

**(2016) 01 BOM CK 0154**

**In the Bombay High Court**

**Case No : Writ Petition No. 8839 of 2015**

Ramkrishna Govindrao Dandi and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 29-01-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Maharashtra Co-operative Societies Act, 1960 — Section 25, Section 35, Section 72,  
Section 73, Section 73G, Section 73G(2), Section 78

**Citation :** (2016) 2 ALLMR 406 : (2016) 4 BCR 436 : (2016) 3 MhLJ 268

**Hon'ble Judges :** S.C. Dharmadhikari and G.S. Patel, JJ.

**Bench :** Division Bench

**Advocate :** Ramdas P. Sabban and Subhash Gutte, for the Appellant; A.B. Vagyani, G.P. and C.P. Yadav, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

G.S. Patel, J.—1. The ten Petitioners claim to be the duly elected Directors of the Maharashtra State Handloom Cooperative Federation Limited ("MAHATEX"), of which the Managing Director is arrayed as the 3rd Respondent to this Petition brought under Article 226 of the Constitution of India. The Petitioners claim that they were elected as Directors at an election held on 31st March 2011 for a statutorily mandated five year term. They claim, however, that their five year term commences not from the date of the election, viz., 31st March 2011, but from the date when the Collector held the first meeting of the newly elected Directors on 16th January 2012. This meeting was called to elect the Chairman and Vice Chairman of MAHATEX. According to the Petitioners, they are entitled as a matter of law and as a matter of right to serve out an entire period of five years from 16th January 2012 to 16th January 2017. The Petitioners challenge a letter dated 31st March 2015 by which elections have been called in the year 2016.<sup>1</sup>

2. The facts are few and not in dispute. On 16th March 2011, the Collector of

Mumbai put a notice calling for elections to be held on 31st March 2011 for the Board of Directors of MAHATEX.<sup>2</sup> Elections were held on that date. By a letter dated 18th August 2011,<sup>3</sup> the Collector intimated a list of the names of 16 persons elected as Directors to MAHATEX. These names were thereafter notified as required in law on 25th-31st August 2011 in the Maharashtra Government Gazette.<sup>4</sup> The Petitioners state that thereafter the MAHATEX and the Petitioners by their various letters requested the Collector to call the first meeting of the newly elected Directors inter alia to conduct the elections of the Chairman and Vice Chairman of MAHATEX. It was not for a period of nine months thereafter till 2nd January 2012 that the Collector called the first meeting of the newly elected Board.<sup>5</sup> On 16th January 2012, this meeting was held. A Chairman and Vice Chairman of the Board were duly elected on that date. It seems that thereafter the 4th Respondent, the Secretary of the Maharashtra State Cooperative Election Committee, by his letter dated 5th August 2014 asked for information regarding the Board of Directors of MAHATEX. Thereafter, by its letter dated 31st March 2015, MAHATEX informed the 4th Respondent-Election Authority that it proposed to hold elections in 2016 to the MAHATEX Board of Directors.<sup>6</sup> The Petitioners are aggrieved by this. They protested by their Advocate's letter dated 24th July 2015.<sup>7</sup> It is this notice calling for elections in 2015 that is impugned in the present Writ Petition.

3. We have heard Mr. Sabban for the Petitioners and Mr. Vagyani for Respondent Nos. 1 and 2 and considered the material on record. Mr. Sabban's submission is that under Section 73G of the Maharashtra Cooperative Societies Act, 1960 as it stood prior to its amendment by Maharashtra Act 16 of 2013, dated 13th August 2013, with effect from 14th February 2013 ("the 2013 Amendment"), the Committee's term of office was statutorily defined as being for five years "from the date on which the first meeting is held". The relevant portion of Section 73G of the Act prior to the 2013 amendment reads:

"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)...

...

(vii)...

(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."

(Emphasis added)

4. It is Mr. Sabban's submission that since the meeting of MAHATEX's Board of Directions was only held on 16th January 2012, therefore, it necessarily follows that its term of Office continues till 16th January 2017; and the Respondents' contention that the term of five years is to be computed from 31st March 2011 till 31st March 2016 is incorrect. Mr. Sabban submits that Section 73G was amended by the 2013 Act. Section 73AAA was inserted by that Amendment. The relevant portion of this amendment reads:

"73AAA. Constitution of committee

(1) The Committee shall consist of such number of members as may be provided in the by-laws:

Provided that, the maximum number of members of the committee shall not exceed twenty one:

(2)...

(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee.

(4)...

(5)... "

(Emphasis added)

5. Mr. Sabban submits that there is an entirely new scheme introduced in 2013 and that this scheme now specifies the term of office of elected members of the committee being five years from the date of the election. In contrast, the previous Section 73G specifically stated that the Committee members would hold office for a period of five years from the date of the first meeting unless that period was extended by the State Government. It is his submission that the amendment operates prospectively and not retrospectively. He submits that the Petitioners have a "vested right to continue for the entire five year term".

6. In support of his submissions, Dr. Sabban relies on several authorities. The first of these is Bharat Cooperative Bank (Mumbai) Ltd. v Union of India. 2003 (4) Mh.L.J. 1043. That was a decision under the Multi-State Cooperative Societies Act, 1984. The previous provision under that Act specified a term of three years. The society's bye-laws, which provided for a five year term, were held to be inconsistent with the unamended provision. The amendment enlarged the period to five years. A Division Bench of this Court held that the members of the committee could not gain benefit from this amendment, and that it conferred no larger entitlement on the committee. In our view, this decision in no way

supports Mr. Sabban's submission, for it dealt with a case where additional rights were being claimed by amendment, and not one where the complaint was of any curtailment of any so-called vested right.

7. Mr. Sabban also relies on the decision of the Supreme Court in *Tarlochan Dev Sharma v State of Punjab & Ors.* , (2001) 6 SCC 260 to contend that an incumbent is entitled hold office for the term for which he is elected unless his election is set aside by the prescribed procedure known to law. This decision is of no assistance whatsoever to Mr. Sabban. That was a case of removal. This is by no stretch of imagination the same as the effect on a term of office of a statutory amendment. Similarly, we are not persuaded by Mr. Sabban's reliance on *Rai Ramkrishna & Ors. v State of Bihar.* , AIR 1963 SC 1667. That dealt with the question of prospective and retrospective operation of laws generally in a situation very different from the case at hand. Similarly, the decision of the Supreme Court in *Mahadeo Prasad Singh & Anr. v Ram Lochan & Ors.* , (1980) 4 SCC 354 sets out in paragraph 21 certain principles of interpretation. It states that a statute which takes away or impairs substantive rights acquired under the existing law must receive prospective operation unless a contrary instruction is expressly or by necessary implication required. It is important to note that the presumption does not apply to an enactment affecting any procedure or practice. The reason being that no person has a vested right in any course of procedure. This authority too does not assist Mr. Sabban. Similarly, Mr. Sabban's submission on *State of Punjab & Ors. v Bhajan Kaur & Ors.* , (2008) 12 SCC 112 is inapposite to the facts of this particular case and does not carry the matter any further. The Supreme Court's decision in *S. Khader Sherir v Munnuswami* , AIR 1955 SC 775 dealt with a completely different aspect under the Representation of Peoples Act, 1956.

8. We will consider first Mr. Sabban's submission that the Petitioners, as elected members of the Committee, had a "vested" right. In our view this appears not to be correct. At best, they may have had an existing right. The Supreme Court in *M/s. New India Sugar Works v State of Uttar Pradesh & Ors.* , (1981) 2 SCC 293 (in turn citing with approval its earlier decision in *Trimbak Damodar Raipurkar v Assaram Hiranman Patil & Ors.* , AIR 1966 SC 1758 : 1962 Supp (1) SCR 700) held the difference between an existing right and a vested right to be well settled. A statute operating prospectively does not become retrospective because it includes within its sweep any existing rights. Thus the right of a committee member of a cooperative Society cannot be a "vested" right. To accept that submission would be to accept that every such committee member's term of office is absolutely inviolate. That is simply incorrect. Every Committee Member is subject to the discipline of an election and serves of its pleasure. The Maharashtra Cooperative Societies Act, 1960 itself makes clear that the final authority is that of the General Body.<sup>8</sup> The Committee has delegated powers of management and these are conferred or imposed (said to be "vested") by the Act, the Rules made thereunder and the Bye-laws.<sup>9</sup> Every Committee Member is subject to reelection as permitted by law at defined intervals. A Committee

Member may also be removed mid-stream if a no-confidence motion against him succeeds.<sup>10</sup> No committee member has an absolute right to serve out his full term. That position on the committee of a society may be curtailed in several other situations as well, e.g., if the person in question ceases to be a member of the society in the first place,<sup>11</sup> including on account of expulsion.<sup>12</sup> Secondly, the statute itself provides for vacating of office and disqualifications for membership of the committee<sup>13</sup> as also for a suspension of a committee<sup>14</sup> and the supersession of the committee or the removal of its members.<sup>15</sup> All these necessarily result in a curtailment of a committee member's term of office. The statute itself, therefore, does not support Mr. Sabban's proposition, one that is unacceptably broad, that every elected committee member has an indefeasible right to serve out the entirety of his or her term.

9. It is well settled that no statute should be interpreted in a way that would yield a manifest injustice or a facial absurdity. First, as we have noted, to accept his submission requires us to ignore all other provisions that contemplate a shortening of the term of office. Second, and taken to its logical conclusion, Mr. Sabban's submission if applied as broadly as he suggests, would in a given case result in a complete absurdity. Consider a situation where no meeting is held of a Committee for a period of four years and 364 days after its election. On Mr. Sabban's reasoning, the term of that Committee would then continue for another five years; i.e., it nearly double the intended tenure, and during that time no election could be called. This would result in both injustice and absurdity, for a committee could then continue for nearly a decade. This could never have been the statutory intent even of Section 73G(2) of the Act before its amendment and deletion. Evidently, Section 73G(2) contemplated that a meeting would be called within a reasonable period after the date of the election. This is now the provision of the amended Section 73AAA, which in terms provides for a period of five years from one election to the next. The new Section is thus not retrospective in operation. It only subjects existing rights to a reasonable, rationale and logical discipline, one which, in our understanding, would in any case have had to be construed as the true meaning of the provisions of Section 73G.

10. In taking this view, we are mindful of the decision of the Supreme Court in *Sree Bank Limited v Sarkar Dutt Roy & Co.*, AIR 1966 SC 1953 In paragraphs 4 and 5, the Supreme Court while considering Section 45-O of the Banking Companies Act, 1949, said:

"(4) The next question as to whether S. 45-O(1) has a retrospective operation is of real difficulty. Having given the matter my most anxious consideration, it seems to me that the better view would be to hold that it has such an operation. The general rule no doubt is, as was stated by Wright, J. IN re, Athlumney; Ex parte, Wilson 1898 2 QB 547 at pp. 551-552

"Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing

right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

It can no doubt be argued with force that no violence will be done to the language used in sub-s. (1) of s. 45-O if it is read as applying only to cases where the right to apply has not become barred at the date of its enactments. But there are other considerations.

(5) Two reasons have operated on my mind to lead me to the conclusion that the general rule should not be applied in the present case. First, it is recognised that the general rule is not invariable and that it is a sound principle in considering whether the intention was that the general rule should not be applied, to "look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated.": see *Pardo v. Bingham*(2). Again in *Craies on Statute Law*, 6th ed., it is stated at p. 395,

"If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."

To the same effect is the observation in *Halsbury's Laws of England*, 3rd ed., vol. 36 p. 425. This seems to me to be plain commonsense. In ascertaining the intention of the legislature it is certainly relevant to enquire what the Act aimed to achieve.

11. Similarly, the question was also considered by the Hon<sup>ble</sup> Supreme Court in *Vijay v State of Maharashtra & Ors.* , (2006) 6 SCC 289 This was specifically in the context of an election to a panchayat and the question was whether the amendment before the Supreme Court would also apply to sitting members. The Supreme Court held that there are two exceptions to the general rule that a statute is to be construed prospectively. It must be expressly so stated or it must be evident by necessary implication. However, the inhibition against the retrospectivity is not inflexible. It does not apply to a disqualifying provision or to a curative or clarificatory statute. Every law that takes away a right vested under existing law is retrospective by definition. Where a law is enacted for the benefit of a community as a whole, it may be permissibly retrospective.

12. In paragraph 12 of its decision in *Ramji Purshottam v. Laxmanbhai D. Kurlawala* , AIR 2004 SC 4010, the Supreme Court was considering an amendment to the Bombay Rent Act, 1947. That amendment spoke inter alia of a landlord's entitlement to recovery of possession, among other things. The Supreme Court held that it is not retrospective if an amendment applies to pre-existing facts such as did in that particular case. It cited Justice G.P. Singh in his magisterial work *Principles of Statutory Interpretation* to the effect that a prospective benefit under the statutory provision in some cases is dependent on

an antecedent fact but this does not necessarily make the provision itself retrospective. In *Ramji Purshottam*, the Supreme Court held that on coming into force of the amended Act, tenants became entitled to the benefit of amended provisions, i.e., that the Act was not restricted only to those who become tenants after the date of the amendment. This in fact would be the effect of Mr. Sabban's submission and we are unable to accept it.

13. It seems to us that Section 73G, if read as Mr. Sabban would have us do, was rife with a mischief that the legislature did not and could not have intended. We do not propose to accept an interpretation that results in the perpetuation of any such mischief. The principle Mr. Sabban advocates has no application at all to a disqualifying provision. What Mr. Sabban advocates is precisely the mischief or evil that the amended Section cures in the larger public good, and it is to that demonstrated public purpose that we will give voice, never to the mischief it cures.

14. Finally, we note with dismay the Petitioners' claim, one that smacks of desperation, to be allowed to continue in office for a few months more from April 2016 to mid-January 2017. Probity demanded that the Petitioners subject themselves to the democratic discipline embodied in the MCS Act rather than urge a slavish adherence to the cold letter of a now-amended statute unmindful of its consequences or effect on the larger public good. The fact that this Petition seeks nothing more than to be allowed to cling on to their office at the very end of their tenure is, in our view, a most dubious claim unrelated to any bona fide concern for the body they were elected to govern. Indeed, nowhere in the Petition is there even a hint of a reason why, in the public interest, or in the interest of MAHATEX, the Petitioners should be permitted to continue in office. There is no emergent situation pleaded or shown. It is not even stated that any such election, duly called in consonance with the amended provision, will in any way operate to the detriment of the general body of MAHATEX. All that the Petitioners speak of throughout is their right, their interest, their claim; never that of MAHATEX or its members. The Petitioners, as elected committee members, are charged with duties to act in the interest of the body that elected them. This is a most solemn duty in the nature of a trust. They hold office in a fiduciary capacity. This carries with it a charge of duty that is both sacred and vital, not to be lightly trifled with. The distinction lies between governing a body and ruling it. The statute contemplate the latter, not the former. It speaks of an election, not a coronation.

15. The approach of the Petitioners, and the lack of any demonstrated interest in the affairs of MAHATEX, must colour their bona fides sufficiently to further warrant our conclusion that the Petition is entirely devoid of merit. Such a petition deserves to be rejected.

16. It is; but without costs.

1Exhibit "G", pp. 38-39

2Exhibit "A", pp. 14-16

3Exhibit "B", pp. 17-28

4Exhibit "C", pp. 29-30

5Exhibit "F", P. 37

6Exhibit "G", Pp. 38-39

7Exhibit "H", Pp. 40-41

8Section 72 of the MCS Act, 1960

9Section 73 of the MCS Act, 1960

10Section 73-1B of the MCS Act, 1960

11Section 25 of the MCS Act, 1960.

12Section 35 of the MCS Act, 1960.

13Section 73CA(1) read with Section 73CA(2) and 73CA(3) of the MCS Act, 1960. There is now, following the 2013 Amendment, even a disqualification for re-nomination, re-co-option, reappointment or reelection if a committee member incurs the disqualifications in Section 73CA(1A) or 73CA(1)(i) through (ix).

14Section 78 of the MCS Act, 1960.

15Section 78A of the MCS Act, 1960.