IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19946 of 2019 (O&M)
Date of decision: 25th January, 2022

Rakesh Kumar Jakhar

… Petitioner

Versus

State of Haryana and others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Pardeep Solath, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana for respondents No.1 and 2.

Mr. Sandeep Moudgil, Advocate for respondent No.3.

FATEH DEEP SINGH, J.

The Haryana State Cooperative Apex Bank Limited (in short, 'HARCO Bank') is the apex society under the Haryana Cooperative Societies Act, 1984 (in short, 'the Act') in which the State has a major part of the share-capital to the extent of 65 percent by virtue of which the Managing Director of the HARCO Bank is appointed by the State and is deemed to be the functionary under the Act. The petitioner Rakesh Kumar Jakhar is a nominee of the Jhajjar Central Cooperative Bank Ltd. (in short, 'Jhajjar Bank') to the HARCO Bank. The election of the Board of Directors of HARCO Bank was held, by virtue of which Board of Directors (Annexure P1) comprising of 17 members was constituted on 11.09.2017 (also October 2017) (Annexure R3/5). The term of the Board

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of Directors was till September 2022. It is by virtue of correspondence dated 05.07.2019 (Annexure P2) the petitioner happens to be one of the Directors of HARCO Bank and was called for meeting of the Board of Directors of HARCO Bank to be held on 24.07.2019. It is on the basis of a correspondence dated 17.07.2019 (Annexure P3), the HARCO Bank sent a mail to the Jhajjar Bank to intimate that the petitioner has ceased to be representative of the Jhajjar Bank as his term has expired being one of the Directors of the Board of Directors with effect from 12.07.2019 and therefore made a request that the petitioner be informed accordingly. Aggrieved over this, the petitioner has invoked jurisdiction of this Court under Articles 226/227 of the Constitution of India by way of writ of certiorari seeking quashment of order dated 17.07.2019 (Annexure P3) and declaring him to be in the Board of Directors of HARCO Bank. It was termed that the same was in violation of Section 21(a) of the Act and the manner in which bye-laws by virtue of Clause 31(3) has been amended was with an ulterior motive to throw out the petitioner from the Board of Directors of HARCO Bank and thus, the relief in question.

Respondents No.1 and 2 in their reply pleaded that bye-laws No.33(i) and 34(a) were contradictory to bye-law No.31(3) and did not approve of the amendment so carried on and invariably support the case of the petitioner. The main contest that has been sought to be raised is by respondent No.3 HARCO Bank who in their reply had denied vehemently each and every averment of the petitioner alleging that since term of Board of Directors of the Jhajjar Bank had expired on 12.07.2019

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the petitioner being nominee of the said bank ceases to be Director of HARCO Bank. The respondents have sought to reiterate that entire amendment has been in accordance with law and there was no illegality in the same and sought dismissal of the petition.

Giving a thoughtful consideration to the submissions of Mr.Pradeep Solath, Advocate for the petitioner; Mr.Gaurav Jindal, Additional Advocate General, Haryana representing respondents No.1 and 2; as well as Mr.Sandeep Moudgil, Advocate appearing on behalf of respondent No.3, it is in no manner refuted that the petitioner happens to be a nominee of the Jhajjar Bank and that by virtue of Annexure P1, Board of Directors for the HARCO Bank was constituted in October 2017 and its term was to expire in September 2022.

The short point involved is, can the authorities (the respondents in this case) by virtue of impugned order dated 17.07.2019 (Annexure P3) suddenly hold that since term of Jhajjar Bank expires on 12.07.2019 and thus, being nominee of this, the petitioner ceases to be a member of the Board of Directors of HARCO Bank?

Section 21(a) of the Act is reproduced below to make the things more clear:-

> *"21. **Manner of exercising vote** – Every member of a cooperative society shall exercise his vote in person and no member shall be permitted to vote by proxy:*
>
> *Provided that –*
>
> *(a) a co-operative society which is a member of another co-operative society may, subject to the rules,*

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appoint one of its committee members through a resolution of its committee to vote on its behalf in the affairs of the other society; … … …"

Rule 10 of the Haryana Cooperative Societies Rules, 1989 (in short, 'the Rules') ensures the manner in which amendment of bye-laws can be undertaken and the same is as follows:-

> *"10.* ***Procedure for amendment of bye-laws. [Section 131(iii)]*** *– No amendment of bye-laws shall be carried out save in accordance with a resolution passed at a general meeting of the co-operative society of which due notice of the intention to discuss the amendment has been given:*
>
> *Provided that no such resolution shall be valid unless it is passed by a majority of members present at a general meeting at which not less than two-third of members for the time being, of the co-operative society are present:*
>
> *Provided further that model bye-laws approved by the Registrar may be adopted by a majority at an ordinary general meeting."*

Section 3(2) of the Act empowers the Government that it may by general or special order, confer on any person appointed to assist the Registrar any of the powers of the Registrar under this Act and the Rules, and thereby such person so appointed shall exercise the powers conferred on him under Sub-Section (2) of this Section subject to the general superintendence and control of the Registrar for carrying out the purposes of this Act, however it needs to be ensured that such powers can be

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specifically given for attaining a specific purpose and there cannot be blanket delegation as is the case in the present matter.

What is highlighted from the records and the arguments of the two sides is that by virtue of its meeting held on 21.02.2019, HARCO Bank passed an agenda approving the amendment to bye-laws 33(i) and 34(a) and in respect of which letter dated 03.04.2019 (Annexure P5) was sent to the Assistant Registrar Cooperative Societies, Haryana when earlier in response to letter dated 03.04.2019, Assistant Registrar Cooperative Societies, Ambala vide his letter dated 11.04.2019 (Annexure R3/2) had allowed the proposed amendment but through letter dated 25.06.2019 (Annexure R3/7) the office of Registrar, Cooperative Societies Haryana had objected to this procedure of amendment of bye-laws and vide order dated 22.08.2019 (also Annexure R3/7) on the appeal by one Maya Ram the Deputy Registrar Cooperative Societies, Kurukshetra rejected the amendment treating as illegal orders of Assistant Registrar Cooperative Societies, Ambala. Annexures R3/1 and R3/3 are corroborative to this fact and Annexure R3/5 including R3/7 nullifies this so called amendment to the bye-laws that is sought to be brought about surreptitiously by the HARCO Bank.

No doubt, by virtue of Section 131 the Act empowers the Government to make rules for any cooperative society or class of societies but such a power is not unbridled and has to be exercised commensurate with the provisions of the Act and Rules, and Section 131(3) ensures that any such amendment in the Rules under the Act shall

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be laid before the State legislature and which recourse does not appear to have been adopted in this case. Even if it is assumed for the sake of arguments, as has been contended by the learned counsel for the respondents that amendment to the Act was approved by the State, the own stand of one of the respondents in his affidavit submitted before this Court dated 24.07.2019 duly accepts that till date Registrar has not approved the proposed amendment. The same cannot attain finality and therefore pleads that the statutory mandate necessitates approval by Registrar to be compulsory and to the specific query of the Court learned counsel for the respondents could not highlight any such approval in this regard.

How and by what means the term of the petitioner expires at the very whims and fancies of the respondents is anybody's guess when he being one of the Directors of the Board of Directors of HARCO Bank which was supposed to continue till September 2022, could not be extinguished midway on such frivolous, illegal and capricious manner arbitrarily and to the mind of this Court is purely to suit the political vendetta and convenience.

Since the alleged amendments were neither approved nor can be put into play to throw out the petitioner from the Board of Directors of HARCO Bank and any such order passed by the respondents including the ones under assail needs to be set aside. The petitioner is entitled to carry on with his duties and functions as one of the Directors of the Board of Directors of HARCO Bank.

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In the light of foregoing discussions, the impugned order under challenge (Annexure P3) is hereby struck down thereby allowing the instant writ petition to that extent.

Disposed off.

(FATEH DEEP SINGH)
JUDGE

January 25, 2022
rps

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

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