
(2016) 06 BOM CK 0091
In the Bombay High Court
Case No : Writ Petition No. 10829 of 2015

Dinesh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(c), 21
Maharashtra Co-operative Societies Act, 1960 — Section 72, 73

Citation : (2016) 4 ALLMR 394 : (2016) 4 BCR 348

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. N.V. Gaware, Advocate, for the Appellant; Mr. V.S. Badakh AGP, Mr. P.R. Patil a/w Mr. Sandesh R. Patil, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Petition is filed with the following prayer :

"(B) Hold and declare that the inaction on the part of respondent No.6 society, for injuncting the respondent no.6 society from proceeding with the further process of recruitment in pursuance of the advertisement published in daily Sakal on 14th September, 2015 is illegal, arbitrary, violative of Article 14, 19(1)(c) and 21 of the Constitution of India hence liable to be quashed and set aside."

2. The learned counsel appearing for the petitioners submits that as per the staffing pattern, one post of clerk is admissible as against 300 members and one post of peon is admissible as against 400 members. Already there are excess peons and clerks working with Respondent No.6 ? Society, and therefore, there was no need of recruitment. As on today, there are 14 clerks, 9 peons and one watchman working with Respondent No.6 society. One post of clerk is already in excess and there is no further need of recruitment, which puts additional financial burden on Respondent No.6 ? society. He further submits that there will be financial implication, if such appointments are made in excess. The eligibility criteria for the posts of peon and clerk has been laid down in clause (4) and

clause (3) respectively of the revised guidelines and in respect of the post of watchman has been laid down in clause (5) thereof. However, Respondent no.6 by adopting secret method has undertaken the process of recruitment for the post of clerk, peon and watchmen though not required in the strict sense.

3. It is submitted that the agenda of the meeting dated 25th December, 2014 does not reflect the subject of recruitment to be undertaken by respondent no.6 ? society. On 31st August, 2015, Respondent No.3 issued communication, thereby permitting Respondent No.6 to undertake the process of recruitment subject to certain conditions. One of the conditions stipulated was that the expenses for the purpose of administration should not exceed 2% of permissible expenditure. However, if the appointments are made pursuant to the advertisement, the said expenses will exceed 2%. Respondent no.6 has not followed the roster with regard to the reservation. Respondent No.6 has not adhered to the conditions laid down by Respondent No.3, while granting permission to advertise the posts. The learned counsel also invites our attention to the financial implications, in case the recruitment is allowed and appointments are made.

4. It is submitted that the advertisement published for the posts was of a very small dimension and was in one of the corners of the news paper. No details/eligibility criteria have been laid down in the said advertisement for the reasons best known to Respondent No.6. The eligible persons were to log on to the Website, however, the said Website was blocked and was not accessible. The agency which has been engaged for undertaking the process of recruitment also had no experience of banking personnel selection. It is submitted that the members of Respondent No.6 society have ensured that their kith and kins only could apply for the said posts and out of them, the candidates were to be selected. The learned counsel also invites our attention to the pleadings in the Petition, grounds taken therein, as also the averments in the rejoinder affidavit, and submits that the Petition may be allowed. He further submits that the petitioner may be allowed to amend the Petition.

5. The learned counsel appearing for the petitioner relying on the judgments in the cases of the U.P. State Cooperative Land Development Bank Limited v. Chandra Bhan Dubey, 1999 AIR (SC) 753 and Association of Milma Officers", Thiruvananthapuram and another v. State of Kerala and others, AIR 2015 Kerala 137 submits that Writ Petition is maintainable against Respondent no.6 society.

6. In pursuance of the notices issued to Respondents, Respondent nos. 3 and 4 filed affidavit in reply. It is stated that after the approval of the staffing pattern dated 4th October, 2004, there has been change in the situation and the branches of respondent no.6 society have been increased from 3 to 7. Therefore, in the said staffing pattern, by way of clause 3, branch wise posts were provided which were to increase after opening of the new branches. Moreover, respondent no.6 has also given promotions to its employees. Therefore, as per the branch-wise strength of respondent no.6 ? society, there is requirement of total 55

employees and thus, there is existing vacancy of 16 posts. At present there are 39 employees working with respondent no.6 society and the financial condition of respondent no.6 ? society is quite good. It has continuously secured "A" audit classification during last three years. By order dated 31st August, 2015, Respondent no.3 has imposed certain conditions on Respondent no.6 society before carrying out recruitment process. As per condition no.1, it is prescribed that the administrative expenditure of the society should not exceed 2% of its working capital. However, the Commissioner for Cooperation, Maharashtra State, Pune has fixed the criteria for audit classification of the societies in the State of Maharashtra, by circular dated 29th April, 2010. As per the said criteria, the limit for administrative expenditure with working capital of the societies is fixed at 2.5%. It is also stated that the allegation that Respondent no.6 ? society has not complied with the condition of clearing of backlog is incorrect. Respondent nos. 3 and 4 have taken cognizance of the complaint filed by the petitioners and directed Respondent no.6 to comply with the conditions laid down for allowing Respondent no.6 to go ahead with the recruitment process. The applications/representations filed by the petitioners have been decided by Respondent no.3. The copies of the decisions are also placed on record.

7. Respondent no.6 has also filed the affidavit in reply. In the said affidavit in reply, it is stated that the advertisement was issued in Marathi news paper 'Sakal'. It is further submitted that Respondent no.3 granted permission to go ahead with the recruitment on certain conditions. One of the conditions was that expenditure should not be more than 2%. However, subsequently Respondent no.3 has corrected the mistake and communicated that instead of 2%, the expenditure on account of salary and allowances to the employees shall not exceed 2.5%. Since Respondent no.6 is not the State within the meaning of Article 12 of the Constitution of India, Writ petition is not maintainable. It is submitted that the Government does not grant any funds to respondent no.6. The wide publicity was given before recruitment process was undertaken. The petitioner has an alternate remedy under section 91 of the Maharashtra Cooperative Societies Act, 1960 by way of filing Dispute.

8. It is submitted that petitioner no.1 Dinesh Bhaidas Mahale was the Chairman of the previous Managing Committee of respondent no.6 for a period from 3rd August, 2007 to 3rd August, 2008. During his tenure as a Chairman he made several appointments illegally. Respondent no.6 has quoted names and dates of appointment of such employees in para 5 of the reply. It is stated that the petition has been filed only with a view to obstruct the proceedings. It is stated that the performance of the society is excellent and during the last four years, there has been substantial increase in the net profit of Respondent no.6 society. It is submitted that the approved staffing pattern clearly shows that there are 56 posts. There are seven branches of the society. Therefore, the duly approved staff is 56 posts. Out of 56 sanctioned strength of employees, only 39 are working. There is shortage of 17 employees. Out of this, nine posts are to be filled up. Out of these 9 posts, 2 posts of clerks are reserved for Scheduled

Tribes, 2 posts of peons are reserved for Scheduled Tribes, and one post of peon is reserved for Scheduled Caste. Remaining 4 posts i.e. 2 clerks and 2 peons are meant for open category. Moreover, 226 members of the society have given representation on 17th October, 2015 to the society and supported the cause of recruitment process carried out by the Society. Dhule and Nandurbar are predominantly tribal districts. Therefore, the members also expect that the appointments should be as per the reservation policy.

9. It is submitted that initially, on 28th January, 2015, the society applied to the Backward Class Cell of Commissioner office, Nashik for examining the backlog. However, it was informed that initially the roster should be verified at District Deputy Registrar's level. On 25th February, 2015, the society requested the District Deputy Registrar to verify the roster. By letter dated 13th March, 2015, the office of the District Deputy Registrar replied that it would be appropriate to get the roster verified from Divisional Joint Registrar. On 7th April, 2015, the society submitted a letter to Divisional Joint Registrar. By reply dated 23rd July, 2015, the Divisional Joint Registrar informed that it is not within his jurisdiction to verify the roster. The backlog of the reserved category candidates is calculated by the Society and it is reflected in the table submitted to the above referred authorities. Even otherwise the Society is not receiving grants from the State Government. Therefore, the reservation policy may not be strictly applicable. On 23rd November, 2014, the issue of recruitment was discussed in the meeting and thereafter the resolution was passed in the Managing Committee meeting. Thereafter, on 15th March, 2015, during meeting it was resolved to bring transparency in the selection process, and therefore, three companies were shortlisted. Out of that, Gajanan Enterprises was found to be appropriate for the purpose of conducting selection/recruitment procedure, since it was possessing expertise.

10. Resolution dated 15th March, 2015 was duly approved by Respondent no.3. There were 7 conditions laid down by Respondent no.3 in his letter dated 31st August, 2015. All these conditions are followed by the Society. The Respondent ? Society has maintained the model ratio of expenditure to the turn over as less than 2.5%. In para 15 of the reply, during last three financial years, the ratio maintained by the society is mentioned. The audit report of Credit Society also reveals that the expenditure is less than 2.5%, and therefore, full five marks are allotted to the society.

11. Respondent no.6 filed further additional affidavit, wherein it is stated that on 19th November, 2015, the Chairman of Respondent no. 6 society has specifically brought to the notice of the Divisional Joint Registrar that proper percentage of the administrative expenses was 2.5% and not 2%, and therefore, the said authority was requested to correct the said condition of expenditure and accordingly the reply was received by Respondent no.3 stating that since the matter is sub-judice, the request is kept in abeyance. On 27th October, 2015, Respondent no.3 sent a letter to Respondent no.6 ? society and thereby ordered

to conduct the recruitment process as per the conditions stipulated vide earlier letter of permission dated 31st August, 2015. It is stated that on 20th September, 2010, the Commissioner for Cooperation has issued norms for the audit of the cooperative credit societies. In these norms at Sr. no.4.7, norms regarding the administrative expenses is shown as 2.5% and maximum 10 marks are liable to be allotted, if the expenses are up to 2.5%. If they are between 2.5 to 3%, then there would be 5 marks and above 3% there would be zero marks.

12. The learned counsel appearing for Respondent No.6 cited the judgment of the Hon'ble the Supreme Court in the case of Pehladi Ram and others v. Haryana Urban Development Authority, (2014) 14 SCC 778, the judgment of the Full Bench at Principal Seat in the case of Shamrao Vitthal Cooperative Bank v. Padubidri Pattabharam Bhat and another, 1993 Mh.L.J. 1 and the judgment of the Division bench of this Court in the case of "Dnyandeo Dattatraya Kale and others v. State of Maharashtra and others, 1995 (2) Mh.L.J. 930. Relying upon the judgment in the case of Dnyandeo (supra), the learned counsel appearing for Respondent no.6 submits that the view is taken in the said judgment that merely because large scale employment was done, it could not be said that employment was public employment and in the facts of that case, it has been held that the bank was performing the statutory duty, and therefore, Writ Petition against the District Central Cooperative Bank is not maintainable. The learned counsel appearing for Respondent no.6, relying upon the judgment of the Full Bench at Principal Seat in the case of Shamrao (supra), submits that the Cooperative Society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 and under the Multi-State Cooperative Societies Act, 1984, carrying on business of banking and governed by the Banking Regulation Act, 1949 is not "State" under Article 12 of the Constitution of India. The learned counsel appearing for Respondent No.6 also placed reliance on the judgment in the case of Pehladi Ram (supra) and submits that the view is taken that the dishonest litigant suppressing certain facts need not be protected by the Courts. The learned counsel appearing for Respondent no.6 files the notes of arguments during the course of hearing and submits that all the conditions which are stipulated by Respondent no.3 while allowing Respondent No.6 to go ahead with the recruitment, have been followed/complied with by Respondent no.6. Therefore, he submits that the Petition may be rejected.

13. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for Respondent no.6. We have carefully perused the pleadings in the petition, annexures thereto, replies filed by respective respondents, rejoinder filed by the petitioner and the judgments cited across the Bar by the learned counsel appearing for the parties.

14. It appears that on 31st August, 2015, the Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik communicated Respondent No.6,

in reply to the request of Respondent No.6 for allowing it to make appointments, that Respondent No.6 can go ahead with the recruitment process in view of Resolution no.8/4 passed by the Managing Committee of Respondent No.6 subject to seven conditions stated in the said letter. The first condition speaks that total expenditure on account of administration shall not exceed 2% of the working capital. Secondly, directions issued by the State Government about the recruitment should be followed. The appointments from the candidates from the Backward category should be made on priority basis. The roster of reservation should be followed. There should be strict adherence to the provisions of Section 74(1) of the Maharashtra Cooperative Societies Act, 1960. While conducting the recruitment process, it should be strictly in adherence to service conditions. The recruitment should be through Agency/Government approved company.

15. Upon careful perusal of the reply filed by Respondent no.3, it is abundantly clear that Respondent no.3 is constantly monitoring the selection process and has taken steps to see that there should be strict adherence to the conditions laid down in the communication dated 31st August, 2015. He has clarified in his affidavit that the permissible expenditure on account of administrative can be up to 2.5%. It is also stated that earlier there were three branches and now there are seven branches of Respondent No.6 ? society. The Respondents have demonstrated that since there is extension of branches, the appointment of the additional employees is needed. The advertisement is also given in the news paper `Sakal". There is no denial to the assertion of Respondent no.3 and Respondent No.6 that Respondent no.6 has been rated `A" Class Audit Classification. Apart from it, prima facie, it appears that Respondent no.6 has earmarked two posts of clerks for Scheduled Tribes, 2 posts of peon for Scheduled Tribes, and one post of peon for Scheduled Castes. In case Respondent No.6 is lacking in fulfilling any of the conditions mentioned in the letter dated 31st August, 2013 referred herein above, Respondent no.3 can very well ask Respondent no.6 to take corrective measures or appropriate steps to fulfil the said conditions.

16. There is no denial to the fact that Petitioner no.1 Dinesh Bhaidas Mahale was Chairman of the previous Managing Committee of Respondent no. 6 society for a period from 3rd August, 2007 to 3rd August, 2008. Therefore, filing complaints by him or at his instance out of political vendetta cannot be ruled out.

17. Upon considering the entire material placed on record, we are of the opinion that Respondent No.3 is Competent Authority to monitor the selection process and from his reply, it can safely be gathered that Respondent no.3 has taken appropriate steps and ensured that the selection process initiated by Respondent no.6 is in adherence to the conditions laid down in his letter dated 31st August, 2013, addressed to Respondent No.6, of course, with the increased limit of expenditure to 2.5%. It is also not in dispute that Respondent no.6 is not receiving any financial aid from the State Government.

18. In that view of the matter, we are unable to persuade ourself to grant reliefs

as prayed for in the Petition. Hence the Petition stands rejected. No costs.

19. After pronouncement of the judgment, the learned counsel appearing for the petitioners prays for continuation of interim order for further eight weeks, which was in force till today. The prayer is vehemently opposed by the learned counsel appearing for Respondent No.6.

20. Since the entire selection process is held up due to interim order, we are not inclined to continue the interim order any further. Hence the prayer for continuation of the interim order for eight weeks stands rejected.