

PETITIONER:
ALL INDIA BANK OFFICERS' CONFEDERATION AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 14/08/1989

BENCH:
THOMMEN, T.K. (J)
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THOMMEN, T.K. (J)
DUTT, M.M. (J)

CITATION:
1989 AIR 2045 1989 SCR (3) 850
1989 SCC (4) 90 JT 1989 (3) 389
1989 SCALE (2) 320

ACT:

Banking Companies (Acquisition and Transfer of undertakings) Act, 1970: Section 9--Object of.

Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980: Clause 3--Nationalised Banks--Board of Directors--Appointment of Directors--Discretion of 'Central Government--How to be exercised--Appointment of non-workmen Directors--Practice of appointing persons from out of panel submitted by respective Associations representing non-workmen employees--Circular discontinuing the practice--Validity of.

Words and phrases: 'Employees'--Whether includes workmen and non-workmen.

HEADNOTE:

The Central Govt. in exercise of its power under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 enacted the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980. Clause 3(b) of the said scheme deals with the appointment of workmen Directors and it provides that the Central Govt. shall constitute the Board of a Nationalised Bank consisting of one Director from among the employees of the nationalised bank, who are workmen, to be appointed from out of a panel of 3 such employees furnished to it by the Representative Union. Clause 3(c) of the Scheme deals with appointment of non-workmen Directors and it provides that the Central Government shall constitute the Board of a nationalised bank consisting of one director, from among the employees of the nationalised bank, who are not workmen, to be appointed after consultation with the Reserve Bank. The consistent practice of the Central Govt. was to appoint a non-workman Director from out of a panel of 3 names furnished to it by the majority association of non-workmen employees. By a circular dated 23.8.82, it was clarified that as far as appointment of non-workmen Director is concerned, there is no justification for restricting the choice to the office bearers of the Association. This was to enable the Central Govt. to appoint any officer of proven

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ability and character to the Board of Directors of a natio-

nalised Bank irrespective of his affiliation with any association.

The petitioners in these petitions to this Court, challenged this circular as contrary to the mandate of the Act and the Scheme, and also contended that clause 3 of the Scheme was ultra vires Section 9 of the Act.

Allowing the petitions,

HELD: 1. The Circular is ultra vires the Act and the Scheme and it is, therefore, null and void and of no effect. [861C]

2. The object of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 is to render the largest good to the largest number of people. The object of Section 9 of the Act is to empower the Central Govt. to make a Scheme for the constitution of the Board of Directors so as to include representatives of the employees i.e. workmen and non-workmen and other specified categories viz. depositors, farmers, workers and artisans. The representatives of these classes of people are to be either elected or nominated in the manner specified by the Scheme. The legislature has left it to the Central Government to make a scheme providing for appointment to the Board from amongst the specified categories either by election or by nomination. The discretion as to the mode of appointment is left to the Central Government, but it is not an unrestrained or unrestricted discretion, but a discretion which must be reasonably exercised so as to give effect to the true intent of the legislature i.e. to give the Board a truly representative character so as to reflect the genuine interests of the various persons manning or dealing with the bank as an industry and a commercial enterprise. What is postulated is such election or nomination as would lend to the Board of Directors its truly representative character in consonance and harmony with the extremely delicate, vital and significant role of the banking industry in the context of the national policy and objectives and economic development. The mode of election or nomination must, therefore, be such as would be ideally suitable and appropriate to the banking industry. Neither the election nor the nomination should be conducted in a manner unmindful of the distinctiveness of the banking industry. The Central Govt. must in this regard act in consultation with the Reserve Bank of India which has the necessary expertise and intimate knowledge in the field of banking, finance and other connected matters. [856F-H; 857A-B, C-G]

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2.1 But the Central Government has no discretion to avoid election even where election is appropriate and feasible in respect of a particular category of persons. For the appointment of representatives of depositors, farmers, workers other than employees and Artisans, the discretion is entirely that of the Central Govt. to choose the mode of representation. On the other hand, in the case of employees, election is indeed the most logical, the most appropriate, the most democratic and certainly the most advantageous form of representation. They are well-identified, well-organised, well-motivated and interested associates and participants in the banking industry. They are as such a part of the bank as the management is. There can be no legitimate management culture foreign to their vital interests. There can be no valid management policy contrary to their genuine needs. The Act does not contemplate a management unmindful of the true and legitimate interests of the employees. In a nationalised bank, everyone is as much an employee as he is an employer. There is no antithesis between the management and the em-

ployees. The distinction that traditionally existed prior to nationalisation is no longer applicable. The true management culture is indeed the culture that represents the various interests of all persons specified under Section 9 as well as the larger and wider interests of national economy as postulated in the preamble to the Act. [858B-G]

3. The Central Govt. understood sub-clause (c) of Clause 3 regarding non-workmen employees to warrant the same type of representation as in the case of workmen-employees mentioned under subclause (b) of Clause 3. The field of choice was thus understood by the Government to be limited to the panel of names furnished by the representative Union of workmen or Association of non-workmen as the case may be. But sub-clause (c) of Clause 3 is vaguely drafted and when read without regard to the legislative intent, as disclosed by the Act, is capable of a contrary interpretation viz. there is no justification for restricting the choice of non-workmen Directors to the office bearers of the Association. That interpretation is wrong and, in any case, out of harmony with the principle enshrined in Articles 19(1)(c) and 43(A) of the Constitution. [860B-D]

4. It is open to the Central Government to amend the Scheme to improve on the machinery for the conduct of an appropriate election, it is incumbent upon it, until any such amendment is made, to work the present Scheme in such a way as to give the maximum scope for the concerned employees to exercise their choice in the selection of their representatives. [860H; 861A]

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JUDGMENT:

ORIGINAL JURISDICTION: Transfer Case (Civil) No.219 of 1988.

WITH

C.M.P. No. 8572 of 1989.

(Under Article 139(A)(1) of the Constitution).

AND

TRANSFER PETITION NOS. 376-40 of 1985.

Rajinder Sachar and R. Vasudevan for the Petitioners in Transfer Case No. 219/88 and C.M.P. No. 8572 of 1989.'

M.K. Ramamurthy, D.S. Chauhan, Pinaki Misra, M.A. Krishnamoorthy, H.S. Parihar, R.P. Kapoor, O.C. Mathur, Ms. Madhu Khatri, Ms. Bina Gupta, D.N. Misra and Harish N. Salve for the Respondents in Transfer Case No. 2 19/88 and C.M.P. 8572 of 1989.

G. Ramaswamy, Additional Solicitor General, Anil Dev Singh (NP), R.P. Srivastava, Ms. A. Subhashini and C.V.S. Rao for the Petitioners in Transfer Petition No. 376-40 1 of 1985.

S.R. Seita and P.K. Manohar for the Respondent in Transfer Petition Nos. 386 and 376 of 1985.

The Judgment of the Court was delivered by

THOMMEN, J. The first petitioner is a registered Central Trade Union claiming to represent about 85 per cent of the officers working in the various nationalised banks. Petitioners 2 to 4 are principal office bearers of the first petitioner and are officers of different nationalised banks. They are aggrieved by Circular dated 23.8.1982 (Annexure-A) issued by the Joint Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs, (Banking Division), New Delhi. They contend that the circular is contrary to the mandate of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act No. 5 of

1970) (hereinafter referred to as the 'Act') and the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980 (hereinafter referred to as the 'Scheme'). They further contend that Clause 3 of the Scheme in terms of which the circular is purported to have been issued is ultra vires Section 9 of the Act unless the said clause is so read as to be in harmony with the Section, and when so read the said clause does not justify or support the impugned circular. The petitioners, therefore,
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seek a writ of mandamus to direct the Central Government to appoint a nominee of the majority association of each of the nationalised banks as a member of its Board of Directors.

The circular in question reads:

"As you are aware, in terms of sub-clause (c) of Clause 3 of Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, one Director from among the employees of the nationalised banks who are not workmen, is to be appointed by the Central Government in consultation with the Reserve Bank of India on the Board of each of the Nationalised Banks. Unlike in the case of workman, the Scheme does not lay down any procedure for selection of the non-workman Director. The intention clearly was that in the case of Officer-Director, Government should have ample scope and freedom in selecting any officer of the Bank to be the non-workman Director. However, hitherto panel of names sent by the banks for selection of the non-workman Director has been confined to office-bearers of the Association of Officers. Government has recently reviewed this matter in the light of the relevant provisions of the Scheme and come to a conclusion that there is no justification for restricting the choice to the office-bearers of the Associations."

The object of the circular is to clarify that the Central Government no longer regards itself bound by its earlier practice of appointing a person from out of the panel of three names submitted by the respective Association representing the majority of the non-workmen employees of each nationalised bank. The circular makes it clear that the Government wishes to appoint any officer of proven ability and character to the Board of Directors of a nationalised bank irrespective of his affiliation with any Association. The petitioners contend that the circular is undemocratic and contrary to the letter and spirit of the Act and the Scheme insofar as it cuts at the root of the representative form of selection for appointment to the Board of Directors as contemplated by the statute.

The stand of the Central Government and other respondents, as stated in their counter-affidavits, appears to be that the object of the circular is to neutralise and discourage trade unionism amongst the officers and to keep the directorship above union affiliation, and thus
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encourage the growth of a "management culture". Mr. Rajinder Sachar, supported by Mr. Ramamurthi, contends that there is no justification whatsoever to issue any such circular for the very object of the Act is to encourage democratic selection of the Directors who will truly represent the interests of the various categories of persons mentioned in the Act. To discourage trade unionism is contrary to the very spirit

of the statute and repugnant to constitutional principles enshrined in Article 19(1)(c) and Article 43A of the Constitution of India.

The Additional Solicitor General, representing the Central Government and Mr. Harish N. Salve, counsel for the Reserve Bank of India, contend that the Act postulates both election and nomination of members of the Board of Directors and the choice between the two modes of appointment is left to the Central Government. The election or nomination has to be conducted in a manner as specified in the Scheme. The Scheme in effect postulates all appointments to be by nomination. In the case of workmen-employees, the Director is appointed by the Central Government from amongst the names of three employees furnished by the representative Union. Such appointment, though made out of, and restricted to, the panel furnished by the Union, is in effect a nomination of the one preferred by the Central Government. In the case of non-workmen-employees, the choice is not restricted to any panel and the only condition postulated is consultation with the Reserve Bank of India. Unionisation, though desirable among workmen, is not a matter to be encouraged in the case of other employees for selection to the Board of Directors, for the Directors must represent the interest of the bank as a whole and not of any special class of persons. The Additional Solicitor General also submits that appointment by election is not the only mode of representative appointment, but nomination is perfectly valid and more effective from the point of view of the true institutional interest, particularly with reference to management efficiency.

In the light of these rival contentions, we shall examine the relevant provisions of the Act and the Scheme. Section 9 of the Act provides:

"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) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:

(a)

(b) the constitution of the Board of Directors, by whatever name called, of the corresponding new bank and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c)

(d) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Act.

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

(a) representative 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."

The object of Section 9 of the Act, insofar as it is material, is to empower the Central Government to make a

scheme for the constitution of the Board of Directors so as to include representatives of the employees and other specified categories. "Employees" include workmen and non-workmen. The categories specified, apart from the employees, are depositors, farmers, workers and artisans. The representatives of these classes of people are to be either elected or nominated in the manner specified by the Scheme. The legislature has left it to the Central Government to make a scheme providing for appointment to the Board from amongst the specified categories either by election or by nomination. The discretion as to the mode of

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appointment is, of course, left to the Central Government, but it is not an unrestrained or unrestricted discretion, but a discretion which must be reasonably exercised so as to give effect to the true intent of the legislature as to the composition of the Board of Directors. The object of the legislature is to give the Board a truly representative character so as to reflect the genuine interests of the various persons manning or dealing with the bank as an industry and a commercial enterprise.

The object of the Act is to nationalise the banks in order to, as stated in the preamble to the Act, "control the heights of the economy and to meet progressively, and serve better, the needs of development of the economy in conformity with the national policy and objectives". The very purpose of that legislative exercise is to render the largest good to the largest number of people of this "sovereign, socialist, secular, democratic republic". (See the preamble to the Constitution enshrining the national policy and objectives.) It is with this object in view that the Act has envisaged a truly representative Board of Directors chosen by election where election is feasible or by nomination where that mode is more appropriate. But the legislature has left it to the Central Government to specify by a scheme the manner in which the election or nomination is to be conducted, bearing in mind the true character and objective of the banking industry and its distinguishing features as a highly sensitive commercial enterprise. Neither the election nor the nomination should be conducted in a manner unmindful of the distinctiveness of the banking industry. What is postulated is such election or nomination as would lend to the Board of Directors its truly representative character in consonance and harmony with the extremely delicate, vital and significant role of the banking industry in the context of the national policy and objectives and economic development. The mode of election or nomination must, therefore, be such as would be ideally suitable and appropriate to the banking industry and the choice of the mode is generally a matter for decision by the Central Government. The Central Government must in this regard act in consultation with the Reserve Bank of India, for it is the latter that has the necessary expertise and intimate knowledge in the field of banking, finance and other connected matters. The Act, therefore, requires the Central Government to make the Scheme in consultation with the Reserve Bank of India. Any amendment or variation of the Scheme also requires consultation with the Reserve Bank of India. [See Section 9(4)].

The Additional Solicitor General is right when he submits that it

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is generally within the discretion of the Central Government to choose the special mode of appointment. The Government may choose election or nomination as the appropriate mode of appointment in respect of various categories. But we do not

agree with him when he submits that the Central Government has a discretion to avoid election even where election is appropriate and feasible in respect of a particular category of persons. The very object of leaving the choice to the Central Government as to the mode, which is election or nomination, is to enable it to reasonably exercise its discretion in such a way as to give the best form of representation to every category of persons mentioned in the Act. It may be possible to appoint a representative of the depositors by election instead of nomination. It would be perfectly within the discretion of the Central Government to choose that mode. On the other hand, the depositors being not an organised body of persons, although easily identifiable, selection of their representative by nomination may be easier, more feasible and perhaps more appropriate for the purpose of appointment to the Board. Farmers, workers other than employees, and artisans mentioned under subsection 3(b) of Section 9 are best represented by nomination, they being difficult of identification and their connection with the bank being more remote than in the case of employees or even depositors. For these classes of people, the discretion is entirely that of the Central Government to choose the mode of representation. In the case of employees, on the other hand, election is indeed the most logical, the most appropriate, the most democratic and certainly the most advantageous form of representation. They are well-identified, well-organised, well-motivated and interested associates and participants in the banking industry. They are as much a part of the bank as the management is. There can be no legitimate management culture foreign to their vital interests. There can be no valid management policy contrary to their genuine needs. The Act does not contemplate a management unmindful of the true and legitimate interest of the employees. In a nationalised bank, everyone is as much an employee as he is an employer. There is no antithesis between the management and the employees. The distinction that traditionally existed prior to nationalisation is no longer applicable. The true management culture is indeed the culture that represents the various interests of all persons specified under Section 9 as well as the larger and wider interests of national economy as postulated in the preamble to the Act.

We will now examine the Scheme. Clause 3 of Chapter II of the Scheme provides:

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"3. 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

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(b)(i) 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;

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(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;

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The scheme-making authority appears to us to have exercised the legislative power delegated to it in making the Scheme in consonance with the Act, although in a certain respect concerning the non-workmen-employees the intention of the delegate of the legislature could have been articulated a little more explicitly. We say so in

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the light of the contemporaneous construction placed on the statute by the delegate, namely, the Central Government, as evinced by its own practice prior to the circular dated 23.8.1982. Until the date of the circular, the consistent practice of the Central Government was to appoint a non-workmen Director from out of a panel of three names furnished to it by the majority association of non-workmen-employees. The Central Government understood the Act and the Scheme to warrant such mode of appointment in the case of all employees. In other words, the Central Government understood sub-clause (c) of Clause 3 regarding non-workmen-employees to warrant the same type of representation as in the case of workmen-employees mentioned under sub-clause (b) of Clause 3. The field of choice was thus understood by the Government to be limited to the panel of names furnished by the representative Union of workmen or Association of non-workmen as the case may be. But, as stated earlier, sub-clause (c) of Clause 3 is vaguely drafted and when read without regard to the legislative intent, as disclosed by the Act, is capable of a contrary interpretation, as is now

sought to be put upon it by the Central Government, and that interpretation is, in our view, wrong, and, in any case, out of harmony with the principle enshrined in Articles 19(1)(c) and 43(A) of the Constitution-

The Additional Solicitor General poses the question whether the Scheme would not be even more defective if sub-clause (c) were to receive the same construction as sub-clause (b) so as to restrict the choice of appointment to the three persons specified on the panel furnished by the representative Association. The Act, he says, speaks of election or nomination, and if election were to be construed to be the appropriate mode of choosing the representatives of the employees, appointment by nomination of one person out of the panel furnished by the representative Union of workmen or Association of non-workmen, as the case may be, would not be a perfect representation in keeping with the principle of election. That may or may not be so, and there is always room for improvements; but the petitioners have no complaint on that score. If the Central Government were to provide for election in the manner chosen by it so as to appoint the true representatives of the concerned employees, Mr. Sachat submits, the petitioners would have no complaint, provided the provisions laid down in that behalf are valid and reasonable.

While, in our view, it is open to the Central Government to amend the Scheme to improve on the machinery for the conduct of an appropriate election, it is incumbent upon it, until any such amend-

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ment is made, to work the present Scheme in such a way as to give the maximum scope for the concerned employees to exercise their choice in the selection of their representatives. That means, it would be perfectly in order for the Central Government to continue the practice followed by it prior to the circular in question or to hold election of the representatives of the concerned employees, and, if necessary, to amend the Scheme suitably for that purpose.

In the circumstances, we declare that the circular dated 23.8.1982 (Annexure A) is ultra vires the Act and the Scheme and it is, therefore, null and void and of no effect. The Transfer Case is accordingly disposed of. Civil Miscellaneous Petition No. 8572 of 1988 and Transfer Petitions Nos. 376-401 of 1985 are allowed. Parties shall bear their respective costs.

T.N.A.

Petitions allowed.

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