

(2022) 10 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No.7731 Of 2022, Interim Application No.18400 Of 2022

Kusum Ramesh Agarwal And Ors

APPELLANT

Vs

Hon'ble State Minister For Co-Operation, Department Of Co-Operation And Ors

RESPONDENT

Date of Decision : 19-10-2022

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 — Section 78(1), 78A(1), 78A(1)(a), 78A(1)(b), 89, 152

Citation : (2022) 10 BOM CK 0110

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Subhash Jha, Manshi Jain, Usha Tiwari, V.S.Nimbalkar, Surel Shah, Atul Thakkar, Pratibha Mehta

Final Decision : Partly Allowed

Judgement

Sandeep K. Shinde, J

1. Rule. Rule made returnable forthwith. With consent of the learned counsel for the Parties, Petition is taken up for final hearing.

2. Petitioners were ofce bearers of Poonam Chambers, B Wing, Commercial Premises Co-operative Society Limited ('Society' for short). The Deputy Registrar, Co-operative Societies-Respondent No.3, in exercise of the powers under Section 78A(1)(b), of the Maharashtra Co-operative Societies Act, 1960 ('Act' for short) removed the petitioners as members of the committee of the society and held them not be eligible to be re-elected, re-co-opted or re-nominated, as member of any committee of the society till expiry of the period till next term of the committee. Simultaneously, Deputy Registrar appointed Shri Ananda Patil, Authorised Ofcer to administer the affairs of the said Society. Later, on 11th January, 2022, committee of Shri Chirag Shah (Respondent No.6), Shri Mahavir Murarka (Respondent No.7) and Mr. Anand Patil (Authorised Ofcer) Respondent No.5, was constituted to manage the affairs of society.

3 In Appeal under Section 152 of the Act, the Divisional Joint Registrar, vide order dated 2nd June, 2022 and in Revision, Hon'ble Minister vide order dated 21st June, 2022 confirmed the order dated 11th January, 2022 passed by the Deputy Registrar, Co-operative Societies. Feeling aggrieved by the said orders, petitioners have approached this Court in its supervisory jurisdiction.

4. It appears from the impugned order that Petitioners as Committee Members, refused to discharge the functions of the Society, besides violating the provisions of the Act, bye-laws and rules. Thus, after following due procedure, petitioners were removed from committee of the society. It is not in dispute that tenure of the petitioners as members of the committee has come to an end on. As such, election of the society is due.

5. Mr. Zha, learned counsel for the petitioners, would submit that besides giving reasonable opportunity of being heard, consultation with the federal society, is mandatory before superseding the committee or removal of member of the committee. Mr. Zha submitted that in terms of second proviso to Sub-section (1) of Section 78A, the Deputy Registrar could not have proceeded to remove the petitioners, from the committee within 45 days, from the date of seeking opinion of the Federal Society. Mr. Zha submitted, settled law is consultation with the Federal Society is mandatory, however, in the case at hand, there was no consultation at all, leave aside effective consultation. In support of this contention, Mr. Zha has invited my attention to the letter dated 13th February, 2022 addressed by Federation to the Deputy Registrar. This letter conveys that Federation had received only a copy of show-cause and no other documents, for submitting its opinion. Therefore, argued by Mr. Zha, that in absence of, consultation with the Federal Society, order dated 11th January, 2022 passed by the Deputy Registrar in exercise of the powers under Section 78A(1) (b) and further disqualifying the petitioners from contesting the elections for period of next one term was illegal. Mr. Zha relied on the decision in the case of Hemchandra Madhukar Shaligram & Ors. v. Sonal Sanjeev Shetty and Ors. 2019 SCC Online BOM 1877, Vinod Ghanshay Meshram & Ors. v. Hon. Minister for State and Ors. 2014 SCC Online Bom 1676. In these decisions, it was held that requirement of consultation under Section (1) of Section 78 is mandatory and in order to demonstrate, there was effective consultation with the Federal Society, record must indicate that there was meeting of minds of the management committee of Federal society among themselves and the consulting committee, culminating into passing of the resolution either one way or the other. It is, therefore, argued that in absence of consultation, impugned orders are bad in law and thus, be quashed and set aside.

6. Refuting petitioners' submissions, Mr. Surel Shah, learned counsel appearing for the R. Nos.4, 6 and 7, would contend that Divisional Joint Registrar and Hon'ble Minister both concurrently upheld the findings of the Deputy Registrar that the Petitioners failed to discharge the functions and committed irregularities in the administration of the society. Mr. Shah submitted that the findings

recorded by the Deputy Registrar were founded on report dated 25th November, 2021 submitted by Shri Sunil Marbhal, Co-operative Ofcer, Class-I pursuant to directions issued under Section 89A of the MCS Act and, therefore, findings being consistent with report, no interference is called for in the order dated 11th January, 2022 passed by the Deputy Registrar, Co-operative Societies, eventually affirmed by the Hon'ble Minister.

7 In so far as the issue of consultation with the Federal Society is concerned, Mr. Shah learned counsel for the respondents submitted that, in terms of the fourth proviso to Sub-Section (1) of Section 78A, the obligation to consult the Federal Society has no application to the facts of the case at hand, reason being, Society was not receiving financial assistance either in cash or in kind or guarantee from the Government nor the Government has shareholding in the Society. Mr. Shah, therefore, argued that since the society was not receiving government aid, Registrar was not under statutory obligation to consult the federal society while exercising the powers under Section 78A(1)(a) or (b) of the Act. To appreciate submissions of Mr. Shah, it would be appropriate to re-produce Section 78A(1) and the provisos appended thereto.

"78A. Power of supersession of committee or removal of member thereof

(1) If in the opinion of the Registrar, the committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election Authority has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to, come to a stand-still, or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or, where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard, and after consultation with the federal society to which the society is affiliated comes to a conclusion that the charges mentioned in the notice are proved, and the administration of the society cannot be carried out in accordance with the provisions of this Act, rules and bye-laws, he may be order stating reasons therefore.- (a) (i) supersede the committee; and (ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its place, or appointed an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society for a period not exceeding [twelve months]:

Provided that, the Registrar shall have the power to change the committee or any member thereof or administrator or administrators appointed at his discretion even before the expiry of the period specified in the order made under this sub-section:

Provided further that, such federal society shall communicate its opinion to the Registrar within forty-five days, from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the order of supersession or removal of a member and the Registrar shall be at liberty to proceed further to take action accordingly:

Provided also that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply and the committee shall not be superseded for a period exceeding one year:

Provided also that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government."

8 It could be seen that provisions of Sub-section (1) empowers the Registrar to supersede the committee of the society or remove member thereof, where acts of the committee or its members are prejudicial to the interest of the society or if the committee makes persistent default in performing its duties or is negligent in performing duties or not discharging its functions appropriately or diligently. However, these powers are to be exercised after giving committee or the member, as the case may be, opportunity of being heard and after consultation with the federal society, to which society is affiliated. As such, Registrar is empowered either to supersede the committee of the society under Section 78A(1)(a) or remove member of the committee under Section 78A(1)(b), as the case may be, if the acts of the committee or its members are prejudicial to the interest of the society. Fourth proviso conveys that Registrar cannot supersede committee of the society (emphasis), which is not receiving financial assistance, either in cash or kind from the Government. To put it differently, society to which, Government has not extended financial assistance or the guarantee, committee of such society cannot be superseded by the Registrar. Therefore, fourth proviso applies to suppression of committee of the society and not to removal of the member of the committee, whose acts are prejudicial to the interest of the society. Therefore, when member of the committee is to be removed for the alleged act, which is prejudicial to the interest of the society or for not discharging function properly or diligently, consultation with the federal society is pre-requisite before removing him from the committee of the society. Here, the case falls under Section 78(1)(b) i.e. removal of member from the committee. Herein, letter dated 13th December, 2021 addressed by the Mumbai District Co-operative Federation Limited to the Deputy Registrar Co-operative societies indicates that, Federal Society had received, only copy of show-cause notice. Therefore, Federal society vide said letter, requested Deputy Registrar to send complaint, inspection report, say of the society on inspection report, reply of

society to the show-cause notice. Admittedly, this letter was neither responded to by the Deputy Registrar nor he complied with the requisition of the Federal Society. This fact is not in dispute. Therefore, there was no, 'consultation' with the Federal Society, which is pre-requisite before removing the member from a committee. Although the opinion of the Federal Society is not binding on the authority, yet, the authority must establish that it sought opinion of the Federal Society by providing requisite documents. In the case at hand, leave aside the opinion, the Deputy Registrar did not send the documents required by the Federal Society for forming the opinion. Therefore, Mr. Zha, learned counsel, has correctly submitted that in absence of, consultation, the Registrar could not have passed the impugned order and held petitioners not to be eligible to be re-elected, re-co-opted or re-nominated as member of any committee of the society till the expiry period of next one term.

9. In consideration of the facts stated above, in my view, when member is removed from the committee, in exercise of the powers under Section 78A(1)(b) of the Act, consultation with the Federal Society is a pre-requisite. For these reasons, the order disqualifying petitioners from being re-elected, re-co-opted or re-nominated as member of committee of the society till the expiry of the period of next one term of the committee is quashed and set aside.

10. It is not in dispute that the term of the committee of the society has come to an end and its election is due. The Deputy Registrar has appointed committee of three members to manage the affairs of the society. In consideration of above facts, the said committee shall take requisite steps to hold the election, in accordance with Election to Committee Rules, 2014. However, till the new committee is duly elected, the committee appointed by the Deputy Registrar shall administer the day-to-day affairs of the society but shall not take any policy decision. To put it differently, committee is authorised to make all statutory payments, including payment to house-keeping personnel, security services, renewal and annual maintenance charges, etc. of which account shall be maintained.

11. Thus, petition is partly allowed and disposed of including all applications therein, in above terms.