

(1971) 03 AHC CK 0038

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 2040 of 1969 and 726 of 1970

Sultan Singh

APPELLANT

Vs

Assistant Registrar Incharge Jhansi Division, Jhansi and
Others

RESPONDENT

Date of Decision : 19-03-1971

Acts Referred:

Constitution of India, 1950 — Article 19, 246

Citation : AIR 1972 All 159

Hon'ble Judges : R.S. Pathak, J;R.L. Gulati, J

Bench : Division Bench

Advocate : M. Asif Ansari and R.C. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Pathak, J.—The petitioner Sultan Singh, applies under Article 226 of the Constitution for an order directing the Assistant Registrar, Incharge, Jhansi Division, not to enforce the bye laws framed by him in respect of the Jhansi District Co-operative Bank Limited, and also prays that the bye-laws be quashed.

2. The Jhansi District Co-operative Bank Ltd., (which for convenience we may refer to as "the Bank") is a cooperative society registered in 1932 under the Co-operative Societies Act, 1912, and constituted, it is said, with the sole purpose of providing banking facilities to its members. Under the bye-laws, as amended from time to time, the Board of Directors of the Bank included a Director elected by the share-holders. The petitioner acquired a block of shares in the Bank in 1961 and became a shareholder. In 1962, he was elected by the share-holders as Director, which office he continued to hold by virtue of successive elections. The petitioner alleges that in 1969 his name was taken off the roll of the ordinary members of the Bank, and he has been denied the right to participate in the affairs of the Bank. The question is whether the petitioner is entitled to any relief.

3. On January 26, 1968, the U. P. Co-operative Societies Act, 1965 was brought into force, repealing the Cooperative Societies Act, 1912 in its application to Uttar Pradesh. Section 17(1) of the new Act lists the persons who can be members of a Co-operative Society. They include individuals satisfying certain qualifications, Co-operative Societies, the State Government, the Central Government, the State Warehousing Corporation and any other body corporate approved by the Registrar generally or in particular for ordinary or nominal membership of Co-operative Societies. P2 Section 17(2), which is material for our purposes, provides:

"Notwithstanding anything contained in Sub-section (1) a Joint Stock Company or an individual shall not be admitted as an ordinary member in such co-operative society or societies or class of co-operative societies as may be prescribed."

Section 2 (q) defines "prescribed" as meaning "prescribed by rules". Therefore, both individuals and Joint Stock Companies are barred from the ordinary membership of such co-operative societies or class of co-operative societies as are specified by the rules, and this is so notwithstanding that Section 17(1) contemplates individuals as members of co-op, society. Rule 44 of the U. P. Co-operative Societies Rules, 1968 provides:

"(a)"

(b) No person, who is an individual, shall be admitted as an ordinary member in (i) an apex society or Central Bank (other than U. P. State Co-operative Land Development Bank and an Urban Central Bank).

(ii) a central society which includes any other central society in its ordinary membership."

4. A Central Bank, as defined by Section 2 (k) of the Act, is "a co-operative society, the main object of which is to lend money to co-operative societies which are its ordinary members." Admittedly, the Jhansi District Co-operative Bank Limited is a Central Bank. There is also no dispute that it is not an urban central bank. The result is that by reason of Section 17(2) read with Rule 44 (b) an individual cannot be admitted as an ordinary member of the Jhansi District Co-operative Bank Ltd., and the petitioner, who was an individual was an ordinary member of the Bank before the new Act came into force is not entitled to be an ordinary member of the Bank under the new Act. Rule 44 (c) provides, however,

"If a society mentioned in Sub-rule (b) has on the date of coming into force of the Act, individuals as its ordinary members, the Society shall within a period of one year from such date or such further period as the Registrar may, for reasons to be recorded, allow for any co-operative society, adjust its membership to any other class mentioned in Sub-section (1) of Section 18 in accordance with the provisions of the bye-laws of the Society."

Section 18(1) details the classes of members which a Co-operative Society may

have. In addition to ordinary members, it may have sympathiser members, nominal members and associate members. Rule 44 (c) enables the society within a specified period to adjust its membership to any of these classes in accordance with the provisions of the bye-laws of the Society, and in this way a measure of relief is available to individuals who were formerly ordinary members of the society. If such individual is genuinely interested in the promotion of the object of the society or in the welfare of the member workers he can, by virtue of Section 18(2)(a), be admitted as a sympathiser member. The number of sympathiser members in a society is, by Section 18(2)(b), limited to 5% of the total number of ordinary members, and the number of sympathiser members on the committee of management is also limited. Nominal membership is contemplated for those persons with whom the society has or proposes to have business dealings, and associate membership is open to seasonal or temporary workers or apprentices in the business of the society or who are otherwise interested in such business. A person, who is denied the ordinary membership of a society by reason of Rule 44 (b) may be a sympathiser member of the society provided he fulfils the conditions set out in Section 18(2)(a), and the provisions of Rule 44 (c) are availed of by the society. As we have seen, Rule 44 (c) contemplates that the adjustment of its membership by the society must be in accordance with the bye-laws of the society.

5. The bye-laws of a society referred to in Rule 44 (c) are the bye-laws in force under the new Act. Section 131(1) declares that a co-operative society incorporated under the Co-operative Societies Act, 1912 shall when the new Act is brought into force be deemed to be registered under the new Act and "its bye-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded according to the provisions of this Act." To bring the existing bye-laws into conformity with the provisions of the new Act, Section 131(3) provides:

"(3). Every Co-operative Society covered by Sub-section (1) shall, within a period of one year from the date of coming into force of the Act, delete or amend such bye-laws as are inconsistent with the provisions of this Act or the rules and shall make such further bye-laws as may be necessary having regard to the provisions of this Act and the rules."

If the Co-operative society fails to do so, then the Registrar, by Section 131 (4), is empowered to "make necessary amendments including deletions and additions in the bye-laws of the society." And so, provision has been made for bringing into existence a set of bye-laws which will have force under the new Act.

6. As regards the adjustment of Its membership by a society, reference may be made to Section 131 (5). It provides:

"(5) Every co-operative society shall, within a period of one year from the date of coming into force of this Act or such further period as the Registrar may, for reasons to be recorded allow for any co-operative society, adjust its membership

according to the classification of members under this Act:

Provided that any existing member who cannot be adjusted into one or other kinds of membership shall be deemed on the expiry of the "period of one year or the extended period, if any, to have withdrawn from the membership of the society with the same rights and liabilities attached as if he had withdrawn from the membership before the coming into force of this Act."

Where a co-operative society fails to adjust its membership as specified in Section 131 (5) then the Registrar, by Section 131 (6) is empowered to "make the adjustment and direct as to who, if any, of the existing members shall be deemed to have withdrawn from membership under the provisions of subsection (5)." At this stage, we may also refer to Section 131 (7), which requires every co-operative society to constitute, within one year of the coming into force of the new Act, its committee of management in accordance with the provisions of that Act and the rules. If it fails to do so, the Registrar is required to constitute the committee of management.

7. The new Act came into force on January 26, 1968, and by reason of Section 121 (3) of the Jhansi District Co-operative Bank Limited should have amended its bye-laws within one year thereafter. On, April 3, 1969, the Assistant Registrar. In-charge, Co-operative Societies, Jhansi Division issued a notice to the Bank pointing out that the Bank had not complied with the provisions of Section 131 (3) and had not brought its bye-laws into conformity with the new Act and the rules, nor made such further bye-laws as were necessary thereunder and required it to amend the bye-laws within a period of two months from the date of receipt of the notice. The Bank was warned that in case it failed to comply with Section 131 (3) within that period the Assistant Registrar would exercise his powers u/s 131 (4) and make the necessary amendments including deletions and additions in the bye-laws of the Bank. Copies of model bye-laws were enclosed with the notice. The petitioner says that the Management Committee of the Bank took up the matter, and it was only in a meeting of June 1969, that the Board of Directors were able to consider the model bye-laws and make some amendments, and thereafter a special general meeting of the members of the Bank was fixed for August 1, 1969 for adopting the amendments in the bye-laws. Meanwhile an extension of time was sought from the Assistant Registrar. But on June 30, 1969 the Bank received a letter from the Assistant Registrar that he had framed the bye-laws u/s 131 (4). The new bye-laws followed the model bye-laws. They did not provide for individual membership. Indeed, bye-law No. 5 (a) (v) provided that upon the registration of the bye-laws individual membership would be deemed to have come to an end and upon the expiry of the period mentioned in Section 25 of the Act individual share-holders would be entitled to withdraw their capital. Under the new bye-laws, individual members were completely eliminated from the Committee of Management.

8. It appears that the Bank did not avail of Rule 44 (c) and adjust its membership in order to accommodate individuals, who were formerly ordinary

members, in a membership specified in Section 18(1). The consequence was that on the expiry of the period specified in Section 131 (5) the petitioner and like members had to be deemed to have withdrawn from the membership of the society. The petitioner complains that the Registrar, although empowered in that behalf by Section 131 (b), did not make the necessary adjustment in the membership of the Bank, as he was, it is said, bound in law to do so. It is said that the Annual General Meeting of the Bank was convened on August 20, 1969 but had to be postponed under the orders of the Assistant Registrar. The Annual General Meeting of the Bank was again called for September 25, 1969 but that meeting had also to be adjourned. The Secretary of the Bank then summoned a meeting for December 28, 1969 for holding elections in which the petitioner is not entitled to participate as his name is not included in the voters" list.

9. As regards the connected Writ Petition the facts are these. The Jalaun Zila Sahkari Bank Limited. Orai, which is also a co-operative society registered under the Co-operative Societies Act, 1912, had three categories of members. One category, described as share-holders of Class C, consisted of individuals over 18 years of age and living permanently in district Jalaun or permanently carrying on business in that district or owning Immovable property there. These individual members were entitled under the bye-laws to be members of the General body and to take part as such in the conduct of the affairs of the society and to participate in the election of the Directors of whom three were drawn from amongst themselves. On April 3, 1969 the Assistant Registrar, Co-operative Societies, served a notice on the society regarding the necessity of complying with the provisions of Section 131 (3) of the new Act and allowing it two months for effecting such compliance by bringing the bye-laws into conformity with the provisions of that Act and the rules. On the failure of the Society to comply with the notice, the Registrar framed a new set of bye-laws u/s 131 (4) on July 11, 1969. The new bye-laws did not make any provision for "sympathiser members". Provision was made for nominal members, but they had no right of vote in the management of the society"s affairs. Bye-law No. 5 (a) (v) was to the same effect as the corresponding provision in the bye-law framed in respect of the Jhansi District Co-operative Bank Limited. A notice was issued by the society convening the annual General Meeting on December 7, 1969 for the election of a new Board of Directors. No copy of the notice was issued to the former individual share-holders of Class C on the ground that their membership had come to an end u/s 131 (5) and bye-law 5 (a) (v) of the new bye-laws. The petitioner, Dwarka Prasad Tarsolia, is one of these. His name has not been included in the new voters" list.

10. Learned counsel for the petitioners have raised the following contentions:

1. The U. P. Co-operative Societies Act, 1965 is ultra vires, being beyond the legislative competence of the State Legislature as it is legislation in respect of banking which is a subject within the exclusive legislative competence of Parliament.

2. The impugned Act contemplates Individuals being ordinary members and, therefore, Rule 44 (b), which bars individuals from such membership, is invalid.

3. The Assistant Registrar acted in excess of his powers u/s 131 (4) inasmuch as he has replaced the original bye-laws entirely by a new set of bye-laws when he could merely amend, or replace such bye-laws only as were inconsistent with the Act.

4. Inasmuch as the rules were brought into force only on December 31, 1968, the period of one year provided by Section 131 (3) to a co-operative society for bringing its bye-laws into conformity with the Act and the Rules, should be computed from that date, and consequently the Assistant Registrar had no power to amend the bye-laws until that period had expired.

5. The case was one to which Section 131 (5), and not Section 131 (3), was attracted.

6. Section 17(2) and Rule 44 (b) contravene Article 19 of the Constitution as they deprive the petitioners of their fundamental right to be ordinary members of the Society and to participate in its affairs.

7. Rule 44 (b) is ultra vires because it violates Article 14 of the Constitution inasmuch as it has selected central banks arbitrarily from the general group of Co-operative Societies for discriminatory treatment.

8. Bye-law (5) (a) (v) contravenes Article 31 of the Constitution because upon the extinction of an individual's status as share-holder he has the right only of withdrawing his contribution to the capital of the society and has not been granted compensation for all the rights lost by him on the termination of his membership.

9. The Act is a piece of colourable legislation.

11. In regard to the first contention of the petitioners, the submission appears to be that the U. P. Co-operative Societies . Act, 1965 is legislation which falls within the exclusive legislative competence of Parliament and is outside the purview of the State Legislature. We have been referred to Entries 43 to 45 in List I to the Seventh Schedule of the Constitution. They read;

"43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with object not confined to one State, but not including Universities.

45. Banking."

It is urged that as the impugned legislation deals with co-operative societies which have been essentially constituted for the purpose of banking business, it must be considered with reference to the entries mentioned above. In particular,

reliance is placed upon Entry 45. Now, it will be noticed that Entry 43 expressly excludes co-operative societies, and, therefore, the impugned legislation cannot possibly be referred to that entry. Entry 44 does not come into play at all having regard to its plain language. As regards Entry 45, for any legislation to, be covered by that entry it is necessary that in pith and substance it deals with the activity of banking. The impugned legislation is a law in respect of co-operative societies. In pith and substance it is a law relating to the incorporation, regulation and winding up of co-operative societies. It is not a law which is essentially concerned with the activity of banking. In our opinion, the impugned legislation should be considered as a law in respect of co-operative societies, and referable to Entry 32 in List II of the Seventh Schedule which reads:

"32. Incorporation, regulation and winding up of corporation other than those specified by List I and Universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

There is a long line of decisions that in the event of a conflict between competing provisions of two Legislative Lists the pith and substance of legislation must be examined. Reference to one decision alone will suffice. In *Thakur Manmohan Deo and Another Vs. The State of Bihar and Others*, the question arose whether the Bihar Land Reforms Act, 1950 enacted by the Bihar Legislature fell outside the legislative competence of that Legislature inasmuch as its provisions applied to Government Ghatwalis. It was urged that the legislation was in respect of Entries 1 and 2 of the Union List, namely the Defence of India and the Armed Forces of the Union. The Supreme Court observed that in pith and substance the legislation had no relation to Entries 1 and 2 of the Union List and was covered by Entry 36 of the State List. Reliance was placed by the petitioners upon *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, In that case, the contention was raised that the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 was within the legislative power of Parliament to the extent to which it vested "in the named Banks the assets of business other than banking and, therefore, it trenchd upon the authority of the State Legislature. This contention was not accepted on the ground that there was no evidence that the named Banks held any assets for any district non-Banking business and that it was also not shown that the acquisition fell within an entry in List II of the Seventh Schedule. We are unable to see how this case assists the petitioners. In our opinion, there is no force in the first contention and it is rejected.

12. The second contention Is that as the impugned legislation, by Section 17(a), provides for individual members of a co-operative society, Rule 44 (b) which bars individuals from being ordinary members is inconsistent with the Act and is, therefore, invalid. The submission is plainly untenable. Section 17(2) clearly provides that notwithstanding any thing contained in Section 17(1) an individual shall not be admitted as an ordinary member in such co-operative society or societies or class of co-operative societies as may be prescribed. In providing for the exclusion of an individual from the ordinary membership of a co-operative

society specified by the rules, the rule does no more than carry out the purposes of the Act itself. It cannot be said to be in excess of the provisions of the statute, and on that ground it cannot be assailed as invalid. The second contention is also rejected.

13. The third contention is that the Assistant Registrar acted in excess of his powers u/s 131 (4) inasmuch as the bye-laws framed by him amount to a wholesale replacement of the original bye-laws without regard to the fact that he could merely amend or replace such bye-laws only as were inconsistent with the Act. It is clear from Section 131 (3) that the society is required to delete or amend such bye-laws as are inconsistent with the provisions of the Act or the Rules and also to make such further bye-laws as are necessary for the purpose of giving effect to the provisions of the Act and the Rules. Upon default by the two Banks, the Registrar acquired jurisdiction u/s 131 (4) to frame such bye-laws. His powers u/s 131 (4) extended to doing all that which the society should have done u/s 131 (3). The case of the respondents is that the new bye-laws in substance merely reproduce the old bye-laws except that they exclude those bye-laws which are inconsistent with the provisions of the Act and which, therefore, have been replaced by new bye-laws. It is also pointed out that some additional bye-laws, as were necessary having regard to the provisions of the Act and the Rules, have also been added. As a measure of convenience, all the bye-laws so re-settled have been compiled and printed as a single body of bye-laws in book form. Learned counsel for the petitioners have been unable to show us that the set of bye-laws so compiled completely replaces and alters all the old bye-laws and is in excess of the powers of the Registrar u/s 131 (4). The third contention being without force is rejected.

14. Turning to the fourth contention, the submission of the petitioners is that as Section 131 (3) requires a cooperative society to bring the existing bye-laws into conformity with the Act and the Rules, and a period of one year is provided in that behalf, the period should be computed as from the date on which the Rules were brought into force. Inasmuch as the Rules were brought into force on December 31, 1968, the period of one year for complying with Section 131 (3) must be considered as extending up to December, 31, 1969. Consequently, the Assistant Registrar was not competent to exercise the power u/s 131 (4) at the time when he did so. Now, Section 131 (3) in terms provides that the bye-laws must be altered by the society "within a period of one year from the date of coming into force of the Act." The provision is clear. The period of one year must be computed from the date on which the Act came into force. Section 131 (3) does not take into account the date on which the rules came into force. It is well settled, we think, that the provisions of a statute cannot be re-written by the Court. That is a matter for legislative consideration. When the statute speaks with a clear voice, it is not open to the Courts to vary or modify its language.

The Act came into force on January 26, 1968. When the Rules were brought into force, a period of 26 days was still available to the societies for complying with

Section 131 (3). It will be further noted that the Registrar did not interfere u/s 131 (4) until long afterwards. In the case of the Jhansi District Co-operative Bank Limited, the Assistant Registrar served a notice on the society on April 4 1969, calling upon it to amend its bye-laws u/s 131 (3) within two months. The Bank had thus all the time from January 1969 to June 1969 and we have no reason to doubt, that had the Bank modified or altered its bye-laws in accordance with Section 131 (3), no occasion would have arisen for the Assistant Registrar framing a set of bye-laws u/s 131 (4) and the bye-laws so framed by the Bank could not, in our opinion, be invalid merely because they were framed after the period mentioned in Section 131 (3). That period had been specified merely for the purpose of ensuring an expeditious revision of the bye-laws, necessary for the operation of the society in accordance with the Act and the Rules and, therefore, provision has been made for the Registrar performing that function in case of default by the society. Merely because a period of one year has been prescribed by Section 131 (3), modification or alteration of the bye-laws by the society even beyond that period will not render such action invalid. In the case of the Jalaun Zila Sahkari Bank Ltd., also, the Assistant Registrar served a notice on April 3, 1969 on that Bank allowing it two months for complying with Section 131 (3). When he did it cannot be said that he acted prematurely. The contention that he acted in excess of his powers is rejected.

15. The fifth contention is one which we have found difficult to appreciate. It is not possible to say, upon the facts before us, that the provisions of Section 131 (3) were not attracted at all. Having regard to the facts, there was justification for invoking the provisions of Sections 131 (3) and 131 (5). The two Banks before us had ample opportunity to amend the bye-laws. They had also ample opportunity to adjust their membership. After the further time allowed by the Assistant Registrar, they could have amended and altered the bye-laws and could then have acted u/s 18(2)(a) read with Rule 44 (c) for the purpose of adjusting their membership. They did not do so. The Assistant Registrar was within his powers in taking action u/s 131 (4) and Section 131 (6). We have no hesitation in rejecting the fifth contention also.

16. The sixth contention is that Section 17(2) and Rule 44 (b) contravene Article 19 of the Constitution - inasmuch as they deprive the petitioners of their fundamental right to be ordinary members of two Banks and to participate in their affairs. We cannot see, how a citizen enjoys a fundamental right to participate in the affairs of a co-operative society. That is a right which belongs to him only under the rules of the society. If the rules prescribe that the right can belong only to the members of the society, strangers to the membership cannot complain. It is from the rules of the society that the status of membership arises and the rights pertaining to such status are enjoyed. There is no title in the nature of a fundamental right to such status and rights. If the rules are altered so that a particular class of membership is abolished the status and rights are destroyed and there being no fundamental right to that class of membership, no question of the impairment of a fundamental right arises when the class of membership is

abolished.

Moreover, if the case be viewed as one of existing members deprived of the rights of such membership by reason of the impugned legislations, it must be remembered that the new Act and the Rules expressly provide for such individuals, on the abolition of their ordinary membership, being absorbed as sympathiser. The Act contemplates a new organisational structure in co-operative societies moreover no foundation has been laid in the Writ Petitions before us on the basis of which the respondents can be called upon to justify the legislation as being reasonable within the limits contemplated by Article 19. In *State of U. P. v. District Co-op. Bank*. 1969 All LJ 996 this Court observed that the members of a Committee or the governing body of a co-operative society are appointed, and owe their powers to, the rules framed under the Co-operative Societies Act, and that the right of managing the affairs of a society is not antecedent to their appointment and did not exist independently of the rules. Reference has been made to a number of decisions before us, but we are not satisfied that they affect the decision of the question involved in the contention under consideration. The sixth contention is rejected.

17. The seventh contention is that Rule 44 (b) is ultra vires because by selecting central banks arbitrarily from the general group of co-operative societies for discriminatory treatment it violates Article 14 of the Constitution. As to this contention, we are unable to discover any foundation for it in either of the two Writ Petitions before us. As was laid down by the Supreme Court in *The Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi Vs. The State of Delhi and Another*, , it is for the party who attacks the validity of the legislation by reference to Article 14 to place all materials before the Court which would go to show that the selection is arbitrary and insupportable. In the circumstances the contention cannot be accepted.

18. The eighth contention is that bye-law 5 (a) (v) contravenes Article 31 of the Constitution inasmuch as it does not provide to the share-holder compensation for all the rights lost by him on the termination of his membership. The contention, it seems to us, is misconceived. It is sufficient to point out that as the State has not acquired any interest belonging to those individuals, including the petitioners, the case is not one which falls under Article 31(2) of the Constitution. The Act merely provides for the incorporation, regulation and winding up of co-operative societies on a new basis. The eighth contention is also rejected.

19. Finally, it was faintly urged that the impugned Act is a piece of colourable legislation designed to effectuate the political ends of the party in power. Although some allegations have been made to that effect in the Writ Petitions, we are unable to hold that the charge can be sustained.

20. We see no force in these petitions.

21. The petitions are dismissed, but in the circumstances there is no order as to

costs.