

Before Swatanter Kumar & S.S. Saron, JJ

PUNJAB FINANCIAL CORPORATION EMPLOYEES
WELFARE ASSOCIATION, CHANDIGARH
AND ANOTHER,—*Petitioners*

versus

PUNJAB FINANCIAL CORPORATION
AND OTHERS,—*Respondents*

C.W.P. No. 9500 of 2002

14th August, 2003

Constitution of India, 1950—Arts. 226—State Financial Corporation Act, 1951—Ss.9, 23 and 39—Punjab Financial Corporation (Staff) Regulations, 1961—Regs.65, 66 and 92—State Government withdrawing/lowering allowances and perquisites of employees/officers of Corporation—Whether State Government competent to issue directions to the Corporation—Held, yes—State Government entitled to give instructions on questions of policy—to examine whether a directive given by Government in terms of S.39(1) is a matter of policy or not is to be determined in the facts and circumstances of each case—Grant of allowances and other concessions cannot be said to be a question of policy—Even if it is taken to be a question of policy the Board of Directors are to be guided by the Government in the discharge of its functions—Directions given by the Government liable to be examined independently by the Board of Directors—Board of Directors failing to consider the decision of the Government—State Government failing to consult Small Industries Bank as provided under section 39(1) before giving instructions to the Corporation—Violation of statutory provisions of the Act—Petition allowed while directing the Board of Directors of Corporation to consider the matter afresh.

Held, that it is open to the State Government to give directions to the Corporation but the directions of the State Government is for the guidance of the Corporation in the discharge of its functions. The question whether a directive given by the State Government in terms of Section 39(1) of the Act is a matter of policy or not is to be

determined in the facts and circumstances of each case. The grant of house rent allowance and other concessions, in view of Section 39(1) of the Act cannot be said to be a question of policy. However, the instructions given by the State Government, even if it is taken to be a question of policy, the Board of Directors of the Corporation are to be guided by it as the provisions of Section 39(1) of the Act provide that in the discharge of its functions, the Board shall be guided by such instructions on questions of policy. In any case, these would be advisory in nature in terms of Section 39(2-B) of the Act. Therefore, the instructions on a questions of policy or advise of the State Government is to be considered by the Corporation.

(Para 27)

Further held, that Section 39(1) of the Act also provides that the instructions given by the State Government on the question of policy are to be in consultation with and after obtaining the advise of the Small Industries Bank. The directions given by the State Government in terms of its Demi Official letter dated 10th May, 2002 does not in any manner show that the same has been given in consultation with and after obtaining the advise of the Small Industries Bank. Neither is it the case of the State Government that consultation and advice of the Small Industries Bank was taken. There has, thus, been a clear violation of statutory provisions of the Act. Therefore, the impugned decisions of the respondents i.e. the Demi Official letter dated 10th May, 2002, letter dated 22nd May, 2002 and the decision of the Board of Directors of the respondent Corporation dated 29th May, 2002 are liable to be set aside and quashed.

(Para 27)

A. K. Chopra, Senior Advocate with Mr. Pankaj Gupta,
Advocate, for the petitioners in C.W.P. 9500 of 2002.

T. P. S. Mann, Advocate for Petitioners, in C.W.P. No. 10743
of 2001.

Salil Sagar, Advocate for respondents No. 1 and 2.

C. M. Munjal, Addl. A. G., Punjab for respondent
No. 3.

JUDGMENT

S.S. SARON, J

(1) This order will dispose of Civil Writ Petitions No. 9500 of 2002 and 10743 of 2001 as the claims and the questions of law involved are the same. The facts are, however, taken from CWP No. 9500 of 2002.

(2) The Punjab Financial Corporation Employees Welfare Association, and the Officers Association have filed this petition for quashing the directives dated 10th May, 2002 (Annexure P-10) and 22nd May, 2002 (Annexure P-11) issued by the respondent No. 3 State of Punjab and also for quashing decision dated 29th May, 2002 (Annexure P-15) of the Board of Directors of the Punjab Financial Corporation. The effect of which are that the employees of the Punjab Financial Corporation (Corporation - for short) who were getting house rent allowance to the extent of 25% of their basic pay was reduced to 15%. The conveyance re-imbusement implemented by the Corporation was discontinued with effect from 1st June, 2002. In respect of the medical reimbursement the Corporation was to follow State Government rules for outdoor treatment and indoor treatment as per norms fixed by A.I.I.M.S. and P.G.I. with effect from 1st June, 2002. Besides, Travelling Allowance/Dearness Allowance was also to be as per rules followed by the State Government. The decision of the Board of Directors of the Corporation was taken on the directives of the State Government.

(3) The Punjab Financial Corporation was established under the State Financial Corporation Act, 1951 (hereinafter referred to as the Act). The Corporation is a body corporate and its affairs are run by the "Board" which means the Board of Directors of the Corporation as defined in Section 2(a) of the Act. It is the case of the petitioners that the Act was enacted by the Parliament as the incorporation, regulation and winding up of the Corporation fall within the purview of Parliament,—*vide* Entry No. 43 of the Union List. The main source of finance of the Corporation is from Industrial Development Bank of India (Development Bank - for short), the Small Industries Development Bank of India (Small Industries Bank - for short) or from Commercial Banks by floating bonds. The Corporation is an autonomous and independent statutory body having its own constitution,

regulations, functions and obligations. In discharge of its functions, the Corporation is free to act according to its own requirements. The Corporation makes its own recruitments for various posts, which under the head 'Emoluments' provide that in addition to pay scale and special pay allowances as admissible under the Regulations/Instructions of the Corporation shall be granted.

(4) The employees/officers of the Corporation were being paid house rent allowance @ 25% of their respective pay since the year 1978. Besides, conveyance allowance since the year 1984 and the medical reimbursement in full as per the Punjab Financial Corporation (Staff) Regulations, 1961 (hereinafter referred to as the 1961 - Regulations), as amended from time to time and the instructions of the Corporation. The grievance of the petitioner is against the said allowances being brought at par with the State Government employees in terms of the Demi Official letter dated 10th May, 2002 (Annexure P-10) from the Chief Secretary to the Principal Secretary to Government of Punjab, Department of Industries and Commerce, Chandigarh (respondent No. 3). In the said letter a reference has been made to the Meeting of the Cabinet Sub-Committee on Fiscal Management, held on 24th April, 2002, in which various decisions were taken to effect economy in pay and allowances. It was observed that some of the PSUs were paying pay scales and allowances to their employees at rates higher than the Government employees and were also extending perquisites to the employees which was not available to their counter parts in Government service. A decision was taken by the Sub-Committee that pay, allowances and perquisites of employees of Public Sector Undertakings, Local Bodies, Corporations and other Public and quasi Public institutions shall not be higher than their counterparts in the Government service. It was, therefore, requested to immediately order alignment of pay scales and allowances and perquisites of the employees of the institutions with that of the Government employees of the equivalent category with immediate effect. The responsibility for non-implementation of the above decision of the Cabinet Sub-Committee was to be that of the Administrative Secretary and the Managing Director of the PSU concerned. Compliance report in that behalf was indicated to be sent by 21st May, 2002, with a copy to the Principal Secretary, Government of Punjab, Department of Finance. It was also indicated that the Cabinet Sub-Committee on Fiscal Management is an Empowered Sub-

Committee of the Council of Ministers and, therefore, its decision were the decisions of the Council of Ministers for all intents and purposes. In furtherance to the Demi Official letter dated 10th May, 2002 (Annexure P-10), the Industries Department of the Punjab Government issued a memo dated 22nd May, 2002 (Annexure P-11) with regard to the parity of pay, allowances and perquisites of employees of PSUs with that of Government Employees. It was requested by the said memo which was addressed to various Corporations including the Managing Director of the Respondent-Corporation that by taking immediate action on the Demi Official letter dated 10th May, 1992 (Annexure P-10), the Corporation should send a copy of the action report taken to the Department while sending the same to the Chief Secretary/Principal Secretary Finance. This was asked to be finalised on priority basis. Thereafter,—*vide* memo dated 26th May, 2002 (Annexure P-12) on the subject of strict observance of economy and austerity measures to be implemented in all the PSUs by making a reference to the Demi Official Letter dated 10th May, 2002 (Annexure P-10) and memo dated 22nd May, 2002 (Annexure P-11), the Managing Director of the Corporation recorded that the Corporation is governed by the Act and Section 39 provides that the Board shall be guided by such instructions on the question of policy as may be given by the State Government and that 'Policy' does not include the fixation of emoluments. The State Government it was stated has limited powers only in matter pertaining to the running of the business of the Corporation and to decide the fixation of grades, creation of posts and matters relating to emoluments, pension, gratuity etc. cannot be said to be policy matters. The Managing Director concluded that if a wider interpretation is given to the word 'policy' as used in Section 39, of the Act, the Corporation would become a part of the State Government and cannot work as an autonomous body. The case was placed before the Board of Directors for advice and appropriate decision in the matter.

(5) The position, therefore, is that on the basis of the Demi Official letter dated 10th May, 2002 (Annexure P-10), memo dated 22nd May, 2002 (Annexure P-11) from the State Government and the memo dated 26th May, 2002 (Annexure P-12) of the Managing Director, the Board of Directors of the Corporation took the impugned decision in its meeting held on 29th May, 2002 (Annexure P-12) alongwith its enclosures are recorded to have been considered and resolved that

in view of the D.O. letter dated 10th May, 2002 (Annexure P-10), the Corporation shall adopt the said directives. The salient features of the impugned decision is that in respect of the House Rent Allowance, the employees of the Corporation were paid 25% of the basic pay whereas the State Government employees were getting 15% of their basic pay. As such the Corporation, resolved to follow that Government pattern with regard to House Rent Allowance to its employees with effect from 1st June, 2002. Conveyance reimbursement implemented by the Corporation was to be discontinued with effect from 1st June, 2002 as the State Government employees did not get any such facility. With regard to the Medical reimbursement, it was resolved that the Corporation shall follow the State Government rules for payment of Rs. 250/- per month for outdoor treatment and indoor treatment expenses as per norms fixed by A.I.I.M.S. and P.G.I. with effect from 1st June, 2002. However, the employees could avail of indoor treatment from any other recognised hospital (to be short-listed by the management) and the reimbursement of the charges were not to exceed the charges stipulated by A.I.I.M.S. or P.G.I. This action of the State Government and the Corporation is impugned in the present petition.

(6) Notice of the case was issued to the respondent-Corporation and the State of Punjab filed their separate written statements. In the reply filed by the Corporation, it was submitted that petitioners were being paid House Rent Allowance since 1978, conveyance allowance from 1984 and medical reimbursement as per the Regulations amended from time to time. However, it was denied that these emoluments having been paid continuously had become conditions of service. Besides, it was stated that the State Government can issue directives under Section 39 of the Act with regard to the matters pertaining to question of Policy.

(7) The respondent - State in its written statement submitted that the Cabinet Sub-Committee of the Government considering the precarious fiscal health of the State had taken certain decisions, which were conveyed in order to bring parity in the pay, allowances and perquisites being enjoyed by the employees working in the various Public Sector Undertakings, Local Bodies, Corporations and other Public and Quasi Public Undertakings shall not be higher than their counterparts in the Government service. Therefore, the petitioner had

no statutory right to claim such allowances. Besides, it was stated that the State Government is empowered to give instructions to Punjab Financial Corporation under Section 39 of the Act on the question of policy. Therefore, the order for alignment of pay scales and allowances and perquisites of the employees of institutions with that of the Government employees of the equivalent categories were issued with immediate effect. It was made clear that while doing so the pay of the employees may be protected in lower scales and higher allowances and perquisites not admissible to Government employees but being enjoyed by the Public Sector Undertakings employees may be withdrawn prospectively. On these averments, it was prayed that the writ petition be dismissed.

(8) The petitioner filed a short rejoinder, in which it was stated that it was incorrect that no rent free accommodation was provided to Government employees. As per Rule 5.35 of the Punjab Civil Services Rules, Volume-I, Part-I with Appendix 7, rent free accommodation can be provided to the Government employees. Besides,—*vide* memo dated 9th April, 1989, the Government of Punjab decided that the facility of rent free accommodation should be allowed to all the Doctors with clinical responsibility. Moreover,—*vide* letter dated 4th July, 2001, it was stated that the rent free accommodation would be admissible only if the employee who cannot be allowed rent free accommodation hires a house within 3 k.m. of his place of duty. The provision of granting accommodation to the Government employees had also been made in the rules known as Punjab Government Houses (General Pool) Allotment Rules, 1983. Therefore, it was prayed that the writ petition be allowed as there was disparity in the matter of House Rent Allowance between the employees of the State Government and that of the Corporation.

(9) Shri A. K. Chopra, Learned Senior Advocate assisted by Shri Pankaj Gupta, Advocate, appearing for the petitioners and Shri T. P. S. Mann, Advocate for the petitioners in the connected petition (CWP No. 10743 of 2001) have contended that the impugned decision taken by the Corporation to lower the allowances and perquisites being enjoyed by the employees and officers of the Corporation is based on the directives of the State Government, which the State Government was not competent to issue and in any case were not binding on the Corporation as it is an autonomous Corporation having

its own independent identity. Shri Chopra learned Senior Advocate also referred to the provisions of Section 9 of the Act which provides for the general superintendence, direction and management of affairs and business of the Corporation shall vest in the Board of Directors, which may exercise all powers and do all such acts and things as may be exercised or done by the Financial Corporation. Besides, a reference was made to Section 23 of the Act which provides that the Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its function, and determine by regulations, their conditions of appointment and service and the remuneration payable to them. He also made a reference to Section 16 of the State Financial Corporations (Amendment) Act 2002, in pursuance of which the Proviso to Section 23 of the Act has been omitted. The Proviso to Section 23 as it earlier existed provided that the State Government may in consultation with and after obtaining the advice of the Development Bank, specify the class or categories of posts in respect of which appointments may be made by the Board on such remuneration and other conditions of service as the Board may determine and no regulation made under the Act are to apply to such posts in respect of matters so determined by the Board. This provision having been omitted, it is contended, that the State Government now has no right to specify the class or categories of posts in respect of which appointments may be made on such remunerations and other conditions of services. Besides, it is contended that the State Government under Section 39 of the Act can only guide the Corporation and its decisions cannot be thrust upon it. Lastly that Section 48 of the Act gives powers to the Board to make Regulations, which are not inconsistent with the provisions of the Act and the Rules made thereunder after consultation with the Small Industries Bank and with the previous sanction of the State Government to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of the Act. It is in exercise of the said powers that the Board of Directors of the Corporation made the 1961 Regulations which were notified on 16th March, 1961 and applied to every officer and employee of the Corporation. Regulation 65 of the 1961 Regulations provides that the pay and allowances of an employee shall be regulated in accordance with the provisions of Appendices I

and II except as otherwise provided in the Regulations. Appendix II relates to Compensatory Allowance and para 1(i)(c) provides for travelling allowance. This was being granted to the employees of the Corporation since January 28, 1984 at different rates with the sanction of the Board. Besides, Regulation 66(2) provides that a concession, the grant of which is not covered by the 1961 Regulations, may not be granted to an employee except with the sanction of the Board. Regulation 92 provides that medical attendance shall be provided by the Corporation to its employees and their families as per the provisions of Appendix III of the Regulations. In this view of the matter, it is contended that the impugned action is in violation of the statutory provisions of the Act and the 1961 Regulations.

(10) In response Shri C. M. Munjal, learned Additional Advocate General, Punjab, appearing for respondent No. 3 State of Punjab and Shri Salil Sagar, Advocate, appearing for the Corporation contend that the decision to withdraw the house rent allowance, conveyance allowance and medical reimbursement is in accord with the provisions of the Act and the Regulations. It is contended that the State Government in exercise of its powers under Section 39 of the Act can issue directions to the Corporation for the discharge of its function and the Corporation is to be guided by such instructions on questions of policy as may be given to it by the State Government. Besides, even in the event of dispute between the State Government and the Corporation as to whether the question is or is not a question of policy, the decision of the State Government is to be final. It is also contended that State Government holds more than 51% equity shares in the Corporation and even otherwise notwithstanding the equity shares holding in the Corporation by the State Government. It may advise the Corporation on the matters of policy. In this view of the matter, it is contended that decision taken by the Cabinet Sub-Committee on fiscal management in its meeting held on 24th April, 2002 to effect economy in pay and allowances so as to bring the employees of PSUs, Local Bodies, Corporations and other Public and Quasi - Public Institutions to be not higher than their counter parts in the Government service was just and reasonable and within the purview of Section 39 of the Act. Therefore, they pray for the dismissal of the writ petition.

(11) We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties. In order to appreciate the respective contentions of the parties, the provisions of Sections 9, 23 and 39 of the Act may be noticed, which read as under :—

“9. Managements : (1) The General superintendence, direction and management of affairs and business of the Financial Corporation shall vest in a Board of Directors which may exercise all powers and do all such acts and things, as may be exercised or done by the Financial Corporation and are not by this Act expressly directed or required to be done by the Financial Corporation in general meeting.

(2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the Chairman, Managing Director or the whole-time Director.”

“23. **Officers and other employees of the Financial Corporation.**—The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.”

“39. **Power to give instructions to Financial Corporation on questions of policy.**—(1) In the discharge of its functions, the Board shall be guided by such instruction on questions of policy as may be given to it by the State Government in consultation with and after obtaining the advice of, the Small Industries Bank.

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

- (2-A) Nothing contained in sub-section (1) and sub-section (2) shall apply in a case where a State Government holds less than fifty-one per cent of the equity shares in the Financial Corporation.
- (2-B) Notwithstanding the equity share holding of a Financial Corporation by a State Government, the State Government may advise the Financial Corporation on the matters of policy.
- (3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of Section 37-A, the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any Court.”

(12) Besides, the provisions of Regulation 65, 66 and 92, may be noticed, which reads as under :—

“65. Application of Appendices I and II

Except as otherwise provided in these Regulations, the pay and allowances of an employee shall be regulated in accordance with the provisions of Appendices I and II.”

“66. Grant of honorarium special increments, or other concessions.

66 (1) The terms and conditions under which an honorarium, or special increments may be granted to an employee of the Corporation for passing the examination held by an Institute of Bankers shall be determined by the Board.

66 (2) A concession, the grant of which is not covered by these regulations, may not be granted to any employee, except with the sanction of the Board.”

92. Medical Attendance provided by the Corporation.

Medical Attendance shall be provided by the Corporation to its employees and their families as per provisions of Appendix III to these Regulations.

(13) The perusal of Section 9 of the Act shows that the general superintendence directions and management of affairs and business of the Financial Corporation vests in a Board of Directors. It also envisages that the Board of Directors may exercise all powers and do all such acts and things, as may be exercised or done by the Financial Corporation and are not by the Act expressly directed or required to be done by the Financial Corporation in general meeting. Section 23 of the Act provides that Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and remuneration payable to them. As already noticed above, the Act was amended by the State Financial Corporation (Amendment) Act, 2000 (Act No. 39 of 2000) and in terms of Section 16 of the said amendment Act No. 39 of 2000 with effect from 5th September, 2000, the proviso to Section 23 which provided right to the State Government to specify the class or categories of posts in respect of which appointments may be made by the Board on such remuneration and other conditions of service as the Board may determine in consultation and after obtaining the advice of the Development Bank, has been omitted. The unamended Section 23 contained a proviso that the State Government may in consultation with and after obtaining the advice of the development Bank specify the class or categories of posts in respect of which appointments may be made on such remuneration and other conditions of service as the Board may direct. This proviso stands omitted. Section 39 of the Act envisages that in discharge of the functions of the Corporation, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government in consultation with and after obtaining the advice of the Small Industries Bank. Section 48 of the Act gives power to the Board of the Corporation to make regulations not inconsistent with the provisions of the Act and the rules made thereunder, after consultation with the Small Industries Bank and with the previous sanction of the State Government to provide for all matters for which provision is necessary or expedient

for the purpose of giving effect to the provisions of the Act. The Corporation has framed as the 1961 Regulations. These were notified on 16th March, 1991 and applied to other Officers or employees of the Corporation.

(14) The question which requires to be considered is whether the allowances which were received by the employees of the Corporation can be withdrawn on the directives of the State Government.

(15) As already noticed above, the State Government has issued directives,—*vide* Demi Official Letter dated 10th May, 2002 (Annexure P-10) from the Chief Secretary, intimating the decisions of the Cabinet Sub-Committee of Fiscal Management, wherein it had been decided to effect economy in pay and allowances. It was observed that some P.S.U.s. were paying pay scales and allowances to their employees at rates higher than the Government employees and were also extending perquisites to the employees, which were not available to their counter parts in government service. It is further mentioned that a decision had been taken by the Sub-Committee that pay, allowances and perquisites of employees of Public Sector Undertakings, Local Bodies, Corporations and other Public and quasi Public Institutions shall not be higher than their counter parts in the government service. It was requested to immediately order alignment of pay scales, allowances and perquisites of the employees of the institutions with that of the government employees of the equivalent category with immediate effect and while doing so, it was mentioned, that the pay of the employees may be protected in the lower scale and higher allowance and perquisites not admissible to government employees but being enjoyed by the P.S.U. employee may be withdrawn prospectively. Lastly, it was mentioned that it may kindly be noted that the responsibility for non-implementation of the decisions of the Cabinet Sub-Committee would be that of the Administrative Secretary and the Managing Officer of the P.S.U. concerned. A compliance report in this regard was to be sent to the Chief Secretary by 21st May, 2002, with a copy to the Principal Secretary Finance. The Superintendent of the Industries and commerce Department,—*vide* his letter dated 22nd May, 2002 (Annexure P-11) sent the said decision to the Managing Director of the Corporation to take immediate action and send a copy of the action taken report to the department while sending the same to the Chief Secretary and Principal Secretary,

Finance. The Managing Director of the Corporation addressed a memorandum dated 26th May, 2002 (Annexure P-12) to the Board of Directors, regarding strict observance of economy and austerity measures to be implemented in Public Sector Undertakings. In the context of the memo dated 22nd May, 2002 (Annexure P-11) along with the Demi Official letter dated 10th May, 2002 (Annexure P-10) from the Chief Secretary, it was recorded as follows :—

“In this connection, it is mentioned that the Punjab Financial Corporation is governed by the Provisions of the State Financial Corporation’s Act, 1951. Section 39 of the said Act provides that the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government. Various High Courts have considered the matter in detail and laid down that the word or phrase policy does not include the fixation of emoluments. The State Government has limited powers only in the matter pertaining to the running of the business of the Corporation. To decide the fixation of grades, creation of posts and matters relating to emoluments, pension, gratuity etc. can not be said to be policy matter. If a wide interpretation is given to the word ‘policy’ as used in Section 39, the Corporation will become a part of the State Government and can not work as an autonomous body. The condition of service of the employees can not be considered as a matter of policy.

The case is placed before the Board of Directors for advice and appropriate decision in the matter.”

(16) The above observations of the Managing Director in his Memo dated 26th May, 2002 (Annexure P-12) is recorded to have been considered by the Board of Directors in their meeting held on 29th May, 2002 (Annexure P-15). However, in view of the Demi Official letter dated 10th May, 2002 (Annexure P-10) from the Chief Secretary a decision was taken on 29th May, 2002 (Annexure P-15) to implement the directives of the State Government.

(17) Therefore, it is to be seen whether the directive of the Chief Secretary comes within the ambit of Section 39 of the Act, which provides for giving instructions to Financial Corporation on the

questions of policy. In the case of **Rakesh Rajan Verma versus State of Bihar**, (1) the Hon'ble Supreme Court considered the provisions of Section 78-A of the Electricity (Supply) Act, 1948, which is *par materia* to the provisions of Section 39 of the Act in the present case. Section 78-A of the Electricity (Supply) Act, reads as under :—

“Section 78-A of the Act reads as under :—

“Directions by the State Government.—(1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final.”

(18) In **Rakesh Rajan Verma's** case (*supra*) the candidates though included in the panel list of the year in question could not be appointed to the post of Junior Electrical Engineers in the State Electricity Board, as there were no sufficient vacancies in the said post. They were appointed on the lower post of operator on recommendations of the committee and on taking an undertaking from them that they would not lay any claim in future for the post of Junior Electrical Engineer. The candidates subsequently made a claim before the State Electricity Board and the State Government that they should be absorbed against the vacant posts of Junior Electrical Engineers on the basis of the merit list and panel prepared in the year 1984. The State Government by a communication dated 18th July, 1988 wrote to the Board that as the petitioners had appeared in the written test for being appointed to the post of Junior Electrical Engineers, any Undertaking given by them on the eve of their appointments was an unreasonable restriction and as such they may be absorbed against the posts of Junior Electrical Engineers. It was mentioned in the said communication that the said direction was being issued in exercise of powers under section 78-A of the Electricity (Supply) Act, 1948. Another communication on 5th May, 1989 reiterating the earlier direction was also issued, which were not complied with by the Board.

(1) AIR 1992 S.C. 1348

The petitioners filed writ petition to quash the advertisement dated 28th July, 1989 and to appoint/absorb them to the vacant substantive posts of Junior Electrical Engineers. After noticing the provisions of Section 78-A of the Act, it was observed by the Hon'ble Supreme Court as follows :—

“The above provision clearly lays down that the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. In the circumstances of the case before us the directions given under letters dated 18th July, 1988 and 5th May, 1989 cannot be considered as directions on any questions of policy. So far as the appointment of staff is concerned, S. 15 empowers the Board to appoint such officers and employees as may be required to enable the Board to carry out its functions under the Act.”

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“.....Thus, we agree with the view taken by the High court in this regard that the direction given by the State Government to appoint the appellants as Junior Engineers by the Board does not involve any matter of policy and it would be an encroachment on the powers of the Board given under S. 15 of the Act.”

(19) In **Chittoor Zilla Vyavasayadarula Sangham versus A.P.S.E. Board (2)**, while adverting to the provisions of Section 78-A of the Electricity (Supply) Act, it was held as follows :—

“It is necessary first to examine the periphery of the statutory fields within which, the Board and the State Government has to function. Admittedly both are statutory functionaries under the Central Act. They have to perform their obligations within the limits they have been entrusted with. Section 78-A empowers the State Government to issue directions to the Board on question of policy, on the other hand the Board has to perform its statutory obligations under the said Act and with reference to the fixation of tariff it has to act in terms

of what is contained in Ss. 49 and 50(59). But this field of policy direction is not unlimited. There cannot be any policy direction which pushes the Board to perform its obligations beyond the limits of the said two sections. Any policy direction, which in its due performance keep the Board within its permissible statutory limitations would be binding on the Board. So, both State and the Board have to maintain its cordiality and co-ordination in terms of the statutory sanctions. If any policy direction pushes the Board in its compliance beyond statutory limitations, it cannot be a directions within the meaning of S. 78-A. It is significant that opening words of S. 78-A is, "in the discharge of its functions, the Board shall be guided by such directions." So, the direction of the State is for the guidance to the Board, in the discharge of its functions. Thus this direction has also limitation to give direction which will subserve in performing its statutory obligation.....".

(20) The above observations show that the provisions of the Act; "in the discharge of its functions, the Board shall be guided by such directions," was considered and it was held that the directions of the State is for guidance to the Board in the discharge of its functions.

(21) Apart from the provisions of Section 78-A of the Electricity (Supply) Act, which as already noticed, are para-materia with the provisions of Section 39 of the Punjab Financial Corporation, Act, the Hon'ble Supreme Court in the case of **Gujarat Housing Board Engineer Association versus State of Gujarat (3)**, considered the provisions of Section 82 of the Gujrat Housing Board Act, 1961, which empowered the State Government to give to the Housing Board such directions as were in its opinion necessary or expedient for carrying out the purposes of the said Act and it was submitted that the Housing Board was obliged to comply with such directions. The Hon'ble Supreme Court held that the short answer to this submission was that it was not open to the State Government to give directions to the Housing Board under Section 82 which were contrary to the provisions of the Regulations made under the provisions of the said Act with its previous sanction.

(22) A Division Bench of Himachal Pradesh High Court in the case of **H.P. Financial Corporation Employees Union versus State of H.P. and Another**, Civil Writ Petition No. 791 of 1991 decided on 11th December, 1992 (Annexure P—6) considered a similar controversy in the context of Section 39(1) of the Act and the powers of the State Government to issue instructions. The employees of the Himachal Pradesh Financial Corporation were receiving *ex gratia* amount equivalent to 20% of pay and D.A. or equivalent two months and ten days pay whichever was less for the last many years. This payment was a result of decision by the Board of Directors of the Himachal Pradesh Financial Corporation. This payment was stopped by the Himachal Pradesh Financial Corporation on the instructions received from the State Government *vide* a communication. It was contended that the matter relating to the grant of *ex gratia* payment is not a matter of policy and therefore State Government had no jurisdiction to issue such directions and the petitioners are entitled to *ex gratia* payment @ 20% of payment and other emoluments continuously. The question that was considered was whether the Government had the power to direct the Financial Corporation to stop *ex gratia* payment to the employees and follow its direction to pay bouns @ 8.33%. The Himachal Pradesh High Court held that the directions issued were not a question of policy. As to the policy the State Government may have jurisdiction to direct the Financial Corporation to carry on its primary question as to advancement of loan recovery thereof and the employees for the grant of such loss etc. but this jurisdiction does not cover matters relating to re-claim of staff and their joint conditions of service. *Ex gratia* payment to its employees, it was held was primarily the function of the Financial Corporation and it was for it to decide what conditions are to be there for the purpose of the staff employed by it and the payments to be made to them by way of emoluments.

(23) A Division Bench of Rajasthan High Court in C.W.P. No. 669 of 1988 decided on 5th September, 1988 (Annexure P-5) also considered a similar question in the matter of *ex gratia* payment. It was contended that employees were continuously and regularly without any interruption; paying *ex gratia* to all the employees @ 20% of the emoluments drawn by them for the last 15 years. The Rajasthan Financial Corporation admitted this fact but, however, stated that under the directions of the State Government they had

stopped the payment and were bound by the directions given by the State Government as a policy. The State of Rajasthan took the stand that the payment being an *exgratia* one does not create any right statutory or otherwise on the members of the petitioners association to claim *exgratia* payment @ 20% of the salary. It was also stated that *exgratia* payment is a separable part and can be separated from the emoluments which are paid. After referring to provisions of Section 39 of the Financial Corporation Act, it was held as follows :—

“S. 39 of the R.F.C. Act, 1951, further provides that the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government. The word or phrase ‘policy’ does not include the fixation of emoluments. The State Government has a limited power only in the matters pertaining to the running of the business. To decide the fixation of the grade, creation of the posts and the matter relating to emoluments, pension, gratuity etc. cannot be said to be (a sic.) policy matters. If a wider interpretation given to the word policy as used in S. 39 the Corporation will become the part of the State Government and cannot work as autonomous body. We can understand that the matters relating to the advancement of loan and their recoveries and other allied matters, the State Government will have a right to give the direction under Section 39. The conditions of the service of the employee cannot be considered as a matter of policy. Therefore, we are of the view that the directions given by the State Government regarding *ex-gratia* payment are not within the purview of the Act. The orders, Annexure 7 dated 22nd July, 1987 and Annexure 11 are also set aside. We hereby further direct that the payment should be made to the employees which they are getting since 1973 and onwards. The Corporation shall comply the order of this Court within 3 months. The State Government shall pay Rs. 1,000 as a cost of litigation to the petitioners.”

(24) A reading of the aforesaid judgments, it is evident that in terms of Section 39 of the Act, the State Government is entitled to give instructions to the Financial Corporation on questions of policy

and the Corporation in the discharge of its function shall be guided by such instructions on questions of policy as may be given to it by the State Government. The directions given by the State Government in matters of grant of allowance are liable to be examined independently by the Board of Directors of the Corporation. The payment of house rent allowance against which the petitioners being the employees of the Financial Corporation are aggrieved is in the nature of a concession as held by a Division Bench of this Court in the case of **Nand Lal versus Punjab State (4)**, it was held that house rent allowance and other allowances were in the nature of concession and could not be claimed in the writ jurisdiction. However, we are concerned primarily not with the right of the petitioners to claim house rent allowance as a matter of right or being in the nature of concession are not entitled to it but in the decision making process of the Board of Directors of the respondent-Corporation. Judicial review of an administrative order is concerned with the decision making process and it is to be seen whether decision taken by the Board of Directors of the respondent Financial Corporation on 29th May, 2002 (Annexure P-15) satisfies the test of "reasonableness" which has three elements i.e. the Board of Directors of the Corporation must have taken into account all relevant factors which were necessary for the decision making process and at the same time left out from consideration all irrelevant factors and the decision is neither perverse nor irrational. "Perverse" would mean an improper or contradictory decision not supported by any evidence and "irrational" would be one which no sensible person properly advised on the facts would reasonably arrive at. Keeping in view the above principles a reading of the impugned decision shows that,—*vide* item No. 333.41, the Agenda item regarding strict observance of economy and austerity measures to be implemented in all the Public Sector Undertakings was considered. The memo dated 26th May, 2002 (Annexure P-11) as also the Demi Official letter dated 10th May, 2002 (Annexure P-10) from the Chief Secretary and the memo, dated 26th May, 2002 (Annexure P-12) are recorded to have been considered and it was decided that :

"Considered Memorandum No. BD/534/2002 dated 26th May, 2002 alongwith its enclosure and resolved that in view of the D.O. letter dated 10th May, 2002 from the Chief

Secretary to the Government, Punjab; Chandigarh,
the Corporation shall adopt the directives as follows :—

Pay Scales :

As far as pay scales are concerned, the pay scales of the officers and non-managerial staff are as per Government norms and as such there are no deviations and hence need no changes.

House Rent Allowance :

The Board noted that the Corporation was paying H.R.A. @ 25% of the basic pay to its employees, whereas the State Government employees were getting 15% of their basic pay. As such, the Corporation should follow Government pattern with regard to payment of H.R.A. to its employees with effect from 1st June, 2002.

Conveyance Reimbursement :

Conveyance reimbursement implemented by the Corporation should be discontinued with effect from 1st June, 2002 as the State Government employees do not get any such facility.

C.C.A.

As per Government pattern and hence requires no change.

Medical Reimbursement :

The Corporation shall follow State Government rules of payment of Rs. 250 per month for outdoor treatment and indoor treatment expenses as per norms fixed by A.I.M.S. and P.G.I. with effect from 1st June, 2002. However, employees could avail of indoor treatment from any other recognized hospital (to be short-listed by the management) and the reimbursement of the charges not to exceed the charges stipulated by PGI or A.I.I.M.S.

T.A./D.A.

T.A./D.A. norms shall also be as per the rules following by the State Government.

The Board further desired that the State Government be conveyed about the adoption of the directives issued by the Chief Secretary to the Government of Punjab.”

(25) A perusal of the impugned decision dated 29th May, 2002 (Annexure P-15) shows that only the D.O. letter dated 10th May, 2002 (Annexure P-10) from the Chief Secretary has been implemented. This is evident from the following sentence in the decision :—

“the Corporation shall adopt the directives as follows.”

(26) Besides, it is appropriate to note that Section 23 of the Act envisages that the Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions and determine, by Regulations, the conditions of appointment and service remuneration payable to them. The provisions of Regulation 65,66 and 92 of the 1961 Regulations have already been noticed above. The 1961 Regulations determine the conditions of service and remuneration payable to such officers, advisers and employees of the Corporation. Therefore, the Board of Directors were to consider the memo, dated 10th May, 2002 (Annexure P-10) from the stand point as to whether it was a matter of policy and if so to be guided by such policy.

(27) Shri Salil Sagar, learned counsel appearing for the Corporation, however, states that the amendment to the Act, in terms of Act 39 of 2000, the Corporation is bound by the directions given by the State Government. He has contended that Section 39(1) of the Act, provides that the Board shall be guided by such instructions on question of policy, as may be, given by the State Government. This he contends is mandated where the State Government holds more than 51% equity shares in the Financial Corporation whereas in terms of Section 39(2-B), it is provided that notwithstanding the equity shares holding of a Financial Corporation by a State Government, the State Government may advise the Financial Corporation on matters

of policy. It is contended that the use of the words, "shall be guided by such instructions on questions of policy," in Section 39(1) and the use of the words; "the State Government may advise the Financial Corporation on the matter of policy," in Section 39(2-B) clearly shows that the Board shall be bound by such instructions. We are however, of the view that in the light of the decision of the Hon'ble Supreme Court in the case of **Rakesh Ranjan versus (supra)**, **Chittor Zilla Vyavasayadarula Sangham (supra)** and **Gujarat Housing Board Engineer Association (supra)**, that it is open to the State Government to give directions to the Corporation but the directions of the State Government is for the guidance of the Corporation in the discharge of its functions. The question whether a directive given by the State Government in terms of Section 39(1) of the Act is a matter of policy or not is to be determined in the facts and circumstances of each case. In the case in hand, the grant of house rent allowance and other concessions, in view of the afore-referred judgments in the context of Section 39(1) of the Act cannot be said to be a question of policy. However, the instructions given by the State Government even if, it is taken to be a question of policy, the Board of Directors of the Corporation are to be guided by it as the provisions of Section 39(1) of the Act, provide that in the discharge of its functions, the Board shall be guided by such instructions on questions of policy. In any case, these would be advisory in nature in terms of Section 39(2-B) of the Act. Therefore, the instructions on a question of policy or advise of the State Government is to be considered by the Corporation. It may also be noticed that Section 39(1) of the Act also provides that the instructions given by the State Government on the question of policy are to be in consultation with and after obtaining the advise of the Small Industries Bank. The directions given by the State Government in terms of its Demi Official letter dated 10th May, 2002 (Annexure P-10) does not in any manner show that the same has been given in consultation with and after obtaining the advise of the Small Industries Bank. Neither is it the case of the State Government that consultation and advice of the Small Industries Bank was taken. There has, thus, been a clear violation of statutory provisions of the Act. Therefore, we are of the view that the impugned decisions of the respondents i.e. the Demi Official letter dated 10th May, 2002 (Annexure P-10). letter dated 22nd May, 2002 (Annexure

P-11) and the decision of the Board of directors of respondent Corporation dated 29th May, 2002 (Annexure P-15) to the extent of decision taken,—*vide* item No. 333.41 are liable to be set aside and quashed and it is ordered accordingly.

(28) In the circumstances, the Board of Directors of the Corporation shall re-consider the entire matter in the light of the statutory provisions of the State Financial Corporation Act, 1951, the instructions issued by the Government and shall take into consideration all relevant material which is liable to be taken into consideration in the consideration process for the grant or non-grant of House Rent Allowance and other concession in accordance with the Act and the 1961 Regulations. The petition is accordingly allowed and the impugned orders 10th May, 2002 (Annexure P-10), letter dated 22nd May, 2002 (Annexure P-11) and 29th May, 2002 (Annexure P-15) to the extent of decision taken in respect of item No. 333.41 are quashed and the matter shall be considered afresh by the Board of Directors of the Corporation. There shall, however, be no order as to costs.

R.N.R.

Before V.M. Jain & Amar Dutt, JJ.

PUNJAB NATIONAL BANK,—*Appellant*

versus

HIMGIRI TRADERS AND ANOTHER,—*Respondents*

CrI. M. 486/MA of 2002

The 29th August, 2003

Negotiable Instruments Act, 1881—Ss. 9, 15 & 16—Issuance of cheques by respondents in favour of a Mill—Bank granting facility of minimum credit to the Mill on the basis of these cheques—Dishonour of cheques—No endorsement made on the cheques by the Mill in favour of Bank as required under section 9—In the absence of an endorsement Bank never become holder of the cheques in due course—Bank neither payee nor endorsee of the cheques—No right to challenge dishonour of cheques under section 138—only a payee or an endorsee entitled to make a demand for payment of the amount of cheque—Petition liable to be dismissed.