
(2010) 06 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 795 of 2010

Mukesh Zanaka Paserkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 5 BomCR 174

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : N.A. Vyawahare, for the Appellant; A.S. Sonare, A.G.P. for Respondent No. 1, V.N. Morande and K.V. and S.V. Deshmukh for Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—Heard Shri Vyawahare, learned Counsel for the petitioner, Shri Sonare, learned AGP for Respondent No. 1, Shri Morande, learned Counsel for Respondent No. 2 and Shri Deshmukh, learned Counsel for respondents No. 3 and 4.

2. By this writ petition filed under Articles 226 and 227 of Constitution of India, the petitioner has challenged the order of Respondent No. 2 dated 3.2.2010 rejecting his objection to Election programme of Respondent No. 3 Society as published on 2.1.2010. The contention of the petitioner is that until and unless all contesting candidates deposited the necessary amount as per the circular dated 1.9.2007 issued by Commissioner 8s Registrar for Co-operation and for that purpose the Bye-laws of Respondent No. 3 society are amended, the elections cannot be permitted to take place. This Court has on 16.2.2010 issued notice and vide order dated 4.3.2010 the elections are permitted to proceed further but the same have been subject to further orders in the matter. Accordingly, after hearing parties, writ petition came to be admitted on 23.3.2010 and it has been thereafter listed for final hearing.

3. The Circular dated 1.9.2007 is not in dispute. According to Shri Vyawahare, learned Counsel, by the impugned order, Respondent No. 2 - Election/Returning Officer has held that circular is not applicable to Respondent No. 3 - Society and hence there was no need to either amend the Bye-laws or to hold elections after compliance with that circular. He points out that Respondent No. 3 - society is a Urban Credit Co-operative Society and hence the circular is applicable to it fully. According to him, defence that the society is not Urban Credit Co-operative Society, but a Salary Earners" Society and, therefore, circular is not applicable to it, is artificial and unsustainable. He has invited attention to relevant provisions of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the Act) particularly to Rule 10 of 1961 Rules framed under the said Act with contention that classification or categorization of societies as per said rule is only illustrative and not exhaustive. He has also urged that the last column i.e. column No. 3 of table mentioned in Rule 10 clearly reveals the intention to govern all societies of type stipulated therein by same Jaw and the description of societies therein cannot be treated as determinative for the purposes of application of said circular. He has relied upon the judgment of Division Bench of this Court in the case of (Baburao v. Brihmadeo) reported at 1980 B.C.I. 8 : 1980 Mh.L.J. 75, for this purpose.

4. He has invited attention to provisions of Section 14 of the Act to show that said Act empowers the Registrar to direct amendment to the Bye-laws of a society. In addition, he has also pointed out the provisions of Section 79A to urge that in the interest of members and depositors, powers thereunder can also be exercised and such direction is sustainable thereunder. He has invited attention to said circular to point out that it has been issued with the object of forcing personal interest in the Directors while advancing loans to members of Society by pointing out that deposits mandated thereby of such Directors with the society are also jeopardized if bad loans are sanctioned. Looking to this object of circular, the same is applicable to all Urban Credit Co-operative Societies i.e. to all societies which sanction loans to its members. He has placed heavy reliance upon the last para of said circular pointing out that it expects various officers like Assistant Registrars, District Deputy Registrar to point out the obligations imposed by it to respective societies in their jurisdiction and to insist for amendment to its Bye-laws on these lines before approving any Election Programme. He states that the circular emphasizes that the election programme can be approved only after Bye-laws are amended in consonance with said circular. As the efforts made by the petitioner to secure compliance with that circular failed and as respondents No. 1 and 2 have failed to discharge their statutory obligations, according to him, the petition deserved to be allowed and after the Bye-laws are properly amended, an Election Programme needs to be published. He further states that the order of this Court dated 4.3.2010 and 23.3.2010 are within the knowledge of Respondent No. 3 - Society and as the elections are already subjected to further orders of this Court in the present matter, the elected candidates are also aware that their tenure is subject to

further orders in the matter.

5. Lastly, he has invited attention to the fact that though added Respondent No. 4 has filed return separately, Respondent No. 3 has not separate affidavit on record after the matter came to be admitted. He has stated that before admission, the stand of Respondent No. 3 - Society was in consonance with the circular dated 1.9.2007 and that stand has still not been changed in accordance with law. Affidavit allegedly filed by newly elected secretary on its behalf taking a different stand therefore can not be looked into.

5-A. Shri Sonare, learned AGP for Respondent No. 1 and Shri Morande, learned Counsel for Respondent No. 2 - Election Officer have opposed the petition. They contend that Circular dated 1.9.2007 is not relevant in the present matter because Respondent No. 3 -Society is not a Urban Credit Co-operative Society at all and it is only a salary earner's society. According to them, the circular specifically restricts itself to Urban Credit Cooperative Societies and as salary earner society is not covered thereunder, compliance therewith is not warranted. The publication and further prosecution of Election Programme and rejection of objection raised by the petitioner is, therefore, sought to be justified by them.

6. Shri Deshmukh, learned Counsel for respondents No. 3 and 4 has at the outset stated that Respondent No. 4 is the President elected in elections conducted pursuant to impugned election programme. He further states that earlier, Respondent No. 4 was not party and stand of Respondent No. 3 - Society taken at that time (before election) is not relevant. His contention is, Respondent No. 3 - Society has after issuance of "Rule", filed separate affidavit through one Gyaneshwar Badhel and the said person is the Secretary newly elected in place of the petitioner. He points out that the said affidavit filed on behalf of Respondent No. 3 Society is in accordance with the affidavit filed by Respondent No. 4 - President and it cannot be argued that there is no final stand of Respondent No. 3 - Society on record.

7. He has also invited attention to provisions of Section 79A and Section 14 of Maharashtra Co-operative Societies Act to urge that these provisions are not at all attracted in present matter. According to him, the circular dated 1.9.2007 cannot be connected with any of these provisions. He has invited attention to provisions of Rule 13 of 1961 Rules framed under Maharashtra Cooperative Societies Act to show the procedure to be followed for amendment of Bye-laws by a society or then by Co-operative department, when the society refuses to abide by directions issued by the department in this respect. He has placed reliance upon the judgment in the case of Eknath Vishnoo Hinge and Others Vs. State of Maharashtra and Others, , to urge that the amendment to Bye-laws is possible only in the mode and manner prescribed u/s 14 read with Rule 13. According to him, the instructions issued on 1.9.2007 are at the most executive instructions and the same do not have force of law. He has relied upon the judgment in the case of The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others, , for the said purpose. He

has further pointed out that u/s 79A of the Act, the power to issue directions has been given to State Government and the State Government cannot delegate that power either to Registrar or any other subordinate authority. He points out that party aggrieved by action of Registrar u/s 14 or Rule 13 has a remedy of filing appeal u/s 152 of the Act and then a revision before the State Government u/s 154 of Maharashtra Co-operative Societies Act. Inviting attention to Circular dated 1.9.2007, the learned Counsel contends that by said circular, directions are given to its subordinate by the issuing authority and those directions are not to Respondent No. 3 or any other society. In this background, he contends that when Registrar exercises powers u/s 14 or Rule 13, that authority is discharging quasi judicial functions and in discharge of those functions, it cannot be guided by its superiors. The reliance is being placed upon the judgment of this Court in the case of Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune and Another Vs. State of Maharashtra and Others, . He further points out that the circular, therefore, is in conflict with the provisions of Section 14 and in any case it at the most directs amendment to Model Bye-Laws and not to the Bye-laws of Respondent No. 3 - Society. He further relies upon the judgment of this Court in the case of Kartarsingh Pardeshi and Others Vs. The State of Maharashtra and Others, , to urge that Bye-laws come into force only after its registration. He has further contended that this Court has not. made election subject to result of writ petition and the elected Managing Committee members, therefore, ought to have been joined as party respondents. According to him, newly elected Managing Committee members are also entitled to an opportunity of hearing before this Court. He further states that the orders of this Court subjecting the elections to its further orders at the most can stop the respondents from taking plea of availability of alternate remedy to the petitioner and it does not mean that newly elected members can be unseated behind their back. He has cited the judgment of this Court in the case of Ramkisan Onkarmal Agrawal Vs. State of Maharashtra and Others, , in support of his submission. Lastly, the learned Counsel argues that the present petitioner never sought any amendment to Bye-laws but he is party to a resolution by which the Election Officer came to be appointed. According to him, even if circular dated 1.9.2007 is held to be applicable, at the most the contesting candidates have to maintain a compulsory security deposit of Rs. 5,000/- with Respondent No. 3 - Society and their actual compulsory deposits with it are much more than that. He invites attention to the provisions of Bye-laws particularly Clause 18 to show that amount in deposit towards saving schemes like Shakti and Anivarya Bachat cannot be refunded. He, therefore, states that even on merits, the election of newly elected members is in accordance with law and circular dated 1.9.2007.

8. In his reply, Shri Vyawahare, learned Counsel has stated that Respondent No. 3 -Society is very much party before this Court and the elections have been conducted by Respondent No. 2 who is/was also aware of the orders passed by this Court. According to him, the Secretary and President both elected because of permission granted by this Court to proceed further with the election, are aware

of the interim orders and hence they represent the interest of Society as also of new committee, and hence it is not necessary for the petitioner to join each newly elected member as respondent. He further points out that the circular dated 1.9.2007 has not been challenged by respondents No. 3 and 4 and hence said circular needs to be implemented. According to him, Respondent No. 2 ought to have obtained clarification from his superiors before rejecting the objection of the petitioner on technical grounds.

9. With the assistance of learned Counsel, I have perused the records. It is to be noted that there is no challenge to circular dated 1.9.2007 before me though respondents No. 3 and 4 have attempted to show that said circular has no legal sanction and, therefore, can at the most constitute an executive instruction. More over the State Government is joined as party through District Deputy Registrar of Co-operative Societies at Nagpur. The authority issuing the circular is also not party respondent.

10. The perusal of said circular reveals that it is issued by the Commissioner for Co-operation and Registrar of Co-operative Societies at Pune. It does not expressly point out any statutory provision under which the same has been issued and it also does not disclose any direction by any superior authority/State Government to the issuing authority for that purpose/The Commissioner for co-operation has noted that a review of working of various Credit Co-operative Societies in State was undertaken as the amounts received as deposits were not being returned. The faulty procedure for distribution of loan was found to be the reason thereof. The authority also states that the Directors of such societies do not have their amounts as deposits with the societies and in many cases such directors have themselves taken the loan indiscriminately without considering the interest of society or depositors. To avoid such working and tendency, the authority found it necessary to impose a condition that such Directors must always maintain particular amount as deposit with the society. The authority has found that imposition of such condition will constrain such directors to function more seriously and with responsibility. Thereafter the authority has stated that to secure this purpose, the provisions of model Bye-laws laying down qualification for contesting elections to the post of Director are being amended and a condition of maintaining deposit of stipulated amount always with such society is being imposed. The types of societies depending upon the area of their operation has been then mentioned with amount of deposit against each such type of society. It is not in dispute that if this requirement is held applicable to society like the Respondent No. 3 - Society, the person desirous of contesting election to the post of Director of such society will be required to have & maintain deposit of Rs. 50,000/-. The circular further states that if said Director withdraws this amount of deposit before expiry of his term as Director, he will be disqualified to continue as Director thereafter. It is also mentioned that no loan can be borrowed or disbursed against security of such deposit. In the penultimate para, the said authority has stated that all Urban Credit Maharashtra Societies in State Government should accordingly get their model Bye-laws modified. In last para,

obligation has been cast upon subordinate authorities to bring this decision to the knowledge of respective cooperative societies functioning in their jurisdiction with further direction to ascertain whether such societies got their Bye-laws modified before sanctioning their Election Programmes. The circular at its ends lays down that if the Bye-laws are found to be not so amended, the Election programme be approved only after the amendment is carried out. For the purposes of Credit Co-operative Societies of Other Backward Classes and Women, the said security deposit is stated to be 10% of what is laid down in its earlier para. Thus for Directors of such a Society, the said security deposit works out to Rs. 5,000/-. It is, therefore, apparent that the circular nowhere directly calls upon any society to amend its Bye-laws. The model Bye-laws are mentioned only in penultimate para of said circular but then again it is qualified by all Urban Credit Co-operative Societies in the State. It is, therefore, apparent that the word "model" appearing in that para cannot be construed to mean that there was direction to amend model Bye-laws. After each society gets registered, it has its own Bye-law and when this position is read with said last para, it clearly indicates an intention that all societies must amend their Bye-laws in order to bring it in conformity with Circular dated 1.9.2007.

11. The provisions of Section 79A of the Act show that it deals with powers of Government to give direction in public interest. The said section enables State Government to issue instructions in public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government, or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof. The directions can be issued on receipt of report from the Registrar or otherwise. It is to be noted that the circular dated 1.9.2007 nowhere states that the obligation sought to be imposed therein are in view of any direction issued by the State Government. The said circular is issued by the Commissioner for Co-operation and Registrar of Co-operative societies and that authority is not made a party. It is, therefore, prima facie apparent that this circular cannot be viewed as direction falling u/s 79A of the Act.

12. Section 13 of the Act deals with amendment of Bye-laws of the society. As per its Sub-section (1), no amendment to Bye-law to society is valid until registered under the Act and the procedure prescribed for securing such registration and amendment is also laid down therein. Section 14 gives power to Registrar to direct amendment of Bye-laws. Sub-section (1) requires Registrar to form an opinion that it is necessary or desirable in the interest of such society to have amendment and thereafter the Registrar can call upon the society to make the amendment. If the society thereafter fails to make amendment within time stipulated, the Registrar can after giving society an opportunity of being heard and after consulting such State Federal Society as may be notified by State Government, register the amendment and issue to the society such amendment

certified by him. After the date of registration of amendment in this manner, Bye-laws of society are deemed to have been amended. However, even such amendment is made subject to appeal. It is, therefore, apparent that even when the power is sought to be exercised, amendment cannot be brought into force unilaterally and steps as contemplated by Section 13 or Section 14 are required to be undertaken. In this matter, even if it is presuming that steps u/s 13 are not initiated, as Respondent No. 3 is opposing such amendment, still u/s 14(2) before registering such amendment, the Registrar has to grant an opportunity of hearing to Respondent No. 3, consult federal society and thereafter only the amendment can be registered. These steps are not taken in the present matter. The circular does not contemplate an amendment to Bye-laws automatically but only directs that societies should get their own Bye-laws amended accordingly. The circular is dated 1.9.2007 and neither the petitioner - Society nor the department has taken any steps thereafter till date to have its Bye-laws amended accordingly.

13. It has been pointed out to this Court that on 3.8.2009, the Managing Committee of Respondent No. 3 society has passed a resolution appointing Election Officer for the purposes of elections in dispute before this Court. The petitioner before this Court was the Secretary and was party to this resolution dated 3.8.2009. Even after 3.8.2009, he has not taken any steps to secure compliance with said circular dated 1.9.2007, The Election programme has been published by Respondent No. 3 on 2.1.2010 and present writ petition has been filed thereafter by him on 11.2.2010.

14. The petitioner has made a grievance for the first time before Respondent No. 2 vide his representation dated 3.2.2010. In this representation, he has made reference to the fact that for elections due for the year 2010-2015, 118 members have filed their nominations and has requested Election Officer to verify whether every nomination form is with deposit slip of Rs. 10,000/- and then he has invited attention to requirement of Government circular dated 1.9.2007. He has requested the Returning Officer to reject all nomination papers if they are not fulfilling such security deposits. On 3.2.2008, the Returning Officer has rejected this representation by pointing out that Circular dated 1.9.2007 does not apply to Respondent No. 3 - Society and there is no provision in sanctioned Bye-laws of the society for such deposit. There is no dispute that sanctioned Bye-laws do not contain a provision requiring the aspirant to deposit the amount of Rs. 10,000/- with the society. In the light of provisions of Section 14(2) discussed above, it is apparent that the elections already scheduled could not have been made to wait till the Bye-laws are changed in consonance with the circular dated 1.9.2007.

15. The Returning Officer has found that the circular dated 1.9.2007 is not applicable to Respondent No. 3 - Society. The Bye-laws of Respondent No. 3 - Society show that it is classified as Resource society with its sub-classification as Credit Resource Society. This is in consonance with Rule 10, Entry 8(a) of the 1961 Rules. The registration certificate dated 2.11.2007 produced by Shri

Vyawahare, learned Counsel also reveals a similar classification and sub-classification. The column 3 of Rule 10 gives examples of society falling in said clause or sub-clause and those illustrations are "agricultural credit, thereafter urban credit and salary earners societies". It is, therefore, clear from bare examples given therein that Urban Credit Societies as also salary earners societies are covered by this classification and sub-classification. The perusal of judgment in the case of Baburao v. Brihmadeo, (supra) shows consideration of this aspect in paras 7 and 8. The Division Bench has concluded that the definition in Section 2 of Maharashtra Co-operative Societies Act, is though in relation to objects of those societies or the nature of their business or their composition but not in relation to territorial limits of their operation. The contention that the Act does not contemplate any society known as "Urban Society" was found to be misconceived. The Division Bench has further found that the classification of societies is illustrative and not exhaustive. In para 8, provisions of Rule 10 are looked into and again Division Bench has found that classification and sub-classification of various societies under Rule 10 are the natural concomitant to Section 2 and pertain to the societies defined in that section. The classification and sub-classifications under Rule 10 is found also merely illustrative and not exhaustive. Here, as already observed above, the examples appearing in column 3 against Entry 8 of Rule 10 include Urban Credit society and salary earner society. Thus, the contention raised before the Division Bench there can not have been raised now in the light of entry as it stands after 4.1.1985.

16. Though the respondents have come up with a case that it is salary earners society, the perusal of Bye-laws of the society also show that it extends credit/loan to its members. It, therefore, cannot be accepted that it is only salary earners society and the circular dated 1.9.2007 is not meant for it. The said circular and its objects are already stated by me in brief above and it is apparent that contingencies which laid to its issuance can also arise in working of Respondent No. 3 - Society. The reason that said circular is not applicable to Respondent No. 3 - Society as given by Respondent No. 2, therefore, is unsustainable.

17. Shri Deshmukh, learned Counsel for respondents No. 3 and 4 has already pointed out that the elected members always have and had compulsory deposit of more amount than what is contemplated by circular dated 1.9.2007. The Bye-laws of the society show that only person belonging to Sweeper Caste can become its member. Thus, the society is of members belonging to Backward Class, Hence, the amount of deposit to be maintained by its Directors has to be 10% of Rs. 50,000/- i.e. Rs. 5,000/- each. The perusal of return of Respondent No. 4 particularly document R-IV (2) with it shows that the elected members maintain deposit in excess of the said sum. Bye-law No. 18 also shows that the amount in deposit by them under, schemes by name "Shakti Bachat and Anivarya Baduif cannot be refunded or allowed to be withdrawn till the member continues to be a Member. It is, therefore, apparent that even in absence of express stipulation in the Bye-laws of Respondent No. 3 society, the purpose of Circular

dated 1.9.2007 has been achieved in present matter. Thus the policy envisaged therein already stands implemented and, in any case, is not being defeated.

18. In this situation it is apparent that no interference is warranted in writ jurisdiction in the matter. Various contentions about said circular or scheme therein advanced by rival parties can not be considered effectively as neither State Government nor Authority issuing the same are parties before me. The contention that elected members ought to have been made party respondents in writ petition, therefore, has not been examined by me and the issue is left open for consideration in appropriate case. Writ petition is thus dismissed. Rule discharged. However, there shall be no order as to costs.