(1970) 01 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2820 of 1969

Sant Sadhu Singh and Others — APPELLANT

Vs

The State of Punjab and Another — RESPONDENT

Date of Decision : 29-01-1970

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 246, 31A

Citation : AIR 1970 P&H 528 : (1971) 2 ILR (P&H) 571

Hon'ble Judges : S.S. Sandhawalia, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : Kuldip Singh and R.S. Moongia, for the Appellant; Mela Ram Sharma, D.A.G., I and Mohinder Pal Singh Gill, Asst. A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—This order will dispose of Civil Writ Petitions No. 2820. 2858, 3090 and 3091 of 1969. The petitioners are mainly Directors of the Cooperative Banks and have filed the present petitions under Articles 226 and 227 of the Constitution of India, to challenge the vires of Punjab Co-operative Societies (Amendment) Ordinance, 1969 (Ordinance No. 10 of 1969) which Ordinance has later on been made Law (Punjab Co-operative Societies (Amendment) Act, 1969) (Pun-Jab Act 25 of 1969). Sections Nos. 4, 7, 10 and 11 of the Ordinance and now Sections Nos. 4, 6, 9 and 10 of the Act, are being challenged in these petitions. The main grounds of attack which were argued before us are:--

(1) That the Punjab Legislature is not competent to make Law pertaining to Banking Corporations. Co-operative Societies doing banking business are Banking Corporations and, therefore, the Amending Ordinance and the Amending Act, which have replaced it are ultra vires the Constitution so far as the Banking Co-operative Societies are concerned.

(2) That the exercise of the power by the State Legislature in enacting the Amending Act and the promulgation of the Ordinance by the Governor are a

colourable exercise of power so far as the Banking Cooperative Societies are concerned.

(3) That the Ordinance as well as the Amending Act are violative of Articles 14 and 19 of the Constitution of India.

2. It may be mentioned that only the first ground of attack was really pressed. The two grounds of attack have been merely stated to be rejected. We have been unable to see how the Act or the Ordinance are a colourable exercise of power, whereas the complete answer to the 3rd ground of attack is furnished by Article 31A of the Constitution of India. Therefore, we only propose to deal with the facts of Civil Writ Petition No. 2820 of 1969 in order to bring out the controversy pertaining to the first ground. It is conceded that whatever our decision is in this petition it will conclude the other three petitions. We have not thought it necessary to advert to the facts of the remaining three petitions.

3. In Civil Writ No. 2820 of 1969. the petitioners are the Directors of Central Co-operative Bank Ltd., Ropar -- hereinafter called the Bank. This Bank was registered under the Punjab Co-operative Societies Act, 1961. Petitioners Nos. 1, 2, 4 & 5, namely, Sant Sadhu Singh, S. Jagir Singh. S. Gurdev Singh & S. Sarwan Singh respectively, were elected Directors of the Bank in an election held on the 9th of May. 1969. They were elected unopposed. Petitioner No. 3, Dr. Roy Bikram Chand, was elected unopposed on the 13th of August, 1968, whereas petitioner No. 6, S. Karam Singh, was elected as a Director of the Bank on the 27th of September, 1968. According to the bye-laws of the Bank the Board of Directors is elected for a period of three years and l/3rd of the Directors retire annually in rotation. The Bank was established in the year 1927 with a nominal capital. Its present working capital is over two crores. The Punjab Government have also subscribed to the share capital of the Bank to the extent of about 20 lacs. It has also nominated three Directors as members of the Board of Directors u/s 26 of the Punjab Co-operative Societies Act, 1961. It is claimed that by reason of the Ordinance and the Amending Act, the rights and powers of the share-holders in managing the co-operative Banks have been considerably curtailed and the Registrar of the Co-operative Societies has taken over completely the control of the Societies. It is also averred that the reason for the Ordinance and the Amending Act is to deprive the control which was with the Congress Party and make it over to the Akali Party.

4. Reverting to the main ground of attack, namely, that the Punjab Legislature has no power to enact a Law pertaining to Co-operative Societies doing Banking business, it is not disputed that the Ordinance as well as the Amending Act are fully within the competence of the State Legislature so far as the other co-operative Societies (i.e. Societies not engaged in Banking business) are concerned. In order to appreciate the contentions that have been advanced by the learned counsel for the petitioners, it will be proper to refer to Schedule VII, List I, Entries Nos. 43, 44 and 45, List II, Entry No. 32. These entries are reproduced below for facility of reference.

"List I.

Entry No. 43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

No. 44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

No. 45. Banking.

"List II.

Entry No. 32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

5. On the basis of these entries the argument of the learned counsel for the Petitioners is that entry No. 43 clearly confers the power of regulation of Corporations including Corporations doing banking business in the Central Parliament and only those Co-operative Societies are excluded from entry No. 43 which are not doing the business of banking. This fact, according to the learned counsel, finds further support if entry No. 32, List II is taken into consideration. That entry only brings those Corporations within the purview of the legislative power of the State Legislature which are not specified in List I. As Banking Corporations are specified in List I, Entry No. 43, any legislation pertaining to banking, necessarily falls within the ambit of List 1, regarding which only the Central Parliament can legislate. It is also urged that in view of entry No. 45. List I any legislation which affects banking would have to be undertaken by the Central Parliament and it will not be within the competence of State Legislature to legislate about matters pertaining to banking.

6. So far as the State counsel is concerned, his contention is that no matter what business the Co-operative Societies are doing including the banking business, they were specifically taken out from entry No. 43, List I and are put in List II, Entry No. 32. Therefore, the State Legislature has full powers to legislate about Co-operative Societies irrespective of the fact whether they are doing banking business or not.

7. It is common ground that Cooperative Societies are Corporations. This has been conceded by the learned counsel representing both the parties in view of Supreme Court decision in The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, , that a Co-operative Society is a Corporation and we have, therefore, proceeded on that basis.

8. Before proceeding to deal with the respective contentions of the learned counsel for the parties, it may be mentioned that any legislation regarding the banking business as such can only be undertaken under entry No. 45, List I.

whereas regulation of Corporations doing Business of Banking falls under entry No. 43. But Co-operative Societies are excluded from this entry and have been put in entry No. 32, List II, Schedule VII. This is also evident from the Banking Companies Act, as amended up to date, and the Reserve Bank of India Act. The Co-operative Societies doing banking business are put on par so far as entry No. 45. List I is concerned, with other banking institutions. While construing entry No. 45, the Federal Court of India in AIR 1945 7 (Federal Court) , observed as follows :--

"On a reasonable construction, the entry must be limited to laws which affect the conduct of the business of banks qua banks."

Their Lordships were considering entry No. 38. List I of the Government of India Act, 1935, which is in these terms: --

"Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State."

9. This entry more or less corresponds to entry No. 45 in List I, Schedule VII of the Constitution of India. The entry corresponding to entries Nos. 43 and 44 in List I, Schedule VII of the Constitution of India is entry No. 33 in List I of the Government of India Act, 1935. Entry No. 33 is in the following terms:--

"Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations whether trading or not, with objects not confined to one unit."

10. Their Lordships of the Supreme Court in The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, . in the matter of construction of entries in Schedule VII observed :--

"Item No. 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditional by the words used therein, a narrow or restricted interpretation will not he put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject."

11. In Seth Banarsi Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc., , their Lordships of the Supreme Court relying on AIR 1941 16 (Federal Court) , observed that the relevant words used in the entries of the Seventh Schedule must receive the widest interpretation. It was also observed:--

"Another rule of construction which is also well established is that it may not be reasonable to import any limitation in interpreting a particular Entry in the List by comparing the said Entry or contrasting it with any other Entry in that very List.

While the Court is determining the scope of the area covered by a particular Entry, the Court must interpret the relevant words in the Entry in a natural way and give the said words the widest interpretation. What the Entries purport to do is to describe the area of legislative competence of the different legislative bodies, and so, it would be unreasonable to approach the task of interpretation in a narrow or restrictive manner."

12. In The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , their Lordships, while reiterating the earlier propositions, observed:--

"But some of the entries in the different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of the Court to reconcile the entries and bring about harmony between them. The underlying principle in such cases is that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Constitution and operating in the same field, when by reading the former In a more restricted sense effect can be given to the latter in its ordinary and natural meaning. Thus, every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory."

13. Keeping in view these principles, the meaning and scope of entry No. 43 has to be ascertained. The contention of the learned counsel for the petitioners is that the various provisions in the Ordinance, which has been replaced by the Amending Act, impinge on the business of banking inasmuch as the entire control of the management is more or loss vested with the Registrar and the right of the shareholders to elect their representatives has been taken away. This is so. It is evident that entry No. 43 and entry No. 45 relate to different heads of legislation. Whereas entry No. 45 gives the power to the Central Legislature to legislate qua banking business, entry No. 43, on the other hand, gives power to the Central Legislature to legislate regarding corporations. It is immaterial whether those Corporations were doing the banking business or not. In other words, Central Legislature is competent to legislate with regard to Corporations engaged in the business of banking, in view of entry No. 43. List I. But so far as the Co-operative Societies are concerned, they were taken out of the ambit of entry No. 43 and put in entry No. 32, List II. The word ''regulation'' in entry No. 43 is of a wide import and would include how a Cooperative Society is to work. In other words, it will include the constitution of a Co-operative Society and any matter relating to its constitution would naturally be the subiect-matter of legislation by the State Legislature.

In a broad sense, the controlling of the working of a Society doing banking business will in some measure concern the business of banking and thus may bring it within the ambit of entry No. 45. List I. Thus there would be some overlapping. But in order to give a harmonious construction to both the entries, Nos. 43 and 44, it must be held that only business of banking as such falls within the ambit of entry No. 45; whereas the incorporation of the Corporations and other matters relating to them fall within the ambit of entry No. 43. Therefore, the constitution of the Societies and their working would have fallen within the ambit of entry No. 43 but for the fact that Co-operative Societies are excluded from its purview. The very fact that in entry No. 43, Corporations engaged in the business of banking are specifically mentioned, it clearly follows that Co-operative Societies doing that business were taken out of entry No. 43. List I, and deliberately put in entry No. 32, List II. In view of the clear wording of the two entries, I am unable to agree with the contention of the learned counsel for the petitioners, that the State Legislature has no jurisdiction to regulate the functioning of the Co-operative Societies engaged in the business of Banking.

14. For the reasons recorded above, these petitions fail and are dismissed. There will be no order as to costs.

S.S. Sandhawalia, J.

15. I agree.