

(2000) 09 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 3631 of 1999

Jayram Sakharam Pachore and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

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

Citation : (2001) 2 ALLMR 179 : (2001) 1 BomCR 245 : (2001) 2 BOMLR 587 : (2000) 4 MhLj 255

Hon'ble Judges : D.S. Zoting, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : R.N. Dhorde and L.M. Pawar, for the Appellant; E.P. Sawant, Government Pleader for Respondents No. 1 to 3, V.H. Dighe for S.V. Kharde Patil for respondent No. 4, Arvind Bobde, P.M. Shah and S.S Manale, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—This petition has challenged the vires of section 73G(2B), 73A, 73IB and 77A (3) of the Maharashtra Co-operative Societies Act, 1960 (for short, the Act) and prayed for other consequential relief's, including the continuation of the managing committee in office without being superseded or replaced by an Administrator till their elections are held and the newly elected body resumes office. On 2nd August, 1999 a Division Bench of this Court (Barde and Mhase, JJ.), while issuing notice before admission, granted ad interim relief in terms of prayer clause (F) and also clarified that the petitioner would be at liberty to move the State Government as per the provisions of section 73G(2) of the Act with an application for extension of the managing committee's tenure. Prayer Clause (F) reads, thus :

(F) Pending the hearing and final disposal of the present writ petition, grant an injunction restraining the respondents Nos. 1 to 3, their officers, agents, servants or anybody else claiming through or under them from taking any steps for

superseding the existing Board of Directors of the respondent No. 4 Sangh including the petitioners and other members and/or appointing the Administrator till the newly elected Managing Committee Board of Directors takes over the charge of the respondent No. 4 Sangh and for that purpose issue necessary orders.

2. Before we proceed further it would be necessary to deal with some factual aspects regarding the present managing committee. Its term was to expire on 2nd August, 1999 and the Collector of Ahmednagar, who is the statutory authority to conduct the elections for the managing committee of the respondent No. 4 Sangh, which is a specified co-operative society within the meaning of section 73G of the said Act, had declared provisional voters list on 4th June, 1999. Anticipating that the managing committee would have to vacate the office after 2nd August, 1999, by the operation of the provisions of section 73G(2B) of the Act, in the event of the elections to the new managing committee not being held, five of the fifteen managing committee members approached this Court in the instant petition on 14th June, 1999. A little prior to that i.e. on 8th June, 1999, the Government of Maharashtra issued an order, invoking its statutory powers u/s 73IB of the Act, to postpone the elections of all co-operative societies till 30th September, 1999 and pursuant to the general elections to the Legislative Assembly as well as the Parliament the Code of Conduct was in operation till 20th of October, 1999. On 30th June, 1999 the Government of Maharashtra passed an order making an exception in respect of the respondent No. 4 Sangh and excluding it from the general order dated 8th June, 1999 postponing the elections. Thereafter, the managing committee approached the State of Maharashtra for extension of tenure and the said application was allowed, thereby extending the tenure upto 15th of December, 1999 or till the newly elected committee took charge, whichever was earlier. On 21st October, 1999, the Collector Ahmednagar declared the election programme of the managing committee for respondent No. 4 Sangh and the date of polling was scheduled as 28th November, 1999 so that the newly elected committee could take over the reins of the respondent No. 4 earlier than 15th December, 1999. However, the said election programme came to be challenged in writ petition No. 5060 of 1999 which came to be rejected by this Court by order dated 25th October, 1999.

Aggrieved by the said order of rejection of writ petition, SLP No. 16715 of 1999 came to be filed before the Supreme Court on 30th October, 1999 and by order dated 26th November, 1999 the Supreme Court was pleased to stay the declaration of the election results. Again on 24th February, 2000 the SLP was heard by the Apex Court and the stay order passed on 26th November, 1999 came to be confirmed and the SLP was admitted. It is under these circumstances that the old managing committee, of which the petitioners are some of the members, continues in office.

3. Shri Dhorde, the learned counsel for the petitioners, submitted that the amendment to section 73G(2B) of the Act, deleting the proviso by Maharashtra

Co-operative Societies (Amendment) Act, 1995 is ultra vires the Constitution and the benefit of the deleted proviso ought to be considered by this Court in favour of the petitioners inasmuch as the elections of the managing committee could not be held prior to 2nd August, 1999 on account of the failure on the part of the Collector and also because of the other factors, which are not, in any way, attributable to the petitioners. The challenge to the legality of section 73H of the Act has been given up in view of the recent ordinance issued by the State of Maharashtra and the challenge to the validity of section 77A(3) of the Act has not been pressed. The challenge to the provisions of section 73IB, under which the Government of Maharashtra issued order dated 8th June, 1999, postponing the elections of the cooperative societies till 30th September, 1999 need not be gone into in view of the fact that the State Government, by its order dated 30th June, 1999, has already made an exception in case of the respondent No. 4 Sangh, as observed hereinabove.

4. The fact remains that the legislature deleted the proviso to section 73G(2B) way back in 1996 (5th September, 1996) and the petitioners are obviously elected as managing committee members sometimes in the year 1994. Not only the challenge is belated, indeed it is not required to be considered by us for the following reasons.

5. Section 73G(2) of the Act states that when the election of all the members of the committee of any specified society is held at the same time, the members elected on the committee at such general election shall hold the office for a period of five years from the date on which the first meeting is held unless the period is extended by the State Government, for reasons to be recorded in writing for a period not exceeding one year, so however, that the total period does not exceed six years in the aggregate. In the instant case, the original period of five years was to expire on 2nd August, 1999 and even if the benefit of second extension was impliedly given to the petitioners, even that has expired on 2nd August, 2000 and in view of the statutory provision no managing committee in office can continue beyond a period of six years. This provision is independent of any other provisions of the said section. The extended tenure, pursuant to the order passed by the Government of Maharashtra, has expired on 15th December, 1999 and the petitioners are in the office as on today solely because of the injunction order passed by this Court, by way of ad interim relief on 2nd August, 1999. There can be no dispute, and it is well established by a catena of enunciations, that an order of injunction cannot operate contrary to the provisions of the statute and Mr. Bobade, learned senior counsel in this regard very rightly relied upon a judgment of the Privy Council in the case of AIR 1925 83 (Privy Council) which has been subsequently followed by the Apex Court in the case of "Badri Prasad and others vs. Nagarmal and others", AIR 1955 SC 559.

6. There is one more aspect which also requires consideration for not examining the challenge raised by Shri Dhorde. Without entering into the issue as to whether the Collector was at fault or he had failed to hold the elections in time,

when the original tenure was to expire on 2nd August, 1999, the fact remains that the Government of Maharashtra extended the tenure up to 15th December, 1999 and the Collector declared the election programme on 21st October, 1999 so as to ensure that the newly elected managing committee would resume office much before 15th December, 1999. Giving the benefit of this extension to the petitioners, it is apparent that there was no failure on the part of the Collector to hold the elections prior to 15th December, 1999.

7. If a proviso of a statute has been deleted by the legislature it is not for this Court to reincorporate it in the statute which is purely a function of the legislature. While interpreting the law, it is not for the Court to rely upon a provision which does not exist in the statute books. The plea taken by the petitioners in support of their continuation in the office cannot be supported by the proviso which was not, in fact, for the last about more than four years in the Act and the plea that it should be deemed to exist so as to allow the petitioners to continue in office and that too beyond the statutory period of six years, is required to be considered only for being rejected.

8. Section 73G(2B) of the Act stipulates that where, for any reason whatsoever, the election of the members of the committee was held or could not be held before the expiry of the term or the extended term, as the case may be, all the existing committee members, including the officers of the committee, shall cease to hold office on the expiry of its terms or extended term, as the case may be, and they shall be deemed to have vacated their offices. The operation of these provisions is automatic on expiry of the original term or the extended term, as the case may be. In the instant case, the extended term, as observed hereinabove, has expired on 15th December, 1999. Shri Dhorde, learned counsel for the petitioners, submitted that though the elections for the new managing committee have been held on 28th November, 1999 the result thereof could not be declared and the new committee could not take charge solely because of the stay order granted by the Supreme Court on declaration of the election results. This, however, will not support the petitioner's case to continue in office on the face of the provisions of section 73G(2B) of the Act. Admittedly, the petitioners appeared before the Apex Court on 24th January, 2000 and there is no such relief prayed for or order passed by the Apex Court which permits them to continue in office till the election result is declared. Except the injunction granted by this Court on 2nd August, 1999 there is no order of extension and, in fact, there cannot be an order of such extension beyond 2nd August, 2000 under any circumstances if regards be had to the provisions of section 73G(2) of the Act.

9. Shri Dhorde, learned Counsel for the petitioners placed reliance on the judgments of this Court in the case of (i) "Chatageppa Parreppa Mungeri and others vs. M. R. Naik and others", 1983 Mh.L.J. 984, (ii) "Vidarbha Nagarpalika Parishad and others vs. State of Maharashtra and others", 1985 Mh.L.J. 887; (iii) "Karvenagar Sahakari Griha Rachana Sanstha Maryadit and another vs. The State of Maharashtra and others", 1989 Mh.L.J. 320 = 1989 CTJ 302; (iv)

"Tinajirao Ramrao Kale vs. The State of Maharashtra and ors.", Writ Petition No. 3432 of 2000 and also the judgments of the Supreme Court in the case of The Tehsildar, Hinganghat and Another Vs. Deorao and Others, ; and in the case of Narendra Madivalapa Kheni Vs. Manikrao Patil and Others, as well as the judgment of the Madhya Pradesh High Court in the case of "Anurodh Prasad Shastri and another vs. State of Madhya Pradesh and others", 1993(2) MPJR 33. In short, the contention of Shri Dhorde is that the petitioners being elected members of the managing committee and there being no allegations against them. In that capacity, it is imperative that they be continued to hold the office for a temporary period and until they seek orders from the Apex Court, to maintain the true democratic spirit and the statutory right which they have conceived should not be taken away. The first judgment of this Court in the case of "Chatageppa" case (supra) does not assist the cause of the petitioner inasmuch as the section 73G(2) has been amended in the year 1986 and in the facts of this case the ratio therein is misplaced. The second case is the Full Bench judgment of this Court which was dealing with the interpretation of sections 40, 48A and 51 of the Maharashtra Municipalities Act and in view of the scheme of section 73G(2), section 73G(2B) and section 73H of the Act, we are afraid the ratio laid down by the Full Bench of this Court cannot be applied and more so when we desire to forbid the Government or the Registrar from invoking the powers u/s 77A of the Act, for some time.

10. Section 73G(2B) read with section 73G(2) of the Act states that on expiry of the original tenure or the extended tenure, the outer limit being of six years, the elected members cease to hold office of the managing committee. However, these provisions do not stipulate any alternative arrangement for the administration of the society in that eventuality namely when the elected members cease to hold office on completion of their original term or extended term. Such an issue had also come up for our consideration in the case of "Ratnakar Anand Daste and others vs. State of Maharashtra and others", Writ Petition No. 1136 of 2000 and we had relied upon the provisions of section 73H of the Act which states that the committee shall cease to function on the expiry of its term and the members thereof shall cease to hold office and the Registrar may himself 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 and the Registrar or Administrator shall hold the elections within a period of six months and the committee shall be constituted before the expiration of that period. This provision empowers the Registrar, at the first instance, to take over the administration of the society, which includes a specified society as well and in the second stage it empowers the Registrar to appoint an Administrator. Section 77A empowers the State Government or the Registrar to appoint a new committee or Administrator or constitute a committee by following the procedure as laid down therein. Our order dated 18th April, 2000 in Writ Petition No. 1136 of 2000 was challenged before the Supreme Court and the SLP came to be rejected. We are satisfied that there is no case for the

State or the Registrar to invoke the powers u/s 77A of the Act immediately. By the operation of section 73G(2) and (2B) of the Act the elected members have ceased to hold the office and an elected member does not have the right to continue in the said office beyond the statutory period. It is for these reasons that we find ourselves unable to concede to the request made by Shri Dhorde to allow the petitioners to hold the office for a temporary period of four weeks.

11. In the premises the petition is hereby rejected summarily. Ad interim order dated 2nd August, 1999 stands vacated. We direct the District Deputy Registrar to take over the affairs of the respondent No. 4 forthwith u/s 73H(2) of the Act and we further direct the State of Maharashtra and the Registrar not to initiate any action u/s 77A of the Act for a period of four weeks from today for appointment of an Administrative Committee or an Administrator.

12. At this stage, Shri Dhorde submitted an oral application to stay the operation of this order for a period of two weeks. Shri Shah, learned counsel appearing for the respondents submitted that in view of the deeming provision of section 73G(2B) of the Act the petitioners have ceased to hold the office and there is no justification in allowing the oral prayer made by Shri Dhorde. However, taking into consideration the long chain of litigation and the fact that the SLP is pending before the Supreme Court in which an interlocutory order has been passed directing not to declare the result of elections held for the managing committee on 28th November, 1999, we deem it appropriate to allow the prayer and we, therefore, stay the operation of this order for a period of two weeks from today.