
(2001) 07 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 173 of 2001

Ashok Keshavrao Sonar

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Co-operative Societies Act, 1960 — Section 11, 25A, 35

Citation : (2002) 1 ALLMR 595 : (2002) 1 BomCR 193

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; V.D. Sapkal, A.G.P. for respondents Nos. 1, 2 and 4, K.S. Bhore for respondents Nos. 3, 5, 6 and 7, U.B. Dube for respondents Nos. 8, 10 to 12, 16, 18 to 20, 22, 25, 28, 33, 35 and 37 and V.D. Hon for respondents Nos. 9, 13, 15, 17, 21, 23 to 27, 29, to 32, 34, 36, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This petition under Article 226 of the Constitution of India, seeks a Mandamus to the following effect.

"To direct the respondent No. 3 Bank to take necessary action immediately u/s 25A of and 35 of the Act as well bylaws of the Bank on the basis of the decision of District Deputy Registrar, Cooperative Societies, Ahmednagar dated 8-12-2000."

2. The brief facts, not in dispute, could be stated as under:

The respondent No. 3 Bank came to be registered under the Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity, hereinafter, referred to as "the said Act") on 8-4-1996, with its area of operation of 10 Kms around Jamkhed town and at that time Shri Dilip Chandmal Bafana (present respondent No. 23) was the Chief Promoter. The Ad-hoc board i.e. Board of Promoters was required

to be replaced by the elected managing committee and because the Board of Promoters failed to take appropriate steps within the stipulated time, the District Deputy Registrar, Co-operative Societies, Ahmednagar, vide his order dated 9-6-2000 had appointed Board of Administrators with the Assistant Registrar as the Chairman of the said Board.

3. On/or about 18-7-2000, the present petitioner approached the District Deputy Registrar, Co-operative Societies with an application u/s 11 of the said Act and alleged that out of 1222 members of the respondent No. 3 Bank, the Chief Promoter had illegally admitted as many as 391 persons as Members of the said Bank and therefore, their membership was required to be cancelled. In response to this application, the District Deputy Registrar by his order dated 31-8-2000 appointed one Shri A. M. Deshmukh, Assistant Registrar, Cooperative Societies, Pathardi for making an enquiry into the said representation. Pursuant to this order, Shri Deshmukh purportedly issued show cause notices to all the 391 members, who were alleged to be admitted illegally and submitted his report on 8-12-2000. The District Deputy Registrar, therefore, addressed a letter to the petitioner on the same day stating that the respondent No. 3 was directed to cancel the membership of all these persons u/s 25A read with 35 of the Act. It is apparent from the said letter that the Assistant Registrar had conducted the enquiry on 10-10-2000, 17-10-2000 and 31-10-2000 and the proceedings were completed on 10-11-2000.

4. In the meanwhile, the respondent No. 4 had published provisional voters list on the notice board of the Bank on 9-10-2000 inviting objections and these objections were to be submitted on/or before 23-10-2000. The petitioner also had submitted his objections and after hearing all these objections, the voters list was made final on 30-11-2000. The Returning Officer was pleased to declare the election programme on 14-12-2000 specifying various stages of election and the nominations were to be filed between 14-12-2000 to 21-12-2000 and the poll was scheduled to take place on 31-1-2001. On 9-12-2000, the petitioner approached the Returning Officer with a copy of the communication he had received from the District Deputy Registrar for deleting the names of 379 members. Said representation was rejected. Simultaneously, one Shri Moreshwar Prabhakar Deshmukh had also filed Dispute No. 711/2000 before the Co-operative Court challenging the membership of 391 members and it was prayed by way of interim relief for direction against the Returning Officer not to publish the election programme. Initially, the learned Judge of the Co-operative Court was pleased to grant ex-parte interim injunction on 13-12-2000 and the same came to be vacated on 27-12-2000 after hearing the parties. It appears that the disputant thereafter, approached the Co-operative Appellate Court in which an ex-parte order was passed on 12-1-2001 directing the Returning Officer not to declare the election programme till further orders. When the respondents appeared and filed reply, the learned Member of the appellate Court, after hearing the respective parties, dismissed the appeal on 25-1-2001, and the ex-parte order dated 12-1-2001 came to be vacated. The fact remains that the

dispute No. 711 of 2000, which is pending has to be decided on merits including the issue regarding its maintainability.

5. On the other hand, the communication dated 7-12-2000 issued by the District Deputy Registrar, directing the respondent No. 3 to take an action u/s 25A read with 35 of the said Act has also been challenged by some of the affected persons, before the Divisional Joint Registrar, who by his exparte order dated 14-3-2001 has stayed the operation of the order passed by the District Deputy Registrar. However, by subsequent order dated 27-3-2001, the Divisional Joint Registrar has vacated the ad interim stay granted on 14-3-2001 and obviously, the revision application No. R-I 1/ 2001 is still pending.

6. This petition has been filed on 11-12-2000 and after the learned Member of the Co-operative Appellate Court had dismissed the appeal, the Returning Officer has published a fresh election programme on 27-1-2001. Said programme was published in some local news papers as well. As per this programme, the nomination forms were to be issued between 29-1-2001 to 3-2-2001. They were to be submitted between 30-1-2001 to 5-2-2001. The final list of the candidates contesting the elections was to be published on 22-2-2001 and the polling was to take place on 6-3-2001, with the counting and results being announced on the same day. This court did not grant any stay on the election programme while issuing notice before admission on 16-1-2001, as a result, the election process continued and on 1-3-2001, when this Court had granted Rule returnable on 20-3-2001, directed that the result of the election be not declared until further orders. Consequently, the polling has taken place and all the ballot papers are lying in the sealed boxes, which are presently in the bank's locker under the heavy security arrangements and at the costs to be borne by the bank. We are informed that as at present no security guards are deployed for this purpose, though the ballot boxes are lying in the locker of the respondent Bank.

7. The learned counsel for petitioner has relied upon the Division Bench judgment of this Court (Coram : Barde and Patil, JJ.) in the case of Shivaji Suryawanshi Vs. The State of Maharashtra and others, . In that case, it was alleged that 363 non borrower members were included in the voters list illegally and atleast 122 of them were not residents of the village in question. The objection raised before the Returning Officer was rejected. This Court had, therefore, directed the respondent No. 2 to conduct the enquiry and submit a report, which report was subsequently submitted and this court held that the provisional voters list of non borrower members was altogether without any basis. Even though the election programme was announced and the same election process was in progress, this Court rejected the preliminary objection regarding maintainability of the petition and directed the District Deputy Registrar to initiate an action u/s 25A of the said Act against the (352) non borrower members. Number of enunciations were relied upon by this Court regarding the maintainability of the petition and this court held that even if the election process was in progress, the powers under Articles 226 and 227 of the

Constitution were intact and this Court would not sit tight. We need not repeat the enunciations which were considered in the case of Shivaji (supra).

8. The only question which we are required to consider is whether the petition could be entertained for the substantial relief sought for which has been reproduced in para No. 1 of this judgment. Our answer is in the negative and against the petitioner for the following reasons:

(A) It is well established that this Court while exercising its powers under Article 226 of the Constitution cannot issue a writ against the cooperative bank registered under the said Act. In this regard, reference may be had to the Full Bench judgment of this Court in the case of Shamrao Vithal Co-operative Bank vs. State of Maharashtra (1993(1) Mah.L.J. 1) and in the case of Dnyandeo Dattatraya Kale vs. State of Maharashtra and others, (1995 (2) Mah.L.J. 930).

(B) The District Deputy Registrar has already, by his decision dated 8-12-2000 directed the board of trustees of the respondent No. 3 to take action against 379 members u/s 25A of the said Act and therefore, there is no further question of issuing any such directions against the bank, even to perform a statutory duty.

(C) The decision of the District Deputy Registrar as communicated to the petitioner on 8-12-2000 has not reached its finality and in any case, the subject matter is sub judice in the pending proceedings before the Co-operative Court (Dispute No. 711/2000) as well as before the Divisional Joint Registrar in Revision Application No. 11 of 2001. Even if the proceedings pending before the Cooperative Court are not at the instance of the petitioner, the fact remains that the relief claimed by the petitioner by filing an application u/s 11 of the Act was also a subject matter of the said proceedings.

(D) After filing this petition, the petitioner himself has submitted his nomination form in response to the election programme published on 27-1-2001 and contested the elections and therefore, he has a full-fledged remedy of filing an election dispute in case he is adversely affected by the outcome of the poll that has taken place already. In the facts and circumstances of this case, the judgment in the case of Shivaji (supra) is not applicable and the reliance thereon by the petitioner is misplaced.

9. We may also note that the very same petitioner had approached us in Writ Petition No 4399 of 2000 praying for injunction against the Board of Administrators not to declare the election programme prior to completion of enquiry in respect of the application he had submitted on 8-7-2000 u/s 11 of the said Act. By our order dated 17-10-2000, the petition was rejected summarily. When the petitioner has equally efficacious alternate remedy of filing an election petition, it would not be proper for this Court to interfere with the election process, which has already concluded and the results of the said election could not be announced in view of the interlocutory orders passed by us on 13-1-2001 and more so, when the petitioner has already participated in the election process. We, therefore, hold that the petition is not tenable for the relief sought

for.

10. In the result, the writ petition is dismissed. Rule discharged. Interim order stands vacated. There shall however, be no order as to costs.

11. We make it clear that the pending proceedings before the Co-operative Court as well as the Divisional Joint Registrar shall be decided on their own merits and we have not touched upon the rival contentions pending for consideration before these forums.

In view of the judgment in Writ Petition, the Civil Application No. 2789 of 2001 does not survive. Hence, it is disposed of.