(1987) 08 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3518 of 1985 with W.P. No''s. 3599 and 3686 of 1985 and 2505, 3256, 6118 and 6168 of 1986 and 112, 461, 493 and 2730 of 1987

Bassein Catholic Cooperative Bank Ltd., Papdi and another APPELLANT

Vs

State of Maharashtra and others RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(c), 19(1)(g), 43
Maharashtra Co-operative Societies Act, 1960 — Section 2(31), 36, 72, 73, 73G

Citation : (1987) MhLj 769

Hon'ble Judges : S.D. Sugla, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : B.R. Naik with Y.R. Naik, for the Appellant; A.S. Bobde, Advocate General with D.L. Patil, A.G.P. For State, Vilas Naik, Vikram Pai, Rajendra Sawant, Bhimrao N. Naik, C.J. Sawant and Vijay Patil, for the Respondent

Judgement

C.S. dharmadhikari, J.—As in all these Writ Petitions common questions of law and fact are raised, they were heard together and are being disposed of by this common judgment.

2. In these petitions the provisions of clause (vii) of sub-section (1) of Section 73G of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the ''said Act'') are being challenged on the ground that they are ultravires of Articles 14,19(1)(c) and 19(1)(g) of the Constitution of India. It is contended by Dr. Naik learned counsel appearing for the petitioners that although the said clause purports to lay down guidelines by using expression "regard being had to the financial position and share capital of such societies or class of societies", the said expression is vague and not capable of any reasonable meaning. This is so because there is no indication as to whether the expression ''financial position'' means a weak financial position or a strong financial position; whether the expression ''share capital'' means either authorised share capital or subscribed share capital. The area and the field covered by these two expressions are

entirely distinct and different. Besides this, both of them are required to be taken into account conjunctively and not disjunctively. In the absence of any precise definition or connotation of these expressions, it is difficult to give any meaning to the said expressions. In substance, therefore, clause (vii) fails to provide any meaningful guidelines. It is also contended that the said clause is also arbitrary. By the said clause naked and uncanalised powers are conferred upon the Executive which is free to pick and choose any cooperative society to bring it within the import of the said clause, obviously arbitrarily. The societies which have no share capital or commercial activity could also be brought under its purview. Arbitrary powers are also conferred upon the Executive to pick and choose any society and exclude some of them though belonging to the same class from the purview of the said provision. In substance clause (vii) fails to make any classification. Assuming that there is a classification, the said classification is not based upon any intelligible differentia distinguishing those that are grouped together from the others left out of the group. Furthermore, such differentia does not have any rational relation or nexus with the object sought to be achieved by the said Act. Within the same class of cooperative societies registered or deemed to be registered under the said Act, the State Government is given wide, arbitrary and uncanalised powers to pick and choose some societies, leaving the others. It is then contended that every cooperative society is a body corporate u/s 36 of the said Act with its final authority vesting in its general body under'' Section 72 and its day to day management vesting in its managing committee by virtue of Section 73 of the said Act. Matters pertaining to elections obviously are not common law rights but are rights controlled by the Act, the rules and the bye-laws. By conferring powers on the Executive under clause (vii) of Section 73G(1) the Government of the day will be able to manipulate elections through the Collector of the district, if the Managing Committee in the office is not of its liking. There are other provisions in the Act, under which the Registrar can exercise powers in the matter of holding elections. In a given case if there is total failure to hold the elections the managing committee could be superseded u/s 78 of the said Act. Section 77A was also introduced to meet the situations where elections could not be held or an elected committee was prevented from entering upon office. Therefore it is not understood why the Legislature thought it fit to enact the present provisions. It is the contention of the petitioners that the said clause is a fraud on the fundamental rights of the petitioners guaranteed under Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India. The said clause also suffers from the vice of excessive delegation as the Legislature has abdicated its legislative functions in favour of (he Executive, without laying down any meaningful guidelines.

3. In the alternative, it is contended by the petitioners that, even if it is assumed that the said section is good, the notifications issued thereunder are bad in law. The impugned notifications are intended to operate only against the Urban Cooperative Banks. The expression "Urban Cooperative Banks" in itself is vague. The impugned notifications are also issued without taking into account the

financial position and share capital of the respective banks. The impugned notifications are issued arbitrarily and for reasons extraneous to those contained in clause (vii) of Section 73G(1) of the said Act. The notification is also arbitrary as within the same class of cooperative banks; Banks having less than Rs. 50 lacs paid up share capital, are left out, whereas Balbhim Cooperative Bank Ltd., a bank having Rs. 30 lacks as paid up share capital is included by issuing a separate notification. The State Government has in the past issued notifications under clause (vii) indiscriminately, treating unequals equally. The notifications issued covered primary societies and federal societies. It covers societies at village level, taluka level, district level as well as State level. This indiscriminate exercise of power is a clear evidence of the abuse of powers. Therefore, in substance it is contended by the petitioners that the provisions of clause (vii) of Section 73G(1) are ultra vires of the provisions of Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India and in any case the notifications issued thereunder are illegal being beyond the scope of the said provisions.

4. On the other hand, it is contended by Shri Bobade learned Advocate General for the State Government that the provisions of the said section are in the best interest of the Cooperative Movement. Initially a notification was issued covering Urban Banks having a share capital of Rs. 10 lacs. A good number of Urban Banks represented against the said notification. After considering the said representations and the contentions raised therein, Government cancelled the said notification. Thereafter a notification was issued which covered the Urban Cooperative Banks having share capital of Rs. 25 lacs. Again certain representations were received from various Urban Cooperative Banks and their Association, as a result the Government decided to raise the limit from Rs. 25 lacs to Rs. 50 lacs, and, therefore, notification dated 12th September 1984 came to be issued. Before issuing the notification the Government took into consideration the financial position and the share capital of this class of societies. In substance, this notification has been issued as a result of representations made by such societies themselves. It is not correct to say that notifications have been issued in arbitrary and a colourable exercise of the powers. The share capital and especially paid up share capital is one of the important ingredients to indicate financial position of an organisation. It constitutes major input in the total financial position. The financial positions of the Urban Cooperative Banks were duly taken into consideration by the Government before issuing the impugned notification. It is common knowledge that the share capital in the Urban Banks is mostly related to the loans and advances. For every loan or advance there should be a maximum 10% holding of a particular person. Further the re re-cycling of funds enables Banks to earn profit and build up reserves and other resources. This building up of funds mainly depends upon the share capital of an organisation. Therefore, the Government is right in taking into consideration the paid up share capital of Urban Cooperative Banks as one of the major pre-requisites for declaring these banks as specified societies. Government also took into consideration the financial position of these banks from the point

of view to see whether they will be able to bear the expenses of the elections. Government also took into consideration the financial stakes involved, both of the members and the public at large. According to the Government, in majority of the cases the financial position and the share capital is interrelated. The details have been given in the affidavit as to how the share capital indicates the financial position. The societies having share capital of Rs. 50 lacs is a class by itself.

Apart from this the District Cooperative Milk Unions and the State Dairy Cooperative Federations, State Federations and District Federations of Fisheries Cooperatives, District Krishi Audyogik Societies and all Distilleries are also declared as specified societies by the Government having regard to their financial position and the share capital. This has been done to ensure free and fair elections. It is not correct to say that clause (vii) does not provide any guidelines on the basis of which the powers could be exercised. The said provision does not confer any unbridled or uncalised power upon the Government. The notifications which related to Milk Federations or Dairy Cooperative Societies are also within the purview of the said enactment and, therefore, cannot be termed as ultra vires.

5. The Counsel appearing for other Respondents adopted the arguments advanced by the State Government and contended that all the sub-clauses of Section 73G if read together clearly provide a guideline. It is not correct to say that the expressions ''financial position'' and ''the share capital'' are vague. The object of the section is to provide for a statutory control in certain matters, such as, elections, tenure of the committee, qualifications of the committee members etc. In respect of big societies classification is based on its activities, area of operation, share capital etc. It is well known that very often unscrupulous elements take advantage to perpetuate their control over such societies. By bringing the society in the fold of Section 73G of the said Act, fair and impartial elections are ensured to get rid of such unscrupulous elements. There are restrictions over the expenditure which could be incurred by the contesting candidate. It eliminates corrupt practices. Further the validity of the section cannot be decided with reference to the other provisions of the said Act. The said provisions cover different and distinct areas and fields, and, therefore, it cannot be said that the provisions of Section 73G(1)(vii) are either ultra vires or redundant.

6. For properly appreciating the controversy raised before us it will be worthwhile if the Section 73G as a whole is reproduced verbatim :

''73G. (1) The election of the members of the committees (and the officers, by the committees) of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter:-

i) such Apex (societies), which the State Government may, by general or special order published in Official Gazette, from time to time, specify in the behalf, regard being had to the financial position and share capital of such (societies);

ii) all District Central Cooperative Banks;

iii) all Primary Land Development Banks;

iv) (a) all District Cooperative Sale and Purchase Organisations;

(b) all Taluka Cooperative Sale and Purchase Organisations;

v) all Cooperative Sugar Factories;

vi) all Cooperative Spinning Mills;

vii) any other societies or class of societies, which the State Government may, by general or special order published in the Official Gazette from time to time specify in this behalf, regard being had to the financial'' position and share capital of such (societies or class of societies).

(2). When the election of all the members of the committee of any such society is held at the same time, the members elected on the committee at such general election shall hold office for a period of five years from the date on which the first meeting is held, unless the period is extended by the State Government for reasons to be recorded in writing, for a period not exceeding one year so however that the total period does not exceed six years in the aggregate.

(2A) The term of office of the members who are appointed or nominated or co-opted, or selected or elected on the committee including to fill the vacancy shall be co-terminus with the term of office of the elected members under subsection (1), notwithstanding the date of their such appointment, nomination, cooption, selection or election including to fill the vacancy;

(2B). Where, for any reason whatsoever, the election of the members of the committee was not held or could not be held before the expiry of the term or the extended term, as the case may be, of the existing committee, the members (including the officers of the committee) shall cease to hold office on the expiry of its term or extended term, as the case may be, and they shall be deemed to have vacated their offices:

Provided that where the Collector fails to hold election to the committee of any such society, the term of office of the members of the committee of that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee.

(3). Notwithstanding anything in the bye-laws of any such society, only the committee of management shall be elected by a general body of members of the society; and all other committees authorised by or under the bye-laws may be constituted only by electing or appointing persons from among the persons who are members of the committee of management and all such committees shall be sub-committees of the committee of management, and shall be subordinate to it".

7. As to why the Legislature felt it necessary to enact this provision is clear from the Statement of Objects and Reasons. So far as clause (vii) of Section 73G(1) is concerned, the Statement of Objects and Reasons read as under :

" A large number of complaints are received regarding unfair practices followed in the elections of Co-operative Institutions. This has led to a number of disputes being filed before the Registrar every year. Very often unscrupulous elements take advantage to perpetuate their control over the society. This has been rendered possible due to the absence of any regular election machinery to conduct elections in a fair and impartial manner. It is now proposed to regulate the elections of bigger cooperative institutions such as those having jurisdiction covering a Taluka or more area or those whose share capital is more than Rs. five lacs and to have the elections held under the control of the Collector. It is also proposed to hold elections triennially in such institutions. A limit is sought to be placed on the extent to which a candidate may incur expenditure for election purposes."

Thus it is very clear that the object of Legislation is to provide for a regular election machinery to conduct elections in fair and impartial manner in bigger cooperative societies. One fails to understand as to why anybody should have any objection to this. The purity of the election depends upon the purity of the process through which persons are elected, it the elections are free and fair, then only there would be true representation in the management of the society. To achieve this object Section 73G has been enacted. All the sub-sections of Section 73G will have to be read together. All these sub-sections deal with the societies which can be termed as big societies. By subsection (vii) a power is conferred upon the State Government to declare certain more cooperative societies as specified societies, regard being had to the financial position and share capital of such societies or class of societies. While defining the expression ''working capital'' in Section 2(31) reference is made to share capital and how the funds at the disposal of the society could be ascertained. Therefore, enough guidelines have been laid down. The financial position and/or share capital of the society cannot be termed as irrelevant while deciding the question as to the nature of the society; rather it is a relevant consideration for deciding the said question. Power is conferred upon the State Government itself. Classification of a society based on its financial position and share capital cannot be termed as arbitrary or vague. Having notified certain cooperative societies under clauses (ii) to (vi), instead of further enumerating each and every society which enumeration is also to some extent impossible, power is conferred upon the State Government to specify such societies or class of societies. The State Government is best suited to decide the question as to which society or class of societies should be brought within the fold of Section 73G. This must depend upon the experience and relevant data qua a society or class of societies. The specification is contemplated by a general or special order to be published in the Official

Gazette. The object of the section is to provide a regular election machinery to conduct the elections of such societies or class of societies in a fair and impartial manner. From the statement of objects and reasons it is further clear that the cooperative institutions having jurisdiction covering a taluka or more area or whose share capital is more than Rs. five lacs are expected to be covered by these provisions, regard being had to their financial position and share capital. Enumeration of certain types of societies in clauses (ii) to (vi) also provide sufficient guidelines. Therefore, it is not correct to say that no guidelines have been laid down in the section itself for exercise of the powers. A possible abuse of power cannot render a section arbitrary or illegal because abuse cannot be presumed more so when the power is conferred upon the highest authority, that is State Government itself. In a given case if power is abused and it is found that the notification is issued in colourable exercise of power, then the said notification could be declared as illegal but that will not make the section itself bad or ultra vires. It cannot also be said that the said provisions interfere with the autonomy of the cooperative societies. On the other hand it ensures free and impartial election which are in the interest of the cooperative movement.

8. It cannot be forgotten that promotion of cooperative movement is one of the Directive Principles of the State Policy (see Art. 43 of the Constitution). Cooperative movement is a socio-economic and moral movement. Power intoxication or operation by vested interests, is not cooperation. Therefore, cooperative movement cannot be permitted to be polluted by unfair practices followed in the elections. As is clear from the statement of objects and reasons, it was noticed that very often unscrupulous elements take advantage to perpetuate their control over the society. This has been rendered possible due to the absence of any regular machinery to conduct elections in a fair and impartial manner. To suppress this mischief, at least, so far as big cooperative societies are concerned, the present provision has been enacted. It has been enacted for ensuring healthy growth of cooperative movement. Hence it can safely be held, that the restrictions, if any, are reasonable, and are also in the interest of general public

9. Relying upon the Full Bench decision of this Court in 1985 Mah.L.J. 887 Vidarbha Nagarpalika Parishad and others vs. State of Maharashtra it is contended by Dr. Naik, that it is obligatory on the part of the State Government to apply its mind to the financial position and share capital qua each and every society, before issuing notification. It is not possible to accept this contention. When a notification is issued covering a class of societies it is not necessary to consider the situation in an individual society, but consideration will have to be for the class of said societies in general, as the notification covers a class of such societies.

10. So far as the impugned notification is concerned, the State Government had issued the impugned notification qua Urban Cooperative Banks whose paid up share capital exceeds Rs. 50 lacs. This has been done having regard to their

financial position and share capital. The share capital many times indicates the financial position of a cooperative society. Some other factors could also indicate financial position. The notification has been issued by the State Government after taking into consideration the financial position and share capital of the Urban Cooperative Banks. By the notification the State Government has specified all Urban Cooperative Banks in the State whose paid up share capital exceeds Rs. 50 lacs as on the last date of the cooperative year to be specified societies for the purpose of the said section, so that the elections of the members of the Committee and the officers of committee of such societies shall be subject to the provisions of Chapter XI-A of the said Act and will be conducted in the manner laid down by or under that Chapter. Therefore, it cannot be said that the selection of the Urban Cooperative Banks as class of societies is any way arbitrary or illegal. The notification has been issued by the State Government after proper application of mind to the relevant factors and guidelines laid down by the section. A federal Dairy Cooperative Society functioning for one or more taluka; or more than one district and the Maharashtra Rajya Sahakari Dudh Mahasangh has also been declared as a specified society for the purpose of this section regard being had to their financial position and share capital. The jurisdiction of these societies covers wider area and field. On that basis having regard to their financial position and share capital they are declared as specified societies. It is nobody''s case nor it is demonstrated that the societies covered by the impugned notifications will not be able to bear the financial burden of elections. It is also not shown that this declaration has adversely or prejudicially affected the affairs or management of these societies. On the other hand these notifications will help them to have free, fair and impartial elections which will ensure a stable managing committee. In view of the matter, we do not find any substance in any of these writ petitions.

Hence Rule stands discharged in all these Writ Petitions with no orders as to costs.