

SUPREME COURT OF INDIA

UCO Bank

Vs.

Saamyendra Roy Choudhury & Ors.

C.A.No.4820 of 2016

(Kurain Joseph and R.F.Nariman,JJ.,)

05.05.2016

JUDGMENT

R.F.Nariman,J.,

SLP(Civil)No.14209 of 2014

1. Leave granted.

2. The matter arises out of a decision by the nomination committee set up under an RBI Circular dated 24th May, 2013, in which it has decided, having regard to the fact that the respondent no.1 before us is over aged, i.e. above 65 years, and the fact that he has already served for a period of two terms as Director of the Appellant Bank is disqualified therefore from standing for any further election as Director of the said Bank.

3. The said decision was challenged before the High Court in Civil Suit No. 212 of 2013. By an interim order dated 29th November, 2013, the learned trial Judge allowed the interim prayer of the respondent no.1 before us, namely, Prayer (e), by which an interim mandatory injunction was ordered to deem the said Director as having been elected as a shareholder director notwithstanding the impugned order dated 24th May, 2013. This was for the reason that prima facie the learned Single Judge held that the Government of India Guidelines dated 10th December, 2007, which alone contained the twin disqualifications of being above age as well as having stood for election as a Director twice, could not apply to persons who are elected Directors as opposed to non-official Directors, who are only the Directors nominated under a Statutory Scheme under Section 9(3) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It was further held that the RBI Guidelines dated 1st November, 2007, issued pursuant to the Statutory Power contained in Section 9 (3AA) of the said Act, alone governed the facts of these cases, and that no other criteria de hors the criteria in these guidelines could possibly be taken into account.

4. The appeal from the aforesaid judgment met with the same fate, as the Division Bench, by the impugned Judgment and Order dated 15th May, 2014, reiterated the findings of the learned Single Judge and granted the same relief based on the same view taken of the respective guidelines issued by the Government of India and by the Reserve Bank of India.

5. Considering that the Suit is yet to be decided, and that we are only confronted with an interim order passed by the High Court, we do not propose to go into the merits of the contentions raised by learned counsel on either side. Suffice it to say that, prima facie, the RBI Guidelines dated 1st November, 2007 framed under Section 9 (3AA) of the said Act would apply to the facts of the case. What is important under the Section itself is to determine the fit and proper status of a person who wishes to be elected as a Director in the appellant-Bank based on track record, integrity and such other criteria as the RBI notifies from time to time in this regard. The RBI, in the Guidelines dated 1st November, 2007 has expressly stated that in determining the fit and proper status of an existing elected Director/proposed candidate, the nomination committee should determine his educational qualification, his experience and field of expertise, track record and integrity. What is important to note is that the aforesaid list, as stated by the said Guidelines, is only illustrative and not exhaustive. Further, what is important is that the committee should see whether non adherence to any of the aforesaid criteria would hamper the existence of the elected Director/proposed candidate from discharging his duties as Director on the Board of the bank.

6. We have been shown a letter dated 3rd September, 2013, written by the Under Secretary, Ministry of Finance, Department of Financial Services, to the appellant-bank. This letter is set out by us hereinbelow:

" As you are aware, the election of shareholder director in Public Sector Banks is administered by RBI guidelines no. DBOD No. BC NO. 471/29.39.001/2007-08 dated 01.11.2007 as per which the Nomination Committee of the Bank's Board is to undertake a process of due diligence to determine the 'fit and proper' status of persons to be elected under Section 9(3)(i) of the Banking Companies Act, 1970/80. These guidelines are broad, illustrative and largely indicative.

2. Therefore, I am directed to state that in order to ensure that the candidates elected as shareholder director discharge their duties as director on the Board with greatest transparency and in public interest, it is desirable that Government guidelines dated 01.06.2011 regarding appointment of part-time non-official director also be kept in mind while carrying out determination of 'fit and proper' status of the candidates. You are requested to advise the board of your bank accordingly.

3. This issues with approval of S(FS)."

7. We are prima facie of the view that this letter applies to cases like the present. This being the case, we are of the view that the present case should be remanded to the nomination committee so that the committee takes a fresh decision as to whether the respondent No.1 is

fit and proper for election as a Director of the appellant-bank. This is for the reason that in the impugned order dated 24th May, 2013 before the High Court, the said committee took into account only the fact that the respondent No.1 was over age and the fact that he had already been Director in the appellant-bank for more than two terms. We, therefore, remit the matter to the nomination committee to decide this case after a consideration of all the criteria laid down in the RBI Circular dated 1st November, 2007 and the Guidelines dated 10th December, 2007 issued by the Ministry of Finance, Government of India. Needless to add, all these criteria will be taken into account without giving any one or more criteria undue weightage, the idea being that ultimately the nomination committee has to decide, in accordance with Section 9 (3AA) of the Act, whether the respondent No.1 is a fit and proper person to be elected as a Director of the appellant-bank.

8. We, therefore, set aside the order of the learned Single Judge and Division Bench of the High Court of Calcutta and remit the matter to the committee as aforesaid. The committee will decide in accordance with what is stated in our judgment within a period of four weeks from receiving our order. We request a Single Judge of the High Court to take up Civil Suit No. 212/2013 for hearing within a period of eight weeks from today. We expect that the learned Single Judge will decide the said suit finally within six months from today.

9. With the above observations, the aforesaid civil appeal is disposed of.