the appointment of Shri Narain Upadhyaya and Shri Laxmi Lal Upadhyaya in the Mills. It has further been stated that as far as he understands these two persons were appointed on account of their experience and fulfilling requisite qualifications. Rampal Upadhyaya has not replied to that part of para No. 15(e) wherein it has been stated that the order suffers from lack of bona fides more so when the impugned action has been taken at the instance of the Education Minister Shri Rampal Upadhyaya whom the petitioner did not oblige. I had asked the learned Advocate General to produce the relevant file for the perusal of the Court and from its perusal it can no longer be disputed that the action to appoint Badrilal Tiwari in place of the petitioner was taken at the request of Rampal Upadhyaya, Education Minister, respondent No. 4. A request was made by Shri Upadhyaya to the Minister for Cooperative to make changes in the nominated Board of Directors and it was proposed that in place of Chairman Shri Rampal Agarwal, the petitioner, Shri Badrilal Tiwari be appointed as Chairman. As requested by Shri Upadhyaya a decision was taken by the Government to remove the petitioner and in his place to nominate Badrilal Tiwari as Chairman of the Board of Directors and it was thereafter that the order Annexure 5 dated June 12/13, 1985 was made under which the Board of Directors was re-constituted with Badrilal Tiwari as Chairman in place of the petitioner. It can therefore be said that the petitioner appears to have been removed from the office of the Chairman of the Board of Directors at the behest of Shri Rampal Upadhyaya, the Education Minister. Rampal Upadhyaya was not the Minister-incharge of the Co-operative and he was then the Education Minister, in the Government of Rajasthan. No doubt he was representing Gangapur Assembly constituency from the district of Bhilwara. He had no authority to move for the reconstitution of the Board of Directors or appointing Shri Tiwari as Chairman in place of the petitioner. But assuming though not conceding that by virtue of being MLA of that constituency he could, have requested the Chief Minister for certain action, there should be some reason for the proposed action and from the perusal of the file none can be spelt out. All executive actions should be bona fides and should not be arbitrary. Article 14 of the Constitution strikes at the arbitrariness in the State action and ensures fairness and one of its facets is that it eschews arbitrariness in any form. It cannot be disputed and has not been disputed even by Rampal

Upadhyaya that Narain Upadhyaya is his son and Laxmilal Upadhyaya is his real brother. Though, there is no direct evidence to come to the conclusion that Shri Upadhyaya had any role in the ad hoc appointment of his son Narain Upadhyaya but even from the perusal of the Annexure 7 to the writ petition it appears that a post of Sales Assistant was lying vacant having been created earlier and only a single application of Narain Upadhyaya was received for appointment. Shri Narain Upadhyaya was B.Com. and had some experience, he was ordered to be appointed. There are no signatures of the petitioner who was the Chairman, though from the note therein made by General Manager, it appears that as discussed and desired by the Chairman and M.D. there is need of a sales person who may do market survey etc. It may take some time to appoint someone by regular procedure, therefore, as discussed and confirmed Shri Narainlal Upadhyaya may be kept in a monthly salary of Rs. 1,200/- p.m. on the post of Sales Assistant for a period of two months at first instance. From the perusal of the file referred to earlier it also appears that Shri Upadhyaya had proposed on March 25, 1985 for appointment of other persons in place of the Directors and that proposal was agreed upon and in that proposal it was not contained that Rampal be also removed. It was on June 10, 1985 that a request was made by Shri Upadhyaya that in place of Shri Rampal, the petitioner, Badrilal be appointed as Chairman. As already stated above, it does not appear how this proposal was initiated and how this request was made, and what was the occasion for this request. When on March 25, 1985 when a request was made for removal of certain nominated Directors and appointment of new ones in their place, then it was not proposed to remove the petitioner. A look at Annexure R 3, 5/14, dated April 20, 1985 will show that only on April 10, 1985 the Board of Directors was re-constituted presumably in order to give effect to the order which was passed of the appointment of new Directors on the request of Shri Upadhyaya made on March 25, 1985 as appears from the perusal of the file, a reference of which has already been made above. In the aforesaid order Shri Agarwal continued to be the Chairman of the Board of Directors and it was only on June 10, 1985 that Upadhyaya proposed to remove Shri Rampal petitioner and for appointment of Shri Badrilal Tiwari as Chairman of the Board of Directors. It can therefore be said that it was only after April 10, 1985 when the appointment of Narain Upadhyaya was made as Sales Assistant and to which the petitioner did not put his signatures that on June 10, 1985 Shri Upadhyaya proposed and requested for removal of the petitioner and for re-constitution of the Board of Directors. It may be that Shri Upadhyaya might have been feeling that as long as the petitioner is the Chairman of the Mills it may not be possible for his son Narain Upadhyaya to be regularly appointed as Sales Assistant. It may be stated here that later on the said Narain Upadhyaya son of Shri Rampal Upadhyaya was regularly appointed by the Committee duly constituted for the purpose as Sales Assistant. A reference to Annexure 9 may be made in this connection. Annexure 9 is proposed dated September 27, 1985 of the Committee for appointments on the various posts including that of the Sales Assistant. So far as the posts of Sales Assistants are concerned, the recommendations are as under :--

;ksX;rk xzsT;q,sV o 3 o"kZ dk vuqHko vko";d gS ,oa Jh mik/;k; dk 3 o"kZ dk vuqHko 1&3&86 dks iw.kZ gksxk vr% fu;fer osru J`?[kyk 1&3&86 ls ns; gksxh pw?fd ,Mksd csfll ls iwoZ gh dk;Z dj jgs gS ,oa dk;Z larks"k tud gS A vr% 1200@&izfr ekg osru ij fu;qfDr dh flQkfj"k dh tkrh gS A

The Committee thought Om Prakash Pandit is fit to be appointed for the post, but because Shri Pandit demanded Rs. 1,500/- plus 10% House Rent it was therefore that Narain Upadhyaya was appointed, though he would have acquired requisite experience only on March 1, 1986. It may be that Upadhyaya might not have influenced the members of the selection committee, but they in order to please him might have recommended the appointment of Narain Upadhyaya as Sales Assistant though he was not having the requisite experience and would have acquired experience only on March 1, 1986. The experience would not have been acquired by him but for his ad hoc appointment under the order dated April 1st, 1985. This is really a novel method of appointing a person by backdoor, by first appointing on ad hoc basis and then by counting his experience on his appointment on ad hoc basis. Be that as it may, Narain Upadhyaya was not having requisite experience on September 27, 1985, the day on which the committee recommended his appointment and would have acquired the requisite experience only on March 1, 1986 i.e. after about 5 months. The Government has power to relax the experience and it has no power to relax the essential qualifications which go to make a candidate eligible for the post. But it does not appear that in the advertisement seeking applications it was notified that the employer may relax the requisite experience as otherwise many others might have applied. and even the committee has not ordered the relaxation of experience as otherwise the committee would not have said that he will acquire the experience only on March 1, 1986 and the regular pay shall be paid to him with effect from March 1, 1986. In case of relaxation, the relaxation is made in the order itself and it is not to take place on any future date. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, the Supreme Court has held that it is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. The Court further said that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias and in deciding the question of bias the Court has to take into consideration human probabilities and ordinary course of human conduct. As already stated earlier, it cannot be any longer in dispute that the action to remove Rampal Agarwal, the petitioner, as Director/Chairman of the Board of Directors and thereby to reconstitute a fresh Board of Directors was initiated by Ram Pal Upadhyaya and was agreed upon by the Chief Minister who was the in charge of the portfolio of Co-operative. It has been said earlier, that it does not appear as to why and for what reason the proposal was initiated and a request was made by Upadhyaya. At any rate the bona fides of the action do not stand the test of scrutiny on the perusal of the record. The action appears to be arbitrary besides the fact that the same was taken without affording opportunity of hearing to the petitioner. The order Annexure 5, therefore, is liable

to be set aside and quashed.

8. The question is that because the Board of Directors of which the petitioner was Chairman was only to hold office up to August 31, 1986 rather under the bye-law the period of nominated Board comes to an end after five years i.e. up to August 31, 1986 and when only three days remain in the term any relief should be granted to the petitioner. In my opinion, though with the conclusion to which I have arrived, the petitioner would have been entitled to relief and the order Annexure 5 was liable to be quashed but because the term of the Board of Directors of which the petitioner was the Chairman and even of the reconstituted Board of Directors in going to expire on August 31, 1986 i.e. after two days, no useful purpose would be served by ordering that the order Annexure 5 is set aside and the old Board of Directors headed by the petitioner as Chairman should hold office for the remaining term.

9. Consequently, it is hereby held that though the action of the Government is not in accordance with law being violative of Audi Alteram Partem rule and on the ground that the order was made arbitrarily and not bona fide at the behest of Rampal Upadhyaya but no relief can possibly be granted to the petitioner. Therefore, no relief is being granted to the petitioner. Learned Advocate General and Mr. G. G. Sharma, learned Advocate for the non-petitioners Nos. 3 and 5 made a request for the stay of the order which I have made. I have granted no relief to the petitioner. In view of the fact that no relief has been granted to the petitioner, no question of any stay of the order which I have made, arises. The request for stay of the order made today is declined.