
(2011) 06 BOM CK 0116
In the Bombay High Court
Case No : Writ Petition No. 4220 of 2011

Babasaheb Borade

APPELLANT

Vs

The Additional Divisional Commissioner, Aurangabad and
Others

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 2(20), 73, 73(1AB), 73(AB), 73EA

Citation : (2012) 1 ALLMR 722

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : Vishal A. Bagal, for the Appellant; V.H. Dighe, A.G.P. for the Respondent/State, Shri K.J. Suryawanshi, Advocate for the Respondent No. 3 and Shri S.S. Bhise, for the Respondent No. 4., for the Respondent

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—The petitioner is a director and member of the managing committee of the respondent No. 4/Vividh Karyakari Seva Sahkari Society Limited, Dhoksal, Tq. Mantha. The said respondent No. 4/primary society is a member of the respondent No. 3 specified co-operative society i. e. the Jalna District Central Cooperative Bank Ltd. The elections for the managing committee of the respondent No. 3 specified society are declared. The petitioner was a delegatee of the respondent No. 4 primary society for election of the managing committee of the respondent No. 3 specified society. The petitioner filled in his nomination form as a delegatee of the respondent No. 4 primary society for the said election of the managing committee of the respondent No. 3 specified society from the economically weaker section. The nomination paper of the petitioner came to be rejected at the time of scrutiny by the respondent No. 2/ Election Officer on the ground that the petitioner is representing the respondent No. 4/primary society which is a defaulter of respondent No. 3 specified society. The petitioner filed an appeal before the respondent No. 1 who also dismissed

the appeal holding that the petitioner is a director of the respondent No. 4 primary society. The said respondent No. 4 primary society is a defaulter of respondent No. 3 specified society and as such, is disqualified for being director of respondent No. 3 specified society. The petitioner assails the said order in the present writ petition. Shri Bagal, the learned counsel for the petitioner strenuously contended that:

a. It was erroneous on the part of respondent Nos. 1 and 2 to hold that the petitioner is disqualified in view of Section 73EA of the "Maharashtra Co-operative Societies Act, 1960 (hereinafter called as "Act of 1960" for brevity) from contesting the election for the managing committee of the respondent No. 3 specified society as a delegatee of the respondent No. 4 primary society.

b. The petitioner is a director of respondent No. 4 primary society and is not an "office bearer" of the said society. It is only the "office bearer" of a defaulting primary agricultural co-operative credit society who is disqualified from becoming a director of the District Central Co-operative Bank. The petitioner being a director of primary society cannot come within the ambit and purview of the term "office bearer".

c. "Office bearer" would be a person who holds an office, such as Chairman, Secretary, Treasurer, etc. and mere member or a director of a managing committee of the said primary society cannot be included in the definition of "office bearer".

d. The Act does not define the term "office bearer", as such the plain meaning of the word "office bearer" will have to be taken into consideration and it would not include a director or a member of the managing committee.

e. The authorities have in casual manner dealt with the issue and have relied on the definition of an officer while coming to the conclusion that the petitioner being a director would be an office bearer. The authorities have failed to make distinction between the term officer and office bearer.

3. Shri Dighe, the learned Assistant Government Pleader submits that the director would come within the ambit and purview of the term "office bearer" of the primary agricultural cooperative credit society.

4. Before adverting to the contentions raised by the learned counsel for the petitioner and the learned Assistant Government Pleader, it would be appropriate to refer to some of the provisions relevant for the purpose of deciding the issues raised by the petitioner and involved in the petition.

The Maharashtra Cooperative Societies Act, 1960

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2(20) "officer" means a person elected or appointed by a society to any office of such society according to its by-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer,

member of the committee and any other person elected or appointed under this Act, the rules or the by-laws, to give directions in regard to the business of such society;

73. Committee, its powers and functions

(1) The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bylaws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the by-laws.

[73(1AB) The members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. Every such member shall execute a bond to that effect within fifteen days of his assuming the office, in the form as specified by the State Government by general or special order. The member who fails to execute such bond within the specified period shall be demand to have vacated his office as a member of the committee]:

[73EA Disqualification for being director of District Central Co-operative Bank or State Co-operative Bank

Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, co-opted or, for being a director of a District Central Co-operative Bank or of the State Co-operative Bank, if he,---

(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative Bank or State Co-operative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;

(ii) is a person who is defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society.

(iii) is a person, who represents a society whose Managing Committee is, superceded;

4. The factual matrix that the respondent No. 4 primary agricultural co-operative credit society is a defaulter of the respondent No. 3 specified society is not disputed. So also the fact that the respondent No. 4 can nominate its delegatee to represent the respondent No. 4 for election of the managing committee of respondent No. 3 specified Co-operative Society is also not disputed. It is also not disputed that the petitioner is a director and member of the managing committee of the respondent No. 4 primary agricultural co-operative credit

society.

5. The moot question would be whether a "director or a member" of the managing committee of respondent No. 4 Primary Agricultural Co-operative Credit Society would come within the ambit and purview of the phrase "Office Bearer", so as to be disqualified for being director of respondent No. 3 specified society as contemplated U/Sec. 73-EA(ii).

6. The word "officer" is defined U/Sec. 2(20) of the Act of 1960. Perusing the definition of "officer" as is enumerated under the statute with which we are concerned i. e. the Act of 1960, it is manifest that the term officer has been given an exhaustive meaning and an officer of the society includes the member of the committee or any other person elected or appointed under the Act, Rules or the by-laws to give directions in regard to the business of such society, but the legislature has not defined the word "office bearer" under the Act of 1960.

The term "office bearer" is defined under the Trade Unions Act as "in case of a trade union includes any member of the executive thereof, but does not include an auditor. It would be clear from the definition that any member of the executive can be termed as an officer bearer and the executive is defined under the said Act as means the body by whatever name called to which the management of the affairs of a trade union is entrusted." Perusal of the definition of "office bearer" and the term executive as enshrined in the Trade Unions Act, it is clear that for the purpose of the said Act a member of a body would come within the realm of the term "office bearer".

7. Section 73 of the Act of 1960 lays down that the management of every society shall vest in a committee constituted in accordance with this Act, Rules and by-laws and that the committee shall exercise and perform duties as may be conferred or imposed by the Act, Rules or by-laws. Section 73(AB) makes all the members of the committee jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society and for all the acts and omissions. When the management of the society vests in the committee, then the members of the committee shall be deemed to be "office bearers."

8. Each word, phrase or sentence is to be construed in the light of general purpose of the Act itself. They have to be construed with some imagination of the purpose which lie behind them. The intention of the legislature accumulates two aspects. In one aspect they carry the concept of meaning i. e. what the words mean and in another aspect it conveys the concept of purpose and object or the reason and spirit pervading through the statute. The process of construction therefore, combines both literal and purposive objects. The legislative intention i. e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment, in the light of any discernible purpose or object which apprehends the mischief and its remedy to which the enactment is directed.

9. While interpreting a statute or a terminology expressed in the statute the Court has to be satisfied about the intended purpose of the statute or the provisions in question. Purposive construction will have to be applied. Their meaning is found not so much in a strict grammatical or etymological propriety of language nor even in its popular use as in the subject or in the occasion on which they are used and the object to be attained. It is recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they vest harmonize with object of the statute and which effectuate the object of the legislature.

10. Section 73EA lays down that an office bearer of a defaulting primary agricultural cooperative credit society shall not be eligible for being appointed, nominated, co-opted or from being a director of a District Central Co-operative Bank. The object is that a person who is invested with the management of the society and is jointly and severally responsible for all the decisions of the society should not be made eligible.

11. The legislature vide Section 73-EA(ii) has made an "office bearer" of a defaulting primary agricultural co-operative credit society ineligible/disqualified to be a member of a committee of a specified society i.e. District Central Co-operative Bank or a State Co-operative Bank.

12. In general parlance the "office bearers" are the persons with whom the management vests. Office bearers are the persons who are involved in the decision making process and every day management of the institution. Under the Act of 1960 as per Sec. 73, the management of every society vest in the committee and they exercise all such powers and perform such duties as are conferred or imposed by the Act, rules and by-laws. Perusal of Section 73 it is manifest that the complete management of the society vest in a committee i. e. every member of the committee. Further Section 73 (1-AB) makes every member of the committee jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society and they are further jointly and severally made responsible for all the acts and omissions detrimental to the interest of the society.

The legislature has made an "office bearer" of a defaulting primary agricultural co-operative credit society ineligible for being a director of the specified society i.e. District Central Co-operative Bank or the State Co-operative Bank. The object and intention behind it is to exclude all the persons with whom the management of the primary agricultural cooperative credit society vests and who are jointly and severally responsible for all the acts of omissions and commissions from becoming the director of the specified society. In view of the provisions of Section 73 of the Act of 1960 the management vest with the committee and all the members are jointly and severally liable for the decisions taken by the committee. So also all the members of the committee are jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. The term "office bearer" cannot be given a narrow connotation, but will

have to be interpreted in a wider sense.

The phrase "office bearer" will embrace in its realm all the members/directors of the committee of the primary agricultural co-operative credit society.

13. In view of the above conspectus, the director of the defaulting primary agricultural co-operative credit society is an "office bearer" and shall be ineligible/disqualified to be a director of the District Central Co-operative Bank or the State Co-operative Bank. In the result, the writ petition is dismissed, however, with no order as to costs.