
(2000) 07 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 3143 of 2000

Kisan Vikas Ginning Pressing Ltd., Aurangabad

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Co-operative Societies Act, 1960 — Section 102, 102(I)(b), 21, 21A, 77A

Citation : (2000) 07 BOM CK 0004

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; S.K. Kadam, A.G.P., for the Respondent

Judgement

S.A. Bobde, J.—Heard Mr. Godhamgaonkar, learned counsel for the petitioner and Mr. S. K. Kadam, learned A.G.P. for the respondents.

2. Rule. By consent of the parties. Rule made returnable forthwith and the petition is taken up for final hearing. This is a petition under Articles 226 and 227 of the Constitution of India.

3. This is an unusual case in which a Co-operative Society i.e. Kisan Vikas Ginning Pressing Limited, has sought to convert itself into a public limited company. Noticing that the Co-operative Society has not held election, to the Managing Committee, the Assistant Registrar, Co-operative Societies, Vaijapur, has exercised his powers u/s 77A of the Maharashtra Co-operative Societies Act, 1960, and appointed an Administrator by the order dated 4th July, 2000.

4. The brief facts are, that the petitioner Kisan Vikas Ginning Pressing Limited, a Co-operative Society, was registered on 29-9-1994. The term of the last Managing Committee expired on 12-4-1996, it was extended under the orders of the Government upto 12-4-1997.

5. Before the expiry of the term, on 13-7-1998 the Co-operative Society resolved

in its annual general meeting that due to large scale political interference it is better that the Co-operative Society should cease to function as such under the Maharashtra Co-operative Societies Act, 1960, and it should be converted into a public limited company under the Companies Act, 1956. After this resolution, the Co-operative Society informed the Assistant Registrar Co-operative Societies, Vaijapur, by its letter dated 17-4-1999 that in its Annual General Meeting held on 13-7-1998 it has been resolved that this Co-operative society should be converted into a public limited company. The Assistant Registrar seems to have not taken any note of this letter and has therefore, not acted on that letter.

6. In the meanwhile, by the order impugned in the present writ petition dated 4-7-2000, the Assistant Registrar Co-operative Societies, has exercised his powers u/s 77A of the Maharashtra Co-operative Societies Act, 1960 and appointed an Administrator to carry on the administration of the said society on the sole ground that the term of the Managing Committee is expired and election has not been held. The learned Counsel for the petitioner, Mr. Godhamgaonkar, argued that the resolution dated 13-7-1998 itself brought an end to the existence of the society having regard to the fact that the society is a juristic person which comes into existence under the provisions of the Maharashtra Co-operative Societies Act, 1960 and its existence continues under that Act, it is clear that its end can also be brought about only in accordance with the provisions of that Act. The existence of a Co-operative Society can come to an end either by cancellation of its registration u/s 21 or its de registration u/s 21A of the Act. The other mode, which seems appropriate in this case, is by liquidation. Section 102 of the Maharashtra Co-operative Societies Act, 1960 provides as under:

102. LIQUIDATION. - (1) If the Registrar,

(a) after an inquiry has been held u/s 83 or an inspection has been made u/s 84 or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three fourth of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of society which

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members' deposit not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye laws. is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up. (2) A copy of such order made under sub-section (1) shall be communicated in the prescribed manner, to the society calling upon it to submit its explanation to the

Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society of being heard, may issue a final order, vacating or confirming the interim order.

The aforesaid provision requires that winding up may be initiated ""on receipt of an application made upon a resolution carried by two third members of a society present at the special general meeting called for the purpose" or on his own motion in the case of a society, which has ceased working, the process of winding up can be initiated.

7. Having regard to the facts of the present case, I am of the view that the society having resolved to convert itself into a public limited company, it expressed a clear intention to bring an end to itself. The society having intimated this resolution of the society, the Assistant Registrar was entitled to treat this either as an application for winding up in the event it was found that in compliance with section 102(I)(b) or could have on his own motion initiated the winding up procedure on the ground that the society has ceased to function. It was neither legal nor proper or necessary for the Assistant Registrar to have appointed an Administrator on the society, in exercise of his powers u/s 77A of the Act which assumes that the co-operative society is functioning and the Managing Committee of the society has failed to hold the election after the expiry of the term of the earlier Managing Committee. Section 77A further provides in sub-section (2) that the Administrator shall have powers to discharge the function of the committee or any officer of the society. This further shows that the purpose of appointment of an Administrator is to carry on the function of the society. Section 77A therefore cannot be brought into play where the society has ceased to function as a society as result of its own decision. Such a situation would attract the provisions of section 102 of the Act which provide for liquidation.

8. In the result, I find that there is no justification for the Assistant Registrar to have passed the impugned order dated 4-7-2000 by which the Administrator has been appointed on the petitioner Co-operative Society. I, therefore, set aside the said order. The Assistant Registrar is further directed to take appropriate action u/s 102 of the Maharashtra Co-operative Societies Act, 1960, as may be appropriate and liquidate the said society. The Assistant Registrar may treat the letter dated 17-4-1999 written by the petitioner Co-operative Society intimating that it has resolved to convert itself into a public limited company, as an application for winding up, provided it otherwise complies with the provisions of section 102(I)(b) of the Act. He may act on his own motion u/s 102 of the Act.

9. In the circumstances, Rule made absolute in terms of prayer clause (c) along with the directions given above.