

FED. OF BANK OF INDIA STAFF UNIONS & ANR. A

v.

UNION OF INDIA & ANR.

(Civil Appeal No. 5570 of 2014)

MARCH 01, 2019 B

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

The Nationalized Banks (*Management and Miscellaneous provisions*) Scheme, 1970 – Appellant No.1 is the association of various Staff Unions of the employees working in the Respondent No.2-Bank – 1970 Scheme framed under the Banking Act – s.9(3) of the Banking Act provides for composition of Board of Directors as to who can be nominated as Directors in the Board of Directors – Clause (a) to (i) of s.9(3), Banking Act sets out various categories from which one Director from each of such categories is nominated in the Board of Directors – Clause(e) deals with category of workman/employee Director whereas clause(f) deals with category of officer/employee Director – Clause 3(2)(iii) of the Scheme deals with disqualification of workman/employee for being nominated as Director – Respondent no.2 called upon the appellants to furnish panel of three workers/employees for being nominated as Director– Appellants sent panel of three names vide letter dtd. 08.06.09 – Rejected vide letter dtd. 10.10.2009 – Appellants filed writ petition in the High Court for quashing letter dtd. 10.10.2009 and declaration that Cl.3 (2) (iii) of the Scheme, be struck down as being ultra vires the Constitution – Dismissed – On appeal, held: So far as the challenge to letter dtd. 10.10.2009 and enforcement of appellants' letter dtd. 08.06.2009, i.e. (Relief Nos.(a) & (b) in the writ petition) is concerned, both the reliefs are rendered infructuous as employees/workers whose names were recommended in letter dtd. 08.06.2009 have retired long back – Further, it would be clear from Clauses (e) & (f) of s.9(3) of the Banking Act that both the categories of employees are different – One is worker/employee category and the other is officer/employee category – It is for the legislature to decide as to what qualifications/disqualifications be prescribed for various categories of the employees for their nomination on the post of Director – Worker is governed by 1947 Act whereas the officer is governed by separate service rules – Both these categories C D E F G H

- A *of employees cannot be equated with each other, nor can be placed at par for providing equal qualification or/and disqualification for their nomination – Art.14 applies inter se two equals and not inter se unequals – Present case falls under the latter category – High Court rightly dismissed the appellants' writ petition, upholding Clause 3(2)(iii) of the Scheme as legal – Trade Unions Act, 1926– Banking Companies(Acquisition and Transfer of Undertakings) Act, 1970/1980 – Industrial Disputes Act, 1947 – s.2(s) – Constitution of India – Art.14.*
- B *Dismissing the appeal, the Court*

- C **HELD: 1.1 It would be clear from a perusal of clauses (e) and (f) of Section 9(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 that both the categories of employees are different- one is worker/employee category as defined under Section 9(3)(e) and the other is officer/ employee category as defined under Section 9(3)(f) of the Act. It is for the legislature to decide as to what qualifications and disqualifications should be prescribed for various categories of the employees for their nomination on the post of Director. There lies a distinction between the worker and the officer. The former, i.e., worker is defined under Section 2(s) of the Industrial Disputes Act, 1947 and is governed by that Act whereas the latter, i.e., officer is not governed by the Industrial Disputes Act but is governed by separate service rules. Both these categories of employees, therefore, cannot be equated with each other and nor can be placed at par for providing equal qualification or/and disqualification for their nomination as a Director in the Board of Directors. Article 14 of the Constitution applies *inter se* two equals and not *inter se* unequals. The case at hand falls under the latter category and, therefore, reliance placed on the principle enshrined under Article 14 of the Constitution by the appellants is wholly misplaced. The nominee worker/employee has only a right under the Act to be appointed as Director from the category of worker/ employee in terms of Section 9 (3)(e) of the Act provided the concerned nominee whose name is recommended by the Union fulfills the qualifications laid down in Clause 3(2)(iii) of the The Nationalized Banks (Management and Miscellaneous provisions) Scheme, 1970 but not beyond it. [Para 29][143-B-E]**
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1.2 A mere reading of Section 9(3) clause (a) to (i) would go to show that the Board of Directors consists of persons coming from different fields. There cannot, therefore, be a uniform qualification or/and disqualification for such persons. Indeed, the qualifications and disqualifications are bound to vary from category to category and would depend on the post, experience and the stream from where a person is being nominated as a Director. Moreover, the qualification and disqualification has to be seen prior to his/her becoming a Director and not after his/her appointment as a Director. No good ground to interfere with the reasoning and the conclusion arrived at by the High Court, which rightly dismissed the appellants' writ petition, and upheld Clause 3(2)(iii) of the Scheme as being legal. [Paras 31-33][143-G, H; 144-A-B]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5570 of 2014.

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From the Judgment and Order dated 08.04.2011 of the High Court of Bombay at Goa in Writ Petition (Civil) No. 618 of 2010.

Siddharth Bhatnagar, Siddharth Mohan, Ankit Kumar Yadav, T. Mahipal, Advs. for the Appellants.

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Pranab Kumar Mullick, Ms. Soma Mullick, Sebat Kumar Deuria, Ms. Bhakti Pasrija, T. M. Singh (For Mrs. Anil Katiyar, Adv.) Advs. for the Respondents

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 08.04.2011 passed by the High Court of Bombay at Goa in Writ Petition (c) No.618 of 2010 whereby the High Court dismissed the writ petition filed by the appellants herein.

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2. The appeal involves a short point as would be clear from the facts stated *infra*.

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3. The appellants herein are the writ petitioners and the respondents herein are the respondents in the writ petition filed in the High Court of Bombay at Goa, out of which this appeal arises.

4. Appellant No.1 is an Association of various Staff Unions of the

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- A employees working in the Bank of India - respondent No.2 herein. Appellant No.1 is a registered Association under the Trade Unions Act, 1926. Appellant No.2 is an employee of Respondent No.2 - Bank and at the relevant time was working as Deputy General Secretary of appellant No.1- Association.
- B 5. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 (hereinafter referred to as "the Act") deals with Banking Companies and their internal affairs. Section 9 of the Act empowers the Central Government to make scheme after consultation with the Reserve Bank of India for carrying out the provisions of the Act.
- C 6. Section 9 (3) of the Act provides for composition of Board of Directors and also provides as to who can be nominated as Directors in the Board of Directors. Clauses (a) to (i) of sub-section (3) of Section 9 of the Act sets out various categories from which one Director from each of such categories is nominated in the Board of Directors. Clause(e) deals with a category of workman/employee Director whereas clause(f) deals with a category of officer/employee Director for their nomination in the Board of Directors.
- D 7. In exercise of powers conferred under Section 9(1) of the Act, the Central Government has framed a Scheme called-The Nationalized Banks (Management and Miscellaneous provisions) Scheme, 1970.
- E 8. Chapter II of the Scheme deals with Board of Directors. Clause 3 of the Scheme deals with the constitution of the Board whereas Clause 3(2)(iii) deals with disqualification of a workman/employee for being nominated as a Director.
- F 9. So far as the procedure relating to the nomination of a Director out of the officer/employee category falling in clause(f) of Section 9(3) of the Act is concerned, it is provided in the third schedule to the Scheme.
- G 10. So far as the case at hand is concerned, it relates to the nomination of a Director from the workman/employee category falling in clause (e) of Section 9(3) of the Act and also relates to his disqualification for being nominated as a Director in that category.
- H 11. On 28.05.2009, the Management of the Bank (respondent No.2) called upon the appellants to furnish a panel of three workers/employees for being nominated as a Director in order of preference in

the category of “Workman Director” in the Board of Directors.

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12. The appellants, in compliance with the request made by respondent No.2, sent a panel of three names of the workers/employees in order of preference to the Central Government by their letter dated 08.06.2009. These names were - Mr. Dinesh Jha “Lallan”, Mr. Ram Gopal Sharma and Mr. Pranab Kumar Roy Chowdhary.

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13. The Secretary, Government of India, by letter dated 10.10.2009, however, informed the appellants that since all the three workers/employees, whose names were sent, have less than three years of residual service before their superannuation, therefore it is not possible to nominate any of the workers/employees as Director in the Board of Directors. The appellants were accordingly requested to send a fresh panel of names to enable the Central Government to nominate one, out of the three new names, as Director in the Board of Directors.

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14. The appellants instead of sending the fresh three names submitted their representation on 21.10.2009 and requested the Central Government to re-consider the matter afresh and nominate any one out of the three names already sent by them vide their letter dated 08.06.2009. The parties then went on exchanging the letters on this subject, but the Central Government did not accede to the request made by the appellants and insisted on them to send fresh names of the workers/employees.

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15. It is with these background facts, the appellants felt aggrieved and filed a writ petition in the High Court of Bombay at Goa. In that writ petition, the appellants (writ petitioners) sought quashing of the communication of respondent No.1 dated 10.10.2009 by which respondent No.1 had rejected the panel of three names sent by them vide their letter dated 08.06.2009. A writ of mandamus was also prayed commanding the respondents to consider the nomination panel sent by the appellants vide their letter dated 08.06.2009 and nominate one worker/employee as Director out of the three names sent by them in the Board of Directors.

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16. In the alternative, the appellants also sought a declaration that clause 3 (2) (iii) of the Scheme, 1970 be struck down as being *ultra vires* the Constitution.

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17. The respondents opposed the writ petition by filing their counter affidavit. The respondents placed reliance on the provisions of the Act and the Scheme framed thereunder and contended *inter alia* that the

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A challenge made in the writ petition has no factual or/and legal basis.

18. By the impugned order, the High Court dismissed the writ petition finding no merit therein, which has given rise to filing of this appeal by way of special leave by the unsuccessful writ petitioners - Union of workers/employees in this Court.

B 19. Heard Mr. Sidharth Bhatnagar, learned counsel for the appellants and Mr. Pranab Kumar Mullick & Ms. Bhakti Pasrija, learned counsel for the respondents.

C 20. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we find no merit in this appeal.

D 21. At the outset, we find that so far as the challenge to the impugned communication dated 10.10.2009 and enforcement of the appellants' letter dated 08.06.2009, i.e. (Relief Nos.(a) and (b) in the writ petition) is concerned, both the reliefs have been rendered infructuous.

E 22. It is for the reason that the employees/workers whose names were recommended by appellant No.1 in their letter dated 08.06.2009 have retired long back. Not only that, on their retirement, many other persons were nominated as Director out of the category of worker/employee in the Board of Directors of the Bank. This relief, therefore, no longer survives for consideration.

F 23. Now the only question, which survives for consideration in this appeal, is regarding the legality of Clause 3(2)(iii) of the Scheme, 1970 - whether Clause 3(2)(iii) of the Scheme is legal or *ultra vires* the Constitution. The High Court, in the impugned order, has held that the Clause 3(2)(iii) of the Scheme is legal and valid.

G 24. The challenge to the Clause 3(2)(iii) of the Scheme is essentially based on one argument. According to the appellants, there does not appear to be any rational or basis in providing two different types of disqualifications-one for workers/employees and the other for the officers/employees while considering their cases for nomination as Director from their respective categories.

H 25. In other words, the submission is that the disqualification provided in Clause 3(2)(iii)(b) of the Scheme for the worker/employee category is only confined to their category. No such similar disqualification

is made applicable to the officer/employee category.

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26. This, according to the appellants, has created discrimination between the two categories of the Directors without any reasonable basis and, therefore, Clause 3(2)(iii) of the Scheme and especially clause (b) thereof violates the principle underlined in Article 14 of the Constitution of India.

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27. We find no merit in this submission for more than one reason.

28. Section 9(3)(e) and (f) of the Act and Clauses 3(2)(i),(ii) and (iii) of the Scheme are relevant for the disposal of this appeal which read as under:

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“Section 9(3)(e) and (f) of the Act

9. Power of Central Government to make scheme-(1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the provisions of this Act.

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(2)

(3) Every Board of Directors of a corresponding new bank, constituted under any scheme made under sub-section (1), shall include-

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(a)

(b)

(c)

(e) one director, from among such of the employees of the corresponding new bank who are workmen under clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), to be nominated by the Central Government in such manner as may be specified in a scheme made under this section;

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(f) one director, from among the employees of the corresponding new bank who are not workmen under clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), to be nominated by the Central Government after consultation with the Reserve Bank;

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Clause 3(2)(i),(ii) and (iii) of the Scheme

3. **Constitution of the Board**-(1) The Central Government shall by notification in the Official Gazette, constitute the Board of a Nationalised Bank.

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(2) (i) The director referred to in clause (e) of sub-section (3) of section 9 of the Act, shall be nominated 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 communication made by the Central Government, requiring the representative union to furnish the panel of names:

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

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(ii) (a) Where there is no representative union, to represent the workman of a Nationalised Bank, or

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

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(c) where all the persons specified in the panel furnished by the representative union are disqualified whether under item (iii) of this sub-clause or under clause 10, the Central Government may, at its discretion appoint such workman of the Nationalised Bank, as it may think fit, to be a director of such bank.

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(iii) A workman of a Nationalised Bank shall be disqualified for being nominated as a director unless-

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(a) he is and has been, serving for a continuous period of not less than five years in the Nationalised Bank, and

(b) he is of such age that there is no likelihood of his attaining the age of superannuation during his terms of office as director.”

29. It would be clear from a perusal of clauses (e) and (f) of Section 9(3) of the Act that both the categories of employees are different - one is worker/employee category as defined under Section 9(3)(e) and the other is officer/employee category as defined under Section 9(3)(f) of the Act. Second, it is for the legislature to decide as to what qualifications and disqualifications should be prescribed for various categories of the employees for their nomination on the post of Director. Third, there lies a distinction between the worker and the officer. The former, i.e., worker is defined under Section 2(s) of the Industrial Disputes Act, 1947 and is governed by that Act whereas the latter, i.e., officer is not governed by the Industrial Disputes Act but is governed by separate service rules. Both these categories of employees, therefore, cannot be equated with each other and nor can be placed at par for providing equal qualification or/and disqualification for their nomination as a Director in the Board of Directors. Fourth, Article 14 of the Constitution applies *inter se* two equals and not *inter se* unequals. The case at hand falls under the latter category and, therefore, reliance placed on the principle enshrined under Article 14 of the Constitution by the appellants is wholly misplaced. Fifth, the nominee worker/employee has only a right under the Act to be appointed as Director from the category of worker/employee in terms of Section 9 (3)(e) of the Act provided the concerned nominee whose name is recommended by the Union fulfills the qualifications laid down in Clause 3(2)(iii) of the Scheme but not beyond it.

30. Learned counsel for the appellants then submitted that once the employee is nominated to the Board of Directors-may be from different categories specified under Section 9, then no distinction should be made between them while prescribing the qualification and disqualification.

31. This submission has also no merit. A mere reading of Section 9(3) clause (a) to (i) would go to show that the Board of Directors consists of persons coming from different fields. There cannot, therefore, be a uniform qualification or/and disqualification for such persons. Indeed, the qualifications and disqualifications are bound to vary from category to category and would depend on the post, experience and the stream from where a person is being nominated as a Director. Moreover, the

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- A qualification and disqualification has to be seen prior to his/her becoming a Director and not after his/her appointment as a Director.

32. In view of the foregoing discussion, we find no good ground to interfere with the reasoning and the conclusion arrived at by the High Court, which rightly dismissed the appellants' writ petition, and upheld B Clause 3(2)(iii) of the Scheme as being legal.

33. The appeal is thus found to be devoid of any merit. It fails and is accordingly dismissed.

Divya Pandey

Appeal dismissed.