
(1990) 02 BOM CK 0040

In the Bombay High Court

Case No : Civil Appeals No's. 4676 and 4793 of 1989

Gajanan Narayan Patil and Others

APPELLANT

Vs

Dattatraya Waman Patil and Others

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Citation : (1990) 3 BomCR 166

Hon'ble Judges : R.M. Sahai, J;Kuldip Singh, J;B.C. Ray, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

B.C. Ray, J.

1 This is, an appeal under Art. 133, of the Constitution of India against the Judgment and Order dated October 23, 1989 passed by the High Court of Bombay in Writ Petn. No. 3976 of 1989 whereby the High Court directed the Registrar of Co-operative Societies to give fresh notice to the elected members as well as to the 3 persons namely 2 nominees of the Financial institutions and the expert co-opted member.

2. The matrix of the case is that the appellants who are the duly elected Directors of the Sanjay Sahakari Sakhar Karkhana Ltd. hereinafter to be as "Karkhana signed a requisition and sent the same to the respondent No. 3, the Joint Director of Sugar and Joint Registrar, Co-operative Societies Maharashtra State, Pune requesting him to summon a special meeting of the Committee of the Karkhana to consider the proposed motion of no-confidence against the Chairman of the Committee, Dattatraya Waman Patil, respondent No. 1. The requisition was signed by more than 1/3rd of the total members of the Committee in accordance with the provision of Cl. (2) of section 73-ID of the Maharashtra Co-operative Societies Act, 1960 (Maharashtra Act No. XXIV of 1961). The above requisition was received in the office of the joint Director of Sugar and Joint Registrar, Co-operative Societies, Maharashtra State, Pune, the

respondent No. 3.

3. On 6-9-1989 the respondent No. 3 issued a notice dated Sept. 13, 1989 convening as special meeting of the Managing Committee of Karkhana i.e. Board of Directors of the Karkhana on 25-9-1989. This notice was issued as contemplated by Cl. (3) of section 73-ID of the Act. This notice was sent to all the members of the Committee of the Karkhana who at that time were entitled to sit and vote at any meeting of the Committee i.e. the elected members of the said Committee of Management. Over and above a copy of the notice was sent to the office of Registrar, Deputy Director of Sugar, Aurangabad (Presiding Officer). A copy of this notice was also sent to the office of the Managing Director of the Karkhana as by way of this notice, the Managing Director had been directed to produce the minute book of the Committee meeting and hand over possession thereof to the Presiding Officer at the commencement of the special meeting.

4. On 18-9-89 the respondent No. 1 filed Writ Petition No. 3976 of 1989 before the High Court at Bombay challenging the requisition notice dated 6-9-89 signed by the 10 appellants who are elected members of the Managing Committee as well as notice dated 13-9-89 issued by the respondent No. 3 mainly on the ground that under the scheme of the Act read with the Rules and the Bye law of the Karkhana, co-opted member and nominees of the Financial institutions who are members of the Board of Directors of the Karkhana and are entitled to sit and vote at the special meeting when the Committee considers the vote of no-confidence u/s 73-ID of the Act are required to be served with the said notices of requisition enabling them to participate in the said special meeting. This writ petition was heard by the Division Bench of Bombay High Court on 26-10-89. On a consideration of the provisions of section 73-ID read with Rule 57-A and Bye law No. 29 of the Bye-laws of the Society the High Court allowed the writ petition holding that the 3 members of the second category who have got a limited right to vote at a meeting except at a meeting to elect Chairman or Vice-Chairman are entitled to be served with notices of the special meeting and to participate in the said meeting and as the two nominees of the Financial Institutions and the expert co-opted members had not been served with the notices of requisition meeting, the requisition meeting cannot be held instead of quashing the notice issued by the respondent No. 3 convening the meeting, the High Court directed the Registrar, the respondent No. 3 to issue fresh notices to the elected members as well as to the 3 Directors of the second category before holding the meeting and disposed of the writ petition accordingly. "The High Court however retained the Chairman to enter into new contracts and as well as giving any fresh commitment on behalf of the Karkhana.

5. The appellants filed a petition under Art, 133 of the Constitution of India against the Judgment and Order dated October 26, 1989 passed by the High Court. Bombay in Writ Petn. No. 3976 of 1989. The High Court by Order 26-10-89 granted certificate for appeal to this Court under Art. 134(1) of the Constitution of India on the following questions:

"Whether the nominees of the Financial institutions and the expert co-opted by the Committee under Bye law 29 are included within the expression "Committee members" who are for the time being entitled to sit and vote at any meeting of the Committee ?"

6. In order to decide the above question, it is appropriate to consider the relevant provisions of the Maharashtra Co-operative Societies Act, 1960 to be hereinafter called the "Act" and the rules framed there-under as well as the relevant bye-laws of the particular Co-operative Society in question.

7. The Karkhana is a Co-operative Society governed by the Maharashtra Co-operative Societies Act. Section 2(7) defines Committee as The Committee of Management or Board of Directors or other directing body by whatever name called in which the management of the affairs of the society is vested u/s 73 of the said Act.

8. Section 27 which deals with the voting powers of the members provides in sub-section (9) that no nominee of the Government or of any Financial Bank or any Society shall be entitled to vote at any election of its Committee. Section 73 states that the management of every society shall vest in a Committee, constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such rules and may be conferred or imposed respectively by this Act, Rules and the Bye-laws. Therefore, the management of every Co-operative Society vested in the Committee of management or for that in the Board of Directors of the Society. Section 73-ID which is relevant for determination of the said question is quoted below:---

73-ID "(1) A President, Vice-President, Chairman, Vice-Chairman, Secretary, treasurer or any other officer by whatever designation called who holds office by virtue of his election to that office shall cease to be such President, Vice President, Chairman, Vice-Chairman, Secretary, treasurer or any other officer, as the case may be if a motion of no-confidence is passed at a meeting of the committee by two-third majority of the total number of Committee members who are for the time being entitled to sit and vote at any meeting of the committee and the office of such President, Vice President, Chairman Vice-Chairman, Secretary, treasurer or any other officer, as the case may be, shall thereupon be deemed to be vacant.

(2) The requisition for such special meeting shall be signed by not less than one third of the total number of members of the committee who are for the time being entitled to sit and vote at any meeting of the committee and shall be delivered to the Registrar. The requisition shall be made in such form and in such manner as may be prescribed.

Provided that, no such requisition for a special meeting shall be made within a period of six months from the date on which any of the officers referred to in sub-section (1) has entered upon his office.

(3) The Registrar shall, within seven days from the date of receipt of the requisition under sub sections convene a special meeting of the committee. The meeting shall be held on a date not later then fifteen days from the date of Issue of the notice of the meeting."

Rule 57-A---Motion of no-confidence against the officers of the Society-

(1) The requisition to call the special meeting of the committee of a society to consider motion of no-confidence against the President, Vice President, Chairman, Vice Chairman, Secretary, Treasurer, or other officer of the society, by whatever designation called, who holds office by virtue of his elections to that office, shall be made in Form M-18. The requisition shall be accompanied by-

(a) the grounds of no-confidence,

(b) the text of the motion of no-confidence to be moved,

(c) the name of the committee members who shall move the motion of non-confidence,

(d) a list of members of the committee specifying their full names, and address who are, for the time being, entitled to sit and vote at any meeting of the committee,

(e) signatures of the members of committee who are signing the requisition duly attested by the Chief executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government.

(2) The requisition referred to in sub-rule (1) shall be delivered in person to the Registrar. Such requisition or requisitions shall be delivered in duplicate in each case. The Registrar on ascertaining that the requisitions, as the case may be, have been signed by not less then 1/3rd members of the Committee who for tie time being are entitled to sit and vote in any meeting of the committee of society.

(a) receive and acknowledge the requisition under his signature with date and time,

(b) issue notice, within 7 days from the date of receipt of the requisition, convening the special meeting for that purpose specifying therein place, date, time, name and designation of the officer who shall be presiding over such meeting, to all the members of the Committee, the presiding officer and the Managing Director. General Manager, Manager, paid Secretary, Group Secretary or such employee of the society, to whom the Registrar has directed to produce minute book of Committee meetings of the society. This notice of no confidence, shall also be issued, to the officer or officers against whom the motion of no confidence is being moved, and shall be accompanied by the copy of the requisition along with enclosures and agenda.

(5) The time of the meeting shall be between office hours of the authorised officer. The meeting shall be held either in the office of the Registrar or in the

office of the person authorised by the Registrar to preside over the meeting.

(6) No other subject, except the motion or motions of no confidence shall be kept on the agenda.

(7d) The Registrar or the officer authorised to preside over the meeting shall not allow any other person to enter the place of meeting except the person or persons appointed to assist him, the officer of the society who has produced the minute book, the officer or officers against whom, the motion of no-confidence is moved, the member of the committee who are for the time being entitled to sit and vote in any meeting of the committee, who are present at the commencement of the meeting and police officer or officers if called by him to maintain the law and order.

By law No. 29.

Board of Directors:

A to E x x x x x

(F) "Managing Director, and representatives in sub-clauses (d) and (e) (Co-opted Technical Director) shall not be entitled to function as Chairman and Vice Chairman. The representatives referred to in above sub-clause (d) and technical expert co-opted as per provisions of sub-clause (e) and Managing Director, will not be entitled to vote at the meeting of the election for Chairman and Vice-Chairman. The representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board. But his opinion will be recorded in the minute book. He will not be responsible for mis-management and negligence of the Board. Further no action can be taken against him for any losses sustained to the Karkhana due to the mismanagement and the negligence of the Board."

9. It has been contended on behalf of the appellant that section 27 sub-section (B) debar the Government nominee or the nominee of any Financial Bank on any society to vote at any election of the election of the Committee of the society and as such except the elected Directors other Directors cannot participate in the election of the Managing Committee of the Society and cannot vote for such election. It has been also submitted that u/s 73-ID, Clause (A) in the special meeting convened for consideration of no-confidence motion against the Chairman and Vice-Chairman of the society and other officer of the society only the members who are for the time being "entitled to it and vote at any meeting of the Committee may participate and vote in the said meeting. It has also been provided therein that as soon as vote of no-confidence is passed against the Chairman of the managing committee of the society by 2/3rd majority of the total number of committee member who are for the time being entitled to sit and vote the office of Chairman etc. shall be deemed to be vacant. Therefore, it has been submitted that the word at any meeting of the committee shall be deemed to refer to all the meetings of the managing committee or the Board of Directors.

The nominee of the Financial in situations and also the co-opted expert, co-opted Technical Director having been not entitled to function as a Chairmen and Vice Chairman and not to vote at the meeting of the election for Chairman and Vice-Chairman of the Board of Directors are not petition to sit and vote in the special meeting convened for the purpose of consideration of the no-confidence motion against the Chairman of the Board of Directors. It has also been contended in this connection that the Chairman of the managing committee or of the Board of Directors is elected by the elected Directors of the managing committee, it is against the democratic principles that the motion of no" confidence against the Chairman for removal from his elected office are to be passed by the 2/3rd majority of the members of the Board of Directors including the Directors who are representatives of the Financial in situations and expert nominee (co-opted).

10. Mr. S.S. Ray, learned Counsel appearing on behalf of the respondent No. 1 has on the other hand joined issues and submitted that the right to participate in the special meeting convened for consideration of no-confidence motion against the Chairman (is a statutory right flowing from the provisions of the statute. This right has been conferred expressed by the provisions of section 73-10 read with R. 57-A, Clause 2(b) read with Cl. 7(D) i.e. "members of the committee who are for the time being entitled to sit and vote in any meeting of the Committee." Though section 27 sub-section (9) enjoins that no nominee of the Government or of financing bank or of any society shall be entitled to vote at any election of its committee. This merely means and signifies that the nominee of the Government as well as of the Financial in situations are not entitled to participate in the election meeting of the society and from casting their votes in such meeting. By law 29 of the Bye-Laws of the Society provides that the Board of/directors of the Karkhana would consist of the following members:---

Sr. No. Particulars No of Members
 1. Members falling under --- elected producer
 11 Bye-law No. 29(A) members
 2. Members falling --- elected by 01 under Bye-law --- society members No. 29(B)
 3. Members falling under --- Managing Director 01 Bye-law No. 29(C) Ex-officio. 01
 4. Members falling under --- Representatives of the 01 Bye-law No. 29(D) (i) financial agency.
 5. Members falling under --- Representatives of 01 Bye-law No. 29(D) (ii) Indian Finance Corp- oration of India, L.I.C. IDBI etc. (not more than two) in the present case only.
 6. Members falling under --- Representative of ICICI Nil Bye-law No. 29(D) (iii). --- (one) in the present case.
 7. Members falling under --- Nominee of the 01 Bye-law No. 29(D) (iv). --- State Government.
 8. Members falling under --- Expert nominee 01 Bye-law No. 29(E). (co.opted).
 9. Members falling under --- elected from CST/ST 01 Bye-law No. 29(G) r/w and Weaker Section.
 Total Strength 19

11. It is also evident from the provisions of Bye-Law No. 29 that the Representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board, but his opinion may be recorded in the minute book. So far the representatives referred to in Clause (D)(i) and (D)(ii) in

Bye-law No. 29, that is, representative of the financial institution as well as the expert nominee (co-opted) falling under Bye-Law 29(E) are entitled to participate in the special meeting and also cast their votes in such meeting. This being the position it is against the provisions of the Act, Rules and Bye-laws of the society to held that the members falling under Bye-law 29(D)(i) and (II) as well as the except nominee (co-opted) under Bye-law 29(E) are not entitled to sit and votes in the meeting of the committee convened for consideration of the non-confidence motion against the Chairman Board of Directors or for that of the Managing Committee. This interpretation will be wholly going against the clear meaning of the expression namely members who are entitled to all and vote at any meeting of the committee. The right to participate in the special meeting as well as to vote for such meeting is a statutory right and it flows from the provision of the Act, Rules and Bye-laws of the Society. It had nothing to do with the democracy. The words "entitled to all and vote in any meeting of the society" refer to member to all end vote not in every meeting but in any meeting of the society. The only express bar as provided in section 27 is that the members, that is, the Directors representatives of the Financial in situations as well as the Expert Director (co-opted) are not competent to participate only in the election of member of the society. The said Directors have been conferred the right to participate in any meeting including the special meeting of the Board of Directors or of the Managing Committee of the society. It is appropriate to refer of *Jumuna Prasad Mukhariya and others v. Lachhi Ram* (1956)¹ S.C.R. 608. it has been observed:---

"The right to stand as a candidate and contest the election is not a common law right it is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute, the appellants have no fundamental right to be elected Members of Parliament. If they want that they must observe the rules"

12. We have gone through the judgment rendered by our learned brother, Hon"ble Mr. Justice R.M. Sahai we are however, unable to concur with the views expressed by our learned brother and the findings arrived at therein. We, therefore, hold that the requisition meeting that has been convened cannot be held as the representatives of the Financial in situations in The Board of Directors as well as the Expert Director (co-opted) under the relevant provisions of Bye-law No. 29 have not been served with the requisition notices of special meeting convened by the respondent No. 3 pursuant to the said requisition notice the Impugned notice convening the special meeting is wholly Illegal and unwarranted. Furthermore, as we have found herein before that the two Directors representing the Financial in situations as well as the expert nominee (co-opted) are entitled to participate in the special meeting of the committee and also to vote at the same meeting as regards the no-confidence motion, the non-service of the notice of the said meeting on the aforesaid Directors renders the said special meeting illegal as there has been an infringement of the provisions

of the said Act, R. 57-A of the Maharashtra Co-operative Societies Rules, 1961 and Bye-Laws 29-D (I) and (ii) and 29-E of the Bye-Laws of the Society. We, therefore, dismiss the appeal and allow the writ petition filed in the High Court. The appellants will pay costs quantified at Rs. 5,000/- to the respondents.

Per R.M. SAHAI, J. (Dissenting) :---The short question of law that arises for consideration in this appeal directed against the order of Bombay High Court, is whether the nominees of financial institutions and co-opted Technical Directors who are not entitled under bye-law 29 of the Sanjay Sahakari Sakhar Karkhana Ltd. Hereinafter called as " Society") framed under Maharashtra Co-operative Societies Act, 1960 (for brevity "Act") either to function as Chairman or Vice Chairman of the Board of Directors of the Society or to vote at their election are entitled to participate in a special meeting requisitioned for consideration of motion of no-confidence u/s 73-ID of the Act.

14. Resolution to requisition a special meeting to consider motion of no-confidence against Chairman of the Board, signed by more than 1/3rd members of the Board, was delivered to the Registrar as required by R. 57-A along with a list of members who were entitled to all and vote. Notices on it were issued under Clause (b) of sub-rule (2) of R 57-A to elected members only. Validity of it and consequent proceedings were challenged before the High Court, amongst others, for facing violative of R. 57-A as it required the Registrar to issue notices to all members of the Board. Further nominees of financial in situations being vitally involved in the welfare of the Society, their presence was essential for effective and meaningful discussion even if they were not entitled to sit and vote. Various other objections were raised. But the High Court did not find merit in any except the one relating to non issuance of notice to nominees of financial institutions and the expert co-opted by the Board Reason for it was wider construction of the expression " who are for the time being entitled to sit and vote at any meeting of the committee" used in section 73-ID of the Act The High Court found that even the high it would have been more logical to restrict such right to the as alone who were entitled to elect yet it widened the ambit of expression because if two meanings were possible then the meaning which extended the right to vote rather than that limited should be accepted it also found that right to vote on a resolution of no" confidence being an Important matter effecting the Society, it should be extended to even nominated members who had a right to vote at some meeting.

15. Bye-law 29 framed by the Society, gives out the Constitution of the Board of Directors comprising of elected, ex-officio, representatives and co-opted members. But right to be elected as Chairman or Vice-Chairman of the Board or even voting at the meeting of such election has been confined in elected members by Clause (F) which is extended below:

"Managing Director, and (representatives in sub-clauses (d) and (e) (Co-opted Technical Director) shall not be entitled to function as Chairman and Vice. Chairman. The representatives referred to in above sub-clauses (d) and technical

expert director co-opted as per provisions of sub-clause (e) and Managing Director, will not be entitled to vote at the meeting for the election of Chairman and Vice-Chairman. The representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board. But his opinion will be recorded in the minute book. He will not be responsible for sale management and negligence of the board. Further no action can be taken against him for any losses sustained to the Karkhana due to the mismanagement and the negligence of the board "

16. The question is how does it reflect on the right to participate in a meeting of no confidence against the Chairman of the Board ? For this purpose it is necessary to extract sub-section (1) of section 73-ID which reads as under:---

"A President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatever designation called who holds office by virtue of his election to that office shall cease to be such President, Vice President, Chairman, Vice-Chairman, Secretary Treasurer or any other officer, as the case may be if a motion of no confidence is passed at a meeting of the committee by two third majority of the total number of committee members who are for the time being entitled to sit and vote at any meeting of the committee and the office of such President, Vice- President, Chairman, Vice-Chairman, Secretary. Treasurer or any other officer, as the case may be, shall thereupon be deemed to be vacant."

17. This sub-section provides the manner in which a Chairman or Vice-Chairman who holds such office by virtue of his election may cease to hold it. It also provides the method of such removal of two-third majority of the total members of the committee who are, for the time being, entitled to stand vote in any meeting of the committee. It is thus clear that the right to remove and elect Chairman and Vice Chairman has been restricted to only limited class of members. Who are they?

18. Elections in a democracy have been conceived as an instrument of selecting the best qualitatively superior and politically valuable. Who should be entitled to reverse the selection ? Those who elect or any other numbers increased by any methodology or law adding representatives and nominees not entitled to participate in selection. If the value of elective process has to have primacy then those worthy of choice should not be permitted to be squeezed out by those who are precluded from leadership or electing the leader. This basic concept does not stand altered or modified either by any provision in the Act or Rules. Literal construction of expression "entitled to sit and vote" if it results in negation of democratic process or is against logic and is fraught with danger of removal of an elected representative by nominee of financial in situations or government then it has to be avoided.

19. Reverting to statutory right the scheme of the Act does not warrant the conclusion that such members are entitled to participate in meeting requisitioned u/s 73-ID. Sub section (9) of section 27 reads as under---

"No nominee of the Government or of any financing bank or any society shall be entitled to vote at any election of its committee."

20. It clearly and unequivocally debars nominees of financial institutions or Government representatives from exercising any right to vote at any election meeting. Therefore, the provisions in the bye-law debarring such a member from voting at election of Chairman or Vice-Chairman cannot be interpreted to mean as permitting such representatives to vote at other election meeting as that may result in invalidating the bye-law. Even if such members have some right to vote in some meetings other than election meetings or they have a right to record their opinion it does not entitle them to participate or even served with notice of vote of confidence as nature of meeting for considering motion of no-confidence has all the characteristics both in content and effect of an election meeting. Voting is sine quo non of election and under Clause (i) of sub-rule (7) of R. 57-A, the decision to retain Chairman is arrived at by noting and such right namely, right to vote in election meeting being non existent in nominees of financial institutions or of Government the expression "entitled to sit and vote" used in section 73-ID has to be read as excluding such members from its ambit. Such reading of the provision is necessary not only because it is more logical but also that is the outcome of combined reading of sub-section (9) of section 27, section 73-ID and bye-law 29.

21. For there reasons, this appeal succeeds and is allowed. The writ petition filed in the High Court is dismissed. But there shall be no order as to costs.