
(2008) 07 SHI CK 0025
In the High Court Of Himachal Pradesh

Shiv Lal Thakur and Others	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Banking Regulation Act, 1949 — Section 35(b)

Citation : (2008) 3 ShimLC 33

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The petitioners have filed this writ petition against the show-cause-notice (Annexure-PK) issued to them by the Registrar, Co-operative Societies (Respondent No. 2) and the consequential order (Annexure-PV) removing them from the Board of Directors of the Himachal Pradesh State Co-operative Bank (Respondent No. 4). The petitioners have also prayed for consequential relief flowing from the quashing of these orders.

2. It is undisputed before me that the petitioners are the Directors of respondent No. 4, H.P. State Co-operative Bank Limited, constituted, incorporated and formed under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968, (hereinafter referred to as the "Act"). Show-cause-notice (Annexure-PK) dated 5th February, 2008 was issued to the petitioners by the Registrar, respondent No. 2, on various grounds set out therein. The basis of the notice was the two audit reports for the financial years 2005-2006 and 2006-2007. Statutory inspection of the Bank for the year 2005-2006 was conducted by the National Bank for Agriculture and Rural Development ("NABARD" for short) u/s 35(6) of the Banking Regulation Act, 1949. The petitioners, replied vide Annexure-PL stating therein the reasons for which the notice was bad and no action could be taken against them. They inter alia asked for the reply filed by the Chief General Manager, NABARD who is also a Member of the Board of Directors of respondent No. 4 and that of the other Members, as the entire Board was sought to be implicated and the shortcomings in the statutory report have to

be explained or rectified with the consensus of all the Directors.

3. By order Annexure-PV, the Registrar rejected the replies filed by the petitioners and proceeded to remove the petitioners from the Board of Directors of the Himachal Pradesh State Co-operative Bank Ltd., Shimla and appointed Shri R.D. Dhiman, IAS, Commissioner, Excise and Taxation Department as an Administrator u/s 37(1)(a)(ii) of the Act for a period of three months or till the election of the Board of Directors of the bank is held. The election of the Board of Directors has since been conducted.

4. Learned Counsel appearing for the petitioners has challenged the issuance of Annexure-PK and its rejection on a number of grounds by stating that specific charges attributable to each Member have not been mentioned and it has been issued in a pre-determined manner leaving very little for determination. The petitioners contend the violation of the Rule of audi alteram partem and submit that the show-cause notice has concluded about the guilt of the petitioners and all other proceedings subsequent to that are a sham and mere pretence of compliance to the principles of Natural Justice and the statutory provisions of the Act.

5. Learned Counsel appearing for respondents No. 1 to 3 have urged that the show-cause-notice cannot be quashed as it is the statutory right of the Authorities to conduct a statutory inquiry on any acts of mismanagement etc. which may be found and that the rejection is by a reasoned and speaking order.

6. A perusal of Annexure-PK shows that its foundation is the statutory report etc. for the years 2005-2006 and 2006-2007 levelling charges against the Board of Respondent No. 4. A detailed reply has been filed to the petition on each and every ground including a demand for the record and documents/records and replies on the basis of which allegations have been levelled against the petitioners which are not in their possession. I am not going into the detailed submissions and allegations made in the writ petition regarding the specific character of the reports or the adequacy of the grounds to drop the inquiry, but, at this stage, it is the consequential order Annexure-PV which is being considered as to whether it is Constitutionally sustainable and whether it meets the requirement of Article 14. As noticed, the petitioners herein had filed a detailed reply in which one of the allegations is that the Registrar or his nominee is one of the Member of the Board of Directors and the Managing Director of the Bank who are responsible for the violation, if any, as they are dealing with the objection(s) raised in the statutory audit report etc. The consideration of the reply to say the least leaves much to be desired. All that Annexure-PV says is that the petitioners' reply has been considered in detail and that it has not been found to be satisfactory. This is hardly a satisfactory way of dealing with the grounds and the demand for information and documents made in the reply. Although reasons need not be elaborate, yet they must disclose the working of the mind of the Authority passing the order. Reasons are after all the heart and soul of an order and a safeguard against arbitrary or whimsical abuse of statutory or

administrative power(s). The show-cause-notice issued cannot be quashed outright except in rare circumstances. I do not consider this to be a case where such relief can be granted to the petitioners. However, that does not preclude this Court from exercising powers of judicial review and affirm grant of sweeping powers to the Registrar who is a statutory Authority under the Act to proceed with the matter in any manner in which he likes. He is bound by the provisions of Article 14 of the Constitution of India and the principles of natural justice as enshrined therein as the consequences of the rejection of the reply are serious and entail civil consequences. A show-cause-notice not only levels allegations against a particular person(s) but also asks for his explanation as to whether he accepts these allegations or not and the grounds/reasons for rejection of the charges levelled. Once the matter is placed before the Authority, it is mandatory that the explanation submitted be considered and the objections raised therein decided in accordance with law. There is ample precedent in law wherein it has been held that a reasoned decision is mandatory.

7. In *State of West Bengal Vs. Atul Krishna Shaw and Another*, , it was held:

7. ...Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice.

(Emphasis supplied)

8. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , the Supreme Court stressed the need for a reasoned order as a safeguard for the protection of liberties and rights of the citizens holding that:

7. ...The Condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness, it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal."

8. ...If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons, for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

9. ...There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the stand-point of policy and expediency. The habit of mind of an

executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders....

9. In *S.N. Mukherjee Vs. Union of India*, , this principle was elaborated thus:

35. ...the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review.... It is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy....

10. Pronouncing upon the rationale of this principle in *Atul Krishna Shaw's* case the Supreme Court came to the conclusion that reasons form the core of any decision which protect not only the citizen from the arbitrary action but also the decision maker from the charge of having acted in a motivated fashion.

11. The principle of law finds expression in *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, , whereby Court held that although the statute under consideration did not require for maintenance or a record or the oral evidence etc. yet an appeal to be effective, the order must contain reasons. The Court held:

18. ...For such an appeal to be effective, the party aggrieved must be in a position to canvass the propriety and correctness of the reasoning of the tribunal of first instance before the appellate authority and it would be obvious that it could not be done satisfactorily unless the party is in possession of the materials on which the conclusions of the first tribunal are based and reasons are recorded for the order....

12. To similar effect are the decisions of the Court in *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, and *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, . Orders passed by Statutory/Administrative Authorities are subject to the writ jurisdiction of this Court and exercise of judicial review would be meaningful only if the reasons are explicit in the orders itself.

13. In *Union of India (UOI) and Others Vs. Essel Mining and Industries Ltd. and Another*, , the Supreme Court holds that it is not the number of pages in a judgment/order which is relevant but the sufficiency of reasons indicated to justify the conclusions arrived at.

14. Although an elaborate judgment is not required but the Registrar should have been alive to the situation that the petitioners herein were elected Members of the Board of Directors and the principles of Natural Justice followed before their removal. These include doctrine of fairness that they should have been given an

adequate opportunity for presenting their case, material asked for and a reasoned decision disclosing the rationale for arriving at a particular conclusion.

15. Indisputably the petitioners' rights have been affected and an adverse order passed against them which has serious bearing for the future.

16. I have not gone into the merits of the submissions made by the learned Counsel for the parties as the Board of Directors already stands elected and constituted, but it is the consequential action of the removal of the petitioners from the Board of Directors which has been considered and adjudicated. A perusal of the Order Annexure-PV shows that the rejection of the reply discloses a total non-application of mind. The first ground stated in the order of removal of the petitioners as Directors (Annexure-PV) is that it is evasive and devoid of any substance, then it proceeds "that the charges have been denied without justifying their denial on each article of charge. It proceeds ..."the reply so filed has been considered and examined in detail and found to be devoid of any detailed plausible, reasoned and satisfactory reply on each article of charge".

17. The basis of the charge is the report by "NABARD" to which even the Director of "NABARD" has not replied, although he is a Member of the Board of Directors of Respondent No. 4. Paragraph-4 of the order proceeds with the wording:

That the joint reply filed by the six Members of the Board was considered and examined in the light of the charges referred to above and the material available on the face of record. The reply(s) tendered by these six members of the Board has been found unsatisfactory, vague, non-specific and devoid of any substance and material and far from facts on record. Instead of filing detailed and specific reply of each article of charge to justify their conduct, these six members have preferred to shift the onus on the then Managing Director, Registrar, Government nominees, etc. for their acts of omission and commission in discharge of their duties imposed on them as the members of the Board.

18. This clearly indicates abandonment of statutory duties. If the petitioners have made query(s) and asked for some material, surely that should have been considered in the light of the charges framed and the statutory provisions instead of merely repeating time and again that the reply filed is evasive etc. In order to satisfy myself I called for the record and did find that there was substance in the complaint of the petitioners. Rather assuming the role of an appellate Authority I have thought it fit and proper that the matter be again relegated to the stage of show-cause notice whereafter the petitioners be given an opportunity to represent their case before the Registrar, who would examine the reply in depth and detail on each of the points made by the petitioners herein and then proceed in accordance with law. While exercising powers under Article 226 of the Constitution of India, I have thought it proper not to re-appreciate the entire gamut of the allegations and an in-depth examination of the record as if this Court was sitting as an appellate Authority but I have exercised powers of

judicial review confining the respondents to their statutory limits with a direction that proceedings against the petitioners should be conducted strictly in accordance with Article 14 of the Constitution of India. They will be given adequate opportunity for presenting their case and access to such material as has been asked for by them in defence to the charges leveled against them. This would be basic minimum requirement of compliance with the principle of natural justice.

19. In view of the facts and circumstances, the order Annexure-PV is quashed and set aside and the proceedings are relegated to the stage of the show-cause notice and reconsideration of the case of the petitioners on the replies filed. The election of the Board of Directors having been concluded, no other relief is granted. There shall be no order as to costs.