
(2013) 12 BOM CK 0194
In the Bombay High Court
Case No : Writ Petition No. 7024 Of 2010

Alka

APPELLANT

Vs

The Divisional Joint Registrar Co-operative Societies
Aurangabad

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) MCR 629

Hon'ble Judges : S.S. Shinde, J.

Bench : Single Bench

Advocate : Mr. S.S. Thombre, Advocate, for the Petitioners; Mr. P.P. More, A.G.P, for the Respondent Nos. 1 & 2

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard with the consent of learned counsel for both the parties.

2. This Writ Petition takes exception to the Order dated 30th July, 2010 passed by the Deputy Joint Registrar, Co. Operative Societies, Aurangabad (In short, the Dy. J.R., Aurangabad) in Appeal No.7 Of 2010 filed U/Section 152 of the Maha.Co.Op.Societies Act, 1960 thereby, confirming the order dated 28th June, 2010 passed by the Assistant Registrar, Co. Operative Societies, Paithan, Dist. Aurangabad U/Section 11 of the Maha.Co.Op.Societies Act, 1960 in Case O.No.Admn/Member/ Cancel/ 704/2010. (In short, the A.R.,Co.Op. Societies, Paithan).

3. Background of facts for filing present Petition, as disclosed in the Writ Petition are as under :-

The Petitioners are the members of the "Takali Ambad Vividh Karyakari Seva Sahakari Sanstha Maryadit, Takali Ambad, Tal. Paithan, Dist. Aurangabad". (In short, the Takali Ambad V.K.S.S.S.M.) / Respondent No.4 since more than 15 years. General election to elect Managing Committee for the year 2010-15 of

said Society was scheduled to be held. Prior to this election, the petitioners had exercised their right to cast votes in the general elections of said Society. The Returning Officer published the election programme to elect the Managing Committee for the year 2010-15 and as per the said election programme, 13 seats are to be elected and out of that one seat is reserved for the non-borrowing category and as per the election programme 14th June, 2010 was the date for publication of the preliminary Voters List and upto 21st June, 2010 the time was given for raising objections and 28th June, 2010 was the date for publication of the final Voters List and 6th June, 2010 was the last date for submission of the nominations and 8th August, 2010 was the date for polling. It is contended that, in pursuance of the election programme on 14th June, 2010 the preliminary Voters List was published where-in the names of the present petitioners are shown in the Voters List from the non-borrowing category. Respondent No.5 raised an objection in respect of inclusion of the names of the present petitioners in the Voters List from the non-borrowing category stating therein that as per the bye-laws, present petitioners are not having minimum 10 Are land at village Takli Ambad and it was stated that they are the members of the Hiradpuri Vividh Karyakari Seva Sahakari Sanstha Maryadit and stated that they are not residing within the area of operation of the Takali Ambad V.K.S.S.S.M. Said objection was raised on the last date of filing the objections to the provisional Voters List i.e. on 21st June, 2010 and on the same day, respondent No.3 Returning Officer has forwarded the same to the learned A.R.,Co.Op. Societies, Paithan, who thereupon issued show cause notices to the petitioners on the very day. As per the said show cause notices, on behalf of the petitioners, one Shri. Narke submitted the written reply wherein it is specifically stated that they are the members of Takali Ambad V.K.S.S.S.M. from non-borrowing category. The A.R., Co.Op. Societies, Paithan had issued notices U/ Section 11 of the Maha. Co Operative Societies Act, 1960 and directed the petitioners to submit their Say on 28th June, 2010 and without conducting any inquiry the A.R., Co.Op. Societies, Paithan passed an order on 28th June, 2010 and removed the present petitioners from the membership of said Society and on the same day the Returning Officer was pleased to delete the names of the present petitioners from the Voters List.

4. Being aggrieved by the order passed by the A.R.,Co.Op. Societies, Paithan, the petitioners approached before respondent No.1 i.e. the Dy. J.R., Aurangabad by preferring an Appeal U/Section 152A of the Maharashtra Co-Operative Societies Act, 1960 and raised various grounds in the Appeal Memo. It was specifically averred that Section 11 of the Maha.Co.Op.Societies Act,1960 contemplated in respect of registration and, therefore, the procedure which is contemplated under Rule/s 28 and 29 of the Maha.Co.Op.Societies Rules, 1961 was not followed by the A.R.,Co.Op. Societies, Paithan and he has no authority to pass an order of removal of the petitioners and on another grounds, the Appeal was preferred before the Dy. J.R., Aurangabad. Before the Dy. J.R., Aurangabad i.e. respondent No.1 written Say was filed by the Secretary of respondent Society, where-in it

was stated that as per the record of the Society, the petitioners are the members of Takali Ambad V.K.S.S.S.M. and their names stood appeared in the Voters List of the election which were held in the year 1999. The secretary of the Hiradpuri V.K.S.S.S.M. has issued a Certificate dated 1st July, 2010 thereby stating that Petitioner Nos. 1,3 and 6 are not the members of said Society. The Dy. J.R., Aurangabad was pleased to heard the matter and recorded the submissions of the petitioners as well as other respondent Nos. 3 to 5 and without giving any findings on the submissions made by the petitioners, Respondent No.1 was pleased to dismiss the Appeal by its Judgment and Order dated 30th July, 2010. Therefore, the petitioners are approaching before this Court by way of filing this Writ Petition.

5. The learned counsel, appearing for the petitioner invited my attention to the pleadings made in the Petition and grounds taken therein and submits that the provisions of Section 11 of the Maharashtra Co-Operative Societies Act, 1960 deals with the registration of Co Operative Societies and, therefore, the power exercises by the A.R.,Co.Op. Societies, Paithan under said Section in relation to facts involved in the present case are not proper. It is further submitted that, said Section enable the authority to deal with the case in which the issue of registration of co-operative Society is involved. It is submitted that, on 14/06/2010 provisional voters list was published wherein names of present petitioners were shown. On the last date of raising objection i.e. on 21st June, 2010 an objection was raised by Respondent No.5 and immediately on the same date, the Returning Officer has reported to the A.R.,Co.Op. Societies, Paithan and on the same day the A.R., Co.Op. Societies, Paithan was pleased to issue show cause notices to the petitioners U/Section 11 of the Maharashtra Co-Operative Societies Act, 1960 and hearing was kept on 28/06/2010 and on the same day, hearing was completed and the A.R.,Co.Op. Societies, Paithan was pleased to pass an order thereby removing names of petitioners from the membership of the Takali Ambad V.K.S.S.S.M.. It is submitted that order passed by the A.R., Co.Op. Societies, Paithan is contrary to the provisions of the Maharashtra Co-Operative Societies Act, 1960 as well as Rule/s 28 & 29 of the Maharashtra Co-Operative Societies Rules, 1961. It is further submitted that, under political pressure of local Member of Legislative Council the learned A.R., Co.Op. Societies, Paithan passed the impugned order dated 28/06/2010 and, therefore, the appellate authority ought to have quashed and set aside the order passed by the A.R.,Co.Op.Societies, Paithan. It is further submitted that, the petitioners are the members of Takali Ambad V.K.S.S.S.M. since last 15 years and they have exercised their right to cast votes in the earlier election/s and, therefore, there was no extraordinary circumstances to remove the names of petitioners from membership of Takali Ambad V.K.S.S.S.M. and it is contrary to the provisions of the Maharashtra Co-Operative Societies Act, 1960 and the Maharashtra CoOperative Societies Rules, 1961.

6. It is further submitted that, bye-laws of said Society, which have made applicable in the case of petitioners, are amended after the year 2004 and as the

petitioners are the member of said Society since last 15 years, amended bye-laws have no application in the facts of present case. It is submitted that, without admitting but assuming that bye-laws are applicable, even after passing of order of cancellation of membership, said order would take effect only after one month, from the date of passing of said order. Therefore, according to the learned counsel for the petitioners, names of petitioners should have been maintained in the Voters List. The learned counsel further invited my attention to the various provisions of the Maharashtra Co-Operative Societies Act, 1960 and the Maha.Co.Op. Societies Rues, 1961 and submits that, Petition deserves to be allowed.

7. On the other hand, learned A.G.P. invited my attention to the affidavit in reply filed on behalf of Respondent Nos. 1 and 2 and submits that, the A.R.,Co.Op.Societies, Paithan is empowered to exercise the powers U/Section 11 of the Maharashtra Co-Operative Societies Act, 1960 when issue of membership is raised for consideration and as per Section 11 such question shall be decided by the Registrar. It is also submitted that, petitioners have not submitted Certificate issued by Village Panchayat, Takali Ambad regarding residence of said village and 7/12 extract or any other revenue record to show that, they possess agricultural lands at village Takali Ambad, therefore, the petitioners have not complied with provisions of bye laws Nos.(1)(3) and 6(4) of Takali Ambad V.K.S.S.S.M.. It is submitted that, the petitioners have not borrowed any loan since last 15 years for the agricultural purpose from the said Society, therefore, the petitioners have not complied with the provisions of bye-laws Nos. 6(16) and 6(25) of said Society.

8. Learned A.G.P. further invited my attention to various provisions of Bye laws and submits that, petitioners are not eligible to continue as members of said Society; since they did not fulfil with the requirement of membership of said Society as stated in clause (6) of the bye-laws of said Society. It is submitted that, the petitioners have not shown that they possession at least 10 Are agricultural land within the vicinity of operation of Takali Ambad V.K.S.S.S.M..Therefore, relying upon the affidavit in reply, various provisions of Law and reasons recorded by the A.R.,Co.Op. Societies, Paithan and also the Dy.J.R.,Aurangabad, the learned A.G.P. submits that, Petition is devoid of any merit, same may be rejected.

9. I have given careful consideration to the submissions made by learned counsel appearing for the petitioners and learned A.G.P. With their able assistance, I have perused the pleadings, grounds taken in the Petition, annexures thereto, order passed by the A.R.,Co.Op.Societies, Paithan and order passed by appellate authority i.e. the Dy. J.R., Aurangabad and reasons assigned by them while rejecting the applications filed by the petitioners.

10. It is not in dispute that, prior to passing of order by the A.R., Co.Op.Societies, Paithan, the petitioners herein had exercised their rights to vote in the general election of Takali Ambad V.K.S.S.S.M. being members of said

Society. Therefore, it is clear that prior to passing of the order by the A.R.,Co.Op. Societies, Paithan, the petitioners herein were the members / voters and from-time-to time they had participated in the activity of Takali Ambad V.K.S.S.S.M. and also cast their votes in the election of said Society, from the category of non-borrowing Members.

11. Contention of learned A.G.P. that, the petitioner have not obtained any loan from said Society for the agricultural purpose, therefore, they have incurred disqualification, appears to be without any substance, in as much as, the petitioner names are included in the provisional Voters List from non-borrowing Member Category. Consequently, when it is admitted position that, the petitioners are the members of Takali Ambad V.K.S.S.S.M, even before amended bye laws, the bye laws which were in force came into force prior to enrolling them as members of the said Society ought to have been considered by the respondent authorities. The respondent authorities have not produced for perusal of this Court the bye-laws which were in force prior to enrolling the present petitioners as members of said Society. Ultimately, membership is granted keeping in view the relevant provisions of bye-laws in operation when the membership is conferred upon the members.

12. Therefore, in the facts and circumstances of the present case, the bye-laws which were in force prior or at the time of granting member -ship to the petitioners are important. However, it appears that, the respondent authority have relied upon the bye-laws which are amended after the year 2004. Upon reading of said bye-laws, it is not clear that whether said bye-laws would have application, retrospective or prospective. As a general rule, whenever any provisions of law is brought into force, or amended, or incorporated / repealed into from Statute or in any bye law, in such a case, such provisions have prospective application and would not apply retrospectively, unless there is specific mention of giving retrospective effect therefor in such Statute, Law, Bye-laws as the case may be.

13. In the facts of present case, the petitioners have alleged that, one local M.L.A. pressurized the authority and under the political influence, the authorities have hurriedly acted upon and passed the order thereby expelling the petitioners from membership of said Society. I find considerable force in the argument advanced by learned counsel appearing for the petitioners that, as only one weeks time was granted to the petitioners, by the authority, to put forth their contentions and for production of evidence. When the petitioners are the members of said Society since last more than 15 years prior to passing of order by the A.R.,Co.Op. Societies, Paithan in such situation reasonable opportunity of defending their case could have been given to the petitioners by the concerned authority. The petitioners herein consistently alleged and raised their grievances that authority have acted under the political pressure of local M.L.A.. Before the appellate authority the petitioners have raised ground No.8 in Appeal Memo, which reads thus:

It ought to have been considered that considering the dates which are stated in the above para it clearly reveals that the respondent No.1 has acted against the present appellants under the political pressure of the local M.L.A. Shri.Sanjay Waghchoure and under his pressure the respondent no.1 has passed such order and no such procedure is contemplated under Section 11 of the Maharashtra Co-Operative Societies Act, 1960 and Rule 28 of the Rules, 1961 therefore, the order passed by the respondent No.1 unjust, illegal and arbitrary.

14. Upon reading Ground No.8 of Appeal Memo, it is abundantly clear that, the petitioners have expressly alleged that, local M.L.A. has exerted pressure on the authority to take action against the petitioners. When such type of serious ground is raised by the petitioners in the Appeal Memo, it was incumbent on the part of the Dy. J.R., Aurangabad to consider the same and make the detailed observation to arrive at conclusion whether the local M.L.A. has exerted political pressure or not and whether there is substance in the contention of the petitioners that, the A.R.,Co.Op.Societies, Paithan has hurriedly passed the order only due to political pressure, as alleged by the petitioners.

15. However, upon careful perusal of the order passed by the Dy. J.R., Aurangabad surprisingly it appears that, he has not touched such serious aspect while passing the impugned order dated 30th July, 2010. For the reasons best known to him, he has not considered such serious ground raised by the petitioners in their Appeal Memo and consequently, the Dy. J.R., Aurangabad has not observed anything in the impugned judgment in respect of said ground.

16. I find force in the argument canvassed by learned counsel for the petitioners that, Section 11 is a part of Chapter II of said Act, which deals of registration. Therefore, the appellate authority ought to have addressed itself whether the A.R.,Co.Op. Societies, Paithan could exercise powers U/Section 11 of the Maharashtra Co-Operative Societies Act, 1960 in the facts of present case.

17. When such specific point was raised before the A.R.,Co.Op. Societies, Paithan and the Dy. J.R., Aurangabad, they being competent authority to deal with the same bound to adjudicate upon said point. Appeal is a valuable right of the parties. Appeal is available both on facts and law and when specific contention is raised by the petitioners before the Dy. J.R., Aurangabad, in respect of exercise of powers by the A.R.,Co.Op.Societies, Paithan U/Section 11 of the Maharashtra Co-Operative Societies Act, 1960 in the facts of present case, appellate authority ought to have considered the said point and should have answered the same.

18. Rule/s 28 and 29 of the Maharashtra Co-Operative Societies Rules, 1961 read thus :

28.Expulsion of Members:- Any member who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of the by-laws regarding sales of his produce through the Society, or other matters in connection with his dealings with the Society or who, in the opinion of the committee, has brought disrepute to the Society or has done other acts

detrimental to the interest or proper working of the Society may, in accordance with the provisions of sub-Section (i) of Section 35, be expelled from the Society. Expulsion from membership may involve forfeiture of shares held by the member.

29.Procedure for expulsion of members:-

(1) Where any member of a Society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the Society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.

(2) When a resolution passed in accordance with sub-rule (1) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the Society and the member concerned. The resolution shall be effective from the date of such approval.

19. Upon conjoint reading of Rule/s. 28 & 29, it appears that said provisions deals with expulsion of members and procedure prescribed therefor. It appears that, there is no conscious application of mind by the A.R., Co.Op.Societies, Paithan to the procedure prescribed under Rule/s. 28 and 29 of the Rules, 1961 before passing the order thereby expelling the petitioners from membership of respondent No.4 Society. Even reading the bye-laws which are in force, the procedure to expel the members is provided under the said bye-laws.

20. It appears to this court that, not only the A.R.,Co.Op.Societies, Paithan proceeded in hurried manner to pass the order directing expulsion of petitioners from the membership of respondent No.4 Society but also, not adhered to the prescribed procedure of Law, relevant bye-laws of said Society and provisions of the Maharashtra Co-Operative Societies Rules, 1961.

21. There was no any compelling circumstances or extraordinary situation wherein authority should have passed the order without affording sufficient time to the petitioners to put forth their contentions and to place on record necessary documents in support of their case.

22. As already discussed, the petitioners are the members of Society, since last more than 15 years and, therefore, authority could have been more careful while exercising their powers before expelling the petitioners from membership of respondent No.4 Society.

23. The question which needs to be address in the facts of the present case is

that, whether the A.R.,Co.Op.Societies, Paithan was justified in expelling the petitioners from membership of respondent No.4 Society.? The learned counsel appearing for the petitioners was right in contending that, even if the members are removed or expelled, as the case may be, still in that case also, such order would take effect only after expiry of one months time, from passing of such order. Therefore, when the petitioners names were already included in the provisional Voters List, which was prepared for the election of Respondent No.4 Society, their names should have been figured in the final Voters List, in view of that fact, order expelling the petitioners from the members of said Society should not have taken effect at least for one month as provided under the bye-law. The petitioners names are included in the provisional Voters List in non borrowing Members Category, therefore, question of their disqualification, as they did not obtained / borrowed the loan from said Society, does not arise.

24. In the light of the discussion herein-above and taking into consideration the peculiar facts involved in the present case and fact that petitioners have alleged that the respondent - authorities have acted under the political pressure of local M.L.A. and further though such ground was taken in the Appeal Memo, the appellate authority i.e. Dy. J.R., Aurangabad had not considered the said ground while passing the impugned order, the A.R.,Co.Op.Societies, Paithan has no followed prescribed procedure either under the relevant Rules or bye-laws, the impugned order passed by the A.R. Co.Op. Societies, Paithan and confirmed by the Dy. J.R., Aurangabad deserves to be interfered with.

25. Accordingly, order dated 28th June, 2010 passed by the A.R., Co.Op. Societies, Paithan U/Section 11 of the Maha.Co.Op. Societies Act, 1960 in Case O.No.Admn/Member/ Cancel/ 704/2010 and impugned order passed by the Dy. J.R., Aurangabad dated 30th July, 2010 in Appeal No.7 Of 2010 are quashed and set aside.

26. However, it is made clear that in case the respondents wish to consider the issue of membership of the present petitioners, they are at liberty to do so however only in adherence to the relevant provisions of the Maha.Co-Operative Societies Act,1960, the Maharashtra Co-Operative Societies Rules, 1961 and relevant bye-laws of Respondent No.4 Society.

27. By the interim order dated 5th August, 2010 this court allowed the petitioners to cast their votes during the election of Respondent No.4 Society and further observed that, said votes shall be kept separately and not to be counted in the category of non-borrowing Members. Since the Petition is allowed and disposed of, the respondent authorities are free to take steps to count the votes of the petitioners from the non-borrowing category. In that respect, no any opinion is expressed by this court and it is left open to the authority to take appropriate steps / decision in accordance with provisions of the Maharashtra Co-Operative Societies Act, 1960, the Maharashtra Co-Operative Societies Rules, 1961 and relevant bye-laws of Respondent No.4 Society.

28. Rule made absolute in terms of prayer clause (b) of the Writ Petition. Petition is disposed of in above terms. There shall be no order as to costs.