
(1998) 06 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 668 of 1998

Machindranath Bandu Kale and others	APPELLANT
Vs	
Satali V.K.S. SOciety Ltd. and others	RESPONDENT

Date of Decision : 10-06-1998

Acts Referred:

Citation : (1998) 5 BomCR 928

Hon'ble Judges : Smt. R.P. Desai, J; Ashok Agarwal, J

Bench : Division Bench

Advocate : P.N. Joshi, for the Appellant; V.V. Pai, A.G.P., for the Respondent

Judgement

1. Rule. By consent rule is made returnable forthwith. Heard parties.
2. In our view, the present petition is covered by the decisions of this Court in the case of Dinkar Pandurang Patil and another v. Chikali Vividh Karyakari Society Ltd., and others ,1984 C.T.J. 147 and in the case of Utrane Vividh Karyakari Seva Sahakari (V) Socy. Ltd. and Others Vs. Laxman Dalpat Patil and Others, , which decisions have been followed in a number of decisions of this Court. In the circumstances we hold that there is no justification to restrict the right to elect one representative from amongst the non-borrowing members through the non-borrowing members only and deny the right to elect the said member through the borrowing members also. Section 73-C(3) of the Maharashtra Co-operative Societies Act, 1960, which applies to the society at hand, in so far as it is relevant, provides as under :--

"In the case of an Agricultural Credit Society which gives loans to individuals for the raising of crops, there shall not be more than one representative on the committee of such society, of members who have not taken any loans from the society and that representative shall be elected only from amongst members, who have not taken loans."
3. The above provisions deals with election of not more than one representative from amongst the non borrowing members. The said provision does not restrict

the right of voting to non borrowing members only. Hence, under the aforesaid provisions both the non borrowing members as also the borrowing members will be entitled to vote for electing one representative from the non borrowing members on the committee of the Society. In this context a reference to the relevant Bye-laws of the society may be made. Bye-laws 38(a) provides that one member from amongst non borrowing members will be elected on the committee. The said bye-laws also does not restrict the right of vote only to non-borrowing members. In the circumstances, we hold that both u/s 73-C(3) of the Act and under the Bye-law 38(a) of the Society, right to vote for electing one member from out of the non borrowing members will vest best both on non borrowing members as also on borrowing members. The view which we have taken is consistent with the view taken in the aforesaid case of Dinkar Pandurang Patil v. Chikali Vividh Karyakari Society Ltd. and others. After quoting the provisions of section 73-C(3), the Court has observed, as under :--

"There is, no doubt that on its plain wording, the section contemplates representation of borrowing members on the committee by an elected representative. This does indicate the legislative recognition of the distinction of not conflict, between the interest of borrowing and non-borrowing members and anxiety to prevent domination of the former by the latter. This is so notwithstanding there being nothing in the Act to prevent, a non-borrowing members in one year being a borrowing member the next year and vice versa. This representation from amongst them, still does not justify any interference of legislative intent to constitute any constituency of such non-borrowing members. (emphasis provided)

9. Firstly, election of such representative from amongst such non-borrowing members does not mean election "by" them alone. In the absence of any provision for the election of such representative "by" them alone, right of borrowing members to exercise their vote in this election cannot be denied. Right to vote in the affairs of the society contemplated u/s 27(1) of the Act cannot be denied without some legal authority for such denial",

4. In the result, the petition succeeds. We direct that respondent Nos. 2 and 3 will permit the borrowing members as also non borrowing members of respondent No. 1 society i.e. The Satali V.K.S. Society Ltd. to cast vote for all ten seats.

5. Rule is made absolute in terms of prayers clauses (a) and (b) of the petition. No orders as to costs.

6. Writ to be despatched immediately.

7. Petition succeeds.