

(2020) 09 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3276 Of 2020

Vijay Thakur

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Himachal Pradesh Societies Registration Act, 2006 — Section 37, 37(1)(b)

Citation : (2020) 09 SHI CK 0001

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Tara Singh Chauhan, Sudhir Bhatnagar, Arvind Sharma, Sudhir Thakur, Karun Negi, Ajay Sharma, Amit Jamwal

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Present writ petition filed under Art. 226 of Constitution of India lays challenge to impugned order dated 6.7.2020 (annexure P-3) passed by Registrar Cooperative Societies, Himachal Pradesh, in purported compliance of directions issued by Division Bench of this Court in CWP No. 1783 of 2020, whereby Division Bench of this Court, while refraining from expressing any opinion on merit, directed Registrar, Cooperative Societies to exercise power in terms of Section 37 of Act, for the purpose of smooth functioning and management of affairs of respondent No.3 Bank till new body comes into existence on 15.9.2020.

2. Precisely, the facts of the case as emerge from the record, are that respondent No.4, Shri Raj Kumar Negi, a former Director, of respondent No. 3 Bank filed CWP No. 1783 of 2020, seeking therein direction to respondent no. 2 for appointment of an Administrator on account of resignation of seven Directors. Respondent No.4 in the aforesaid petition claimed that since out of twelve Director, seven have resigned, Board has virtually become defunct and it is necessary to appoint an Administrator for smooth functioning of the Bank.

Besides above, petitioner claimed that Managing Director of the respondent Bank has issued election programme for election of Board Directors, perusal whereof reveals that elections are to be held on 15.9.2020, whereafter, new body would come into existence and till then, for smooth functioning of the bank, Registrar, Cooperative Societies be directed to appoint an Administrator, while exercising power under Section 37.

3. Perusal of judgment Division Bench of this Court in having taken note of the fact dated 22.6.2020, passed by the said petition reveals that that some of Directors have resigned, Division Bench of this Court disposed of the petition without expressing any opinion on merit, with a direction to respondent No. 2 to pass appropriate orders under S.37 of the Act *ibid*, within a period of two weeks.

4. Since respondent No.4 was not satisfied with the said direction, he filed Review Petition No. 18 of 2020, which came to be dismissed vide order dated 1.7.2020. However, subsequently, respondent No.2, Registrar, Cooperative Societies in purported compliance of judgment dated 22.6.2020 passed by Division Bench in CWP No. 1783 of 2020, appointed an Administrator by way office order dated 6.7.2020 (Annexure P-3), to look after functioning of Bank till the new body comes into existence on 15.9.2020, which has been impugned in the instant proceedings.

5. Precisely, the case of the petitioner in the case at hand is that at no point of time, direction if any ever came to be issued by Division Bench in judgment dated 22.6.2200 to the Registrar, Cooperative Societies to appoint an Administrator and as such, order dated 6.7.2020, which has been passed in purported compliance of judgment dated 22.6.2020, is not sustainable in the eyes of law.

6. To the contrary learned senior counsel representing respondent No.4 contends that since majority of Directors of bank have resigned, Registrar, Cooperative Societies with a view to ensure smooth functioning of Bank rightly issued order dated 6.7.2020, appointing an Administrator in terms of judgment dated 22.6.2020 passed by Division Bench.

7. Having heard learned counsel for the parties and perused the material available on record, this Court finds that respondent No.4 though in CWP No. 1783 of 2020 specifically prayed for issuance of direction to respondent No.2, to appoint an Administrator but the Division Bench of this Court directed Registrar, Cooperative Societies to exercise power in terms of Section 37 of the Act to meet with the exigency i.e. to fill up the vacancies occurred on account of resignation of some of the Directors, but, at no point of time, directed him to appoint an Administrator. It appears that after passing of aforesaid judgment, respondent No.4 with a view to seek clarification filed review petition as taken note above, but even that was dismissed, meaning thereby Division Bench of this court, having taken note of vacancies having arisen due to resignation of some of the Directors in the Bank, left it to the discretion of the Registrar, Cooperative

Societies to take appropriate decision in terms of S. 37 of the Act, which empowers it to supersede the Society in certain eventualities or to fill up the vacancies, as have been enumerated in the said provision.

8. Otherwise also, careful perusal of para 10 of judgment rendered in CWP No. 1783 of 2020, clearly suggests that the Division Bench of this Court, having taken note of the fact that there are vacancies, specifically took note of S.37 (1) (b) of act, which empowers Registrar, Cooperative Societies to exercise power to fill up vacancies for the remaining period. If the aforesaid judgment is read in its entirety, especially para Nos. 10 and 11, it can be safely inferred and presumed that Court while issuing direction to the Registrar, Cooperative Societies to exercise power under S. 37, had intended only to fill up the vacancies for smooth functioning of the Bank. Leaving everything aside, order dated 6.7.2020, passed by Registrar, Cooperative Societies in purported compliance of judgment dated 22.6.2020 cannot be said to be in accordance with law by any stretch of imagination because, before proceeding under S. 37 of the Act, it was incumbent upon Registrar, Cooperative Societies to issue notice to the members/committee. S. 37 of the Act is reproduced herein below:

"37. Supersession of committee.-

(1) If in the opinion of the Registrar, a committee of any co-operative society or any member thereof persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members, the Registrar may after giving such committee or member, as the case may be, an opportunity to state its or his objections, if any, by order in writing-

(a) remove the committee; and

(i) order fresh election to the committee; or

(ii) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order which period may at the discretion of the Registrar, be extended from time to time, so, however, that the aggregate period does not exceed five years; or

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act, the rules and the bye-laws.

(1-A) Where the Registrar, while proceeding to take action under subsection (1), is of the opinion that suspension of the committee or any member during the period of proceedings is necessary in the interest of the cooperative society, he may suspend such committee or member, as the case may be, and where the committee is suspended, 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 or member so suspended is not removed, it or he shall be re-instated and the period of suspension shall count towards its or his term. (2) The Registrar may fix such remuneration for the administrator as he may think fit. Such remuneration shall be paid out of the funds of the society.

(3) The administrator shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to perform all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.

(4) The administrator shall, at the expiry of his term of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.

(5) Before taking any action under sub-section (1) in respect of a cooperative society, the Registrar shall consult the financing institutions to which it is indebted.

(6) A member who is removed under sub-section (1) may be disqualified for being elected to any committee for such period not exceeding three years as the Registrar may fix and the said period shall commence after the expiry of the term of the committee from which he is removed"

9. Though Shri Ajay Sharma, learned senior counsel while referring to provisions of S.37 made a serious attempt to persuade this Court to agree with his contention that since Committee/Board had become defunct on account of resignation of seven Directors, Registrar, Cooperative Societies was not required to issue notice prior to appointing an Administrator, but having carefully perused provisions contained in S. 37 of the Act *ibid*, which are self-explanatory, this Court finds no force in the submissions of Mr. Ajay Sharma, learned senior counsel and same is rejected being devoid of merit. Even if it is presumed that seven Directors, who resigned, also lost their membership on account of their resignation, even then, remaining Members who continued as Directors, were required to be served with notice under S.37 by Registrar, Cooperative Societies before appointing an Administrator.

10. Otherwise also, order dated 6.7.2020, cannot be said to be have been passed in conformity with S.37 because bare perusal of same nowhere reveals that the Registrar, Cooperative Societies, before initiation of action, if any, under S.37 of the Act, adopted the procedure as enshrined under S.37 of the Act, rather, same has been passed in purported compliance of judgment dated 22.6.2020. But as has been taken note above, at no point of time, Division Bench of this Court directed Registrar, Cooperative Societies to appoint an Administrator. Since respondent No.4 had approached Division Bench of this Court in earlier writ petition in the wake of resignation of some of the Directors, Division Bench having taken note of S. 37(1)(b) rightly required the Registrar, Cooperative Societies to take appropriate action under S.37 of the Act for smooth functioning of the Bank.

11. Otherwise also, S.37 which provides for supersession of Committee, clearly reveals that Registrar, Cooperative Societies before exercising power under S. 37 is required to form an opinion that a committee of any co-operative society or any member thereof persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members. As has been taken note above, Registrar Cooperative Societies after having formed an opinion, if any, is further required to issue notice to the Committee or its members, as the case may be, who may then state its/their objections, if any.

12. However, perusal of order dated 6.7.2020 nowhere suggests that the Registrar, Cooperative Societies, before exercising power under S. 37 formed any opinion as has been taken note herein above, rather, while misinterpreting the mandate of this Court given in CWP No. 1783 of 2020, he proceeded to appoint an Administrator in violation of provisions contained in S. 37 of the Act.

13. Though the petitioner in the case at hand would continue to be a President/Chairman of the Bank till fresh body is elected but since the Registrar, Cooperative Societies is to conduct elections under his supervision, there appears to be no force in the submission of Mr. Ajay Sharma, learned senior counsel that in case, petitioner is allowed to continue as Chairman/President of the Bank, he may influence the elections.

14. Consequently, in view of above, present petition succeeds. Order dated 6.7.2020 (Annexure P-3) issued by the Registrar Cooperative Societies is set aside All pending applications are also disposed of.