(2009) 03 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 9087 of 2008 with Civil Appli. No. 2596 of 2009 in Spl.C.A. No. 9087 of 2008 with Civil Appli. No. 2672 of 2009

Senior Citizens'' Service Trust and Others — APPELLANT

Vs

Minister for Finance and Another — RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 — Section 3(2B), 9, 9(3), 9(3A)
Constitution of India, 1950 — Article 39
State Bank of India Act, 1955 — Section 10(1), 27, 28, 29

Citation : (2009) 2 GLR 1633

Hon'ble Judges : K.S. Radhakrishnan, C.J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Praful G. Desai, Party in Person, for the Appellant; Harin P. Raval, for the Respondent

Judgement

K.S. Radhakrishnan, C.J.—Petitioner a registered trust, concerned with the welfare of the senior citizens and the depositors of various Public Sector Banks, has approached this Court with this public interest litigation. Reference was made to series of articles appeared in ''Indian Express'' daily dated 6-5-2007 and 26-6-2007 containing serious allegations in the matter of appointment of independent Directors in various Public Sector Banks in the country. Portion of the reports reads as follows:

Records investigated by the The Sunday Express show that the Government has crammed at least 33 to 37 positions for independent directors (called in Bank parlance ''Non-Official'' Directors) with men and women known for their allegiance to the Congress party; at least five Secretaries of the All India Congress Committee (A.I.C.C), a Vice President and a Secretary of the All India Manila Congress (A.I.M.C.) and the Sewa Dal - politicians who have either lost elections or loyalists to whom the party wishes to dole out a favour.

Report makes also specific reference to the appointments of Harcharan Singh Josh, K. K. Sharma and Umesh Kumar Sharma as ''Non-Official Directors'' to the Punjab and Sind Bank. Paper report further says that Chairman and Managing Director of Punjab and Sind Bank had addressed the Government pointing out difficulties being faced by them in running affairs of the Bank due to the poor performance of the Non-Official Directors appointed by the Government, and also their defiant attitude. Report published reads as follows:

That one of the directors, Harcharan Singh Josh, ''along with other non-official directors has been continuously putting pressure on the Bank to agree for unreasonsable settlements of non- performing accounts. Since, the management was not agreeing to their requests, they have been resorting to opposing all the agenda items (during Board meetings).."

Another independent director, K.K. Sharma, the Chairman complained, ''has not submitted ''Deed of Covenant'' declaration of secrecy and other mandatory information despite repeated telephone calls, letters and contacts by local branch officials''.

In the case of another director, Umesh Kumar Sharma, the complaint is also serious. The Chairman has written that he "gave an incorrect statement that he is a graduate, whereas he is only a matriculate... Harcharan Singh Josh is a member of the Minority Commission and is drawing salary as a full-fledge public servant. He has been a defaulter of the Bank and his accounts were settled after giving concessions.

2. Petitioner submitted that above incidents and various other details pointed out by him in the writ petition indicate that the primary concern of the Government while appointing Non-Official Directors is not the interest of the Bank/Institution but to meet its political interest. Petitioner has also called for few information from the concerned Department under the ''Right to Information Act, 2005''. Details of which have been furnished in the petition. Reference was also made to the guidelines for selection of part-time Non-Official Director framed by the Government. Petitioner has also stated that while appointing Non-Official Directors on the Board of Directors of various Public Sector Banks, provisions contained in Section 9(3A) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (for short ''the Act'') were not followed and there was no effective consultation with Reserve Bank of India, Departments of Income Tax, Customs, Central Excise and Enforcement Directorates of the Central Government.

3. Detailed affidavit-in-reply has been filed on behalf of the respondents. It has been stated in Paragraph 10.3 that for appointment of the part-time Non-Official Director, recommendations are received from various sources including Hon''ble Ministers, Hon''ble Members of the Parliament and Hon''ble M.L.As. and Hon''ble M.L.Cs. proposing the names of persons for nomination of part-time Non-Official Director to the Board of various Public Sector Banks. Further, it has been stated

additionally with a view to induct professional on the Board of Management of such Public Sector Banks, a panel of names of Economists, Management Experts, Chartered Accountants, Lawyers, Academicians, Industrialists, etc. are obtained from the organisations like N.C.A.E.R., I.E.G., Indian Institute of Management, Institution of Chartered Accountant of India, Indian Law Institute, reputed Universities, Federation of Indian Chamber of Commerce and Industries, C.I.Is., Assocham and various Chambers of Commerce. It is also stated that on receipts of names from such various quarters, scrutiny of the names received is undertaken and a data Bank of persons are short-listed keeping in mind educational qualifications, professional experience, age. Further, it is also stated that endeavour made to give representation to the Scheduled Castes and Scheduled Tribes, minorities and women and also to give every region/State in the country gets representation on the Board of Directors. It is stated that final list is approved by the Finance Minister after taking into account the views of the Reserve Bank of India and clearances from Departments of Income Tax, Customs, Central Excise and Enforcement Directorates of the Central Government. On receiving the clearances from the above-mentioned agencies, the proposals are submitted to the Appointments Committee of the Cabinet (A.C.C.) through the Department of Personnel and Training. Appointments are notified after receipt of A.C.C''s. approval and obtaining the requisite declarations from the persons wherever necessary.

4. In the reply-affidavit filed by the respondent, it has been stated that Non-Official Director are not interfering in the day-to-day functioning of the Bank and they are expected to attend all the Board meetings of the Bank and further expected to address themselves to policy formulations and performance appraisal leaving other operational aspects to be handed by the Chairman and Senior Executive of the Banks. Further, it has been stated in some of the important areas on which such Directors may bestow particular attention are compliance with monetary and credit policy of the Reserve Bank of India/ Government, observance of cash reserve and statutory liquidity ratio, efficient management of personnel, funds and branch control, profitability, overall sectoral deployment of funds, loans to sick units, performance budgeting and house-keeping particularly in regard to reconciliation of inter-branch accounts and customer service including vigilance and avoidance of frauds. Further, it has been stated that emphasis on policy formulation, management information monitoring, non-performing, assets management and related fields. Further, Government of India''s letter dated 6-7-2007 addressed to the trustee of the petitioner trust stated that some of the Directors indicated in the list might also be politicians, but they fell within the eligible criteria.

5. When this matter came up for hearing before us, we passed an order on 19-2-2009 directing the respondents to produce files in respect of the following Non-Official Directors appointed by the Government to various Banks.

1. Smt. Joginder Kaur - Allahabad Bank

2. Romesh Sabharwal - Central Bank of India

3. Smt. Nafisa Ali Sodhi - Indian Bank

4. Umesh Kumar Sharma - Punjab & Sind Bank

6. Learned Counsel appearing for the respondent has made available the files in respect of the above-mentioned persons appointed as Non-Official Directors to various Public Sector Banks and we perused those files.

7. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 was enacted to provide for the acquisition and transfer of undertakings of certain Banking Companies, having regard to their size, resources, coverage and organisation, in order to further control the heights of the economy, to meet progressively, and serve better, the needs of the development of the economy and to promote the welfare of the people, in conformity with the policy of the State towards securing the principles laid down in Clause (b) and (c) of Article 39 of the Constitution and for matters connected therewith or incidental therein. Chapter IV of the Act deals with the management of corresponding new Banks which says that the general superintendence, direction and management of the affairs and business of a corresponding new Bank shall vest in a Board of Directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding new Bank is authorised to exercise and do. Section 9 of the Act empowers the Central Government to make scheme after consultation with the Reserve Bank of India to carry out the provisions of the Act. Section 9(3)(h) of the Act empowers the Central Government to nominate not more than six Directors to be nominated by the Central Government. Directors so nominated shall have satisfactory recommendations as per Sub-section (3)(a)(h) of Section 9 of the Act. Relevant portion of the above Section is extracted hereinunder:

9(3)(a) Every Board of Directors of a corresponding new Bank, constituted under any scheme made under Sub-section (1), shall include:

(a) not more than two whole-time directors to be appointed by the Central Government after consultation with the Reserve Bank;

9.3(h) Subject to the provisions of Clause (i) not more than six directors to be nominated by the Central Government;

(i) where the capital issued under Clause (c) of Sub-section (2B) of Section 3 is:

(I) not more than twenty percent of the total paid-up capital, not more than two directors.

(II) more than twenty percent, but not more than forty percent of the total paid-up capital, not more than four directors,

(III) more than forty percent of the total paid-up capital, not more than six directors, to be elected by the shareholders, other than the Central Government, from amongst themselves:

Provided that on the assumption of charge after election of any such directors under this clause, equal number of directors nominated under Clause (h) shall retire in such manner as may be specified in the scheme.

(3A) The directors to be nominated under Clause (h) or to be elected under Clause (i) of Sub-section (3A) shall:

(A) have special knowledge or practical experience in respect of one or more of the following matters, namely:

(i) agricultural and rural economy,

(ii) banking,

(iii) co-operation,

(iv) economics,

(v) finance,

(vi) law,

(vii) small-scale industry

(viii) any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the corresponding new Bank;

(B) represent the interests of depositors; or

(C) represent the interests of farmers, workers and artisans.

(3B) Where the Reserve Bank is of the opinion that any director of a corresponding new Bank elected under Clause (i) of Sub-section (3) does not fulfil the requirements of Sub-section (3A), it may, after giving to such director and the Bank a reasonable opportunity of being heard, by order, remove such director and on such removal, the Board of Directors shall co-opt any other person fulfilling the requirements of Sub-section (3A) as a director in place of the person so removed till a director is duly elected by the shareholders of the corresponding new Bank in the next annual general meeting and the person so co-opted shall be deemed to have been duly elected by the shareholders of the corresponding new Bank as a director.]

8. Central Government has also issued guidelines for selection of part-time Non-Official Director which states that nominations shall be made keeping in view the provisions of the relevant Acts/Rules and the suitability of nominees may be assessed in terms of formal qualification and expertise, track record, integrity etc., to decide for assessing integrity and suitability, information on criminal records, financial position, civil actions undertaken to pursue personal debts,

refusal of admission to or expulsion from professional bodies, sanctions applied by regulators and similar bodies and previous questionable business practices etc. will be relied upon. It is also stated that persons with special academic training or practical experience in the fields of agricultural, rural economy, banking, cooperation, economics, business management, humanre sources, finance, law, marketing, industry and I.T. will ordinarily be considered. Further, it is stated that as far as possible representation also be given to women and the persons belonging to the Scheduled Caste/Scheduled Tribe community. It is also stated that Non-Official Director should at least be a graduate and educational qualification may be relaxed with the approval of A.C.C. in case of farmers, depositors and artisans. With regard to work experience, professionals/ academicians should ordinarily have 10 years of work experience in the particular field. There is a specific clause for disqualification which states that persons connected with hire-purchase, financing, investment, leasing and other para-Banking activities, M.Ps., M.L.As., M.L.Cs. and Stock Brokers will not be appointed as non-official directors on the board of Banks/F.Is.

9. Statutory provisions under the Act as well as guidelines would clearly indicate that prime consideration for appointment as Non-Official Director is that they should have special knowledge or practical experience in the fields of agricultural, rural economy, banking, co-operation, economics, business management, human resources, finance, law, marketing, small-scale industry and I.T., who is capable of representing the interest of the depositors'' interest of farmers, workers and artisans guidelines specifically stipulate that Members of Parliament, M.L.As., M.L.Cs. etc. are disqualified for being nominated as the Directors of various Public Sector Banks. Files and materials produced before us would indicate that most of the persons who have been nominated on the Board of Directors as Non-Official Directors are their nominees and political workers and in several cases, guidelines as well as statutory requirements have been given a go-bye. There are also instances where the opinion of the Reserve Bank of India was also ignored.

10. We have perused files pertaining to the nomination of Mr. Umesh Kumar Sharma of Punjab and Sind Bank. Files show that Mr. Umesh Kumar Sharma was addressed by the Ministry of Finance vide letter dated 17-6-2005 informing him that the Government was considering his name for appointment as a part-time Non-Official Director on the Board of a Nationalized Bank and he was asked to convey his willingness and to make available detailed particulars/bio-data in the enclosed proforma. Mr. Umesh Kumar Sharma against column of qualification stated in the proforma that he is graduate and against occupation, he stated ''agriculture and business''. Further, it is also stated that he is active member of the Congress party since college days and was the former General Secretary of Haryana Pradesh Youth Committee and he was Returning Officer in State of U.P. by Indian Youth Congress. In the proforma submitted to the Government, he stated that his educational qualification is Matriculate. Name of Mr. Umesh Kumar Sharma was considered along with other few others and notification was issued

by the Government on 9-12-2005 nominating them as part-time Non-Official Directors of Punjab and Sind Bank for a period of three years. Later on, it was noticed that Mr. Umesh Kumar Sharma was considered for appointment thinking that he was Graduate. Consequent upon notification dated 19-12-2005 he gave his qualification as Matriculate in Bio-data. Since, Mr. Sharma was only Matriculate, he was not eligible for being appointed as Non-Official Director as per the guidelines issued by the A.C.C. Consequently, file was sent for replacing him by nominating another person in place of Mr. Sharma but the same was not acceded to by the Government and Government didn''t cancel his appointment. Chairman and Managing Director of Punjab and Sind Bank had addressed the Government pointing out these facts and indicated the difficulties experienced by the Bank at the hands of the Non-Official Directors. Government was informed that the Bank had suffered lot in the past due to reckless lending because of political interference and obliging management which resulted in accumulation of highest N.P.As. in the industry. Further, it was pointed out that if the Government wants the Bank to survive, the Bank should have Directors who are not only professional but also men of integrity and not connected with local politics. Request was made to re-constitute the Board of Directors of the Bank at the earliest, a news item to that effect appeared in ''Tribune'' of 26-3-2007 as well in the ''Indian Express'' daily. Mr. Umesh Kumar Sharma had, however, tendered his resignation on 28-4-2008.

11. We may also incidentally refer to the appointment of Ms. Joginder Kaur, Non-Official Director on the Board of Directors of Allahabad Bank. Reserve Bank had raised objection with regard to her nomination stating as follows:

Smt. Joginder Kaur does not appear to have any experience in Banking and other relevant areas as required in terms of Para (I) 3 of the Government of India guidelines dated 16-10-2006 and Section 9(3A) of the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970.

Opinion expressed by the Reserve Bank of India was given a go-bye and she was nominated. Smt. Joginder Kaur appears to have been appointed relaxing the criteria adopted for appointment of Non-Official Director. However, in the note submitted to the appointing authority, it was submitted as follows:

Smt. Kaur, is under S.C. category and belongs to a family who is committed to nationalism and anti-communalism. She has been a staunch crusader against terrorism and suffered on this account. She is a powerful speaker and is an effective exponent of the ideology of secularism and humanism, therefore, it was felt that as a public nominee she could be considered for appointment as part-time Non-Official Director on the Board of Directors of Allahabad Bank.

Reserve Bank of India did not give any No-Objection Certificate and in fact, opined against her appointment. Reasons stated for her recommendation, prima facie, are not what is stipulated in the statute and the guidelines. We have no hesitation to state that in many cases the appointments of above Non-Official

Directors are made not on merits or following the statutory requirements or on the recommendations of the Reserve Bank of India. Serious thought has to be bestowed while nominating Directors as Non-Official Directors to various Public Sector Banks keeping in mind their special knowledge, practical experience in the various fields, which would help the Bank in formulating of various policies.

12. Section 10(1)(d) of the State Bank of India Act, 1955 provides that persons having knowledge of the work of co-operative institution and of rural economy or experience in commerce, industry, banking or finance, may be nominated as Directors in terms of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980 and as per the provisions contained under Sections 27, 28 and 29 of S.B.I. Act, 1955, the Directors are entitled for sitting fees for attending to any Board meetings or at any Committee of the Board or for attending to any work of the Bank. In addition to the fees, the Directors are also entitled for reimbursement of travelling and halting expenses on such basis as may be fixed from time to time by the Central Government after consultation with the Reserve Bank of India. Public money is being spent for their up-keep so also give proper assistance into policy formulation and not expected to interfere by projecting their political views for achieving some other ulterior motive. Complaint of Chairman of one of the Public Sector Banks was that one Non-Official Director was continuously putting pressure on the Bank to agree for settlement of the Non-Performing Accounts. Further, complaints were also raised that another Non-Official Director used to put pressure for settling the various N.P.As. All these factors would give a wrong signal to public and would not do good to the Public Sector Banks many of them are reeling under tremendous economic crisis. Government should bestow serious attention while exercising their statutory powers u/s 9(3)(a)(h) of the Act which itself provides the criteria to be followed by the Central Government while nominating the Directors to various Public Sector Banks. Nomination cannot be in a casual manner so as to favour the demands of politicians. Government has to carefully apply its mind de hors political consideration giving emphasis to the statutory requirements provided under Sub-section (3A) of Section 9 of the Act as well as guidelines formulated thereunder. Primary consideration of the Government should be interest of the Public Sector Banks, its depositors and not interest of the nominees or any other vested interest. We are sure that the Government will give serious thought in future so unnecessary criticism could be avoided.

13. With the above observations, this Public Interest Litigation is disposed of.

14. Consequently, the Special Civil Application and Civil Applications stand disposed of accordingly.