

**(2012) 07 BOM CK 0042**

**In the Bombay High Court**

**Case No :** Letters Patent Appeal No. 255 of 2012 in Writ Petition No. 2490 of 2012 (D)

Ramdarsh Shardaprasad Mishra

APPELLANT

Vs

Divisional Joint Registrar, Co-operative Societies, Nagpur and Others

RESPONDENT

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**Date of Decision :** 19-07-2012

**Acts Referred:**

Maharashtra Co-operative Societies Act, 1960 — Section 4, 73, 73G, 73G(4), 73ID

**Citation :** (2012) 6 ALLMR 686 : (2013) 4 BomCR 796 : (2012) 114 BOMLR 3338

**Hon'ble Judges :** Vasanti A. Naik, J;A.B. Chaudhari, J

**Bench :** Division Bench

**Advocate :** A.H. Patil, for the Appellant; B.H. Dangre, A.G.P. for R 1 to 3, Shri. Bhonsale, h/f Shri. P.D. Meghe, for R-4 and Shri. A.M. Ghare, for R - 6 to 8, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.B. Chaudhari, J.—A common judgment and order dated 25.6.2012 in Writ Petition Nos. 2490/2012 and 2491/2012, passed by the learned Single Judge, is under challenge in these two letters patent appeals. In support of the appeal, learned Counsel for the appellant in both the appeals made the following submissions.

(A) The members of the Managing Committee of respondent No. 4 Co-operative Society are 13 from the elected category and 2 from the nominated category and thus, the strength of the Committee is 15. The motion of no confidence was passed against the appellants with 9 votes. According to Shri Patil, the learned Counsel for the appellant in both appeals, it is an admitted fact that the notice of motion of no confidence was given to only 13 elected members of the Committee and the 2 nominated members, namely one from a District Central Cooperative Bank and the other, namely the representative of District Deputy Registrar Co-operative Societies were not at all noticed of the said meeting of motion of no

confidence. Consequently, those two members could not attend the meeting. Advocate Shri Patil continued to argue that those two nominated members of the Committee had right to participate in the meeting of motion of no confidence in terms of Rule 57A of the Maharashtra Co-operative Societies Rules, 1961 (for short the Rules of 1961 though they may not have right to vote in such meeting. Due to this default, the very motion of no confidence stands vitiated and becomes illegal. He relied on the decisions in the case of (i) Jayprakash s/o Raosaheb Salunke and others Versus The State of Maharashtra and others, reported in AIR 2000 Bombay 461 (ii) Ranjit Sinh V. Patil and others Versus Collector, Kolhapur and others, reported in 2004 (3) Mh.L.J. 642, (iii) Gajanan Narayan Patil and others Versus Dattatraya Waman Patil and others, reported in AIR 1990 Supreme Court 1023 and (iv) Raees Ahmad Versus State of U.P. and others, reported in AIR 2000 Supreme Court 583 and further argued that the learned Single Judge did not consider this important legal aspect which has resulted into miscarriage of justice to the appellants.

(B) The ground for proposing motion of no confidence against the appellants is as vague as it could be and therefore, on such a vague ground, the meeting for motion of no confidence could not have been held and if held has become illegal. He relied on the decision in the case of (a) Laxman Versus Gram Panchayat, Mangladevi, (Note 102), reported in 1965 Mh.L.J. 50 and (b) Ganeshsinha Domansinha Hajari. Vrs. Commissioner, Nagpur Division, Nagpur and others, reported in 1963 Mh.L.J. 569.

(C) The list of the total members of the Committee submitted along with the requisition shows only 13 members of Managing Committee, who were elected and not the two nominated members in addition who were the members of the Managing Committee and therefore, the said notice as well as meeting both are illegal.

2. Per contra, Smt. Dangre, the learned Additional Government Pleader for respondent nos. 1 to 3 and Advocate Shri Ghare for respondent nos. 6 to 8 opposed the appeal and argued that the two nominated members of the Committee spoken of by the learned Counsel for the appellants in fact are not the members of the Managing Committee as sought to be canvassed. Inviting our attention to bye-law No. 16, the learned Counsel argued that opening words of the bye-law show that there are only 13 members of the Managing Committee and not 15 as alleged. The other two are merely representatives of the District Co-operative Bank and the District Deputy Registrar Co-operative Societies respectively. Therefore, there are only 13 members of the Managing Committee and not 15 as argued. The provisions of Section 73-ID of the Maharashtra Co-operative Societies Act, 1960 (for short the Act of 1960) and Rule 57 of the Rules of 1961, if read together, will show that the provisions of Section 73-ID of the Act of 1960 must prevail over the provisions of Rule 57A of the Rules of 1961, since the provisions of Rule must give way to the provisions of the Act. Though the provision of Rule 57 of the Rules of 1961 does not show deletion of the words

members entitled "to sit", the same will make no difference because such members are not entitled to vote. The said Rule 57A was framed in the year 1987 and was not amended simultaneously or thereafter when Section 73-ID was amended to delete the words entitled "to sit". The only words entitled "to vote" in Clause 1 of Section 73-ID of the Act of 1960 stood retained. The learned Counsel, therefore, argued that the representatives do not have any right to sit as well since they are not the members of the Managing Committee. On the last two points, raised by the learned Counsel for the appellants, the learned Counsel for the respondents argued that the learned Single Judge has recorded categorical findings with reasons which are inconsonance with the law and need no interference. They, therefore, prayed for dismissal of the letters patent appeals.

3. We have gone through the impugned judgment and order passed by the learned Single Judge. We have seen the pleadings and the documents on record. We have heard the learned Counsel for the rival parties at length. It would be useful to dispose of the last two points first.

The submission made by the learned Counsel for the appellants that the ground for bringing the motion of no confidence is vague, does not appeal to us after reading the said ground. It is not necessary that the ground for bringing motion of no confidence should be descriptive but it must indicate the intention of the requisitionists on the basis of which the ground has been framed. To our mind, the ground mentioned in the text of the motion of no confidence is quite clear and does not need a detailed description by various examples or events in support thereof since the same could be the part debate in the meeting itself. The next submission regarding non-issuance of notice to the two nominees i.e. one of the District Central Cooperative Bank and other of the District Deputy Registrar must equally be rejected since both these nominees are not the members of the Managing Committee of the Society but they are merely the representatives of their masters and were thus not even entitled to sit in a meeting of motion of no confidence. Thus, concurring with the findings recorded by the learned Single judge on these two aspects, we reject the submission made by the learned Counsel for the appellants. The decisions cited before us on these two points are distinguishable on facts as we have held that the grounds for bringing the motion of no confidence have been stated in the text in good terms which was not the case in the facts of those cited decisions.

4. The bye-law No. 16 of the respondent No. 4 Society after translation is reproduced below.

16) Managing Committee of the Federation:-

1) The Managing Committee of the Bhandara District Labors Cooperative Societies Federation shall consists of total 13 members.

2) There shall be one Representative of the Central Financial Society in the Managing Committee. Such Representative working as the Representative of the

Society, shall have right to give his opinion and cast vote regarding financial policy of that Society. However, he will have no right to cast vote in respect of other resolution.

3) One Representative of the District Deputy Registrar.

4) The constitution of the Managing Committee of the Bhandara District Labours Cooperative Societies Federation Limited, Bhandara shall be as under:

1) From general category --- 7 members

2) Posts reserved as per Section 73(b) of the Maharashtra Cooperative Societies Act, 1960.

a) Scheduled Castes/Scheduled Tribes --- 1 member

b) For economically weaker section --- 1 member

c) For Nirdhi Suchit Jamati, Vimikta Jamati/Nomadic Tribes or Special Backward Class Category. --- 1 member

d) For other backward class category ---1 member

Reserved for ladies, u/s 73(b) b 1 of the Maharashtra Cooperative Societies Act, 1960. ---2 members

Total 13 Directors as above shall be elected as per Election Rules from all the members of the Federation by secret ballot.

(Translated)

5. It is not in dispute that respondent No. 4-Society does not fall within the description of Section 73G of the Act of 1960 and thus, respondent No. 4 Society is neither a specified Society nor a notified Society and falls in the third category of Society, which is in common parlance called an "ordinary Society". The strength and the composition of the members of the Managing Committee consequently is governed by the bye-laws of the said Society and is not governed by the provisions of the Act or Rules. Section 73G of the Maharashtra Co-operative Societies Act, 1960 reads thus.

73G. Provision for conduct of elections to committees and of officers of certain societies and term of office of member of such committees

(1) The election of the members of the committees and the officers by the committees of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter :-

(i) such Apex [societies], which the State Government may, by general or special order published in Official Gazette, from time to time, specify in this behalf, regard being had to the financial position and share capital of such societies;

- (ii) all District Central Co-operative Banks;
- (iii) all District Co-operative Agriculture and Rural Multipurpose Development Banks;
- (iv) (a) all District Co-operative Sale and Purchase Organisations;
- (b) all Taluka Co-operative Sale and Purchase Organisations;
- (v) all Co-operative Sugar Factories;
- (vi) all Co-operative Spinning Mills;
- (vii) any other societies or class of societies, which the State Government may, by general or special order published in the Official Gazette from time to time specify in this behalf regard being had to the financial position and share capital of such societies or class of societies.

(2) When the election of all the members of the committee of any such society is held at the same time, the members elected on the committee at such general election shall hold office for a period of five years from the date on which the first meeting is held unless the period is extended by the State Government, for reasons to be recorded in writing for a period not exceeding one year so however that the total period does not exceed six years in the aggregate.

It is clear from the reading of Section 73G of the Act of 1960, which applies to certain Societies (not respondent No. 4 Society) and in particular Sub Section 4 thereof that particular type of persons/professionals mentioned in the provision are, by operation of the said provision, the members of the Managing Committee or the Board of Directors of such certain Societies. Therefore, even if the bye-laws of such certain specified Societies do not provide for such additional Directors in the composition of the Board of Directors, but by virtue of operation of the Statute, they would become part of the Board of Directors and would fall in the composition of the Board of Directors. However, in the case of respondent No. 4 Society the said provision of Section 73G (4) of the Act of 1960 will have no application since respondent No. 4 is an "ordinary Society". That apart, reading of bye-law No. 16(1) clearly shows that the composition or the total composition of the members of the Managing Committee shall be 13 and not 15. The bye-law No. 16 (2) shows that there shall be two representatives of the financial institution and the District Deputy Registrar. The bye-law No. 16(4) then shows the detailed description of the category of the said 13 members of the Managing Committee in 16(4)(1, 2) (a, b, c, d). The said description does not show that the representatives of the financial institution or the District Deputy Registrar shall form the composition of the Managing Committee. But it is at the end asserted that the Managing Committee would consist of only 13 members. We, therefore, find from the factual position that the composition as per bye-law of respondent No. 4 ordinary Society in the Managing Committee is only of 13 members and not of 15members as argued by the learned Counsel for the appellants. Thus, the two representatives though have been shown in bye-law

No. 16(2) under the main heading, they have been treated as mere representatives of the financial institution and District Deputy Registrar and not as members of the Managing Committee *stricto sensu*. By merely putting literal emphasis thereon that such nominated members or representatives shall be on the Managing Committee, would be stretching too far; since the very composition of the Managing Committee has been manifestly indicated. We, therefore, hold that the composition of the Managing Committee of respondent No. 4 Society does not show that the Managing Committee consists of 15 members as alleged but we hold that it consists of 13 members and the remaining two representatives of the financial institution and the District Deputy Registrar are not the members of the Managing Committee but their status is akin to the special invitees to attend the meeting as experts or to protect the interest of their masters and nothing more. We, therefore, consequently hold that there was no need to issue notice of the motion of no confidence to them. The decisions relied upon by Advocate Shri Patil for the appellants in the case of *Ranjit Singh V. Patil and others Versus Collector, Kolhapur and others*, cited *supra*, *Gajanan Narayan Patil and others Versus Dattatraya Waman Patil and others*, cited *supra*, and *Raees Ahmad Versus State of U.P. and others*, cited *supra*, will have no application because the nominated members as per the provisions stated in the said decisions were the composite part of the particular body. In the case of *Raees Ahmad Versus State of U.P. and others*, cited *supra*, Section 9 (D) of the U.P. Municipalities Act, 1916 itself provided that the nominated members were in the composition of a Municipality and therefore, statutorily they were the members of Municipality, even if they had no right to vote but they had as per that provision right to sit and participate. In the case of *Ranjit Singh V. Patil and others Versus Collector, Kolhapur and others*, cited *supra*, the Society was governed by the provision of Section 73G of the Act of 1960 about which we have already made a discussion and therefore, the said decision on facts has no application. In the case of *Gajanan Narayan Patil and others. Vrs. Dattatraya Waman Patil and others*, cited *supra*, similar is the position since the Society in the said case was a Sugar Factory governed by the provisions of Section 73G of the Act of 1960 and that is the reason why the Supreme Court held that they were the members of the Board of Directors of the Sugar Factory and were part of composition thereof and consequently, they were entitled to sit and vote since at that time the provision enabled them to vote also. Therefore, these decisions on facts are not applicable to the instant case. We, therefore, find no substance in these appeals. Letters Patent Appeal Nos. 255/2012 and 256/2012 are dismissed. No order as to costs.