

Before Hon'ble R. P. Sethi & H. S. Bedi, JJ.

BRIJ KISHORE ARORA,—Petitioner.

versus

THE ADMINISTRATION, U.T. CHANDIGARH AND
OTHERS,—Respondents.

Civil Writ Petition No. 10 of 1989.

November 26, 1993.

Constitution of India, 1950—Arts. 226/227—Punjab Co-operative Societies Act, 1961—Ss. 27 & 30—Dismissal from service—Chandigarh Administration took over Bank and administrator appointed—Allegation that petitioner deprived bank of large amount—On resolution matter referred to arbitrator—Action challenged that administrator had lived out maximum period of appointment and no reference could be made.

Held, that the passing of a resolution is not an empty formality so that in the absence of a valid resolution of a committee, no reference under Sections 55 or 56 of the Act can be initiated. We, are, therefore, of the considered view that on November 3, 1987, the date of the resolution, the Administrator having lived out his maximum period of appointment, could not pass a valid resolution and in the absence of such a resolution, the arbitration proceedings initiated thereunder, were equally void.

(Para 5)

B. S. Khoji, Advocate, for the Petitioner.

Harbhagwan Singh, Sr. Advocate with Rup Chand Chaudhry,
Advocate, for the Respondents.

A. K. Mittal and G. S. Sandhwalia for Respondent Nos. 1, 2
and 6.

Balwinder Singh, Advocate for D. V. Sharma Advocate for respon-
dent No. 8.

JUDGMENT

H. S. Bedi, J.

(1) Respondent No. 5 the Chandigarh State Co-operative Bank Limited, Chandigarh, is a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961 (hereinafter called "the Act") as amended by the Punjab Legislature upto November 1, 1966. The petitioner was serving as a Junior Accountant with the Bank, when he was dismissed from service,—*vide order*

dated November 9, 1984. In the meantime, as the affairs of the bank were not being run in a proper manner the Union Territory, Chandigarh, Administration removed the Managing Committee of the Bank and appointed an Administrator on December 29, 1981, who actually took over on January 1, 1982. As the maximum term for which an Administrator could hold office had been fixed at five years under Section 27 of the Act, the Registrar removed the Administrator but appointed a Supervisor instead,—*vide* Annexure P-2 dated September 9, 1987. The period of the Supervisor was further extended under Annexure P-3 dated April 18, 1988. As there were allegations against the petitioner of having deprived the bank of a very large sum of money, the Supervisor,—*vide* resolution passed on November 3, 1987, Annexure P-6 to the petition, raised a dispute against him and referred it under Sections 55 and 56 of the Act, to the arbitration of Shri Labh Singh, Inspector, Co-operative Societies on November 23, 1987 by order Annexure P-4 to the petition. This reference led to the filing of the present writ petition impugning the orders Annexure P-6, primarily on the ground that as the maximum period provided under Section 27 of the Act for the continuance of an Administrator by whatever name called was to be five years and no more and this period having come to an end on December 31, 1986, no reference to arbitration could be made thereafter and the proceedings taken pursuant to the resolution, were without jurisdiction. In support of his argument, Mr. B. S. Khoji, learned counsel for the petitioner has relied upon *Balwant Singh and another v. The State of Punjab and others* (1), and an unreported judgment of this Court in Civil Writ Petition No. 5700 of 1989, decided on September 27, 1989 (*Balwant Singh and others v. The Union Territory, Administration*) and appended as Annexure P-9 to the writ petition. It has also been submitted by Mr. Khoji, that passing of a valid resolution was a *sine qua non* for the initiation of arbitration proceedings under Sections 55 and 56 of the Act and if such a resolution was not in order, no proceedings could be taken pursuant there to. Reliance for this submission has also been placed on *Vice-Chancellor, Utkal University and others v. S. K. Ghosh and others* (2), and a Single Bench decision of this Court in *Udat Bhagat Ram Nazool Co-operative, Society v. Leekal Singh and others* 1980 (3).

(2) In the replies filed on behalf of the respondents, it has been admitted that an Administrator could not continue in office beyond

(1) 1973 P.L.J. 427.

(2) A.I.R. 1954 S.C. 217.

(3) 1980 (2) I.L.R. 112.

a period of five years in view of the provisions of Section 27 of the Act, but it has been asserted that a Supervisor was not an Administrator and the sanction for the appointment of a Supervisor was envisaged by the judgment of this Court in the case of *Ram Singh and others v. Shri S. L. Kapur, Registrar, Co-operative Societies, Punjab and others* (4). The respondents have also urged in addition that any action taken by the Administrator or a Supervisor of the Committee whose appointment was subsequently held to be bad, was duly deemed to have been validated by Section 29 of the Act, and *ipso facto*, the reference to arbitration was also in order.

(3) We have heard the learned counsel for the parties and have gone through the record and also the judgments cited at the bar.

Section 27 of the Act, as applicable to the Union Territory, is reproduced below :—

“Supersession of Committee.—(1) If, in the opinion of the Registrar, the committee of any co-operative society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or its members, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee; and

(a) order fresh election of the committee; or

(b) 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.”

It will be seen from a bare reading of the Section itself that the total period for which a committee could stand superseded and be put under the control of an Administrator or any other officer by whatever name called could not exceed five years. The words “that the aggregate period does not exceed five years.” Clearly make out that a mandate has been given by the statute that this period was sacrosanct and could not be extended on any ground whatsoever. Sub-section (4) of Section 27 of the Act further supports our view

(4) 1974 P.L.J. 568.

as it imposes a duty on the Administrator at the expiry of the term of his office of arrange for the constitution of a new committee. Section 27 therefore admits of no ambiguity and it must be held that an Administrator/Supervisor who was appointed for the first time with effect from January 1, 1982, could not continue in office beyond December 31, 1986. The judgments cited by the learned counsel for the petitioner do very substantially support his case. In *Ram Singh's case* (supra), the Court while dealing with a similar situation held that it was not open to the Registrar or any other functionary under the Act to extend the period fixed thereunder and it was in the light of this mandate that a duty had been affixed on the Administrator to ensure that a committee was inducted before the expiry of maximum term during which the administrator could hold office. It was also held that if it was not possible to hold such an election, or that the affairs of the committee were in such a bad shape that no election could be held, it was for the Registrar acting under Section 57 of the Act to order the liquidation of the Society. In *Balwant Singh's case* (supra) which is a judgment pertaining to the respondent bank itself, the Court observed thus :—

“As is evident from order Annexure P-3, passed by the Registrar, Co-operative Societies U.T., Chandigarh the Managing Committee of the Chandigarh State Co-operative Bank Ltd. Chandigarh, was removed on 29th December, 1981 and an Administrator was kept appointed from time to time till 4th August, 1987 and since then the Registrar has delegated his powers to the Land Acquisition Officer-cum-Deputy Registrar Co-operative Societies, U.T. Chandigarh, to be a Supervisor in his place for day to day business and affairs of the Bank. This state of affairs cannot be allowed to continue for every. Day-to-day functioning may be good as a stop-gap arrangement but cannot be permitted to lead to a permanency in such affairs. The law postulates only on Administrator in the absence of the Committee and that too only to the maximum period of five years. The appointment of a Supervisor is totally alien to the concept and the domain of jurisdiction of the Registrar-Co-operative Societies. It was thus incumbent on him to arrange for an election in the year 1987 itself when a supervisor was appointed. Be that as it may, we now direct the Registrar Co-operative Societies, U.T., Chandigarh to frame and announce the election programme forth with within the

minimal period as prescribed under the law. He should start the process within one month from today.

“With these directions, we allow the writ petition at the motion stage.”

(4) It will thus be seen that a period beyond five years was totally unauthorised. Reliance of the respondents on *Ram Singh's case* (supra), is misplaced and does not advance their case whatsoever. In this case also, the Court found that the continuation of the Administrator beyond the maximum period provided was illegal, yet some arrangement had to be made till the new election took place and it was in that situation that the Court itself directed that a Supervisor be appointed to administer the day to day working of the society till the elections were held. It is also to be noted that the appointment of the Supervisor was at the instance of the Court keeping in view the peculiar facts and circumstances, but the authorities under the Act cannot take the support of the judgment and appoint a supervisor beyond the period fixed thereunder.

(5) Mr. Khoji, learned counsel for the petitioner also appears to be right when he submits that the passing of a resolution is not an empty formality so that in the absence of a valid resolution of a committee, no reference under Sections 55 or 56 of the Act can be initiate. The two cases cited by him do support to his case. In *Vice-Chancellor, Utkal University's case* (supra), it was observed as under :—

“The reason for the stricter rule laid down in the cases cited before us is that though an incorporated body like an university is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolution properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member ‘in these circumstances’ would invalidate the meeting and that in

turn would invalidate resolutions which purport to have been passed as if. But this is only when such inflexible rigidity is imposed by the incorporating constitution.”

The judgment of the High Court is much to the same effect and it was held that Co-operative Society being a body corporate having succession and a common seal as envisaged under section 30 of the Act, is to act by passing a resolution authorising its Chairman or Officers to act on its behalf and in the absence of any such resolution, no valid authority can be conferred on any person to do so. We are, therefore, of the considered view that on November 3, 1987, the date of the resolution Annexure P6, the Administrator having lived out his maximum period of appointment, could not pass a valid resolution and in the absence of such a resolution, the arbitration proceedings initiated thereunder, were equally void.

(6) Faced with this situation, the respondents have taken shelter under Section 29 of the Act, which reads as under :—

“No act of a co-operative society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution or election of an officer or on the ground that such officer was disqualified for his appointment.”

A bare reading of this Section indicates that validation is confined only to such acts of a committee or any of its officer which are held vitiated by reason (i) only of the existence of any defect in the procedure followed (ii) or in the constitution of the Committee or (iii) in the appointment or election of an officer on the ground that such officer was disqualified for his appointment. It would be clear from the above that this Section specifically talks of validating an action taken by the committee or its employees, but cannot, by any stretch of imagination, validate an action taken by the Supervisor whose very continuation in office was void, being contrary to the mandate of the Act itself. While dealing with such a situation, this Court in *Ram Singh's case* (supra) observed that this provision was applicable only to a case of an officer whose appointment was either defective or who was disqualified for appointment to begin with, but it could not be made applicable to the case of an arbitrator whose appointment had gone beyond a period of five years prescribed under the Act as after the expiry of the said period, such officer would become *functus officio* and

could not, as such, pass any order in connection with the affairs of a society.

(7) For the reasons recorded above, the present petition is allowed, the resolution Annexure P-6 and the action taken thereafter on its basis are quashed but the committee which is said to have been recently elected, is granted permission to proceed afresh against the petitioner in accordance with law. There will, however, be no order as to costs.

J.S.T.

Before Hon'ble J. S. Sekhon, S. S. Grewal & Amarjeet Chaudhary, JJ.
(F.B.)

KRISHAN LAL AND OTHERS,—*Petitioners.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 11541 of 1990

May 4, 1994.

Indian Penal Code, 1860—Ss. 107, 304-B and 498A—Indian Evidence Act—Ss. 113-A and 113-B—Dowry Prohibition Act 1961 as amended by Act 43 of 1986—S. 2—Code of Criminal Procedure, 1974—S. 315—Criminal Law (Second Amendment) Act No. 46 of 1983—Constitution of India, 1950—Arts. 14, 20, 20 (2) & (3) and 21—Dowry death—Presumption as to abetment of suicide by a married woman—Vires of Section 304B of the Indian Penal Code and S. 113-A and 113-B of the evidence Act challenged as being violative of Arts. 14, 20, 20(2) & (3) and 21—Held, the said provisions are constitutionally valid.

Held, that it cannot be said by any stretch of imagination that Section 498-A or Section 113-A has introduced invidious classification qua the treatment of a married woman by her husband or relative of her husband vis-a-vis the other offenders. On the other hand, such women form a class apart than the one which married more than seven years earlier to the commission of such offence because with the passage of time after marriage and birth of children there are remote chances of treating a married woman with cruelty by her husband or his relatives. Thus, the classification is reasonable and has close nexus with the object sought to be achieved i.e. eradication of the evil of dowry in the Indian social set up and to ensure that the married women live with dignity at their matrimonial home.

(Para 14)