

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.1654 of 2020

ORDER:

This writ petition is filed seeking the following relief :-

“....to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the proceedings of the 2nd respondent in F.No.R-11017/27/2013-LandM dated 21/01/2020, as without jurisdiction, violative of natural justice, illegal and ultra vires his powers and to set aside the same and direct the 2nd respondent to act in accordance with law”.

Heard Sri Vedula Srinivas, learned counsel appearing for the petitioner, learned Assistant Solicitor General appearing for the 2nd respondent, learned Government Pleader for Co-operation appearing for respondents 1 and 3 and Sri M.Karuna Sagar, learned counsel appearing for the 4th respondent.

It has been contended by the petitioner that it is a Co-operative Bank engaged in banking business and it is registered under the Multi-State Co-operative Societies Act, 2002 (for short 'the Act') and it has intended to move an agenda on 10.09.2015 making one Sri Ramesh Kumar Bung conferring the title of Chairman Emeritus and the 4th respondent is objecting for such conferment of Chairman Emeritus and the 4th respondent has approached the 3rd respondent on 09.09.2015 and contended that Sri Ramesh Kumar Bung had already rendered two terms as Chairman of the petitioner's Bank and, therefore, he is not entitled for conferring the title of Chairman Emeritus. The 3rd respondent vide order dated 09.09.2015 had directed the petitioner not to place the Agenda on 10.09.2015 in respect of Item No.9, which was dealing with conferring the title of Chairman Emeritus on Sri Ramesh Kumar Bung. Aggrieved thereby, the petitioner has approached the 2nd

respondent on 10.09.2015. The 2nd respondent vide order dated 10.09.2015 was pleased to keep the order passed by the 3rd respondent in abeyance. Pursuant thereto, the petitioner has passed a Resolution in accordance with the Agenda and conferred the title of Chairman Emeritus in favour of Ramesh Kumar Bung and since then, Sri Ramesh Kumar Bung was continued with the title of Chairman Emeritus, which was conferred as co-terminus, for a period of five years and the tenure would come to an end by April 2020. The petitioner has further contended that aggrieved by the order passed by the 2nd respondent dated 10.09.2015, keeping the order of the 3rd respondent in abeyance, the 4th respondent had filed W.P.(C).No.5566 of 2018 before the Delhi High Court and while the matter was pending, the 4th respondent sought permission to withdraw the said writ petition with a liberty to pursue his remedies before the revisional authority i.e., the 2nd respondent and the Delhi High Court vide order dated 24.05.2018 dismissed the said writ petition as withdrawn and directed the revisional authority to dispose of the revision in accordance with law within a period of three months from the date of receipt of the communication of the said order. Pursuant to the order passed by the Delhi High Court, the 2nd respondent has taken up the revision and closed the revision on 29.10.2018 by observing as follows :-

“ In view of the order dated 24.05.2018 passed by the Hon’ble High Court of Delhi, the matter has been re-examined. Since arbitration petition has already been filed before the office of RCS Telangana, therefore, the Arbitrator/ Additional Registrar/ Registrar of Co-operative Societies (RCS), Telangana, is advised to take a decision in the matter by providing a reasonable opportunity of hearing to all the parties and following all the rules, regulations and

the procedures applicable in the Arbitration & Conciliation Act, 1996 read with MSCS Act, 2002. ”

Pursuant to the said order passed by the 2nd respondent, the 3rd respondent vide orders dated 19.02.2019 and 17.08.2019 requested the 2nd respondent to take up the matter once again and the 2nd respondent, after closing the revision on 29.10.2018 has re-entertained the case and passed the impugned order dated 21.01.2020 by observing as follows :-

“In view of the above, the Management of the Bank is directed to rectify the said anomaly within seven days from the date of this order and submit a compliance report before this authority. Any non-compliance of this order shall be viewed seriously. Parties to appear again for the next hearing on 3.2.2020 at 4.00 p.m.”

Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contended that W.P.(C).No.5566 of 2018 filed by the 4th respondent was dismissed as withdrawn by the Delhi High Court and directed the revisional authority to dispose of the revision in accordance with law within a period of three months from the date of receipt of the communication of the said order. Pursuant thereto, the 2nd respondent has passed orders on 29.10.2018 closing the revision and once the 2nd respondent has closed the revision, it has become functus officio and it cannot re-entertain the revision and pass orders adverse to the petitioner. Further, the co-terminus tenure of Ramesh Kumar Bung would be ended within a couple of months i.e., during April, 2020. Therefore, the impugned order is liable to be set aside, as the 2nd respondent has no jurisdiction to pass the impugned order as it had already closed the revision on 29.10.2018 and having closed the revision, the 2nd respondent cannot re-open

the revision, pursuant to the order passed by the Delhi High Court in W.P.(C).No.5566 of 2018.

Learned Assistant Solicitor General appearing for the 2nd respondent has contended that the 2nd respondent has rightly considered the revision and passed orders, pursuant to the order passed by the Delhi High Court in W.P.(C).No.5566 of 2018 dated 24.05.2018 and therefore, there are no merits in the writ petition and the same is liable to be dismissed.

Learned Counsel appearing for the 4th respondent has contended that Ramesh Kumar Bung has already rendered his service as Chairman twice and as per the bye-laws, he is not entitled to be continued as Chairman for any other term. But, the petitioner intends to continue Sri Ramesh Kumar Bung in the form of conferring the title of Chairman Emeritus though he has been discharging his duties as Senior Vice Chairman. The 4th respondent has been pursuing his remedies since 2015 before the Authorities to prove the illegality committed by the petitioner's Bank in continuing Sri Ramesh Kumar Bung as Chairman. In spite of the 3rd respondent passing orders, the petitioner is continuing Ramesh Kumar Bung as Chairman Emeritus in addition to the post of Senior Vice Chairman, which is illegal and contrary to the bye-laws. He further contended that for creation of any post, there should be a resolution to that effect. But, in the absence of any resolution in accordance with the bye-laws, the petitioner cannot confer title of Chairman Emeritus in favour of Ramesh Kumar Bung. Therefore, the 2nd respondent has rightly directed the petitioner Bank to remove Ramesh Kumar Bung from the post of Chairman Emeritus within seven days and pass orders in accordance with the directions given

by the Delhi High Court in W.P.(C).No.5566 of 2018 dated 24.05.2018 and therefore, the 2nd respondent has rightly passed the impugned orders.

Insofar as the contention of the petitioner that the 2nd respondent has closed the revision vide order dated 29.10.2018, he stated that it is false and incorrect, as the 2nd respondent has not closed the revision on 29.10.2018 and it has directed the 3rd respondent to take up the matter and the 3rd respondent has initially entertained the grievance of the 4th respondent and passed orders on 09.09.2015. Aggrieved by the same, the petitioner has preferred a revision before the 2nd respondent and the 2nd respondent, without adjudicating the case on previous occasion, had placed the order passed by the 3rd respondent in abeyance vide order dated 10.09.2015 and therefore, it should be treated as continuation of proceedings, which were initiated way back in the year 2015 by the 4th respondent by giving complaint before the 3rd respondent as early as on 09.09.2015. Therefore, the order passed by the 2nd respondent is to be treated as continuation of proceedings, which were initiated way back in the year 2015 and the 2nd respondent has rightly passed impugned orders in favour of the 4th respondent. Learned counsel appearing for the 4th respondent further contended that as per Section 11 (1) of the Act, the petitioner's Bank must obtain necessary permission from the 2nd respondent for creation of post of Chairman Emeritus. Admittedly, in the instant case, the petitioner has not obtained any permission from the 2nd respondent for creation of post of Chairman Emeritus. Therefore, the creation of post of Chairman Emeritus by the petitioner bank and conferring the same on Ramesh Kumar Bung is

arbitrary and illegal and therefore, the 2nd respondent has rightly passed orders directing the petitioner to remove the title of Chairman Emeritus granted in favour of Ramesh Kumar Bung and report within seven days.

Learned counsel for the 4th respondent further contended that the 3rd respondent has passed orders on 09.09.2015 on the revision submitted by the 4th respondent and rightly directed the petitioner not to place the agenda in the meeting scheduled to be held on 10.09.2015 in respect of Item No.9 and within twelve hours, the petitioner could appear before the 2nd respondent and the 2nd respondent on the earlier occasion has passed illegal orders at 9.56 hours early in the morning i.e., even before the office could open. Therefore, the order passed by the 2nd respondent on 10.09.2015 is illegal and arbitrary and the same was rectified by the impugned order passed by the 2nd respondent that too in compliance of the order passed by the Delhi High Court in W.P.(C).No.5566 of 2018 dated 24.05.2018. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that the 2nd respondent has passed final orders on the revision and closed the revision on 29.10.2018 and the 2nd respondent has entertained the said revision, at the instance of the 3rd respondent and passed the impugned order. When the 2nd respondent passed orders closing the revision on 29.10.2018, the 2nd respondent becomes functus officio and it is not entitled to re-entertain the revision once again and pass the impugned order. Therefore, the impugned order is liable to be set aside and it is accordingly set aside.

As per Section 84 of the Act, an Arbitrator has to be appointed to look into the affairs of each of the Co-operative Societies, which has to be registered under the Act. As per Section 84 of the Act, the 2nd respondent has appointed one Damodar Bura as Arbitrator to look into the affairs of the petitioner's Bank vide proceedings dated 22.11.2019.

Section 84 of the Act reads as follows :-

84. Reference of disputes:

(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947) touching the constitution, management or business of a multi-State co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

(d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of

another multi-State co-operative society, such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:-

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.

(3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any Court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).

A perusal of Section 84 of the Act touches upon the Constitution, Business and Management of the Society. The issue

raised by the 4th respondent also touches upon the Constitution, Business and Management of the Society. Therefore, the 4th respondent is at liberty to approach the said Arbitrator, who was appointed by the 2nd respondent in terms of Section 84 of the Act. It is needless to state that if the 4th respondent approaches the Arbitrator, the Arbitrator will adjudicate the matter and pass appropriate orders within a period of two weeks from the date the 4th respondent approaches the Arbitrator.

With the above observations, the writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 13-02-2020

Note:

Issue C.C. by tomorrow

(B/o)

Prv



