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**(2005) 04 BOM CK 0091**

**In the Bombay High Court**

**Case No : Writ Petition No. 9377 of 2004**

Prakash Mahadeo Khot and Others

APPELLANT

Vs

Maruti Dadu Khot and Others

RESPONDENT

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**Date of Decision : 07-04-2005**

**Acts Referred:**

**Citation :** (2005) 2 ALLMR 775 : (2005) 4 BomCR 568

**Hon'ble Judges :** Chandrachud D.Y., J

**Bench :** Single Bench

**Advocate :** S.A. Pawar, for the Appellant; P.D. Dalvi, for respondent Nos. 1 to 6, M.H. Solkar, A.G.P. for respondent Nos. 9 to 11 and D.B. Lonkar, for the Respondent

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## **Judgement**

Chandrachud D.Y., J.—Rule, by consent returnable forthwith. Counsel appearing for the respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Eighth respondent is a Co-operative Society, registered under the Maharashtra Co-operative Societies" Act, 1960 ("the Act") and is a notified Society u/s 73IC. On 7th December, 2002 an election programme was declared by the Assistant Registrar of Co-operative Societies for electing 13 members of the Managing Committee. It appears that there was no nomination for one of the posts which had to be filled up from amongst Denotified Tribes 12 posts were accordingly filling up. On 17th and 18th January, 2004, 7 members of the Managing Committee including the four petitioners and respondent Nos. 1, 2 and 7 tendered their resignations to the Secretary of the Eighth respondent. One of the members of the Managing Committee had expired. Consequently, only four members of the Managing Committee remained in office. On 19th January, 2004, the resignations were forwarded to the Assistant Registrar of Co-operative Societies by the Secretary of the Eighth respondent. On 27th January, 1994, the Assistant Registrar issued a notice to show cause u/s 78 of the Act and after hearing the concerned members, passed an order on 6th March, 2004. The

Assistant Registrar noted that in the meantime. Respondent Nos. 1, 2 and 7 had withdrawn their resignations. However, the Assistant Registrar observed that there was no provision for the withdrawal of a resignation and that the resignation of each of these members had come into force immediately upon being tendered. The Assistant Registrar accordingly appointed an Administrator in place of the Managing Committee of the Eight Respondent. Respondent Nos. 1, 2 and 7 preferred an appeal before the Divisional Joint Registrar who allowed the appeal by an order dated 31st May, 2004. The petitioners thereupon filed a revision which was dismissed on 22nd August, 2004. Both the Divisional Joint Registrar and the Revisional Authority have concurred in holding that once the resignation was withdrawn by three members, the minimum required quorum of seven members continued to subsist and there was no reason to appoint an Administrator.

3. Counsel appearing on behalf of the petitioners submitted that the tendering of a resignation in the present case has to be regarded as a unilateral act since there is no provision in the statute or in the bye-laws of the Society under which the resignation is required to be accepted. There is merit in this contention. The law is well settled. Where a resignation is a bilateral act in the sense that an acceptance of the resignation is necessary before it is effective, the person tendering resignation can withdraw it before its acceptance. Where a resignation does not require to be accepted under the governing statute or bye-laws, the Act of resignation is unilateral. A unilateral act comes into force immediately, if it is intended to take immediate effect or from a future date if the resignation is made effective from a prospective date. If the resignation is tendered with effect from a future date, it can be withdrawn before the date on which it takes effect.

4. In the present case, there is nothing in the statute or in the bye-laws which would make the resignation a bilateral act or one that would require acceptance of the resignation. The resignations were in the present case, tendered with immediate effect of which there is no dispute. The subsequent withdrawal of the resignations, therefore, would be of no consequence. In these circumstances, both the Divisional Joint Registrar as well as the revisional authority took a manifestly erroneous view.

5. In *Arun Trivikramrao Rajurkar v. Gowardhan Janardhan Khotre*, 1982 M.L.J. 576, a Division Bench held that a resignation tendered by a Chairman of a Co-operative Society operates from the date of its tender and that no acceptance of the resignation is necessary. The Division Bench held that there was no need of the acceptance of the resignation and even if the letter of resignation is so worded as to make a request of its being accepted that would not in any way affect the operation of the resignation when tendered. In *Moti Ram Vs. Param Dev and another*, , the Supreme Court held that if the act of relinquishment is of a unilateral character, it comes into effect when such act indicating an intention to relinquish office is communicated to the Competent Authority. The authority to whom the act of relinquishment is communicated is not required to take any

action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, the Supreme Court held that the general principle regarding resignations is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor.

6. In the present case, it is an admitted position that resignations were tendered with immediate effect. In the absence of any constitutional, contractual or legal requirement, the resignation must be regarded as unilateral in character and when tendered with immediate effect, took effect immediately.

7. In these circumstances, the impugned orders dated 31st May, 2004 and 22nd August, 2004 are quashed and set aside. The appeal filed by respondent Nos. 1, 2 and 7 (Appeal 44 of 2004) is restored to the file of the Divisional Joint Registrar, Co-operative Societies, Kolhapur, who shall pass fresh orders after considering such other issues that may be raised before him by the parties on merits.

8. The petition is accordingly disposed of. No costs.