

THE AGRICULTURAL DEVELOPMENT BANK ORDINANCE, 1961

(IV OF 1961)

[11th February, 1961]

An Ordinance to establish an Agricultural Development
Bank of Pakistan

Preamble. Where it is expedient to provide for the establishment of an Agricultural Development Bank of Pakistan to replace the Agricultural Development Finance Corporation and the Agricultural Bank of Pakistan and to make better provision for affording credit facilities to agriculturists and persons engaged in cottage industries in the rural areas, and for matters connected therewith;

Now, therefore, in pursuance of the proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance.

COMMENTS

Providing credit facilities to agriculturists. Bank's objection that apart from female Directors, financial position of remaining Directors was not found to be sound. Such objection had not been brought to the notice of the company (borrower) before opening first letter of credit and even for opening second letter of credit the only requirement which petitioner was asked to fulfil was to deposit in cash 75 per cent. of the total amount of equity and nothing else. Bank could not take such objection at belated stage and petitioner could not be discriminated on that account.¹

Direction to Bank to extend credit facilities and to disburse Foreign Currency Loan. Rights claimed by petitioner (borrower) whether arose from contract and as such could not be enforced through Constitutional petition. Main function of Agricultural Development Bank was to provide financial assistance in the form of loan to agriculturists from resources placed at the disposal of the Bank by the State. State was actually performing its such function through the Bank, which being a statutory body was a person performing functions in connection with the affairs of the Federation. Bank was bound in the matter of grant of financial assistance by the provisions of the Ordinance (IV of 1961) and had got no freedom in the settlement of terms and

¹ PLD 1993 Lah. 914.

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conditions on which same was to be given and was bound to follow those terms and conditions. Extension of credit facilities to an agriculturist was not a contractual obligation but financial assistance from the resources placed at the disposal of the Bank by the State. Constitutional petition seeking direction to Bank to extend credit facilities and to disburse Foreign Currency Loan to petitioner (agriculturist) was thus competent.²

CHAPTER I.--PRELIMINARY

1. Short title, extent and commencement. (1) This Ordinance may be called the Agricultural Development Bank Ordinance, 1961.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

2. Definitions. In this Ordinance, unless there is anything repugnant in the subject or context,--

(a) "Agricultural Bank" means the Agricultural Bank of Pakistan established under the Agricultural Bank Act, 1957 (XXIII of 1957);

(b) "agriculture" includes the raising of crop, horticulture, forestry, fishery, animal husbandry, poultry farming, bee-keeping and sericulture and such other activity as the Federal Government may by notification in the official Gazette, declare to be agriculture within the meaning of this clause;

(c) "agriculturist" means any individual engaged in agriculture or in the development of agriculture of agricultural products or in storage, warehousing, marketing or processing of agricultural produce, and any public or private limited company or co-operative society incorporated or registered as by or under any law for the time being in force and so engaged, and any person, company or co-operative society incorporated or registered as aforesaid, who satisfies the Bank that the loan to be taken shall be spent on agriculture or the development of agriculture or agricultural products or on the storage, warehousing or marketing or processing of agricultural products;

(d) [Omitted by the Federal Adaptation of Laws Order, IV of 1975];

(e) "Bank" means the Agricultural Development Bank of Pakistan established under this Ordinance;

(f) "Board" means the Board of Directors of the Bank;

2. AIR 1983 SC 848; PLD 1991 SC 546 and 1986 SCMR 916 ref. PLD 1993 Lah. 914.

3. Added by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1978, S. 2.

- (g) "Chairman" means the Chairman of the Board;
- (h) "co-operative society" means a society registered in Pakistan under any law or the time being in force relating to registration of co-operative societies;
- (i) "Corporation" means the Agricultural Development Finance Corporation established by the Agricultural Development Finance Corporation Act, 1952 (XVII of 1952);
- (j) "Cottage industry" means an industry which is carried on wholly or mainly by the members of a family either as a whole-time or as a part-time occupation or by a group of such persons who have formed themselves into a co-operative society;
- [(j)] "loans, advances and credit" includes "finance" as defined in the Banking Tribunals Ordinance, 1984 (LVIII of 1984), and all cognate expressions shall be construed accordingly;
- (k) "Prescribed" means prescribed in rules or regulations made under this Ordinance;
- (l) "Regional Manager" means the executive head of a Regional Office of the Bank;
- (m) "small agriculturist" means an agriculturist in occupation of holding which is normally tilled by himself and the members of his family;
- (n) "State Bank" means the State Bank of Pakistan.

CHAPTER II.—ESTABLISHMENT, INCORPORATION AND SHARE CAPITAL OF THE BANK

3. **Incorporation of the Bank, etc.** (1) As soon as may be after the coming into force of this Ordinance, steps shall be taken to establish in accordance with the provisions of this Ordinance, a bank to be called the Agricultural Development Bank of Pakistan, to carry out the purposes of this Ordinance.

(2) The Bank shall be body corporate by the name of the Agricultural Development Bank of Pakistan, having perpetual succession and a common seal, with power to hold and dispose of property, and shall by the said name sue and be sued.

(3) The Bank shall be deemed to be a banking company for the purposes of the Banking Companies Ordinance, 1962 (LVII of 1962) and the State Bank of Pakistan Act, 1956 (XXXIII of 1956), and any other law for the time being in force relating to banking companies.

(4) Notwithstanding anything contained in any of the laws mentioned in sub-section (3), the Bank may refer to the State Bank for

4. Cl. (m) ins. by Agricultural Development Bank (Amendment) Ordinance, XXI of 1985.

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Bank constitute statutory Corporation with affairs of Provincial Corporation not per se Statutory rules framed employees of statutory contained in rules governing servant. Relief under Act and under Art. 201(2) to such servant.

4. **Share capital** of the Bank shall be fully paid-up shares of be issued by the Bank the Federal Government.

(2) Not less than time shall be subscribed financial institutions of Pakistan and the Provincial Government the public for subscription conditions as the Federal issues.

5. **Increase** of the Federal Government from time to time be increased the provision

6. **Share Register** a register to be called particulars as may be

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5. PLD 1973 Lah.
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reconsideration any directives issued under any of the said laws by the State Bank and in the event of a difference of opinion between the Bank and the State Bank the matter shall be referred to the Federal Government whose decision thereon shall be final.

COMMENTS

Bank constituted under Ordinance IV of 1981, a statutory Corporation engaged in performance of functions in connection with affairs of Provinces and Centre. Employee of statutory Corporation not *per se* subject to general law of master and servant. Statutory rules framed laying down terms and conditions of service of employees of statutory corporation. Terms and conditions of service contained in rules govern employee and not general law of master and servant. Relief under Art. 98(2) (a)(ii), Constitution of Pakistan (1962) and under Art. 201(2) (a) (ii) of Constitution of Pakistan (1972) available to such servant.⁵

4. Share capital and its issue. (1) The Original share capital of the Bank shall be twenty crores of rupees divided into twenty lakhs fully paid-up shares of the nominal value of one hundred rupees each, to be issued by the Bank from time to time with the previous approval of the Federal Government.

(2) Not less than fifty-one per cent. of the shares issued at any time shall be subscribed for by the Federal Government or one or more financial institutions owned or controlled by it, including the State Bank of Pakistan and the remaining shares, if any, shall be offered to the Provincial Governments, the co-operative societies and the members of the public for subscription in such proportion and on such terms and conditions as the Federal Government may determine at the time of each issues.

5. Increase in share capital. Subject to the previous approval of the Federal Government the original share capital may be increased from time to time by the Bank, and as and when the capital is so increased the provisions of Section 4 shall, as far as may be, apply.

6. Share Register. The Bank shall maintain at its Head Office a register to be called the Share Register and shall enter therein such particulars as may be prescribed by regulations.

CHAPTER III.-MANAGEMENT

7. Head Office--Regional Offices and Branches. (1) The Head Office of the Bank shall be at [Islamabad] and may be shifted to such other place as the Federal Government may direct.

(2) The Bank shall establish Regional Offices of the principal seat of each Provincial Government, and may, with the approval of the

5. PLD 1973 Lah. 425.

6. Subs. by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1978, S. 3.

Federal Government, establish, Regional Offices at such other places as it may deem necessary].

(3) The Bank may open branches at such places as it may deem necessary.

8. Direction and superintendence. (1) The general direction and superintendence of the affairs and business of the Bank shall be entrusted to a Board of Directors, to be constituted in accordance with the provisions of Section 9 and such Board may exercise all such powers and do all such acts and things as may be exercised or done by the Bank subject to the provisions of this Ordinance.

(2) The Board in discharging its functions shall act on commercial considerations but with due regard to the interests of agriculture and cottage industries in rural areas and shall be guided on questions of credit and monetary policy by such directions as the State Bank may from time to time give.

(3) If there is a difference of opinion between the State Bank and the Bank as to whether a particular question is a question of credit and monetary policy, it shall be referred to the Federal Government whose decision thereon shall be final.

9. The Board. (1) The Board shall consist of the following Directors to be appointed by the Federal Government, namely:--

- (i) the Chairman;
- (ii) three officers of whom one each shall be representative of the Ministry of Finance, Ministry of Food and Agriculture and the State Bank of Pakistan;
- (iii) one officer serving under each of the Provincial Governments, to be appointed upon the recommendation of the Provincial Government concerned;
- (iv) one non-official from each Province, to be appointed in consultation with the Provincial Government concerned; and
- (v) such other person, if any, as the Federal Government may appoint.

(2) The Directors referred to in clauses (ii) and (iii) of sub-sec. (1) shall be appointed by virtue of the offices held by them under the Federal Government or, as the case may be, the Provincial Government.

10. Chairman. (1) The Chairman shall be appointed by the Federal Government for a period not exceeding five years on such salary and terms and conditions of service as the Federal Government may determine;

Provided that the salary and other terms and conditions of service of the Chairman shall not be varied to his disadvantage during his tenure

of office."

"(1-A) The Chairman shall be eligible for reappointment."

(2) The Chairman shall be eligible for reappointment on behalf of the Board subject to such rules as may be made by the Board."

(3) The Chairman shall be eligible for reappointment on behalf of the Board subject to such rules as may be made by the Board."

(4) The Chairman shall be eligible for reappointment on behalf of the Board subject to such rules as may be made by the Board."

Provided that six consecutive years; break of less than disregarded.

(2) In the event of the Chairman appointed under Section 9, a new Director appointed under this Ordinance, for the

12. Executive Committee consisting of

(2) The Chairman, shall be eligible for reappointment on behalf of the Board."

(3) Subject to the provisions of the Board.

(4) The Chairman shall be laid before the Committee.

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and (iii) of sub-section (1) of the Ordinance by them under the Provincial Government.

be appointed by the Government for a period of five years on such salary as the Government may

conditions of service and the salary payable during his tenure

of office."

[(1-A) The Chairman shall on the expiry of his term of office be eligible for reappointment.]

(2) The Chairman shall be the chief executive officer and shall on behalf of the Board direct and control the whole affairs of the Bank subject to such rules as the Federal Government may make.

(3) Except as otherwise directed by the Federal Government, the Chairman shall devote his whole-time to the affairs of the Bank.

11. Term of office of Directors. (1) A Director appointed under clause (iv) or clause (v) of sub-section (1) of Section 9 shall hold office for a period of three years and shall, subject to the provisions of this Ordinance, be eligible for re-appointment:

Provided that such a Director shall not hold office for more than six consecutive years; and, in computing the period of six years, any break of less than three years in the continuity of office shall be disregarded.

(2) In the event of a casual vacancy occurring in the office of a Director appointed under clause (iv) or clause (v) of sub-section (1) of Section 9, a new Director shall be appointed, subject to the provisions of this Ordinance, for the remainder of the term of his predecessor].

12. Executive Committee. (1) There shall be an Executive Committee consisting of the Chairman and three Directors, ^a[.....].

(2) The members of the Executive Committee, other than the Chairman, shall be elected by the Board.

(3) Subject to the rules made in this behalf the Executive Committee shall deal with any matter within the competence of the Board.

(4) The minutes of every meeting of the Executive Committee shall be laid before the Board at its meeting next following the meeting of the Committee.

13. Disqualifications for Directors. No person shall be or shall continue to be a Director who,--

- (a) is a salaried official of the Bank, other than the Chairman; or
- (b) is or has at any time been adjudicated an insolvent; or
- (c) is found lunatic or becomes of unsound mind; or

6a. Subs. by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1978, S. 3.

7. Sub-sec. (1-A) inst. by the Agricultural Development Bank (Amendment) Ordinance, XXVII of 1983.

8. Omitted by the Federal Adaptation of Laws Order, 4 of 1975.

- (d) is or has at any time been convicted of an offence which in the opinion of the Federal Government is an offence involving moral turpitude; or
- "(e) is for the time being disqualified for membership of any body established by or under any law for the time being in force of which the constituent members are wholly or partly chosen by means of election; or]
- (f) absent himself from three consecutive meetings of the Board or, if he is a member of the Executive Committee, from three consecutive meetings of the Committee, without leave of absence from the Chairman or, in the case of the Chairman, from the Federal Government.

14. Meetings. (1) No members of the Board of the Executive Committee shall be transited except at a meeting at which a quorum of Three Directors in the case of the Board two members in the case of the Executive Committee is present.

(2) The meetings of the Board and of the Executive Committee shall be held at such times and at such places as may be prescribed by regulations:

Provided that until regulations are made in this behalf such meetings shall be convened by the Chairman.

(3) If a Director appointed under clause (ii) or clause (iii) of subsection (1) of Section 9 is unable to attend a meeting of the Board or of the Executive Committee of which he is a member, the Federal Government may--

- (a) where such Director is one appointed under the said clause (ii), authorised in writing any other person to perform the functions of such Director at that meeting; and
- (b) where such Director is one appointed under the said clause (iii), authorised in writing upon the recommendation of the Provincial Government concerned any other officer to perform the functions of such Director at that meeting.

(4) All meetings of the Board or of the Executive Committee shall be presided over by the Chairman and in his absence by a Director or member chosen for that purpose by the Directors or members present from amongst their number.

(5) At a meeting of the Board or of the Executive Committee, each Director or member of the Committee, as the case may be, shall have one vote, and in the event of equality of votes, the Chairman shall have a second or casting vote.

9. Subs. by the Federal Laws (Revision and Declaration) Ordinance, XXVII of 1981, Sch. 2.

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(6) No act or proceeding of the Board of the Executive Committee shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the Board or the Executive Committee.

COMMENTS

Direction to Bank to extend credit facilities and to disburse Foreign Currency Loan. Rights claimed by petitioner (borrower) whether arose from contract and as such could not be enforced through Constitutional petition. Main function of Agricultural Development Bank was to provide financial assistance in the form of loan to agriculturists from resources placed at the disposal of the bank by the State. State was actually performing its such function through the bank, which being a statutory body was a person performing function in connection with the affairs of the Federation. Bank was bound in the matter of grant of financial assistance by the provisions of the Ordinance (IV of 1961) and had got no freedom in the settlement of terms and conditions on which same was to be given and was bound to follow those terms and conditions. Extension of credit facilities to an agriculturist was not a contractual obligation but financial assistance from the resources placed at the disposal of the Bank by the State. Constitutional petitioner seeking direction to Bank to extend credit facilities and to disburse Foreign Currency Loan to petitioner (agriculturist) was thus competent.¹⁰

Providing credit facilities to agriculturists. Bank's objection that apart from female Directors, financial position of remaining Directors was not found to be sound. Such objection had not been brought to the notice of the company (borrower) before opening first letter of credit and even for opening second letter of credit the only requirement which petitioner was asked to fulfil was to deposit in cash 75 per cent. of the total amount of equity and nothing else. Bank could not take such objection at belated stage and petitioner could not be discriminated on that account.^{10a}

15. Fees, etc. (1) The Directors, other than the Chairman, who are not serving under Government shall be paid such fees for attending the meetings of the Board and the Executive Committee as may be prescribed by rules.

(2) The Directors shall be reimbursed such travel costs and other expenses for attending the meetings of the Board and the Executive Committee as may be prescribed by rules.

(3) All fees, travel costs and other expenses under this section shall be payable by the Bank.

10. AIR 1983 SC 848; PLD 1991 SC 546 and 1986 SCMR 916 ref. PLD 1993 Lah. 914.

10a. PLD 1993 Lah. 914.

16. Regional Manager. There shall be a Regional Manager for each Regional Office to be appointed in such manner and on such terms and conditions as may be prescribed by regulations.

17. Advisory Committee. (1) An Advisory Committee shall be constituted by the Bank for each Regional Office, with the approval of the Federal Government.

¹¹(2) Each Advisory Committee shall consist of the following members, namely:--

- (a) three officers, serving under the Provincial Government concerned, to be nominated by that Government;
- (b) one member of the National Assembly and one member of the Senate, each with agricultural background, from the area covered by the Regional Office to be nominated by the Federal Government;
- (c) one member of the Provincial Assembly, with agricultural background, from the area covered by the Regional Office, to be nominated by the Federal Government; and
- (d) the Regional Manager (by whatever name called), who will act as Secretary of the Committee.]

(3) The Federal Government shall appoint one of the persons nominated by it under clause (6) of sub-section (2) to be the Chairman of the Advisory Committee.

(4) The Advisory Committee shall advise the Regional Manager on such matters as may be referred to it.

(5) The meetings of the Advisory Committee shall be convened by the Regional Manager with the concurrence of the Chairman at such times as he may deem necessary.

(6) The members of the Advisory Committee shall be paid such fees and travel costs for attending the meetings as may be prescribed by rules.

(7) The members of the Advisory Committee shall hold office for two years.

18. Technical Advisory Committee. The Bank may appoint a Committee of experts to be called the Technical Advisory Committee to give it technical advice on schemes submitted to the Bank for financial assistance or on any point that may be referred to the Committee by the Board.

CHAPTER IV.---BUSINESS AND FUNCTIONS OF THE BANK

19. Business. (1) The Bank shall provide credit in cash or in

11. Subs. by the Agricultural Development Bank (Amendment) Ordinance, LV of 1978, S. 4.

kind and credit facilities which it may advance by facilities, for such term prescribed by rules, to persons engaged in cottage industries, and in business hereinafter spe

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kind and credit facilities, including the hiring and renting of anything which it may advance by way of loan and the provision for warehousing facilities, for such term and subject to such conditions as may be prescribed by rules, to agriculturists for the purpose of agriculture and to persons engaged in cottage industries in rural areas for the purpose of such industries, and may carry on and transact the several kinds of business hereinafter specified, that is to say--

- (a) the accepting of money on deposit;
- (b) the borrowing of money for the purposes of the Bank's business, against the security of its assets or otherwise;
- (c) the issuing and selling of bonds and debentures;
- ¹²[(cc) obtain or raise funds on the basis of participation in profit and loss, make-up and mark-down in price, hire-purchase, lease, rent-sharing licensing, charge or fee of any description, participation term certificates, *modaraba* certificates and such other instruments as may be approved by the State Bank, purchase or sale of any property, including commodities, patents, designs, trade marks and copyright, with or without buy-back arrangements with the seller or on condition of payment of its price in one or more instalments at a stated future date or dates or any other mode is not based on interest;]
- (d) for the purpose of securing loans and advances made by the Bank, accepting pledge, mortgage, hypothecation or assignment to the Bank of any kind of movable or immovable property or unconditional bank guarantee of a scheduled bank or drawing, accepting, discounting, buying and selling or rediscounting bills of exchange and promissory notes bearing to or more good signatures, one of which shall be that of a scheduled bank or that of co-operative bank, or other negotiable instruments;

¹³[Provided that, where a loan not exceeding such amount as the Federal Government may, by notification in the official Gazette, specify is made to an individual agriculturist, it may be secured by a bond with one or more sureties, as the Bank may deem necessary].

- (e) [Omitted by the Agricultural Development Bank (Amendment) Act, XXI of 1985];

¹⁴[(f) The subscribing to the debenture or participation term

- 12. Clause (cc) inst. by the Agricultural Development Bank (Amendment) Act, XXI of 1984.
- 13. Proviso added by the Agricultural Development Bank (Amendment) Ordinance, XXXV of 1983.
- 14. Clause (f) subs. by the Agricultural Development Bank (Amendment) Act, XXI of 1985.

certificates or term finance certificates or *modaraba* certificates or *musharika* certificates, and such other instrument as may be approved by the State Bank, of any body corporate concerned with agriculture or the financing of agriculture or the financing of cottage industries in rural areas which are repayable within a period not exceeding ten years;]

- ¹⁵[(f)] with the approval of the Federal Government, purchasing of shares of any body corporate sponsored by the Government, or by the Bank, the object of which is to provide services to agriculturists;]
- (g) the custody of gold ornaments, jewels, securities, savings certificates, title deeds and other valuable articles and the collection of the proceeds, whether principal ¹⁶[interest, dividends or return] of any such securities or savings certificates;
- (h) the administration of estates for any purpose whether as executor, trustee or otherwise;
- (i) the paying, receiving, collecting and remitting of money, and securities;
- ¹⁷[(j)] the purchasing or otherwise acquiring in the normal course of its banking business of any residential or commercial property, movable or immovable, including commodities, patents, designs, trade marks and copyrights, with or without buy-back arrangements by the seller, or for outright sale in the form of hire-purchase or on deferred payment basis with mark-up or for leasing or licensing or for rent-sharing or for any other mode of financing other than based on interest and, until so disposed of, dealing with and maintaining the same;
- (k) the taking over of the business, including the capital, assets, and liabilities, of any other bank or financial corporation, with the previous approval of the Federal Government;
- (kk) the guaranteeing against the security of agricultural property of loans granted by scheduled banks;
- (l) the opening of accounts or the making of any agency arrangement with, and acting as agent or correspondent of, any bank or financial corporation;
- (m) the investing of its funds in Government securities as a purely temporary measure;

15. Clause (f) Inst. by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1945.

16. Subs. by the Agricultural Development Bank (Amendment) Act, XXI of 1985, Sec. 3.

17. Subs. by the Agricultural Development Bank (Amendment) Act, XXI of 1985, S. Sec. 3.

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ndment) Act, XXI of 1985, S.

Provided that investment of fund exceeding twenty lakhs of rupees shall not be made except with the prior approval of the Federal Government;

(n) the selling and realising of all property, whether movable or immovable ¹⁸[commercial or residential, including commodities, patents, designs, trade marks and copyrights], which may in any way come into the possession of the Bank in satisfaction or part satisfaction of its claims, and the acquisition and the holding of, and generally the dealing with, any right, title or interest in any property, movable, or immovable, ¹⁸[commercial or residential, including commodities, patents, designs, trade marks and copyrights], which may be the Bank's security for any advance or loan or may be connected with any such security;

(o) generally the doing of all such acts and things as may be necessary, incidental or conducive to the attainment of the objects of the Bank.

(2) Notwithstanding anything in sub-section (1), any loan guaranteed by the Federal Government or any Provincial Government may be made without any specific security.

(3) Notwithstanding anything contained in any law for the time being in force, it shall be lawful for any agriculturist or person engaged in cottage industries in rural areas to pledge, mortgage, hypothecate or assign any kind or quantity of movable or immovable property to the Bank or otherwise to create a charge on any such property in order to secure the repayment of the loan and the Bank shall in accordance with the provisions of this Ordinance, be competent to demand and recover its dues from any property so pledged, mortgaged or hypothecated or assigned:

Provided that no property so pledged, mortgaged or hypothecated, assigned or otherwise charged shall be sold or otherwise disposed of except by public auction and then only so much of it as is sufficient to recovery the dues of the Bank, and the Bank shall not bid at such auction, except in cases where the bid is not sufficient to pay up the Bank's dues or there are no bidders.

(4) Notwithstanding anything contained in any other law for the time being in force, any charge created on any property to secure the repayment of the loan of the bank or to secure the performance of the stipulations, of any bond executed in favour of the Bank shall be enforceable against such property in the hands of any person to whom it may have been transferred including the person who has acquired the property for consideration and without notice of the charge.

(5) The Bank may make use of any agency prescribed by rules for watching the expenditure from its loans and making recoveries.

18. Words inst. by the Agricultural Development Bank (Amendment) Act, XXI of 1985, Sec. 3.

COMMENTS

Loan. Petitioner before sanction of loan in his favour and before formal allocation of tractor in his favour managing to obtain tractor. Agricultural Bank sanctioning loan but subsequently cancelling same as petitioner already taken delivery of tractor. Right created in favour of petitioner through sanction of loan and allocation of tractor in his favour already availed of by him and there was, held, thus no infringement of any right of petitioner as claimed by him after delivery of tractor in anticipation of sanction and petitioner had no right to claim another tractor on basis of same loan.¹⁹

Loan for tractor. Where a petitioner before sanction of loan in his favour and before formal allocation of tractor in his favour managed to obtain a tractor, by informal recommendation of Bank staff on the basis of his application for loan. Agricultural Bank later sanctioned loan but subsequently cancelled the same as petitioner had already taken delivery of the tractor. Right created in favour had been already availed of by him and there was thus no infringement of any right of petitioner as claimed by him after delivery of tractor in anticipation of sanction and petitioner had no right to claim another tractor on basis of the same loan.²⁰

Stay order against recovery of Bank loan through coercive measures. Recovery of Bank loan, as stipulated, in accordance with the terms and conditions of agreement between plaintiff (borrower) and defendant-Bank (creditor). Plaintiff (borrower) instituting suit against defendant (creditor) seeking declaration and permanent injunction besides a decree for recovery of specified amount as a counterblast to deprive the Bank of the remedy available to it for recovery of the amount of loan. Plaintiff's claim for interim relief was accepted by Trial Court but dismissed by Appellate Court below. Validity. bank would be well within its powers to adopt measures for recovery of its loan amount, which plaintiff admittedly had not paid. Plaintiff was required to discharge his liability and pay the principal amount, along with the interest accumulated; he could not make grievance of the fact that the Bank could not have recourse to coercive means. Bank could not be deprived of the remedy available to it for the recovery of amount of loan, as stipulated in accordance with the conditions of the agreement between the parties and in term of provisions of Agricultural Development Bank Ordinance. Amount would be recoverable as arrears of land revenue. Plaintiff had stresses on his claim to certain amount as damages or compensation payable by the Bank which was a novel way of putting creditor in the state of counter-accountability. Plaintiff's claim that the Bank could not press for payment of loan amount, unless it was willing to make compensation for the loss in business sustained by the borrower (plaintiff) could not be accepted. Court could not presuppose that plaintiff's claim was valid and the specified amount claimed by him had,

19. 1983 CLC 2833.

20. 1983 CLC 2833.

a justifiable or concrete basis must be prepared to pay and the Bank, plaintiff would be a precondition for grant of stay and a pronounced or manifest irretrievable injury, which is only endeavouring to evade motion by the creditor Bank was the legal and moral obligation resorting to any kind of claw was not found entitled to grant

Credit in cash or facilities to agriculturist contract bind representative promisor before performance the contract or the performance provisions of any law. Extent on the legal representative of Elements of Law of Contract

Transfer of property barred. Scheme underlying Agricultural Development transfer during subsistence encumbered land is to Commissioner and another rel.²²

20. Research and necessary in collaboration agencies--

- (a) any research on products, agricultural societies, cottage subjects, and the connection; and
- (b) the provisions of training institutes co-operative societies have financial relations

21. Preference business of the Bank the business to the credit need to small who engages a crop-sharer.

21. PLD 1970 SC 180 and 1

22. PLD 1988 SC 67.

22a. 1985 CLC 225a

in his favour and before giving to obtain tractor. Only cancelling same as it created in favour of of tractor in his favour as no infringement of delivery of tractor in right to claim another

ore sanction of loan in n his favour managed of Bank staff on the later sanctioned loan er had already taken l been already availed ny right of petitioner ation of sanction and on basis of the same

the loan through in accordance with the (borrower) by instituting suit on and permanent fixed amount as a able to it for recovery relief was accepted by elow. Validity. bank s for recovery of its paid. Plaintiff was amount, along with any of the fact that s bank could not be y of amount of loan, agreement between Development Bank rs of land revenue. ount as damages or ovel way of putting tiff's claim that the unless it was willing ned by the borrower resuppose that rmed by him had,

a justifiable or concrete basis. Whatever was due from the plaintiff, he must be prepared to pay and whatever would be found to be due from the Bank, plaintiff would be able to obtain at the end of the trial. Procondition for grant of stay order was existence of a *prima facie* case and a pronounced or manifest exposure of aggrieved person to an irretrievable injury, which conditions were non-existent. Plaintiff was only endeavouring to evade his liability and delay the process set in motion by the creditor Bank for recovery of the amount of loan, which was the legal and moral obligation of the debtor to discharge, without resorting to any kind of clever manoeuvring or manipulation. Plaintiff was not found entitled to grant of interim relief in circumstances.²¹

Credit in cash or in kind and extension of other credit facilities to agriculturists by Bank. Promises contained in the contract bind representatives of the promisor in case of death of such promisor before performance unless a contrary intention appears from the contract or the performance is dispensed with or excused under provisions of any law. Extent to which contractual obligation was binding on the legal representative of a party to such contract elucidated. Keith on Elements of Law of Contract ref.²²

Transfer of property during subsistence of mortgage not barred. Scheme underlying in law relating to mortgage with Agricultural Development Bank, held, does not vitiate subsequent transfer during subsistence of mortgage, because transferee of encumbered land is to step into shoes of debtor. Chief Land Commissioner and another v. Maula Dad and others 1978 SCMR 264 rel.^{22a}

20. Research and training. The Bank may, ~~exercise~~ if necessary in collaboration or consultation with official or non-official agencies--

- (a) any research on agricultural credit, marketing or agricultural products, agricultural and agricultural credit co-operative societies, cottage industries in rural areas, and other allied subjects, and the establishment of research institutions in that connection; and
- (b) the provisions of training facilities, including the establishing of training institutes, for the benefit of its personnel and that of co-operative societies and other bodies corporate which may have financial relations with the Bank.

21. Preference to small agriculturists. In transacting the business of the Bank the Board shall, as far as possible, give preference to the credit need to small agriculturists, including any such agriculturist who engages a crop-sharer.

21. PLD 1970 SC 180 and 1983 CLC 520 rel. 1993 CLC 1316.

22. PLD 1988 SC 67.

22a. 1985 CLC 2256.

22. Prohibited business. (1) The Bank shall not undertake any kind of business other than that authorized by or under this Ordinance, and, in particular, it shall not--

- (a) make any advance or loan or open any credit upon the security of shares of the Bank, but such shares or allow its shareholders to set off their debts or part of their debts to the Bank against such shares;
- (b) discount or buy or advance or lend or open any credit on the security of any negotiable instrument payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons unconnected with each other;
- (c) ²³[save as provided in clause (ff) of sub-section (1) of Section 19, purchase] or subscribe to shares of any company or other body corporate or otherwise acquire any such share except in the course of the satisfaction of any of its claims;
- (d) engage in trade or otherwise have a direct interest in any commercial, industrial or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims.

(2) Any share or interest acquired under clause (c) or clause (d) of sub-section (1) shall be disposed of by the Bank as early as possible.

23. Application and use of loans, etc. The Bank shall require and, as far as possible, ensure that a loan is spent on the purpose for which it is made, and if this requirement is not complied with by the borrower, the Bank may require the repayment of the loan forthwith.

24. Repayment of loans in full in certain circumstances. Notwithstanding any agreement to the contrary, the Bank may by notice require any borrower forthwith to pay his debt to the Bank in full if--

- (a) he has failed to comply with any term of the agreement under which the relevant loan, advance or credit has been granted;
- (b) the Bank reasonably apprehends that he is unable to pay his debt;
- (c) in the opinion of the Bank false or misleading information on any material particular has been given in the application for the relevant loan, advance or credit or in any other statement or communication made in connection with any loan, advance or credit granted to him;
- (d) the property mortgaged, hypothecated or assigned to the Bank as security for the advance, loan or credit is not kept in proper condition to the satisfaction of the Bank, or its value as

23. Subs. by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1978, Sec. 6.

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25. Recovery of
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- 24. PLD 1993 Lah.
- 25. PLD 1993 Lah.

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Ordinance, XLV of

The Agricultural Development Bank Ordinance, 1961 573

estimated by the Bank has depreciated by more than twenty per cent. and further security to the satisfaction of the Bank is not given within the time specified by the Bank;

- (c) without the permission of the Bank, any property pledged, mortgaged, hypothecated or assigned to the Bank is leased or rented to third parties or is in any way charged, disposed of or removed from the place where it was at the time the loan, advance, or credit was granted;
- (f) for any other reason it is necessary in the opinion of the Bank to protect its interests.

COMMENTS

Provisions of S. 24, Agricultural Development Bank Ordinance, 1961, being penal in nature are to be construed strictly.²⁴

False statements made by Directors of Company for securing loan. Provision of S. 24(c), Agricultural Development Bank Ordinance, 1961. Applicability: Provisions of S. 24(c), Agricultural Development Bank Ordinance, 1961, would be applicable in case where in the application for grant of loan, a false statement was made which led to the sanction of the loan and but for which loan would not have been sanctioned.²⁵

25. Recovery of Bank dues. (1) Where any agriculturist who is under liability to the Bank under agreement makes default in repayment or otherwise fails to comply with the terms of his agreement with the Bank, such default or failure not being due to natural calamity, the Bank may, subject to any rules made in this behalf, take over the management of the concern of the agriculturist and sell or realise any property pledged, mortgaged, hypothecated or assigned by the agriculturist to secure his liability to the Bank.

(2) All sums due to the Bank shall be recoverable as arrears of land revenue.

(3) [Omitted by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1978].

(4) Sums due from a co-operative society and recoverable under sub-section (1) may be recovered in accordance with the provisions of law for the time being in force relating to the recovery of such sums due from a co-operative society to Government.

COMMENTS

Recovery of amount. Unless and until amount recoverable from borrower by Bank was determined judiciously as being "due" and was declared as arrears of land revenue, coercive process as provided

24. PLD 1993 Lah. 914.

25. PLD 1993 Lah. 914.

under Land Revenue Act, 1967, could not be adopted. Dispute having been raised by borrower about amount being "due", provisions of S. 91 would not debar borrower from filing suit without deposit.²⁶

Coercive recovery of outstanding dues--Procedure. Demand of amount being the dues outstanding against deceased father made from son. Power of coercive recovery cannot be invoked against a person who did not secure the loan as an agriculturist himself. Son having not obtained credit facilities or secured loan which was being recovered from him, coercive proceedings for recovery of the dues from him were illegal.²⁷

Realisation of amount as arrears of land revenue. Machinery provisions of West Pakistan Land Revenue Act, 1967 for the realisation of amount as arrears of land revenue under S. 25 of the Ordinance could only be invoked after the procedure for determination of arrears due is adopted and duly certified. In absence of such a certificate the person concerned, without being given an opportunity of hearing, will not be a defaulter within the meaning of law.²⁸

Credit in cash or in kind and extension of other credit facilities to agriculturists by Bank. Promises contained in the contract bind representatives of the promisor in case of death of such promisor before performance unless a contrary intention appeared from the contract or the performance is dispensed with or excused under provisions of any law. Extent to which contractual obligation was binding on the legal representative of a party to such contract elucidated.

According to section 19 of the Agricultural Development Bank Ordinance, 1961 the bank is required to provide credit in cash or in kind and extend other credit facilities to agriculturists. The loans are advanced as is clear from sections 24 and 25 of the Ordinance under the terms of written agreement dealing with repayment and other matters. Essentially, therefore subject to the provisions of the Ordinance the loans advanced and the liabilities incurred therefore are created as a result of contract between the parties. Ordinarily the promises contained in the contract bind the representatives of the promisor in case of death of such promisor in case of death of such promisor before performance unless a contrary intention appears from the contract or the performance is dispensed with or excused under the provisions of any law. Generally a contractual obligation undertaken by deceased promisor would be binding on his legal representatives to the extent of the estate of the deceased promisor in their hands as this obligation of the legal representatives is not personal. However, there is an exception to this rule in case of contracts which involve personal elements, and if personal skill is of the essence of the contract, the obligation under the contract

can be discharged only by legal representatives of the promisor, nor can they renounce the contract. On the death of the promisor, the legal representatives of the deceased promisor will bind the legal representatives of the deceased promisor to the extent of the estate of the deceased promisor as is payable to him of the property of the deceased promisor. The legal representatives of the deceased promisor have not applied such property of the deceased promisor in this context of the law, with the hands of the son and pecuniary liability of the deceased son. Keith on Elements of

Jurisdiction of 172, West Pakistan Land Revenue Act if based on fraud. Government not to averment made by him in Land Revenue Act, XVII not justified in holding the trial Court set aside.²⁹

Section 172(2) of 172, West Pakistan Land Revenue Act if based on fraud. Government not to averment made by him in Land Revenue Act, XVII not justified in holding the trial Court set aside.³⁰

Provision in S. 91 of the West Pakistan Land Revenue Act, 1967, which provides that the Government may, in its discretion, direct the Collector to enforce any process for land revenue and no appeal taken against him. Plain Pakistan Land Revenue Act

26. PLD 1988 SC 67; PLD 1962 SC 384; 1984 SCMR 1047; PLD 1975 Kar. 1008; 1985 CLC 718; PLD 1984 Pesh. 188; 1990 MLD 1776 and PLD 1990 Pesh. 17 ref. 1993 MLD 1031.

27. PLD 1988 SC 67.

28. PLD 1988 SC 67.

29. PLD 1988 SC 67.

30. 1984 CLC 511.

31. PLD 1978 Kar. 267.

32. PLD 1966 BJ 19; 197

Dispute having
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can be discharged only by that party whose personal skill is involved. The legal representatives of the deceased promisor cannot be required to perform, nor can they render performance of contract involving personal skill and action. On the death of a person, on principle, the benefits and burdens of his contract pass to the legal representatives as part of his estate. A pecuniary obligation arising out of the contract by a deceased party will bind his legal representative to the extent of the estate of the deceased coming to his hands. In case of money decree the liability of the legal representatives of a party who has died after the passing of the decree extends under section 52 of the C.P.C. to such property of the deceased as is proved to have come into their possession or to the extent of the property of the deceased in respect of which such legal representatives have failed to satisfy the Court that they have duly applied such property of the deceased which came to their possession. In this context of the law, without proving that any property has come into the hands of the son and to what extent in value compared with the pecuniary liability of the deceased father, it cannot be recovered from the son. Keith on Elements of Law of Contract ref.²⁹

Jurisdiction of Civil Court. Not barred in all cases under S. 172, West Pakistan Land Revenue Act, 1967. Any action taken under Statute if based on fraud, that loses its validity and sanctity and Civil Court in appropriate cases will have jurisdiction to scrutinise such action. Government not taking any action against appellant on basis of averment made by him in his plaint. Section 172(2)(xv) of West Pakistan Land Revenue Act, (XVII of 1967), not attracted and trial Court held, not justified in holding that appellant's suit was not competent. Order of trial Court set aside.³⁰

Section 172(2) of Land Revenue Act, 1967, held, not wide enough to cover all matters relating to recovery of land revenue or any sum recoverable as land revenue. Section 172(2) can be invoked when any collection is made by Government or any process for recovery of land revenue or sum recoverable as arrears of land revenue is enforced by Government. Person making claim relating to or connected with such collection, recovery or process, or challenges same, jurisdiction of Court to entertain such action, held, barred.³¹

Provision of S. 91, West Pakistan Land Revenue Act, held, can be pressed into service where proceedings have been taken for recovery of arrears. Where no proceedings have been taken under Act, S. 91 of West Pakistan Land Revenue Act (XVII of 1967) not applicable. Appellant not alleging that Government making any collection or enforcing any process for recovery of any sum recoverable as arrears of land revenue and no allegation made by him that proceeding under Act taken against him. Plaint, held, not hit by S. 91 and S. 172(2), West Pakistan Land Revenue Act, 1967.³²

1975 Kar. 1008;

D 1990 Pesh.-17

29. PLD 1988 SC 67.

30. 1984 CLC 511.

31. PLD 1978 Kar. 267 ref. PLD 1971 Lah. 206 ref. 1984 CLC 511.

32. PLD 1966 BJ 19; 1979 CLC 151 and PLD 1970 SC 180 ref. 1984 CLC 511.

CHAPTER V.--RESERVES, PROFITS, AUDIT AND RETURNS

26. Reserves. The Bank shall establish a fund to be called the General Reserve Fund and create from time to time such other reserves as the Federal Government may direct.

27. Disposal of profit. After making adequate provision for bad and doubtful debts, depreciation of assets and any other matters which are usually provided for by bankers, the net annual profit of the Bank shall be disposed of as follows, that is to say--

- (a) a percentage of the net profit to be determined every year by the Board shall be transferred to the General Reserve Fund, until the Fund is equal to the subscribed share capital of the Bank;
- (b) the remaining net profit may be utilized for paying a dividend to the share-holders;

Provided that such dividend shall not exceed five per cent. per annum;

- (c) If, after making the provision and declaring the dividend mentioned in the foregoing clauses of this section, there is a surplus left, this may be transferred to any other reserve which may be created.

³³[**27-A. Exemption of the Bank from certain Taxes.** Notwithstanding anything contained in the ³⁴[Income-tax Ordinance, 1979 (XXXI of 1979)], the Gift-tax Act, 1963 (XIV of 1963), the Wealth-tax Act, 1963 (XV of 1963), or any other law in force relating to Income-tax, super-tax, wealth-tax, gift-tax or business profits tax, the Bank shall not be liable to pay any such tax its income, profits, gains, wealth or gifts].

28. Audit. (1) The accounts of the Bank shall be audited by one or more auditors being Chartered Accountants within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), who shall be appointed by the Federal Government, in consultant with the Auditor-General on such remuneration to be paid by the Bank, as the Federal Government may fix.

(2) The Auditor-General shall have the power to give directions to the auditors in regard to the extent and method of their audit subject to the provisions of the Companies Ordinance, 1984 and to prescribe the forms of accounts to be maintained by the Bank consistent with the requirements of this Act.

(3) Notwithstanding the provisions of sub-sections (1) and (2),

33. Added by the Agricultural Development Bank (Amendment) Ordinance, XLV of 1978 S. 8.

34. Subs. by the Federal Laws (Revisions and Declaration) Ordinance, XXVII of

the Auditor-General, who any payment to the Ban and in other cases, either this behalf from the Fed the accounts of the Banl and the Bank shall, at books, registers and cor explanations and inform officers authorized by hin

(4) Every audito a copy of the annual ba together with the accoun a list delivered to him c reasonable times have documents of the Bank any Director or officer of

(5) The Federal the auditors requiring measures taken by the share-holders and credit auditing the affairs of th the scope of the audit o adopted or that any othe opinion the public intere

(6) Any/audit of Bank where/the books a

(7) The auditor Government and to the together with the annua loss and in every such balance sheet is a full a particulars and properly view of the sate of the Ba explanation or informat officer of the Bank, wi satisfactory.

29. Returns. financial year, the Bank audited statement in th liabilities as they stood at loss account for the year the year and the Federal account and report in the

(2) The Bank sl before the end of the n relates, showing in the liabilities as they stand at month, or if the day is a p

DIVIDEND AND RETURNS

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the Auditor-General, where the Federal Government is required to make any payment to the Bank on account of a guarantee given by it, shall, and in other cases, either of his own motion or upon a request received in this behalf from the Federal Government may, undertake such audit of the accounts of the Bank at such time as may be considered necessary and the Bank shall, at the time of such audit produced the account books, registers and connected documents required and furnish such explanations and information as the Auditor-General or an officer or officers authorized by him in his behalf may ask for.

(4) Every auditor appointed under sub-section (1) shall be given a copy of the annual balance sheet of the Bank and shall examine it together with the accounts and vouchers relating thereto, and shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books of account and other documents of the Bank and may in relation to such accounts examine any Director or officer of the Bank.

(5) The Federal Government may at any time issue direction to the auditors requiring them to report to it upon the adequacy of measures taken by the Bank for the protection of the interests of its shareholders and creditors or upon the maintenance of the accounts or upon the affairs of the Bank, and may at any time extend or restrict the scope of the audit or direct that a different procedure shall be adopted or that any other examination be made by the auditors in its opinion the public interest so requires.

(6) Any audit of the Bank shall be conducted at the office of the Bank where the books and documents to be audited are ordinarily kept.

(7) The auditors shall send as soon as possible to the Federal Government and to the Board a report on the accounts of the Bank together with the annual balance sheet and the statement of profit and loss and in every such report shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the Board or from any Director or officer of the Bank, whether it has been given and whether it is satisfactory.

29. Returns. (1) Within four months of the close of each financial year, the Bank shall submit to the Federal Government an audited statement in the form prescribed by rules of its assets and liabilities as they stood at the close of that year together with a profit and loss account for the year and a report on the working of the Bank during the year and the Federal Government shall publish the said statement, account and report in the official Gazette.

(2) The Bank shall publish a statement in the Official Gazette before the end of the month following that to which the statement relates, showing in the form prescribed by regulations its assets and liabilities as they stand at the close of business on the last Friday of each month, or if the day is a public holiday under the Negotiable Instruments

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Bank (Amendment)

31-C. Continuance of charge and priority. Where a charge on either any property has been or is created by any person in favour of the Bank to secure any interest-based facility extended by the Bank to such person and such facility at any time converted into or substituted by any facility not based on interest, such charge shall continue to remain valid and shall maintain its priority in favour of the Bank against all charges created by such person in favour of any other person subsequent to the original date of registration of such charge.]

32. Declaration of fidelity and secrecy. (1) Every Director, member of a Regional Advisory Committee, auditor or employee of the Bank shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule to this Ordinance.

(2) Whoever contravenes his declaration of fidelity and secrecy shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

33. Disclosure of information, etc. (1) No information given by a person applying to the Bank for financial assistance, or based on data furnished by such person, shall be disclosed or used for the purpose not connected with the discharge of his duties by any Director, or member of a Regional Advisory Committee or of any Committee or by any employee of the Bank.

(2) Whoever contravenes any of the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

34. False information. Whoever in any application for obtaining a loan, advance or credit or in any balance sheet, statement of profit and loss, declaration or any other document submitted to the Bank in respect of any financial aid sought or granted under this Ordinance, wilfully makes a false statement or knowingly permits any false statement to be made or to remain, or uses or permits to be used any loan, advance, or credit for any purpose other than that for which it is granted by the Bank shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

35. Unauthorised use of Bank's name. Whoever without the consent in writing of the Bank uses its name in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

36. Cognizance of offences. No Court shall take cognizance of any offence punishable under this Ordinance otherwise than on a complaint in writing signed by an officer of the Bank authorised in this behalf.

37. **Liquidation.** No provision of law relating to the winding up of banking companies shall apply to the Bank and the Bank shall not be wound up save by order in writing of the Federal Government and in such manner as the Federal Government may direct.

38. **Rules.** (1) The Federal Government may make rules for carrying out the purposes of this Ordinance and where the regulations framed under the succeeding section are inconsistent with the rules framed under this section, the rules shall prevail.

(2) Without prejudice to the provision of sub-section (1), such rules may provide for--

- (a) the manner in which and the conditions subject to which the shares of the Bank may be held and transferred, and generally all matters relating to the rights and duties of the shareholders;
- (b) the duties and powers of the Chairman;
- ³⁶[(c) the manner, conditions and terms of issue and redemption of bonds, debentures, participation term certificates, term finance certificates, *modaraba* certificates, *musharika* certificates and such other instrument as may be approved by the State Bank];
- (d) the conditions subject to which advances, loans and credits may be granted to--
 - (i) the Directors;
 - (ii) the Members of Regional Advisory Committees and the Technical Advisory Committee;
 - (iii) the employees of the Bank;
 - (iv) the relatives of the persons mentioned in this clause;
 - (v) the individuals, co-operative societies and other bodies corporate with whom these persons or their relatives are connected as partners, directors, managers, servants, shareholders or otherwise.

39. **Regulations.** (1) The Board may make regulations not inconsistent with this Ordinance or the rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Ordinance and the efficient conduct of the affairs of the Bank.

(2) Without prejudice to the generality of the provision of sub-section (1), the regulations may provide for--

- (a) the matters on which the Regional Advisory Committees may advise the Regional Managers;

36. Subs. by the Agricultural Development Bank (Amendment) Act, XXI, of 1985, Sec. 5.

(b) the conduct of the Executive Committee;

(c) the procedure of the Bank;

(d) the manner of application;

(e) the manner of appointment of the President and the members of the Board;

(f) the duties and powers of the Chairman;

(g) the form of the rules;

(h) the preparation of the Bank's annual report to the Government.

Provided that the rules mentioned in clause (h) shall be approved by the Federal Government.

Service Rules. No disciplinary action shall be taken against an employee under the Rules if where an employee is found guilty of the real allegation of corrupt. It was held that account of being corrupt has not been followed and discipline could not be allowed to run its course aside by the Lower Court.

Agricultural Development Bank Ordinance, 1961 were not promulgated at the time of its promulgation. It was necessary under the Ordinance to make regulations necessary or expedient for the efficient conduct of the affairs of the Bank.

Proviso added by the Federal Government.

37. PLD 1982 BJ 3

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- (b) the conduct of business at the meetings of the Board and of the Executive Committee or of any other Committee or Sub-Committee;
- (c) the procedure for the recovery of loans and other dues of the Bank;
- (d) the disclosure of interest, direct or indirect, of a Director in any application for loan;
- (e) the recruitment of the employees of the Bank, the terms and conditions of their service, the constitution and management of Provident Funds for the employees of the Bank and all other matters connected with any of these things;
- (f) the duties and conduct of employees and agents;
- (g) the form of return and statements;
- (h) Preparation of annual estimates of income and expenditure of the Bank and their submission to the Board and the Federal Government:

Provided that no regulation made with respect to the matters mentioned in clauses (e) and (f) shall take effect until it has been approved by the Federal Government.]

COMMENTS

Service Rules must be followed. Before taking any disciplinary action against an employee of the Bank, the Bank must act under the Rules. If it acts arbitrarily, the order may be set aside. Thus where an employee was dismissed summarily under S.S.R. 18 although the real allegation against him was that he had the reputation of being corrupt. It was held that since the services were actually terminated on account of being corrupt, therefore the regular procedure should have been followed and deviation therefrom was a fraud on the statute which could not be allowed by law. The order of dismissal was correctly set aside by the Lower Court.³⁷

Agricultural Development Bank (Staff) Service Regulations, 1961 were not promulgated with the approval of Federal Government as at the time of its promulgation, no approval of the Federal Government was necessary under S. 39 of the Ordinance. Board of Directors was competent to make Regulations to provide for matters which it thought necessary or expedient for giving effect to the provisions of the Ordinance and for the efficient conduct of the affairs of the Bank.³⁸

Proviso added to S. 39(2) of the Ordinance IV of 1961, would come into force only upon and from the date of approval accorded by Federal Government but same would not apply to the Bank's

37. PLD 1982 BJ 3. = PLD 1980 Lah. 80.

38. 1993 PLC (C.S.) 1298.

Regulations framed in 1961 i.e. which were already in effect and which fell within purview of cl. (e) of S. 39(2) of the Ordinance IV of 1961. New proviso added to S. 39(2) of the Ordinance IV of 1961, would be applicable prospectively to any Regulations which fell under cl. (e) & (f) of S. 39(2) of the Ordinance making prior approval of Government essential for bringing such Regulations in effect. Banks' Regulations having been framed in 1961, came into force prior to amendment in S. 39 of the Ordinance IV of 1961 by Act XII of 1973, when no approval of Federal Government was necessary, would continue to remain in force and operative notwithstanding amendment of S. 39(2) of Ordinance IV of 1961. Regulations falling within purview of cl. (e) of S. 39(2) of the Ordinance which were in force at the time of amendment and had continued to remain into operation, could not be modified, replaced, or repealed by the Board of Directors of Bank, without prior approval of Federal Government as contemplated by proviso to S. 39(2).³⁹

Civil Service--Dismissal or termination from service. Two distinct powers available to competent authority. Validity of proceedings against employee. Respondent employee of Agricultural Development Bank, a statutory Corporation. Allegation of being corrupt. Services terminated under Staff-Service Regulation No. 13(1) without assigning any reason, on payment of three months' pay in lieu of notice. Order set aside by Civil Court, and upheld in appeal, on ground that employee having been found corrupt, action against him should have been taken under Regulation 95 which provides for procedure and punishment for misconduct. Employer's appeal before Supreme Court. Termination of service of employee is absolute discretion of Bank. Separate Regulations dealing with termination of service and providing for procedure and punishment for misconduct/corruption. Two distinct powers being available to competent authority, there was no bar, express or implied to competent authority invoking either or anyone in particular. Authoritative decisions by Supreme Court having consistently conceded such a power to competent authority, of course not so if it was shown to be *mala fide* either in fact or in law. Appeal allowed *ex parte* and impugned decisions set aside.⁴⁰

40. Publication or rules, etc. All rules and regulations made under this Ordinance shall be published in the official Gazette.

41. Repeal, etc. (1) Upon the establishment of the Bank under sub-section (1) of Section 3, the Agricultural Development Finance Corporation Act, 1952 (XVII of 1952), and the Agricultural Bank Act, 1957 (XXIII of 1957), hereinafter referred to as the said Acts, shall stand repealed.

(2) Upon the repeal of the said Acts--

- (a) the entire undertakings of the Corporation and the Agricultural bank including all assets, rights, powers,

39. PLD 1984 SC 194 ref. 1992 SCMR 1112.

40. PLD 1973 Lah. 425 ref. PLD 1984 SC 194, 1987 SCMR 261; 1986 SCMR 725 and PLD 1956 SC (Pak.) 298 rel. 1988 SCMR 597.

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authorities and privileges, and all property, movable and immovable, cash and bank balances, reserve funds, investments and all other interests and rights in, or arising out of, such property, and all debts, liabilities and obligations of whatever kind of the Corporation or the Agricultural Bank subsisting immediately before the repeal of the said Acts shall stand transferred and vest in the Bank;

- (b) subscription to the authorized capital of the Corporation and for the shares of the Agricultural Bank shall stand transferred to the Bank and be deemed to be subscriptions for shares in the Bank;
- (c) subject as hereinafter provided, every appointment, order, rule and regulation made or issued under any of the said Acts and in force immediately before the repeal of the said Acts shall, so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been made or issued under this Ordinance, as if this Ordinance were in force at the time at which such appointment, order, rule or regulation were made or issued;
- (d) notwithstanding anything contained in any contract or agreement or in the conditions of service, the officers and other employees of the Corporation and the Agricultural Bank shall stand transferred to the Bank and the bank shall appoint such officers and employees, as nearly as may be, to the posts in the Bank corresponding to those they held in the Corporation or in the Agricultural Bank or to such other posts as will not adversely affect such officers and employees in the matters of pay and other emoluments, privileges and advantages;
- (e) all debts and obligations incurred or contracts entered into or rights acquired and all matters and things engaged to be done by, with or for, the Corporation or the Agricultural Bank before the repeal of the said Acts, shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the bank;
- (f) all suits and other legal proceedings instituted by or against the Corporation or the Agricultural Bank before the repeal of the said Acts may be continued by or against the Bank;
- (g) any reference to the Corporation or the Agricultural Bank in any law, other than the said Acts and this Ordinance, or in any order, rule or notification or in any contract or other instrument shall, except as otherwise provided in any general or special order made by the Federal Government or a Provincial Government, be construed as a reference to the Bank;
- (h) no officer or other employee of the Corporation or the Agricultural Bank whose services are by this Ordinance transferred to the Bank shall, notwithstanding anything

contained in any law for the time being in force, be entitled to any compensation because of such transfer.

THE SCHEDULE

(See Sec. 32)

DECLARATION OF FIDELITY AND SECRECY

I, hereby declare that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a Director/a member of a Regional Advisory Committee/auditor/employee (as the case may be) of the Agricultural Development Bank of Pakistan and which properly relate to any office or position in the said Bank held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs and business of the Bank nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Bank and relating to the business of the Bank.

Signature.....

Signed before me.

Signature

Signature

Date

THE AGRICULTURAL BANK

the power conferred by the Bank Ordinance, 1961 to make the following rules

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1. Short title called the Agricultural Bank Ordinance, 1961

(2) They shall be

2. Definition repugnant in the subject

(a) "borrower" means any person who applies for a loan;

(b) [Omitted by the

(c) "non-official Director"

(d) "official Director" means a Director appointed under the Federal Government

(e) "Ordinance" means the Agricultural Bank Ordinance, 1961

(f) "Section" means a section of the Ordinance

CHAPTER

3. Allotment of shares under the Ordinance and these rules shall be under the control of the Board.

(2) Subject to the provisions of the Ordinance, the Board may, in its discretion, operate branches at such places as it may deem fit to be maintained and subject to such reasonable conditions as it may deem fit to be maintained, however that not less

4. Inspection of the books and accounts of the Bank shall be maintained under the provisions of these rules and the share-holder at the time of the audit shall be subject to such reasonable conditions as it may deem fit to be maintained, however that not less