

(2007) 08 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 6242 of 2006

Dhule Gramin Vikas Bhajipala Phal Phalawal Va Phule Kharedi
Vikri Sahakari Sanstha Ltd. and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2007) 5 ALLMR 867 : (2008) 2 BomCR 844 : (2008) 1 MhLj 171

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : P.M. Shah, holding for Amol Savant, for the Appellant; Umakant K. Patil, Assistant Govt. Pleader for Respondents Nos. 1 to 3 and R.N. Dhorde, holding for D.N. Suryawanshi, for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil, J.—Heard learned Counsel appearing for the parties.

Rule. Rule made returnable forthwith. By consent of the learned Counsel appearing for the parties the petition is taken up for final hearing.

2. The petitioners initially challenged communications dated 21st July, 2006 and 25th July, 2006 issued by the Collector Mumbai whereby cut off date as 30th June, 2002 was fixed for preparation of list of voters for holding elections to the Managing Committee of respondent No. 4 - Maharashtra State Cooperative Marketing Federation Limited (for short "the Federation"). The petitioners further prayed for directions to respondents Nos. 3 and 4 to include their names in the list of voters as they have completed 3 years as members of the federal society. This petition was filed on 31-8-2006.

3. The petitioners filed Civil Application Stamp No. 3339 of 2007. By the said civil application the petitioners sought to amend the petition and add some prayer clauses. The petitioners prayed in the amended prayer clauses to quash and set aside communication dated 30th July, 2007 issued by the Collector Mumbai to

respondent No. 4 - Federation in respect of preparation of list of voters fixing the qualifying date as 30th June, 2002.

4. The petitioners contend that they are registered societies under the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act, 1960"). They are registered as Marketing Societies and Sale and Purchase Societies under the Act, 1960. They contend that they are valid members of respondent No. 4 Federation. Respondent No. 4 is admittedly a specified co-operative society within the meaning of Section 73-G of the Act, 1960 as well as Federal Society of all the Marketing Societies and Sale and Purchase Societies in the State of Maharashtra.

5. It is contended that the earlier elections of the Managing Committee of the federation were held in the month of August, 1998. First meeting of the elected Managing Committee was held on 9th September, 1998. The term of the elected Managing Committee of respondent No. 4 Federation had come to an end on 9th September, 2003. The term of the Federation got extended for five times under Notifications issued by the Government of Maharashtra from time to time.

6. The petitioners contend that Writ Petition No. 2283 of 2006 was filed in the Nagpur Bench of Bombay High Court praying for quashing and setting aside order dated 11th October, 2005 passed by the State Government granting extension to the Managing Committee of the Federation for four times. By an order dated 4th July, 2006 the learned Single Judge passed a reasoned order. Para four of the said order reads thus:

4. Admittedly, the elections of the respondent No. 4 were held in the year 1998. As such the elections were due to be held in 2003. In that view of the matter, provisional list of voters is required to be prepared by taking 30th June, 2002 as a cut off date. However, only such societies or members who had invested or who had become members of the federal society prior to 30th June, 2000 could be eligible to participate in the voting.

By an order dated 17th July, 2006 the learned Single Judge at Nagpur Bench finally disposed of Writ Petition No. 2283 of 2006. The Collector Mumbai by his order dated 21st July, 2006 published a programme about preparation of voters list of respondent No. 4 - Federation. The Collector fixed cut off date as 30th June, 2002 as eligibility for inclusion of names in the list of voters. A communication was issued by the Collector Mumbai to respondent No. 4 - Federation on 25th July, 2007 requesting for preparation of list of voters considering the cut off date as 30th June, 2002. The Collector informed to prepare list of voters of the societies who became member of the Federation as on 30th June, 2000. These two communications are placed on record of this Court. The petitioners further contend that the list of voters came to be prepared by the District Marketing Officer Dhule for Dhule District which was forwarded to respondent No. 4 - Federation. The petitioners contended that their names were not shown in the list of voters in "A" Class members societies of the Federation in

spite of the fact that the petitioners had become valid voters of the Federation on 19th August, 2000 and 19th September, 2000. But the cut off date was accordingly fixed as 30th June, 2002 for preparation of the voters list as per Rule 4(1) of the Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971 (for short, "the Committee Rules").

7. The petitioner approached respondent - Collector Mumbai and submitted written objections. According to the petitioners, it was orally informed that the cut off date was fixed in accordance with the order passed by the learned Single Judge of the Nagpur Bench.

8. The learned Senior Counsel Shri P.M. Shah appearing for the petitioners has referred to certain judgments. It was submitted that the Collector Mumbai filed a review petition being Misc. Civil Application (Review) No. 197 of 2007 of the order passed by the learned Single Judge in Writ Petition No. 2283 of 2006. By an order dated 16th July, 2007 the learned Single Judge of Nagpur Bench dismissed the review petition.

9. In the submission of the learned Counsel appearing for the petitioners, in view of the provisions of Sub-section (3) of Section 27 of the Act 1960 a society would be eligible for becoming a voter of the Federation only after completion of the period of 3 years from the date of investing any part of its funds in the shares of the Federation. In the case of the petitioners it was contended that they became members of the order on 19th August, 2000. The term of the managing committee of the Federation expired on 19th August, 2003. The elections to the Board of Directors of the Federation were due on 9th September, 2003 in which elections the petitioners were entitled and eligible to vote, according to the Counsel.

10. The relevant provisions of the Act, 1960 are Section 27(3) which read thus:

27. Voting powers of members

(1) ...

(2) ...

(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 federal society shall be eligible to vote in the affairs of that federal society only after 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.

We may reproduce Rule 4(1) of the Committee Rules 1979.

4. Provisional voters list of voters. - (i) A provisional list of voters shall be

prepared by every society for the year in which general election is due to be held. The persons who have completed minimum period of two years as members from the date of their enrolment before 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the name of voters shall be arranged constituency wise as laid down in the bye-law:

Provided that, if in any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th June, the Collector may, in consultation with the Registrar in respect of the societies of the categories mentioned in Clauses (i), (v), (vi) and (vii) of Sub-section (1) of Section 73-G, and in consultation with the District Deputy Registrar in respect of the societies the other categories mentioned in Sub-section (1) of Section 73-G, by order, change the date of the 30th June and subsequent dates and fix revised dates for the purposes of these rules.

11. The provisions of Section 27 of the Act, 1960 were considered in relation to the effect of Rule 4 of the Committee Rules 1979 by the Apex Court in the reported case in *Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collectors, Kolhapur and Others*, . In the said case the society concerned was a specified society. In para 12 of the said judgment the Apex Court observes:

12. Learned Counsel appearing on behalf of the State of Maharashtra as well as the interveners submitted that under Rule 4, though there were no express words to that effect, the eligibility of a society for its name to be included in the provisional voters" list has to be considered in the light of the provisions of Section 27 of the Act. It was, therefore, submitted that unless a society is a member of the specified society for a period of at least 3 years on the 30th of June of the year immediately preceding the year in which such election is due, its name cannot be included in the provisional list of voters. The submission is wholly misconceived. Rule 4 of the Rules does not provide that a person whose name is to be included in the provisional list of voters should be one who has completed a minimum period of 3 years as a member as on 30th June of the year immediately preceding the year in which election is due. In fact, the express words of Rule 4 provide that he should have completed minimum period of 2 years. To read Rule 4 in the manner suggested by the respondents would amount to rewriting the rule. It was submitted that Rule 4 must be read into Section 27 and so read there may be inconsistency between the Act and the Rules. In fact, the District Collector as well as the High Court took the view that the District Collector was bound by the Rules and, therefore, it has rejected the claim of the appellant Society. On a careful consideration of the provisions of the Act and the Rules, there is no inconsistency between Section 27 of the Act and Rule 4 of the Rules. Even if there was any inconsistency as argued by the respondents, the act must prevail over the Rules.

12. The Division Bench of Nagpur Bench in Writ Petition No. 4349 of 2006, *Subhash Sitaramji Raghtate v. State of Maharashtra and Ors.* decided on 28th

September, 2006 considered an identical issue. The Division Bench in para 4 of the judgment observed as under:

4. The above referred observations of the Apex Court clearly demonstrate that the contention of the State Government that under Rule 4 though there are no express words to that effect, eligibility of the Society for its name to be included in the provisional voters' list has to be considered in the light of the provisions of Section 27 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") and further submission of the State Government that unless a Society is a Member of the specified Society for a period of at least for three years on 30th June of the year immediately preceding the year in which such election is due, its name cannot be included in the provisional list of voters, has been held to be wholly misconceived by the Apex Court and the conclusion recorded by the Apex Court clearly demonstrates that Rule 4 does not provide that the person whose name is to be included in the provisional list of voters should be one who has completed period of three years as a Member on 30th June of the year immediately preceding the year in which the election is due. The Apex Court finally concluded that there is no inconsistency between Section 27 of the Act and Rule 4 of the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (hereinafter referred to as "the Rules") and even if there is any inconsistency, the Act must prevail over the rules.

13. While considering the said provisions in respect of a notified-society, the Full Bench of the Bombay High Court sitting at Aurangabad considered the issue again in the case of Sandip Vasantrao Lahare Vs. State of Maharashtra and Others, . In paragraphs 9 and 13 the Full Bench stated thus:

9. We should, therefore, note the operation of Section 27 of the Act in the matter of voting powers of members of notified society. Sub-section (3) talks of a society which has invested in a federal society and provides for appointment of one of its members to vote on its behalf in the elections to the Managing Committee of the federal society. The proviso to Sub-section (3) of Section 27 of the Act makes such a right operative after three years from the date of investment in the federal society. It will be thus seen from the provisions of Sub-section (3) of Section 27 that a member-society of a federal society acquires a right to vote in the elections to the Managing Committee of Federal Society only after it completes a period of three years from the date of its investment in the federal society and the voting right is to be exercised by the investing society by nominating one of its members as its nominee for the purpose of elections of the Managing Committee of the federal society. 13. In our opinion, this being the correct position in law, the observations in some other judgment including one mentioned above to the contrary do not lay down correct proposition of law. We answer the questions framed above as under:

----- Questions
Answers ----- (i)
What is the date upto which a The date by which the period of person/member is

required to two years mentioned in Section 27 complete two years to be eligible (3-A) of the Act, should be for inclusion of his name in the completed has to be the date on voter's list prepared under Rule which the elections become due on 56-B of the Rules? completion of the term of the Managing Committee. (ii) How the period of "two years" The period of two years mentioned mentioned in Section 27(3-A) as in Section 27(3-A) is to be counted the period of eligibility is to be from the date of enrolment to the counted? date when elections to the Managing Committee of the notified society become due. (iii) Whether the period of 120 The period of 120 days mentioned days mentioned in Rule 56-B is in Rule 56-B(I) is not liable to be liable to be calculated in addition calculated in addition to the period to the period of two years as of two years mentioned in Section mentioned in Section 27(3-A) of 27(3-A). the Act?

14. The contesting respondents filed affidavits-in-reply. In substance, the contention of the learned Counsel appearing for the respondent - Federation and the State is that the Collector Mumbai has fixed the cut off date as 30th June, 2002 solely on the judgment delivered by the learned Single Judge of the Nagpur Bench. Review Petition against the said order was also rejected by the learned Single Judge. Therefore the elections would be held in accordance with the cut off date as prescribed by the Collector Mumbai.

15. Learned Counsel appearing for the respondent Federation Shri R.N. Dhorde submits that the writ petition is premature considering the stage of the election process. The petitioners may raise objections before the Collector Mumbai and in case such objections are raised they could be considered by the Collector.

16. Shri Umakant Patil, learned Assistant Government Pleader submitted that the Collector Mumbai was bound by the order passed in review petition which was sought at the instance of the Collector Mumbai and in accordance with the order passed by the learned Single Judge the Collector had issued the impugned communication dated 30-7-2007.

17. We find from perusal of the provisions of Section 27(3) of the Act, 1960 that there is no ambiguity in its application. Considering the interpretation put up by the Apex Court and the Division Bench of the Bombay High Court in their judgment to the provisions of Section 27 of the Act read with Rule 4 of the Committee Rules it can be safely held that the members society of the federal society shall be eligible to vote in the affairs of the federal society after completion of period of three years from the date of its investing funds in the shares of the federal society.

18. The view of the Collector of fixing the cut off date as 30th June, 2002 would go contrary to the interpreting put to these provisions by the Apex Court and the Division Bench of this Court. It is necessary to be pointed out that the Apex Court observed in the case of Dudhganga Vikas Seva Sanstha (supra) that to read Rule 4 in the manner suggested by the respondents therein would amount

to rewriting the rule. And even if there was any inconsistency the Act must prevail over the Rules. The provisions of Rule 4 of the Committee Rules could not override the provisions of Section 27(3) of the Act, 1960. As the provisions of the Act, 1960 would prevail over the rules the period of three years has to be plainly calculated from the date of investing of the part of the funds by a society in the shares of any federal society.

19. Considering the view adopted by the Apex Court and the Division Bench of this Court in the cases cited supra the Collector Mumbai ought to have followed the view adopted by the Apex Court and the Division Bench of this Court. Any other interpretation put up by the Collector would go contrary to the said judgments.

20. Though the stage of preparation of voters list is under way we are not inclined to relegate the petitioners to alternative remedy as provided under law more particularly in the matters relating to the objections to be raised to the Circular/Communication impugned in this petition which was issued by the Collector Mumbai. It would therefore be appropriate to direct the Collector to adopt the correct cut off date for holding elections to the Managing Committee of the respondent - Federation.

21. As regards the petitioners' contention raising their grievances about enrolment of their names in the voters list certain objections were raised by Shri. R.N. Dhorde, learned Counsel appearing for the respondent - Federation. In view of the order passed on 30-7-2007 the Collector Mumbai had declared the programme of preparation voters' list as per Rules 4 to 7 of the Committee Rules 1979 which would commence from 3-9-2007. Learned Counsel therefore submitted that the petitioners' entitlement to be the voters would be considered by the appropriate authorities considering the fact that they had invested any amount in the funds of the federal society, the record maintained by the societies and other necessary details. Therefore, these issues need not be decided in exercise of writ jurisdiction. We are in agreement with the submissions of the learned Counsel Shri R.N. Dhorde on this count.

22. In this view of the matter we pass the following order:

ORDER

(A) We hold that the communication/order issued by the Collector Mumbai 30th July, 2007 to respondent No. 4 - Federation annexed as "AH" to the Civil Application Stamp No. 3339 of 2007 to the extent of fixing the cut off as 30th June, 2002 and further circumscribing the limit for securing registration by societies as 30/06/2000 to become eligible voters under Rule 5 of the Committee Rules, is illegal and against the judgment delivered by the Apex Court in the case of Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collectors, Kolhapur and Others, and the Division Bench of the Bombay High Court in the case of Subhash Sitaramji Raghtate v. State of Maharashtra Writ Petition No. 4349 of 2006 of Nagpur Bench. We quash and set aside the said communication made by the

Collector Mumbai to the extent stated above.

(B) We declare that the societies who desire to be voters in the elections to the managing committee of the federal society u/s 27(3) of the Act, 1960 ought to have completed period of 3 years from the date of its investment of any part of its funds in the shares of the federal society prior to three years from 9th September, 2003.

(C) As regards individual members seeking eligibility for voting in the election of the Managing Committee of respondent No. 4 - Federation it is clarified that such individual members ought to have completed two years period of their enrolment prior to 9th September, 2003.

(D) We have not considered the objections of the petitioners being eligible for registering themselves as voters on other grounds except the ground of prescribing cut off date by the Collector Mumbai under the impugned communication/order dated 30-7-2007. It is further clarified that the competent authorities are at liberty to raise appropriate objections if any on other grounds regarding petitioners' entitlement for registration as voters for the elections to the Managing Committee of respondent No. 4 - Federation. Except the issue of prescription of cut off date by the Collector Mumbai which we have considered in this petition all other issues are kept open.

(E) The writ petition is allowed to the extent stated above. Rule is made absolute accordingly. No costs.