

(1995) 09 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 3762 of 1995

H.L. Roche and Others

APPELLANT

Vs

Citizen Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Constitution of India, 1950 — Article 43

Citation : AIR 1996 Bom 126 : (1996) 2 BomCR 411 : (1995) 97 BOMLR 546 : (1996) 1 MhLj 258

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : Dr. B.R. Naik, Y.R. Naik and Prashant Naik, for the Appellant; Jai Chinoy, Y.S. Jahagirdar, instructed by . Gabriel Pillai and V.M. Parshurami, A.G.P., for the Respondent

Judgement

A.P. Shah, J.—Whether the Board of Directors of the respondent No. 1 Bank is properly constituted in accordance with the provisions of the Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder and the bye-laws of the respondent No. 1 Bank is the question, which falls for my consideration in the present petition under Arts. 226 and 227 of the Constitution.

2. Briefly, the facts leading to this petition are as follows: The respondent No. 1 Bank is a notified Society within the meaning of Section 73IC of the Maharashtra Co-operative Societies Act, 1960 ("Act", for short). Its elections are required to be held by the Registrar of Co-operative Societies in accordance with Chapter VA of the Maharashtra Co-operative Societies Rules, 1961 ("Rules" for short), which consists of Rule 56A to Rule 56A-35. The Registrar has appointed Additional Registrar, Co-operative Societies, as Chief Election Officer under Rule 56A(1) of the Rules. The Additional Registrar declared elections for 12 seats, which comprised of 8 general seats, 1 reserved for Scheduled Castes/Scheduled Tribes, 1 reserved for Weaker Section and 2 reserved for women. However, only 11 persons i.e. respondent Nos.8 to 18 filed their nominations, who were declared

elected uncontested.

3. The main grievance of the petitioners is that the total strength of the Board of Directors of the respondents No. 1 -- Bank is 23, out of which 17 Directors are to be elected by the General Body of members. However, on account of the misrepresentation made by the earlier Body, the Additional Registrar has declared elections only for 12 seats, when it was necessary for him to declare such elections in all 17 seats having regard to the provisions of the Act, Rules and Bye-laws. Before I deal with the various contentions raised by the petitioners in detail, it is necessary to briefly refer to the bye-laws and the relevant provisions of the Act and the Rules.

4. The constitution of the Board of Directors is provided under bye-law 29. Clauses (i), (ii) and (iii) of the said bye-law 29 read as follows:--

"29. BOARD OF DIRECTORS:

(i) The Board of Directors shall consist of 12 Directors.

(ii) In the event of the State Government contributing to the share Capital of the Bank, it shall be entitled to nominate the Director on the Board of Directors of the Bank.

(iii) (a) On the Board of Directors the two seats shall be reserved, one for the member belonging to the Scheduled Castes or Scheduled Tribes; and one belonging to the weaker section.

The two reserved seats referred to in sub-clause (a) above shall be in addition to the directors to be elected as per sub-clause (i) of this bye-law....."

Then clause (b) of the said bye-law 29 is somewhat material and the same is reproduced as follows:

"(b) on the Board where the number of permanent salaried employees is 25 or more,

(i) if the number of members of Board thereof is 11 or less....one seat;

(iii) if the number of such members is 12 or more one additional seat for every 10 members over and above the first 11 members, shall be reserved for such employees. The seats so reserved shall be filled by selection made by recognised unions or unions, from amongst such employees. If there be no such union, the members representing such employees may be nominated by State Government. Any person so selected or nominated as a member of the Board to reserved seat shall not be entitled to be elected as an officer of the Bank or to vote at any election of officers".

In short, the bye-law provides that the Board of Directors shall consist of 12 Directors and further provides for reservation of two seats -- one for the members of the Scheduled Castes/Scheduled Tribes and one belonging to the Weaker Section. It also provides for a representation to the employees under

clause (b) specifying that if the number of members of the Board of Directors is of 11 or less, then one seat will be reserved for the employees and if it is more than 11, then for every 10 members, over and above the first 11, one seat will be reserved for the employees.

5. Then I turn to the relevant provisions of the Act, which have some bearing on the issues raised in this petition. Firstly, there is a reservation u/s 73B, which provides for reservation of one seat for members belonging to the Scheduled Castes/Scheduled Tribes and one seat for members belonging to the Weaker Section. Some dispute was raised about the applicability of Section 73B, although initially both the parties proceeded on the basis that the said Section is applicable to the respondent No. 1-Bank. Dr. Naik, learned counsel for the petitioners, submitted that Section 73B is inapplicable to the respondent No. 1-Bank in view of the judgment of this Court in *Kartarsing v. State of Maharashtra* 1993 Mh LJ 1206. Reliance is placed upon the observations made in paragraph 3 of the said judgment that the only banking society, which was intended to be covered, appears to be the District Central Co-operative Bank, which creates the funds for being loaned to other societies and which does not include the Urban Co-operative Bank. On the other hand, Mr. Chinoy and Mr. Jahagirdar, learned counsel for the respondents Nos. 1 and 7 to 18, pointed out that the observations made in the judgment of *Kartarsing* (supra) are not relevant, as the said observations referred to a primary urban co-operative bank, which was not notified by either a Special or General Order of the State Government as specified u/s 73B. The learned counsel also pointed out that the respondent No. 1-Bank has been notified by a Special Order dated February 7, 1991 to comply with section 73B. However, in my view, the controversy raised at the bar is purely academic, as I shall presently show that even under the bye-laws of the Society, the said two reserved seats for Scheduled Castes/Scheduled Tribes and the Weaker Section are not in addition to the 12 Directors as prescribed by bye-law 29(i).

6. But first I will deal with the legal position as provided by Section 73B. Sub-section (2) of Section 73B provides that the two reserved seats referred to in sub-section (1) shall unless where the bye-laws of the Society already provide for the reserved seats, be in addition to the strength of the members of the Committee of such Society or class of Societies. Bye-laws 29(iii) of the respondent No. 1-Bank already provides for the two reserved seats. Therefore, these reserved seats as per the provisions of the Act form part of the strength of Board in view of the amended proviso to Section 73B(2). In *Vishwanath and Another Vs. The Collector, Wardha and Others*, , it is clarified that there is no separate reserved constituency for reserved seat, which may divide the Society or the electorate. Similar view was expressed by the Supreme Court in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, . Therefore, the two reserved seats i.e. one for Scheduled Castes/Scheduled Tribes and one for Weaker Section will be part of the 12 seats as provided under bye-law 29(i). Dr. Naik, however, urged that clause (iii) of bye-law 29 provides that the two

reserved seats shall be in addition to the Directors to be elected as per clause (i) of the bye-law and, therefore, these two seats should be in addition to the 12 Directors as provided in clause (i). It is not possible to accept the argument of Dr. Naik for more than one reason. In the first place, in view of the provisions of Section 73-B, the said two seats cannot be in addition to the existing strength of the Directors. In any event, clause (iii) of bye-law 29 speaks about the two reserved seats in addition to the Directors to be elected. Admittedly, there will be representation from the workers on the Board of Directors and admittedly, the workers' representatives are selected and not elected and, therefore, the reserved seats for the Scheduled Castes/Scheduled Tribes and weaker Section cannot be in addition to the total strength of 12 Directors as provided in clause (i) of bye-law 29. Now, therefore, the next question is how many seats will be reserved for workers' representatives under the Act and the bye-laws.

7. The relevant provision is Section 73-BB, which was introduced for providing representation to the employees on the Board of Directors. Section 73-BB reads as follows:

"73BB. (1) On the Committee of such society or class of societies as the State Government may, by general or special order, direct where the number of permanent salaries employees of the society is 25 or more-

(a) if the number of members of the committee thereof is 11 or less - one seat; and (b) if the number of such members is 12 or more one additional seat for every 10 members over and above the first 11 members shall be reserved for such employees. The seats so reserved shall be filled by selection made by the union or unions recognised under the Bombay Industrial Relations Act, 1946, or the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 from amongst such employees. Whether there is no such union then the selection shall be made by the union with the largest membership and where there is no union at all, then by an election by such employees from amongst themselves in the prescribed manner. Any person selected or elected as a member of the committee to any reserved seat shall not be entitled to be elected as an officer of such society or to vote at any election of officers.

(2) No employee who is under suspension shall be eligible for being selected or elected or for being continued as a member under sub-section (1).

(3) Subject to the provisions of sub-section (2) the term of a member representing the employees shall be conterminous with the term of the committee as provided under bye-laws of the society and after every fresh election of the members of the committee a fresh selection or election, as the case may be, of a member under sub-section (1) shall be necessary."

The object of Section 73-BB is to introduce the workers' participation in the management so as to enlist co-operation of workers with a view to bring about improvement in the performance of the industrial organisations. In fact, Section 73-BB is introduced on the statute book to implement the mandate of the

Constitution under Article 43-A, which lays down that the statute shall take steps by suitable legislation or in other way to have participation of the workers in the management of the undertaking, establishment or other organisations. The Division Bench of this Court in Writ Petition No. 3403 of 1981, *Shri Maloji Vishnu Sable v. Regional Deputy Director of Sugar, Kolhapur and others*, observed that such a representation to the employees should obviously be effective and not nominal or ornamental. The Division Bench then proceeded to observe:

"Therefore, the provisions of Section 73-BB will have to be construed and interpreted in the background of this directive principle of the State policy. The said provisions will have to be interpreted and applied in the perspective of Article 43-A of the Constitution, and the benefit of any reasonable doubt even of law will have to be resolved in favour of the weaker section namely employees to whom the Legislature wants to give effective representation".

It was also observed that the intention behind this participation is to create healthy relations between the management and the workers so that by a joint decision-making process both will be benefitted. This will also be conducive and helpful to the maintenance of industrial peace. The provisions of Section 73-BB are, therefore, required to be interpreted in order to ensure that a proper representation is given to the employees and it should not be only nominal or ornamental as observed by the Division Bench.

8. Now I will deal with the different interpretations given to the provisions of Section 73-BB by the contesting parties. Dr. Naik says that the correct and proper interpretation of Section 73-BB is that if the number of members of the Committees is 11 or less, the employees will be entitled to one seat, but if the number is 12 or more, then the employees will be entitled to one more seat; provided that there is complete block of 10 members over and above the strength of 11 members. In other words, Dr. Naik wants to suggest that for the first 11 members, there will be one seat reserved for the employees and the employees will be entitled to one more seat; provided that there are 10 more members i.e. 21 and in case there are 10 more members, i.e. the strength is 31 then there will be 3 representatives of the employees and so on and so forth. On the other hand, it was argued by Mr. Chinoy and Mr. Jahagirdar that the language clearly suggests that up to first 11, there will be one seat reserved and if it is more than 11, one seat will be reserved for every 10 members.

9. I find considerable substance in the argument of Mr. Chinoy and Mr. Jahagirdar. The word "every" clearly specifies that even if there is one member over and above the first 11, there will be one additional seat reserved for the employees for 10 members over and above the first 11 members. The Legislature has used the word "every" consciously and, therefore, it is not possible to restrict the scope of Section 73-BB by giving an artificial meaning as suggested by Dr. Naik. Dr. Naik strenuously contended that in the case of *Shri Maloji Vishnu Sable* (supra), the Division Bench clearly held that the employees will be entitled to an additional seat; provided that there is a complete block of

10. I have carefully gone through the said judgment and I do not find any such ratio laid down by the Division Bench. The question before the Division Bench was whether the employees will be entitled to two seats in the facts and circumstances of the case before the Division Bench. It appears that it was argued that the employees will not be entitled to more than one seat because there has to be a complete block of 10 in addition to the strength of 11. That argument was rejected by the Division Bench, because in that case, along with the one workers' representative, who was already taken on Board, the number was 21. In that view of the matter, the Bench was pleased to observe that the employees will be entitled to have one more seat on the Board of Directors. But the Bench has nowhere laid down that in order to have one additional seat, there has to be a complete block of 10 members. In my opinion, such an interpretation will completely defeat the object behind introducing of Section 73-BB. At this stage, I may also mention that in a recent order passed by the Division Bench in Writ Petition No. 4335 of 1994, *Bank Karmachari Sangh v. Collector of Pune and others*, an additional seat is directed to be reserved for the employees in view of the fact that the strength of Board of Directors was 16 i.e. more than 11. Thus out of 12 seats referred to in bye-law 29(i), there will be reservation of two seats for the employees' representatives.

10. Now the last Section, which is somewhat important, is Section 73-BBB, which provides reservation for two seats for women members. There is no dispute that these two seats shall be in addition to the existing number of the Board of Directors and, therefore, the composition of Board of Directors will be as follows:

(a) 8 seats for General Category.

(b) 2 seats reserved for Scheduled Castes/Scheduled Tribes and Weaker Section.

(c) 2 seats reserved for women.

(d) 2 seats for the employees' representatives to be selected by the employees.

Thus the Board of Directors shall consist of 14 members. Out of those 14 seats, elections are declared in respect of 12 seats, because the remaining two seats are required to be filled in from employees' representatives by process of selection. Thus I do not find any illegality or irregularity in the process of elections. The petition must, therefore, fail and the same is dismissed with costs.

11. On the oral request of the learned counsel for the petitioners, ad interim relief granted to continue for a period of two weeks from today.

12. Petition dismissed.