
(1998) 08 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No's. 4200 and 4201 of 1998

Baburao L. Patil and others

APPELLANT

Vs

Dashrath R. Patil and others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Citation : (1998) 5 BomCR 948

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : V.A. Thorat and S.S. Patwardhan, for the Appellant; K.K. Singhvi and A.A. Kumbhakoni, U.G. Kerkar, A.G.P., for the Respondent

Judgement

A.V. SAVANT, J.—By consent, both the petitions are taken up for hearing together. Heard all the learned Counsel at length; Shri Thorat for the petitioners; Shri Singhvi for the Sugar Factory and Shri Kerkar A.G.P. for the Divisional Joint Registrar, and the Minister for Co-operation.

2. These two petitions have been filed by the members of the Gadhinglaj Sahakari Sakhar Karkhana, at Gadhinglaj, District Kolhapur (for short, "Sugar Factory"), which is a Co-operative Sugar Factory and a Society specified as per the provisions of section 73-G of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act"). The Sugar Factory is respondent No. 974 in Writ Petition No. 4200 of 1998 and it is respondent No. 84 in Writ Petition No, 4201 of 1998. Under the impugned order, expulsion of as many as 1991 members shareholders of the said Sugar Factory which has a total of about 9000 members, has been upheld by the Minister for Co-operation, Government of Maharashtra. It is common ground before me that the election to the Managing Committee of the said Sugar Factory is to be held soon this year.

3. As far back as on 26th March 1993, 2888 persons were enrolled by the said Sugar Factory as its members after their applications were scrutinised by the Committee. Out of the said 2888 members, cyclostyled notices have been issued

to 2102 members calling upon them to show cause against their proposed expulsion. The cyclostyled show-cause notices have been issued on 20th January 1997. What was brought to the notice of the member proposed to be expelled was that he was enrolled as a producer member of the sugar factory under Resolution No. 11 passed in the meeting of the Board of Directors held on 26th March, 1993. However, as per Bye-law No. 18 of the sugar factory, it was necessary for the member to have complied with certain requirements. It was, however, found that the member had not complied with one or more of the following five requirements namely (i) no land held by him; (ii) insufficient sugarcane land held by him; (iii) land held was in the name of some other person; (iv) no land was under cultivation of sugarcane and (v) there was some scratching and overwriting in the 7/12 extracts annexed to the application. There is a tick mark against the relevant objection in the show cause notice sent to each member.

4. It is common ground that the action of expulsion was taken u/s 35 of the Maharashtra Co-operative Societies Act, 1960 which deals with "Expulsion of Members." The said section has been construed by this Court repeatedly. It contains a very drastic provision. Resolution of expulsion has to be passed by a majority of not less than 3/4th of the members who were entitled to vote and were present at the General Body meeting held for the purpose of expelling a member "for acts which are detrimental to the interest or proper working of the society." The proviso to sub-section (1) of section 35 requires that before a resolution of expelling a member is passed, the member concerned must be given a opportunity of representing his case to the general body and no resolution is effectively unless it is approved by the Registrar.

5. Rule 28 of the Maharashtra Co-operative Societies Rules, 1961 deals with the grounds on which a member can be expelled such as (i) persistent defaults in payment of dues (ii) failing to comply with the provisions of the Bye-laws regarding sale of his produce to the society; (iii) failure to comply with the provisions of Bye-laws regarding other matters in connection with his dealings with the society; (iv) bringing disrepute to the society and (v) doing acts detrimental to the interest or proper working of the society. Rule 29 of the said rules deals with the procedure for expulsion of a member. It ensures that there is a proper compliance with the principles of "audi alteram partem" and the meeting has to be held not earlier than a period of one month from the date of such notice. At such a meeting the member to be expelled is expected to show cause against the proposed expulsion.

6. Shri Thorat's first contention is that none of the acts alleged against the expelled members fall within the purview of section 35 of the Act or even Rule 28 of the said Rules. What has been alleged is that the member may not have been eligible to be a member on account of one or more defects in his application or on account of his failure to comply with the requisite eligibility criteria. Be that as it may.

7. Pursuant to the said show cause notice dated 20th January, 1997 replies were tendered by 1365 members out of 2102 members to whom notices were given. In the reply to the show cause notice, the members have contended that the notice was issued on wrong facts. It was issued out of political motives and/or mala fides. The allegations were denied and it was contended that the notice was illegal. It was stated that the concerned member was not ineligible. It was contended that the requisite application was complete in all respects and it was after scrutiny by the concerned committee that the membership was granted pursuant to the resolution dated 26th March, 1993 passed by the Board of Directors. There is even a reference to the various proceedings pending in different courts. It was, therefore, contended that the show cause notice should be withdrawn. These replies have been tendered on different dates after the show cause notice dated 20th January, 1997 was received by respective members.

8. As per the law laid down by this Court in *K.V. Sundaram and another v. Raj Rajeshwari Co-op. Housing Society Ltd. and others*, 1980 M.L.J. 4 and the view taken by another Division Bench (to which I am a party) ; on 18th/19th June 1998 in Writ Petition No. 3128 of 1990 in *Bhaskar Laxman Rane Vs. Shri Gurudev Nityanand Co-operative Housing Society Ltd. and others*, , it is clear that the notice of expulsion must call upon the member concerned to show cause to the general body of the members against the proposed expulsion. The procedure contemplated by section 35 is not mechanical. It is not an empty formality. The material on the basis of which the show cause notice is issued and reply given by the member has to be considered by the general body before arriving at a decision that member has to be expelled. Such a decision can be reached only by a majority of not less than 3/4th of the members entitled to vote who are present in the general body meeting. The Registrar who has to accord his approval under the proviso to sub-section (1) of section 35 is also expected to hold a proper enquiry regarding the procedure that was adopted by the society while passing the resolution for expulsion.

9. In the light of the above legal position, at this prima facie stage of admission of these petitions, let me consider what happened in the general body meeting held on 30th May, 1997 to consider the issue of expulsion of 2102 members. The report of the officer specially deputed by the Regional Joint Director of Sugar to attend the said meeting makes a very interesting reading. After having considered the said report, at this prima facie stage, I am of the view that what happened in the meeting of 30th May, 1997 leaves much to be desired. The meeting for considering the expulsion of 1991 members commenced at 1.05 in the afternoon and was over at 1.20 p.m. The meeting lasted 15 minutes only. In these 15 minutes out of 9000 and odd members, 6872 members who attended the meeting are supposed to have considered the details of the show cause notices, documents in support of the objections against each of the 2102 members sought to be expelled and the explanation tendered by at least 1365 members. Even if the remaining members (2102-1365) = 737 members had not

given their explanation, in my view, it was obligatory for the general body to consider the material that was placed before it for their proposed expulsion and whether the said material fell within the ambit of the provisions of section 35 of the Act or Rule 28 of the said Rules. The general body had to bear in mind the seriousness of the action where 1991 members were sought to be expelled on one or more of the 5 different grounds. The facts of the case of each member were different through the members could be grouped in five categories depending upon the objections. Evidence against each of the member had to be considered, atleast in a cursory manner. Replies given by 1365 members had, at any case, to be considered and then a decision had to be taken. All this is supposed to have been done in a span of 15 minutes. This is not all. The report dated 30th May 1997 does not disclose what was the pattern of voting and whether the decision was carried by a majority of not less than 3/4 of the total number of members present in the meeting and who were entitled to vote. All that is stated in the report is that a majority of the members had raised their hands and had shouted slogans that the resolution should be passed and that some members had given slogans that the resolution was not passed. No voting or counting has taken place and there are no details as to how many had attended the meeting, how many took part in the actual voting and what was the pattern of voting. The report sent by the officer who was specialty deputed to attend the meeting, is blissfully vague about the compliance with the mandatory provisions of section 35 of the Act.

10. After the resolution was passed in great hurry and indecent haste as indicated above, the Divisional Joint Registrar has accorded his approval by order dated 29th December, 1997 to the expulsion of 1991 members. The said order also does not disclose that requirements of section 35 read with Rules 28 and 29 have been complied with. There is no finding as to how many people attended the meeting, how many voted and what was the pattern of voting much less as to whether the resolution was passed in the meeting of 30th May 1997 by a majority of not less than 3/4th of the total number of members entitled to vote who were present in the meeting. In my prima facie view, the Registrar has acted in ignorance of law laid down by this Court in the two Division Bench; decisions referred to above.

11. Two Appeals to the State Government were preferred u/s 152 of the said Act and since the application for stay was not considered, two Writ Petitions No. 3164 and 3165 of 1993 were filed in this Court. On 8th July, 1998 this Court directed the State Government to dispose of the appeals expeditiously. Accordingly the Minister considered the appeals and by his order dated 29th July, 1998 dismissed the same. Unfortunately, there is no finding about the mandatory requirements of section 35 even in the Appellate order passed by the Minister.

12. It is on these errors of law apparent on the face of the record that Shri Thorat prays for issuance of Rule.

13. Shri Singhvi appearing for the sugar factory, on the other hand, contends

that the initial enrollment of the members was itself in contravention of the order dated 11th August, 1997 passed by this Court in Writ Petition No. 3143 of 1992. In my view, the answer to this is simple. Admittedly, this is not even a ground stated in the show cause notice dated 20th January 1997. No member was confronted with this fact and no one knows as to whether the order passed by this Court on 11th August, 1992 in Writ Petition No. 3143 of 1992 was set aside or modified by the Apex Court or even by this Court. Nothing is stated about this ground either in the show cause notice dated 20th January 1997 or in the resolution of expulsion passed on 30th May 1997. Even in the order of approval dated 29th December, 1997 passed by the Registrar there is not even a whisper about the alleged breach of the order dated 11th August, 1992. The attention of none out of the 1991 members who have been expelled was invited to this order dated 11th August, 1992 and today no one knows as to what were the developments after the order dated 11th August, 1992 was passed. Whether there was any further order by this Court or by the Apex Court is not clear. This point was not in issue between the parties either at the state of the show cause notice, the reply given to it, the resolution passed by the general body of the society or even the approval granted by the Registrar. It is true that there is a reference to this order in the Appellate order passed by the Minister. Obviously, the expelled members had no opportunity whatsoever to meet this ground even at the appellate stage. No notice was given to any one in respect of this ground at any stage whatsoever.

14. It was then contended by Shri Singhvi that, of facts, some members were liable to be expelled on the ground that they were not eligible to become members. According to Shri Singhvi even the question of eligibility to become a member would be covered within the ambit of section 35 of the Act.

15. Shri Kerkar, A.G.P. contended that even if these writ petitions were to be admitted, no stay of the process of election should be granted. He reminded me of my Judgment in Someshwar Sahakari Sakhar Limited and etc. Vs. Shrinivas Patil and others, etc., .

16. It is not necessary to express any final opinion on the merits of the rival contentions at this stage. Suffice it to say that having regard to the law laid down by this Court in the two decisions referred to in para 8 above, a strong prima facie case is made out. Hence Rule in both the writ petitions.

17. As far as the question of interim relief is concerned, Writ Petition No. 4200 of 1998 has been filed by five petitioners out of 977 members who had filed Appeal No. 74 of 1998 to the State Government. However, Shri Thorat makes an oral request for transposing respondent Nos. 1 to 972 as petitioners in this petition. He says that it is only on account of the delay in obtaining the vakalatnamas that respondent Nos. 1 to 972 have not been shown as petitioners. Hence, I grant liberty to the petitioners to take out Civil Application for transposing respondent Nos. 1 to 972 as petitioners in this petition.

18. It is alleged by the petitioners that this action is taken mala fide on the eve of the elections that are to be held this year for electing the Managing Committee of the said sugar factory. As many as 1991 members are expelled in a hurried manner in the meeting which lasted for 15 minutes only on 30th May, 1997. In this prima facie view of the matter, I grant interim relief in terms of prayers (c) and (d).

19. Shri Kumbhakoni makes a statement on the basis of the instructions given by Shri S.S. Gadge, Legal Incharge of Gadhinglaj Sahakari Sakhar Karkhana who is present in the Court that the stage of sub-rule (4) of Rule 6 of the Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971 has been postponed by the Collector, Kolhapur from 18th August, 1998 to 25th August, 1998. Statement made by Shri Kumbhakoni is accepted.

20. As far as Writ Petition No. 4201 of 1998 is concerned, it is also filed by five petitioners out of 87 members who had filed appeal No. 73 of 1998 before the State Government. Before considering the interim relief in this petition, Shri Thorat prays for leave to transpose respondent Nos. 1 to 82 as petitioners in the petition. He makes a statement that respondent Nos. 1 to 82 have been shown as respondents only on account of the delay in obtaining their vakalatnamas in time. He further makes a statement that a civil application is being presented praying for relief of transposing respondent Nos. 1 to 82 immediately. Statement accepted and leave for taking out a Civil Application granted accordingly.

21. In view of the above as far as Writ Petition No. 4201 of 1998 is concerned, there will also be interim relief in terms of prayers (c) and (d).

22. Liberty to apply for further interim relief, if necessary, after the Civil Applications are taken out for transposing the concerned respondents in both the petitions as petitioners.

23. Hearing expedited. Liberty to apply for a fixed date of hearing.

24. Issuance of certified copy expedited.