(2013) 10 P&H CK 0237

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 22505 of 2013

The Palli Jhikhi Multipurpose Cooperative Agricultural Society Ltd. and Another	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 173 PLR 844

Hon'ble Judges : Surya Kant, J;Surinder Gupta, J

Bench : Division Bench

Advocate : D.V. Sharma and Ms. Madhu Sandhu, for the Appellant;

Final Decision : Dismissed

Judgement

Surya Kant, J.—The first petitioner is a Co-operative Agricultural Society registered under the Punjab Co-operative Societies Act, 1961 (in short, ''the Act''). Petitioner No. 2 is an ex-Director of the Nawanshahr Co-operative Bank Ltd. The Punjab Ordinance No. 8 of 2013 notified on 9th September, 2013 whereby a proviso to sub-Clause (b) of Clause (a) of sub-Section (2) of Section 26 of the Act has been inserted, is impugned by the petitioners, as according to them, the amended provision is wholly unconstitutional and is an act of colorable legislative power. The petitioners also challenge the advertisement dated 12th September, 2013 issued by respondent No. 3-Bank pursuant to the above-stated amended provision, it being allegedly in violation of the Act, Rules and the Byelaws. The Punjab Co-operative Societies Act, 1961 had been enacted to simplify the Co-operative law and to remove bottlenecks in the way of development of co-operative movement. Chapter-II of the Act contains provisions for registration of Co-operative Societies. Chapter-III deals with Members of Co-operative Societies and their rights and liabilities. Chapter-IV provides for the management of Co-operative Societies. Chapter-V enshrines privileges of Co-operative Societies, while its Chapter-VIII deals with settlement of disputes. Chapter-IX lays down the procedure for winding up and cancellation of registration of a Co-operative Society, while Chapter-X deals with execution of awards, decree, orders and decisions passed by the Liquidator in the winding up proceedings of a Co-operative Society. Chapter-XI provides for appeals and revisions, Chapter-XI-A deals with Co-operative Banks and Chapter-XII provides for offences and penalties.

2. Section 26 of the Act provides for the "Election and Nomination of Members of Committees". Its sub-Section (1) says that members of the Committee of a Co-operative Society shall be elected in the manner prescribed and no person shall be so elected unless he is a share holder in the Society. For better appreciation of the petitioners'' challenge, it would be useful to firstly reproduce the un-amended Section 26 of the Act as it existed before issuance of the impugned Ordinance. It reads as follows:-

SECTION-26

Election and nomination of members of committees:-

The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be so elected unless he is a share holder of the society.

(1-A) The committee of any co-operative society may subject to the approval of the Registrar, divide the area of operation of the society into zones for the purpose of election of members of the committee.

[(1-B) The term of office of a committee elected after the commencement of the Punjab Co-operative Societies (Amendment) Act, 1993, shall be five years from the date of its election:

Provided that the term of office of the existing committee shall remain three years:

Provided further that where in terms of the provisions of the bye-laws of a society one-third members of its committee retire every year, the term of office of such a committee shall, after the commencement of the Punjab Co-operative Societies (Amendment) Act, 1993, expire on the date on which retirement of any of its one-third members falls for the first time.

Provided that a milk producers co-operative society or a society dealing in notified commodity may provide in its bye-laws that as nearly as possible one-third members of its committee shall retire every year in the manner laid down in its bye-laws and in the event of such a provision being made the vacancies caused as a result of retirement shall be filled in the prescribed manner.

(1-C) xxx xxx xxx

(1-D) xxx xxx xxx

(1-E) xxx xxx xxx

(1-F) xxx xxx xxx

(2) Notwithstanding anything contained in sub-section (1),-

(a) where the Government have subscribed to the share capital of a co-operative society or has guaranteed the repayment of the principal of and payment of interest on debentures issued for loans raised by a co-operative society, the Government or any person authorised by it in this behalf shall have the right to nominate on the committee such number of persons not exceeding three or one-third of the total number of members thereof, whichever is less, as the Government may determine.

Provided that where the Government has subscribed to the share capital of a co-operative society to the extent of twenty lacs of rupees or more, the Government may, notwithstanding anything contained in the bye-laws of the society-

(a) appoint one of the members nominated in the aforesaid manner as Chairman of the committee of such society; or

(b) nominate another member in addition to those nominated in the aforesaid manner and appoint him as Managing Director:

Provided further that no person shall be appointed to act as Managing Director unless he is a member of Indian Administrative Service, Punjab Civil Service (Executive Branch) or a Deputy Registrar, a Joint Registrar or an Additional Registrar, Co-operative Societies;

(b) Where the Industrial Finance Corporation, the State Finance Corporation or any other financing institution notified in this behalf by the Government has provided finance to a co-operative society, the Industrial Finance Corporation, State Finance Corporation or other financing institution as the case may be, shall have the right to nominate one person on the committee.

(2A) xxx xxx xxx

(2B) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(Emphasis applied)

3. The Ordinance dated 9th September, 2013 has inserted a proviso to Section 26(2) of the Act which is contained in Clause-2 of the Ordinance and reads as follows:-

Provided further that the condition of share capital of twenty lacs of rupees or more mentioned in the first proviso to clause (a) of sub-section (2) of section 26 of the Punjab Co-operative Societies Act, 1961, shall not apply in the case of any Central Co-operative Bank, which has been provided finance by the Government, the Government of India, the National Bank for Agriculture and the Rural Development or the Reserve Bank of India and the Government may appoint as Managing Director of such Bank, any person, who is a Member of the Indian Administrative Service, the Punjab Civil Service (Executive Branch), a Deputy Registrar, a Joint Registrar or an Additional Registrar Co-operative Societies or is a professional having specialization in the field of banking and possessing the qualifications and experience specified by the Government in this behalf

4. The legislative policy of the Act as discernible from its unamended Section 26 is that the affairs of a Co-operative Society must be run by a Managing Committee duly elected by its members through a democratic process. Sub-Section (2) of Section 26, however, contains a non obstante clause and enables the Government to nominate such number of persons not exceeding three or one third of the total number of members of the Society if they fall in Clause (a). If the State Government have subscribed to the share capital of a Society to the extent of twenty lacs of rupees or more, the State Government is competent under the first proviso to nominate the Chairman and Managing Director, respectively, of such Society. The second proviso qualifies the first proviso as according to it the Government would not appoint a person to act as Managing Director of a Society unless such person is a Member of IAS, PCS or a Deputy Registrar/Joint Registrar/Additional Registrar, Co-operative Societies.

5. The only change which the impugned Ordinance has brought into existence is that the condition of share capital of twenty lacs of rupees or more is henceforth inapplicable in the case of a Central Cooperative Bank which has been provided finance by the State Government, Government of India, the National Bank for Agriculture and Rural Development, or the Reserve Bank of India. The other change carried out by the impugned Ordinance is that "a professional having specialization in the field of banking and possessing the qualification and experience specified by the Government in this behalf", can also be appointed as Managing Director of the Central Co-operative Bank.

6. The afore-stated two changes carried out vide the impugned Ordinance are, according to the petitioners, directly in teeth of the provisions contained in Part-IXB [THE CO-OPERATIVE SOCIETIES] of the Constitution brought into force by way of Ninety Seventh Amendment notified on 12th January, 2012.

7. It is vehemently contended by the learned senior counsel for petitioners that-

(i) the Ninety Seventh Amendment of the Constitution has put the Co-operative Societies on a Constitutional pedestal and Article 43B having been inserted in Part-IV of the Constitution, it is imperative on the State Legislature to promote "voluntary formation, autonomous functioning, democratic control... of Co-operative Societies". The impugned Ordinance is alleged to be on head-on collision with the constitutional mandate as it does not permit the election of the Managing Director of a Central Co-operative Bank through democratic means and permits rather arbitrarily the State Government to nominate the Managing

Director even without subscribing to the share capital of the Bank;

(ii) Article 243ZI mandates for the Legislature of a State to enact law for the incorporation, regulation and winding up of Cooperative Societies based on the principles of ''voluntary formation'' and ''democratic member-control''. The impugned Ordinance runs contrary to the said spirit of the Constitution;

(iii) the Ordinance also violates Article 243ZJ(3) of the Constitution which permits only co-option as Members of the Board of the persons "having experience in the field of banking, management, finance or specialization in any other field...";

(iv) the provisions contained in Part-IXB of the Constitution also promote voluntary incorporation of Co-operative Societies and running of their affairs by elected Members;

(v) the impugned Ordinance is a colorable exercise of legislative power to thwart the democratic process inbuilt in the governance of District Central Co-operative Banks;

(vi) the impugned Ordinance is totally discriminatory as the apex body of the Central Co-operative Banks, namely, Punjab State Co-operative Bank has been excluded from the ambit of the newly-added provision;

(vii) the State Government has so far not laid down qualification(s) for the appointment of ''professionals'' as Managing Directors of Central Co-operative Banks, yet the Managing Director of the Apex Body i.e. the Punjab State Cooperative Bank Ltd. has issued advertisement inviting applications for the afore-mentioned posts. The impugned advertisement thus lacks authority of law;

(viii) the Ordinance under challenge also violates the provisions contained in the Common Cadre Rules for appointment of Managing Director of the Central Co-operative Bank;

8. Having heard learned counsel for the petitioners at some length and on a thoughtful consideration of his contentions, we do not find any substance in the subject challenge. We say so for the reasons that-

(i) the State Legislature has enabled the State Government even before the issuance of the impugned Ordinance to nominate certain Members or to appoint the Chairman and the Managing Director of a Co-operative Society where the Government has subscribed to the share capital of a Cooperative Society to the specified extent or more. The legislative policy to control and run the affairs of a Cooperative Society where public money has been invested, is so explicit from the un-amended Section 26(2) of the Act that it hardly calls for any detailed discussion.

(ii) the impugned Ordinance is only an elaboration of the existing legislative policy as it extends the power of the State executive to appoint Chairman and the Managing Director of a Central Co-operative Bank which is substantially funded by the Union of India, State or their extended hands. It is the bounden duty of the State Government to ensure that the public money invested directly or indirectly in a Co-operative Bank is appropriated and utilized in accordance with the defined public policy behind such investment. The appointment of a Government servant or a regularly-recruited professional as the Managing Director of a Central Co-operative Bank would infuse discipline and utilization of Government''s funds in public interest as the element of accountability and answerability of such a Managing Director would be much more than an elected Managing Director;

(iii) the second part of the impugned Ordinance, namely, appointment of ''professionals'' as the Managing Director, is indeed a welcome step as it would give impetus to the cooperative movement. Banking now-a-days is a highly competitive and brain-storming venture which deserves to be handled by the qualified professionals only and not by any bureaucrat who may not have even fundamental understanding of the banking principles;

(iv) it also appears that the petitioners have lent their shoulders to the officers of the Co-operation Department who obviously stand ousted from their posting as Managing Directors of the Central Co-operative Banks with the issuance of the impugned advertisement inviting applications from true banking professionals for these posts.

9. It is trite that an Ordinance promulgated under Article 213 of the Constitution is a law and it has the same force and effect as an Act of Legislature. The Constitution Benches in (i) A.K. Roy and Others Vs. Union of India (UOI) and Others, and (ii) T. Venkata Reddy and Others Vs. State of Andhra Pradesh, , have authoritatively ruled that when the Constitution says that the ordinance-making power is legislative power and an Ordinance shall have the same force as an Act, an Ordinance should be clothed with all the attributes of an Act of Legislature carrying with it all its incidence, immunities and limitations under the Constitution. It cannot be treated as an executive action or an administrative decision.

10 K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, followed in Naga People''s Movement of Human Rights Vs. Union of India (UOI), and Dharam Dutt and Others Vs. Union of India (UOI) and Others, and a string of other decisions, have authoritatively held that the doctrine of colorable legislation does not involve any question of bona fide or mala fide on the part of the Legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. "If the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the Legislature lacks competency, the question of motive does not arise at all. Whether a Statute is constitutional or not it thus always a question of power".

11. Reiterating these jurisprudential principles in T. Venkata Reddy''s case

(supra), the Supreme Court held that an Ordinance being an act of legislative power, is assailable only on the grounds on which any law made by the Legislature can be struck down, namely, it violates the provisions contained in Part-III of the Constitution or any other constitutional provision or lacks legislative competence.

12. In State of Punjab Vs. Satya Pal Dang and Others and Baldev Parkash and Others, , it was held that subject to the limitation as to the duration of the Ordinance prescribed in the Constitution, there is no other limitation upon the Ordinance-making power of the Governor except those which are imposed upon the State Legislature.

13. In K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, the Supreme Court held that it is impossible to accept the submission that the Ordinance can be invalidated on the ground of non-application of mind. The power to issue an Ordinance is not an executive power but is the power of the executive to legislate. It has also been held that an Ordinance cannot be invalidated on the ground of ulterior motive or ulterior purpose. Similarly, in Gurudevdatta VKSSS Maryadit and Others Vs. State of Maharashtra and Others, it has been held that promulgation of an Ordinance is legislative in nature and the Court cannot interfere with a legislative malice as it is beyond the pale of jurisdiction of the law courts.

14. The petitioners'' plea that the subject Ordinance is an outcome of colorable exercise of executive power does not sound good being contrary to the settled legal principles and thus has no strength to sustain.

15. The strange submission of striking down the impugned Ordinance on the plea that the provision introduced by it runs parallel to the Common Cadre Rules or the Byelaws of a Co-operative Society, deserves to be noticed and rejected only. The provisions in the Common Cadre Rules or Byelaws were incorporated much before the amended law came into force by way of the subject Ordinance. These Rules or Byelaws are at best a piece of subordinate legislation and are subservient and subject to the provisions of the principal legislation. Once a new provision has been legislated, the Rules or Byelaws to the extent they are inconsistent, shall be deemed to have been superseded and annulled. The subordinate legislation draws force for its survival from the principal legislation and not vice versa. The very contention is wholly misconceived and misdirected.

16. The half-baked plea that the State Government has not prescribed qualifications for appointment of professionals or that the Managing Director of the apex Bank has issued the advertisement hurriedly, has no bearing on the validity of the Ordinance. If the Managing Director has pre-empted the State Government from prescribing qualifications as per the newly-inserted provision, nothing precludes the State Government to intervene and take remedial steps. The petitioners may also approach the State Government in this regard, if so advised.

17. For the reasons afore-stated, we dismiss the writ petition in limine. Dasti.

