

(1979) 09 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1035 of 1979 with Civil Application No. 2240 of 1979

Baburao Chanappa Chakote and another APPELLANT

Vs

Brihmadeo Krishnat Mane and others RESPONDENT

Date of Decision : 17-09-1979

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 12, 2, 2(9), 22, 73G

Citation : (1980) MhLj 75

Hon'ble Judges : V.S. Deshpande, J;B. Lentin, J

Bench : Division Bench

Advocate : A.V. Savant, for the Appellant; B.R. Naik with Y.R. Naik for respondent No. 1, C.J. Sawant, Addl. Govt. Pleader with S.G. Deshmukh, Asstt. Govt. Pleader. for respondents Nos. 3, 5 and 6 and P.M. Mengane, for the Respondent

Final Decision : Allowed

Judgement

B. Lentin, J.—By this petition, the petitioners challenge the order dated 7th April 1979 passed by the Additional Commissioner (namely, the 5th respondent) allowing an election petition filed by respondents 1 and 2 and setting aside the 1st petitioner's election and declaring the 1st respondent to have been elected to the Board of Directors of the 4th respondent-Bank.

2. The 4th respondent-Bank is a specified society within the meaning of section 73G of the Maharashtra Co-operative Societies Act, 1960 (referred to hereafter as "the Societies Act"). Elections for constituting the Board of Directors of the 4th respondent-Bank were held in November 1978 in accordance with Chapter XI-A of the Societies Act read with Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971 (referred to hereafter as "the 1971 Election Rules"). The 3rd respondent, namely, the Collector of Sholapur, was the Returning Officer. The 1st petitioner represented the 2nd petitioner-society in the aforesaid election of the 4th respondent-Bank. The 2nd petitioner is a Co-operative Society within the meaning of the Societies Act, its area of operation

being in Sholapur city. The 2nd petitioner is a member of the 4th respondent-Bank. The name of the 2nd petitioner-society was entered in the voters' list at Serial No. 88, with the 1st petitioner shown as the delegate of the 2nd petitioner-society. The provisional list, prepared in accordance with rule 4 of the 1971 Election Rules was displayed on the 4th respondent's notice board and was duly notified before 7th July 1978 on the basis of the position prevailing on 30th June 1978. Tenth July 1978 was the date fixed for inviting objections in accordance with rule 4 (2). No objections were raised by anyone. The provisional list as finalised in accordance with rule 6, was displayed in accordance with the provisions of rule 7 on the requisite notice boards of the 4th respondent-Bank and the Collector, namely, the 4th respondent. Polling took place on 18th November 1978. The 1st and 2nd respondents had also contested the election. The 1st petitioner secured 87 votes and the 1st respondent secured 80 votes. The 1st petitioner was declared elected On 12th December 1978, respondents 1 and 2 filed an Election Petition No. 7 of 1978 for setting aside the 1st petitioner's election. That petition was resisted by the petitioners On 7th April 1979, the 5th respondent, namely, the Additional Commissioner passed his impugned order, setting aside the 1st petitioner's election on the ground that the 1st petitioner was representing the 2nd petitioner-society "which was not an affiliated society within the meaning of bye-law 34 of the 4th respondent-Bank, and declaring the 1st respondent duly elected to the Board of Directors of the 4th respondent-Bank. Hence the present petition.

3. The finding of the 5th respondent was assailed by Mr. Savant, the learned Counsel appearing on behalf of the petitioners, on the ground that the 1st petitioner was eligible to be a candidate for directorship of the 4th respondent-Bank, inasmuch as the 2nd petitioner was an affiliated society within the purview of bye-law 34 of the 4th respondent-Bank. On the other hand, it was urged on behalf of the 1st respondent that the 2nd petitioner does not fall within any of the categories set out in bye-law 34 of the 4th respondent-Bank; that only credit societies are entitled to contest the elections under bye-law 34; and that the 2nd petitioner not being a credit society but being a consumer society unconcerned with credit, was, therefore, ineligible to contest the elections and hence could not appoint the 1st petitioner as its delegate. Reliance was placed on rule 10 of the Maharashtra Co-operative Societies Rules 1961 (referred to hereafter as "the 1961 Rules"), in support of the contention that only those co-operative societies which came under the classification of co-operative Banks or resource societies alone fell within the purview of bye-law 34, and that except the last two, no other society could possibly be a credit society.

4. In order to appreciate these rival contentions urged before us, it may be stated that bye-law 8 of the 4th respondent-Bank provides that all registered Co-operative Societies within the Solapur District which have, through their representatives, subscribed to the application for registration, are original members of the 4th respondent Bank. Bye-law 10 provides that every society which is a member of the 4th respondent-Bank shall be termed as an affiliated

society. The relevant excerpt of bye-law 34 of the 4th respondent-Bank, relied on by all the parties before us, reads as under :

* * *

No person shall be eligible to be a candidate for directorship on behalf of affiliated society unless at the time of his nomination he is a representative of:

(1) Agricultural Credit Society or Multipurpose society in "A" or "B" class.

(2) Sale or Non-agricultural Credit Society in "A" or "B" class.

(3) An Urban Society in "A" or "B" class.

5. According to the petitioners, the 2nd petitioner-society falls within any of these three classifications whereas, according to the 1st respondent the 2nd petitioner-society falls in none of them. The objects of the 2nd petitioner-society as set out in para 3 of the petition are to be found in its bye-law 3, the existence or validity whereof were not controverted before us. In translation, the objects are identical with those appearing in section 2 (9) of the Societies Act, as under :

(a) the procurement, production or processing, and distribution of goods to, or the performance of other services for, its members as also other customers, and

(b) the distribution among its members and customers, in the proportion prescribed by rules or by bye-laws of the society, of the profits accruing from such procurement, production or processing, and distribution;

The main controversy with which we are concerned and on which we were addressed at some length by both the learned counsel appearing for the petitioners and 1st respondent, respectively, is whether the 2nd petitioner-society is an "urban society" within bye-law 34 (3) of the 4th respondent-Bank. On behalf of the 1st petitioner, we were invited to hold in the affirmative, whereas on behalf of the 1st respondent, we were invited to hold to the contrary, on the ground that there is no such thing as an urban society as demonstrated by section 2 of the Societies Act and rule 10 of the 1961 Rules.

6. The question, therefore, we must ask ourselves is: What is an urban society? A glance through section 2 of the Societies Act discloses various definitions of diverse societies, inter alia, to wit, agricultural marketing society, consumer society, crop protection society, farming society, housing society, lift irrigation society, processing society, producers' society and resource society. The societies defined in section 2 are with reference to the objects or the nature of the business of those societies as stated against each such society or with reference to their composition. For instance, agricultural marketing society is defined as a society with the object of marketing agricultural produce etc. with a membership of not less than three-fourths who are agriculturists and so forth. Crop protection society is defined as a society the object of which, inter alia, is the protection of crops, etc. A farming society has been defined as a society with the object of

increasing, inter alia, agricultural production and so fourth. A co-operative bank has been defined as a society with reference to the nature of the business stated in that definition and a federal society has been defined with reference to its composition as stated in that definition. A society with limited liability and a society with unlimited liability have been defined in that section with reference to "the liability of the members being limited or unlimited, as the case may be, in accordance with the bye-laws of such society.

7. We agree with Dr. Naik, the learned counsel appearing on behalf of the first respondent, when he says that in section 2 there is no mention of any society known as "urban society". But does that mean that such a society is unknown to the Societies Act or that no such society can be in existence in fact and in law? The answer must clearly be in the negative. It is abundantly clear that though section 2 of the Societies Act defines a number of societies in relation to their objects, or the nature of their business or their composition, the societies listed in that section are at best illustrative and not exhaustive. There is no warrant to come to the conclusion that beyond the societies named and defined in section 2, no other society can come within the purview of that Act, with the result that there can be no such thing as an urban society as we were invited by Dr. Naik to hold. It is abundantly clear that the definitions in section 2 are either in relation to the objects of those societies or the nature of their business or their composition, but not in relation to the territorial limits of their operation. No doubt, even among the diverse societies defined in section 2, there are several societies which may legitimately be termed as urban societies, depending upon their main operations being within urban limits. If so, such societies would be urban societies. A consumer society, a co-operative bank, a housing society and a processing society are but some illustrations, provided, however, the main area of their operations are within urban limits. No doubt, the 2nd petitioner-society is a consumer society as defined in section 2 (9), but, even so, that by itself would not make it any the less an urban society, provided, however, the main area of its operations falls within urban limits.

8. For the same reason, Rule 10 also can be of no assistance to the 1st respondent. Section 12 of the Societies Act provides for classification of societies by the Registrar. Rule 10 of the 1961 Rules classifies and sub-classifies diverse societies "according to the principal object" provided in the bye-laws of the societies classified and sub-classified in rule 10. The various classifications are, agricultural society, crop protection society, lift irrigation society, consumers' society, co-operative bank, farming society, housing society, processing society, producer's society, resource society, and general society. Sub classification of these societies, except of the crop protection society, lift irrigation society and consumer's society are set out in the second column of rule 10. Column 3 sets out the examples of societies falling in the class or sub class, as the case may be. We agree with Dr. Naik that in rule 10 there is no allusion to an urban society. But for the reasons stated earlier, we do not agree with him when he says that on that account there can be no such thing as an urban society. Classifications

and sub classifications of the various societies under rule 10 are the natural concomitant to section 2 and pertain to the societies defined in that section. If section 2 is not exhaustive but merely illustrative, which, in our view, it is, a fortiori, the classifications and sub-classifications under rule 10, must also be merely illustrative and not exhaustive and confined to those societies classified and sub-classified therein with reference to their objects and not with reference to the territorial limits of their operations.

9. This is not all. In the Societies Act itself, there is an indication which goes to demolish Dr. Naik's contention and discloses that the concept of an "urban society" is not entirely unknown to the Societies Act itself and that section 2 is not exhaustive but merely-illustrative. In the second proviso to section 22, there is a specific reference to urban society. Section 22 pertains to persons who may become members of a society. The second proviso reads thus :

Provided further that, subject to such terms and conditions as may be laid down by the State Government by general or special order, a firm or company may be admitted as a member only of a society which is a federal or urban society or which conducts or intends to conduct an industrial undertaking.

(Italic is ours.)

Can the concept, therefore, of an urban society be transplanted into section 2 ? There is nothing in section 2 or for that matter in any other section of the Societies Act, to exclude, either expressly or by necessary implication, a society with reference to the territorial limits of its operations. If the operation of such a society is mainly within urban limits, such a society would be an urban society. What the urban limits must be, shall be discussed by us presently.

10. What are the territorial limits of such a society. Oxford English Dictionary defines "urban" as --

Pertaining to or characteristic of, occurring or taking place in, a city or town.

Constituting, forming or including a city, town, or burgh, or part of such.

Exercising authority, control, supervision, etc. in or over a city or town.

Residing, dwelling, or having property in a city or town. One who belongs to or lives in a town or city.

Random House Dictionary defines "urban" as:

Of, pertaining to, or comprising a city or town.

Living in a city or cities.

Characteristic of or accustomed to cities; citified.

11. Thus, the territorial limitation of "urban" as understood in common parlance is in relation to, and with emphasis on, residence and activity within the limits of

a town or city. What is urban cannot, by its very nature of things, be rural. These two terms are incompatible and mutually destructive of each other, for while urban pertains to the city or town, rural must pertain to the countryside, the agricultural, the pastoral and the rustic. Thus, just as there can be a rural society, to wit, an agricultural society, so can there be an urban society, the area of the operation of the former being within rural confines, while that of the latter being within urban limits. In this petition, we are not concerned with the rural and hence shall confine ourselves to the urban. What are such urban limits ? The answer is to be found in the explanation to section 22 which defines an urban society thus:

For the purposes of this section "an urban society" means a society the business of which mainly falls within the limits of a municipal corporation, municipality, cantonment or notified area committee.

Thus this definition of an urban society indicates the territorial limits within which such a society must mainly operate. It has nothing to do with the objects of such a society, as long as its main business falls within the territorial limits stated in that definition. No doubt, the above definition of "urban society" is for the purpose of section 22 alone, as is clear from the opening words of the explanation itself. However, when an enactment itself provides the meaning, it is from the four corners of the enactment itself that the meaning must be gathered. When the Legislature defined "urban society-- for the purpose of section 22, it had, no doubt, in mind, not the objects of such a society but the area of territorial confines of its operation as understood in common parlance and projected by the explanation to section 22. It would be unreasonable to assume that even if "urban society" had been defined in section 2, the area of its operation would have been other than the one defined in the explanation to section 22. We, therefore, see no difficulty in attracting to an urban society the same territorial limits as are to be found in the explanation to section 22. Thus, an urban society would be a society the business of which mainly falls within the limits of a city, a municipal corporation, municipality, cantonment or notified area committee. II A. In the result, the area of operation of the 2nd petitioner-Society being, or in any event mainly being, within Sholapur city, it is an urban society falling within bye-law 34 (3) of the 4th respondent-Bank.

12. It was urged by Dr. Naik that the petitioners should have led evidence in the lower Court to establish that the business of the 2nd petitioner-Society was mainly within the limits of Sholapur city. There is no merit in this contention. When a particular society is situated within the limits of a particular town or city, the presumption is that it mainly carries on business within the local limits of that town or city, unless the contrary is established by the other party. Nothing of the kind was done or even attempted to be done by respondents 1 and 2 in the Election Petition, which it was open for them to do then, instead of raising this bogey for the first time before us.

13. It was next urged by Dr. Naik that the society which can be affiliated to the

4th respondent-Bank must not only be an urban society but it must be an urban credit society. This contention is contrary to the plain reading of bye-law 34 (3) and must be advanced to be rejected.

14. Dr. Naik's reading of bye-law 34 (1) and (2) was that only a credit society would fall within sub-bye-laws (1) and (2). The plain reading of these two clauses must be sufficient to repeal that contention. In sub-clauses (1) and (2), it is only an agricultural society or a non-agricultural society which must be a credit society and not a multi-purpose society or a sale society. If it had been the intention in bye-law 34 (1) to provide for a multipurpose credit society, nothing could have prevented the framers of that bye-law from stating so as has been done in the case of agricultural credit society. We are not aware what a "sale credit society" is. Nor was Dr. Naik in a position to enlighten us, and rightly so. Be that as it may, if in sub clause (2) it had been the intention of the framers of bye-law 34 to include, in Dr. Naik's words, "a sale credit society" (whatever that means), nothing could have prevented the framers of bye-law 34 from stating so in sub-clause (2) itself.

15. These aspects, however, pale into insignificance, if the 2nd petitioner is an urban society, which we hold it is. No doubt, because the 4th respondent Bank would welcome on its Board of Directors persons representing a cross-section of talent and experience, that it has framed its bye law 34 so as to also attract an urban society and thereby have the best of both worlds.

16. Dr. Naik finally urged that the 2nd petitioner being a consumer society, would not fall within sub-clause (3) of bye-law 34. There is no merit in this contention, inasmuch as the 2nd petitioner falls within subclause (3) as it is an urban society. This contention does-not take into account that a consumer society can be urban society if it mainly operates within the urban limits stated earlier.

17. To summarise, though an urban society is not defined in section 2 of the Societies Act, the concept of such a society is not unknown to the Act. Section 2 of the Act is merely illustrative and not exhaustive and defines various societies in relation to their objects, or the nature of their business or their composition but not in relation to the territorial limits of their operations. An urban society means a society the business of which falls mainly within the limits of a municipal corporation, municipality, cantonment or notified area committee. The 2nd petitioner-society, even though a consumer society as defined by section 2 (9), is no less an urban society falling within bye-law 34 (3) of the bye-laws of the 4th respondent-Bank, as the main area of the operations of the 2nd petitioner-society is in Sholapur city. Hence the election of the 1st petitioner representing the 2nd petitioner-society to the Board of Directors of the 4th respondent- Bank was proper and valid.

18 In the result, the petition is allowed and the order dated 7th April 1979 passed by the 5th respondent is set aside. Rule is made absolute. There will be no order as to costs.

Mr. Savant states that no orders are necessary in Civil Application No. 2240 of 1979 for amendment. Accordingly, there will be no order in Civil Application No. 2240 of 1979, with no order as to costs.