
(1992) 09 SC CK 0073

In the Supreme Court Of India

Case No : Civil Appeal No. 2706 of 1988, (with C.A. No"s. 5030 of 1985, 1762 of 1986, 2692-2705, 2707-2735, 4148 of 1988; Writ Petition (civil) No"s. 686, 810, 880, 1065, 1202 and 1251 of 1988, 85, 265, 283, 488, 687, 728, 799, 998, 1051, 1178 and 1362 of 1989, 4

Bhandara District Central Co-operative Bank Ltd. and Others, APPELLANT
Vs
State of Maharashtra and Another etc. RESPONDENT

Date of Decision : 10-09-1992

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 73A

Citation : AIR 1993 SC 59 : AIR 1992 SC 59 : (1992) 2 SCALE 617 : (1993) 3 SCC 259 Supp : (1992) 1 SCR 501 Supp

Hon'ble Judges : S. Mohan, J;N. Venkatachala, J;L. M. Sharma, J

Bench : Full Bench

Advocate : Anil B. Divan, V.N. Ganpule, B.A. Masodkar, Y.K. Naik, K.R. Choudhary, R.K. Sharma and A.M. Khanwilkar, for the Appellant; S.B. Bhasme and A.S. Bhasme, for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—The petitioners (including the appellants in civil appeals also) have challenged the constitutional validity of Section 73A of the Maharashtra Co-operative Societies Act, 1960, as being violative of Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India. As all these cases have been heard together, they are being disposed of by this common judgment. Except where otherwise indicated, we are proceeding to refer to the facts of Civil Appeal No. 2706 of 1988 which has been treated as the leading case.

2. By the impugned provisions a designated officer as defined in Section 73A(1) is not allowed to hold office in more than one society in violation of the restrictions mentioned in Sub-sections (2) and (4) thereof; and by Sub-section (5) the maximum period available to a designated officer to continue in office has been fixed in peremptory terms. Before proceeding further it will be useful to examine the provisions of Sub-sections (1), (2), (4) and (5) of Section 73A which

are in the following terms:

73A. (1) In this section and in Sections 73C, 73D and 73E, "a designated officer" means the Chairman and the President, and includes any other officer of the society as may be declared by the State Government, by notification in the Official Gazette, to be a designated officer, but does not include, any officer appointed or nominated by the State Government or by the Registrar.

(2) No person shall at the same time, be or continue to be a designated officer of more than one society falling in Category I or Category II or Category III of the categories mentioned below; and shall not be or continue to be a designated officer in more than two societies in the aggregate in the three categories:

Category I - Societies, the area of operation of which extends to the whole of the state,-

(a) but extends to Greater Bombay and the authorised share capital of which is more than Rs. 10 lakhs; or

(b) but extends to one or more districts; or

(c) is less than a district and the authorised share capital of which is more than Rs. 10 lakhs.

Category III - Societies, the area of operation of which does not extend to the whole of a district but extends to one or more talukas, or the authorised share capital of which is not more than Rs. 10 lakhs but is not less than Rs. 5 lakhs.

Explanation - For the purposes of this sub-section, the expression "society" shall not include a society with no share capital and a society not engaged in commercial activities.

(4) If any person becomes, at the same time, a designated officer of societies, in excess of the number prescribed under Sub-section (2), unless he resigns his office in the society or societies in excess of the said number within a period of ten days from the date on which he is elected or appointed a designated officer of more than the permissible number of society or societies, or if the elections or appointments are held or made simultaneously, from the date on which the result of last of such elections or appointments is declared, he shall, at the expiration of the said period of ten days, cease to be a designated officer of all such societies and thereupon, notwithstanding anything contained in any other provisions of this Act, a person so resigning or ceasing to be a designated officer of any or all such societies shall not be eligible for being re-elected or re-appointed as a designated officer of such society or societies during the remainder of the term of office for which he was so elected or appointed; and at no point of time such person shall be a designated officer of societies in excess of the number prescribed under Sub-section (2).

(5) No person shall be, or shall continue to be, a designated officer of any society of any of the categories referred to in Sub-section (2), for a period of more than

ten years in the aggregate and at the expiration of that period any such person shall cease to be a designated officer of that society, and shall not be eligible for being re-elected or re-appointed as a designated officer, until a period of one term of the committee has elapsed after completion of the aforesaid period of ten years.

Explanation - For the purposes of this sub-section -

(a) in calculating the aggregate, period of ten years in office, any period for which the person concerned may have been such officer, before the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1969, shall be ignored;

(b) if any person resigns his office as a designated officer at any time within twelve months of the date on which the aggregate, period of ten years would, but for his resignation, have been completed, he shall be deemed to have completed the period ten years on his resignation.

3. According to the case of the petitioners, the designated officers are entitled to manage the affairs of the co-operative societies as entrusted to them by the members, without any interference by the legislature, and the restrictions imposed by the impugned provisions are violative of their fundamental rights as protected by Articles 19(1)(c) and (g) of the Constitution. The members of a co-operative society, according to the argument, are entitled to conduct the affairs of the society in accordance to their choice and any interference in this is uncalled for. We were not able to fully appreciate this argument, and so we pointed out to Mr. Anil B. Divan, the learned Counsel for the petitioners (that is, the appellants in Civil Appeal No. 2706/88), that there was no impediment in the running of the societies, and the impugned provisions are attracted only in such cases where the societies are desirous of being registered under the Act with a view to take advantage of the provisions thereunder. The Act does not place any restriction on the formation of any association or union for carrying on any trade or business, nor does it require such unions or societies to be registered under the Act. The petitioner-societies were free to proceed as they wished (of course, they could not be allowed to contravene any law) without being subjected to any condition placed by the Act, but in that case they would not be entitled to the benefits of the Act. Mr. Divan appreciating the situation, explained his point by saying that as a consequence of Section 145 of the Act an unregistered society is not entitled to use the word "co-operative" in its name or title (without the sanction of the State Government) and this by itself puts the society under a disadvantage, affecting its trade and business. The learned Counsel fairly conceded that he is not in a position to rely on any other circumstance in support of his argument based on Articles 19(1)(c) and (g). We do not find any merit in this point which is solely based on the ban of the use of the word "co-operative", by Section 145. The restriction is clearly reasonable and in the interest of the general public and is, therefore, saved by Clause (6) of Article 19. The purpose of Section 145 is to ensure that the general public has adequate notice that a

society they may have to deal with, is unregistered and, therefore, not amenable to the provisions of the Act, before taking a decision about their relationship with the same. The persons desirous of running such a society have been placed under an obligation to publicly declare that their society is not registered under the Act, and we do not see any valid objection to this course. The main argument of Mr. Divan is, therefore, overruled.

4. The learned Counsel has, next, challenged Section 73A of the Act on the ground that the provisions separating the Chairman and the President from the other members of the managing committee for the application of the impugned restrictions are discriminatory. He also urged that the further power given to the State Government to declare any other officer of the society as a designated officer is bad in the absence of a proper guideline. The State Government is, thus, vested with unlimited, unbridled and, therefore, arbitrary power. Mr. Masodkar appearing on behalf of the appellant in Civil Appeal No. 2699 of 1988, besides reiterating the questions discussed earlier, offered some additional reasons. He argued that a separate class were created by Section 73A which was not permissible in view of the provisions in Sections 72 and 73. The final authority of every society has been vested by Section 72 in the general body of members in general meeting and by Section 73 the management is vested in the managing committee and in that background if the legislature intended to put any limitation on the period of tenure it should have done so with respect to all the members of the society, or in any event all the members of the managing committee. The learned Counsel also objected to the exception made by Section 73A in favour of an officer appointed or nominated by the State Government or by the Registrar.

5. We have considered the argument and examined the provisions of the Act placed before us by the learned Counsel for the parties. It appears that there is clear basis for selecting the category of persons to be referred to by the expression "designated officer" for the purposes of Sections 73A, 73C, 73D and 73E, and the policy in this regard is perfectly reasonable, having regard to the object of the amendment. The impugned provisions restrict the period for which a person either elected or appointed (under the Act, the rules or the by-laws, who is entitled to give directions in relation to business of a society, can remain in office. The object of the amendment is clearly discernible as preventing a person or a group of persons from monopolising the affairs of a society by exercising control thereon indefinitely for a long period. A co-operative society is not meant to be run as a close preserve of an individual or a group of persons. "co-operative" has been understood as a form of organisation where persons voluntarily associate together on a basis of equality for the promotion of their economic interests. The emphasis is on 'co-operation'. It is, therefore, desirable to have the active participation of as many members as may be possible. The Statement of Objects and Reasons for the 1969 Amendment has mentioned that the object of the Act was not being fully achieved as a group of persons were found holding the key positions in several important co-operative institutions

simultaneously and for long periods, with a result that new leadership was not being built up to the desired extent. To check this unhealthy tendency and to give a more democratic character to the co-operative institutions, it was found necessary to prescribe the limitations in the statute itself by amendment. When after watching the effect of the earlier amendments, the Gujarat legislature found that the goal was not fully achieved, and a further amendment was necessary, the impugned provisions were inserted in the Act. All this has done for realising the objective set out by the Act and is clearly in the public interest.

6. Reliance by Mr. Masodkar on Sections 72 and 73 of the Act is also misplaced. The interest taken by all the members of the society in the working thereof can hardly be described as a participation in the running of the society. The sittings of the managing committee also take place after intervals and the looking after of the affairs of the society and implementation the decisions are left to persons who are in the words of Section 2(20) "to give directions in regard in business of such societies". As to which officer exercises this power effectively with reference to a particular society will depend on the facts and circumstances which would differ from society to society, but so far the Chairman and the President are concerned they certainly come in that class. This is the reason that Section 73A includes the Chairman and the President within the expression "designated officer" and leaves it to the State Government to issue further notifications according to the exigencies arising in a particular society. Thus, the basis of distinction made between the 'designated officers' as defined in the Act and the other members has clear nexus with the object which the amendment seeks to achieve. The plea of illegal discrimination must, therefore, be repelled as being without any merit. It has been firmly established that this Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of the legislature in enacting law which is otherwise within its legislative competence.

7. So far the argument of excessive delegation of power u/s 73A(1) is concerned, it has to be appreciated that the power of the State Government to include within the expression "designated officer" is limited to "officers", which terms has been defined u/s 2(20) as a person elected or appointed to give directions in regard to business of a society. The State Government, therefore, cannot include a person who has no power to issue directions within the expression. The element of arbitrariness, which is presumed in the argument of the petitioners, is thus adequately taken care of. Besides, while choosing a person, the State Government has to keep in mind the object of the legislation as discussed in the previous paragraph. It is not necessary to have the guideline in express terms in the very section dealing with delegation. The entire Act is available for this purpose. This Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, had, while considering a similar argument with reference to the *Essential Supplies (Temporary Powers) Act, 1946*, observed that the preamble and the body of the Act sufficiently formulate the legislative policy. The exercise of power u/s 73A(1) has, therefore, to be in accordance with the policy of the

impugned amended provisions read with the entire Act, and the discretion in this regard by the State Government is to be exercised in a manner which will advance this policy. In paragraph No. 8 of their Writ Petition No.2098 of 1986 in the High Court, the appellants in Civil Appeal No. 2706 of 1988 have stated that by a notification issued u/s 73A(1) the respondent-Government has included within the definition of designated officer (i) Vice-Chairman; (ii) Vice-President; (iii) the Secretary, Additional Secretary or the Joint Secretary, when he is not a salaried employee of the society and (iv) the Managing Director or the Joint Managing Director when he is not a salaried employee of the society. This only illustrates that the State Government has not either misconstrued or misused the provision. Mr. Masodkar further urged that since in pursuance of Section 74, proper discipline can be maintained on the co-operative societies, it was not necessary to have brought in, the amendments which are under challenge. This again is a matter of policy to be decided by the legislature and the judiciary cannot substitute its own view in this matter.

8. For appreciating the next argument of Mr. Diwan it is necessary to mention that the provisions of Sub-section (5) of Section 73A as initially inserted in the Act in 1969 have been modified from time to time. When the section was inserted for the first time, the bar under Sub-section (5) was with reference to a consecutive period of 6 years. This period was later changed to a consecutive period of 10 years. In the sub-section as it stands now, the consecutive period of 10 years has been substituted by a period of 10 years in the aggregate. The learned Counsel has challenged this last amendment as being arbitrary. The argument is that if earlier a decision was taken to link the bar with a consecutive period of 10 years it should not have been changed again. We do not see any merit in this point either. It was against a question of policy which was adopted only after a thorough examination. The Joint Committee to which the relevant Bill was referred, after studying the situation, stated in its report that its conclusion was that because of the "concept of consecutive period of 10 years in the existing Section 73A(5), the provisions of the Act were not being implemented in the letter and spirit of the law." The Committee, therefore, thought that this disqualification should be applicable in cases of period of more than 10 years instead of the existing consecutive period of 10 years. The Committee also thought that the person concerned should not be eligible for being re-elected for a period of one term of the Committee instead of the present period of 3 years. It is then urged that since the period of 10 years in aggregate is made applicable to every case irrespective of the period for which a person has already remained in the office in the past, the same is discriminatory. We do not see any force in the point. The impugned provision is not meant to rectify everything which has happened in the past. By Prospective application it is now putting the bar on all the persons who have already completed the period of 10 years. If a person has already in the past, managed to remain in office, for, say 15 years continuously, nothing is permissible to undo it. The only question which is relevant is whether he has completed an aggregate of 10 years. The equality before law does not

mean absolute equality in mathematical terms. Let us take the case of retirement of a government officer where the age of super-annuation is fixed at 58 years. By applying the same rule to persons entering in government services at varying ages the equality clause of the Constitution is not violated. The test is whether the rule is uniformly applied.

9. In the result we do not find any merit in the points raised on behalf of the petitioners.

10. The learned Counsel for the appellants, Mr. Diwakar B. Balvekar, in Civil Appeal Nos. 2730 and 2734 of 1988 attempted to raise a new plea not taken earlier. He said that the co-operative societies in question are small ones and are, therefore, not covered by the amended provisions. This is not a pure question of law and cannot be raised at this stage.

11. For the reasons mentioned above all the writ petitions, civil appeals and special leave petitions are dismissed but, in the circumstances without costs.