

(1991) 04 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 721 of 1991

Pandurang Shenphadu Pawar

APPELLANT

Vs

Laxman Bhagaji Bhise and Others

RESPONDENT

Date of Decision : 12-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 BomCR 651

Hon'ble Judges : A.A. Halbe, J

Bench : Single Bench

Advocate : P.C. Godhamgaonkar, for the Appellant; V.D. Hon, for respondent No. 1, P.G. Deshmukh, for respondent Nos. 2 and 7, S.K. Shelke and N.B. Khandarere, for the Respondent

Judgement

A.A. Halbe, J.—Rule. With the consent of the parties matter taken up for consideration. Heard the parties at length. Besides other questions, the important question which has been raised for consideration in this writ petition is whether the ex-officio members referred in section 112-A(1)(b)(ii), (iii) and (iv) of the Maharashtra Co-operative Societies Act, (for short the Act), are entitled to vote at the meeting called for the purposes of passing no confidence motion u/s 73-ID of the Act against respondent No. I, the Chairman of the loan committee of the respondent No. 9-Bank. Whereas the petitioner has stoutly discounted this suggestion, the respondents more particularly respondent No. 1, has tried to support the proposition that the ex-officio members referred above are entitled to vote at the said meeting and that the no confidence motion can be said to have been passed if only 2/3 number of members, entitled to sit and vote at the said meeting, have cast their votes in favour of the no confidence motion.

2. In order to appreciate these rival contentions, it would not be out of place to state briefly the facts set out in the petition. The petitioner is one of the members of the loan committee of respondent No. 9-. The Maharashtra State Co-operative Agricultural and Rural Development Bank Ltd. The respondents Nos. 1

to 6 are the elected members of the District Loan Committee of respondent No. 9 Bank, branch Aurangabad. The said loan committee is constituted under the above provisions of section 112 of the Act.

3. The said committee consists of three types of members and they are 7 elected members, 2 nominated members u/s 112-A(l)(b)(i-a) of the Act and the ex-officio members namely District Deputy Registrar of the Co-operative Societies, Divisional Officer of the respondent No. 9 Bank of the concerned Aurangabad division on and the District Branch Manager of the respondent No. 9 Bank.

4. The contentions of the petitioner are that the loan committee was constituted for four years and approximately one year of the due term remained. The respondent No. 1 is the elected Chairman of the said committee. In view of respondent No. 1 having lost the confidence, the elected members by their notice date 25-1-1991, called for a meeting for passing the no confidence motion on 7-2-1991. It seems that some intervening events took place to which I shall refer later but suffice it to say at this stage that in spite of the matter going to the Court, the DO confidence motion was passed by majority of six votes against one vote, that of respondent No. 1 himself in the meeting of 7-2-1991. Before the meeting was held, the respondent No. 1 approached the Co-operative Court by filing dispute No. ACR/44/91 challenging said notice issued on 25-1-1991 and further prayed for stay of summoning of the meeting of 7-2-1991. The respondent No. 1 filed two writ petitions Nos. 500 of 91 and 517 of 91 before this Court. In W.P. No. 500 of 91 he challenged the vires of sub-section (7) which was newly added 16 section 112-A of the Act. In that writ petition, there was an additional prayer for stay to the holding of the meeting scheduled on 7-2-1991. He also sought injunction restraining the concerned frees holding the meeting on that day. He also filed Writ Petition No. 517 of 91 challenging the competency of the authority issuing the notice of calling the meeting on several grounds. It seems that W.P. No. 517 of 91 was withdrawn whereas Rule was issued in W.P. No. 500 of 91. Obviously, therefore, the latter writ petition is pending before this Court wherein, as indicated above, the vires of sub-section (7) of the above section has been challenged.

5. The petitioner in the above dispute, filed before the Co-operative Court, did not succeed in obtaining stay and as stated above, nothing transpired in the above writ petition and, therefore, the elected candidates succeeded in holding the meeting as well as passing the no confidence motion against the petitioner. As the respondent No. 1 did not succeed in the Co-operative Court, in getting the stay to the meeting of 7-2-1991, he filed Appeal No. 22 of 91 before the Maharashtra State Co-operative Appellate Court, Aurangabad by which time on confidence motion was already passed and the learned Member of the said Court, by his order dated 14-3-1991, was pleased to set aside the order of the Co-operative Court and he granted injunction inter alia providing that the respondents were restraining from operating, implementing and executing the no confidence resolution passed against the Chairman on 7-2-1991 till the disposal

of the dispute pending before the Co-operative Court. An additional prayer was however granted that this order did not prohibit the elected respondents from holding fresh meeting for passing no confidence motion against the disputant in accordance with the law.

6. The net position as it stands today is that the injunctions are operating against the implementation of no confidence motion passed on 7-2-1991 and the respondent No. 1 is very much in the saddle as the Chairman of the loan committee.

7. Being aggrieved by the order of the Co-operative Court, the petitioner who is one of the elected Members, has preferred this writ petition under Article 227 of the Constitution of India inter alia praying that the order of the Co-operative Appellate Court is not at all warranted in view of the fact that the ex-officio members could not vote at the meeting of no confidence motion; that there is jurisdictional error on the part of both the courts below in entertaining the dispute when as a matter of fact, the above writ petitions were filed and one of them is pending and that in both the writ petitions, the substantial prayer is for restraining the members from passing the no confidence motion.

8. In order to understand the real thrust of arguments on the part of the petitioners, it would be appropriate to formulate two propositions which have been canvassed before me.

(1) Whether the Co-operative Court as well as the Co-operative Appellate Court has jurisdiction to entertain the dispute referred by the Chairman in Dispute No. ACR/ 44/91 and Appeal No. 22 of 91 preferred u/s 97 of the Act, in view of the W.P. Nos. 500 of 91 and 517 of 91?

(2) Whether the ex-officio members provided in section 112-A are entitled to vote at the meeting of no confidence motion held u/s 73-ID of the Act?

9. At the out set, it will have to be stated that the jurisdiction of this Court under Article 227 is limited. It is in the nature of jurisdiction of superintendence. This Court should examine as to whether the tribunals or the courts working under it act within their jurisdiction when they deal with the questions requiring application of law. If it is found that the tribunals or the courts are exceeding their jurisdiction, then only this Court is entitled to invoke the jurisdiction and rectify the mistake. However in this case, it is to be noticed that in this writ petition, the said jurisdiction shall have to be invoked in view of the fact that the important question of law is involved and that it seems to be the foundation of the dispute filed before the Co-operative Court and finally adjudicated upon by the appellate Court. Unless this question is resolved, it will be virtually impossible for the courts below to decide the dispute and as indicated, the same dispute relates to the competency of the ex-officio members of the loan committee to vote at the meeting of no confidence motion. Again the jurisdiction of the Lower Tribunal is also challenged. It is in this light of the contentions that the entire matter needs consideration.

10. Now turning to the first question which has been raised on behalf of the learned advocate for the petitioner, it is urged that W.P. No. 517 of 91 is withdrawn and that the respondent No. 1 has now approached the courts, although it is specifically barred in terms of the ratio laid down by the Supreme Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, in the case of *Surgufa Transport v. Stute Transport Appellate Tribunal*, In that case, the Supreme Court was pleased to observe that when the petition is withdrawn without permission to institute a fresh petition, the fresh petition would be barred on the analogy of the provisions contained in Order 23, Rule 1 of C.P.C. Of course, the Supreme Court has made exception in the case of habeas corpus petitions. The learned advocate for the petitioner has, therefore, contended that as soon as W.P. No. 517 of 91 was withdrawn the chairman could not now agitate the same question to any of the courts below. In order to understand this argument, the brief reference to that writ petition appears to be necessary. In W.P. No. 517 of 91, the grievance of the respondent No. 1 was that the notice issued by the Deputy Registrar on 25-1-1991 was invalid, illegal and that he did not hold any authority to issue that notice. Hence the meeting for no confidence motion could not be legally summoned.

11. In that writ petition, it was also prayed that the same notice should be quashed and that by way of interim relief, injunctions were prayed for against implementation of the said notice namely calling of the meeting on 7-2-1991. The learned advocate for the petitioner, relying on this contention, has vehemently urged that looking to this averment in the petition, it would be manifestly clear that the respondent No. 1 now can not agitate those questions before either the Co-operative Court or the Co-operative Appellate Court in terms of the ratio indicated above.

12. This has indeed been opposed by the learned advocate for the respondent No. 1. He has contended that in the first instance this writ petition was filed before the meeting. The meeting has been held and that the cause of action, which has been propagated in the above writ petition, dies not survive. It is also urged by him that in the withdrawal of the writ petition, it can not be held that the question has been finally decided after complete hearing of the matter. He has also drawn my attention to the observations of the Supreme Court that this ratio would not be applicable to the remedies like a suit or a petition. There is a lot of substance in this argument. It can be well noticed that the no confidence motion meeting has been held, the motion has been passed and hence the grievance made in the writ petition is either exhausted or frustrated. It can not, therefore, be said that in the withdrawal of the writ petition, the respondent No. 1 is debarred from agitating the question raised in the said writ petition before the Co-operative Court or the Co-operative Appellate Court. It must also be noticed that the Supreme Court has exempted the remedy of the suit from that ratio and thus the respondent No. 1 was fully armed with legal rights to approach before the Co-operative Court. To that extent, therefore, the submission of the learned advocate for the present petitioner shall have to be negated.

13. Coming to another Writ Petition No. 500 of 91, the petitioner in that writ petition has challenged the vires of sub-section (7) of section 112-A of the Act. Several submissions are made in that behalf and it is contended that the amendment made by the incorporating sub-section (7) is very drastic and could create unhealthy atmosphere in the co-operative field. Several other provisions of the Act have been referred to indicate, that the said amendment is ultra vires the Acts. Rule has been issued in that petition. However the important aspect of this writ petition is the challenge to vires of sub-section (7) of section 112-A of the Act. Now even if this writ petition is pending, it can not be said that the right of the Chairman to approach the Co-operative Court is barred because the dispute before the Co-operative Court is that the notices of the no confidence motion were not served on all the members of the loan committee. They were also not issued in conformity with Rule 56 of the rules framed under the Act. The Deputy Registrar issued notices only to the elected members and two nominated members. The ex-officio members were not allowed to participate in the meeting and cast their votes and hence the no confidence motion could not be passed by 2/3rd majority of the total strength of members of the loan committee. This contention, therefore, appears to be distinct from the contention relating to vires of sub-section (7) of the above section.

14. As stated above the contentions are altogether distinct. The vires of sub-section (7) of section 112-A have been challenged before this Court whereas altogether different contentions are raised in the dispute before the Co-operative Court. The learned Member of the Co-operative Appellate Court has rightly observed that although the order of the Court provides that "Whatsoever happens in the meeting being held today and/or in pursuance thereof will be subject to the decision in this petition". These observations, in no way come within the path of the courts below because even if the no confidence motion is held to be valid or not, the scope of the writ petition is altogether different and that is whether sub-section (7) of the above section is within the competence of the Legislature or is ultra vires the Act. I, therefore, feel that the contentions raised by the learned advocate for the petitioner can not be accepted and they are accordingly negated.

15. The next question which is indeed of importance is whether the ex-officio members referred above are entitled to vote at a meeting of no confidence motion. The learned advocate for the petitioner and the learned advocate for the respondents Nos. 2, 3, 4, 7 and have unanimously contended that the ex-officio members, by no stretch of imagination, are entitled to vote at the meeting wherein no confidence motion is being tabled. They have drawn my attention to various provisions of the Act and those provisions are 73G, 77A, 78, 112-A(2) of the Act. According to them, if these provisions are properly interpreted, they specifically exclude the ex-officio members from participating and voting at the meeting of no confidence motion.

16. As against this, the learned advocate for the respondent No. 1 has squarely

relied on the judgment of the Supreme Court reported in *Gajanan Narayan Patil and Others Vs. Dattatraya Waman Patil and Others*, , in the case of *Gajanan Narayan Patil and others v. Dattatraya Waman Patil*, He has also drawn my attention to section 27(9), section 74(3) of the Act and urged that when the Legislature has desired that a particular member, more particularly ex-officio members, should be barred from voting, the Legislature has come forth with special provision indicating that the said ex-officio members can not vote at the meeting of the committee. He has, therefore, urged that when there is no specific bar in section 73ID read with section 112-A, it impliedly follows that the ex-officio members are entitled to vote at any meeting inclusive of the meeting called for passing no confidence motion. He has also pressed into service the observations of the Supreme Court to which I shall refer later.

17. The learned advocate for the petitioner has contended that u/s 112-A(2) it is clearly provided that every District Loan Committee shall have a Chairman, who shall be elected by delegates elected under sub-clause (i) and the members nominated in sub-clause (1-a) of Clause (b) of sub-section (1) from amongst themselves. He has, therefore, contended that in the election process, there is a fundamental assumption that the electors have a confidence in the person elected. If, therefore, this confidence has to be withdrawn, the same can be done only by them which have been instrumental to the election of the Chairman. Hence it is urged by him that sub-section (2) should persuade the Court to hold that the ex-officio members have no right to vote at a meeting wherein the consideration about the confidence of the elected members has to be considered. He has further contended that looking to the nature of appointments, more particularly of the District Deputy Registrar of the Co-operative Societies, it is unlikely that it might be within the mind of the Legislature to empower this person to vote at the no confidence motion. u/s 78 of the Act, the Registrar is competent to remove any member including the Chairman and if that be so, there is no reason for nominating this person and empowering him to vote at a no confidence motion. Such a provision is thus contradictory and self defeating. If the authority could exercise the power directly in pursuance of certain provisions, there is no reason for that authority to exercise it indirectly for unseating a particular member. He has, therefore, urged that this provision should convince the Court that the argument on behalf of the respondent No. 1 is not at all tenable.

18. He has also drawn my attention to the notification issued by the State Government conferring powers on the Registrar or the Joint Registrar or the Divisional Registrar or the District Deputy Registrar. Those notifications are of 1962 and October 1973. He has also relied on the definition of Registrar at section 2(24) and section 3. Reading these provisions, he has urged that the State Government is empowered to delegate all the powers of the Registrar to subordinates namely the Joint Registrar and the Deputy Registrars. If that be so, according to him, there is no reason as to why the ex-officio member namely the Deputy Registrar should be vested with separate powers to vote on the no

confidence motion. Reliance is also placed by him on section 2(9) wherein the nominee of the Government or any financing bank or any society are not entitled to vote at any election of the committees.

19. My attention is also drawn to the observations of the Supreme Court in the dissenting judgment by R.M. Sahai, J., that----

"Elections in a democracy have been conceived as an instrument of selecting the best qualitatively superior and politically valuable. Who should be entitled to reverse the selection? Those who elect or any other numbers increased by any methodology or law adding representatives and nominees are not entitled to participate in selection. If the value of elective process has to have primacy then those worthy of choice should not be permitted to be squeezed out by those who are precluded from leadership or electing the leader. This basic concept does not stand altered or modified either by any provision in the Act or Rules.

Literal construction of expression entitled to sit and vote" if it results in negation of democratic process or is against logic and is fraught with danger of removal of an elected representative by nominees of financial institutions or government then it has to be avoided.

The sum and substance of these observations is that those who are entitled to elect a person, have only right to unseat him by expressing no confidence.

20. It is also urged that the said judgment relates to the sugar factory affairs and the bye-laws framed by the said factory. It does not specifically refer to the ex-officio members and in that light of the matter, it should be construed that the ex-officio members referred in section 112-A of the Act are excluded from voting in the meeting of no confidence motion.

21. A suggestion has also been made that the ex-officio members, who are the executive officers of the organisation, are under duty to observe neutrality. To vote at no confidence motion would be going beyond that neutrality and such a proposition would not be in the mind of the Legislature. It will have to be observed that all these arguments are in direct conflict with the ratio laid down in the majority judgment of the Supreme Court. The Court has distinguished only two categories; one category of elected members and the other category of non-elected members which would obviously include all nominees who enter the loan committee other than by way of election. Now in this regard if the Supreme Court's judgment is scrutinised, it would manifestly show that the Supreme Court was possessed of the basic problem as to whether the nominated members have a right to vote. They may flow from various categories of employees. They may be either deputed by any institution, they may be appointed by any authority or they may even be the employees of the Bank of which the loan committee is one part. The basis on which the Supreme Court has approached the problem is that the right of election is not a common law right. It is a special right created by a Statute and can only be exercised on the conditions laid down in the Statute.

22. It is also observed that the fundamental rights" chapter has no caring on the right like one created by an election statute. It is in this background that the Supreme Court came to the conclusion that the members who constitute the committee, may come from any source but they have right to vote at a no confidence motion when not specifically barred. The distinction which is sought to be urged on behalf of the petitioner, really does not commend because the question before the Supreme Court was not the source from which the nominees were appointed but whether the members, instrumental to elections are the only members capable of voting at the no confidence motion or whether besides the elected members, another category of nominated members could vote on the same no confidence motion.

23. The Court observed that any other interpretation was wholly going against the clear meaning of the expression namely the members, who are entitled to seat and vote at a meeting of the committee. The right to participate at a meeting is a statutory right and it flows from the provisions of that Act, Rules and bye-laws. Incidentally it is admitted between the parties that the loan committee has no bye-laws. The Supreme Court has gone to the extent of observing that the rights about election had nothing to do with the democracy. The words" entitled to seat and vote in any meeting of the society" referred to members who are entitled to seat and vote and as indicated, the provisions of section 112-A are quite explicit. It provides for the constitution for the loan committee and for the various terms of members which could act on the loan committee and u/s 73(ID) which is now made applicable under sub-section (7) all the members who are entitled to seat and vote at any meeting would be entitled to seat and vote even at a meeting wherein no confidence motion is tabled.

24. Again respondent No. 9 has wider area of operation than the area of operation of the loan committee. Hence it is unlikely that the officers of the Bank would not be in a position to set. effectively against the Chairman or members of the loan committee. Ultimately their actions will be subject to the scrutiny of the Head Office. They need not be subservient to the members of the local loan committee. In this context, there is nothing illegal in empowering those officers to vote at no confidence motion against the Chairman of loan committee. This is not inconsistent with the spirit of Act. The logic of servant punishing the master can not be pressed into service.

25. Apart from that, under the normal rules of interpretation, it has been repeatedly held by the Supreme Court that where the provision is specific the courts should not try to introduce its own reasoning and try to defeat that provision. In this case, it is manifestly clear that wherever the Legislature has felt that particular member should not vote, there is a specific provision in that behalf. By way of illustration, section 27(9) can well be considered. Section 27 relates to voting powers of the members. The Legislature has desired that the Government nominee or nominee of any financing bank should not be

empowered to vote at any election of its committee. It is therefore, specifically provided in sub-section (9) of the above section.

26. Another illustration which can be cited is the provision contained in section 74(3). In that provision, it is clearly provided that the Chief Executive Officer, so appointed shall be the ex-officio member of the committee but he shall have no right to vote at the meeting of the committee. This provision would also supply an instance for the reasoning that where the Legislature does not intend empowering a particular member for voting, it has made a specific provision in that behalf. Where it has not so desired, it had not made the provision barring a particular member from voting in a meeting. As indicated, from section 73(ID) read with section 112-A of the Act, it can be easily spelt out that there is no bar to ex-officio members from voting.

27. The other wholesome idea behind enabling the officer to vote appears to be that these ex-officio members should exercise appropriate control over the affairs of the loan committee. They should check all fiscal measures taken by the committee and if they find that the affairs of the loan committee are being carried in undesirable manner and that the Chairman is instrumental to it, they can very well voice that grievance by being a party to no confidence motion, it can not be said that the Deputy Registrar who is empowered to remove a member under other provisions, should be deemed to have been barred. The scope of provisions cited by the learned advocate for the petitioner, does not appear to have substantial bearing on the point of no confidence motion. These provisions have to be invoked in particular circumstances. In this case, what is contemplated is loss of confidence in the Chairman. By no stretch of imagination, it can be said that there is a loss of confidence against all members of the Loan Committee. Different circumstances would exist to express no confidence whereas different circumstances may operate when the Registrar is compelled to take other measures as envisaged u/s 78 of the Act.

28. As regards the argument about neutrality of the elected members, it may be stated that by expressing no confidence, the said ex-officio members can express their displeasure over the actions of the Chairman of the committee. If the right of vote is envisaged in this context, it can not be said that the concept of neutrality is breached. On the other hand, in the recent legislation, more particularly in the Company Law, it can be noticed that the affairs of the company are sought to be controlled by the Government nominees, who are entitled to voice their grievance at various meetings.

29. The learned advocate for the respondent No. 1 has contended that in all the meetings of the committee, the ex-officio members have actively participated and they have voted on the affairs of the loan committee and it is in consonance with the concept that they are empowered to vote at no confidence motion. I, therefore, feel that the learned Member of the Co-operative Appellate Court has rightly come to the conclusion that the ex-officio member have a right to vote at the meeting called for no confidence motion. In his well reasoned judgment, he

has taken into consideration all the aspects of section 73(ID) and 112-A of the Act. I, therefore, feel that no interference is called for.

30. The above judgment has been delivered with a limited purpose of enabling the ex-officio members to vote at the meeting of no confidence motion. The learned Co-operative Court shall

now take up the main dispute and dispose it of as expeditiously as possible in the light of the above observations.

31. The result, rule discharged and the writ petition is dismissed. In the circumstances, there shall be no order as to costs.