

(2001) 07 BOM CK 0113

In the Bombay High Court

Case No : Writ Petition No. 2735 of 2001

Ramesh Thakur and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Citation : (2001) 07 BOM CK 0113

Hon'ble Judges : S.B. Mhase, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : R.B. Raghuvanshi, V.D. Solunke, for the Appellant; E.P. Savant, Govt. Pleader for respondents 1 to 4, for the Respondent

Judgement

S.B. Mhase, J.—Heard Shri R. B. Raghuvanshi, learned Counsel for the petitioners; Mr. E. P. Savant, learned Government Pleader for the respondents No. 1 to 4 and Mr. V. D. Solunke, learned Counsel for the intervenor.

2. Intervention application is allowed.

3. Rule returnable forthwith with the consent of the parties. Mr. Savant, learned Government Pleader waives service for respondents No. 1 to 4.

4. Petitioner No. 1 belongs to O.B.C. category, while petitioner No. 2 is a woman. Both the petitioners have approached this Court challenging the election programme published by the respondent No. 2 on 3-7-2001 to elect the managing committee and/or Board of Directors of the respondent No. 4 sugar factory. Presently the said sugar factory is being looked after by the Administrator and the Administrator is the Collector, who is also an authority to conduct the elections of the said society under Chapter XIA of the Maharashtra Co-operative Societies Act and the Maharashtra Specified Co-operative Societies (Election to Committees) Rules, 1971. The grievance of the petitioners is that section 73-B is amended by the Ordinance No. XII of 2001, issued on 23rd April, 2001. As per the said Ordinance, apart from already provided reservations, u/s 73-B, more reservations have been incorporated, i.e. (i) one for members

belonging to the Other Backward Classes and (ii) one for members belonging to the Denotified Tribes (Vimukta Jatis), Nomadic Tribes or Special Backward Classes. The learned Counsel, therefore, submitted that while declaring the election programme under rule No. 16, the Collector should have taken the cognizance of this Ordinance and should have declared a programme for these seats along with the already declared seats u/s 73-B. According to the learned Counsel, if the election is not declared to elect the seats u/s 73-B along with the other seats to be elected, the election programme is required to be scrapped as has been observed by the Apex Court in the matter of Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, .

5. The second ground on which the petitioners have approached this Court is that the women's reservation has been provided in section 73-BBB and in case as per the said section, if the strength of the Board of Directors is more than 19, then three seats should have been reserved for the women and accordingly programme should have been declared. The learned Counsel pointed out, however, the election programme has been declared in respect of the two seats only assuming that the strength of the Board of Directors is less than 19. It is submitted by the petitioners that strength of the managing committee is provided in the Bye-laws of the respondent No. 4 society and if it is calculated, it comes to 21 even excluding the seats to be provided u/s 73-B and u/s 73-BBB and thereby three seats are required to be reserved and, therefore, three seats should have been reserved.

6. The learned Government Pleader Mr. Savant initially tried to oppose the petition, but has showed willingness that the election to additional seats which have been provided by section 73-B will be conducted at a later stage immediately after the completion of the present election programme. He also tried to persuade us that the two seats shown to have been reserved for the women category has been rightly done in the election programme and no amendment is necessary.

7. Mr. Solunke, learned Counsel, who is appearing for intervenors submitted that as per the Ordinance, the seats will have to be elected. However, he submitted that it is not necessary to strike down the election programme, because according to him, Rule 16, explanation (C) gives power to the Returning Officer - Collector to change the dates shown in the programme which is already provided in rule No. 16 and, therefore, he submitted that by invoking such power which is vested in the Collector, the further programme which will lead to a simultaneous election of all the seats, can be prepared by the Collector and thereby the elections can be conducted at one and the same time.

8. With the help of the learned Counsel we have scrutinized the matter. The Ordinance referred to above has come into force at once i.e. from 23rd April, 2001 and, therefore, when the election programme was declared on 3-7-2001, the Collector should have taken a cognizance of the said Ordinance. However, Mr. Savant, learned Government Pleader has reported this Court that the Ordinance

was not circulated to the Collector office and the Collector received an information about the Ordinance only after filing of the petition by the petitioners. However, fact remains that two additional seats which have been provided in Ordinance will have to be elected along with the other seats. So far as what should be the strength of the women's representation on the Board of Directors u/s 73-BBB of the Act is concerned, our attention was drawn to an unreported judgment of this Court in Writ Petition No. 2828 of 2000, in the matter of Sushilabai vs. State of Maharashtra and others, decided on 10th July, 2000, wherein the question as to how the seats u/s 73-BBB are to be calculated has been considered by the Court and this Court in the said judgment has observed that excluding the section 73-B and 73-BBB, all other seats of the managing committee as reflected from the Act, Rules and Bye-laws are required to be calculated and thus, calculated we find that the strength comes to 21 and, therefore, there should have been three seats given for women while publishing the election programme under rule No. 16. Thus, it is revealed that the election programme, which has been published on 3-7-2001 shows three seats inadequate so as to constitute the Board of Directors, namely, two seats as provided in the Ordinance and one seat for women, which has been wrongly calculated. Therefore, in order to make the election complete, it becomes necessary to take a cognizance of all these aspects. While the matter was being argued, Mr. Savant, learned Govt. Pleader realized all these difficulties and, therefore, he assured to the Court that necessary amendments, by invoking the powers under rule No. 16 will be made by the Collector in the election programme and accordingly the amended programme has been submitted to this Court. By this amended programme, the Collector has now proposed to hold election of all seats simultaneously and voting for all the seats will be on one and the same date and counting will also be on one and the same date. So far as the persons who have filed the nomination papers as per the election programme published on 3-7-2001 and their nominations are concerned, the election programme pertaining to those persons is modified from the date of withdrawal to the date of election results. So far as the three seats in respect of which the election programme is being published, that programme will provide for the stage of nomination papers, scrutiny, etc. and thereafter both the programmes will go together and thus, ultimate result of the preparation of the election programme submitted by the Collector is that the date of withdrawal of nomination papers and thereafter date of voting and date of counting will be one and the same for all the candidates. What we find is that this is in consonance with the Apex Court judgment in the matter of B. K. Garad (supra), where the Apex Court has observed that the seats as provided u/s 73-B of the Act are required to be notified for election along with the other general seats and elections of those seats should be simultaneous to other general seats. The said object as desired by the Apex Court is achieved by the programmes submitted to this Court. We find that it is not necessary to scrap the earlier programme as submitted by Mr. Raghuvanshi, learned Counsel for the petitioners, because in Garad's case (supra), the elections have taken place in 1981. Thereafter the

Election Petition u/s 144-E was filed. That petition appeared before the Apex Court in 1984. The term of the body had practically come to an end and, therefore, directing the elections was the only proper way out left for the Supreme Court. In our case, as on today the election is not complete. Only the election programme has been published on 3-7-2001, in which some deficiencies as discussed above, have been noticed by us and, therefore, to overcome those irregularities and to follow the Apex Court judgment in its spirit, the Collector has amended the dates of elections by invoking the power under rule 16 (c) and has submitted a fresh programme. We find, by this procedure, no prejudice will be caused to any of the voters or any of the candidates who have already filled in the nomination papers. We are further not in favour of cancelling the earlier election programme, because so far as the nomination papers submitted by the various candidates on the basis of the earlier programme are concerned, they have been scrutinized and while in that process, some nomination papers may have been rejected by the Returning Officer. If the programme published on 3-7-2001 is cancelled, then in that circumstances, the persons whose nomination papers have been already rejected, may overcome the deficiencies in which their nomination papers were rejected and thereby the persons whose nomination papers were accepted, will be prejudicially affected and that too will be without hearing them. Therefore, we accept the course which has been given by the Collector, by exercise of powers under rule 16, explanation (c) and, therefore, we allow the petition to the extent that the seats be notified as prayed by the petitioners. However, the programme is to be published by the Collector as it is submitted to this Court. The copies of programme which are submitted to this Court are marked "X" and "Y" and they will form the part of this judgment and accordingly we direct that the Collector should hold and complete the elections as per the given schedule.

9. All this exercise is in the facts and circumstances of the instant case. We have not laid down any precedent of this Court.

Rule is made absolute accordingly.