

PETITIONER:
THE REGISTRAR, CO-OPERATIVE SOCIETIES

Vs.

RESPONDENT:
DHARAM CHAND AND OTHERS

DATE OF JUDGMENT:
27/04/1961

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA

CITATION:
1961 AIR 1743 1962 SCR (2) 433

ACT:
Co-operative Societies-Co-operative Bank Defalcation of bank funds-Show cause notice to committee members and subsequent removal by the Registrar-Misfeasance application by shareholders against committee members- hearing of application by the Registrar -Legality-Bias-Natural justice-Co-operative Societies Rules, rr. 17, 18, 30(3)-Co-operative Societies Act, 1912 (2 Of 1912), s. 17.

HEADNOTE:

An investigation of the affairs of a Co-operative Bank registered under the Co-operative Societies Act, 1912, on the disappearance of the manager of the bank in 1953, showed that a very large amount of money had been defalcated. On February 26, 1955, the Registrar of Co-operative Societies gave notice to the members of the managing committee of the bank asking them to show cause why the committee should not be suspended, under r. 30(3) Of the Rules framed under the Act. In reply the members denied allegations of mismanagement etc., but the Registrar, however, appointed an administrator of the bank after removing the managing committee. In the meantime, some of the shareholders of the bank made an application before the Registrar under r. 18 of the Co-operative Societies Rules, in the nature of a misfeasance proceeding against the members of the managing committee, praying for an award directing them to pay the amount found defalcated, on the ground that it had been occasioned by a glaring breach of the law and the rules

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and the bye-laws of the bank and betrayal of confidence by the members of the committee. The Registrar originally appointed an arbitrator for this purpose, but, on the inability of the arbitrator to act due to his illness, the Registrar informed the parties that he would decide the dispute himself. The legality of the procedure adopted by the Registrar was challenged in a petition filed before the judicial Commissioner, on the ground that he was in the position of a party and had expressed his opinion unequivocally against the members of the committee in the

notice he gave on February 26, 1955, and therefore his constituting himself as a tribunal to decide the dispute under r. 18 was against the principles of natural justice, inasmuch as a party constituted himself the judge. The judicial Commissioner took the view that although the Registrar had no pecuniary or properties interest in the dispute yet in view of the circumstances of the case there was a strong likelihood of bias and therefore his acting as the tribunal would be against the principles of natural justice.

Held, that the notice dated February 26, 1955, was concerned with the collective responsibility of the members of the managing committee in the discharge of their duties, while the application made under r. 18 of the Co-operative Societies Rules was in the nature of misfeasance proceedings in which their individual responsibility as members to make good the loss caused by the embezzlement fell to be considered, and consequently there could be no inference of bias against the Registrar simply because he gave notice to show cause against the removal of the managing committee, as the two matters were quite different.

Held, further, that the fact that Registrar had general supervision over all co-operative societies could not be said to amount to a bias in him so as to disentitle him to act as a judge or arbitrator under r. 18.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1 of 1958.

Appeal from the judgment and order dated April 18, 1956, of the former Judicial Commissioner, Ajmer, in Civil Writ Petition No. 1 of 1956.

G. C. Kasliwal, Advocate-General for the State of Rajasthan, S. K. Kapur and D. Gupta, for the appellant.

S. S. Deedwania and K. P. Gupta, for respondent No. 1.

B. P. Maheshwari, for respondent No. 9.

1961. April 27. The judgment of the Court was delivered by 435

WANCHOO, J.-This is an appeal on a certificate granted by the Judicial Commissioner, Ajmer. The brief facts necessary for present purposes are these.,, There is a Bank in Ajmer known as the Commercial Co-operative Bank Limited, Ajmer (hereinafter referred to as the Bank), which is registered under the Cooperative Societies Act, No. 11 of 1912 (hereinafter referred to as the Act). Dharam Chand, respondent No. 1 (hereinafter referred to as the respondent), along with certain other respondents were members of the managing committee of the Bank. One Nandlal Sharma was the paid manager of the Bank. This man disappeared in 1953 and thereafter defalcation to the extent of about Rs. 6,34,000 was detected. Consequently, the managing committee passed a resolution suspending the business of the Bank subject to the approval of the Registrar. The then Registrar Shri Nagar approved the resolution and appointed an Inspector of Co-operative Societies to hold an immediate inquiry. He also appointed a firm of Chartered Accountants as investigating auditors. On investigation by the auditors embezzlement to the extent of about Rs. 6,34,000 was found. Thereupon the successor Registrar, Shri Chitnis, gave notice to the respondent and other members of the managing committee on February 26, 1955, asking them to show cause why the committee should not be suspended under r. 30(3) of the Rules framed under the Act. A reply to the notice was given by the respondent and

others in which they denied allegations of mismanagement, etc. The then Registrar Shri Chitnis however appointed an administrator of the Bank after removing the managing committee. In the meantime, an application was made under r. 18 of the Rules by seven shareholders of the Bank to the Registrar on April 4, 1956. Rule 18 authorises the Registrar to decide any dispute brought before him under that rule either himself or through the appointment of one or more arbitrators. Any dispute concerning the business of a Co-operative Society between members or past members of the Society or persons claiming through them, or between a member or past member or person

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so claiming and the Committee or any officer can be referred under r. 18. Such reference can be made by the Committee or by the Society by resolution in general meeting or by any party to the dispute, or if the dispute concerns a sum due from a member of the committee to the Society by any member of the Society. In consequence of this application the then Registrar appointed Shri Hem Chand Sogani, an advocate, as an arbitrator. The application was in the nature of a misfeasance proceeding against the members of the managing committee and the prayer was for an award against thirteen persons (including the respondent) directing them to pay certain amounts including the entire loss amounting to about Rs. 6,34,000, which was said to have been occasioned on account of glaring breach of law and the rules and the bye-laws of the Bank and betrayal of confidence by the members of the managing committee. The appointment of the arbitrator was challenged by the president of the managing committee before the Deputy Commissioner through a revision petition but the challenge failed. As however Shri Sogani was in ill-health, he expressed his inability to act as arbitrator. Consequently, on December 13, 1955, the then Registrar set aside the order appointing Shri Sogani as arbitrator and informed the parties that he would decide the dispute himself. This order was also challenged in revision before the Deputy Commissioner; but the attempt failed. Thereafter the present petition was filed by the respondent before the Judicial Commissioner, Ajmer, and a large number of grounds were urged in support of it, and it was prayed that the Registrar be prohibited from proceeding to deal with the application under r. 18 and the proceedings arising therefrom be quashed.

The petition was decided by the Judicial Commissioner on April 18, 1956. He negatived all the contentions raised on behalf of the respondent except one; and it is with that contention only that we are concerned in the present appeal. That contention is that the Registrar is in the position of a party and had expressed his opinion unequivocally against the respondent and other members of the-committee in the notice

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which he gave on February 26, 1955, and therefore his constituting himself as a tribunal to decide the dispute under r. 18 was against the principles of natural justice, inasmuch as a party constituted himself the judge. This contention found favour with the learned Judicial Commissioner and he held that although the Registrar had no pecuniary or proprietary interest in the dispute yet in view of the circumstances of the case there was a strong likelihood of bias and therefore the Registrar's acting as the tribunal would be against the principles of natural justice. He further held that if the Registrar had not suffered from the disability inherent in the situation, he

would have been the most proper person to decide the dispute. The petition was therefore allowed and a writ of prohibition was issued to the Registrar directing him not to proceed with the dispute before him. This was followed by an application to the Judicial Commissioner for a certificate of fitness in order to file an appeal to this court, which was granted; and that is how the matter has come up before us.

The official bias of the Registrar is sought to be based on two circumstances: the first is the notice issued by the then Registrar on February 26, 1955, asking the members of the managing committee (including the respondent) to show cause why they should not be suspended, and the second is that the Registrar is the head of the Co-operative Department and as such has certain legal powers over all Co-operative Societies (including the Bank) in his administrative capacity and therefore he would not be an impartial person to decide this dispute, particularly in view of the provisions of s. 17 of the Act.

We are of opinion that there is no force in either of the contentions. Turning to the notice of February 26, 1955, we are of opinion that there can be no inference of bias against the Registrar as such because he gave that notice and afterwards ordered the removal of the managing committee. That notice was based on the report of the investigating auditors and was concerned with the collective responsibility of the

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managing committee in the discharge of their duties. The proceedings under that notice have nothing in common with the proceedings in the present dispute which, as we have already said, are in the nature of misfeasance proceedings against certain members of the managing committee and in which their individual responsibility as members of the managing committee to make good the loss caused by the embezzlement falls to be considered. So far as the proceedings under the notice are concerned, the only question was whether on the facts found by the investigating auditors the managing committee should as a whole be allowed to act as such and all that the Registrar in that connection did was to decide on the facts found by the investigating auditors that the managing committee should no longer be allowed to manage the affairs of the Bank. That is a very different matter from the dispute in the present proceedings, namely, whether the particular members of the managing committee against whom the application under r. 18 has been made are responsible for making good the loss caused to the Bank by the embezzlement, the fact of which is not in dispute. In the present proceedings therefore the Registrar will have to decide the individual responsibility of the various members of the managing committee (including the respondent) in the matter of making good the loss caused to the Bank. We are therefore of opinion that the fact that the Registrar gave that notice for the purpose of the removal of the managing committee is no reason to hold that he would be biased in the investigation of individual responsibility of various members of the managing committee in this matter. We cannot therefore agree with the Judicial Commissioner that there can be any official bias in the Registrar on this ground in connection with the present dispute and that such bias disentitles him to act as a judge or arbitrator under r. 18.

The next contention is that the Registrar being the administrative head of the Department is in control of all

the Co-operative Societies in Ajmer, including the Bank. It is said that because of that administrative control which the Registrar exercises through his

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subordinates in the Department, he is interested to see that the blame is put on the managing committee and that his Department is freed from all blame. In, particular our attention has been drawn to s. 17 which enjoins that the Registrar shall audit or cause to be audited by some person authorised by him the accounts of every registered society once at least in every year. It is said that under this provision the Registrar has been appointing Chartered Accountants to audit the accounts of the Bank and that nothing wrong was discovered in the annual audits till the paid manager Nandlal absconded and the defalcations came to light. We fail to appreciate how this general supervision of the Registrar over all Co-operative Societies can be said to amount to a bias in him so as to disentitle him to act as a judge or arbitrator under r. 18. It is not the respondent's case that the Registrar is in any way responsible for the day to day working of the Bank. All that he is concerned with is to see that the accounts of the Bank are audited yearly, and if necessary, to make inspections of the Bank, if so authorised by the Act and the Rules. That, however, does not mean that the Registrar is bound to shield the auditors or his subordinates who might have made the inspection of the Bank and would so conduct the proceedings as to put the blame on the members of the managing committee. Even if some blame attaches to the auditors appointed by the Registrar or to his subordinates who might have inspected the Bank, their fault would be that they failed to detect the embezzlement till the paid manager absconded. That, however, does not mean that the Registrar was at any time a party to the fraud which resulted in the embezzlement. Even the Judicial Commissioner recognises that the Registrar has no personal interest in the matter and that he would but for the bias found by the Judicial Commissioner have been a most proper person to decide the dispute. Therefore even if we bear in mind the fact that the Registrar is the administrative head of the Department, we see nothing inherent in the situation which shows any official bias whatsoever in him so far as adjudication of this dispute is concerned.

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We have no reason to suppose that if any of his subordinates or the auditors appointed by him are in any way found to be connected with the fraud he would not put the responsibility where it should lie. We are therefore of opinion that the Judicial Commissioner was wrong in the view that there was anything inherent in the situation which made the Registrar a biased person who could not act as a judge or an arbitrator in this case.

It seems to us, therefore, that the learned Judicial Commissioner was in error in thinking that the Registrar was biased. For the reasons earlier mentioned, we do not think that any such blemish attached to the Registrar. That being so, no question of his inability to act as a judge under the rule of natural justice that no man shall be judge in his own cause, arises. The judgment of the learned Judicial Commissioner has to be set aside on this ground alone.

We do not wish however to be understood as having made any pronouncement that if it had been proved that the Registrar was suffering from any bias, then the present would have been a fit case for the issue of a writ of prohibition as asked by the respondent. Before the writ could be issued a

further question would have to be decided whether in view of the statute, that is, r. 18 of the Rules framed under s. 43 of the Act, there was any scope for applying the rule of natural justice on which the contesting respondent relied. A question of this kind was mentioned in Gullapalli Nageswar Rao and Others V. State of Andhra Pradesh and Others (1). In the view that we have taken it is unnecessary to go into that question and we do not do so.

The result is that the appeal is allowed and the judgment of the Judicial Commissioner is set aside. The petition will stand dismissed. Respondent No. 1 will pay the costs throughout. We trust that there will be no further reason to delay the termination of the proceedings under the rules by the Registrar.

Appeal allowed.

(1) [1960] 1 S.C. R. 580, 587.

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