
(2001) 06 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2231 of 2001

Arjun Panditrao Khotkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-06-2001

Acts Referred:

Citation : (2002) 2 ALLMR 303 : (2002) 2 BomCR 368

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : V.D. Hon, for the Appellant; Umakant Patil, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. Rule. Rule made returnable forthwith by consent.

3. The petitioner challenges the order issued by the Divisional Joint Registrar, Co-operative Societies, Aurangabad on 7-8-2000 and confirmed by the Appellate Authority by its judgment and order dated 17th May, 2001. The order dated 7th August, 2000 was apparently passed in exercise of powers u/s 78 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter called as the said Act.)

4. Few facts, relevant for the decision are that the petitioner is the Chairman of the Jalna District Central Co-operative Bank Limited, Jalna. A show cause notice dated 10-3-2000 came to be issued to the petitioner and other Directors of the said Bank by the Divisional Joint Registrar, Co-operative Societies, Aurangabad calling upon the petitioner and others to show cause as to why the action should not be taken in terms of the provisions contained in section 78(1)(a) of the said Act. After considering the replies of the petitioner and other directors, the Divisional Joint Registrar by its order dated 7-8-2000 passed the impugned order in exercise of the provisions contained in section 78(1) of the said Act dissolving

the Managing Committee of the said Bank and appointing Administrative Committee consisting of three officers. It is the contention of the respondents that prior to the issuance of the said order, the respondents had complied with the requirement of consultation with the Federal Bank i.e. the Maharashtra State Co-operative Bank Ltd., Bombay in terms of the requirement of the law whereas it is the contention of the petitioner that there was no such consultation. Subsequent to the order dated 7-8-2000, the petitioner filed an appeal before the Appellate Authority and prayed for stay of the impugned order. However, as there was delay in grant of any such order, the petitioner approached this Court by Writ Petition No. 3619 of 2000 and by order dated 22-9-2000 this Court had ordered that the execution of the impugned order dated 7-8-2000 shall be stayed till the period of two weeks after service of the order by the Appellate Authority on the petitioner in relation to his application for stay of the impugned order filed before such Appellate Authority. Thereafter, the Appellate Authority granted stay of the impugned order during the pendency of the appeal. The appeal came to be dismissed on 17th May, 2001. However, the order to that effect was communicated to the petitioner by 4th June, 2001. Hence, the present petition.

5. The impugned orders are being assailed on two grounds. Firstly, that in view of the fact that five years terms of the Managing Committee of which the petitioner is the Chairman, having already expired, and the committee being in the management, during interregnum period i.e. during and till the new Managing Committee is elected in accordance with the provisions of law no action could have been taken in terms of section 78 of the said Act; Secondly, it is the contention of the petitioner that there is no effective consultation within the meaning of the said expression u/s 78(1) of the said Act.

6. There is no dispute on the point that the period of five years of the management of the petitioner and other members of the Managing Committee has already expired and they continue to be in the management by virtue of the provisions continued in section 73-G of the said Act. Indeed, by Maharashtra Act No. IV of 2001, by which the said Act was amended, the following proviso was added to section 73-G w.e.f. 13th November, 2000 :-

"Provided that where the Collector fails to hold election to the committee of any such society, the term of office of the members of the committee of that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee."

There is also no dispute that the Collector in the case in hand has not held the elections for the said Bank though the period of five years has already been expired. However, it is also the matter of record that the Collector has already prepared the voters list and the preliminary work as regards holding of the election of the new committee is almost complete.

7. u/s 78(1) of the said Act, the Registrar may, by an order, remove the

committee of any society or any members of such committee, if, in his opinion such committee or the member makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any Act which is prejudicial to the interests of the society or its members, or wilfully disobeys directions issued by the State Government, or by the Registrar for the purposes of securing proper implementation of co-operative policy and development programme approved or undertaken by the State Government or is otherwise not discharging its or his functions properly and diligently or where a situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and diligently and the business of the society has or is likely to come to a stand-still or where any member of such committee stands disqualified by or under this Act for being a member. Two preconditions specified for taking such an action by the Registrar, are that, firstly, the Registrar to act, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any within 15 days from the date of receipt of the show cause notice in that regard and secondly to have consultation with the federal society to which the society is affiliated. The provisions of law contained in section 78 of the said Act also provide for consequential action to be taken by the Registrar in case of removal of the committee or its member. Bare reading of the said section nowhere discloses any restrictions on exercise of powers thereunder by the Registrar merely because the term of five years of the committee has either expired or that the elections to new committee are likely to be held in near future. The powers of the Registrar u/s 78 of the said Act are not subject to any such restriction and no such interpretation imposing restriction on such powers is permissible, considering the purpose and reasons for which the said power has been given to the Registrar. Apparently, the Registrar is authorised to act under the said provisions of law in cases where the Managing Committee fails to perform its duties under the said Act or does not act diligently and in the interest of the society. Being so, till and until the committee would remain in-charge of the management of the society, their actions can be subjected to scrutiny by the concerned authority and if found committing default in their duties and functions or not acting diligently in the interest of the society, certainly, the Registrar would be entitled to take appropriate action under the provisions of law contained in section 78(1) of the said Act. Besides, the very proviso sought to be introduced by way of Amendment No. IV of 2001 to section 73-G discloses the intention of the Legislature that mere lapse of period of five years would not automatically result in-cessation of powers of the duly elected Managing Committee of the society in case of failure on the part of the Collector to hold election for new Managing Committee for the further period and the committee already in the office would continue to be in the office till new committee takes over the charge in accordance with the provisions of law. Being so, expiry of the period of five years is not a bar for taking action by the Registrar u/s 78(1) of the said Act. Likewise, there is no bar for taking action under the said section by the Registrar even during the period the committee continues in office on account of

failure on the part of the Collector to take appropriate steps in time to hold elections for new committee. Hence, there is no substance in the first ground of challenge by the petitioner.

8. As regards the second ground of challenge, it relates to the absence of effective consultation prior to taking action u/s 78 of the said Act. The learned Advocate for the petitioner, placing reliance on the decision of the learned Single Judge of this Court in *Shalikram Shivram Khobragade and others Vs. Divisional Joint Registrar, Co-operative Societies, Nagpur and others*, of the Division Bench in the matter of *Agricultural Produce Market Committee, Dharni and others v. District Deputy Registrar, Co-operative Societies, Amravati*, reported in 1986 M.L.J. 374, of the learned Single Judge in the matter of *Shriram Sahakari Sakhar Karkhana Ltd. & another v. Director of Sugar and Additional Registrar, Co-operative Societies, Maharashtra State, Nagpur and others*, reported in 1997 (3) All.M.R. 106, submitted that the records apparently disclosed that all the relevant papers, based on which the respondents have arrived at the decision to take action u/s 78 of the said Act, were not placed before the federal society in order to have an effective consultation with the said federal society and on that count, the decision to take action u/s 78 of the said Act is vitiated and hence, the impugned orders are bad in law. Attention was also drawn to specific plea raised by the petitioner in the memo of appeal before the Appellate Authority that the respondents had not submitted all the replies filed by the Directors of the Bank to the federal society and yet, there is no counter to the same in the official reply filed today by the respondents in this petition. It was sought to be contended that the vague averment to the effect that the order was passed after consultation with the federal society, does not disclose proper compliance of the provisions contained u/s 78 of the said Act in relation to the requirement of consultation prior to the decision under the said provision. On the other hand, referring to the impugned order dated 7-8-2000, it was sought to be contended by the learned Advocate for the respondents that the order itself apparently discloses that all the relevant papers were sent to the federal society and after waiting for the period for which the federal society asked for in order to enable to give their opinion in the matter, the respondents had taken necessary decision. Being so, according to the learned Advocate for the respondents, no fault can be found with the respondent's decision on account of absence of opinion from the federal society in the matter.

9. The Division Bench in *Agricultural Produce Market Committee's case* (supra) has held that the consultation is not an empty formality or a ritual. It has to be real, full and effective. Unless there has been full consideration of all the matters relevant to the question, it cannot be said that the process of cannot has taken place. It has been further observed that there is a corresponding duty also on the body whose consultation is mandatory to give its opinion. Mere sending of a copy of the show cause notice without anything more cannot amount to consultation within the letter and spirit of the proviso to section 45(1) of the *Agricultural Produce Marketing (Regulation) Act*. It was also held that no opinion

could be given only on the basis of a show cause notice issued by the District Deputy Registrar and the way, reply was sought showed that the authorities treated the requirement of consultation in a most casual fashion as if it was a mere ritual. The facts of the said case also disclose that apart from mere sending of the copy of the show cause notice, nothing more was done to have effective consultation with the Federation of the Market Committees as was otherwise required to be done u/s 45(1) of the concerned Act. It was specifically observed by the Division Bench that neither the defence put up by the market committee nor the relevant material on the basis of which proposed supersession was to take place was placed before the Federation and therefore, no opinion could be given only on the basis of a show cause notice issued by the respondent and hence, there was no effective consultation.

10. In *Shriram Sahakari Sakhar Karkhana's* case (supra), referring to the decision *Suresh Dnyandeo Khumkar and Others Vs. State of Maharashtra and Others*, , *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , the learned Single Judge of this Court has held that mere submission of copies of show cause notice without disclosing the copies of the documents to the federal society, on the basis of which dissolution is sought for of the sugar factory, the dissolution order of the co-operative sugar factory could not be said to have been passed after effective consultation and, therefore, action u/s 78 of the said Act was bad in law. It was also held that the consultation was a mandatory requirement and it has to be actual and read before taking any action under the said section.

11. The learned Single Judge in *Shalikram Shivram Khobragade's* case (supra) has held that consultation u/s 78 of the said Act is not an empty formality and a ritual. The consultation would mean that the authority who is sought to be consulted is provided with the material based on which the order is to be passed in terms of the provisions contained in section 78 of the said Act. Sufficient opportunity must be given to the authority to tender the advice. In the present case, admittedly, only the show cause notice was issued on 13th February, 1997. However, though it was contended that the show cause notice was sent to the federal society, nothing was available on record to show that the federal society had in fact, received the said notice. It was further observed by the learned Single Judge that even assuming that the said notice was received, it was apparent that the petitioners therein had filed their reply on 28-2-1997. Nothing was disclosed from record that the copy of the reply filed by the petitioners to the show cause notice was also made available to the federal society and yet, the order impugned therein, was passed on 10th March, 1997. The learned Single Judge, therefore, has held that even if it was held that the copy of the show cause notice was sent to the federal society, it could not be said that there was real, meaningful and effective consultation inasmuch as the reply given by the Directors was not made available to the Federal Society.

12. It cannot be disputed that the consultation is a mandatory requirement and

precondition for an appropriate decision u/s 78(1) of the said Act. Equally it is to be noted that the consultation has to be effective and meaningful and not a mere formality. In other words, before taking any final decision u/s 78, the authority has to supply all the materials based on which the decision is to be taken, to the authority to be consulted before taking a final decision under the said section. Equally, it is to be noted that mere furnishing of such information is also not sufficient but, sufficient opportunity and time also must be afforded to the authority to be consulted before taking any decision in the matter. It is only after compliance of both these conditions, it can be said that there is effective consultation empowering the authority to take appropriate decision in the matter.

13. Reverting to the facts of the case in hand, the show cause notice was issued to the petitioner and other directors on 10th March, 2000. Thereafter, the petitioner and other directors filed their replies to the said notice from time to time. The Notice apparently required the addressees to submit the replies within 15 days from the date of receipt. There is no dispute that notices were received by the addressees in time. The impugned order itself show that the copies of the show cause notice as well as the replies filed by various directors received by the respondents were furnished to the federal society along with whatever information was called for from time to time and in the course of hearing, including the Audit Report of 1997-98 and 1998-99 and some other documents referred to therein. It also discloses that by letter dated 29-7-2000, the federal society had informed the respondents that it would not be able to express any opinion in the matter till 31st July, 2000. Thereafter, in the appeal memo filed by the petitioner, it was alleged that some of the replies filed to the show cause notice by the Bank Directors, were not furnished to the federal Bank for the purpose of consultation before issuing the impugned order. In the affidavit filed today on behalf of the respondents by the Divisional Joint Registrar, it is clearly stated that the consultation of the federal society, which is mandatory provision u/s 78 is obtained prior to issuing order in this matter and the final order is passed on 17-8-2000. In the course of arguments, the learned Advocate for the respondents has also placed before this Court the records pertaining to the proceedings.

14. The impugned order dated 7-8-2000 apparently discloses that the copies of the show cause notice as well as replies filed thereto by the Directors as also the audit reports for the relevant years, and some other documents and information asked for by the federal society was made available to the federal society by 30th May, 2000. On 29th July, 2000, it was informed by the federal society to the respondent that explanation on their part in the matter would not be tendered prior to 31st July, 2000. The order further discloses that thereafter, awaiting for whatever explanation which the federal society might have given till 6th August, 2000, the authority passed the impugned order on 7-8-2000. The affidavit-in-reply filed today, no doubt, does not disclose the steps in detail taken by the respondents for effective consultation with the federal society. Nevertheless, there is a statement to the effect that the final order was issued after

consultation with the society and being fully aware of the fact that such consultation was mandatory prior to the decision in the matter. The learned A.G.P. has also made available the records pertaining to the proceedings before the respondents and the same also apparently disclose that all these materials based on which the impugned order dated 7-8-2000 was passed, were placed before the federal society. In other words, as far as the first condition i.e., of placing all the material in the matter before the authority required to be consulted, no fault can be found with the respondents in that regard. It is to be noted that the petitioner has not pointed out any document having been referred to by the respondent while passing the impugned order dated 7-8-2000 which could have been stated to have been referred to or relied upon for such order but the copy thereof was not submitted to the federal society. The material which has been relied upon for the decision in the matter, is certainly ascertainable on the face of the said order. Besides, the statement which has been made on oath today in the affidavit by the Divisional Joint Registrar to the effect that "even consultation was obtained prior to the issuance of the order" and further the impugned order dated 7-8-2000, apparently disclosing all the materials having been placed before the federal society prior to the passing of the impugned order and the same being corroborated from the record placed before this Court in the course of argument. I do not find any substance in the contention that the respondents had failed to place all the materials before the federal society for the purpose of consultation.

15. As regards the second contention that in order to see that there was effective and real consultation, the authority which is to be consulted ought to be given sufficient time to frame its opinion in the matter, as already observed above, I find that all the materials were furnished to the federal society by 30th May, 2000 and the federal society itself by its letter dated 29-7-2000, had expressed that opinion would not be given till 31st July, 2000. It is only thereafter, i.e. after waiting for a period of one week or so, that the decision was taken in the matter. In the circumstances, can it be said that sufficient time was not granted to the federal society to frame its opinion in the matter. Certainly, there is no obligation cast upon the authority to wait indefinitely for the advice or opinion whatever it is. On the contrary, it is the duty of the advisory board or the body with whom the consultation is precondition for the decision in a matter, to impart appropriate and necessary advice or the opinion within reasonable time after receipt of all the necessary information and the materials required for giving such advice or the opinion. As the authority is required to submit all the relevant materials to the advisory body to frame its opinion in the matter, in order to have effective and real consultation as required by the statute, equally it is necessary for the advisory body to act swiftly and promptly to impart its advice or opinion to the authority seeking consultation as any lethargy on the part of such body in that regard may defeat the very purpose and the object behind taking the proposed action by the authority, resulting in bonanza to those who fail in their duties or act detrimental to the interest of the society. Real and effective consultation

cannot be with belated and stale advice or opinion. In the case in hand, as observed over, the respondents had furnished all the materials to the federal society by 31-5-2000 and the federal society itself had asked for the time till 31-7-2000, and yet, till 6-8-2000, no opinion was communicated to the authority. In such a case, it can never be said that no sufficient time was granted to the federal society to give its opinion. Besides, there is nothing on record even to suggest remotely that the federal society was not given sufficient time to frame its opinion, nor can it be concluded that the federal society was in anyway handicapped in giving its opinion within the time specified by the federal society itself. Being so, I do not find any substance in the challenge by the petitioner.

16. It was sought to be contended that by order dated 22nd September, 2000 in Writ Petition No. 3619/2000, stay was granted for the implementation of the order that could be passed in the proceedings before the Appellate Authority and therefore, though the order was received on 4th June, 2000 dismissing the appeal, the petitioner was protected by the said order dated 22-9-2000 of this Court in Writ Petition No. 3619 of 2000. However, the order dated 22nd September, 2000 in Writ Petition No. 3619 of 2000 relates to the proceedings in the application for stay and not to the proceedings in the appeal itself. The operative portion of the said order reads thus:-

"Consequently, the ad interim order passed in the present writ petition on 28-8-2000 shall continue to operate during the pendency of the application for stay and for a period of two weeks after the service of the order passed thereon on the petitioner. The petition is disposed of with the aforesaid directions."

Even, the other contents of the said order dated 22-9-2000 disclose that they relate to the proceedings in the application for stay and not in the appeal. Therefore, there is no substance in the contention of the petitioner that he was protected against the order of dismissal of the appeal for a period of fifteen days from 4th June, 2001 on account of the order dated 22-9-2000 in Writ Petition No. 3619 of 2000. Surprisingly, the affidavit filed today by the Divisional Joint Registrar, Co-operative Societies, Aurangabad also discloses total misreading about the order dated 22-9-2000 of this Court in the said Writ Petition No. 3619 of 2000. Apparently, the statement in Para No. 14 of the said affidavit has been made without perusing the order of this Court in Writ Petition No. 3619 of 2000.

17. In the result, therefore, there is no case made out for interference by this Court in its writ jurisdiction and hence, the petition fails and is hereby dismissed, the Rule is discharged with no order as to costs. At this stage, the learned Advocate for the petitioner states that the petitioner continues to be in management of the concerned Bank till this date and drawing attention to para No. 14 of the affidavit-in-reply, submits that it was also the understanding of the respondents that the order passed in the appeal would not be given effect to for a period of fifteen days. The learned A.G.P. on behalf of the respondents states that in fact, the charge of the management of the Bank has not been taken over by the Administrative Committee appointed by the order dated 7-8-2000. In the

circumstances, at the request on behalf of the petitioner for status quo in the matter for a period of three weeks, the parties are directed to maintain status quo for three weeks. However, it is made clear that this shall not entitle the petitioner to take any decision regarding or relating to the finance or the funds of the Bank or to disburse any amount of or to create any liability whatever for the Bank during the said period.