

(1986) 04 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1421 of 1985

Murlidhar Tukaramsao Bhandekar

APPELLANT

Vs

The Nagpur District Central Co-operative Bank Ltd. and
others

RESPONDENT

Date of Decision : 02-04-1986

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 154

Citation : (1986) MhLj 599

Hon'ble Judges : V.A. Mohta, J;M.S. Deshpande, J

Bench : Division Bench

Advocate : M. Kamlakar, for the Appellant; V.R. Manohar for Respondent No. 1, B.T. Patil, A.G.P. for Respondents Nos. 2, 3 and S.S. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—Murlidhar Bhandekar (the petitioner) was a member of Borkhedi Sewa Sahakari Society Limited (respondent No. 4). As a representative of that society he successfully contested the election to the office of one of the directors of the Nagpur District Central Co-operative Bank Limited (respondent No. 1) in June, 1978. He had after giving sureties taken crop loan from the society which had taken advance for this purpose from the respondent No. 1 Bank on 1st July, 1978. The said loan was repayable in terms of Clause 60 of the bye-laws of the Society. The loan was not repaid in time and application for extension of period for repayment of loan was made by the petitioner to the Society. By Resolution dated 20th April, 1978 passed by the Managing Committee of the Society the period of repayment was extended for one year. For such extension neither the permission of the respondent Bank nor the sureties as required by bye-law No. 60 was taken. Bye-law of the Society does not fix any period for repayment failure to pay within which incurs disqualification for membership. The petitioner was nominated by the Assistant Registrar of the Co-operative Societies, Nagpur on the Managing Committee of the Nagpur Vikas Khand Shetki Kharedi Vikri

Sahakari Sanstha, Nagpur but the nomination was cancelled by an order dated 7th December, 1978 on the ground that he had incurred disqualification for defaulting to repay crop loan to the Society under Rule 58(1)(a) of the Maharashtra Co-operative Societies Rules, 1961 (the Rules) framed under the Maharashtra Co-operative Societies Act, 1960 (the Act). The petitioner preferred revision u/s 154 of the Act before the Divisional Joint Registrar, which came to be dismissed. This order became final. The Chairman of the Bank vide letter dated 12th May, 1980 (Annexure-VII) informed the petitioner that he could not continue as a Director of the Bank for the same reason. By this petition the said (Annexure-VII) is impugned.

2. Rule 58(1)(a) relating to disqualifications for membership of the Committee reads as under : -

58. Disqualification for membership of Committee :

(1) No person shall be eligible for appointment or election as a member of the committee of a society, if -

(a) he is in default to any society in respect of any dues from him, either as a borrower or as a surety for such period as is specified in this behalf in the bye-laws of the concerned society, or for a period exceeding three months, whichever is less or

(b) Sub-rule (2) provides that : -

A member of the committee of a society shall cease to hold office if he incurs any of the disqualifications mentioned in sub-rule (1).

3. For considerable length, there was a debate before us as to the point of time which the disqualification can be said to have been incurred. The petitioner contended that he had taken loan for 12 months and in view of the extension of the period for one more year by the Society, the petitioner could not be a defaulter before 1st July, 1980. On the other hand, the respondent Bank contended that in the absence of fixation of lesser period than three months for repayment of loan in the bye-laws, the amount had to be repaid within three months of the taking of loan by any member interested in preventing the operation of Rule 58(1)(a) relating to disqualification, even though under the contract subject to the bye-law the loan had not become due. We are inclined to reject both these contentions.

4. None can be a "defaulter" within the meaning of Rule 58(1)(a), unless the amount really becomes due under the contract subject to the bye-law. Unless default is committed, there cannot be any question of incurring disqualification. Though the language used in the Rule is somewhat clumsy, it is difficult to accept that legislative intention was to allow disqualification to incur as soon as the amount is not paid within three months (or shorter period if mentioned in the bye-law) of the taking of loan irrespective of the period for which loan was lawfully taken. What then is the meaning of the terminology "such period as is

specified in this behalf used in the Rule" In our view, the phrase "in this behalf does not refer to the outer limit of period for repayment in the bye-law, but it refers to the outer limit for a defaulter to make repayment, failure of which incurs disqualification. In other words, the scheme appears to be that in order to save disqualification, the defaulted amount has to be paid within maximum three months of the default, unless bye-law prescribes lesser period for the disqualification to incur. In the instant case, bye-law does not provide for any such period in this behalf and thus period of three months mentioned in the Rule will govern the matter and the disqualification incurs in expiry of period of three months after the amount became due. When does amount become due under the bye-law" Now bye-law No. 60 provides that the crop loan can be for a maximum period of one year and the date cannot be beyond the end of crop season, i.e. 31st March. Thus the loan becomes due in any case on 31st March of the year in which it is taken, unless the period is validly extended as per the bye-law No. 60, which permits extension only if

- (i) the member applies for extension,
- (ii) the member is not in a position to repay within time for reasons beyond his control,
- (iii) the Bank from which the advances are taken consents, and
- (iv) the sureties agree in writing. Thus, the following positions emerge : -

Unless validly extended last date for repayment of crop loan is 31st March under the relevant Bye-law. Admittedly, the last two conditions of Bye-law No. 60 have not been complied with in the instant case and hence the loan had become due on 31st March, 1978 itself. Thus, the disqualification had incurred on expiry of period of three months thereafter, viz. on 1st July, 1978. Admittedly, the dues were not cleared by that time.

5. It is clear that sub-rule 2 operates automatically and thus with effect from 1st July, 1978 the petitioner had incurred disqualification and no order of any authority for the purpose was necessary. That apart, in the instant case, the matter was enquired into by the Assistant Registrar and the Divisional Joint Registrar's order confirming the Order of the Assistant Registrar had become final. Under the circumstances, the respondent Bank was perfectly justified in issuing Annexure-VII, validity of which, we have no hesitation to uphold.

6. The judgment will not be complete without reference to the Division Bench decision of this Court in the case of Roha Ashtami Co-operative Urban Bank Ltd. Vs. The Judge, Co-operative Court, Alibagh (Kolaba) and Others, which interpreted the very Rule. Now the said decision has proceeded on two assumptions. (1) That the amount had not become due under the bye-law until the period of 12 months had expired and (2) that the amount was not repaid even within fifteen months from the date of taking of the loan. Now the bye-law of Roha Society are not before us. We do not know whether they provide for 31st

March as the outer limit for repayment of crop loans or No. Under the circumstances, the observations made therein will have no application to the present matter.

7. In the result, we see no merit whatsoever in this petition. It is dismissed. Rule discharged. No order as to costs.

8. During the course of hearing we were informed that ever since 1978 no elections of the Board of Directors of the respondent Bank have taken place. The justification, we are informed, is that in writ petition No. 2439 of 1984 an election programme issued by the Collector, Nagpur has been quashed vide order dated 15th January, 1986 being contrary to the ratio of the case of Jaisinghrao vs. The State of Maharashtra (1985 Mh.L.J. 95). We direct that the fresh election programme in accordance with the law be issued within a period of four months from today.