(2008) 11 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : C.W.P.No.6072 of 2008

Ujjal Singh APPELLANT

Vs

Financial Commissioner, Cooperation Punjab, Chandigarh RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 14, 17, 17
Security Interest (Enforcement) Rules, 2002 — Rule 8(1)

Citation : (2009) 1 Law Herald 396 : (2010) 5 RCR(Civil) 692

Hon'ble Judges : Augustine George Masih, J

Advocate : A.K. Jaiswal, J.S. Sandhu, AAG, Sushma Chopra, Advocates for appearing Parties

Judgement

Augustine George Masih, J.—The question which requires consideration and decision by this Court is whether the byelaws of the society would prevail over the Statutory Rules framed under the Cooperative Societies Act, 1961 (for short ''the Act'').

2. Through this writ petition, the petitioner has sought quashing of the impugned order dated 27.11.2007(Annexure P7) passed by the Financial Commissioner, Cooperation Punjabrespondent No.1 whereby the revision petition preferred by the Patiala Central Cooperative Bank Limited, Patialarespondent No.4 stands accepted.

3. The petitioner was working as a Clerk in the Banur Branch of the Patiala Central Cooperative Bank Limitedrespondent No.4 (hereinafter referred to as the Bank). He was issued a chargesheet vide memo dated 5.10.1999. He submitted a detailed reply to the said chargesheet. The same having not been found to be satisfactory, an Enquiry Officer was appointed by the Executive Committee of the respondentBank vide resolution dated 4.8.2000. The Enquiry Officer submitted a report against the petitioner on 20.3.2002 wherein both the charges against the petitioner stood proved. The said enquiry report was placed before the Board of

Directors who while agreeing with the findings and conclusion arrived at by the Enquiry Officer vide its resolution No.19 dated 29.4.2002 unanimously issued a show cause notice to the petitioner on 1.5.2002 for imposing a punishment of compulsory retirement, to which he submitted his reply on 19.5.2002. On consideration of the reply, the Board of Directors vide its resolution No.14 dated 2.9.2002 unanimously decided to retire him compulsorily from the service of the respondentBank. The said order was conveyed to the petitioner by the District Manager vide letter dated 10.9.2002.

4. The petitioner challenged his order of compulsory retirement by way of filing an appeal on 9.3.2005 under Byelaws 34 (iii) of the registered Byelaws of the respondentBank before the Registrar, Cooperative Societies, Punjab. The case was transferred by the Registrar to the Joint Registrar (P), Cooperative Societies, Punjab, Chandigarh who vide his order dated 10.2.2006 relying upon Rule 10 of the Punjab State Cooperative Financial Institutions Service Rules, 1958 (hereinafter referred to as 1958 Rules) held the appeal preferred by the petitioner as time barred. This order was challenged by the petitioner by way of revision petition under Section 69 of the Punjab Cooperative Societies Act, 1961 before the Judicial Registrar (I), Cooperative Societies, Punjab, Chandigarh, which was allowed and the order dated 10.2.2006 passed by the Joint Registrar, Cooperative Societies (P), was set aside, with a direction to the Deputy Registrar (Legal) Cooperative Societies, Punjab, Chandigarh, to hear and decide the appeal under the byelaws of the respondentBank on merits. Feeling aggrieved, respondent No.4Bank challenged the said order dated 1.3.2007 before the Financial Commissioner, Cooperation, Punjab, by filing a revision petition which was allowed on 27.11.2007. It is this order which is under challenge before this Court.

5. The basic contention raised by the counsel for the petitioner is that the appeal dated 9.3.2005 preferred by the petitioner under Byelaw 34 (iii) of the registered Bye laws of the Bank, could not have been dismissed as time barred as there is no limitation provided under the said byelaws. Further, even if it is assumed that the Limitation Act is applicable then also the limitation for a void order to be challenged is 3 years as per the judgment of the Hon''ble Supreme Court in the case of State of Punjab and others vs. Gurdev Singh and another AIR 1991 SC 2219. The order of punishment against which the appeal was preferred is dated 10.9.2002 and the appeal was filed on 9.3.2005, therefore, the same was well within the period of limitation as prescribed under the Limitation Act. It is her contention that Rule 10 of the 1958 Rules is not applicable in the present case as the remedy which has been availed of by the petitioner was under the registered byelaws of the respondentBank under which the services of the petitioner were governed. It is her further submission that even if Rule 10 is also to be applied, then also as the byelaws do not provide for any limitation for filing the appeal, the limitation as prescribed under Rule 10 cannot be imported into the byelaws to make the appeal preferred by the petitioner time barred.

6. It is the contention of the counsel for the petitioner that Rule 10 of the 1958 Rules earlier, came up for interpretation of this Court in C.W.P.No.1223 of 1976 The Chandigarh State Cooperative Bank Limited. Chandigarh vs. The Union Territory of Chandigarh through its Chief Commissioner and others, decided on 10.9.1976 wherein this Court relying upon the judgment in the cases of Hardial Singh vs. State of Haryana and others 1975 (1) SLR 55 and the Jullundur Central Cooperative Bank Limited. Jullundur vs. Registrar Cooperative Societies, Punjab and others, 1983(1) SLR 64 had held that the said Rule is ultra vires the Act. It is on that basis that counsel for the petitioner prays that the impugned order dated 27.11.2007(Annexure P7) passed by the Financial Commissioner, Cooperation, Punjab cannot be sustained and the order dated 1.3.2007 (Annexure P6) passed by the Additional Registrar, Cooperative. Societies, (I), Punjab, deserves to be upheld wherein a direction was issued to the Deputy Registrar (Legal) Cooperative Societies, Punjab, Chandigarh to hear and decide the appeal on merits of the petitioner in accordance with the Byelaws of the Bank.

7. On the other hand, counsel for the respondentBank has placed reliance on the stand of the respondents in paras 8 and 9 of the reply which reads as under:

?8). That while para No.8 of the writ petition is not denied but it is respectfully submitted that Rule 10 of the Punjab State Cooperative Financing Institutions Service Rules, 1958 which was under consideration in the judgment reported as 1983 (1) SLR Page 64 was replaced/substituted by the Registrar Cooperative Societies Punjab in exercise of power under Rule 28 of the Punjab Cooperative Societies 1963 vide letter dated 2.12.1994 and this substituted Rule 10 of the said 1958 Rules did not suffer from the vice from which the unamended Rule 10 suffered due to which the unamended Rule 10 of the said 1958 Rules was struck down as per judgment reported as 1983 (1) SLR page 64. For the kind perusal of this Hon''ble Court, the unamended Rule 10 and substituted Rule 10 of the said 1958 Rules are reproduced below:

Unamended Rule 10

?10. Right to appeal: A member of the service upon whom any penalty is imposed by the Board, may, within 60 days from the date of communication of the order of the Board, appeal to the Registrar. The decision of the Registrar shall be final and binding on the parties.?

SUBSTITUTED RULE 10 vide letter of the Registrar Coop. Societies dated 2.12.1994

?A member of the service upon whom the penalty is imposed by the punishing authority may within 30 days from the date of communication of the orders of the Punishing Authority, appeal to the authority specified in the Byelaws or Service Rules of the concerned Financing Institution.?

It may be respectfully submitted that in the year 2002 when impugned orders Annexure ?P2? were passed, the aforesaid substituted Rule 10 was in operation and this amended/substituted Rule 10 of the said 1958 Rules did not suffer from the vice on the basis of which unamended Rule 10 was declared invalid vide judgment reported as 1983(1) SLR page 64 because by incorporating substituted Rule 10, the Registrar respected the wishes of the managements of the Banks expressed by them in the registered Byelaws of the institutions.

9) That para No.9 of the writ petition is admitted only to the extent that the petitioner filed appeal against the orders of punishment Annexure ?P2?. It is, however, denied that the Joint Registrar (Planning) Cooperative Societies Punjab wrongly treated the appeal under Rule 10 of the Punjab State Cooperative Financing Institutions Service Rules, 1958. It is submitted that the said Service Rules 1958 are statutory in nature having been framed under the Punjab Cooperative Societies Rules 1963 which have further been framed under the Punjab Cooperative Societies Act, 1961. That being the position, the said statutory rules have the force of law whereas the Byelaws of the Bank being not statutory do not have force of law and the petitioner could file appeal only under Rule 10 of the said 1958 Rules. Since the appeal had been filed after two years and six months from the date of passing the impugned orders, the Joint Registrar (Planning) Cooperative Societies was right in dismissing the appeal as time barred.?

8. On the basis of these pleadings, he submits that the Court primarily had held Rule 10 as ultravires on the ground that an Authority not empowered to decide a matter under the Act cannot assume power for deciding that matter under the garb of the Rules. The Rules cannot vest an Authority with a power which the Act does not permit. If such a power is envisaged, then the effect would be that the provisions of the main Act taking away the jurisdiction of the Registrar in the matter of disciplinary action would become redundant. The unamended Rule 10 provided for an appeal to be maintainable to the Registrar only by a member of the Service upon whom any penalty is imposed by the Board. With the substituted Rule 10 which came into effect from 2.12.1994, a member of the Service upon whom the penalty is imposed by the Punishing Authority, may within 30 days from the date of communication of the order of such punishment, appeal to the Authority specified in the Byelaws or Service Rules of the concerned Financial Institution.

9. It is further the contention of the counsel for the respondent that the said Rule has not been challenged by the petitioner and it holds the field. Earlier also Rule 10 was not struck down on the question of providing limitation for filing an appeal but was struck down on the limited ground as mentioned above. It is, therefore, the counsel for the respondent contends that the Byelaws which have been framed by the Bank cannot have an overriding effect on the statutory Rules which have been framed and notified under the Punjab Cooperative Societies Rules, 1963 which have been further framed under the Punjab Cooperative Societies Act, 1961.

10. Faced with this situation, counsel for the petitioner contends that the bye

laws of the Society of the Bank have no force of law as the right of appeal is conferred by a Statute and the byelaws of a Society framed in pursuance of the Punjab Cooperative Societies Act, 1961 cannot be held to have the force of law. For this contention, he relies upon a judgment of this Court in the case of The Kular Cooperative Agricultural Services Society Limited, Ludhiana vs. The Registrar, Cooperative Societies, Punjab, Chandigarh and others, 1997(1) Recent Service Judgment 313.

11. On going through the rival contentions of the counsel for the parties, I am of the considered view that there is no merit in this writ petition. Byelaw 34(iii) of the Central Cooperative Bank Limited, Patiala reads as follows:

?34. The powers and duties of the Board of Directors shall be:

(iii) To appoint, dismiss, suspend or punish employees of the Bank, provided that an employee aggrieved by an order of the Board of Directors dismissing, suspending or otherwise punishing him may appeal there from to the Registrar (who may delegate his powers of deciding such appeal to the Deputy Registrar) and the appellate authority shall be final.?

Rule 10 of the Punjab State Cooperative Financing Institutions Service Rules, 1958 reads as follows:

?Rule10. A member of the service upon whom the penalty is imposed by the punishing authority may within 30 days from the date of communication of the orders of the Punishing Authority, appeal to the authority specified in the Byelaws or Service Rules of the concerned Financing Institution.?

A conjoint reading of the Byelaw 34(iii) and Rule 10 would show that the Registrar or if his powers are delegated to the Deputy Registrar by him, would be the Appellate Authority under Byelaw 34(iii), Under Rule 10, the appellate Authority is the Authority specified in the bye laws of the concerned Financial Institutions and, therefore, here again the Registrar or the Deputy Registrar if delegated with his powers, would be the Appellate Authority. There is no limitation provided for preferring an appeal as per Byelaw 34(iii) whereas Rule 10 provides for limitation of 30 days for filing the appeal from the date of communication of the orders of the Punishing Authority. Since Rule 10 is a statutory rule, it will have an overriding effect on Byelaw 34(iii) in case there is a conflict between the two. If the Byelaws are silent about any aspect which the rule provides for, those provisions of the rule would be ipso facto applicable to the bye laws itself. Since appeal is the creation of the statute and Rule 10 is a statutory rule providing for the appeal, therefore, the appeal would be governed by the statutory rules and the conditions imposed therein. What Rule 10 provides for apart from the appeal is the limitation of 30 days in filing the appeal from the date of communication of the order of the Punishing Authority. It also prescribes the Appellate Authority to be the one as specified in the Byelaws or Service Rules of the concerned Financial Institution.

12. The appeal, thus, is provided in Rule 10 and the Authority to which the appeal would lie has been prescribed in bye law 34 (iii) of the Bank. What actually is provided for under byelaw 34(iii) of the respondentBank is the appellate Authority but the appeal, as such, has been provided under Rule 10 of the 1958 Rules and, therefore, an employee availing the remedy of an appeal has to go by the requirement of Rule 10 which provides for a time limit within which the appeal has to be filed i.e. 30 days from the date of communication of the orders of the Punishing authority.

13. The order of punishment in the case of the petitioner is dated 10.9.2002 while the appeal was preferred by him on 9.3.2005. The period of limitation as prescribed under Rule 10 of 1958 Rules, which gives a right of appeal, is 30 days from the date of communication of the order of Punishing Authority. Therefore, the appeal of the petitioner is hopelessly time barred meaning thereby that the impugned order challenged before this Court cannot be set aside as the same is as per law.

14. The contention of the counsel for the petitioner, that the Byelaws do not provide for any limitation and that being so, the appeal preferred by the petitioner under the byelaws is not amenable to limitation can also not be accepted for another reason that the Byelaws do not have the force of law and the appeal is a statutory right. The appeal, therefore, having been provided under statutory Rule 10 of the 1958 Rules, the limitation prescribed therein will have to be given effect to. For coming to this conclusion, reference can be made to a judgment of this Court in the case of the The Kular Cooperative Agricultural Service Society Limited, Ludhiana (supra) wherein this Court has held in para 9 as follows:

?9. Now the question arises if any Byelaw of the Society has the force of law because the right of appeal is conferred by a statute and the Byelaw of a Society framed in pursuance of the Punjab Cooperative Societies Act cannot be held to have the force of law. It has been held in AIR 1970 Supreme Court 245 Cooperative Central Bank vs. The Additional Industrial Tribunal, that the Byelaws of a Cooperative Society framed in pursuance of the provisions of the Act cannot be held to be a law or to have the force of law. It has no doubt been held that if a statute gives power to a Government or other Authority to make Rules, the Rules so framed have the force of statute and are deemed to be incorporated as part of the statute. That principle, however, does not apply to Byelaws of the nature that a Cooperative Society is empowered by the Act to make. The Byelaws rather contemplated by the Act can be merely those which governs internal management, business or the administration of a Society. They are the Articles of Association of a Company incorporated under the Companies Act. They may be binding between the persons affected by them but they do not have the force of a statute. In 1977 P.L.J. 310 Joginder Singh vs. The Registrar Cooperative Societies, it was held that Bye law of a Cooperative Society cannot be held to be law nor such Byelaw does have the force of law. The Hon''ble

Division Bench held as follows at page No.312:

?We are unable to accept the submission that the byelaws of a Cooperative Society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Govt. or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye laws of the nature that a cooperative society is empowered by the Act to make. The byelaws that are contemplated by the Act can be merely those which govern the internal management business or administration of a society. They may be binding, between the persons affected by them, but they do not have the force of a statute???..The byelaws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law.?

The conclusions of the above discussion are that the Byelaws of the Societies have no force of law. Appeal is a creation of the Statute and therefore, lies under Rule, 10 of the Punjab State Cooperative Financial Institutions Service Rules, 1958, which provides for the limitation of 30 days for filing the appeal from the date of communication of the order of the Punishing Authority to the Appellate Authority as specified in the Byelaws or Service Rules of the concerned Financial Institution. Byelaw 34 (iii) of the Patiala Central Cooperative Bank Limited, Patiala specifies the Appellate Authority only and does not confer any right of appeal nor any appeal is maintainable under this Byelaw.

In view of the above, I do not find any merit in this writ petition and dismiss the same. No costs.