

(1981) 07 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 1484 of 1981

Balasaheb Rajaramji Dampurikar

APPELLANT

Vs

The Collector of Parbhani

RESPONDENT

Date of Decision : 08-07-1981

Acts Referred:

Constitution of India, 1950 — Article 43A, 46

Citation : (1981) 83 BOMLR 489 : (1981) MhLj 893

Hon'ble Judges : Dharmadhikari, J; Bhonsale, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—The petitioners have filed this writ petition for a writ of prohibition restraining the respondents from holding a meeting for electing Chairman" and the Vice-Chairman of the second respondent society. Second respondent Parbhani District Central Co-operative Bank Limited is a specified society governed by the provisions of chap. VII as well as chap. XI A of the Maharashtra Co-operative Societies Act (hereinafter referred to as the Act). As per the provisions of chap. XIA the collector is the competent authority to hold elections of committee and the officers of second respondent society. For holding elections of the committee and officers of the specified societies the Government has framed rules in exercise of the power conferred upon it by Sub-section (3) of Section 144 F and Sub-section (4) of Section 144T and Section 144X and all other enabling provisions in that behalf and the said rules are known as Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971 (hereinafter referred to as the Rules). It is contended by the petitioner that as per the bye-laws of the society electorate is divided in different constituencies. So far elections have been held for one seat from the industrial societies constituency, to eight seats from agricultural credit societies from 8 talukas, to one seat from marketing societies from the district, to one seat from individual members, one nominee of the Maharashtra State Co-operative Bank is also nominated and election is also held for one seat from non-agricultural and processing society. These elections were held as per election programme referred

to in para. 6 of the petition and in this election first petitioner Balasaheb Rajaramji has been elected as a director on the board of directors i.e. the managing committee of second respondent from the constituency of agricultural credit societies from Parbhani taluka. However, according to the petitioners ex-officio managing director and the nominee of the Zilla Parishad, is not yet nominated. Similarly nominees of the employees u/s 73BB and two members from the reserved constituencies viz. from the Scheduled Caste, Scheduled Tribes etc. or from the weaker section of the members, as provided for by Section 73B, have not been elected. In this writ petition the petitioners have confined their grievance to the election to the reserve seats referred to in Section 73B of the Act and have contended that unless the said elections are held the collector has no power to convene a meeting of the managing committee for electing the office-bearers viz. the Chairman or the Vice-Chairman. According to the petitioners unless these elections are held, constitution of the committee is not complete and hence the election of office bearers under Sub-section (2) and Section 144Y cannot be held, until the committee is duly constituted. In support of this contention the petitioners are relying upon a decision of this Court in *Nathmal Gopikisan v. N. D. Rahate* [1968] Mah. L.J. 866 as well as the provisions, of Section 73B of the Act.

2. On the other hand it is contended by Shri Pradhan, the learned Counsel appearing for the respondents and Shri Sawant, learned Addl. Government Pleader that Section 73B itself lays down in clearest terms that if the persons belonging to the reserved category are not elected, the committee has power to co-opt required number of members on the committee from amongst the persons entitled to such representation and, therefore, in each and every case it is not necessary that before the first meeting of the committee is convened, the election to these constituencies should be completed. It is open to the committee to co-opt the required number of members on the committee from amongst the persons entitled to represent the reserved constituencies by co-opting them. Therefore, it cannot be said that the constitution of the committee is not complete.

3. For properly appreciating the controversy raised before us, it will be worthwhile if a reference is made to &. 73B of the Act which reads as under:

78 B. On the committee of such society or class of societies as the State Government may by general or special order direct, two seats shall be reserved, one for the members who belong to the Scheduled Castes or Scheduled Tribes or the Tails declared to be Vimukta Jatis by the State Government and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200/- during the year immediately preceding. If no such persons are elected or appointed, the committee shall co-opt the required number of members on the committee from amongst the persons entitled to such representation.

To carry out the obligation cast by this section second respondent society has

framed bye-laws viz. bye-law 30(v). The question as to what is the Mention behind this provision of reservation of two seats for the Scheduled Castes etc. as well as for economically weaker section of members fell for consideration of this Court in *Devidas Amrutrao v. District Deputy Registrar Sp. C.A. No. 1481 of 1973* decided on December 14, 1973. (unrep.). The relevant observations are as under:

What is the reason why such bye-laws came to be passed under which reservation is afforded to certain types of members of co-operative society. To us, it appears that the genesis lies in the provisions of Article 46 of the Constitution of India which falls in part IV dealing with "Directive Principles of State Policy". It is well known that the provisions of this part could not be enforced in the Court of law but the principles laid down are fundamental in the governance of this country and it shall be the duty of the State to apply these principles in making laws. Article 46 of the Constitution of India says that "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled tribes and shall protect them from social injustice and all forms of exploitation." The Maharashtra State Government was obviously aware of the fact that in the co-operative movement which is spreading to all fields of life in this State, some of the sections of the community who either belong to the backward castes like Scheduled Castes and Scheduled Tribes or who are otherwise weak and backward may not get adequate representation on the managing committee of the cooperative societies. These societies are supposed to cater the economic needs of the residents within the local limits of that society. Even getting a loan for a good cause by a person belonging to a Scheduled Caste or to an economically weaker section of the community may not be possible. With this background that some representation must therefore be made available to such a weaker section of the community, it was assured by resorting to reservation of seats on the managing committee. The State Government, therefore, first passed a law in that behalf which is represented by the provisions of Section 73B of the Maharashtra Co-operative Societies Act, 1960.. . It seems to reserve a seat primarily for a group of persons who could be described as economically weak Marathi words are "Arthik drishtya durbal". There is a further rider that even such a person shall not have borrowed more than Rs. 200 in the previous one year.,. Initially, the candidate must belong to such a group and should not have further borrowed a loan of more than Rs. 200/-. If this is not the only way to look at the bye-law an astounding result might follow as it happened in the present case, A very rich agriculturist owning extensive property may not require a loan at all from the society though he is a member. Since he could be described as a person who has not harrowed more than Rs. 200/- in a given year he would become eligible to contest the election from the reserved constituency.... It is for the State Government to consider this question and to make appropriate provisions either in the Act, rules or bye-laws as may be permissible. In the absence of any guideline in that behalf unnecessary disputes can be raised. Our experience shows that in the matter of

elections all and every contention is raised and lot of public time is being spent upon the decision and disposal of election disputes. It is desirable, therefore, to lay down a guideline so that the area of the dispute could be minimised.

The Division Bench also directed that a copy of the judgment should be sent to the Co-operative Department bringing to its attention the abovesaid observations. It appears that inspite of this decision of the Division Bench in December 1973 the State Government has not taken any steps in this behalf and the matter stands as it was.

4. Thereafter also another Division Bench of this Court had an occasion to consider the scheme of the said section in *Dinkar v. Chikhali Vividh Karyaketrit Society Writ Petition No. 396 of 1979* decided on December 16, 1979. After examining the scheme of the section in para. 12 of the judgment the Division Bench observed:

It is however advisable to frame proper bye-laws to implement the latest mandate u/s 78B to 78C to avoid any confusion.

5. It appears that thereafter also no steps were taken by the authorities concerned to frame proper bye-laws or rules etc. to implement the said mandate to avoid any confusion. To say the least this is most regrettable .

6. Section 73B speaks of reservation of seats. This provision has been made to implement the mandate of the constitutional provision in that behalf viz. Article 46. The Constitution does not adopt system to separate electorate. Therefore, Section 73B will have to be understood in this background. It appears from the two decisions to which a reference is made hereinbefore that in those cases after following the procedure laid down by the rules, necessary list of voters etc. was prepared. However, in the present case it appears that the procedure prescribed by the rules is not followed by the collector, who is the authority to hold the elections under chap. XIA of the Act. The bye-laws also are vague and do not lay down any specific procedure for holding elections for these seats. Therefore, it appears that the procedure differs from society to society and no uniform pattern is followed in this behalf.

7. Section 73BB makes a provision for reservation of seats for employees on the committees of certain specific societies. It appears that this prevision was made by the legislature to give effect to the directive principle of State policy as incorporated in Article 43(A) of the Constitution, which lays down that the State shall take steps by suitable legislation or in any other way to have participation of workers in the management of the undertakings, establishments or other organisations. By this article what is contemplated is participation in the management and not more representation. The representation contemplated is effective representation which could be termed as active participation in the management. Section 73BB only prohibits these representative of employees from contesting the election of an office-bearer of the society or to vote at any election of officers. But for this restriction the representative of the employee is

entitled to participate in the management of the society like any other member of the committee or the board. In this context a reference could usefully be made to the observations of the Supreme Court in *Manooram Mills Ltd. v. The State of Gujarat* AIR [1976] S.C. 217, wherein the Supreme Court has observed that the object of the workers' participation in the joint management council is to enlist co-operation of the workers with a view to bring about improvement in the performance of industrial organisations. Another object appears to be to democratise the industrial milieu and equalitarianism in the process. This is what the Supreme Court has observed in para. 10 of the said judgment:

For about a hundred years the term industrial democracy has been often mentioned in the writings of socialists, trade unionist and social reformers. Of late the industrialists have taken it over. The reason for that is that industrialists have become conscious that any approach which has the effect of treating workers as if they were commodities is unsound and wasteful economically. The industrialists, it has been said, tried paternalism or benevolent autocracy and they have found that this did not work, just as Frederick the Great and his followers found that benevolent political despotism did not work. Democracy in political terms means the consent of the governed in the governance of the country. In industry it means that wage earners shall have an effective Voice.

Therefore, it is quite clear that the representation contemplated by Section 73BB of the employees is neither nominal nor ornamental but is an effective one.

8. It is an admitted position before us that the seat reserved for the ex-officio managing director could not be filled in because there is no managing director as such. Nominee of the Zilla Parishad is also not available because we are informed by the learned Government Pleader that the Zilla Parishad itself is superseded. The nominee of the employees has neither a right to get elected nor to vote at the election. Therefore, the two seats now remaining vacant are reserved seats contemplated by Section 73B of the Act. Therefore, it will have to be seen as to whether in the absence of holding elections for the said two reserved seats it is not open; to the society to co-opt the members for the said two seats and to hold election of the office-bearers.

9. It is no doubt true that it is held by this Court in *Nathmal Gopikisan v. N. D. Rahate* (supra) that the essence of corporation is completion of the process of incorporation. That process among other elements consists in holding elections to all the electoral divisions and if that process is not completed, then it cannot be said that the corporation has been duly constituted so as to allow it to function and exercise further rights after due incorporation. The constitution of a corporate body must mean the due constitution of every limb of that body. There cannot be any dispute so far as this proposition is concerned and, therefore, normally the reserved seats contemplated by Section 73B should be filled in by holding elections. There is internal evidence available for this in the section itself. However, it is also laid down by the said section that if no such persons are elected or appointed, the committee shall co-opt the required number of

members on the committee from amongst the persons entitled to such representation. Obligation to hold elections under Chapter XIA is on the collector. The rules lay down a detailed procedure as to how the voters' list should be prepared and elections are held. In the present case the collector has not chosen to hold elections for these reserved seats. The reason for this is not apparent. It appears from the averments made in the petition that though respondent No. 2 has individual members, such individual members have not been granted loans which are less than Rs. 200. It also appears that respondent No. 2 society has only 26 individual members. About 1260 co-operative societies are members of this society and the bye-laws are not clear as to how elections to the reserve seats are to be held. Therefore, at this stage the respondent society is faced with a *fait accompli*, because holding of the election was not in their hands. This function is entrusted to the collector of the district. It is a well settled principle of interpretation of statute that where the prescriptions of a statute relate to the performance of a public duty, and where the invalidation of the act done in disregard of that provision would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, yet not promote the essential aims of the legislature, then the neglect of them may be penal indeed but it does not affect the validity of the act done, in disregard of them, (see Maxwell on interpretation of statutes, 11th Edition, page 369). In the present case the obligation to hold election as per rules is cast upon the collector and it appears that because of some confusion or absence of proper guidelines and procedure being laid down in the rules or the bye-laws, the collector did not take steps to hold elections to these two reserved seats after following the procedure prescribed by the rules. In this context it cannot also be forgotten that the petitioners before us were parties to the election process. First petitioner is the delegate of second writ petitioner and had contested election for the office of the director on the board of directors and is also elected. The rules lay down various stages when the objections could have been raised. The petitioners obviously did not take any objection until the whole election process was completed and have now chosen to approach this Court to throttle down the election of the office-bearers only. Therefore, to some extent it can be said that the petitioners have chosen to waive their right in that behalf. If amounts to acquiescence and therefore in any case this is not a fit case wherein any interference is called for at this stage at the instance of petitioners. In these circumstances, in our opinion, having regard to the peculiar facts of this case, the other alternative prescribed by Section 73B viz. co-opting required number of members on the committee from amongst the persons entitled to such representation from the reserved seats could be adhered to.

10. This cannot be treated as a general rule. Normally the alternative of co-option is available only if no such persons are elected or appointed. Unless elections are held, how can a person get elected? The right to elect the representatives to the reserved seats vests in the voters. They cannot be deprived of this right of choice by following an indirect method of co-option,.

However the case before us, is peculiar in every respect. The petitioners have alleged in the petition that though the society has individual members, such individual members have not been granted loans which are less than Rs. 200 each. The society has only 26 individual members and it is not known whether anybody of them belongs to scheduled castes or tribes or Vimukta Jatis, because the averments made in the petition in this behalf are not accepted, at least at the time of hearing. The petitioners have also not chosen to raise this contention at the earliest opportunity, when the voters' list was being prepared, and elections to other seats were held. They chose to remain silent, and the first "petitioner contested the election and is also, elected as a director. Thus the petitioners are trying to blow hot and cold at the same breath. Further, we are satisfied having regard to the facts and circumstances of this case that directing holding of elections at this stage will instead of furthering the object of reservations, will defeat it. This is more so as the rules and the bye-laws are wholly inadequate and do not lay down as to how the elections to these reserve seats should be held. Rule 61, of the Maharashtra Specified Co-operative Societies Elections to Committee Rules is now substituted by Third Amendment in June 1980. By these amending rules even Rule 42(a) is amended. In spite of the observations of this Court, in two earlier petitions, reference to which is already made, the Government has not chosen, to take any steps to remove the confusion. Therefore, we are inclined to take a view that at least in this case, the committee can co-opt these two members to provide representation to these weaker sections of the society, obviously as per the provisions of the Act, rules and bye-laws.

11. Section 144Y lays down that after election of the members of the committee, election of the officer or officers of the society shall be held as provided in the bye-laws. As per the bye-laws such an election could be held in the first meeting of the board of the directors. As per Sub-section (2) of Section 144Y, upon such a meeting only the collector of his nominee is entitled to preside. It is not disputed before us that the persons who are entitled to be elected or co-opted u/s 73B are also entitled to contest election of the office-bearers. If this is so then in any case the process of co-option of such members must be completed before the office-bearers are elected. From the decisions of this Court, on which reliance is placed by Dr. Naik viz. *Nathmal v. N. D. Rahate* (supra) and *P.L. Shende v. M.P. Marathe* [1976] Mah. L.J. 593 it is quite clear that even the process of co-option to some extent involves process of election. Therefore, it is open to the elected committee to co-opt these members in the first meeting itself before the election of the office-bearers is held. In our opinion such a construction will have to be placed on these provisions to make the provisions workable. It is a well recognised canon of construction that a construction which makes the rule unworkable should be avoided where two constructions are possible and the Court should lean in favour of construction which makes the rule workable and further the purpose for which the rule is intended. The first meeting in which such office-bearers are to be elected is to be presided over by the collector or his

nominee in view of the provisions of Sub-section (4) of Section 144Y. Obviously the presiding officer will have no voting right. Hence the question of casting vote will not arise. This being the position in the case of equality of votes, the office bearer will have to be elected by drawing lots, which to some extent is the process contemplated for the election. It is not necessary to deal with the question as to who are eligible or entitled to be co-opted to these reserved seats. We do not propose to deal with the circular issued by the office of the Divisional Joint Registrar Co-operative Societies, Pune dated January 1, 1980, as it is wholly unnecessary at this stage. Since after co-option to these seats, composition of the committee will be complete for all practical purposes viz. for electing the office-bearers of the committee, as all the members who are eligible to contest or to vote would be either elected or co-opted on the committee. Therefore, it cannot be said that the composition of the committee is not complete for the purposes of holding elections of the office-bearers. In this view of the matter, it is not possible for us to restrain the collector from convening the meeting as per the provisions of law. As already held in the meeting which will be convened by the collector for this purpose, it is open to the committee to co-opt the members to the reserved seats and once such members are co-opted, as per the provisions of the Act, rules and bye-laws, the collector can proceed with the election of the office-bearers viz. the Chairman and the Vice-Chairman.

12. In this view of the matter, there is no substance in this petition. Hence the rule is discharged. However, having regard to the fact that in spite of the directions given by this Court on two earlier occasions, the Government has not chosen to clarify the position, there will be no order as to costs in this petition.

13. A copy of this judgment should be sent to the co-operative department, Government of Maharashtra, Mantralaya, Bombay.