**(2002) 02 OHC CK 0002**

**In the Orissa High Court**

**Case No :** A.H.O. No. 14 of 2002

Urban Co-operative Bank APPELLANT

Vs

State of Orissa and Others RESPONDENT

**Date of Decision :** 11-02-2002

**Acts Referred:**

**Citation :** (2002) 1 OLR 486

**Hon'ble Judges :** P.K. Balasubramanyan, C.J;A.S. Naidu, J

**Bench :** Division Bench

**Advocate :** Manoj Mishra, P.K. Das, S. Senapati, L. Mishra and B.B. Mohanty, for the Appellant; A.K. Mohapatra, R.K. Mohanty, S. Biswal for Respondents 4 to 17, Sanjit Mohanty, K.P. Nanda and S. Nanda and P.K. Mohanty, Addl. Government, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.K. Balasubramanyan, C.J.—The Administrator appointed for the Urban Co-operative Bank Limited, a society managed under the Orissa Co-operative Societies Act, has filed this appeal challenging the decision of the learned Single Judge holding that the Administrator appointed under the scheme of the Orissa Co-operative Societies Act has no right to admit new members. The learned Judge in support of his conclusion relied on a decision of the Supreme Court in Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, We may incidentally notice that this position was also covered by an earlier decision of this Court in Rahas Bihari Das and Others Vs. State of Orissa and Others, The learned Single Judge has held that the Administrator not having the power to admit new members could not admit such members and disburse loans to them

2. The argument on behalf of the Administrator is that surplus funds available remained idle, if they are allowed to remain idle that will prejudice the Bank and loans had to be given to earn profit, and for that purpose new members had to be admitted. This submission was rejected by the learned Single Judge in view of the settled legal position. It is being aggrieved by the decision of the learned

 

Single Judge holding that the Administrator could not admit new members and disburse loans to them that the Administrator has come up with this appeal.

3. The learned counsel for the appellant vehemently contended that the co-operative bank was not a co-operative society and the decision of the Supreme Court was applicable only to a co-operative society simpliciter and not to a co-operative bank. The learned counsel submitted that the co-operative bank is dealt with in a different manner and is distinct from a co- operative society. The learned counsel referred to Section 123 and Section 133-A of the Orissa Co-operative Societies Act and other similar provisions in support of his stand. According to the learned counsel, the decision of the Supreme Court cannot, therefore, be applied to the case of a co-operative bank.

4. We have considerable difficulty in accepting the argument of learned counsel for the appellant that a co-operative bank is not a co-operative society coming within the purview of the Orissa Co-operative Societies Act. A co-operative bank is also clearly governed by the Act. It is also a co-operative institution. Once it is found that it is governed by the Orissa Co-operative Societies Act, there is no escape from following the ratio of the decision of the Supreme Court in Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, . We are also not able to accept the argument of learned counsel for the appellant that the decision of the Supreme Court must be held to be inapplicable to a co-operative bank governed by the Orissa Co-operative Societies Act. As found by the Supreme Court and by this Court earlier, and by various other High Courts, the Administrator is to be in charge of the affairs of the society only to enable him to carry on the day to day administration of the society. He is not entitled to take any policy decision. He has also no right to admit new members. In our view, after the, decision of the Supreme Court referred to above, it is not open to us to go behind that decision on the basis of an argument that a co- operative bank is different from a co-operative society. We are, therefore, not in a position to accept the argument of the learned counsel for the appellant in that behalf.

5. Once that argument is rejected, it is clear that the learned Single Judge was justified in holding that the Administrator could not admit new members and then grant loans to them as if they were members of the co-operative bank. The decision of the learned Single Judge, therefore, does not call for any interference.

6. The learned counsel for the appellant contended that unless the surplus funds available to the bank are utilised by the bank by granting loans to the members of the bank there will be loss to the bank. It is also unusual for banks to keep huge surplus funds without utilising the same and it was because of this that the appeal was filed by the Administrator so as to enable him to disburse the loans to more persons. It is seen that the Administrator was appointed sometime in the year 1999. If the Administrator felt it so necessary, he should have taken steps to have a fresh election conducted for the election of the managing committee of the bank and to entrust the management of the affairs of the bank to the managing committee so as to enable the managing committee to act in terms of

 

the Act and the Bye-Laws, and admit new members and carry on the business of the bank. It is significant to note that the Administrator has not attempted to pass the necessary Resolution or to take the necessary steps in terms of the Act, for convening a General Body meeting for electing a new Managing Committee. It appears to us that the Administrator has shown a lack of will to do so and if at all any one is to be blamed for the delay in enrolling new members and disbursing fresh loans, it must be held to be the Administrator.

7. In this situation, we decline to interfere with the decision of the learned Single Judge. We confirm the decision of the learned Single Judge, and dismiss the appeal.

Urgent certified copy of the judgment be issued on proper application.

A.S. Naidu, J.

I agree.