(1997) 08 GAU CK 0045

In the Gauhati High Court

Case No : Civil Rule No. 618 of 1997

R.K. Mani Singh APPELLANT

Vs

Imphal Urban Co-Op. Bank Ltd. and Others RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311
Manipur Co-operative Societies Act, 1976 — Section 101, 74

Citation : (1998) 2 GLT 350

Hon'ble Judges : P.K. Ghosh, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : R.K. Nokulsana Singh, Y. Babasaheb, L. Dhineswar Singh, Th. Ashok Kumar and Jagajit, for the Appellant; N. Shyamsundar Singh and Noutuneshwori Devi, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the retirement order dated 31st May, 1997 issued by the President, Imphal Urban Co-Operative Bank Limited.

2. The facts briefly are that the Petitioner was serving as General Manager of the Imphal Urban Co-Operative Bank Limited (for short "the Co-Operative Bank"). On 31.5.97, the President of the Co-Operative Bank issued the impugned retirement order. In the said impugned retirement order it has been stated that in the meeting of the Board of Directors of the Co-Operative Bank held on 20.5.97 the Petitioner exhibited a lack of respect or acknowledgment of the authority of the Board when the Director Sri K.h. Bijoy Singh wanted to know why the Petitioner had released one seized Bull Dozer which was valued at Rs. 10 lacs to a loanee Sri Thangkhenkhup who had defaulted an amount of Rs. 50 lacs without the order of the Board, and in that meeting of the Board the Petitioner attempted to assault the said Director Sri K.h. Bijoy Singh and shouted some derogatory words. In the impugned retirement order, certain findings have been recorded with regard to the release of seized Bull Dozer on 10.5.97 by the Petitioner without the order of the Board, with regard to the attempted assault on the

Director Sri K.h. Bijoy Singh in the Board''s meeting held on 20.5.97 and with regard to the failure on the part of the Petitioner to place R.B.I''s. instructions dated 21.9.93 and 13.5.94 before the Board of Directors. In the impugned retirement order, it has further been stated that in view of these facts and circumstances the Board of Directors of the Co-operative Bank was of the view that the Petitioner would not render useful service to the Bank after divestment of his sanctioning powers under the R.B.I''s. instructions; that he would not be fit to continue his services under the Board and that it would be good for the Petitioner and for the Board of Directors if the option to retire under Rule 12 of the Staff Regulations of the Co-operative Bank was expressed from either side. Finally, in the impugned retirement order it has been stated that the Board of Directors of the Co-operative Bank has resolved to exercise its power under Rule 12 of the Staff Regulations and to issue retirement order under the said rule for administrative reasons with immediate effect from 31.5.97. It has however been stated in the impugned retirement order that the retirement order would not effect the monetary benefits earned by the Petitioner for good services he had rendered and pay and allowances upto 31.8.97.

3. A preliminary objection was raised on behalf of Respondents 1,2 and 5 that the Co-Operative Bank was not a ''State'' within the meaning of Article 12 of the Constitution and that the writ petition challenging the impugned retirement order dated 31.5.97 was not maintainable as against the said Respondents. In support of the aforesaid contention relating to maintainability of the writ petition, the said Respondents 1,2 and 5 relied on the judgment of the learned Single Judge of this Court in Civil Rule Nos. 14/96 and 140/96. But the learned Single Judge hearing the present Civil Rule held in his order dated 3.7.97 that according to him a Co-operative Bank registered under the Manipur Co-operative Societies Act, 1976, was an instrumentality of the State within the meaning of Article 12 of the Constitution and directed that the matter be placed before the Division Bench for consideration. Thereafter, the matter has been referred to this Division Bench by the Hon''ble Chief Justice for disposal.

4. Mr. R.K. Nokulsana Singh, learned Counsel appearing for the Petitioner, submitted that the Co-operative Bank was an instrumentality of the state inasmuch as it came within the expression "other authorities" under Article 12 of the Constitution and hence the writ petition was maintainable against the Co-operative Bank. He pointed out that the Co-operative Bank has been registered under the Manipur Co-operative Societies Act, 1976 (for short, ''the Act, 1976''). He referred to the provisions underlying Section 74 of the Act, 1976, to show that the qualifications for appointment of a Manager, Secretary, Accountant or any other Officers of a Society are to be prescribed by the Rules made under the Act, 1976, and that the State Government has power to nominate a Government servant not below the rank of Class-II officer to work as Managing Director/ General Manager/Manager as the case may be, of a Co-Operative Institution wherein the State Government have contributed to its share capital, guaranteed loans to the tune of Rs. 3 lacs or above or if the Society has incurred loss to the

extent of 25% of its paid up capital. Mr. Nokulsana Singh vehemently contended that u/s 78 of the Act, 1976, vast power has been vested in the Registrar of Co-Operative Societies to issue directions for the purpose of securing proper implementation of C-Operative production and other development programmes approved for undertaken Government, and to take action against the Board of any society for defalut disobeying such instructions and directions. He contended that u/s 78, the Registrar has even the power to appoint a Board or administrators to manage the affairs of the society. Mr. Nokulsana, in particular, referred to the provisions of Sub-section (6) of Section 78 of the Act, 1976, wherein it has been provided that the entire Board of Directors of a Central Co-Operative Bank, Urban Co- Operative Bank and Primary Land Developmrat Bank and Primary Agricultural Credit Co-Operative Society shall stand automatically disqualified if the amount of default or the total number of defaulters exceeds 60% of the total demand or the total number of indebted societies/members in the case of Central Co-Operative Bank, Urban Co-Operative Bank and 70% of the total demand or the total number of indebted members in the case of Primary Agricultural Credit Co-Operative Societies for a continuous period of two (2) years. According to Mr. Nokulsana, since the Co-Operative Bank is a primary credit society, the said provisions of Sub-section (6) of Section 78 of the Act, 1976, are also applicable to the Co-Operative Bank. He referred to the provision of Sub-section (7) of Section 78 to shoe that where the entire Board of Directors is dissolved under the provisions of Sub-section (6) of Section 78 or is declared to be disqualified, the Registrar has power to appoint a special officer who will be entrusted with the responsibility of managing the affairs of such Banks/Primary Society. He also referred to the provision of Sub-section (8) of Section 78 under which all the Co-Operative Institutions registered under the Act 1976, are required to submit the proceedings of the general body. Board of management and any other committees or sub-committees to the Registrar of Co-Operative Society, and the Registrar has the power to annul any such proceedings if he finds die same to be contrary to the provisions of the Act, Rules or Bye-laws. Mr. Nokulsana argued that the State Government is vested with vast powers u/s 78A of the Act, 1976, to suspend the Board of Directors of a Co-Operative Society on receipt of a report from the Registrar of Co-Operative Society or even otherwise if it is satisfied that the management of a Society has not been in accordance with the provisions of the Act, and creditors of the Society have, for justifiable reasons, raised repeated objections to the method and manner of the management of the Society. Mr. Nokulsana further referred to the provisions of Section 81 of the Act, 1976, to show that the Accounts of every Society is to be audited by the Registrar or any person authorised him. He also cited the provisions of Section 91 of the Act, 1976, to show that any dispute touching the constitution, election of the office bearers, conduct of general meeting, management or business of a society is to be referred to the Registrar. He further pointed out that powers have also been vested in the Registrar u/s 101 of the Act, 1976, for recovery of arrears of any sum advanced by a Co-Operative Society. Mr. Nokulsana further stated that u/s 102 of the Act, 1976, the Registrar has also been vested with powers regarding winding up or liquidation of a society. According to Mr. Nokulsana since vast powers have been vested both in the Registrar and the State Government under the Act, 1976, and such powers can be exercised by the Registrar and the State Government in relation to the Co-Operative Bank, the Co-Operative Bank is a "State" within the meaning of Article 12 of the Constitution. Mr. Nokulsana also referred to the objects of the Bye-laws of the Co-Operative Bank to show that the Co-Operative Bank has to undertake various activities which are normally carried on by the State Government or Central Government. He referred to Clause-5 of the Bye-laws to show that the Government of Manipur is a member of the Co-Operative Bank, and to Clause-32 to show that the Registrar of Co-Operative Society, Manipur, or his nominee is one of the Directors of the Board and that the State Government has the power to nominate two Directors to the Board of Directors of the Co-Operative Bank. He referred to the provisions of Clause 37(xvi) of the Bye-laws wherein it is clearly provided that prior written approval of the Registrar is to be obtained for any major action to be taken against the Chief Executive Officer. He also produced before us a copy of the Staff Regulations of the Co-Operative Bank to show that in Rule 15 of the said Staff Regulations it is clearly provided that for any exigency or matters not specifically provided in the Staff Regulations, reference will be made to the relevant Service Conduct Rules of the Government. According to Mr. Nokulsana, these provisions of the Bye-laws as well as the Staff Regulations of the Co-Operative Bank would show that the State Government and the Registrar of Co-Operative Society; Manipur, have got deep and pervasive control over the Co-Operative Bank and that the tests as laid down by the Apex Court in the case of Som Prakash Rekhi v. Union of India and Anr. AIR 1981 SC 212, for determination as to whether a Co-Operative Society is an ''other authority'' within the meaning of Article 12 of the Constitution have been satisfied in the present case.

5. Mr. N. Shyamsundar Singh, learned Counsel appearing for the Respondents 1, 2 and 5, on the other hand, referred to the averments made in para-3 of the reply affidavit filed on behalf of the said Respondents 1, 2 and 5 on 25.7.97 in support of his contention that none of the tests as laid down by the Apex Court in the aforesaid case has been satisfied and that the Co-Operative Bank is not an instrumentality of the State. By referring to paragraph 3 of the reply affidavit, he stated that out of 15 Directors of the Board of the Co-Operative Bank, 9 are elected and the remaining 6 are Ex-Officio Directors. He pointed out that the Bye-laws of the Co-Operative Bank have been adopted by the general body of the Co-Operative Bank and they are not statutory Rules framed by the State Government under the Act, 1976. Similarly, the Staff Regulations to which reference has been made by Mr. Nokulsana, learned Counsel for the Petitioner, have been adopted by the Board of Directors of the Co-Operative Bank and are not statutory Regulations. He further pointed out that the General Manager, Manager or Officers, etc. of the Co-Operative Bank are not appointed by either State Government or the Registrar of Co-Operative Society and that they are not

holders of ''Civil Post'' within the meaning of Article 311 of the Constitution. By referring to sub-para (9) of paragraph 3 of the reply affidavit dated 25.7.97, he stated that the Co-Operative Bank receives no "State Aid" from the Government of Manipur under Chapter-V of the Act, 1976, and by referring to Sub-para (16) of paragraph-3, he further stated that out of the total share capital of Rs. 89,60,650/- as on 31.3.97, the share of the State Government is only Rs. 6,40,000/-, which is equivalent to 7.14% of the total subscribed share capital and that the remaining 92.86% of the subscribed share capital is held by the individual share holders.

6. In the case of Som Prakash v. Union of India and Anr. AIR 1981 SC 212 , cited by Mr. Nokulsana learned Counsel for the Petitioner, the Supreme Court referred to its earlier decision in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and listed out the following factors which would determine as to whether a co-operative society would be a "State" within the meaning of Article 12 of the Constitution:

1. One thing is clear that if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

2. Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

3. It may also be a relevant factor... whether the corporation enjoys monopoly status which is State conferred or State protected.

4. If the functions of the corporation are of public importance and, closely related to governmental functions, it would be relevant factor in classifying the corporation as an instrumentality or agency of Government.

5. Specifically, if a department of Government is transferred to a corporation it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

7. In a Full Bench judgment of this Court in the case of Sahabuddin Choudhury v. State of Assam and Ors. 1993 (2) GLJ 51, the Full Bench had the occasion to consider, the question as to whether a Co-Operative Society registered under the Assam Co-Operative Society Act, 1949, was an ''other authority'' within the meaning of Article 12 of the Constitution, and after noting several decision of the Supreme Court including the case of Ramana Dayaram Shetty v. International Airport Authority (supra) and Som Prakash Rekhi v. Union of India (supra) relied on by Mr. Nokulsana, the Full Bench held:

With great respect we have to point out that the logic and reasoning of die two earlier decisions were not fully appreciated in Nihar Sengupta''s case [1989 (1) GLJ 111] proceeded on the basis that in the two earlier decisions the Court held that because the Assam Co-Operative Societies Act conferred on the State Government and the Registrar considerable degree of control over Co-Operative

Society, the Societies in question were instrumentalities of State. A careful examination of the two previous judgments would show that the Court arrived at the decision on the facts of the cases and on analysis of the financial backing by the State, the administrative control exercised de facto on the society, the fact that a large number of Governmental or public functions were undertaken by the society at the instance of the Government. The assumption that in the two earlier decisions, the Division Benches of this Court held that a large measure of administrative control conferred on the Government and the Registrar by the provisions of the Statute would render every society governed by such provisions to be ''State'' or ''other authority'' within the meaning of Article 12 of the Constitution is erroneous. In Nihar Sengupta''s case the Bench proceeded on the assumption that the nature of the provisions of the Statute would attract Article 12 of the Constitution in the case of every society governed by the Statute. This proposition, with respect, does not reflect the correct position of law. The correct position, as pointed out by the Supreme Court in a catena of decisions, is that in order to decide whether a particular organisation attracts Article 12 of the Constitution, the Court must have regard to various factors, such as, functional character being Governmental in essence, plenary control residing in Government or its officers, financial resource and of the State being the chief funding source, prior history of the same activity having been carried on by Government and made over to the new body, the composition of the body being dominated by the Government representatives, the presence or absence of deep and pervasive control by the Government over the organisation. The test cannot be fitted into a strait jacket formula. When the Court considers functional character regard must be had to the fact that in a welfare State, Governmental control is pervasive and touches all aspects of social existence and independent and autonomous institutions are, therefore, subject to a degree of State control. In the case of a Co-Operative Society, the Court must necessarily examine these factors in the light of the Bye-laws as well as other relevant circumstances. Nihar Sengupta''s case [1989 (1) GLJ 111] does not lay down good law.

In the aforesaid case, therefore, the Full Bench of this Court has already held that the Division Bench of this Court in the case of Nihar Sengupta v. Union Territory of Arunachal Pradesh 1989 (1) GLJ 111, had proceeded on erroneous assumption that the nature of the provisions of the Statute such as the Assam Co-Operative Societies Act, 1949, would attract Article 12 of the Constitution in the case of every society governed by the Statute and that the correct position of law, as pointed out by the Supreme Court, was that in order to decide whether a particular organisation attracted Article 12 of the Constitution, the Court must have regard to various factors, such functional character being Governmental in essence, plenary control residing in Government or its officers, financial resource and of the State being the chief funding source, prior history of the activity having been carried on by Government and made over to the new body, the composition of the body being dominated by the Government representatives, the presence or absence of deep and pervasive control by the Government over the organisation.

8. The contention of Mr. Nokulsana that the Co-Operative Bank is an ''other authority'' within the meaning of Article 12 of the Constitution because of control vested on the Registrar of Co-Operative Societies and the State Government under Sections 74, 78, 78A, 81, 91, 101 and other similar provisions of the Act, 1976, over the Co-Operative Bank has not found favour with the Full Bench decision in the case of Sahabuddin Choudhury v. State of Assam (supra). In fact, if we agree with the aforesaid contention of Mr. Nokulsana then every Co-Operative Society registered under the Act, 1976, which is subject to the control of the Registrar of Co-Operative Societies and the State Government under the said provisions of the Act, 1976, would be an ''other authority'' within the meaning of Article 12 of the Constitution irrespective as to whether under its Bye-laws the State has any control over such society in matters of management, finances, etc. or not. As has been held by the Full Bench in the case of Sahabuddin Choudhury (supra), the Court will have to examine the Bye-laws of the Co-Operative Society in question to find out as to whether the Co-Operative Society is one over which the State has deep and pervasive control or one which is financed by the State, or one which is discharging functions normally carried out by the State.

9. On an examination of the Bye-laws of the Co-Operative Bank, we find in Clause-4 that the objects of the Co-Operative Bank are those of a normal banking Co-Operative Society. Clause-5 of the Bye-laws further indicates that membership of the Co-Operative Bank is open to individuals, other persons, the Government of Manipur and the Manipur State Co-Operative Bank Ltd. and/or the Central Co-Operative Bank of the district concerned. Hence, it is not as if the Government of Manipur is the only member of the Co-Operative Bank. In fact, as has been stated in the reply affidavit filed on behalf of the Respondents 1, 2 and 5, 92.86% of the total share capital the Co-Operative Bank is held by individuals and only 7.14% of the share capital is held by the State Government of Manipur. The said reply affidavit further states that the Co-Operative Bank has not received any financial aid from the State Government of Manipur. Clause-32 of the Bye-laws further indicates that out of the total 15 Directors of the Board of Directors, only 2 are nominated by the State Government and one by the Registrar of Co-Operative Societies. Hence the management of the Co-Operative Bank is also not under the control of the State Government. Clause 37(xvi) of the Bye-laws provides that the appointment of the Chief Executive Officer (General Manager) and any major action against him can be taken only after obtaining prior written approval of the Registrar, but in our considered opinion from this provision alone we cannot come to the conclusion that the control of management of the affairs of the Co-Operative Bank is vested in the Registrar of Co-Op. Societies, Manipur. A provision has also been made in Rule 15 of the Staff Regulations that for any exigency or matters not specifically provided in the Staff Regulations reference will be made to the relevant Service rules of the Government. In our considered opinion, the provision in Rule 15 of the Staff

Regulations does not in any way indicate that the Government has got deep and pervasive control over the Co-Operative Bank. Mr. Nokulsana made a strenuous effort in convincing us that order issued by the Reserve Bank of India, a copy of which has been annexed to the Rejoinder Affidavit of Respondents 1, 2 and 5 as Annexure-8, would show that the Co-Operative Bank is an instrumentality of the State. In our view the aforesaid order of the Reserve Bank of India is issued by virtue of the powers conferred on it under the relevant Statutes for the purpose of opening and licensing of Branches and such provisions are applicable to every banking institution desirous of opening a branch irrespective whether such a bulking institution is an instrumentality of a State or not. We, therefore, hold that the Co-Operative Bank is not an ''other authority'' within the meaning of Article 12 of the Constitution and is therefore not an instrumentality of die State and the writ petition against the Respondents 1, 2 and 5 filed by the Petitioner is not maintainable.

10. Mr. Nokulsana, learned Counsel for the Petitioner, however, submitted that the Petitioner has filed on 7.6.97 before the Registrar of Co-Operative Societies, Manipur, a representation seeking remedies against the impugned retirement order dated 31st May, 1997, but the said representation has not yet been deposed of by the Registrar in view of the pendency of this Civil Rule. He has referred to a communication dated 17.7.97 of the Registrar, Co-Operative Societies, Manipur, to the Petitioner, a copy of which has been annexed to the rejoinder-affidavit of the Petitioner as Annexure-A/9 in support of his aforesaid statement Mr. Nokulsana further submitted that since the Registrar of Co-Operative Societies is a statutory authority and is under a statutory duty under the provisions of the Act, 1976, to decide the dispute referred to him in the said representation dated 7-6-97, appropriate direction be given to the Registrar of Co-Operative Societies to dispose of the said representation of the Petitioner within a stipulated time. Ms. Noutuneswori Devi, learned Additional Government Advocate, Manipur, appearing for Respondents 3 and 4, however, stated that she has not received the copies of the reply affidavit and he rejoinder affidavit along with which copies of the aforesaid representation dated 7.6.97 and the communication dated 17.7.97 have been annexed.

11. Since we have now disposed of this Civil Rule with the finding that the writ petition is not maintainable against the Respondents Nos. 1, 2 and 5, we direct the Registrar of Co-Operative Societies, Manipur, before whom the said representation dated 7.6.97 filed by the Petitioner is said to be pending, to dispose of the said representation by 31st August, 1997 in accordance with law. An authenticated copy of the operative portion of this judgment and order will be furnished to Mr. R.K. Nokulsana Singh, learned Counsel for the Petitioner, by 21.8.97 for communication to the Registrar of Co-Operative Societies, Manipur. Mr. Shyamsundar Singh, learned Counsel appearing for Respondents 1, 2 and 5, has stated that the Petitioner will be paid his salary and allowances upto 31.8.97 as indicated in the impugned retirement order dated 31.5.97.

12. With the aforesaid observations and direction, this Civil Rule is disposed of. However, considering the entire facts and circumstances of the case, we leave the parties to bear their own costs.