
(2020) 03 CHH CK 0045
In the Chhattisgarh High Court
Case No : Writ Appeal No. 227 Of 2020

Sachin Singh Baghel And Ors	Vs	APPELLANT
State Of Chhattisgarh And Ors		RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Chhattisgarh Co-Operative Societies Act, 1960 — Section 53(1), 53(10), 78
Chhattisgarh High Court (Appeal To Division Bench) Act, 2006 — Section 2(1)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 03 CHH CK 0045

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Prafull N. Bharat, S.S. Baghel, S.C. Verma, Chandresh Shrivastava

Final Decision : Dismissed

Judgement

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P. R. Ramachandra Menon, CJ

1. Rejection of I.A. No.01 of 2020 seeking for stay of Annexure P/1 order dated 03.02.2020, whereby the Board of Directors of the 4th Respondent-Bank was suspended by the 2nd Respondent, is put to challenge in this appeal preferred by the Appellants/Writ Petitioners.

2. The factual sequence, as pointed out by Shri Prafull N. Bharat, the learned counsel for the Appellants, is that the Appellants were elected as the members of the Board of Directors of the 4 th Respondent-Bank, who took charge as the President/Chairman and Members of the Board on 06.06.2016. The normal tenure of the Board is for a period of 'five' years and while they were discharging their duties as above, a show-cause notice was issued proposing supersession under Section 53(1) of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960') raising four different allegations/charges against them. The Appellants submitted detailed reply pointing out that

two of the four allegations/charges were of the period when the Bank itself was under the acquisition, which was prior to the election/taking charge by the Appellants/Writ Petitioners. In respect of third allegation/charge, it was pointed out that, it was on the request of the President of the Society that a Committee was constituted and irregularity to the tune of Rs.80,73,091/- was found out and special audit was caused to be done by the Deputy Registrar; adding that after getting the report of the special audit, further action would be taken. In connection with the 4th allegation/charge, it is stated that it was on the persuasion of the Collector, that the amount of insurance (Fasal Bima) was deposited in the farmers' account, in which the Board of Directors had no involvement. Despite the explanation given, the 2nd Respondent passed an order of suspension on 03.08.2019; simultaneously appointing a Committee to manage the affairs of the Bank. The said order dated 03.08.2019 was put to challenge in Writ Petition (C) No.2958 of 2019. When the matter came up for consideration on 29.08.2019, no interim order of stay on suspension was granted, but for making it clear that no order shall be passed as to the 'supersession' of the Board. The above writ petition is still pending and the interim order continues.

3. While so, yet another show-cause notice was issued raising almost similar averments/allegations and seeking for explanation of the Appellants/Writ Petitioners. On receipt of the said notice, the position was explained in crystal-clear terms; despite which, a new suspension order was passed on 03.02.2020 (Annexure P/1) allegedly pending steps for supersession of the Board under Section 53(1) of the Act of 1960. This is stated as nothing but a total abuse of the process of law and hence, is sought to be interdicted by filing another case-Writ Petition (C) No.636 of 2020, with the following prayers :

"10.1 That, the Hon'ble Court may kindly be pleased to issue a Writ, Order or Direction of appropriate nature quashing/set aside the impugned order dated 03/02/2020 (Annexure- P/1) in the interest of justice.

10.2 A Writ, Order or Direction of appropriate nature directing the respondents not to take any coercive action against the petitioner and restrain the respondent state from suspending the petitioners in the interest of justice. 10.3 That the petitioners may kindly be allowed to function as members of the board of the bank, in the interest of justice. 10.4 Any other relief which the Hon'ble Court may deem fit, in the interest of justice. 10.5 Costs be awarded to the Petitioners."

4. Along with the above writ petition, I.A. No.01 of 2020 was filed, which came up for consideration on 14.02.2020 and after hearing, the following interim order was passed therein :

"Mr. P. N. Bharat with Mr. S. S. Baghel, Counsel for the petitioner.

Mr. Amrito Das, Additional AG for the State.

Petition is admitted for hearing.

Mr. Amrito Das accepts notice on behalf of respondent No.1, 2, 5 & 7.

Let notice be issued to respondent No.3 , 4 & 6 on payment of PF as per rules.

Heard on I. A. No.1, which is an application for grant of interim relief.

Perusal of the record would show that the petitioners herein are the members of the Board of Directors of respondent No.4 Bank.

Petitioners on an earlier occasion were placed under suspension on 03.08.2019 and this Court had while entertaining the writ petition WPC 2958/2019 had not granted any interim relief so far as the order of suspension is concerned.

The impugned order of suspension has now been passed after a lapse of 6 months period as earlier period of suspension was valid only for a period of 6 months.

Given the fact that the Co-ordinate Bench of this Court had not granted interim protection at the first instance on earlier occasion, it would not be appropriate for this Court to grant interim protection at this juncture.

Accordingly, I.A. No.1 stands rejected.

Let reply be filed at the earliest preferably within a period of 4 weeks.

The ground of challenging the suspension order was that there is a finding on the part of the RBI to the extent that order of supersession at this juncture is not warranted. This aspect whether the order of suspension would get vitiated only on this ground alone is one which would require consideration after the reply of the respondents are received.

List this case along with WPC 2958/2019."

5. From the above, it is clear that the interim prayer for stay of suspension was rejected, but for passing order of supersession, which made the Writ Petitioners/Appellants to feel aggrieved, who are now before this Court by way of present writ appeal.

6. Shri Prafull N. Bharat, the learned counsel for the Appellants submits that there is no doubt that the 4th Respondent-Bank comes within the purview of the 2nd proviso to Section 53(1) of the Act of 1960 and as such, before passing any order of supersession, previous consultation with the Reserve Bank of India (hereinafter referred to as the 'RBI') was essential. In the instant case, in the earlier round of proceedings (pursuant to earlier show-cause notice dated 10.07.2019), the 4th Respondent-Bank had approached the 3rd Respondent-RBI in terms of the 2nd proviso to Section 53(1) of the Act of 1960. After considering the facts and figures, the RBI, vide Annexure P/5 dated 27.01.2020 (obtained under the Right to Information Act, 2005) had made it explicitly clear that the acts and deeds being prior to the period in question, supersession, was not necessary at that stage. This being the position, according to the learned counsel for the Appellants, the Board ought to have been restored after lifting the suspension, as no supersession was possible by virtue of the mandate of the 3rd

proviso to Section 53(1) of the Act of 1960 and also the 2nd and 3rd proviso to sub-section (10) of Section 53 of the Act of 1960. The learned counsel points out that 'supersession' can only for 'one year' in the case of Co-operative Bank and the 'suspension' shall be confined to six months. Since no order has been passed by the 2nd Respondent superseding the Board of Directors and further since the RBI, on consultation, had made clear that no supersession was necessary, no further proceedings ought to have been pursued in connection with the supersession and the Board of Directors ought to have been reinstated. Since the maximum period of suspension is only six months, the said period is over and Annexure P/1 passed suspending the Board of Directors for a further period of six months with reference to original cause of action (in relation to the first suspension ordered on 03.08.2019) is not correct or sustainable. Reliance is sought to be placed on State of Madhya Pradesh and Others v. Sanjay Nagayach and Others reported in (2013) 7 SCC 25, particularly w.r.t. paragraph-22, explaining the scope of consultation with the RBI as envisaged in Section 53(1) of the Madhya Pradesh Co-operative Societies Act 1960, which is stated as *pari-materia* with the provisions of the Chhattisgarh Co-operative Societies Act, 1960. Reliance is also sought to be placed on the verdict passed by the Madhya Pradesh High Court in Chhatrapal Singh and Others v. State of M.P. and Others reported in 2014 AIR CC 2361 (MP) (same as AIR 2014 (NOC) (SUPP) 567)(MP) (Gwalior Bench).

7. Shri Chandresh Shrivastava, the learned Deputy Advocate General representing the State submits that the challenge in the appeal being against an interim order passed by the learned Single Judge, appeal is not maintainable. It is further submitted that Annexure P/1 order which is put to challenge in the writ petition is appealable under Section 78 of the Act of 1960 and by virtue of the effective alternative remedy, the writ petition is not maintainable. It is pointed out by the learned counsel that the contention of the Appellants/Writ Petitioners that no proceeding for supersession was pending and hence Annexure P/1 order dated 03.02.2020 suspending the Board is bad is not correct; insofar as the supersession of the Board is still pending consideration before the 2nd Respondent. Even though, opinion of the RBI was obtained, pursuant to earlier show-cause notice dated 10.07.2019, no order of supersession could be passed by virtue of the interim order passed by this Court in Writ Petition (C) No.2958 of 2019, which is still pending. The learned counsel further points out that the idea and understanding of the Appellants that as if the RBI is the ultimate authority is not correct. The 2nd proviso to Section 53(1) of the Act of 1960 only mandates previous "consultation" with the RBI and it does not stipulate that it has to be with "concurrence" of the RBI. The fact that the RBI has expressed its views as per Annexure P/5 itself shows that there was effective consultation by the 2nd Respondent with the RBI and it is for the 2nd Respondent to decide the outcome, taking note of all the facts and circumstances including the opinion expressed by the RBI. In other words, the 2nd Respondent who is the Competent Authority to pass the order of supersession in terms of the statutory provision is not bound by

the opinion or recommendation expressed by the RBI under the 2nd proviso to Section 53(1) of the Act of 1960. Even though, the recommendation/opinion was obtained well in time, no further order could be passed because of the interim order dated 14.02.2020 passed by the learned Single Judge restraining the 2nd Respondent from passing any order of supersession.

8. The learned counsel for the Appellants submits that the I.A. seeking stay has been rejected only for the reason that prayer for stay was not granted by the earlier Bench while considering the issue projected in Writ Petition (C) No.2958 of 2019, which cannot be a legally sustainable ground. The learned counsel also points out that since the grievance projected therein was w.r.t. the suspension for a period of 'six months' in respect of an earlier proceeding and since the time has run out, the said writ petition has virtually become infructuous and is proposed to be withdrawn. The merit involved in the present case is to be independently considered and hence, the interference of this Court is sought for.

9. By virtue of the rival pleadings as above, the position that emerges is that the legality of the earlier order of suspension in terms of the 2nd proviso to Section 53(1) of the Act of 1960 is pending consideration in Writ Petition (C) No.2958 of 2019. It is also a fact that, though interim stay of 'suspension' was not granted by the Court as per order dated 14.02.2020, 'supersession' of the Board was interdicted. This being the position, we find force in the submission made by the learned counsel for the State that the 2nd Respondent was not in a position to pass orders after considering the view expressed by the RBI. Since the impediment for passing final order of supersession as envisaged under Section 53(1) of the Act of 1960 was only because of interim relief passed by this Court on 14.02.2020, it comes within the principle of *actus curiae neminem gravabit* (an act of Court shall prejudice no man).

10. The statute clear by mention as to the maximum period of suspension and the consequence, if the request seeking for consultation with the RBI has not been answered within 30 days, the course of action to be pursued on the expiry of maximum period of suspension and also as to the necessity to provide a reasonable opportunity of being heard before passing the orders on supersession. Since the writ petition filed challenging the earlier order of suspension as well as Annexure P/1 dated 03.02.2020 are pending consideration in Writ Petition (C) No.2958 of 2019 and Writ Petition (C) No.636 of 2020 respectively, we do not intend to express any opinion as to the relative merits with reference to the relevant provisions of law. This is also for the reason that, if the writ appeal is not maintainable, we need not consider any of these aspects for the time being.

11. Coming to the maintainability of the writ appeal, it goes without saying that the appeal is a statutory remedy and as such, the right of the appeal depends upon the provisions available under the statute. Appeal from orders passed by the learned Single Judge to the Division Bench (Intra-Court Appeal) is governed by the provisions of Section 2(1) Chhattisgarh High Court (Appeal to Division

Bench) Act, 2006 (hereinafter referred to as 'the Act of 2006'). The said provision reads as follows :

"2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction.-(1) An appeal shall lie from a judgment or order passed by one judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India."

12. The proviso to Section 2(1) of the Act of 2006 says that no appeal shall lie from an interlocutory order passed by the High Court in exercise of the original jurisdiction under Article 226 of the Constitution of India or against an order in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India to a Division Bench comprising of two Judges of the High Court. Admittedly, I.A. No.01 of 2020 was filed seeking for stay of Annexure P/1 order dated 03.02.2020. Granting or rejecting of the interim prayer happens to be an interim order and as such, no appeal is maintainable, as per the clear provision in the statute.

13. The scope of the above provision had come up for consideration before a Full Bench of this Court and as per judgment dated 25.01.2017 in Writ Appeal No.255 of 2016; parties being, Ajay Gupta v. State of Chhattisgarh and Others, it was categorically held that no appeal will lie against an interim order unless it has an element of finality attached to the merit involved. The operative paragraph of the said judgment reads as follows :

"We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finally attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders."

14. Obviously, the final prayer sought for in the writ petition is to set aside the Annexure P/1 order dated 03.02.2020, whereas the interim relief prayed for is to stay Annexure P/1. This being the position, by virtue of the clear mandate of proviso to Section 2(1) of the Act of 2006 and the scope of the provision as explained by the Full Bench of this Court in Ajay Gupta (supra), we hold that the

instant appeal is not maintainable under any circumstance. It is dismissed accordingly.

15. We make it clear that we have not expressed anything with regard to the merits involved. Considering the prayer of the learned counsel for the Appellants that the time is running out and the period of six months will soon be over, with a chance to have the writ petition infructuous, we express our hope and desire that the learned Single Judge would consider and finalize the writ petition pending consideration as mentioned as above as expeditiously as possible.