(1992) 06 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 1406 of 1988

Hingna Taluka Sahakari Shetki Kharedi Vikri Sanstha, Hingna and others — APPELLANT

Vs

State of Maharashtra and another — RESPONDENT

Date of Decision : 26-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 41, 43
Maharashtra Co-operative Societies Act, 1960 — Section 69A, 79A

Citation : (1993) MhLj 1716

Hon'ble Judges : V.A. Mohta, J;M.E Saldanha, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari and Rohit Deo, for the Appellant; S.A. Bobde and R.S. Parsodkar, S.G. Charde, A.G.P. and Advocate General for State, D.K. Khamborkar, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—Validity of section 79A of the Maharashtra Co-operative Societies Act, 1960 (the Act) and the Government Resolution /direction dated 23-6-1987 (Annex. E) passed/issued under the Act is impugned in this petition by 12 Primary Marketing Co-operative Societies. Section 79A reads thus:

79A. (1) If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government, or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interest of the members of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions may impose such conditions as it may deem fit.

(3) Where the Registrar is satisfied that any person was responsible for complying with any directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed, without any good reason or justification to comply with the directions, the Registrar may by order -

(a) if the person is a member of the committee of the society, remove the member from the committee and appoint any other person as a member of the committee for the remainder of the term of his office and declare him to be disqualified to be such member for a period of six years from the date of the order;

(b) if the person is an employee of (he society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, remove the members, appoint other persons as members and declare them disqualified as provided in clause (a) above:

Provided that, before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society to which the society is affiliated. Any order made by the Registrar under this section shall be final.

2. The substance of the impugned resolution is that agriculturists will have the liberty to purchase agricultural inputs also from the Agro Service Centers.

3. The challenge to the above provision is that it gives unguided and un-channelised power to the State Government to issue any binding direction to the co-operative societies and, therefore, is violative of Article 14 of the Constitution. The challenge to the resolution is that it is in excess of the authority conferred by section 79A.

4. We will first take up for consideration challenge to the provision. Bare reading of the provision will indicate that directions can be issued thereunder only : (a) in public interest, (b) for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government; (c) to secure the proper management of the business of the society generally; and (d) for preventing the affairs of the society being conducted in a manner detrimental to the interest of the members of the depositors or the creditors thereof. The purposes of directions are specified, have direct nexus to the object of the Act and the power is conferred in the State Government itself. Under the circumstances, the challenge has no substance and has to be repelled. Indeed the point stands concluded by a Division Bench decision of this Court in the case of Sangli Zilla Sahakari Nagri Banks Association

Ltd. vs. State of Maharashtra. 1989 Mh.LJ. 173 : 1989 CTJ 327. We have our respectful concurrence to the view taken in the said decision upholding the validity of section 79A.

5. Now, about the validity of the direction. The object of issuing this direction can be gathered from the direction as well as the return filed to this petition on behalf of the State. The objects are two-fold - (i) to provide employment to unemployed agricultural graduates and (ii) to provide to the agriculturists competitive market for agricultural inputs and to break the monopoly of the marketing societies. Both the objects have direct nexus to the purposes mentioned in section 79A. The directions are essentially based on a policy decision of the State. Unemployed agricultural graduates are provided with training and facilities of opening Agro Service Centers under the sponsorship of the Maharashtra Agro Industrial Development Corporation. It is a scheme of the Central Government. Considering its purposes it cannot be said that no public interest is involved in the scheme and the directions to support the scheme. Agricultural Development Officer has filed an affidavit that no inputs are available with the Society and that urgent steps to make alternate arrangements for the agriculturists is necessary. In any monopoly, exploitation of the consumer is easy. Healthy competition is one of the solutions. This aspect is one of the inspirations behind the direction. Poor agriculturists - for whose benefit ultimately the co-operative movement is meant - is likely to be benefited by this alternate and not exclusive arrangement. There is no basis for the apprehension that only because such centers are also permitted to deal with inputs the business of the societies will crumble down. If their performance is good, services are satisfactory, rates are reasonable, there is no reason for the agriculturists to abandon them. If they cannot stand in competitive market, the impugned policy is fully justified. That sometime past such directions were issued and later on were withdrawn takes us nowhere.

6. For a considerable time all parties explained to us the mode of granting and recovering loan by the banks like the District Central Co-operative Bank, Nagpur, the respondent No. 2, which also supported the stand of the petitioners on the ground that the old arrangement facilitates the recovery of the loan. It is possible to contend that recovery may be easy in case the transaction is only through the co-operative societies. But that facet cannot be the decisive of the matter. It is pertinent to notice that loan is given only after taking a charge of the property by the agriculturist. [See form ''L'' under Rule 48(1) of the Maharashtra Co-operative Societies Rules, 1961 (the Rules)]. Our attention was also drawn to section 69A of the Act under which is created the Co-operative State Cadre of secretaries. Those societies who want to take the benefit of the services of the State Cadre are required under Rule 53A to contribute to the State Cadre Fund at the prescribed rate of 5 paise for the turnover of Rs, 100/-. Submission is that such a burden is not imposed on Agro Service Centers and this takes them to advantageous position. Now taking the services of the Cadre is a voluntary act. The Societies carry on several activities and the recovery of

loan is but one such activity. Considering the small amount of contribution and the large range of activities of the society, financial burden attributable to the loan recovery is meagre and its impact on the price of the input can be only negligible. On that touch-stone validity of the policy decision cannot be tested. It will have to be presumed that the State Government which has ultimate overall control over the co-operative movement and the societies in terms of the Act, was aware of these possible impacts.

7. It will always have to be remembered that making the societies healthy is not the only object of the Act or the co-operative movement. Indeed they are only means to achieve the ultimate end, viz. welfare of common man.

8. Our pointed attention was also invited to Articles 41 and 43 of the Constitution. Their aim is not different. They endeavour to secure a decent standard of life and economic security to the common man.

9. Under the circumstances, we see no merit in this petition. It is dismissed. Rule discharged. Needless to mention that interim order stands automatically vacated. No order as to costs.

