

(1981) 03 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 39 of 1981

Deorao Vithoba Kale

APPELLANT

Vs

Divisional Joint Registrar Co-operative Societies, Nagpur and
others

RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 150, 77A, 78, 78(1)(b)

Citation : (1982) MhLj 543

Hon'ble Judges : V. Mohta, J; P.G. Palshikar, J

Bench : Division Bench

Advocate : Subhash Paliwal, Pradip Marpakwar and Basant Agrawal, for the
Appellant; A.A. Desai, Asstt. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Mohta, J.—Assistant Registrar, Co-operative Societies, Sub-Division, Pusad, District Yavatmal, respondent No. 3, passed an order dated 29-12-1980 (Annexure-VI) cancelling his earlier order of appointment of the petitioner as a member of the Managing Committee of Umarkhed Block Co-operative Purchase and Sale Society Limited, Umarkhed, a society duly registered under the Maharashtra Co-operative Societies Act, 1960 (The Act, for short). This order is impugned in the present petition. On 29-11-1978 in exercise of the powers u/s 77-A of the Act, the third respondent nominated three persons to be the members of the Managing Committee of the Society which included the petitioner. The term was co-extensive with the term of the other members of the Managing Committee. It appears that the petitioner became defaulter of loan borrowed from the Society to the tune of Rs. 16803. As a result, a show cause notice u/s 78 was served on him. This was followed by an order dated 9-11-1979 (Annexure-3) dismembering the petitioner on the aforesaid ground, contemplated under Rule 58 (1)(a) of the Maharashtra Co-operative Societies Rules 1961 ("the rules" for short). Subsequent to this order, the petitioner

cleared the entire dues. On 14-2-1980 he was again nominated as the post was vacant and the disqualification was removed. Common point is that since then the petitioner continued as a member. The Divisional Joint Registrar (respondent) No. 1) called for the report regarding the nomination of the petitioner from the District Deputy Registrar (respondent No. 2). On 25-12-1980, the second respondent sent the report mentioning that there was no ground for removing the petitioner as he was validly nominated member having no disqualification at the relevant time and that too after 10 months. It is against this back ground that the impugned order (Annexure-VI) came to be passed holding that section 78 (1)(b) of the Act prohibited appointment of the same person over again.

2. Shri Paliwal, the learned Counsel for the petitioner, in the first place, contended that the impugned order is violative of the principle of natural justice inasmuch as, admittedly removal has taken place without issuing any show cause notice to the petitioner. It seems to us that grievance made in this connection is sound. On merits, it was contended that in view of the provisions of section 78 (1)(b) of the Act, there is no bar to the appointment of the same person over again after the disqualification is removed. If that was the intention of the legislature in place of the word "person" the word "other person" would have been incorporated in the said section. Shri Desai, the learned Assistant Government Pleader, on the other hand, contended that by virtue of the fact that appointment has to be in his place it has to be presumed that the appointment of the same person was prohibited. We have given our thought to this question and in our judgment interpretation put on behalf of the State is fallacious. On the language of the provision, we see nothing illegal in reappointment of a person after the disqualification is wiped out. Moreover, we fail to appreciate under what provision of law the third respondent reviewed his own order. The only power of review in the Act is to be found in section 150 but obviously it does not grant any jurisdiction to the third respondent for review. It was further contended that the order of nomination (Annexure-IV) was void ab initio and, therefore, the third respondent had every jurisdiction to correct his own mistake when he noticed it. We are unable to see how this appointment is void ab initio. It is a common point that either on the date of his fresh nomination on 14-2-1980 or subsequently, the petitioner had not incurred any disqualification.

3. Shri Desai contended that as other alternate remedy of appeal and revision is provided for in the Act, the discretionary relief of writ jurisdiction should not be granted. Now, in the present matter, second respondent is the appellate authority and first respondent is the revisional authority. It is clear that all the respondents are actively concerned with the impugned order. Moreover, non-interference on the ground of alternate remedy is a rule of practice and not of law. By this time the remedy of appeal seems to have been barred. What is canvassed before us is a pure question of law and for all these reasons we are unable to uphold the preliminary objection raised on behalf of the respondent regarding maintainability of the petition.

5. In the result, the petition succeeds, The rule is made absolute but under the circumstances without any order as to costs.