

(2000) 08 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 2532 of 2000

Durga Mazdoor Co-operative Society Ltd., Bhandara and
Others

APPELLANT

Vs

Divisional Joint Registrar, Co-operative Societies, Nagpur and
Others

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 73G, 73G(2B), 73H, 77A, 77A(1)(b)

Citation : (2000) 4 ALLMR 832 : (2001) 2 BomCR 485 : (2001) 1 BOMLR 327 : (2000) 4 MhLj 786

Hon'ble Judges : S.K. Shah, J;D.D. Sinha, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, for the Appellant; B.R. Gavai, Government Pleader for Respondents Nos. 1 and 2, A.B. Choudhari for Respondent No. 3, M.V. Samarth, D.A. Mahajan for Respondent No. 4 and P.B. Patil, for the Respondent

Judgement

D.D. Sinha, J.—Rule. Heard forthwith by consent of the learned Counsel for the parties. Shri S. P. Dharmadhikari, learned Counsel appearing for the petitioners, contended that the petitioners are the primary members and shareholders of the respondent No. 6/Bank. The respondent No. 6/Bank is the Apex Bank of the District. Respondent No. 6/Bank is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act"), and is the Specified Society as contemplated u/s 73G thereof. It is contended that respondent No. 3, Narendra @ Nana Patole, was a Member of the Board of Directors and so also a Member of the Working Committee of the respondent No. 6/Bank. The term of the Board of Directors of the respondent No. 6/Bank, is of five years, had expired on 22-2-1999.

2. Shri Dharmadhikari further contended that the respondent No. 1, Divisional Joint Registrar Co-operative Societies, Nagpur, has declared Gondia as a separate district and as such the respondent No. 6/Bank is required to be bifurcated into

two, i.e., for District Gondia as well as for District Bhandara. To avoid the multiplicity of elections and to avoid inconvenience and administrative difficulties, it is contended that the respondent No. 1 has stayed the election of the respondent No. 6/Bank and has extended the term of its office of the Board of Directors by a period of six months, or till the new body is elected, whichever is earlier. It is contended that the extended period of six months had also expired on 16-8-1999. No further extension to the earlier Board of Directors/Committee was granted thereafter by the respondent No. 1, or any other competent authority.

3. Shri Dharmadhikari further contended that by virtue of the provisions of section 73G(2B) of the Act, the Board of Directors of the respondent No. 6/Bank is deemed to have vacated the office and, therefore, the respondent No. 6/Bank is without any legal or valid Committee after 16-8-1999. It is contended that Shri Yadavrao Padole, the then Chairman of the respondent No. 6/Bank, filed Writ Petition No. 446/1999 before this Court and prayed for a direction to the Government to hold election of the Bank and, in the meanwhile, the interim relief was sought that the earlier Board of Directors of the respondent No. 6/Bank be allowed to function till the newly elected body assumes office of the respondent No. 6/Bank. It is contended that though the above referred writ petition is admitted by this Court, the interim relief sought by Shri Yadavrao Padole was refused. SLP No. 1811/2000 was preferred against the refusal of the interim relief by this Court, to the Apex Court, by the then Chairman of the respondent No. 6/Bank. However, the same was dismissed.

4. Shri Dharmadhikari further contended that the respondent No. 1 appointed one Shri Katre, Assistant Registrar, Co-operative Societies, Bhandara, as Administrator over the respondent No. 6/Bank, who had taken over the charge of the management of the respondent No. 6/Bank. It is contended that some of the members of the respondent No. 6/Bank filed another Writ Petition No. 1403 of 2000, challenging the order dated 17-4-2000 passed by the respondent No. 1, by which Shri Katre was appointed as Administrator of the respondent No. 6/Bank. It is pointed out to us that this Court, initially, granted interim relief to the petitioners therein. However, the same was vacated by this Court at the later point of time and the said petition is pending for final hearing.

5. Shri Dharmadhikari, the learned Counsel for the petitioner, submitted that on 17-7-2000, the respondent No. 1 appointed Shri M. D. Date, District Deputy Registrar of Co-operative Societies, Bhandara (respondent No. 4 herein), as the Administrator of the respondent No. 6/Bank and since 17-7-2000, he is working as the Administrator of the respondent No. 6/Bank. It is further contended that the respondent No. 1 again issued a fresh order dated 21-7-2000 and appointed a Committee of Administrators, i.e., respondents Nos. 3 to 5, instead of respondent No. 4 who was the sole Administrator. It is contended that the respondent No. 3, Narendra @ Nana Patole, who was a Member of the earlier Board of Directors/Committee of the respondent No. 6/Bank, whose original term

of office as a member had expired on 22-2-2000, as well as the extended term, on 16-8-1999, is appointed as President of the Board of Administrators. It is this part of the order dated 27-7-2000 passed by respondent No. 1 which is challenged in the present petition by the petitioners.

6. Shri Dharmadhikari, the learned Counsel for the petitioners, contended that the provisions of section 73G of the Act pertains to conduct of elections to committees (and of officers) of certain societies and term of office of member of such committees. It is contended that sub-section (2B) of section 73G of the Act contemplates that for any reason, if the election of the members of the committee could not be held before the expiry of the term, or the extended term, as the case may be, of the existing committee, the members (including the officers) of the committee shall cease to hold office on the expiry of its term or extended term, as the case may be, and they shall be deemed to have vacated their offices. The learned Counsel, therefore, contended that in view of the above referred sub-section (2B) of section 73G of the Act, the cessation of the office is automatic, after expiration of the term of the committee.

7. Shri Dharmadhikari, the learned Counsel for the petitioners, further submitted that section 73H of the Act pertains to the responsibility of committee to hold election before expiry of its term. It is submitted that it is the duty of the Committee of every Society to arrange for holding election of its members before the expiry of its term. It is further submitted that subsection (2) of section 73H of the Act contemplates that the committee shall cease to function on the expiration of its term and the members thereof shall cease to hold office of the Committee. The Registrar may take over the management of the society or appoint an Administrator (who shall not be from amongst the members of the Committee the term of which has so expired). (Emphasis supplied). Shri Dharmadhikari contended that the Registrar, while appointing an Administrator or Administrators, is not empowered to include any of the members of the committee, the term of which has so expired, as an Administrator. In short, it is contended that though the Registrar is competent to appoint an Administrator or Administrators, he shall not appoint anybody from amongst the members of the outgoing committee, whose term has already expired.

8. Shri Dharmadhikari, learned Counsel for the petitioners, further contended that section 77A of the Act pertain to the procedure to be adopted by the Registrar while appointing Administrator or Administrators, where there is a failure to elect members to constitute a Committee. It is submitted that clause (b) of sub-section (1) of section 77A of the Act contemplates that the term (or extended term, as the case may be), of the committee of any society or of any of its members had expired, the Registrar may, either suo motu or on the application of any officer of the society, by order, appoint the person or persons as contemplated in the above referred provisions of the Act.

9. It is submitted that in the instant case, since the extended term of the Board of Directors of the respondent No. 6/Bank was over on 16-8-1999, the

respondent No. 1 has exercised power u/s 77A(1)(b) of the Act, and vide order dated 17-4-2000, appointed Shri Katre as the Administrator of the respondent No. 6/Bank. It is submitted that the petitioners are not challenging this order of the respondent No. 1, dated 17-4-2000, in the present writ petition. Shri Dharmadhikari submitted that on 17-7-2000, respondent No. 1 invoked powers under sub-section (4) of section 77A of the Act and appointed respondent No. 4, Shri M D. Date, as an Administrator of the respondent No. 6/Bank in place of Shri Katre. It is further contended that the respondent No. 1 again on 21-7-2000 invoked powers under subsection (4) of section 77A of the Act and appointed a Committee of Administrators, one of whom was a member of the Board of Directors of the old committee of the respondent No. 6/Bank. The name of such Administrator is Shri Narendra @ Nana Patole who is respondent No. 3 in the present writ petition. It is, thus, submitted that the limited challenge in the present petition is only to the extent of inclusion of respondent No. 3 in the Committee of the Administrators of the respondent No. 6/Bank, by the respondent No. 1 vide order dated 21-7-2000. The learned counsel contended that the action of the respondent No. 1 in this regard cannot be sustained, in view of sub-section (2B) of section 73G, as well as subsection (2) of section 73H, of the Act.

10. Shri B. R. Gavai, learned Government Pleader appearing for respondents Nos. 1 and 2, supported the impugned order dated 21-7-2000 of the respondent No. 1 and contended that section 73H and section 77A of the Act are independent in character and required to be considered independently for resolving the controversy in question. It is submitted that sub-section (4) of section 77A of the Act empowers the Registrar to change the composition of the committee constituted under clause (b) of subsection (1) of section 77A of the Act, at his discretion, even before expiry of the period specified under the order made under sub-section (1). It is, therefore, contended that in the instant case, since the basic order dated 17-4-2000 passed by the respondent No. 1 under sub-section (1) of section 77A of the Act has not been challenged by the petitioners, either on the ground of jurisdiction or otherwise, the impugned order dated 21-7-2000 is an incidental order which can always be made by the respondent No. 1 as per his discretion under sub-section (4) of section 77A of the Act. Shri Gavai contended that since sections 73H and 77A of the Act operate in different areas, they should not be read together for the purposes of considering the action of the respondent No. 1, admittedly taken u/s 77A of the Act. The learned Government Pleader contended that the impugned order does not either suffer from lack of jurisdiction or cannot be rendered invalid in view of sub-section (2) of section 73H of the Act and is sustainable in law.

11. Shri A. B. Choudhari, learned Counsel appearing for the respondent No. 3, also supported the impugned order dated 21-7-2000 and contended that the respondent No. 6/Bank, being a Specified Society u/s 73G of the Act, the procedure in respect of conduct of election of the committee of such society is governed by Chapter XI-A of the Act and the Rules of 1961. It is contended that

section 73H of the Act, in the instant case, is not attracted, since it is applicable only in respect of societies other than Specified Societies and, therefore, the respondent No. 1 under sub-section (4) of section 77A, was competent to pass the order dated 21-7-2000.

12. We have given our anxious consideration to the contentions raised by the respective Counsel, perused the relevant sections of the Act referred to hereinabove and relied upon by the respective Counsel, as well as the impugned order passed.

13 Since the challenge, in the instant petition, is only limited to the extent of appointment of respondent No. 3, Shri Narendra @ Nana Patole, on the Committee of Administrators of the respondent No. 6/Bank, vide order dated 21-7-2000 passed by the respondent No. 1, it is not necessary for us to consider the other aspects of the petition.

14. It is not in dispute that section 77A of the Act pertains to the appointment of the Committee or Administrator by the Registrar, where there is a failure to elect members of the Committee. It is also not in dispute that in view of clause (b) of sub-section (1) of section 77A of the Act, where the Registrar is satisfied that the term of the committee of any society has expired, he may, either suo motu or on the application of any officer of the society, appoint a committee or an administrator for the purposes of managing the affairs of the society, till a newly elected committee enters in the office thereof. It is also not in dispute that in view of sub-section (4) of section 77A of the Act, the Registrar shall have power to change a committee, at his discretion, even before the expiration of its period specified in the order made under sub-section (1) of section 77A of the Act.

15. The only crucial question, which falls for our consideration in the present petition, is, whether, while exercising powers either under subsection (1) or sub-section (4) of section 77A of the Act, the Registrar can appoint an Administrator or Administrators who was/were a member/members of the Board of Directors of the Committee, whose term has expired, till a newly elected committee enters in the office.

16. It will be appropriate to consider the mandate of sub-section (2B) of section 73G of the Act. Sub-section (2B), in no uncertain terms, gives a mandate that for any reason whatsoever, the election of the members of the committee could not be held before expiry of the term or extended term, as the case may be, of the existing committee, the members, including the officers of the committee, shall cease to hold office on expiry of its term or extended term, as the case may be, and shall be deemed to have vacated their office. By virtue of this section, once the term of the office of the committee or extended term thereof has expired, there is automatic cessation of the office by the members of the committee, under sub-section (2B) of section 73G of the Act, and such member no longer is entitled to remain in office after expiration of such term. Proviso to sub-section (2B) of section 73G, by which there was a deemed extension after expiration of

the term till the date of first meeting of the newly constituted committee/ is deleted by Maharashtra Act No. 27 of 1996, with effect from 5-9-1996. (Emphasis supplied)

17. In our opinion, therefore, the persons holding elective offices represent will of the people only during the statutory period for which they are elected to such officers, or to such statutory extension which is granted by the competent authority, but, in any case, cannot remain in the office for any reason whatsoever, beyond such period.

18. In the context of the above referred mandate of sub-section (2B) of section 73G of the Act, it will be appropriate to consider section 73H of the Act. Sub-section (1) of section 73H of the Act contemplates that it shall be the duty of the committee of every society to arrange for holding the election of its members before the expiry of its term. It is, therefore, clear that subsection (1) of section 73H of the Act takes into its ambit all the societies. Subsection (2) of section 73H of the Act prohibits the Registrar to appoint a person as an Administrator who was the member of the committee, the term of which has expired. These riders created by the above referred sections cannot be permitted to cross via section 77A of the Act which will, in our opinion, defeat the very object of these provisions.

19. As we have stated hereinabove, there is no dispute that the power is vested in the Registrar by sub-section (1) and sub-section (4) of section 77A of the Act to appoint and change the committee. However when there is a specific prohibition contemplated by sub-section (2B) of section 73G of the Act to hold the officer of the member of the committee after the expiration of the term of the committee, as well as further rider created by sub-section (2) of section 73H of the Act in this regard, the Registrar, in our opinion, in view of the scheme of these provisions, is not entitled to appoint a person as an Administrator either under sub-section (1) or sub-section (4) of section 77A of the Act, who was the member of the committee the term of which has already expired. If the Registrar is allowed to do so, then, in our opinion, the whole scheme of the provisions of sub-section (2B) of section 73G as well as section 73H of the Act would be frustrated, which is impermissible in law.

20. It is no doubt true that while interpreting the provision of the statute, the interpretation should be made on the basis of the language of the statute or provision of the Act, as it is, unless the same is ambiguous. If the language of the statute is capable of conveying the intention of the Legislature as well as the object of the provision, the same should be the basis for interpreting and construing the provisions of the Act or the statute. It is also necessary to keep in mind that each provision is inserted in the Act with the specific purpose and with specific object. It is, therefore, a duty of the Court to see that while interpreting one provision, the other should not be rendered either ineffective or redundant. It is, therefore, necessary in such situation to take into consideration these various provisions together and are required to be construed in such a manner

whereby the harmonious scheme of such provisions would emerge, demonstrating the intention and object of the Act.

21. Taking into consideration the facts and circumstances of the case, as well as the relevant provisions of the Act referred to hereinabove, the contentions raised by Shri Gavai, learned Government Pleader, as well as Shri Choudhary, learned Counsel appearing for the respondent No. 3, cannot be accepted and are rejected. We answer the legal question stated in paragraph 15 above in the negative.

22. We make it clear that we have not adjudicated upon the aspect of validity of any of the sections of the Act referred to hereinabove, since that was not the subject matter of challenge in the instant petition.

23. For the reasons stated hereinabove, the writ petition is partly allowed. The impugned order dated 21-7-2000 passed by the respondent No. 1 is quashed and set aside, so far as it relates to the appointment of the respondent No. 3, Shri Narendra @ Nana Patole, as the President of the Board of Directors of the respondent No. 6/Bank. It is open for the respondent No. 1, in case it is necessary to appoint anybody as Administrator of the respondent No. 6/Bank, other than the Members of the Board of Directors of the earlier Committee, whose extended term of office has already expired on 16-8-1999.

24. Rule is made absolute in the above terms, with no order as to the costs.