

The Bank of India Officers' Association (South Zone), represented by Its General Secretary, T.S.K. Chari, Bank of India Vs. the Management of Bank of India, represented by Its Chairman-cum-Managing Director and Anr.

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Court : Chennai

Decided On : Jun-15-1989

Reported in : (1991)1MLJ119

Appellant : The Bank of India Officers' Association (South Zone), represented by Its General Secretary, T.S.K. C

Respondent : The Management of Bank of India, represented by Its Chairman-cum-Managing Director and Anr.

Judgement :

S. Mohan, Officiating C.J.

1. Even at the out set we have to mention that in view of the identity of issues, while Writ Appeal No. 719 of 1985 was listed for hearing to-day, both the counsel made a request that Writ Petition No. 10463 of 1983 may also be taken up. Accordingly they are listed. Both these matters can be dealt with under a common judgment since identical issues arise for our determination.

2. Writ Appeal No. 719 of 1985: The writ appeal is directed against the Judgment of Natarajan, J. (as he then was) rendered in Writ Petition No. 1682 of 1985. In that Writ petition the prayer was for a certiorarified mandamus to quash the notification of the Union of India, dated 1-3-1984 and direct the second respondent the Union of India to appoint an Officer-Employee who is the principal office bearer of the Federation of Bank of India Officers' Association or of its affiliates namely any of the Bank of India Officers Association to the post of Director. In Writ Petition No. 10463 of 1983, originally the prayer was for a declaration declaring that Clause 3(c) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 is void, unconstitutional, invalid and inoperative in law, inasmuch as the same is violative of Articles 14 and 16 of the Constitution of India and contrary to the mandate contained in Article 43-A of the Constitution of India insofar as the members of the petitioner Association is concerned. However, an amendment application had been taken out to the following effect in W.M.P. No. 11860 of 1986.

to issue a writ in the nature of mandamus directing the second respondent - Union of India, represented by the Secretary, Ministry of Finance, Department of Banking, New Delhi to appoint after consultation with the Reserve Bank under Clause 3(iii)(c) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 the Principal office bearer of the recognised Federation (which for the present is the Federation of the Bank of India Officers Association).

The petition for amendment was ordered on 27-10-1986.

3. The facts lie within a narrow compass. In exercise of its powers conferred under Section 9 of the Banking

Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Central Act, 1970), hereinafter referred to as the 'ACT', the Union of India, framed the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, hereinafter referred to as the 'Scheme'. Clause 3(c) of the scheme provides for the appointment of one Director from among the employees of the Nationalised Bank who are not workmen. The said appointment is to be made by the Central Government after consultation with the Reserve Bank of India.

4. Till 1982-83, in all the Nationalised Banks, one of the principal office bearers of the recognised representative officers Association/Federation was appointed as Officer-Employee Director, hereinafter called as Office - Director in the Board of Management of the Nationalised Bank. However, in 1983 there was a departure because of certain political pressures. The Central Government purported to appoint officer-employees who are not the principal office bearers of the recognised Officers - Association/Federation affiliated to the I.N.T.U.C. The appellate Association and several other similar associations filed writ petitions in the various High Courts challenging the appointment of officers as Directors belonging to minority Association on the Board of Management. The principal contention was that the officer-employee must be a principal office bearer of the recognised Union Federation, or Association, as the case may be.

5. While those writ petitions were pending, the Union of India, amended Clause 3 of the scheme so as to make the office of the Boards of Management valid during the pleasure of the Central Government, while prior to this the tenure of the office was 3 years, with eligibility for re-appointment. This amendment was brought about by S.O. 144(E) dated 1.3.1984 stating that a Director appointed under Sub-clauses (b), (c), (d), (e), (f), (g) or (h) of Clause 3 shall hold office during the pleasure of the Central Government. However, for the sake of completion, we have to refer the another notification dated July 30, 1985 made in S.O. 559(E). That reads as follows:

2. In the Nationalised Banks (Management and Miscellaneous Federations) Scheme, 1970, (a) Clause 9 shall be renumbered as Sub-clause

(1) thereof and after-Sub-clause (1) as so renumbered, the following sub-clause shall be inserted namely:

(2) subject to the provisions of Sub-clause (1) such director, shall hold office for such term, not exceeding three years as the Central Government may specify at the time of appointment.

It is under these circumstances the writ petition came to be filed for the relief stated above.

6. Two contentions were urged before the learned single Judge. (1) Under Section 9(3) of the Act every Board of Directors of Nationalised Bank shall include representative of the employees and depositors of such Bank and (2) such other persons as may represent the interests of farmers, workers and artisans. It was on the basis of Section 9, the scheme came to be made. In the scheme under Clause (b) one director from the employees of Nationalised Bank who are workmen is to be appointed by the Central Government. The said appointment can be from a panel of three such employees furnished to it by the representative Union. Thereafter it lays down an elaborate procedure as to what should happen in the event of there being no representative Union or the representative Union fails to furnish the list etc. However, while dealing with the appointment of a Director from among the employees who are not workmen, the-Central Government is given absolute discretion and the only requirement is consultation with the Reserve Bank. Where therefore, under Clause (c) of Regulation 3 of the scheme no guidelines had been prescribed and the matter has been left to the arbitrary decision of the Central Government, in contradistinction to Clause (b) there is a clear discrimination violation of Article 14 of the Constitution.

7. Secondly, the original term of office was for a period of three years. By reason of the amendment of the scheme on 1st March, 1984, the term is now made at the pleasure of the Central Government. This again vests the Central Government with arbitrary power. Both these contentions were rejected by Natarajan, J. (as he then was). In the course of the judgment the learned Judge has referred to an unreported judgment of the Andhra Pradesh High Court rendered in D.V. Ramdas v. State Bank of India represented by its Chairman etc.,

W.A. No. 1603 of 1984. Notwithstanding the fact that the provisions of the State Bank of India Act and the rules made thereunder were identical in terms, yet the learned Judge expressed his dissent with that judgment and held that there was nothing discriminatory. He was of the view that under Clause (c) who is required to be appointed by the Central Government is only a representative and not a chosen or an elected or popular representative. It is against the dismissal of the said writ petition, W.A. No. 719 of 1985 has come to be preferred. On identical grounds the prayer originally was made for striking down Clause 3(c), but realising that should such a clause be struck down there would be no representative at all for office employee, the amendment, has come to be made so as to pray for a mandamus to direct the Union of India to appoint after consultation with the Reserve Bank in accordance with Clause 3(c) of the scheme a principal office bearer of the recognised Federation.

8. Mr. N.G.R. Prasad, learned Counsel appearing for the appellant in the writ appeal and for the petitioner in the writ petition, after taking us through Section 9 of the Act and the provisions, particularly Regulation 3 of the scheme, would submit as under: The very object of having these persons, namely workman or a director from the workmen or from the officer-employees who are not workmen is to have effective representations to lay down proper policies with regard to banking, financing of loans etc. In the case of workmen. Regulation 3 adumbrates an elaborate procedure as to how a panel is to be submitted by the representative Union within a particular time. Thereafter, if within the time it is not submitted or if there is no representative union as to what should happen are all set out in detail. Such a procedure has not been envisaged in Clause 3(c) of the scheme as far as Employee-Officers other than workmen are concerned. This is a case of omission. In order to give meaningful representation Clause 3(c) should be so read as to mean only the principal office bearer of the Association or Federation. Why the provision has been so made elaborately as far as workmen are concerned is because the labour is well organised, their representatives are protected under the labour laws, they are represented by Unions and Associations. In the case of officer-employees other than workmen, though no doubt it was not organised today there are representative Unions which have a vital say in the matter. Therefore, only an office bearer of the Union could effectively represent the interests of the Officer-employees. Such a representation or appointment on the Board is not an empty formality, or an exercise in futility.

9. Hitherto the appointments under Clause 3 were only the office bearers of the Association or Federation of the Officer-Employees. Therefore, if the Union of India has so interpreted the scheme there is no justification for a sudden departure having regard to the object of the scheme. This is the way it ought to be interpreted. As a matter of fact, in addition to the unreported judgment of the Andhra Pradesh High Court rendered in D.V. Ramdas v. State Bank of India represented by its Chairman, etc. W.A. No. 1603 of 1984, the learned Counsel would also cite the decision reported in Jitender Bahadur v. Union of India 1989 L I.C. 720 a judgment of a learned single Judge of the Andhra Pradesh High Court, 'Finally it is urged that though as per the law in the case of winding up with reference to a company the workers have no right to represent, the Supreme Court, held in National Textile Workers Union etc. v. P.K. Ramakrishnan and Ors. (1983) 1 L.L.J. 45, that the workers had a right to represent. On the same line of reasoning Clause 3(c) also must be interpreted, on in the second context of other provisions.

10. The second submission of the learned Counsel is that while originally the appointment was for a period of 3 years with a right to re-appointment, that cannot be arbitrarily taken away by amending the scheme so as to make it purely at the pleasure of the Union of India. This again is violative of Article 14 of the Constitution.

11. Mr. M.R. Narayanaswami, learned Counsel appearing for the Bank would submit that in the guise of interpretation the court has no power at all to add to the legislation. Where consciously one procedure was set out, under the scheme for the appointment of a Director from among the workmen under Clause 3(b) and that procedure is departed from as far as the appointment of a director from among the officer-employees, it should be presumed that the Parliament was aware of the position, and if, there for two different procedures had been laid down the court cannot import into Clause (3) something which was not in contemplation at all by the Parliament. The only safeguard that is provided in Section 9(3) is, consultation with the Reserve Bank of

India. Beyond that, there is no scope for importing principles which are alien to Clause 3(c) namely that a representative must be a principal office bearer of the Association or Federation. Nor again could it be said that only such a principal office bearer could effectively represent the interests of the Office employees. On the same parity of reasoning what would happen in the case of depositors or artisans and farmers. Therefore, the deliberate departure manifests the intention of the Parliament. There is no ambiguity in the language nor is it a case of causes omnis for the Court to supply the same. There is nothing arbitrary or unjust in the scheme. The rulings of the Andhra Pradesh High Court make reference to Article 43(a) of the Constitution of India which came into force only in the year 1976 under the 42nd Amendment, while the Scheme was there right from 1970. Therefore the considerations which were prevalent in the case of the right of the workers to make representations in a winding up petition cannot be imported here.

12. As a matter of fact, the judgment of the Andhra Pradesh High Court rendered in *D.V. Ramadas v. State Bank of India* represented by its Chairman etc. W.A. No. 1603 of 1984, has been dissented from by Natarajan, J. in the judgment under appeal in Writ Appeal No. 719 of 1985 for very valid reasons. The learned Counsel would commend the acceptance of the judgment by us.

13. As regards the second submission, if the appointments are made under the very same scheme, it cannot ever be contended that the Scheme is an unalterable one and for all times to come it should remain static for three years. Nor again could it be contended that the Union of India will have no power to prescribe the term. Therefore, this contention is also untenable.

14. Mr. R. Shanmugham appearing for the Union of India also adopts the arguments of Mr. M.R. Narayanaswami.

15. In order to appreciate the respective contentions, we will first briefly refer to the object of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. The preamble reads as follows:

An Act to provide for the acquisition and transfer of the undertaking of certain banking companies, having regard to their size, resources, covering and organisation, in order to control the height of the economy and to meet progressively, and serve better, the needs of development of the economy in conformity with national policy and objectives and the matters connected therewith or incidental thereto.

Section 9 deals with the power of the Central Government to make a scheme Sub-section (3) reads as follows:

Every Board of directors of a corresponding new bank, constituted under any scheme made under Sub-Section (1) shall include:

(a) representatives of the employees, and of depositors, of such bank and

(b) such other persons as may represent the interests of each of the following categories, namely, farmers, workers and artisans, to be elected or nominated in such manner as may be specified in the scheme.

In exercise of its power the scheme came to be made understanding order No. 3793, dated 16-11-1970 and the scheme was published on 23.11.1970 in the Government of India, Gazette. Chapter II deals with the Board of Directors. We will now extract the relevant portion of regulations:

Constitution of the Board: As soon as may be after the commencement of this scheme, the Central Government shall, by notification in the Official Gazette, constitute the Board of a nationalised bank consisting of-

(a) Not more than two whole time directors of whom one shall be the Managing Director, to be appointed by the Central Government after consultation with the Reserve Bank:

(b)(1) one director, from among the employees of the nationalised bank, who are workmen, to be appointed by the Central Government from out of a panel of three such employees furnished to it by the representative

union, within a date to be specified by the Central Government which date shall not be more than six weeks from the date of Central Government requiring the respective Union to furnish the panel of names:

Provided that where the Central Government is of opinion that owing to the delay which is likely to occur in the verification and certification of any union of federation as a representative union it is necessary in the interests of the nationalised bank so to do, it may appoint any employee of the nationalised bank who is a workman to be a director of that bank.

(ii)(A) Where there is no representative union to represent the workman of a nationalised bank.

(B) Where such representative union, being in existence, omits or fails to furnish any panel of names within the specified date, or

(C) Where all the persons specified in the panel furnished by the representative union are disqualified, whether under item (ii) of this sub-clause or under Clause 10, the Central Government, may, as Clause 10, the Central Government may in its discretion, appoint such workmen of the nationalised bank as it may think fit to be a director of such bank:

(iii) a workman of a nationalised bank shall be disqualified for being appointed as a director unless-

(a) he is and has been serving for a continuous period of not less than five years in the nationalised bank or in the existing bank of which the nationalized bank is the corresponding new bank, or partly in one and partly in the other and

(b) he is of such age that there is no likelihood of his attaining the age of superannuation during his term of office as a director;

(c) one director, from among the employees of the nationalised bank who are not workmen, to be appointed by the Central Government after consultation with the Reserve Bank.' On a reading of the above, it is very clear that clear distinction has been brought about with regard to the Director to be appointed from among the employees of the nationalised bank who are workmen. Such an appointment must be from (i) out of a panel of three such employees (ii) such a panel must be furnished by the representative Union, (iii) such furnishing of the panel must be within a date specified by the Central Government (iv) such date shall not be more than six weeks from the date of the communication made by the Central Government requiring the representative union to furnish the panel of names.

16. The proviso talks of the delay with which we are not seriously concerned. Where there is no representative union or where there is such a representative union but omits or fails to furnish the panel of names within the specified date, or where all the persons specified in the panel are disqualified, the Central Government may, at its discretion, appoint such workmen. Two disqualifications are set out in Clause 3(a)(c)(iii) which have been extracted already. At this juncture we may usefully refer to Regulation 2, Clause (1) which is as follows:

'Representative union' means a union registered under the Trade Union Act, 1925 (16 of 1925), or a federation of such unions where the union or federation as the case may be, is certified after due verification, as having the largest number of workmen employed in the nationalised bank as members who have regularly paid their dues to the union or to any of the union constituting the federation:

Provided that no Union or Federation, as the case may be, shall be deemed for the purposes of this scheme, to be a representative union unless the verified membership of such union or the unions constituting the federation, as the case may be, is fifteen per cent, or more of the total number of workmen employed by the nationalised bank.:

From the above it is clearly seen that an elaborate procedure is contemplated as far as appointment of a Director from among the workmen. It can easily be visualised that having regard to the large number of

workmen in any nationalised banking institution it will be difficult for the Union of India to weigh their claims and arrive at a conclusion with regard to acknowledgment as director as to who would be the fit person. Therefore, parliament in its wisdom thought that the representative union could send a panel of names from out of which it can select for appointment. With this background, where there is a deliberate departure under Clause (c) with regard to employees of the bank who are not workmen, we do not know how we can import these considerations which were not even in contemplation of the Parliament while laying down the procedure under Section 9(3) with regard to appointment of Directors. As a matter of fact it is relevant to note that the Board of Directors is to include (i) representatives of employees, (2) depositors, (3) interests of the following categories: (a) farmers; (b) workers; and (3) artisans. The species as workmen and officers-employees is what is contemplated under the Scheme which makes a clear cut distinction. No doubt, the argument of the learned Counsel for the appellant is that as on today, the officer-employees are well organised and, therefore, it would be proper to call upon the Association or Federation of supply a panel of names. This argument, to our mind, appears to be bordering on idealism and not what the statute stands for. We do not think this is a case of causes omnis wanting to make a clear distinction between workman on the one hand and officer-employees on the other. If we are to import those considerations applicable to workmen to officer-employees, we will actually be legislating which is forbidden. No court in the guise of such interpretation could add to the legislation and thereby usurp the functions of Legislature or do the role of legislatures. It would be apt to quote the following dictum of justice story:

I have pondered over the case before us with anxious deliberations. I entertain great respect for the legislature whose Acts are in question...no less respect for the enlightened tribunal whose decision we are called upon to review. I have endeavoured to keep my steps super antiques vias of the law, under guidance of authority and principle. It is not for Judge to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but to pronounce the law as we find it; and having done this, our justification must be left to the imperial judgment of our country.

This dictum clearly ignores the arguments of the learned Counsel for the appellant.

17. We do not think that Article 43-A of the Constitution of India could have also any relevance when the legislative intent is very clear. Further, as rightly submitted by Mr. M.R. Narayanaswami, Article 43(A) came to be introduced by the Constitution 42nd Amendment only in the year 1976 while the Scheme was there even prior to the same. With great respect, we are unable to agree with the line of reasoning of the Division Bench of the Andhra Pradesh High Court in D.V. Ramadas v. State Bank of India represented by its Chairman, etc. W.A. No. 1603 of 1984 and equally with the decision reported in Jitender Bahadur v. Union of India 1989 L. I.C. 720. The provisions dealt with by the Andhra Pradesh High Court though not relate to the Scheme in question but identically worded provisions concerning State Bank of India we are of the view that the rationale of the said judgment does not seem to be correct.

18. No doubt, in National Textile Workers' Union etc. v. P.R. Ramakrishnan and Ors. (1983) 1 L.L.J. 45, the right of workers to represent in a winding up petition came, to be upheld. But here it is not the right to represent itself that is in question but who is to represent. This makes an ocean of difference. So long as the Officer - employees as a category is represented on the Board of Directors, we consider there is absolutely nothing wrong. Besides, we are also to hold that these considerations of Associations or Unions are alien to the officer-employees. That is not in the contemplation of the scheme at all. Hence this case is clearly distinguishable.

19. It may be, by an accident, for a long number of years, only office bearers of the Officer-Employees Union might have been appointed as Directors on the Board. But from that it does not follow that the Union has got a vested right. Nor again does it follow that we should interpret Clauses (3) in such a fashion in clear violation of the statutory provision. We are also constrained to remark that it cannot be urged that a representative means an elected or a popular representative as rightly held by Natarajan, J. (as he then was). The word 'representative' has been defined in Oxford and Chambers Dictionaries as follows:

Per Oxford Dictionary:

representative: Serving as portrayal or symbol of (a group representative of theological virtues; that presents or can present, idea to the mind (imagination is a representative faculty; (of art) representational; typical of a class or classes; containing typical specimens or all or many classes (the truth of an allegory is representative not literal; call a meeting of representative men; a very representative selection, collection); consisting of elected deputies or representatives; based on representation of nation etc., by such deputies (representative government, institutions);....

As per Chambers Dictionary:

representative: representing; exhibiting a likeness; typical pertaining to representation(n) a sample; a typical example or embodiment; one who represents another or others, as a deputy, delegate, Ambassador Member of Parliament, Agent, Successor, heir, the head of a family....

So long as there is a representative, though not a principal office bearer of the Union to represent the interests of the Officer-employees that fully satisfies the statutory requirement. Therefore we reject the first of the arguments advanced by the learned Counsel for the appellant.

20. Turning to the second argument, it was by the very scheme originally the term of the Director was for a period of three years. But whereby the amendment of the Scheme that fixed term had been taken away and the holding of the office at the pleasure of the Central Government has been provided, we are unable to see how it is open to the appellant or the petitioner to contend that the Director of the Officer-employee must have a fixed term. As rightly urged by the respondents, the scheme once framed cannot remain permanent or unalterable for all time. Depending upon the needs, the Scheme could be altered. Therefore this argument is also to be rejected.

21. In the result, we dismiss both the writ appeal and the writ petition. However, there will be no order as to costs.

22. After we pronounced the Judgment, Mr. N.G.R. Prasad, made an oral application for grant of leave to Supreme Court. We do not think, having regard to the clear legislative intendment, this is a fit matter to be decided by the Supreme Court. Hence, leave is refused.

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