
(2015) 08 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 3383 of 2015

Kishanrao

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Co-operative Societies Act, 1960 — Section 26, 73, 91

Citation : (2015) 08 BOM CK 0046

Hon'ble Judges : S.P. Deshmukh, J

Bench : Single Bench

Advocate : V.D. Gunale, for the Appellant; S.K. Tambe, Asstt. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.P. Deshmukh, J—Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. The petition has been moved, challenging communication dated 17-3-2015 (Exhibit H) by returning officer-respondent no. 4 to respondent no. 6 permitting thereunder 89 members of the society to deposit increased contribution to share capital in the bank and production of receipt to that effect and including their names in the final voters" list for elections of managing committee of respondent no. 5-Vividh Karyakari Seva Sahakari Society Shellal, Tq. Udgir, Dist. Latur. It is further contended by Mr. Gunale, learned counsel appearing for the petitioner that inclusion of names of 89 members in the voters" list is at the instance of respondent no. 6 alone and not on application by said 89 persons.

3. Mr. Gunale makes a submission that said 89 members whose names have been included in the voters" list could not legitimately claim to be voters on the cut off date which, in present case, is 31-10-2014, for, they had failed to pay differential share value amount in respect of their shares upon increase in the share value by 31-10-2014. It is submitted that notice in respect of the same

had been displayed and further that it was also notified by beat of drum on 26-09-2014. He submits, from 485 members of the society, about 395 members had deposited requisite differential contribution of share value consequent upon increase in the share value before 31-10-2014 and accordingly, their names had figured in the provisional voters list published on 10-03-2015.

4. Respondent no. 6, on publication of provisional voters" list, appears to have requested under an application for inclusion of certain members according to the list annexed to the application on 16-03-2015 to the returning officer. It appears that thereafter, the returning officer had called upon the society and its office bearers to produce relevant record. It is the case of the other side that the society had not responded to the call. However, present petitioner purports to contend that on the very day, he had pointed out that by 31-10-2014 none from the 89 persons had paid increased share value amount despite notice on board as well as by beat of drum.

5. Learned counsel for the petitioner refers to other two applications of the very day, requesting for inclusion of names appearing in the applications in the voters" list and submits that, no orders had been passed thereon. He further submits that on 17-03-2015, strangely the returning officer had communicated to respondent no. 6 to arrange for payment of requisite share contribution amount in the bank and to produce receipt in respect of the same by next date, in order to include names of said 89 members in the voters" list. On 18-03-2015, learned counsel points out, the returning officer had communicated to the bank to accept the increased share contribution amounts of said 89 members. He thus submits that thereafter the names of said 89 members had been included in final voters" list. According to learned counsel, the action and the orders passed by the returning officer are beyond his powers and authority. He submits that such payment of share capital would not enable said 89 members to be voters in the elections to the managing committee of the society. He submits that unless the members pay up increased share value by cut off date i.e. 31-10-2014, they would not be deemed to be valid voters.

6. Mr. Gunale, in support of his submission that 89 members are not entitled or eligible to be included in the final voters" list refers to and rely on sub rule (2) of rule 36 of the Agricultural Produce and Market Committee Rules and for said purpose places reliance on a decision in Sai Vividh Karyakari Seva Sahkari Sanstha Maryadit and Others Vs. State of Maharashtra and Others, (2012) 1 ALLMR 63 : (2012) 1 BomCR 149 : (2012) 2 MhLj 274 . Facts in aforesaid case has no parity with the present matter save and except the same relates to voters" list. Petitioners" request in said writ petition for inclusion in voters" list was rejected on a ground that they were not members for a period of six months prior to due date of general elections and their names were subsequently enrolled.

7. Mr. Sabnis, learned counsel appearing for a few of the respondents-members whose names have been so included in the voters" list, purports to support the

petitioner with a decision of this court in Pandurang Hindurao Patil Vs. State of Maharashtra and others, (1983) MhLj 1081 , more particularly paragraph number 34 which reads thus;

" 34. Section 73 of the Act, in our view, statutorily requires that the Managing Committee of every society has to be constituted not only in accordance with the Act and the Rules but also in accordance with the Bye-laws. Now, if section 73 requires the constitution of a Managing Committee in accordance with the Bye-laws also, then it obviously casts a statutory obligation on the Returning Officer to comply not only with the Act and the Rules but also with the Bye-laws. Any decision which is not in conformity with the Bye-laws or which is in excess of the Bye-laws will clearly result in affecting the constitution of the Committee and infraction or violation of the provisions of section 73 of the Act. If it is, therefore, possible to show in a given case that at some stage of the constitution of the Committee, the order of the Returning Officer has the effect of the Committee being constituted contrary to the mandate of section 73 of the Act and this mandate requires constitution in accordance with the Act, the Rules and the Bye-laws, the matter can be brought before this Court and if this Court is satisfied that in a given case, interference is necessary, the petition cannot be rejected in limine on the ground that it does not lie and the dispute must only be resolved by recourse to the machinery under section 91 after the result of the election is declared. """,

contending that the returning officer had grossly exceeded his jurisdiction and powers by directing respondent no. 6 to deposit and the bank to accept increased share value amount. In doing so, he has expressed his partisan approach in the matter favouring respondent no. 6 rather than said 89 members. According to Mr. Sabnis, in said case, paragraph no. 34 in Pandurang's case (supra) reproduced hereinabove would go a long way in inducing and persuading this court to invoke its jurisdiction to unsettle the position or rather to neutralize and normalize the undulating situation arising in the matter. Mr. Sabnis further purports to contend that the reasons which underwent in enlisting of 89 members as the voters are unjustifiable. Different reasons as are now appearing cannot be supplied now. He submits that the submission of affidavits of the other side, under the circumstances, are unworthy of being taken into account.

8. Learned counsel for respondent no. 6 and few other respondents Mr. Irpatgire submits that section 26 of the Maharashtra Co-operative Societies Act, 1960 shall play a pivotal role in the matter, which reads :

" 26. Rights and duties of members. (1) A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws;

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with.

(2).....

(a).....

Provided that.

(b).....

Provided that..

Provided that..

Provided that..

Provided that.

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification:

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote. "

9. Mr. Irpatgire submits that the position glaringly emerges and dazzles in the matter is that said 89 members had no notice regarding payment of share capital as is required pursuant to second proviso to Section 26 of the Maharashtra Co-operative Societies Act and/or amendments to by-laws of society particularly by law no. 7(1) which reads;

10. He submits it is not the case of petitioner or, for that matter, of Mr. Sabnis's clients that notice had ever been issued with reference to by-law No. 7(1).

11. In the circumstances, Mr. Irpatgire draws attention of this court to a recent decision by a division bench of this court in writ petition no. 7195 of 2015 [Kondiba s/o Babarao Manorkar vs. The State of Maharashtra and others] dated 11-08-2015. He draws attention particularly to paragraphs number 9, 11, 13 and 14 of the judgment which, to a considerably large extent, would apply to the present case. Said paragraphs read as under;

"" 9. It is not a matter of doubt that the petitioner and other members, whose names have not been incorporated in the final list of voters, are conferred with the membership of the society. The by-laws of the society provides for an active member, which definition, is in conformity with the definition provided under the Maharashtra Co-operative Societies Act. In case name of the member is removed from the list of active members, necessary intimation shall have to be given to

such member within thirty days from the date of close of the financial year. In the instant matter, it has not been disclosed as to whether petitioner and others have been classified as non active members. The fact, however, remains that the petitioner and other members have not been communicated regarding change in the classification and as such, it shall have to be presumed that they are valid members of the society entitled to exercise all the rights.

11. It has been contended that there was a publication of notice in the news paper calling upon members of the society to deposit difference in share value with the society and in spite of such publication, the petitioner and other members have failed to deposit the amount. It must be noted that the publication appears to have been issued in the local news paper only on 20.04.2015 and that there is no individual notice to each of the members within contemplation of proviso to Section 26 of the Act.

13. In the instant matter, as also in the reported case, about 90% of the members have been kept away from the process of election. There is no compliance of the mandate contained in proviso to Sub-section (1) of Section 26 of the Act. The petitioner and other members have not been given any notice in respect of increase in minimum contribution of the members in share capital nor they were called upon to deposit amount of difference in share amount within reasonable period by issuing individual notice. The by-laws of the society provide for mode of service of notice, which has not been adhered to in this matter. Mere publication of notice in the news paper is not a compliance and what is contemplated under the proviso to sub-section (1) of Section 26 is, due notice of demand to the members and to give reasonable period to comply with the demand.

14. In the instant matter, since there is violation of the mandate contained in proviso to sub-section (1) of Section 26, in our opinion, failure of the District Cooperative Election Officer to incorporate names of the petitioner and other members in the list of voters, vitiates whole process of election and as such, interference by this Court is warranted. ""

12. Mr. Irpatgire further goes on to submit that when the facts, essentially the stark ones, as emerging in the matter show that said 89 members could not have been excluded from the voters" list, the argument by learned counsel Mr. Sabnis is relegated to insignificance. The law as applicable to the facts would hold sway and prevail over the situation. He submits that it may be that the reasons for which inclusion of said 89 members in voters" list are not justified, however, one cannot connive at that said 89 members could not have been excluded at all for want of requisite notice as is referred to under the by-laws. He submits, as a matter of fact, in the present case paragraph number 34 in Pandurang"s case (cited supra) relied on by Mr. Sabnis would squarely hold in favour of respondent no. 6 wherein it has been observed that the by-laws would have statutory force. It is an undenied position that said 89 members were not issued notice as required under by-law until 31-10-2014. Under the

circumstances, their names ought to be included in the final voters" list. Such a position emerging in law cannot be ignored. He submits that it is not a matter of supplying reasons subsequently but, it is more a matter of fact and therefore Mr. Sabnis"s submission gets attenuated to a considerable extent and would not be strong enough to alter the position as is emerging about inclusion of 89 members in the voters" list.

13. Learned Assistant Government Pleader Mr. Tambe appearing for respondents no. 1 to 4 is at pains to justify the action taken by the returning officer. He, however, makes an attempt by referring to rules 10 and 11 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 and submits that the action by the returning officer can be said to be referable to said rules.

14. Having regard to aforesaid submissions, indisputable position emerges that no notice pursuant to by-law No. 7(1) of the by-laws applicable to the society had ever been given to said 89 members. In such a case, decision rendered by the division bench of this court on 11-08-2015 in writ petition no. 7195 of 2015 referred to earlier hereinbefore would hold the field, that in the absence of requisite notice pursuant proviso to section 26 of the Maharashtra Co-operative Act and by-laws, members cannot be deprived of their voting rights. Section 26, second proviso ordains a due notice to member in case of increase in minimum contribution of share capital and give reasonable period to comply with. As such, in my estimate, rest of the submissions get paled, for, section 26 does not preclude a right of voting for such member to whom no notice was given. In view of the same and coupled with the decision of division bench, I do not think this is a case wherein powers of this court under articles 226 and 227 of the Constitution of India are required to be exercised and the impugned order is required to be interfered with.

15. Before parting, I cannot contain observing that it is rather strange that a few members from the 89 added in voters" list, who have exercised their franchise, come to the court in support of the petitioner and oppose respondent no. 6 as a result of whose movement they could exercise their right to vote.

16. With aforesaid, writ petition stands dismissed. Rule stands discharged.

17. It is open for the returning officer to proceed further in the matter of election. Learned Assistant Government Pleader to communicate this order to the concerned authorities.