

(2005) 11 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 4485 of 2005

Bhandara District Central Co-operative Bank Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-11-2005

Acts Referred:

Citation : (2006) 1 ALLMR 609 : (2006) 3 BomCR 899 : (2006) 2 MhLj 452

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : A.M. Ghare, L.H. Kothari and L.M. Porandwar, for the Appellant; S.W. Ghate and Dipak Thakre, AGP for respondent Nos. 1 and 3, for the Respondent

Judgement

B.P. Dharmadhikari, J.—In this writ petition under Article 226 of Constitution of India challenge is to the order dated 4-8-2005 issued by respondent No. 3 - Collector cancelling the meeting scheduled on 5-8-2005 in which petitioner was to elect its representative on respondent No. 2 Maharashtra State Co-operative Bank Ltd. Respondent No. 1 herein is the State of Maharashtra through Collector, Mumbai. Considering the nature of controversy, Rule. Rule is made returnable forthwith and heard finally with the consent of the parties.

2. It is not in dispute that petitioner is a lead District Central Co-operative Bank. It is a Specified Co-operative Society is contemplated by Section 73G of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as Cooperative Act). Earlier it was operating in entire Bhandara district which then comprised of area now distributed between revenue district of Bhandara and Gondia. On 24-4-1999, State Government issued notification bifurcating the erstwhile Bhandara district into present Bhandara and Gondia districts. These new districts have been constituted from 1-5-1999. On 31-7-2003, State Government issued notification u/s 18C of Co-operative Act and bifurcated old Bank into two societies namely Bhandara District Central Cooperative Bank and Gondia District Central Co-operative Bank. The erstwhile Bank was holding shares worth Rs. 93,39,000/- only of respondent No. 2 Bank and this amount in

purchasing shares has been invested from year 1958 till 2001, After bifurcation, these shares have been divided between Bhandara Bank and Gondia Bank in proportion to their respective borrowings from respondent No. 2. The petitioner Bank holds shares of Rs. 48,13,000/- only while Gondia Bank holds shares of Rs. 45,26,000/- only. This is communicated by petitioner to respondent No. 2 on 10-6-2004. The Notification dated 31-7-2003 provides that bye-laws of erstwhile Bhandara Bank shall mutatis mutandis apply to petitioner Bank as also Gondia Bank.

3. As per the provisions of bye-laws applicable to respondent No. 2 Bank, respondent No. 2 is to have representative of petitioner-Bank on its Board of Directors. As per Clause No. 51(A) of said bye-law, the erstwhile "Bhandara" Bank had its representative on Board of Directors of respondent No. 2. The said representative is elected by Board of Director of respective District Central Cooperative Bank. The petitioner is therefore entitled to have its representative on Board of respondent No. 2. Respondent No. 1 informed respondent No. 3 on 21-6-2004 that election of respondent No. 2 Bank were scheduled on 22-7-2004 and for participation in it, a representative of petitioner should be elected by respondent No. 3 as required by Section 144C(2) of the Co-operative Act. Accordingly, Administrator of petitioner-Bank was sent as representative on 17-7-2004. The tenure of Administrator expired and elected body assumed office on 17-4-2005 and on 14-5-2005, petitioner-Bank requested respondents No. 1 and 2 to hold elections for sending representative on respondent No. 2 bank. On 28-7-2005 respondent No. 3 informed petitioner-Bank that the meeting for electing representative shall be held on 5-8-2005 and accordingly, notices of said election were served on all directors of petitioner-Bank. In this background, petitioner was shocked when it received the communication dated 4-8-2005 cancelling the meeting in view of bar contemplated u/s 27(3) of Co-operative Act. This communication is challenged in present petition.

4. I have heard Advocate A.M. Ghare for petitioner, Advocate S.W. Ghate for respondent No. 2 and Advocate AGP Shri Thakre for respondents No. 1 and 3.

5. Advocate A.M. Ghare after mentioning the facts stated above has contended that when the representative of petitioner Bank was already called for and sent on 17-7-2004, bar u/s 27(3) was not looked into. He argues that said bar is not applicable at all because petitioner has invested in purchasing shares of respondent No. 2 on 24-7-1958 and it is member of respondent No. 2 since then. The provisions of Section 27(3) are incorporated by amendment with effect from 23-8-2000 and are not attracted in case of old member like petitioner. He states that new registration number given to petitioner Bank is only a technical requirement and petitioner is in fact under same obligations as to discharge of loan etc. as erstwhile Bhandara Bank. He invites attention to provisions of Section 18C and the order dated 31-7-2003 issued under it in this respect.

6. As against this, Advocate S.W. Ghate for respondent No. 2 has contended that the erstwhile Bhandara District Central Co-operative Bank has ceased to exist

and two new societies have come into existence and these societies are deemed to be registered u/s 9 of the Co-operative Act from 1-8-2003. He therefore states that in view of Section 27(3), the representative of petitioner society cannot have a right to vote for three years i.e. upto 31-7-2006 and hence, the notice dated 4-8-2005 impugned in this petition is perfectly legal. He states that earlier notice for election was erroneously issued and said mistake has been corrected after necessary directions in this respect were issued by Collector, Mumbai. He further states that no prejudice is caused to petitioner because the petitioner Bank continues to receive the benefits available to it as before.

7. Learned AGP Shri Thakre adopts the arguments advanced by respondent No. 2 and states that mistake was discovered when representation was made by one Choudhary and thereafter, Collector, Mumbai directed corrective steps to be taken and accordingly, mistake has been rectified by cancelling the meeting of election.

8. In this respect it will be first necessary to find out the scope of Section 27(3) of Co-operative Act and its effect. This issue is considered by Hon"ble Apex Court in judgment reported at Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, . One of the questions considered was whether the amendment introduced with effect from 23rd August, 2000 also applied to societies who had not completed period of three years on the date after becoming member of federal society. Paragraph 20 and 25 of the judgment of Hon"ble Apex Court are important and the same read :

20. The proviso for which the clarificatory Ordinance has been promulgated, it appears that the Legislature advisedly used the expression "new members". Members have been defined under the State Co-operative Societies Act (Section 2(19) of the Act of 1960) meaning a person joining in an application for registration of a co-operative society which is subsequently registered or a person duly admitted to membership of his society after registration and includes a nominal associate or sympathizer member. Section 27(3) proviso as noticed above adds an appendage any new before the members society; whereas Mr. Bobde contended that the appendage "any new" cannot but mean though existing but not voted since Section 27 on which the proviso as noticed above was added by Maharashtra Co-operative Societies (Second Amendment) Act, 2000 which came into force on and from 23rd August, 2000 and deal with the parties voting rights in terms of Section 27 of the Act of 1960 any other interpretation would be in violent departure from the statutory intent and it is on this score. Mr. Bobde did put very strong reliance as to the understanding of the Government as is laid down in the Statement of objects and reasons. Statement of objects as noticed above can only be looked into in the event of there being any requirement therefore and not otherwise. The meaning of the expressions used in the legislation, if is of doubtful nature may be a guide or an aid but not otherwise. The legislature has used the expression new - obviously with an intent to ascribe something other than existing members and this additional

requirement by reason of an additional appendage by way of a statutory amendment, must be stated to be that indicative of the intent and to convey a definite meaning. The word "new" in common English parlance cannot but mean something which was not existing and thus a society becoming a member on or after 23rd August, 2000 and not prior thereto; it cannot possibly apply to existing members but only new members after the amendment.

25. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being in apposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute. Bearing in mind, the aforesaid principle of construction, if the expression "any new member society" occurring in the proviso to Sub-section (3) of Section 27 is construed, it conveys the only meaning that it refers to the societies to be formed hereafter and not of those societies which have already become member societies of the federal society. Therefore, the requirement of the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society would apply on to those societies which became member society of the federal society after 20th August, 2000. In this view of the matter, the impugned judgment of the High Court does not suffer from any infirmity. Even if there remained any doubt in the matter of interpreting the proviso, the Ordinance that has been promulgated on 27th February, 2001 called the Maharashtra Ordinance No. X of 2001, after the first proviso to Sub-section (3) a second proviso had been inserted has removed any doubt or controversy inasmuch as it has been indicated therein that the first proviso will not apply to the member society which has invested any part of its fund in the share of the federal society before the commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2000 dated 20th August, 2000. The aforesaid Ordinance also has been given a retrospective effect, to be effective from 23rd August, 2000. The Ordinance having been held to be valid by us as stated above, the so-called prohibition contained in the first proviso to Sub-section (3) of Section 27 will not apply to all those societies which have already become members of the federal society prior to 23rd August, 2000.

9. In 2003(1) Mh.L.J. 313 between Vasantrao Annasaheb Ubale v. State of Maharashtra, decided on 12-2-2001, Hon'ble Division Bench of this Court has

considered provisions of Section 27(3) and (3A) and has held that the said provisions are prospective and would not apply in case of members who were already enrolled as members prior to 23rd August, 2000. Perusal of paragraph 14 of this judgment reveal that almost identical reasons as are given by Hon''ble Apex Court in its judgment (supra) are also mentioned for arriving at this finding. The Hon''ble Apex Court has found said provisions applicable to "new member society" of a federal society. Paragraph 16 of judgment of Division Bench is important for present controversy and it reads :

16. An individual member of a society who was once eligible to exercise voting power in the affairs of the said society cannot be said to be ineligible because of subsequent Amendment. Our attention was invited to the statement of Objects for Amendment of Section 27 of the Act, which states as follows :

It has been noticed that when the election to the federal societies are due, number of new societies are registered with a view to get voting right on that federal society. It is also noticed that majority of the newly registered societies thereafter become defunct and do not fulfil their objective. The Commissioner of Co-operation has conducted survey of the defunct societies in the year 1995 and number of such defunct societies was 11548. It is found that majority of such (defunct) societies are formed only to be able to take part in the election of the federal societies. The participation of such societies in the election of federal societies hampers the interaction and representation of good and working societies in the federal societies. Therefore, the government considers it necessary to stop this unhealthy trend for such societies, by suitably amending Section 27 of the Act. To ensure its effectiveness, care is also taken to curb enrolment of individual members on the eve of election to get the undue advantage in election by vested interest, by putting a qualifying period of two years before such member gets the right to vote for the elections of the board of the society.

Thus, it is submitted that taking past experience of registration of defunct societies on the eve of election and/or enrolment of individual members on the eve of election, the Amendment has been proposed. What we find from the Statement of Objects is that the past experience has been considered and in future same thing should not be repeated and for that purpose the Amendment has been introduced and brought into force. However, the statement of object never contemplated that the said Amendment is to be applicable retrospectively and/or retroactive. What is further pertinent to note is that the Legislature only considered the voting power of a member in the light of election to the managing committee, and therefore, in order to stop the unhealthy trend of registration of the societies and/or enrolment of individual members on the eve of election, the said Amendment has been brought into force. Thus, it was never desired that those member societies or individual members who were enrolled prior to coming into force the said Amending Act, would also be covered by the said Amendment, because in that eventuality the Statement of Objects should have made it very

clear that the said Amendment has been proposed retrospectively and/or retroactive. However, the statement of object points out that the mischief which are noticed in the past, should not be repeated and/or the same should be stopped. What we find is that voting in the elections to elect the managing committee is itself not the only voting power in the affairs of the society, but it may be a part of it, and therefore, the object of this Amendment is not to take away the total voting power of the members in the affairs of a society but to regulate the part of the said power which is related to the elections to the managing committee of a society. However, even though this is the object, the provision in the Amending Act is general nature totally affecting the voting powers of the members in the affairs of the society. When the Statement of Object only contemplate to regulate part of such voting power in the affairs of a society, it will be inappropriate to take away the said power of a member on the basis of the general language used in the said Amending Act. Thus, what we find is that the Statement of Object of Amendment even though considered the past experience qua the voting rights in the election to managing committee of a society, it does not explain as to why the total voting power is regulated, it is well settled principle that when we look to the Statement of Object when we find that there is some ambiguity in interpreting the concerned provision. However, the general language used in the Amending Act number 41 of 2000, cannot be interpreted to so as to restrict it to the object which is evident from the statement of object. We have gone through the Statement of Object of the Amending Act number 41 of 2000 only in order to scrutinize whether the Legislature desired to have the effect of the said Amendment retrospectively or retroactive. We find from the Statement of Object the said Amendment is to be made applicable prospectively and the Legislature never desired to make the same applicable retroactive as submitted by the learned Counsel for the respondent State. Therefore, we find that all those members who were enrolled on or before 22-8-2000 either as a member of federal society or an individual member of a society, are entitled and eligible to take part in the affairs of the concerned society and the Amendment does not affect the voting power of the members who were enrolled on or before 22-8-2000 or two years prior thereto. The said Amendment only regulates the voting powers of the member societies and/or individual members who are enrolled on or after 23-8-2000 i.e. the day on which the said Amendment has brought into force.

10. At this stage, it would be necessary to make reference to provisions of Section 27(3) and (3A) of Co-operative Act to find out whether the petitioner Bank can be treated as "new member society" to whom the requirement of the completion of the period of three years from the date of its investing any part of its fund in the shares of respondent No. 2 society will apply. The requirement of completion of period of three years is from the date of investment and not from the date of enrolment. In view of the above judgment of Hon''ble Apex Court, said requirement is significant. Said provision is read :

Section 27. Voting powers of members, (3) A society which has invested any part

of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society;

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of period of three years from the date of its investing any part of its funds in the shares of such federal society:

Provided further that, where the election is to a reserved seat u/s 73B, no person shall have more than one vote. (3A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrolment as a member of such society. To find out this, reference to provisions of Section 18C of Co-operative Act will be necessary. It reads :

Section 18C. Reorganisation of societies on account of alteration of limits of local areas in which they operate. -- (1) Where the area of operation of any society or societies is restricted to any district, taluka, municipal area or any other local area and such area is divided into two or more areas, or merged in any other area, or is diminished or increased or is otherwise altered, under any law for the time being in force and the State Government is satisfied that in the public interest, or in the interest of co-operative movement, or in the interest of society or societies, or for the purpose of proper demarcation of area of operation for the societies in each area, it is essential to reorganise any such society or societies, the State Government may by an order, published in the official Gazette, and in such other manner as it deems that, provided for division of any existing society into two or more societies, amalgamation of two or more existing societies into one society, dissolution of any existing society or reconstitution of any existing society, affected by the territorial changes.

(2) An order made under Sub-section (1) may provide for all or any of the following matters, namely :

(a) the division of an existing society into two or more societies and the area of operation of each societies;

(b) the amalgamation of two or more existing societies into one society and the area of its operation;

(c) the dissolution of any existing society;

(d) the re-organisation of any existing society and the area of its operation;

(e) the removal of the committee of any existing society and the appointment of an administrator or an interim committee of management, to manage the affairs of the existing society or of the new society or societies, under the control and direction of the State Government, for a period not exceeding two years, as may be specified in the order or until the successor committee of the concerned society is duly constituted, whichever is earlier;

Provided that the period of two years may be extended by the State Government from time to time, so however that the total period does not exceed three years in the aggregate;

Provided further that, it shall be competent for the State Government to alter and appoint from time to time, during the said period or extended period and for any reason whatsoever, any other Administrator or an interim committee of management or any or all the members of such committee, as it deems fit, notwithstanding that the term or extended term of office of Administrator or an interim committee of management or of any or all the members of such committee has not expired.

(f) in the case of an existing federal society, the transfer of any of its member societies a member of another federal society named in the order;

(g) the transfer, in whole or in part, of the assets, rights and liabilities of any existing society, including the rights and liabilities under any contract made by it to one or more societies and the terms and conditions of such transfer;

(h) the substitution of any such transferee for the existing society, or the addition of any such transferee as a party to any legal proceedings or any proceeding pending before an officer or authority, to which the existing society is the party; and the transfer of any proceedings pending before the existing society or its officer or authority to any such transferee or its officer or authority;

(i) the transfer or re-employments of any employees of the existing society to, or by, such transferee and the terms and conditions of service applicable to such employees after such transfer or re-employment:

Provided that, the terms and conditions of any such employee shall not be made less favourable than those applicable to him while in service of the existing society, except with the previous approval of the State Government;

(j) the application of the bye-laws of the existing society to one or more societies without any modifications or with such modifications as may be specified in the order;

(k) all incidental, consequential and supplementary matters as may be necessary or expedient to give effect to the order made under this section.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882 or the Registration Act, 1908, the order issued under this section shall be sufficient conveyance for transfer of the assets, rights and liabilities of the existing society as provided in the order.

(4) Any order made by the State Government under the section shall be final and conclusive and shall not be called in question in any Court.

(5) Except as otherwise provided by this section or by any order issued thereunder, the provisions of this Act and the rules and orders issued thereunder,

shall in all other respects apply to the existing societies and the new or reorganised societies formed under this section.

11. From above it is apparent that the society coming into existence after division of an existing society is not a new society. It inherits all obligations and liabilities of the society which is being sub-divided in proportion to the share capital received by it from such parents society. It also gets all rights of such an earlier society. In this respect, perusal of order dated 31st July, 2003 by which the erstwhile Bhandara District Central Co-operative Bank Ltd. has been divided into 2 Banks needs to be considered. It states that 1st August, 2003 is the appointed date for coming into existence of these two Banks. It and then proceeds to divide then existing Bhandara District Central Co-operative Bank Ltd. with its head office and under into two separate District Central Cooperative Banks. It further states that these two new Banks shall be deemed to be registered u/s 9 of Co-operative Act and there new registration numbers are also given. The tahasil (revenue) forming part of area of these two Banks are also mentioned and then it proceeds to appoint Administrator to manage their affairs. Persons and societies who are members residing in as also the branches and the offices functioning in such revenue tahasil have been treated as members of respective Bank having jurisdiction on that area. The share capital held by individuals as also societies has been divided between two Banks on the basis of registered address of the society and the residential address of the individuals. The share capital held by Government has been divided between two Banks in that proportion. The funds created out of profit are also divided in the same proportion. Bad or doubtful debts and the reserve in excess or loss is divided as per the area of operation of respective Bank. Borrowings, overdrafts and deposits are also divided on the actual area basis along with bills for collection (receivable) and inwards bills. Other liabilities are divided in proportion in which share capital has been divided. It has been further clarified that such division shall not affect any rights and obligations of respective banks so far as they are transferred by said order to them and shall not render defective any legal proceedings which may be continued or commenced by or against the new societies. Clause 16 of the order states that "The shares of the Maharashtra State Co-operative Bank shall be divided in the proportion to the borrowings from the Maharashtra State Co-operative Bank and the shares of other Co-operative societies except Primary Agricultural Co-operative Societies shall be retained by the Gondia District Central Co-operative Bank. The investments in the shares of the Primary Agricultural Co-operative Societies shall be divided on the actual area basis."

12. From the above order, insofar as shares of respondent No. 2 with petitioner is concerned, it is apparent that the same has been sub-divided in proportion to its borrowings and has become property of petitioner. It is not that the date of purchase of shares or investment has undergone any change. The said amount of investment with petitioner stands invested from 1958 and it is not the case of respondent No. 2 or of any other respondent that petitioner has become its

member by submitting fresh application and it has enrolled petitioner as new member after 1-8-2003. There is nothing on record to show that petitioner has been enrolled as new member after 23-8-2000. The very same shares as held by erstwhile Bhandara District Central Co-operative Bank Ltd. with all rights and liabilities are inherited by petitioner, only with change of registration. It cannot therefore be said that petitioner is a new member who has not completed period of three years from the date of its investing any part of its fund in the shares of respondent No. 2 federal society. On the contrary, in July, 2004 itself respondents accepted representative of petitioner on its Board of Directors. The predecessor of petitioner viz. erstwhile Bhandara District Central Co-operative Bank Ltd. was sending its representative to respondent No. 2 and said right is therefore also available to present petitioner. In the light of discussion of Hon'ble Apex Court above on said provision of Section 27(3), it is apparent that there are two essential ingredients of said proviso and the petitioner Bank cannot be treated as "new member society" to whom the requirement of the completion of the period of three years from the date of its investing any part of its fund in the shares of respondent No. 2 society will apply. Even if reasoning of Hon'ble Division Bench in its judgment (supra) is applied in the facts of present case, the petitioner-society has not been brought into existence to gain unfair advantage in the elections of Board of Directors of respondent No. 2 federal society. On the contrary as is apparent respondent No. 2 society has advanced huge loan amounts to petitioner and investment of petitioner with respondent No. 2 is also substantial. It is thus apparent that said rider of three years imposed by amendment in Section 27(3) proviso, shall not apply in cases of division of existing societies when the existing society was already enjoying the right to send its representative on federal society.

13. The impugned communication dated 4-8-2005 issued by respondent No. 3 and similar communication issued by respondent No. 1 Collector, Mumbai cancelling the meeting of petitioner for electing its representative schedule earlier on 5-8-2005 are hereby quashed and set aside. Respondents are directed to hold appropriate meeting in place of cancelled meeting for transacting the same business as early as possible, and in any case within period of two months from the date of communication of this order to them. Rule is made absolute in above terms. No order as to costs.