

P L D 1994 Supreme Court 36

*Present: Shafiur Rahnman, Abdul Qadeer Chaudhry,
Saleem Akhtar, Saeeduzzaman Siddiqui
and Wali Muhammad Khan, JJ*

Rai RASHID AHMED KHAN---Appellant

versus

PRESIDENT OF PAKISTAN---Respondent

Civil Appeal No. 152 of 1991, decided on 5th October, 1993.

(On appeal against the judgment of Lahore High Court, Lahore (Special Court) dated 30-6-1991 passed in Reference No.I of 1990).

(a) Parliament and Provincial Assemblies (Disqualification for Membership) Order (17 of 1977)---

---Preamble-- -Nature of proceedings under the Presidential Order---Special Court while deciding the issues in the case under the Presidential Order will be guided by the preponderance of evidence---Benefit of doubt arising in the case will be extended to the person proceeded against for findings of the Court entail disqualification.--[Benefit of doubt].

Sardar Muhammad Muqem Khoso v. President of Pakistan Civil Appeal No.262/K of 1991 ref.

(b) Undue influence---

--- Exercise of---What is relevant is the capacity of a person to influence the decision of another and not his presence or absence at the time of decision.

It is not necessary, in order to prove exercise of influence by one person on the decision of another that the former must be present before the latter physically in order to influence the latter's decision. It is quite possible that the former may be absent at the time of decision by the latter but because of the circumstances created by the former the decision of the latter is effectively influenced by the former. Therefore, what is relevant is the capacity of a person to influence the decision of another and not his presence or absence at the time of decision.

(c) Parliament and Provincial Assemblies (Disqualification for Membership) Order (17 of 1977)---

---Art. 2(a)---Agricultural Development Bank of Pakistan Rules, 1961, R.18(1)(8) & (22)---Agricultural Development Bank of Pakistan Ordinance (IV of 1961), S.12---Misconduct---Sitting member of National Assembly by virtue of his said office was nominated on the Board of Directors of Agricultural Development Bank of Pakistan as a non-official Director and on basis of that nomination he also became member of Debt Write-off Committee---Said Member attended the meeting of Debt Write-off Committee in which decision was taken on the application of his wife for writing off the interest on loan---Effect---Held, remission of interest of loan granted to Member's wife was wholly unjustified and illegal and was the result of undue influence exercised by him over the Committee in abuse of his position as the Sitting Member of National Assembly---Action of the Member in obtaining remission of interest on the loan of his wife from the Committee, therefore, amounted to misconduct within the meaning of Art.2(a) of the Parliament and provincial Assemblies (Disqualification for Membership) Order, 1977 for it was an act of favouritism and also amounted to abuse of his position as sitting Member of the National Assembly.

Appellant in the present case was sitting Member of National Assembly and was nominated on the Board of Directors of Agricultural Development Bank of Pakistan as a non-official Director. By virtue of his office of Director he also became member of Debt Write-off Committee. Wife of appellant, had obtained a loan of Rs.75,000 in the year 1976-77 from the Bank which was repayable with interest within 6 years. Until 13-12-1989, when the interest on the above loan was remitted by the Committee, wife had repaid to the Bank out of the loan amount only a sum of Rs.25,000 and the interest outstanding on the loan as on 13-12-1989 was Rs.2,28,098. On the agenda of the meeting of the Committee scheduled for 13-12-1989 the application of the appellant's wife for remission of the interest on the loan was not listed. The application for remission of the interest on the loan of appellant's wife was produced by the appellant personally before the Chairman of the Committee during the course of the meeting which was attended by the appellant as member of the Committee. The application of the appellant's wife was not accompanied by any other document such as the report of the Field Staff of the Bank certifying the genuineness of the claim, which according to the practice followed by the Bank was necessary for decision of such an application. The decision on the application of the appellant's wife was taken then and there by the Committee at the behest of the Chairman without even waiting for the report of field staff of the Bank. The appellant at the relevant time was the sitting Member of National Assembly of the Parliament, besides being one of the Directors of the Board of Directors of the Bank and a member of the Committee. The former Chairman of the Bank, who was produced by the appellant as his witness in the case before the Special Court, stated that he was known to appellant since 1961, and that he had suggested to the appellant to depart from the meeting of 13-12-1989 because of his friendship with him and the affiliation of appellant with a political party. In the above circumstances of the case it could not be argued successfully that the decision to write-off the interest on the loan of appellant's wife stemmed from the merits of the case. It was evidently a decision to show favour to appellant because of his position and status and above all his connection with the former Chairman. The fact that the appellant was not attributed any express word which would have indicated that he attempted to influence the decision of the Committee on the application of his wife, was not of much significance in the circumstances of the case. It was not necessary to prove exercise of undue influence by the appellant over the Committee that he should have said so in express words. The exercise of influence by the appellant over the Committee in taking the above decision could be legitimately inferred from the circumstances created by the appellant in which the Committee was not left free to decide on merit save to take a decision favourable to appellant. The presentation of the application of his wife by the appellant to the Chairman of the Committee on 13-12-1989, when the matter was not listed on the agenda of the meeting; the acceptance of the same by the Chairman then and there and directing the Committee to write-off the entire interest on the loan by passing the normal procedure followed by the Bank to call for the report of field staff on such application before deciding the same were circumstances sufficient to establish that the decision was the result of influence exercised by the appellant over the Committee through its Chairman.

The question which arises for consideration in the case is whether the appellant while presenting the application of his wife to the Chairman of the Committee, for writing-off the interest on the loan acted as a Director of the Bank or he was also acting in his capacity as a member of National Assembly. To determine this question it will be appropriate to look into the circumstances under which the appellant was appointed as the Director on the Board of Directors of the Bank. The appellant was elected as a member of National Assembly on 16-11-1988.

The notification nominating him as Director of the Bank, clearly indicated that the appointment of appellant as Director of the Bank was not on account of any other qualification except for his status as M.N.A. In fact the position of the appellant as non-official Director of the Bank was secondary to his status as M.N.A. The appellant while presenting application of his wife to the Chairman of the Committee seeking remission of interest on loan was not discharging any function in his capacity as the Director of the Bank and also not in his capacity as the M.N.A. No such line of demarcation could be drawn in the circumstances of the case to attribute the action of appellant as falling only under one of his abovementioned two capacities. In the

circumstances of the case it could not be said that the appellant while seeking decision of the Committee on the loan application of his wife was not acting in his capacity as an M.NA. The influence exercised by the appellant over the Committee for getting decision on the application of his wife for remission of interest on loan, was therefore, as much in his capacity as an M.NA. as it could be considered in his other capacity as the Director and member of the Debt Write-off Committee.

According to material on record Debt Write-off Committees were constituted from time to time under the directions of the Board of Directors of the Bank which in their discretion wrote-off interest on loans on case to case basis, without following any set procedure or criteria. This is reflected in the minutes of the meetings of Debt Writ-off Committee placed on record. For instance, the Debt Writ-off Committee in its meeting held on 13-12-1989 took up about 20 cases to consider the remission of interest of loan and allowed remission in all cases without stating any reason for remission except in two cases where it was boldly stated that they were distress cases. In one of the cases considered in the above meeting, the Committee reviewed its previous decision of 50% remission of interest and allowed 100% remission without stating the reason for the change of its view. Similarly, in the meetings of Debt Write-off Committee held on 21-7-1990 and 11-2-1991 interest on loans in a large number of cases was remitted without disclosing any reason for remission. Such arbitrary exercise of power by the Debt Write-off Committee finds no support either from the statutory provision, rule, regulation, by-laws or any policy guideline framed by the Bank or State Bank of Pakistan in this behalf.

The functionaries charged with the authority to administer the affairs of the Bank were dealing with the public money and as such were expected to act with great circumspection and strictly in accordance with law. The examination of the minutes of meetings of Debt Writ-off Committee on record, however, revealed that while dealing with the cases of writing off interest on Bank loans, the Committee neither kept in view the interest of the Bank nor it acted on commercial considerations which was the requirement under the Ordinance. On examination of various provisions of the Ordinance and Agricultural Development Bank of Pakistan Rules, 1961 framed thereunder it is found that under the Ordinance besides constitution of Board of Directors which was made generally responsible to control and manage the affairs of the Bank, another body known as Executive Committee of the Bank was also contemplated under section 12 of the Ordinance which consisted of the Chairman and 3 other Directors of the Bank. This body in the hierarchy of Bank ranked next to the Board of the Directors in so far its power to administer the affairs of the Bank was concerned. The powers to be exercised by the Executive Committee of Bank are mentioned in Rule 22 of the Rules.

From reading of various provisions of the Ordinance and Rules framed thereunder, it is quite clear that besides the Board and the Executive Committee of the Bank no other authority of the Bank was competent to write off losses including those pertaining to irrecoverable loans and interest. It is also quite clear that the Executive Committee of the Bank under Rule 22(b) could write off the loan and interest only up to Rs.10,000 in any one case and that too if the loan and the interest had become irrecoverable. Therefore, unless the loan or the interest was found to be irrecoverable by the Bank, it could not be remitted or written off by it. In the scheme of the Ordinance, the power to write-off interest on Bank loans exercised by the Debt Write-off Committee created under the directions of the Board of Directors was open to serious doubt, and in any case the power, if any, available in this regard could not be excised by the Committee except on commercial considerations which meant that the loan or the interest had become irrecoverable.

The remission of interest on loan granted to appellant's wife was wholly unjustified and illegal and was the result of undue influence exercised by the appellant over the Committee and its Chairman in abuse of his position as the sitting M.NA. The action of appellant in obtaining remission of interest on the loan of his wife from the Committee therefore, amounted to 'misconduct' within the meaning of Article 2(a) of the Order both for the reason that it was an act of favouritism and also amounted to abuse of the position of appellant as M.NA.

(d) Prejudice---

---- Merely contending that defence of the party was prejudiced without pointing out particular reason for the alleged prejudice, is riot sufficient.

(e) Constitution of Pakistan (1973)---

----Art. 184(3)---Absence of statutory Rules or Regulations or any express policy guidelines issued by the State Bank of Pakistan regulating and controlling the powers of Financial Institutions to write-off loans and interest with the result that power to write off loans and interest was being exercised by said institutions without keeping in view the commercial considerations which were the guiding principles in such cases and the interest of Banks and the depositors---Supreme Court found the case to be fit one to be taken up in exercise of its jurisdiction under Art.184(3) of the Constitution of Pakistan as it was a matter of great public importance---Supreme Court directed the office to register a case for chamber processing in the first instance and issue notices to State Bank of Pakistan and other major Banking Institutions to appear before the Court and place before it list of written-off loans and interest cases and the rules, regulations, by-laws and policy decisions followed in that behalf.

In the present case there appeared to be no statutory Rule or Regulation or any expressed policy guideline issued by the State Bank of Pakistan regulating and controlling the powers of Financial Institutions to write-off loans and interest with the result the powers to write-off loans and interest was being exercised by these institutions arbitrarily without keeping in view the commercial considerations which was the guiding principle in such cases and the interest of Banks and the depositors. It was, therefore, desirable that in order to curb and control the prevailing financial indiscipline in the Financial Institutions immediate measures be taken to control and regulate their powers to write-off loans and interest either through statutory provisions or through strict policy guidelines prescribed by the State Bank of Pakistan in exercise of its supervisory jurisdiction over Banking Institutions under Banking Companies Ordinance, 1961. This was necessary to prevent the mismanagement and misuse of public money. The subject was fit one to be **taken up** by Supreme Court in exercise of its jurisdiction under Article 184(3) of the Constitution and it was matter of great public importance. The Supreme Court office was accordingly, directed to register a case for chamber processing in the first instance and issue notices to State Bank of Pakistan and other major Banking institutions to appear before the Court and place before it list of written-off loan and interest cases and the rules, regulations, by-laws and policy decision followed in that behalf.

Shahid Hamid, Advocate Supreme Court and S. Inayat Hussain Advocate-on-Record (absent) for Appellant.

Aziz A. Munshi, A: G., Mumtaz Ali Mirza, DA: G. and Ch. Akhtar Ali, Advocate-on-Record for Respondent.

Date of hearing: 9th February, 1993.