

relied upon in this behalf are *Management of Chandramalai Estate Erndkulam v. Its workmen and another and McLeod and Co. Ltd. v. The Workmen* (supra), where blanket allowance and tiffin allowance were allowed respectively but these are the cases under the Industrial Disputes Act and, therefore, have no applicability to the facts of the present case and are thus clearly distinguishable.

(21) The result of the above discussion is that since the petitioners have no vested right in claiming House Rent Allowance and it is a mere concession which is being paid under the executive instructions from time to time, no petition for a writ of *mandamus* directing that the petitioners be paid House Rent Allowance is maintainable.

(22) Consequently all the writ petitions challenging the orders Annexures P-3 and P-4, dated 30th August, 1988 are hereby dismissed with no order as to costs.

R.N.R.

Before : G. C. Mital and Amarjeet Chaudhary, JJ.

SHIV KUMAR BAGRA AND ANOTHER,—Petitioners

versus

THE PANCHKULA URBAN CO-OPERATIVE BANK LIMITED,  
PANCHKULA, DISTRICT AMBALA AND OTHERS,—Respondents.

Civil Writ Petition No. 355 of 1990.

27th March, 1990.

*Haryana Co-operative Societies Act, 1984—Ss. 34 and 94—Registrar placing the Board of Directors under suspension in exercise of powers u/s 34 pending proceedings into charges of mismanagement—Members of the Board removed on proof of allegations—S. 94 making special provisions for insured cooperative banks and removal of the committee only if so required by the Reserve Bank of India—Removal of committee u/s 34 is without jurisdiction—In case of*

Shiv Kumar Bagra and another v. The Panchkula Urban Cooperative Bank Limited, Panchkula, District Ambala and others  
(G. C. Mital, J.)

*insured cooperative banks, removal of committee must be in accordance with S. 94—The non-obstante clause in S. 94 excludes applicability of S. 34—In absence of directions by the Reserve Bank of India, order of dismissal of the members of the Board is illegal.*

*Held*, that a reading of sections 34 and 94 of the Haryana Co-operative Societies Act, 1984 will show that if it is not a case of insured cooperative bank then Section 34 of the Act would be applicable but in case of an insured bank there is special provision in Section 94 of the Act. Not only that it is mentioned in Section 94 of the Act itself that it is special provision for an insured cooperative bank. Opening words in this section are "Notwithstanding anything contained in this Act", which means in spite of anything contained in any other provision of the Act, in case of insured co-operative banks, Section 94 of the Act alone would be applicable to the exclusion of Section 34 if action is required to be taken against the Managing Committee or other Managing body (by whatever name called) of the bank. Therefore, the non-obstante clause, notwithstanding anything contained in this Act, has to be born in mind while coming to the conclusion whether Section 94 of the Act excludes the applicability of Section 34 of the Act in the case of an insured cooperative bank. In this view of the matter, we are of the opinion that in the case of an insured cooperative bank, special provisions contained in Section 94 of the Act would be applicable and not Section 34 of the Act.

(Paras 6 & 7)

*Held*, that the law framers kept in view the special rights of an insured co-operative bank and for that reason made a special provision as is contained in Section 94 of the Act, wherein it was provided that if action is to be taken against an insured cooperative bank, it will be taken if so required by the Reserve Bank. In this case, there is no such requirement by the Reserve Bank of India and in the absence thereof Registrar under Section 94 of the Act could not take action against the Managing Committee or the Board of Directors. Hence, it has to be held that the initiation of proceedings by the Registrar was without jurisdiction and the order of suspension and dismissal of the members of the Board of Directors are bad.

(Paras 8 & 10)

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying as under:—*

- (i) *That the records of the case may kindly be called for ;*
- (ii) *That after a perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may be pleased to grant the following reliefs:—*
  - (a) *Issue a writ quashing the order dated 15th December, 1989. (Annexure P-6) passed by the Deputy Registrar,*

*Cooperative Societies, Kurukshetra, respondent No. 3 exercising the powers of the Registrar, Cooperative Societies Haryana, under Section 34 of the Haryana Cooperative Societies Act, 1984, whereby the Board of Directors of the Panchkula Urban Cooperative Bank Limited, Panchkula, has been removed which was already under suspension under Section 34, and further ordering the continuance of appointment of Assistant Registrar, Cooperative Societies, Ambala (already appointed) as Administrator of the Bank for a period of one year or till the election of the Board of Directors, whichever is earlier ;*

- (b) *Issue a writ holding that the action taken under Section 34 of the Haryana Co-operative Societies Act, 1984 whereby the Board of Directors had been earlier suspended and now it has been removed,—vide the impugned order is wholly without jurisdiction, illegal, arbitrary, nonest, bad in law; and as such the whole proceedings are void abinitio.*
- (iii) *That any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case ; and for grant of such relief to which the petitioner may be found entitled.*
- (iv) *That the requirement of filing the certified copies of annexures may kindly be dispensed with in view of the urgency of the matter ;*
- (v) *That the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter ;*
- (vi) *That the costs of this petition may kindly be awarded in favour of the petitioner and against the respondents herein as they have been put to avoidable expense at their hands ;*
- (viii) *It is further prayed that during the pendency of the petition in this Hon'ble Court, the operation of the impugned order Annexure P-6 may kindly be stayed.*

S. D. Bansal, Advocate, for the Petitioners.

G. S. Sandhu, Advocate, for Respondent No. 1.

S. K. Sood, D.A. Haryana, for Respondents No. 2 to 4.

Shiv Kumar Bagra and another v. The Panchkula Urban Cooperative Bank Limited, Panchkula, District Ambala and others  
(G. C. Mital, J.)

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### ORDER

(1) The main point involved in the writ petition is whether to an insured co-operative bank, for removal of members of the Managing Committee or Board of Directors, action has to be taken in accordance with the provisions of Section 94 of the Haryana Co-operative Societies Act, 1984 (for short 'the Act'), or in accordance with the provisions of Section 34 of the Act. Our answer is that Section 94 of the Act would be applicable.

(2) The Panchkula Urban Co-operative Bank, Ltd. Panchkula, District Ambala, which is an insured Co-operative Bank (hereinafter called 'the insured bank'), was being governed by the Board of Directors. The Deputy Registrar, exercising the powers of the Registrar Co-operative Societies,—*vide* order dated 23rd June, 1989, copy Annexure P1, placed under suspension the Board of Directors under Section 34 of the Act, and appointed the Assistant Registrar, Cooperative Societies, Ambala, as an Administrator for the management of the affairs of the bank till the proceedings under Section 34 of the Act, which were to be initiated separately were completed. *Vide* Annexure P4, dated 7th July, 1989, the Deputy Registrar served a show cause notice on the Board of Directors detailing the allegations levelled against their way of working. Annexure P5 is the reply, and,—*vide* order Annexure P6, dated 15th December, 1989, in exercise of the powers under Section 34 of the Act, the Deputy Registrar removed the members of the Board of Directors, after giving a finding that all the allegations were proved. By the same order, the Deputy Registrar allowed the Assistant Registrar, Co-operative Societies, Ambala, to continue to act as Administrator of the insured bank for a period of one year or till the elections of the Board of Director of the bank are held, whichever is earlier.

(3) The order of removal of the members of the Board of Director and the suspension has been challenged in this writ petition filed in January, 1990.

(4) While under Section 34 of the Act, the Registrar has the authority to order the removal of such persons on being satisfied about their persistent defaults or negligent in the performance of their duties, under Section 94 of the Act the Registrar can do so

if so required by the Reserve Bank in public interest or for prevention of the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank.

(5) As already noticed, it is not disputed that the Board of Directors or the Managing Committee of the Bank, with which we are concerned, is an insured cooperative bank, while counsel for the petitioners has argued that special provision has been made in Section 94 of the Act for taking such action in the case of insured cooperative bank, the stand of the respondents is that Section 34 of the Act would be applicable. In order to appreciate the controversy, it will be desirable to reproduce both the provisions :—

“34. *Removal of Committee.*—(1) If in the opinion of the Registrar, a committee persistently makes default or is negligent in the performance of duties imposed on it by this Act or the rules of 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 order fresh election of the committee or appoint administrators in accordance with the provisions of Section 33.

(2)

(3)

(4) Before taking any action under sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing institution to which it is indebted.”

94. *Special provision for insured co-operative banks.*

Notwithstanding anything contained in this Act, in the case of an insured co-operative bank :—

(i) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation

Shiv Kumar Bagra and another v. The Panchkula Urban Cooperative Bank Limited, Panchkula, District Ambala and others  
(G. C. Mital, J.)

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or reconstruction (including division or reorganisation) of the bank may be made only with the previous sanction in writing of the Reserve Bank of India;

(ii) an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank of India in the circumstances referred to in Section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961;

(iii) if so required by the Reserve Bank of India in the public interest or for prevention the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made by the Registrar for the removal of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefor for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee;

.....”

(6) A reading of the aforesaid two provisions will show that if it is not a case of insured cooperative bank then Section 34 of the Act would be applicable but in case of an insured bank there is special provision in Section 94 of the Act. Not only that it is mentioned in Section 94 of the Act itself that it is special provision for an insured cooperative bank. Opening words in this section are “Notwithstanding anything contained in this Act”, which means in spite of anything contained in any other provision of the Act, in case of insured co-operative banks, Section 94 of the Act alone would be applicable to the exclusion of Section 34 if action is required to be taken against the Managing Committee or other Managing body (by whatever name called) of the bank. Therefore,

the non obstante clause, notwithstanding anything contained in this Act, has to be born in mind while coming to the conclusion whether Section 94 of the Act excludes the applicability of Section 34 of the Act in the case of an insured cooperative bank.

(7) In this view of the matter, we are of the opinion that in case of an insured cooperative bank, special provisions contained in Section 94 of the Act would be applicable and not Section 34 of the Act.

(8) The law framers kept in view the special rights of an insured co-operative bank and for that reason made a special provision as is contained in Section 94 of the Act, wherein it was provided that if action is to be taken against an insured cooperative bank, it will be taken if so required by the Reserve Bank. In this case, there is no such requirement by the Reserve Bank of India and in the absence thereof Registrar under Section 94 of the Act could not take action against the Managing Committee or the Board of Directors.

(9) The action taken under Section 34 of the Act, is therefore, without jurisdiction. Even if the Deputy Registrar had mentioned that he was taking action under Section 94 of the Act but without being so required by the Reserve Bank of India, it would have been without jurisdiction.

(10) For the reasons recorded above, we allow the writ petition and quash order Annexure P-6 with costs, quantified at Rs. 1,000. Since the initiation of proceedings by the Registrar was without jurisdiction, order of suspension, Annexure P-1 is also quashed.

(11) However, this order will not stand in the way of the Registrar to take action afresh against the delinquent Board of Directors on the same allegations if so required by the Reserve Bank of India.

R.N.R.

Before : J. V. Gupta, A.C.J. & M. S. Liberhan, J.  
VIKRAM STEERINGS & LINKAGES (PVT.) LTD.,  
BHIWANI,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.  
Civil Writ Petition No. 10433 of 1989.

8th May, 1990.

Constitution of India, 1950—Art. 226—State Financial Corporations Act (63 of 1951)—S. 32G—S. 32G as introduced in the Act by