

(2020) 09 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition (ST) No. 92156 Of 2020

Audumber Narayan Wadadekar And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 73AAA, 73CB

Citation : (2020) 09 BOM CK 0002

Hon'ble Judges : S.J. Kathawalla, J;Riyaz I. Chagla, J

Bench : Division Bench

Advocate : Milind Sathe, P.P.Kakade, M.P.Thakur, Dilip Patil Bankar, Mandar Limaye, S.S.Kanetkar

Final Decision : Dismissed

Judgement

S.J. Kathawalla, J

1. By the above Writ Petition, the Petitioners seek to challenge the Order dated 13th August, 2020 (Exhibit F page 31) ('the Impugned Order') passed by the Respondent No.3 - The Secretary, State Co-operative Election Authority, appointing Respondent No.2 - the Divisional Deputy Registrar, Co-operative Societies (Dairy), Pune Division, Pune, to hold an election to the post of Chairman of Respondent No.4 Society and a restraint order from holding the meeting of the Board of Directors of Respondent No.4 Society.

2. The Petitioner Nos.1 to 4 are four of the 17 Directors of the Respondent No.4 - The Solapur Zillah Dudha Utpadak Sangha, a Co-Operative Society, duly registered under the Co-operative Societies Act, 1960, which functions as per its bye-laws. Respondent No.1 is the State of Maharashtra, through the Department of Co-Operation and Textiles, Mantralaya, Mumbai. Respondent No.2 is the Divisional Deputy Registrar, Co-operative Societies (Dairy)-Pune and is the District Co- Operative Election Ofcer. Respondent No.3 is the Secretary, State Co-Operative Election Authority - Pune, a statutory body duly established pursuant

to the provisions of Section 73-CB of the Maharashtra Co-operative Societies Act, 1960 and who has passed the Impugned Order dated 13th August, 2020 appointing Respondent No.2 for holding/conducting a meeting of the Respondent No.4 for the purpose of election of the Chairman of the Respondent No.4. Respondent No.5 was the Chairman of Respondent No.4. By his Letter dated 19th March, 2020, Respondent No.5 tendered his resignation as the Chairman of the Board of Directors of Respondent No.4.

3. The Petitioners have in the above Writ Petition stated/submitted as follows:

3.1 That in the year 2015, General Elections of Respondent No.4 took place. Respondent No.5 was elected as Chairman on 3rd July, 2015. The tenure of the existing Board of Directors came to an end on 23rd June, 2020. However, on account of the pandemic, the Respondent No.1 has postponed the elections of all the Co-Operative Societies in the State of Maharashtra the tenure of whose Board/Managing Committee is already over.

3.2 On 19th March, 2020, the Chairman of the Respondent No.4 i.e. Respondent No.5 herein, tendered his resignation and had asked the Board of Directors to approve the same.

3.3 On 16th April, 2020, the Managing Director of Respondent No.4 addressed a Letter to the Respondent No.2 - the Divisional Deputy Registrar, Co-Operative Societies (Dairy) - Pune and the District Co-Operative Election Ofcer, informing him that Respondent No.5 has tendered his resignation as Chairman of Respondent No.4. However, since a meeting of the Board of Directors could not be held due to the pandemic, the said Board has not taken any decision on the same. The Managing Director of Respondent No.4 had clarified in the said Letter that the same was addressed to Respondent No.2 for his information and to seek his guidance.

3.4 Respondent No.2, in turn, addressed a Letter dated 14th May, 2020 to the Respondent No.3 recording that Respondent No.5 has tendered his resignation as the Chairman of the Respondent No.4 on 19th March, 2020. However, a meeting of the Board of Directors has not been held due to the pandemic. Guidance with regard to the resignation, as well as further action was requested.

3.5 On 12th June, 2020 a meeting of the Board of Directors of Respondent No.4 was held. At the said Meeting, the resignation letter of Respondent No.5 was read over and it was decided not to accept the resignation of Respondent No.5 immediately and to keep the same in abeyance.

3.6 Respondent No.2 - the Divisional Deputy Registrar, Co-Operative Societies (Dairy) - Pune, submitted his Report dated 20th July, 2020 to the Respondent No.3 - the Secretary, State Co-operative Election Authority, recommending holding of an election to appoint a Chairman of the Board of Directors of Respondent No.4 and to appoint an ofcer to conduct the election process.

3.7 On 13th August, 2020, the Respondent No.3 - the Secretary, State Co-

operative Election Authority, appointed Respondent No.2 - the Divisional Deputy Registrar, Co-operative Societies (Dairy) - Pune, to hold/conduct a meeting of Respondent No.4 for the purpose of electing the Chairman of Respondent No.4, from amongst its Directors.

3.8 On 14th August, 2020, Respondent No.2 addressed a communication to the Managing Director of Respondent No.4 directing him to call/hold a meeting of the Board of Directors on 21st August, 2020 for the purpose of electing the new chairman of Respondent No.4.

3.9 Though a Meeting of the Board of Directors was called on 21st August, 2020, none of the Directors of Respondent No.4 attended the said Meeting, save and except for the Managing Director of Respondent No.4 and the Respondent No.2 herein. The Meeting was therefore, cancelled.

3.10 On 21st August, 2020, nine Directors of Respondent No.4 submitted a representation to Respondent No.3 stating that the resignation letter of Respondent No.5 was subject to the sanction/approval of the Board of Directors of Respondent No.4, which is clear from the text of the said Letter itself. Since the resignation of the Chairman was till date not accepted/approved by the Board, the post of the Chairman cannot be held to be vacant and that the Respondent No.3 should forthwith stop the procedure / process undertaken for electing the new Chairman of Respondent No.4.

3.11 Since the Petitioners apprehend that Respondent No.2 will soon be calling a meeting for the purpose of electing the Chairman of Respondent No.4, the Petitioners on 28th August, 2020 filed the above Writ Petition seeking to challenge the Impugned Order dated 13th August, 2020 (Exhibit F, page 31) passed by the Respondent No.3 - the Secretary, State Co-operative Election Authority, appointing the Respondent No.2 - the Divisional Deputy Registrar, Co-Operative Societies (Dairy) - Pune to hold an election to the post of Chairman of Respondent No.4 Society and for a restraint order from holding a meeting of the Board of Directors of Respondent No. 4 Society.

4. The Learned Advocate for the Petitioners has reiterated the above statements/submissions made by the Petitioners in the Writ Petition and has interalia made the following additional submissions :

4.1 The resignation of Respondent No.5 as Chairman of Respondent No.4 cannot be considered as a unilateral act since Respondent No.5 had made a specific request in his Resignation Letter dated 19th March, 2020 that his resignation be approved by the Board of Directors of Respondent No.4.

4.2 Since Respondent No.5 had in his Resignation Letter made a request that his resignation be approved by the Board of Directors of Respondent No.4, until and unless the Board of Respondent No.4 'which is the supreme authority' approves the resignation, the same would not come into effect.

4.3 In the Meeting of the Board of Directors of Respondent No.4 held on 12th

June, 2020, the Board of Directors had unanimously decided not to approve the resignation and the same was kept in abeyance.

4.4 The Hon'ble Supreme Court in the case of Moti Ram V/s. Param Dev 1, has interalia observed that, "in cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish."

4.5 Since the Board of Directors of the Respondent No.4 had not accepted the resignation of Respondent No.5 as the Chairman of the Respondent No.4, there is no vacancy created for the post of Chairman, and it is not open for the election authority to call for a meeting of the Board of Directors for electing a new Chairman of Respondent No.4.

4.6 That since the tenure of the entire Board of Directors of Respondent No.4 is over, the Respondent No.3 ought not to have directed Respondent No.4 to hold election for the post of Chairman only, but ought to have held elections for the entire Board of Directors.

4.7 Since the Bye-Laws of the Respondent No.4 provides that in the absence of the Chairman, the Vice Chairman can conduct the affairs/proceedings of Respondent No.4, there is no need to hold the elections for the post of Chairman in such haste.

4.8 The election to the post of chairman is being held hurriedly, in a mala fide manner.

4.9 The reliefs sought in the Writ Petition be therefore allowed and the election which is scheduled to be held today afternoon, be stayed.

5. The Learned Senior Advocate appearing for Respondent Nos.1 and 2 has submitted that the Writ Petition is clearly misconceived for the following reasons :

5.1 The resignation of Respondent No.5 is not required to be accepted either under the law or under the governing Bye-Laws.

5.2 The resignation of Respondent No.5 is therefore of a unilateral character and cannot be treated as a bilateral act, and the same comes into force forthwith in view of the decisions of this Court in (i) Arun T. Rajurkar V/s. G.J. Khotre², (ii) Prakash Mahadev Khot V/s. Maruti Dada Khot³ and (iii) Dilip Abhaykumar Phade V/s. Dy. Registrar, Co-op. Societies.⁴

5.3 Therefore, the decision of the Hon'ble Supreme Court in the case of Moti Ram (supra) does not render any assistance to the Petitioners.

5.4 Since the resignation of Respondent No.5 came into force with immediate effect, i.e. on and from 19th March, 2020, the post of Chairman has fallen vacant with effect from that day itself i.e. 19th March, 2020.

5.5 Section 73-CB of the Maharashtra Co-operative Societies Act, 1960 provides

that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to a society shall vest in the authority called as 'the State Co-Operative Election Authority', as may be constituted by the State Government in that behalf (Respondent No.3 herein) and that every general election of the members of the committee and election of the office-bearers of a society, including any casual vacancy to the extent applicable, shall be held as per the procedure prescribed in the said Section.

5.6 The election to the post of Chairman of Respondent No.4 is ordered as per the statutory mandate prescribed in Section 73-CB of the Act.

5.7 The submission of the Petitioners that the election to the post of Chairman ought not to be held and instead elections to the Board of Directors be held is misconceived, as the tenure of the Board of Directors which was due to expire in June 2020, has been statutorily extended by Maharashtra Ordinance No.XII of 2020, by which Section 73-AAA has been amended.

5.8 The present Board of Directors of Respondent No.4 Society, therefore continues as Board of Directors under the statutory mandate and casual vacancies are required to be filled in, as mandated under Section 73-CB and the Rules framed thereunder.

5.9 The submission of the Petitioners that despite it being provided in the Bye-Laws of Respondent No.4 that in the absence of the Chairman, the Vice-Chairman can conduct the affairs/proceedings of Respondent No.4, the election to the post of Chairman is being held hurriedly in a mala fide manner, is baseless and without any substance and without any pleadings.

5.10 That the Writ Petition therefore, deserves to be dismissed.

6. The Learned Advocate for Respondent No.3 has adopted the submissions advanced by Dr. Sathe, the learned Senior Advocate appearing for Respondent Nos.1 and 2. In addition, he has submitted that the above Writ Petition is filed by only four out of 17 Directors on the Board of Respondent No.4 and the other 13 Directors have not been joined as party Respondents in the above Writ Petition and therefore, the above Writ Petition deserves to be rejected on that ground alone.

7. The Learned Advocate for Respondent No.4 has attempted to support the submissions advanced on behalf of the Petitioners. However, he has not placed before the Court any resolution passed by the Board of Directors/managing committee of Respondent No.4 authorizing him to appear on behalf of the Board of Directors and support the Petitioners.

8. The Learned Advocate for Respondent No.5 has submitted that he has indeed tendered his resignation as Chairman of Respondent No.4, but till date his resignation is not approved by the Board of Directors of Respondent No.4. He has also submitted that he will abide by the orders of this Court.

9. We have considered the submissions advanced by the Learned Advocates for the parties and have also perused and considered the case law relied upon by them. After the Advocates for the parties concluded their submissions, we have informed them that the Writ Petition is being dismissed and the election to the post of Chairman of Respondent No.4 will proceed today, as scheduled. The Advocates were also granted liberty to circulate within an hour, a written note of their submissions if they so desired. Accordingly, the Learned Senior Advocate for Respondent Nos. 1 and 2 has submitted his written note of arguments (pages 4) which are taken on record.

10. As can be seen from the above facts, the Respondent No.5 admittedly forwarded his Letter of Resignation from the post of Chairman of Respondent No.4 on 19th March, 2020. Respondent No.5 has in his Letter dated 19th March, 2020 recorded that in view of the co-operation received from all the Members of the Board/Managing Committee of Respondent No.4, he has worked as the Director and Chairman of Respondent No.4 since the last 13 to 14 years. He has further stated that an application has been made to the Pandharpur Urban Co-op. Bank Limited seeking financial assistance for Respondent No.4. Being the Chairman of the said Bank, as also the Chairman of Respondent No.4, the Bank is facing legal difficulties in providing financial assistance to the Respondent No.4. He has therefore, tendered his resignation which will help Respondent No.4 in procuring financial assistance from the Bank. He has specifically stated in the said Letter that for the aforesaid reason, he has given his resignation. He has however, requested the Board of Directors to approve the same.

11. It is pertinent to note from the above text of the Letter that Respondent No.5 has clearly stated therein that he is tendering his resignation because the same will help Respondent No.4 in procuring financial assistance from Bank and has thereafter stated that he has given his resignation for the reason set out in his Letter dated 19th March, 2020. Respondent No.5 has not stated in his said Letter dated 19th March, 2020 that he intends to resign from the post of the Chairman of the Respondent No.4.

It is true that Respondent No.5 has after stating that he has given his resignation, requested the Board of Directors of Respondent No.4 to approve the same. However, since admittedly the resignation of the Chairman of the Board of Directors of Respondent No.4 is not required to be accepted either under law or under the Bye-Laws, the resignation in the present case is therefore of a unilateral character, and cannot be treated as a bilateral act, in the sense that its acceptance is not at all a condition precedent to make it effective. In our view, the resignation of Respondent No.5 therefore, came into force immediately, i.e. on 19th March, 2020 itself, and the post of Chairman of Respondent No.4 has fallen vacant from that day i.e. from 19th March, 2020, itself. Since the resignation of Respondent No.5 came into force/effect immediately on 19th March, 2020, the communication of the Respondent No.4 dated 16th April, 2020 to the Divisional Deputy Registrar, Co-operative Societies (Dairy) - Pune

informing him that no decision on the resignation of Respondent No.5 has been taken, and the subsequent decision dated 12th June, 2020, to keep the said resignation in abeyance, is irrelevant and have no legal efficacy. In view thereof, the decision of the Hon'ble Supreme Court in the case of Moti Ram (Supra) will not come to the aid of the Petitioners. Instead we draw support from the decision of the Division Bench of this Court in the case of Arun T. Rajurkar (supra), wherein it was held that the resignation tendered by a chairman of the co-operative society operates from the date of his resignation and that no acceptance of the resignation is necessary. The Division Bench has further held that there was no need for acceptance of the resignation and even if the letter of resignation is so worded as to make a request of it being accepted, that would not in any way affect the operation of the resignation when tendered. In the case of Prakash Mahadeo Khot & Ors. V/s. Maruti Dadu Khot and Ors. 5, Dr. D.Y.Chandrachud, J. (as he then was), while referring to several Judgments of the Hon'ble Supreme Court, as well as this Court, explained as to when a resignation is to be regarded as a unilateral act and when it would be regarded as a bilateral act. The Learned Judge whilst dismissing the Writ Petition before him, has in that case held in paragraphs 3, 4, 5 and 6 of his Judgment as under :

"3. Counsel appearing on behalf of the petitioners submitted that the tendering of a resignation in the present case has to be regarded as a unilateral act since there is no provision in the statute or in the bye-laws of the Society under which the resignation is required to be accepted. There is merit in this contention. The law is well settled. Where a resignation is a bilateral act in the sense that an acceptance of the resignation is necessary before it is effective, the person tendering resignation can withdraw it before its acceptance. Where a resignation does not require to be accepted under the governing statute or bye-laws, the Act of resignation is unilateral. A unilateral act comes into force immediately, if it is intended to take immediate effect or from a future date if the resignation is made effective from a prospective date. If the resignation is tendered with effect from a future date, it can be withdrawn before the date on which it takes effect.

4. In the present case, there is nothing in the statute or in the bye-laws which would make the resignation a bilateral act or one that would require acceptance of the resignation. The resignations were in the present case, tendered with immediate effect of which there is no dispute. The subsequent withdrawal of the resignations, therefore, would be of no consequence. In these circumstances, both the Divisional Joint Registrar as well as the revisional authority took a manifestly erroneous view.

5. In Arun Trivikramrao Rajurkar v. Gowardhan Janardhan Khotre, 1982 Mh.L.J. 576, a Division Bench held that a resignation tendered by a Chairman of a Co-operative Society operates from the date of its tender and that no acceptance of the resignation is necessary. The Division Bench held that there was no need of the acceptance of the resignation and even if the letter of resignation is so worded as to make a request of its being accepted that would not in any way

affect the operation of the resignation when tendered. In *Moti Ram v. Param Dev*, the Supreme Court held that if the act of relinquishment is of a unilateral character, it comes into effect when such act indicating an intention to relinquish office is communicated to the Competent Authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. In *Union of India v. Gopal Chandra Misra* the Supreme Court held that the general principle regarding resignations is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor.

6. In the present case, it is an admitted position that resignations were tendered with immediate effect. In the absence of any constitutional, contractual or legal requirement, the resignation must be regarded as unilateral in character and when tendered with immediate effect, took effect immediately."

12. We therefore, do not accept the submission of the Petitioners that the post of Chairman of Respondent No.4 is vacant till date and therefore, Respondent Nos.1 to 3 cannot hold elections to the post of Chairman of Respondent No.4, and reject the same.

13. We are not in agreement with the submission of the Petitioners that the decision dated 13th August, 2020, directing appointment of an authorized officer to hold election, is not valid and is not in accordance with the statutory mandate. On 14th May, 2020, Respondent No.2 - the Divisional Deputy Registrar, Co-operative Societies (Dairy) - Pune, sought guidance from the Respondent No.3 - the Secretary State Co-Operative Election Authority, Pune, in view of the situation arising out of the resignation of the Respondent No.5 on 19th March, 2020. On 20th July, 2020 a letter was addressed by the Respondent No.2 to the Respondent No.3 (Exhibit E page 30 to the Petition), updating the authority that the Board of Directors had on 12th June, 2020, resolved to keep the resignation in abeyance and further guidance was sought. Thereupon, the State Co-operative Election Authority considering the entire factual position and the statutory mandate under Section 73-CB, as well as the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, appointed the District Co-operation Election Officer to hold an election to the post of chairman. Accordingly on 14th August, 2020 the said Election Officer directed Respondent No.4 Society to convene a meeting on 21st August, 2020, which was postponed in view of lack of quorum, and is now scheduled today i.e. 2nd September, 2020, in order to hold an election to the post of chairman. In view thereof, the decision/order dated 13th August, 2020 directing appointment of an Authorized Officer to hold the election, is valid and in accordance with the mandate of Section 73-CB and the Rules which mandate the election authority to hold elections to the post of committee members as well as office bearers of the committee. The Impugned Order is

therefore in exercise of the statutory powers and no fault can be found with the same.

14. As regards the submission of the Petitioners, namely, that the election to the post of Chairman ought not to be held, and instead election to the committee be held, the tenure of the committee which is due to expire in June 2020, has been statutorily extended by Maharashtra Ordinance No. XII of 2020, by which Section 73-AAA has been amended, to add the following proviso :

"Provided that if the election to the Committee of the Society could not be held for any reason not attributable to the members of the committee of such Society, the existing members of the committee shall be deemed to have continued till new committee is duly constituted."

We are therefore, of the view that the present Board of Directors of Respondent No.4 continues as the Board of Respondent No.4 Society under the statutory mandate, and therefore casual vacancies are required to be filled in as mandated under Section 73- CB and the Rules.

15. The Learned Advocate for the Petitioners has also submitted before us that as per the Bye-Laws applicable to the Respondent No.4, that the Vice Chairman of the Board/Managing Committee can officiate during the absence or leave of the chairman. In our view, though the Bye-Laws do provide that the Vice Chairman of the Board of Directors can officiate during the absence, or leave of the Chairman, the same cannot be an answer or justification for not holding the election to the post of Chairman where the Chairman has resigned. This is particularly so in view of the extension granted to the tenure of the Board by Ordinance No. XII of 2020.

16. Lastly, as regards the contention of the Petitioners, that the election to the post of Chairman has been held hurriedly in a mala fide manner, we called upon the Advocate for the Petitioners to point out the allegations of mala fide in the Writ Petition. He candidly informed the Court that no specific allegations of mala fide is/are made in the Writ Petition. In any case, as held by the Hon'ble Supreme Court in the case of E.P.Royappa V/s. State of Tamil Nadu⁶, the allegations of mala fide must be made with particulars and details of names and events, without which such allegations ought not be entertained. Again the argument of mala fide advanced on behalf of the Petitioners, is on the basis of hurriedly calling the elections by communication dated 14th August, 2020, after the order was passed appointing the Authorized Officer on 13th August, 2020. This allegation is misconceived, since by the 14th August, 2020 communication, a meeting of the Board of Directors was directed to be convened on 21st August, 2020 at 1.00 p.m., which gives sufficient notice to the Members of the Board. The allegation of mala fide in our view, is baseless, without any substance and without any pleadings.

17. For the above reasons, the Writ Petition is devoid of any substance and merits. Writ Petition is dismissed. No costs.

18. This Order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.