(1997) 01 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16579 of 1996

Surinder Singh and Others APPELLANT

Vs

Registrar, Cooperative Societies and Others RESPONDENT

Date of Decision : 08-01-1997

Acts Referred:

Citation : (1997) 115 PLR 833 : (1997) 2 RCR(Civil) 63

Hon'ble Judges : K.S. Kumaran, J;Ashok Bhan, J

Bench : Division Bench

Advocate : H.S. Mattewal and Rajni Gupta and G.P. Singh, for the Appellant; Ram Parsad, for the State, for the Respondent

Judgement

Ashok Bhan, J.—Petitioners, who are elected Directors of the Haryana State Co-operative Apex Bank Limited (hereinafter referred to as the HARCO Bank''), have filed this writ petition challenging the impugned order dated 30.9.1996, Annexure P-10, passed by the Registrar, Co-operative Societies, Haryana (hereinafter referred to as ''the Registrar), exercising powers u/s 34 of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as ''the Act''), removing them from the Board of Directors of the HARCO Bank and appointing a Board of Administrators to run the affairs of the HARCO Bank.

2. HARCO Bank is an Apex Co-operative Bank, membership of which is open to Central Cooperative Banks, State Government and Urban Co-operative Bank as regular members. Any person or Co-operative Society or any other statutory Body notified by the Government can also be Associate Member as per Bye-Laws of the HARCO Bank. HARCO Bank is a scheduled Bank and is also an insured Bank under "The Deposit Insurance and Credit Guarantee Corporation Act, 1961". The main objects of the HARCO Bank as incorporated in the Bye-laws of the HARCO Bank are to function as an Apex Financing and Co-operative Institution for dispensation of credit business, to purchase and sell Government promissory notes, to undertake steps for the training of the staff of the Apex Bank and other Co-operative Banks, etc.

3. A meeting of the Board of Directors of the HARCO Bank took place on 28-4-1993 under the chairmanship of Shri Mani Ram Keharwala, M.L.A.. the then Chairman of the HARCO Bank (nominated by the Government). In this meeting, apart from the other business conducted, an issue to grant car loan to the Members of the Board (non-official) was also discussed and it was decided as under:-

"The Board unanimously discussed the issue of granting Car loan to the members of the Board (non-official) and they unanimously desired that loan to Directors be given upto Rs. 3 lacs for the purchase of Car @ 9% P.A. and it was further resolved that Managing Director should take immediate steps."

4. The meeting was attended by the Assistant Registrar (Credit) as a nominee of the Registrar, apart from other Members of the Board of Directors including the Government nominee Mrs. Sudha Sharma, IRS, Special Secretary, Finance, Haryana and the Managing Director of the HARCO Bank.

5. In the next meeting of the Board of Directors held on 8-7-1993 , the proceedings dated 28-4-1993 including the matter with regard to grant of car loan were confirmed. Registrar''s nominee was again present in this meeting. As per sanction and approval granted by the Board of Directors, in which the Registrar or his nominee remained present, the loan was advanced by the HARCO Bank to the Directors on various dates as per details given herein below:-

"Sr. Name of the Director Amount of the Date on No. loan sanctioned sanction Sarvshri:- 1. Surinder Singh Mann, Karnal 2.50 lacs 5.10.1993 2. Surinder Singh, Sirsa 2.50 lacs 11.10.1993 3. Bhpinder Singh, Sonepat 2.12 " 11.10.1993 4. Mehar Chand Dalai, Faridabad 2.12 " 11.10.1993 5. Mohinder Singh Nain, Jind 2.12 " 11.10.1993 6. Narsi Ram, Hisar 2.18 " 14.10.1993 7. Mohinder Singh, Rohtak 2.18 " 14.10.1993 8. R.C. Masta, Bhiwani 2.50 " 28.10.1993 9. Malik Singh, Kurukshetra 2.36 " 21.10.1993 10. Mrs. Sudha Sharma, IRS 1.93 " 8.4.1994 (Spl. Secy. Finance) 11. Rao Ranbir Singh, 1.92 " 12.4.1994 Mohindergarh 12. Mahabir Singh, Kaithal 2.18 " 16.5.1994 Total Rs. 26.61"

6. One Balwant Singh Dalai filed CWP 2725 of 1996 in this Court questioning the grant of car loan to the Directors and prayed for action against them in accordance with law. In between this period on 20.3.96 the Registrar issued notice u/s 35 of the Act Annexure P-4, calling upon Surinder Singh, Petitioner No. 1, Director of the HARCO Bank, to show cause as to why he should not be removed from the Committee of the HARCO Bank as he had failed to pay the instalments due upto 30.9.1995. In view of the notice, Annexure P-4, issued by the Registrar for removal of the elected Director-petitioner No. 1, this court vide order dated 22.7.1996, Annexure P-3, dismissed the petitioner filed by Balwant Singh Dalai as infructuous with a direction that if the Director was found guilty of the allegation made against him, then the follow up action be completed within six months. Petitioner No. 1 submitted his reply Annexure P-5, to the show cause notice. No further action was taken in the matter by the Registrar on the notice u/

s 35 of the Act,

7. On 23.4.1996, Registrar issued a notice u/s 34 of the Act for removal of the Board of Directors of the HARCO Bank on the ground that the loan was got sanctioned by them without getting the scheme approved from him as required under the provisions of section 64 of the Act at a low interest rate of 9% per annum, which amounted to an act prejudicial to the interest of the HARCO Bank, thereby rendering them liable for action u/s 34 of the Act. Petitioners were directed to file their reply within 15 days of the receipt of the notice. Petitioners filed their replies and appeared before the Registrar in person as well. Registrar did not agree with the contentions raised by the petitioners and held them guilty of acting prejudicially to the interest of the HARCO Bank. Exercising powers u/s 34 of the Act, Registrar vide order dated 30.9.1996, Annexure P-10, removed the petitioners from the Board of Directors of the HARCO Bank and a Board of Administrator was appointed to run the affairs of the Bank.

8. Order, Annexure P-10, has been challenged on the grounds that it has been passed by Shri K.S. Bhoria, Registrar, Co-operative Societies, Haryana, in a mala fide manner at the instance of Shri Ganeshi Lal, Co-operation Minister, Haryana, Chandigarh, and Smt. Rajni Rajdan, IAS, Commissioner and Secretary, Department of Co-operation, Haryana and that the Registrar had no jurisdiction to pass the order u/s 34 of the Act because the HARCO Bank being an insured cooperative bank under" the Deposit Insurance and Credit Guarantee Corporation Act, 1961", action could be taken u/s 94 of the Act, only if required to do so by the Reserve Bank of India and not u/s 34 of the Act.

9. During the course of arguments, counsel for the petitioners gave up his challenge to the impugned order on the ground of malafide. He confined himself to the second question only relating to the applicability of section 34 or Section 94 of the Act.

10. In order to appreciate the controversy, it would be desirable to reproduce Section 34 and 94 of the Act. The same read as under:-

"34. Removal of Committee.- (1) If in the opinion of the Registrar, a committee persistently makes default or is negligent in the performance of duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society, or its members, the Registrar may after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee, and order fresh election of the committee or appoint administrators in accordance with the provisions of section 33:

Provided that the appointment of administrators shall be for a period of one year which may be extended, from time to time upto three years.

(2) Where the Registrar, while proceeding to take action under sub-section (1), is of the opinion that suspension of the committee during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the

committee and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided that if the committee so suspended is not removed, it shall be re-instated arid the period of suspension shall count towards its tenure:

Provided further that the period of suspension shall not exceed six months.

(3) The administrators appointed under sub-section (1) shall arrange, for the election of a committee in accordance with the bye-laws of the society failing which the Registrar shall arrange to hold the election.

(4) Before taking any action under Sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing institution to which it is indebted."

"94. Special provision for insured co-operative banks.- Notwithstanding anything contained in this Act, in the case of an insured co-operative bank;-

(i) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganisation) of the bank may be made only with the previous sanction in writing of the Reserve Bank of India,

(ii) an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank of India in the circumstances referred to in section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

(iii) if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made by the Registrar for the removal of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefore for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee;

11. A perusal of section 34 of the Act would show that the Registrar has the authority to remove a Committee, if it persistently makes default or is negligent in the performance of duties imposed upon it by the Act, rules or the bye-laws or commits any such act which is prejudicial to the interest of the Society or its members, after affording due opportunity.

12. u/s 94 of the Act, a special provision has been made for insured co-operative banks. Under this section, Registrar can initiate action for removal of the Committee only if required to do so by the Reserve Bank of India in public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper

management of the Bank.

13. It is not disputed that the Bank, with which we are concerned, is an insured co-operative bank. Counsel for the petitioners argued that special provision has been made in section 94 of the Act for taking action in the case of insured co-operative banks and, therefore, section 34 of the Act would not be applicable, whereas the case of the respondents is that section 34 of the Act would be applicable.

14. It is the admitted case that action against the petitioners has been taken u/s 34 of the Act and not u/s 94 of the Act. A perusal of these two sections and their analysis would show that section 94 of the Act is a special provision required to be followed in the Case of insured co-operative banks. It starts with non-obstante clause "Notwithstanding anything contained in this Act", thereby, ruling out the applicability of any other provisions of the Act. Inspite of any other provision to the contrary in the Act, section 94 of the Act would have an over-riding effect. In the case of insured co-operative banks, section 94 of the Act would be applicable to the exclusion of section 34 of the Act. u/s 94 of the Act, the Registrar could not take action against the Managing Committee or the Board of Directors, unless so required to do by the Reserve Bank of India. In this case, action was taken by the Registrar u/s 34 of the Act, which is unsustainable in law.

15. Exactly the same point had come up for consideration before a Division Bench of this Court in Shiv Kumar Bagra and Ors. v. The Panchkula Urban Cooperative Bank Ltd., Panchkula and Ors. 1991(1) RRR 75 and it was held that in the case of an insured co-operative bank, action could only be taken u/s 94 of the Act, if so required to do by the Reserve Bank of India that no action could be taken u/s 34 of the Act by the Registrar. It was observed as under:-

"6. A reading of the aforesaid two provisions will show that if it is not a case of insured co-operative bank then Section 34 of the Act would be applicable but in case of an insured bank there is special provision in Section 94 of the Act. Not only that it is mentioned in Section 94 of the Act itself that it is special provision for an insured co-operative bank. Opening words in this section are "Notwithstanding anything contained in this Act", which means in spite of anything contained in any other provision of the Act, in case of insured co-operative banks, section 94 of the Act alone would be applicable to the exclusion of Section 34 if action is required to be taken against the Managing Committee or other Managing body (by whatever name called) of the bank. Therefore, the non obstante clause, notwithstanding anything contained in this Act, has to be borne in mind while coming to the conclusion whether Section 94 of the Act excludes the applicability of Section 34 of the Act in the case of an insured co-operative bank.

7. In this view of the matter, we are of the opinion that in case of an insured co-operative bank, special provisions contained in Section 94 of the Act would be applicable and not Section 34 of the Act.

8. The law framers kept in view the special rights of an insured co-operative bank and for that reason made a special provision as is contained in Section 94 of the Act, wherein it was provided that if action is to be taken against an insured co-operative bank, it will be taken if so required by the Reserve Bank. In this case, there is no such requirement by the Reserve Bank of India and in the absence thereof Registrar u/s 94 of the Act could not take action against the Managing Committee or the Board of Directors.

9. The action taken u/s 34 of the Act, is therefore, without jurisdiction. Even if the Deputy Registrar had mentioned that he was taking action u/s 94 of the Act but without being so required by the Reserve Bank of India, it would have been without jurisdiction."

16. For the reasons stated above and respectfully following the view taken by this Court in Shiv Kumar Bagra''s case (supra), we accept this petition and quash order, Annexure P-10. We make it clear that this order will not stand in the way of the Registrar to take action afresh against the Board of Directors, if so required by the Reserve Bank of India. No Costs.

