

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18841 of 2016
Date of decision: 09.09.2016

Subhash Chander

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.D. Bawa, Advocate
for the petitioner.

Mr. Ramesh Sharma, Advocate
for the caveator.

RAMESHWAR SINGH MALIK, J.

Should this Court change the direction of law, while exercising its extraordinary writ jurisdiction, entertaining present writ petition against a show cause notice, thereby restraining the respondent authorities from exercising their statutory powers under the Haryana Cooperative Societies Act, 1984 (for short 'Act of 1984') and rules made thereunder, is the short but important question of law that falls for consideration of this Court.

Instant writ petition is directed against the show cause notice dated 01.09.2016 (Annexure P-17), issued to the petitioner by the Deputy Registrar, Cooperative Societies, Kurukshetra, for removal from the post of Director/Chairman of the Kurukshetra Central Cooperative Bank Ltd., Kurukshetra, (hereinafter referred to as 'respondent-Bank') and also the order dated 02.09.2016 (Annexure P-18), whereby the petitioner was placed under

suspension, having found incurred the disqualification under Rule 27 (b) of the Haryana Cooperative Societies Rules, 1989 (for short 'Rules of 1989') and byelaws of the respondent-Bank, for membership of the Committee.

Heard learned counsel for the petitioner.

Before proceeding further, it is pertinent to note that when confronted by this Court that present writ petition would not be maintainable, it being only against a show cause notice and even if an order is passed by the competent authority, after considering the reply of the petitioner to the show cause notice, said order shall also be appealable under the relevant provisions of the Haryana Cooperative Societies Act, 1984 and the statutory rules made thereunder, learned counsel for the petitioner persistently argued, contending that writ petition is very much maintainable. He argued the case at length narrating unnecessary, irrelevant and detailed background of the case, with a view to support his contentions about the maintainability of the writ petition. Referring to the averments taken in the writ petition particularly in para Nos. 13, 15, 16, 18 and 19 (E), he has tried to make it a case of political vendetta, alleging malafide against the General Manager of the respondent-Bank, saying that she was enjoying the patronage of present political Government. He further submits that there was no violation of Rule 27 of the Rules of 1989. He also refers to the order dated 23.06.2016 (Annexure P-11) in CWP No.12769 of 2016 and order dated 14.07.2016 in CWP No.13686 of 2016 (Annexure P-14), passed by this Court in earlier writ petitions filed by the petitioner, regarding the issue of no confidence motion and illegally convening of an emergency meeting of Board of Directors of the respondent-Bank, with a view to show that unwarranted political pressure was being exercised, through Chief Minister's window, which makes it a case of political rivalry.

During the course of arguments, when learned counsel for the petitioner was again reminded about the non-maintainability of the writ petition against the show cause notice, pointing out that there was no completed action against the petitioner and he will have the remedy of appeal before the Registrar, Cooperative Societies, Haryana against the completed action and thereafter, a remedy of revision before the State Government, he emphasized that the writ petition is maintainable even against the show cause notice. Placing reliance on Rule 27 (b) of the Rules of 1989, learned counsel for the petitioner vehemently contended that petitioner has committed no violation of this statutory Rule and the impugned show cause notice as well as impugned order of suspension contained in Annexures P-17 and P-18, were the outcome of malafide intention of the General Manager of the respondent-Bank, with a view to please her political bosses. Concluding his arguments, learned counsel for the petitioner submits that since the petitioner was being victimized at the hands of the respondent authorities, the present writ petition is maintainable and the impugned orders may be set aside, by allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the instant writ petition is without any merit, besides being not maintainable against the impugned show cause notice. There is no completed action against the petitioner and the writ petition is liable to be dismissed with costs, for the following more than one reasons.

It has gone undisputed before this Court that the petitioner himself is the owner of branch building of Ramgarh Ror branch of the Kurukshetra Central Cooperative Bank, Kurukshetra. Petitioner was the resident of village

Ramgarh Ror, however, now he is resident of New Shastri Colony, Pehowa, District Kurukshetra. His residential house in his village Ramgarh Ror, which also falls in Tehsil Pehowa, District Kurukshetra, was lying vacant. Agenda No.5 was passed in the meeting of Business Committee of the Bank, under the Chairmanship of the petitioner himself on 14.09.2012 at 11.00 AM (Annexure P-1), for hiring the branch building on rent for Ramgarh Ror Branch. Again, Agenda No.3 was considered by the Business Committee in its meeting held on 09.04.2013 at 11.00 AM (Annexure P-2), under the Chairmanship of the petitioner and recommended to hire the building of residential house owned by the petitioner, in his village Ramgarh Ror for shifting the Branch Office of the respondent-Bank.

Rent of the building was fixed at Rs.5,000/- per month. The agreement was to be for a period of five years and after three years, the rent would be increased @25%. Pursuant to the abovesaid resolutions having been passed by the Business Committee under the Chairmanship of the petitioner, he entered into an agreement with the respondent-Bank and the building of his residential house in his village was given on rent to the respondent-Bank, whose Chairman was the petitioner himself. Further, the abovesaid Resolution No.3 dated 09.04.2013 (Annexure P-2) passed by the Business Committee under the Chairmanship of the petitioner, was considered and approved under Agenda No.5 in the meeting of Board of Directors of respondent-Bank held on 25.04.2013 at 11.00 AM, again under the Chairmanship of the petitioner himself.

It is also pertinent to note here that earlier this very Branch of the respondent-Bank in village of the petitioner, was running from a building of a society @ Rs.800/- per month as rent. Since the residential house of the

petitioner in his abovesaid village Ramgarh Ror was lying vacant, he misused his position as Chairman and got the abovesaid resolutions passed from the Business Committee as well as Board of Directors, under his own Chairmanship. It has been so alleged in the complaint (Annexure P-4).

Rules 27 (b) and 28 (1) (f), (2) and (3) of the Rules of 1989, which are relevant for the purpose of decision of the present case, read as under: -

“27. Disqualification for membership of committee. [Section 131

(2) (xiii)]- No person shall be eligible for election as member of the committee, if. -

xxx

xxx

xxx

(b) he has directly or indirectly any interest in any contract to which the Cooperative Society is a party except in transactions made with the cooperative Society as a member in accordance with the objects of the society as stated in the bye-laws;

xxx

xxx

xxx

28. Removal from membership of committee. [Section 131 (2)

(x)] – (1) A member of the committee shall cease to hold office as such if he -

xxx

xxx

xxx

(f) becomes subject to any of the disqualification specified in rule 27.

(2) The Committee shall inform the Registrar that a member has incurred the disqualification under sub-rule (1) and as such is liable for removal from the office.

(3) On the receipt of information of a Committee under sub-rule

(2) or the application of any member of the society or suo motu, the Registrar may order the removal of the member from office after giving an opportunity to hear the committee and the member concerned.”

Model Bye-laws of the respondent-Bank, which were duly approved by Registrar, Cooperative Societies, Haryana vide his memo dated 14.10.2010, were adopted by the General Body of the respondent-Bank vide Resolution No.4 in the meeting held on 10.11.2010. Bye-law No.33 (viii), (xii) and (xiii) are also relevant and the same read as under: -

“33. An elected members of the Board of Directors shall cease to hold office if: -

xxx

xxx

xxx

(viii) He becomes interested directly in any contract with the bank or any sale or purchase made by the bank privately/or in auction.

xxx

xxx

xxx

(xii) His acts are conclusively proved to be contrary to interests of the Bank.

(xiii) He conducts in a manner not behooving to a director.”

A bare reading of the abovesaid provisions of law contained in statutory rules and Model Bye-laws would make it crystal clear that while entering into a rent agreement with the respondent-Bank, giving his own house on rent for the branch building, pursuant to the resolutions (Annexures P-1, P-2 and P-3), under his own Chairmanship, petitioner has direct, personal and financial interest, which renders him disqualified to be the member of the Committee. Once the petitioner incurs the disqualification under Rule 27 (b) of the Rules of 1989, he becomes liable for the removal from the membership of

the Committee under Rule 28 (1) (f), (2) and (3) of the Rules of 1989.

Proceeding on a bonafide approach, an inquiry committee was constituted to enquire into the abovesaid allegations against the petitioner. The inquiry committee conducted the inquiry and submitted a self-contained report dated 19.08.2016 (Annexure P-15) running from page 57 to 70 of the paper book. A bare reading of the abovesaid inquiry report would show that each and every relevant aspect of the matter was taken into consideration, associating the petitioner in the proceedings of the inquiry. Petitioner appeared before the inquiry committee and suffered his detailed statement.

After going through the entire relevant record and the statements of all concerned, inquiry committee made its recommendations, relevant part of which, for the purpose of instant case, reads as under: -

“After perusal of aforementioned record and statements, I have come to the conclusion that;

- 1. As per Section 27-B of the 'Haryana Cooperative Societies Rules/Act 1989' any member of the Committee could not make contract with the Bank. But, Sh. Subhash Chander Chairman has made agreement of rent with Ramgarh-Road Bank Branch, which has been approved by Committee constituted by 'Business Committee' and in the meeting of 'Business Committee'. But, being a member of the Committee, Sh. Subhash Chander has violated Section 27-B of “The Haryana Cooperative Societies Rules 1989” by making contract with the Bank. Therefore, appropriate action is recommended against Sh. Subhash Chander, Chairman.*

2. *Sh. Subhash Chander, Chairman and his son has taken loans worth Rs.20/20 lakhs on 21.7.2014 by pledging the same building; but, these both the loans have been passed by the B.O.D. of the Bank.”*

Thereafter, Assistant Registrar, Cooperative Societies, Kurukshetra apprised the Deputy Registrar, Cooperative Societies, Kurukshetra about the abovesaid inquiry report dated 19.08.2016 (Annexure P-15), vide communication dated 26.08.2016 (Annexure P-16). On the basis of abovesaid detailed inquiry report, Deputy Registrar, Cooperative Societies, Kurukshetra, exercising his powers under Rules 27 and 28 of the Rules of 1989 and also under Section 35 of the Act of 1984, issued the impugned show cause notice to the petitioner vide Annexure P-17 and passed the impugned suspension order dated 02.09.2016 (Annexure P-18).

Relevant part of the impugned show cause notice (Annexure P-17) is extracted as under: -

“Regarding this complaint, inquiry was got done through 'Assistant Registrar, Cooperative Societies Kurukshetra'. Thus, Assistant Registrar, Cooperative Societies Kurukshetra has sent his report to this office vide his letter No.2890 dated 26.08.2016. In which it has been Rorh explained that Sh. Subhash Chander has done an 'agreement/contract' with Ramgarh branch of 'The Kurukshetra Central Cooperative Bank Ltd., which is in violation of rule 27-B of the 'Haryana Cooperative Societies'. As such, he has directly or indirectly, an interest, in any contact to which the Cooperative Society is a party, except in transaction made with the Cooperative Society, as a member in accordance with the objects

of the Society as stated in the byelaws and rules 28 (f) become subject to any of the disqualifications specified in rule 27. As such, under supra rule any member of the society cannot make any contract with the Society. Regarding Para No.2 of the complaint, this fact has come to light that in the meeting of the 'Business Committee' of the Bank dated 14.9.2012; a Sub-Committee was constituted vide Agenda-5, in which Sh. Gopal Kaushik/Director & Chief Executive Officer D.C.C.B Kurukshetra was authorized for searching a building for opening a new branch. Thus, Chief Executive Officer convened a meeting of 'Business Sub-Committee' vide his office letter No.30446-47 dated 30.3.2013. Whereas, they went on the spot and found the house of Sh. Subhash Chander adequate for the purpose of opening new branch of the Bank. Thereupon, in the meeting of 'Business Committee' dated 09.04.2013; vide Agenda No.3 it was decided that 'Considered the decision/recommendation of the Sub-Committee and further unanimously resolved to fix the rent of the new building @ 5000/- p.m. The agreement would be for a period of 5 years from the date of occupation of the new building. After three years the rent would be enhanced @ 25%. The CEO is authorized to increase the rent after three years. The Branch Manager of the Ramgarh-Rorh is authorized to sign the agreement with the Owner of the Branch Building on behalf of the Bank. Branch building of the Bank of Ramgarh-Rorh is on the name of Sh. Subhash Chander, but the rent and selection of the building has been passed by 'constituted Committee' and Business Committee of the Bank/BOD. In this

regard, Subhash Chander has violated rule 27-B by making 'Contract' being a 'committee member'.

Hence, in view of the above violation; why you should not be terminated from the post of Directors/Chairmanship of Board of Directors of "The Kurukshetra Central Cooperative Bank Ltd., Kurukshetra u/s 35 of the "Haryana Cooperative Societies Act, 1984'. Before doing so; you are offered a chance through this Notice, you should send your written reply within 15 days after the receipt of this notice to the office of undersigned. In case of non receipt of your reply within the prescribed period, you will be terminated from the 'Board of Directors' of the Bank."

It is also a matter of record that the petitioner, instead of filing his reply to the abovesaid show cause notice, rushed to this Court by filing the present writ petition. It is relevant to note here that even after submission of his reply by the petitioner, to the abovesaid show cause notice, once an appropriate order thereon is passed by the Deputy Registrar, Cooperative Societies, Kurukshetra, said completed action in the form of an order shall be appealable under Section 114 (2) (b) of the Act of 1984 before the Registrar, Cooperative Societies, Haryana.

Still further, the appellate order passed by the Registrar, Cooperative Societies, Haryana, would be revisable before the Government under Section 115 of the Act of 1984. It is equally important to note that the appellate as well as revisional authorities under Sections 114 and 115 of the Act of 1984, would have the powers to grant interlocutory orders under Section 116 of the Act of 1984, during pendency of appeal or revision, as the case may be.

When the abovesaid undisputed fact situation was put to learned

counsel for the petitioner to point out any reason, much less justified reasons, as to why he should not file his reply to the show cause notice and avail his equally efficacious alternative remedy of appeal and revision under the relevant statute itself i.e. Act of 1984, he had no answer except to say that the petitioner was being victimized for political reasons. Afraid, this Court cannot take judicial notice of any such political overtones, particularly when there is no material available on record to support such a misplaced argument raised on behalf of the petitioner nor any political person has been impleaded as party-respondent.

So far as the allegations levelled against the General Manager of the respondent-Bank, in the abovesaid paragraphs of the writ petition are concerned, the same have been found totally baseless because there is no supporting material available on record. Present one has been found to be a clear cut case of blatant misuse of his position by the petitioner, as Chairman of the respondent-Bank. Having said that, this Court feels no hesitation to conclude that learned counsel for the petitioner has miserably failed to substantiate any of his contentions and the present writ petition is liable to be dismissed with costs.

The abovesaid view taken by this Court, on the maintainability of the present writ petition, against a show cause notice, is also supported by two judgments of the Hon'ble Supreme Court in **Nirlon Synthetic Fibres & Chemicals Ltd. Vs. Union of India, 1998 (99) ELT 22** and **The Special Director and another Vs. Mohd. Ghulam Ghouse and another, 2004 (3) SCC 440**. The relevant observations made by the Hon'ble Supreme Court in para 5 of its judgment in **Nirlon Synthetic Fibres & Chemicals Ltd.'s** case (supra), read as under: -

“.....It is relevant here to take note of the nature of the subject-matter of the writ petition and of likelihood of any serious or irreversible hardship that its dismissal may entail. The writ petition challenged a show cause notice. An order of stay was made on 21st May, 1981. The petition was pending for nearly ten years. It is stated at the Bar that the point raised in the writ petition has since been covered by a pronouncement of the High Court in another case which is said to support petitioners' contention.

Even if the order of dismissal of the writ petition assumes finality it is yet open to the petitioner to respond to the notice in the statutory proceedings and show cause. If any further steps are taken by the authorities pursuant to the show cause notice, petitioners may have recourse to and pursue other remedies available at law. Taking an overall view, in our opinion, it will not be appropriate to interfere with the discretion exercised by the High Court.”

Again, the law laid down by the Hon'ble Supreme Court on the issue involved herein, is crystal clear from the bare reading of para 5 of the judgment in **Mohd. Ghulam Ghouse's** case (supra). Observations made by the Hon'ble Supreme Court in para 5, which can be gainfully followed in the present case, read as under: -

“This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show causes notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High

Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted.”

This Court is conscious of the fact that availability of an alternative remedy would not be an absolute rule, in every given situation, regarding the maintainability of the writ petition. However, it is equally true that until and unless an exceptional case is made out, this Court would always insist that the litigant is relegated to his alternative remedy at the first instance. So far as the present case is concerned, it is at the very primary stage, wherein petitioner has rushed to this Court, only against a show cause notice and that too, on the basis of ill-founded presumptions and assumptions.

Entertaining the present writ petition at the hands of this Court would amount to taking away the authority of the statutory functionaries, specially and specifically provided for the purpose, under the Act of 1984, as held by the Hon'ble Supreme Court in the cases referred to hereinabove. Further, entertaining the present writ petition would also amount prohibiting the statutory authorities under the Act of 1984, from exercising their jurisdiction in the matter and by doing so, this Court would be exceeding its writ jurisdiction. Having said that, the inevitable conclusion is that the answer to the question posed at the outset, is and has to be an emphatic no. Besides this, no prejudice, of any kind whatsoever, has been shown, which might have been caused to the petitioner, by issuing the impugned show cause notice. The respondent authorities have been found well-justified in proceeding against the petitioner, strictly in accordance with law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the respondent authorities have committed no error of law, while issuing the impugned show cause notice and passing the impugned suspension order, the same deserve to be upheld. Present writ petition is wholly misconceived, bereft of merit and without any substance, besides being not maintainable against the impugned show cause notice, thus, it must fail. No case for interference has been made out.

Keeping in view the totality of facts and circumstances of the case noted above, the writ petition is liable to be dismissed with costs, which are quantified at Rs.30,000/-. Petitioner is directed to deposit the costs of Rs.30,000/-, against proper receipt, with the Secretary, District Legal Services

Authority, Kurukshetra within a period of six weeks from the date of receipt of certified copy of this order. If the petitioner fails to deposit the abovesaid amount of costs within the stipulated period, Deputy Commissioner-cum-Collector, Kurukshetra, is directed to ensure recovery thereof, as arrears of land revenue and shall deposit the same with the Secretary, District Legal Services Authority, Kurukshetra.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands dismissed with costs, as indicated above.

[RAMESHWAR SINGH MALIK]
JUDGE

09.09.2016
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No