

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

(Through Virtual Mode)

Reserved on: 15.06.2020
Pronounced on: 19.06.2020

CM No. 1961/2020 in
SWP No. 470/2020,
CM Nos. 1960/2020 &
978/2020

Mr. Parvez Ahmad Nengroo

.....Petitioner (s)

Through :-

Mr. R.A. Jan Sr. Advocate with
Mr. Taha Khalil, Advocate.

V/s

Union Territory of J&K and others.

.....Respondent(s)

Through :-

Mr. B.A. Dar, Sr. AAG for R-1.
Mr. Sunil Sethi, Sr. Adv. with
Mr. Ravi Arbol, Adv. for R-2 & 4.
Mr. Nitin Parihar, Adv. for R-3.
Mr. G.A. Lone, Adv. for R-5.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

1. Petitioner has filed the instant application, i.e., CM No. 1961/2020, seeking leave of this Court to amend the writ petition. Before coming to the instant application, let me give a brief background of the facts, leading to filing of the instant application.

2. The petitioner filed the instant writ petition, challenging the action of the respondent No. 1 whereby the said respondent issued a communication dated 08.06.2019 thereby removing the petitioner from the post of Chairman cum CEO of the Board of Directors of respondent No. 2-Bank. Petitioner further sought a direction for his reinstatement as Chairman cum CEO of respondent No. 2-Bank and for release of monthly salary along with perquisites in his favour. According to the petitioner, the impugned action of the respondents is non-est in the eyes of law, inasmuch as the impugned notice is wholly arbitrary, illegal and against the provisions contained in the Banking Regulations Act and the Articles of Association of the respondent No. 2-Bank. Petitioner has further challenged the action of the respondents on certain other grounds.

3. Notice of the petition was issued to the respondents and the respondent No. 2-Bank submitted preliminary objection to the maintainability of the writ petition, whereas the other respondents are yet to file their response. During the pendency of the writ petition, it appears that the vide Notifications dated 27.03.2020 and 24.04.2020 followed by the communications bearing Nos. FD/Bkg/12/2020 dated 15.05.2020 and JKB/BS/F3652/2020/024 dated 17.05.2020, the respondents initiated and undertook the process of making appointment of one-Mr. Zubair Iqbal as Managing Director, which post seems to have been created after affecting the amendments to Articles 69 (I) and 71 of the Articles of Association of the respondent No. 2-Bank in the Annual General Meeting dated 26.09.2019. After this development, petitioner filed an application, seeking a direction for staying the selection process being

undertaken by the respondent No. 2-Bank for appointment against the advertised post of Managing Director with a further direction to stay the Notification dated 15.05.2020, whereby the respondent No. 2 nominated Mr. Zubair Iqbal as Nominee Director of respondent No. 1.

4. During the course of hearing of the above application, Mr. Zubair Iqbal filed an application (CM No.78A/2020) seeking his impleadment as party to the writ petition. The said application was allowed vide order dated 29.05.2020 and accordingly, Mr. Zubair Iqbal was impleaded as party respondent No. 5 to the present proceedings.

5. It is in the above backdrop that the petitioner has made an application, seeking leave of this Court to amend the writ petition. Through the medium of this application, petitioner seeks to amend the cause title of the writ petition and to include the averments with regard to the developments which are alleged to have taken place after filing of the instant writ petition, that led to the creation of post of the Managing Director and subsequent appointment of respondent No. 5 to the said post. Petitioner further seeks to urge the legal grounds to throw challenge to these actions of the respondents and to include the prayers for declaring the process as well as appointment of the respondent No. 5 to the post of Managing Director, as non-est in the eyes of the law with a further direction to the respondents not to carry into the effect the aforesaid process/appointment of respondent No. 5.

6. The non-applicants have vehemently opposed the application by filing their objections thereto, wherein it has been contended that the writ

petition itself is not maintainable, as such, the amendment cannot be allowed. It has been contended that there is lack of bonafides on the part of the petitioner, as he has suppressed the material facts, which were within his knowledge. It is also contended that by way of amendment, the petitioner is seeking to introduce a new case, which cannot be allowed. It is further contended that the amendment sought is not necessary for determination of the real controversy between the parties and the same is beyond the scope of the provisions contained in Order VI Rule 17 of the CPC.

7. I have heard learned counsel for the parties and perused the record.

8. Insofar as the provisions pertaining to amendment of the pleadings as contained in the Code of Civil Procedure (*in short, 'the CPC'*) are concerned, the principles thereof are applicable to writ proceedings as well. Order VI Rule 17 of the CPC provides for amendment of the pleadings and it says that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

9. The Hon'ble Supreme Court has, in the case of **Ganesh Trading Company Vs. Moji Ram**, reported as 1978 (2) SCC 91 while explaining the matters pertaining to amendment of the pleadings, observed as under:-

“Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what

is really at issue between the parties, and to prevent deviation from the course which litigation on particular causes must take.”

10. From the above, it is clear that the pleadings and particulars are required to enable the Court to decide the exact rights of the parties. The amendment in the pleadings is a matter of procedure, grant or refusal whereof is in the discretion of the Court, but such discretion has to be exercised in accordance with certain legal principles.

11. The Hon’ble Supreme Court has, in the case of “Jay Jay Ram Manohar Lal Vs. National Building Material, reported as (1969)1 SCC 91” while dealing with a case where amendment of the plaint was refused, held as under:-

“Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleadings of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder, he had caused injury to his opponent, which cannot be compensated for by an order of costs. However, negligent and careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

The Hon’ble Supreme Court further went on to explain as under:-

“The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.”

12. From the aforesaid enunciation of law on the subject of amendment of the pleadings, it becomes manifest that if no prejudice is caused to the adverse party inasmuch as none of the rights accrued to him is taken away by the proposed amendment of the pleadings, normally the Courts must grant leave to amend the pleadings, subject to the condition that the

amendment sought is necessary for determination of real controversy between the parties.

13. Coming to the instant case, as already noted the petitioner by way of the writ petition has challenged the action of the respondent Nos. 1 and 2, whereby his appointment of as Managing Director cum CEO stands rescinded.

14. It is an admitted fact that during the pendency of the writ petition, a separate post of Managing Director stands created against which the appointment of respondent No. 5 has been made subject to the approval of respondent No. 3. These are all subsequent developments, which could not have been within the knowledge of the petitioner when he initially filed the writ petition. Therefore, the contention of learned counsel for respondent No. 5 that the petitioner has suppressed the material facts appears to be without any merit.

15. So far as the contention of learned counsel for the respondents that the amendment sought is not necessary for determination of real controversy between the parties is concerned, the same is also misconceived because even if the petitioner succeeds in convincing this Court that his removal from the post of Managing Director cum CEO of respondent No. 2-bank was illegal, he may not be able to get an order for his reinstatement unless the appointment of respondent No. 5 to the post of Managing Director is stalled. The developments that have taken place subsequent to filing of the writ petition have important bearing upon the controversy between the parties and these facts are essential to the determination of the issues raised in this writ petition. It is not a case

where the petitioner by way of the proposed amended pleadings is contradicting the case set up by him in the original writ petition, but it is a case where he seeks to bring on record the facts relating to the developments that have taken place after filing of the writ petition.

16. Even otherwise, once the respondent No. 5 has been impleaded as party to the present proceedings, the consequent amendment to the pleadings has to take place. The provisions contained in Order I Rule 10 of the CPC are very clear about it. It is pertinent to mention here that at the time of impleadment of respondent No. 5 as party to the writ petition, no objection was raised by any of the parties to these proceedings and, therefore, as a consequence of his impleadment as party, the necessary amendment of the pleadings has to be followed in terms of rule 10(4) of Order I of the CPC. No prejudice is going to be caused to the respondents if the petitioner is permitted to amend the writ petition because most of the respondents have yet to file their response and the case is still at its initial stage. Needless to emphasise that the respondents shall have opportunity to meet the factual and legal averments contained in the amended writ petition and to put forward their contentions.

17. For the foregoing reasons, the application of the petitioner, seeking leave to amend the writ petition, is **allowed** and the amended writ petition is taken on record. Acceptance of the instant application does not mean that this Court is returning a finding upon the maintainability of the writ petition. It shall be open to the respondents to raise objections to the maintainability of the writ petition while filing their reply to the amended writ petition, which they may do by the next date of hearing. The objection

regarding maintainability of the writ petition shall be dealt with after the pleadings are complete.

18. The case be listed on 14.07.2020.

(SANJAY DHAR)
JUDGE

Srinagar
19.06.2020
(Ram Krishan)

