

(1983) 07 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 9 of 1983

Ghataoeppa Pakreppa Muger and others	APPELLANT
Vs	
M.R. Naik and others	RESPONDENT

Date of Decision : 08-07-1983

Acts Referred:

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

Citation : (1983) MhLj 984

Hon'ble Judges : M.N. Chondurkar, Acting C.J.; M.L. Pendse, J

Bench : Division Bench

Advocate : B.R. Naik with Y.R. Naik, for the Appellant; M.B. Mehere, Asstt. Govt. Pleader to 8 and Bhimrao N. Naik, for the Respondent

Final Decision : Allowed

Judgement

M.N. Chandurkar, Actg. C.J.

1. The petitioners in this petition are challenging an order made u/s 77A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") by the Assistant Registrar of Co-operative Societies, Kolhapur. By this order the Assistant Registrar, respondent No. 1, purporting to act in exercise of his powers u/s 77A(1)(a) and (b), has directed that the Managing Committee of the Chandgad Taluka Shetkari Sahakari Kharedi Vikri Sangh, Ltd., Turkewadi, Taluka Chandgad, District Kolhapur (hereinafter referred to as "the Society") would stand dissolved and an Administrator would conduct the affairs of the Society until further orders.

2. For a proper appreciation of the circumstances which, according to the Assistant Registrar, led him to exercise his powers of appointment of an Administrator, it is necessary to state a few facts. Admittedly, the period of live years for which the Managing Committee was elected on 14th October 1977 had already expired. Fresh elections were, therefore, to be held and an election programme was, therefore, published by the Collector, because the Society is a

specified society. In accordance with this programme, the scrutiny of nomination papers was to be held on 10th December 1982 and, if necessary, after the publication of the final list of candidates on 20th December 1982, the poll was to be taken on 5th January 1983. Out of the nomination papers received, 14 nominations were received for 6 seats from A class members and 8 nominations were received for 3 seats from B class members. Respondent No. 7 was the Returning Officer for the election. He is the Deputy Collector of Gadhinglaj. Now, all these nomination papers had been rejected by the Returning Officer. The present respondents Nos. 3 and 4 had also challenged the electoral rolls in Writ Petition No. 3596 of 1982. In that petition, a stay of further proceedings according to the notified programme of election was granted on 9th December 1982. We are not in this petition concerned with the grievance which is made by the petitioners that notwithstanding the stay of the process of election, respondents Nos. 3 and 4 did not intimate to the Returning Officer that the election process was stayed when the scrutiny of nominations took place on 10th December 1982.

3. It appears that 9 persons including respondents Nos. 3 and 4 had made a complaint to the Assistant Registrar making certain grievances against the members of the Managing Committee, the contests of which, according to the Assistant Registrar, were verified by him. The said complaint is not on record nor could it be produced by the learned Assistant Government Pleader at the time of hearing and it is not possible for us, therefore, to speculate on the nature of the complaint. Admittedly the contents of that complaint were also not made available to the present petitioners at any stage. That complaint could not have been considered for making the impugned order. The impugned order refers to three circumstances which were considered by the Assistant Registrar, which impelled him to make the impugned order. These three circumstances were:

- (1) The period of office of the present Managing Committee had expired.
- (2) There was no possibility in the immediate future of any elections of the Managing Committee.
- (3) The contents of the application dated 22nd December 1982 made by the members of the Society asking for appointment of an Administrator have been verified and found correct to a large extent.

4. The Assistant Registrar has treated the case as one in which immediate action was necessary as contemplated by the second proviso to sub-section (1) of section 77A because, according to him, the Society had committed a default in respect of the by-laws relating to the holding of election. Having regard to the three circumstances, as already pointed out, the Assistant Registrar in exercise of his powers u/s 77A (1) (a) and (b) has appointed respondent No. 8 as the Administrator.

5. The short ground on which this order is challenged by the petitioners is that the exercise of the powers by the Assistant Registrar appointing the

Administrator is not warranted by any of the provisions of section 77A on the facts of the present case and further that the requirements of the first proviso to section 77A (1) have not been complied with. The order impugned was sought to be supported by the learned Assistant Government Pleader as well as by Mr. Bhimrao Naik appearing for respondents Nos. 3 and 4. The learned Assistant Government Pleader Mr. Mehere has, at the outset, fairly conceded that the reference to clause (a) was not relevant for our present purpose and, according to both the learned counsel, the order could be supported on the terms of clause (b) of section 77A (1).

6. The impugned order unambiguously states the grounds on which the said order has been made. It was not, therefore, permissible for the learned Assistant Government Pleader or the learned counsel for respondents Nos. 3 and 4 to travel beyond the grounds which were considered sufficient by the Assistant Registrar. But before we go to those grounds, it is necessary to refer to the provisions of section 77A in so far as they are relevant for our present purpose. The relevant part of section 77A reads as follows:

77A. "(1) Where the Registrar is satisfied that-

(a)...

(b) the term of the committee of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies;

(c)...

(d)...

(e)...

the Registrar may, either suo motu or on the application of any officer of the society, by order appoint:

(i) any member or members of the society to be the member or members of the committee to fill the vacancies;

(ii) a committee, consisting of not more than three members of the society, or one or more administrators, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office:

Provided that, before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period:

Provided further that, it shall not be necessary to publish such notice in any case where the Registrar is satisfied that immediate action is required to be taken or that it is not reasonably practical to publish such notice.

Now, a bare look at the provisions of section 77A (1) will show that it confers a discretionary power on the Assistant Registrar in the matter of appointment of an Administrator. This he may do suo motu or on the application of any officer of the Society. The very fact that this is a discretionary power means that a mere existence of the circumstances enumerated in section 77A (1) need not necessarily impel the authority concerned to exercise the power of appointment of an Administrator. In a sense, the power is a drastic power because the effect of the exercise of this power would, in a given case, mean that an elected body would stand removed. It is necessary to point out that the mere fact that the period of office of an elected Managing Committee has expired does not mean that the members of the Managing Committee become functus officio immediately. There is an express provision in section 73G (2) of the Act which provides that the elected members of the Managing Committee who hold office for a period of five years "shall continue in office until immediately before the first meeting of the members of the new committee". Under this provision the members of the Managing Committee are entitled to continue to function as such till the first meeting of the newly elected managing committee who are the successors-in-office. One of the important requirements of section 77A (1) is in the first proviso thereto under which the Registrar has to invite objections and suggestions with respect to the proposed order to be made. For this he has to publish a notice on the notice board at the head office of the society inviting objections and he is duty bound to consider all the objections or suggestions received by him within a specified period. The proviso is, therefore, a salutary provision where the point of view of the members of the committee as to why in a given case an order should or should not be made has to be placed before the authority concerned and has to be considered by him before he decides to act or not to act u/s 77A (1) of the Act. It is undoubtedly true that under the second proviso, where immediate action is required to be taken, compliance with the first proviso is dispensed with. The compliance with the first proviso is also dispensed with if it is not reasonably practical to publish the notice, as required by that proviso. The power to dispense with the statutory requirement of notice inviting objections is an extraordinary power which cannot be exercised as a matter of course. When the exercise of such a power is challenged, the Assistant Registrar is bound to put on record circumstances which, according to him, justified non-compliance or dispensing with the requirements of the first proviso. It has to be noted at the outset that the Assistant Registrar seems to have assumed that notices as required by the first proviso were necessary only to the members of the outgoing committee. This view does not seem to be justified by the wide sweep of the wording of the first proviso. Supersession of an existing managing committee by an administrator is not something which concerns only the members of the managing committee. It vitally affects the right of the members of a co-operative society to have the business of their society being run by duly elected members of the managing committee. That is why a very general provision of publication of a notice on the notice board at the head office of the society is made. When such a notice is published, there is nothing to prevent an

ordinary member of a society from raising an objection to the proposed action u/s 77A (1) of the Act. Admittedly no such notice has been published. If recourse has been taken to the extraordinary power of dispensing with a notice on a wrong assumption that members of the outgoing committee of the society only are entitled to the notice, in our view, it is sufficient to vitiate the action taken by the Assistant Registrar on the assumed ground that the situation warranted an immediate action. Strictly speaking, neither in the return nor in the impugned order is there anything to show as to why immediate action was necessary especially when under the provisions of section 73G (2) the members of the duly elected managing committee could have continued in office even though their period of office had expired.

7. Once we find that the Assistant Registrar was not justified in treating this case as one necessitating an immediate action and he was required to comply with the first proviso to section 77A (1), a clear infirmity occurs in the invocation, which is sufficient to vitiate the impugned order.

8. However, since it has been argued before us that the order was warranted by the provisions of clause (b) of section 77A(1), we shall proceed to consider that argument also. Under clause (b) undoubtedly the Registrar may proceed to exercise his powers u/s 77A (1) subject, of course, to the proviso, if the term of the committee of any society or of any of its members expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies. There are two requirements of this clause. The first requirement is that the term of the committee of the society or of any of its members must have expired or for any other reason an election is held and the second requirement is that at such an election there is a failure to elect all or any of the members required to fill the vacancies. Thus the requirement of clause (b) is that there must have been an election, that election may have been on the ground that the term of the committee has expired or for any other reason and further if such an election has been held, then there is a failure to elect all or any of the members required to fill the vacancies. In the instant case, what is argued by the learned Assistant Government Pleader is that there is a failure to elect the members because all the nomination papers have been rejected. Now, it is obvious that the use of the words "failure to elect" in the context of the reference to an election being held would mean that that failure would be on the part of the members of the society. But for that the pre-condition is that there must be first an election which has been held. Holding of an election is equivalent to the whole process of election commencing with the filing of nomination papers and indeed any stage either of filing of the nomination paper or of rejection of the nomination paper on its scrutiny cannot be equated with the holding of an election.

9. What has been vehemently argued on behalf of respondent No. 1 and respondents Nos. 3 and 4 is that on account of the stay order, which was issued in Special Civil Application No. 3596 of 1982 in which the electoral rolls on which

the elections in question were intended to be held were challenged, the elections could not have been held and there is a failure to elect. Now, if as a result of a stay order of any Court elections cannot be held, then it cannot be said that there is a failure on the part of the members of the society to elect a member or members of the managing committee. This is obviously not a case to which clause (b) of section 77A(1) was attracted. We are, therefore, satisfied that the exercise of the powers by the Assistant Registrar to appoint the Administrator was wholly illegal and the order is, therefore, liable to be quashed. Accordingly, the impugned order dated 24th December 1982 is quashed.

10. Mr. Naik appearing for respondents Nos. 3 and 4 has also contended that in view of the Ordinance No. 8 of 1983 called "The Maharashtra Specified Co-operative Societies (Postponement of Elections Due to Drought Conditions in the State) Ordinance, 1983", which was promulgated on 12th May 1983, elections to the committees of the specified societies cannot be held till the duration of the Ordinance and, therefore, the Administrator must be allowed to continue to look after the affairs of the Society in question. Such a request cannot be accepted because if there is initial infirmity in the appointment of the Administrator himself, then merely on the ground that by a subsequent event like the promulgation of an Ordinance by the Governor, no elections can be held for a certain period of time, the order which was illegal and unsupported by law cannot be allowed to be effective.

11. In the result, this petition is allowed. Rule is made absolute in terms of prayer clauses (a) and (b). The Managing Committee from which the Administrator took charge will be restored back to its office by the Administrator. In the circumstances of the case, there will be no order as to costs.