
(2006) 09 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 4575 of 2006

Ashok Jawalge

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 27, 27(3), 27(3A), 73B

Citation : (2006) 09 BOM CK 0010

Hon'ble Judges : A.P. Deshpande, J

Bench : Single Bench

Advocate : P.S. Chavan, for the Appellant; S.K. Kadam, Assistant Government Pleader for respondent Nos. 1 to 4, N.L. Jadhav for respondent No. 5, Mrs. M.A. Kulkarni for respondent No. 6 and S.P. Joshi, for the Respondent

Final Decision : Allowed

Judgement

A.P. Deshpande, J.—Rule. Rule made returnable forthwith. By consent of parties, the petition is heard finally at the stage of admission.

2. Learned Assistant Government Pleader and the learned Counsel for the respondents waive service for the respective respondents.

3. The petitioner has been granted membership of respondent No. 7/ Society by name, "Jaibhavani Sahakari Doodh Vyavasayik Sanstha Maryadit", Dhanuri, by the Managing Committee on 13-6-2002. The respondent No. II Society is a primary Society affiliated to and a member of the respondent No. 5/ Doodh Utpadak Sangh since its registration. The petitioner's name appear at serial No. 52 in the list of members maintained by the respondent No. 7/Society. On expiry of the term of Board of Directors of respondent No. 5/Sangh, the process of election has been set in motion by the respondent No. 2/Collector. The Managing Committee of respondent No. 7/Society has passed a resolution on 6-10-2005 and nominated the present petitioner to vote on its behalf in the affairs of the Federal Society viz. respondent No. 5. It is undisputed that the respondent No. 7/

Society has invested its funds in the shares of the Federal Society since much before the period of three years and it satisfies the conditions laid down in section 27(3) of the Maharashtra Co-operative Societies Act, 1960 (For short, "the Act") and hence has a right to appoint one of its members to vote on its behalf in the affairs of the Federal Society. The name of the petitioner as a nominee of respondent No. 7 was included in the provisional list of voters but on an objection raised by one Baliram Vishwanath Mali, Chairman of Mauli Sahakari Doodh Vyavasayik Sanstha Maryadit, Lohara (Bk.), the petitioner's name has been deleted by an order passed by the Collector dated 12th April, 2006 and it is this order which is challenged in the present petition.

4. Perusal of the order passed by the Collector reveals that a list of voters was to be prepared of such of the member Societies who had invested the funds in the shares of the Federal Society prior to 31-12-2001. It is undisputed that the respondent No. 7/Society is the member of respondent No. 5/Sangh much prior to 31-12-2001 and thus had a right to nominate one of its members to vote on its behalf. It is reiterated, that the petitioner has enrolled himself as member of respondent No. 7/Society as on 13-6-2002. On the objection raised by Shri Baliram s/o Vishwanath Mali to the inclusion of name of the petitioner in the provisional list of voters, the Collector called for report from the Assistant Registrar, Co-operative Societies (Dairy), Osmanabad. He opined that though respondent No. 7/Society is a member and has a right to vote in the affairs of the Federal Society u/s 27(3) of the Act, but as the petitioner was not a member prior to 31-12-2001 of the respondent No. 7/Society, the respondent No. 7/Society could not have passed a resolution nominating the petitioner as a member to vote on its behalf.

5. Learned Counsel for the petitioner inviting my attention to the provisions of section 27 of the Act, has contended that there is no requirement u/s 27(3), that the Society must appoint one of its members to vote on its behalf who also satisfy the condition contained in the first proviso to Subsection (3). Sub-sections (3) and (3A) of section 27 of the Act, which have bearing on the adjudication of the issue, are reproduced hereinbelow :

(3) A society which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society;

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society;

Provided further that, where the election is to a reserved seat u/s 73-B, no person shall have more than one vote. (3A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two

years from the date of his enrolment as a member of such society.

First proviso to sub-section (3) reveal that any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society. Right to vote in the affairs of the federal society which is vested in a member Society lays down the eligibility of the member Society to vote but does not lay down any eligibility whatsoever for the nominee/delegate of the member Society. The Phraseology "may appoint one of its members" used in sub-section (3) is indicative of the legislative intent which permits a Society to appoint any one of its members to vote on its behalf in the affairs of the Federal Society.

6. Learned Counsel appearing for the petitioner has contended that a plain reading of sub-section (3) of section 27 of the Act does not require that the delegate/nominee should also satisfy the condition of eligibility laid down in the first proviso. It is clear from the reading of sub-section (3), that sub-section (3) only prescribes eligibility for the member Society to vote in the affairs of the Federal Society and the eligibility is that the member Society would get a right to vote only after completion of three years from the date of its investing any part of the funds in the shares of the Federal Society. Sub-section (3A) deals with eligibility of an individual member of the Society for voting in the affairs of that Society and it lays down that such of the members who complete two years from the date of his enrolment as a member shall have a right to vote. In the present case, we are not concerned with sub-section (3A).

7. Learned Counsel for the respondent/objector justifies the order passed by the Collector and submits that if an individual member gets a voting right in the affairs of the Society (member Society), after completion of two years, how could such a person, without completing two years, could be nominated as delegate of the member Society to vote on behalf of the Society in the affairs of the Federal Society. In the submission of the learned Counsel, literal reading of sub-section (3) of section 27 results in obtaining an absurd situation wherein the delegate will not have a voting right in the affairs of the member Society but could exercise a voting right on behalf of a Society in the affairs of the Federal Society. It is as such, contended that it will have to be read in sub-section (3), that the delegate/nominee should also satisfy the condition of eligibility prescribed for the member Society, meaning thereby, completion of a period of three years as a member. Learned Counsel for the respondent/objector has placed reliance on judgment of Full Bench of this Court reported in Sandip Vasantrao Lahare Vs. State of Maharashtra and Others, , which goes to interpret section 27(3-A) of the Act and Rule 56-B of the Maharashtra Co-operative Societies Rules, 1961. The issue involved in the present petition has not been addressed by the Full Bench. The Full Bench has concluded that the period of two years mentioned in section 27(3-A) of the Act is inclusive of the period of 120 days mentioned in Rule 56-B. The Full Bench judgment does not advance the submission of the respondent/

objector.

8. Sub-section (3) of section 27 of the Act provides for eligibility of the member Society to vote in the affairs of the Federal society and the same is completion of three years period from the date of investment, whereas subsection (3A) provides for eligibility of an individual member for voting and the same is completion of a period of two years from the date of enrolment. Subsection (3) and sub-section (3A) of section 27 of the Act operate in different area. The language used in sub-section (3) of section 27 is plain and clear and it does not admit of any need to interpret the same contrary to the language used. Had the legislature intended to prescribe any eligibility to be satisfied by the delegate/nominee of the member Society to vote on behalf of the member Society in the affairs of the Federal Society, the legislature would have so provided the same in sub-section (3). Section 27 of the Act deals with the voting rights and the conditions of eligibility. By an interpretative process, the Court cannot add to the eligibility, if the same is wanting in the section. Sub-section (3) permits a Society to appoint "one of its members" to vote on its behalf in the affairs of the Federal Society. The use of the words "one of its members" gives an option to the Society to nominate any of its members without any criteria, limitation or qualification and hence, it is not possible to hold that the nominee/delegate of the Society appointed to vote on its behalf under sub-section (3) should also satisfy the eligibility which is provided for the Society to be eligible to vote under the first proviso to sub-section (3) of section 27.

9. In this view of the matter, the impugned order passed by the Collector cannot be sustained. The impugned order suffers from a patent illegality which goes to deprive the petitioner of a right to represent the respondent No. 7/Society in the election of the Board of Directors of respondent No. 5, Hence, the same deserves to be quashed and set aside.

10. In the result, the writ petition is allowed.

The impugned order (Exhibit "E") dated 12th April, 2006 passed by the Collector, Osmanabad, in File No. 2005/Co-operative Societies/Election/CR/45, is quashed and set aside. The respondent No. 2/Collector is directed to include the name of the petitioner as a delegate/nominee of respondent No. 7/Society in the voters' list of respondent No. 5/Federal Society.

11. Rule made absolute in the above terms. There shall be no order as to costs.