
(2010) 06 BOM CK 0123

In the Bombay High Court

Case No : Writ Petition No. 5177 of 2009

Ravindra Patil Shishode and Subhash Patil Shishode

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 144B, 73(1), 73FF, 73FF(1), 78

Citation : (2011) 1 BomCR 435

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : S.S. Thombre, for the Appellant; D.R. Korade, AGP for Respondent Nos. 1, 3 and 4 and A.N. Nagargoje, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—Petitioners challenge order dated 30th July, 2009, rendered by the Hon''ble Minister (Cooperation), in revision application No. 254/2009. By that order, the Hon''ble State Minister dismissed the revision application and confirmed order dated 8th May, 2009, passed by learned Divisional Joint Registrar (Cooperative Societies), Aurangabad, in appeal No. 8/2009. With the result, the disqualification of the respondents No. 6 and 7 as per order of the Assistant Registrar, Cooperative Societies, Paithan has been revoked as well as direction to appoint administrator to run affairs of Vividh Karyakari Seva Sahakari Society Limited, Dhakephal (for short, "VKSS Ltd.") also was set aside.

2. The petitioners are members of the VKSS Ltd. The byes-laws of the VKSS Ltd provide that there shall be seven (7) directors of the Managing Committee of the VKSS Ltd. It is a Specified Cooperative Society. There is no dispute about the fact that due to legal provisions regarding reservation available to members of Scheduled Caste, Scheduled Tribes, Other Backward Classes, etc., more six (6) have been provided for election as directors of the Managing Committee. Thus, the Managing Committee comprises of thirteen (13) directors including seven (7)

directors to be elected from general borrowers" constituency and six (6) directors from the reserved categories. The petitioners submitted an application dated 14th November, 2008 to the Assistant Registrar, Cooperative Societies, Paithan, seeking declaration for disqualification of six (6) directors of the Managing Committee of the VKSS Ltd, including the respondents No. 6 and 7. The disqualification against the respondents No. 6 and 7 was sought on the ground that they were defaulters because they had not re-deposited scythes to Shri Sant Eknath Sahakari Sakhar Karkhana Limited and was found in arrears of Rs. 300/- which he deposited that the said Sugar Factory on 28th October, 2008. Another ground put forth by the petitioners was that the respondent No. 6 was not inhabitant of village Dhakephal, but was residing at village Amrapur-Waghundi. He was, therefore ineligible to contest the election of the Vividh Karyakari Seva Sahakari Limited (for short, "VKSS Ltd"). So far as the respondent No. 7 is concerned, it was alleged that he was also a defaulter because amount of Rs. 20,260/- was due against him which was payable to Agasti Sarva Seva Sangh, which is affiliated to Shri Agasti Sahakari Sakhar Karkhana Limited. It was further alleged that he was not residing at village Dhakephal and was, therefore, ineligible to contest the election. The petitioners also alleged that six (6) directors were liable to be disqualified u/s 73FF of the Maharashtra Cooperative Societies Act, 1960 (for short, "the MCS Act") and were liable to be removed. They alleged that because coram was not available for conducting meetings of the VKSS Ltd, in accordance with the bye-law No 45 of the VKSS Ltd, the work of the VKSS Ltd will be stalled and, therefore, the Managing Committee was required to be dissolved by appointing any administrator. The learned Assistant Registrar, Cooperative Societies, Paithan, allowed the application and held that seven (7) directors were liable to be removed. The respondents No. 6 and 7 as well as the other five (5) directors were held disqualified and, therefore, the coram was not available to conduct business of the VKSS Ltd and as such, administrator was appointed to run affairs of the VKSS Ltd. The petitioners and other four (4) directors challenged the said order of the Assistant Registrar, Cooperative Societies, by filing appeal No. 8/2009. The appeal was partly allowed by the Divisional Joint Registrar, Cooperative Societies, Aurangabad. It was held that the respondents No. 6 and 7 did not incur any disqualification and, therefore, their removal as directors of the Managing Committee was set aside. It was further held that appointment of the administrator was not necessary and as such, such direction was set aside. The petitioners challenged the said order by filing revision application No. 255/2009 before the Hon"ble Minister of State for Cooperation. The revision application filed by them came to be dismissed.

3. Heard learned Counsel for the parties and learned A.G.P.

4. Question involved in this petition is:

Whether the respondents No. 6 and 7 incurred disqualification being defaulters and, therefore, the impugned order is liable to be interfered with and that

appointment of administrator is necessary to run affairs of the VKSS Ltd.?

5. The main contention of the petitioners is that as on the date of filing nomination papers, for the election for period between 2008 and 2013, the respondents No. 6 and 7 were defaulters in relation with the named Cooperative Sugar Factories. Obviously, it would be necessary to determine whether really, they were the defaulters as contemplated u/s 73FF(1)(vii) of the MCS Act. The learned Divisional Joint Registrar of Cooperative Societies came to the conclusion that they were not the defaulters. It is held that the respondent No. 6 is not member of Shri Sant Eknath Sahakari Sakhar Karkhana Limited and the scythes were not distributed by the Cooperative Trust as contended by the petitioners. Since the respondent No. 6 was not a member of the Cooperative Sugar Factory, he could not be treated as defaulter and, therefore, was not ineligible u/s 73FF of the MCS Act. The learned Divisional Joint Registrar further held that Agasti Sarva Seva Sangh was not a Cooperative Society as such, but was registered under the Bombay Public Trusts Act, 1950 and, therefore, the respondent No. 7 could not be held defaulter for anything which was due to be paid to the said Trust. These are concurrent findings rendered by the learned Divisional Joint Registrar and the Hon"ble State Minister.

6. Counsel for the petitioners would submit that the respondents No. 6 and 7 were defaulters and, therefore, the disqualification was incurred by them. He contended that inference drawn by the authorities is incorrect. He would submit that coram of eleven (11) members is required as per the bye-law No. 45 of the VKSS Ltd for running affairs of the Society. He contended that the present number of directors of the Managing Committee does not fulfill the coram and, therefore, appointment of the administrator is essential. He contended that the Hon"ble Minister failed to appreciate legal requirement regarding appointment of the administrator when the functioning of the VKSS Ltd has apparently come to standstill. He, therefore, urged to allow the petition.

7. Section 73FF(1)(i) Explanation (c)(i) of the MCS Act is relevant for the present purpose. It reads as follows:

73FF. Disqualification for membership of committee

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he-

(i) is a defaulter of any society;

Explanation.- For the purposes of this clause, the term "defaulter" includes-

(a) *****

(b) *****

(c) in the case of any society,-

(i) a member who has taken anamat or advance; or

The expression "defaulter" as per Explanation enumerated in Sub-clause (c)(i) means a member who has taken anamat or advance from the Cooperative Society. According to learned Counsel for the petitioners, the defaults committed by the respondents No. 6 and 7 in relation to the Cooperative Sugar Factories also would disqualify them to continue to be directors of the Managing Committee of the VKSS Ltd. The learned Counsel invited my attention to the expression "any society" as used in Sub-clause (i) of Section 73FF(1) of the MCS Act. The expression as used in Sub-clause (i) has to be conjointly read along with Sub-section (1) of Section 73FF. The disqualification of a person, being member of a Committee, would be incurred if the person is defaulter in a particular manner. In case of VKSS Ltd, it ought to be proved that he being member has taken anamat or advance from the Society. It has come on record, particularly from letter dated 30-03-2009, issued by Shri Sant Eknath Sahakari Sakhar Karkhana Limited that the respondent No. 6 is not a member of the said Sugar Factory. Therefore, it is difficult to say that he had obtained anamat or advance as a member of the said Sugar Factory. What appears from the record is that he had been given three (3) scythes and small amount for the purpose of sugarcane cutting as he is a labour contractor. Since he was not member of the Sugar Factory, it cannot be said that he was in arrears of any anamat or advance amount being member of that Cooperative Sugar Factory. It follows, therefore, that both the authorities rightly came to the conclusion that he was not disqualified to continue as director of the Managing Committee of the VKSS Ltd. Similarly, on facts, it was noticed that the respondent No. 7 had not obtained anamat or advance from any Cooperative Society as such. It was not proved that he also was not a defaulter. In the case of extraordinary jurisdiction, this Court cannot entertain disputed question of fact. It goes without saying that unless there is unimpeachable evidence to show that the respondent No. 7 was a defaulter, the finding of fact recorded by the learned Divisional Joint Registrar of Cooperative Societies and the Hon"ble State Minister need not be interfered with. There is no tangible material to show that the respondent No. 7 was a defaulter as contemplated u/s 73FF(1)(i) of the MCS Act. The tenor of averments made in the complaint application would show that the allegations of default against the respondent No. 4 were levelled with specific mention that as a sugarcane cutting supervisor, he had taken certain advance from Agasti Sarva Seva Sangh, Agastinagar. The respondent No. 7 did not obtain such anamat or advance as a member of Agasti Sarva Seva Sangh. The amount was allegedly given to him as a supervisor of sugarcane cutting work. The documentary evidence placed on record does not show that he was defaulter at the time of filing of nomination papers. The concurrent findings of both the authorities are, therefore, legal and proper.

8. It is argued by learned Counsel for the petitioners that the respondents No. 6 and 7 were ineligible because they are inhabitants of village Amrapur-Waghundi. There is no specific prohibition which could disqualify them from contesting the

election of the VKSS Ltd., Dhakephal. The respondents have filed copy of letter dated 29-03-2009, issued by the Secretary of Agasti Sarva Seva Sangh. The letter shows that nothing was due from the respondent No. 7. It may be mentioned that learned Counsel for the petitioners placed reliance on certain observations in *Vijay Shivaji Kokate v. Divisional Joint Registrar, Cooperative Societies, Nashik and Ors.* 2007 (3) Mh.L.J. 539 and *Shivshankar Dudh Vyavsayek Va Utpadak Sanstha Maryadit, Alani, District Osmanabad and Anr. v. State of Maharashtra and Ors.* 2004 BCI (0) 16. In "*Vijay Shivaji Kokate*" (supra), a Division Bench of this Court held that bye-laws of the Cooperative Society are not statutory in character though they may have a statutory flavour. It is further held that once the bye-laws are certified and registered, they are binding until such time they are amended or a person aggrieved pursues the remedies under the mechanism provided by the MCS Act, to set aside the bye-laws. In "*Shivshankar Dudh Vyavsayek Va Utpadak Sanstha Maryadit, Alani, District Osmanabad and Anr.*", a Single Bench of this Court held that the Management of the Cooperative Society is under an obligation to exercise such powers and perform such duties as may be conferred or imposed, respectively by the Act, the Rules and the Bye-laws, it being the mandate of Section 73(1) of the Act. It is contended, therefore, that in absence of appropriate coram, the VKSS Ltd. will not be able to function as mandated by the law and, therefore, appointment of the administrator was the proper remedy.

9. Counsel for the respondents No. 6 and 7 placed reliance on *Vinodchandra H. Doshi and Another Vs. Echjay Forgings Pvt. Ltd. and Others*, . In that case, the learned Single Judge of this Court held that where no notice was issued by the Society pointing out to member that he was in default, mere sending of maintenance bill for the current period will not be proper notice and, therefore, the disqualification of the member on ground of default was not justified. He also placed reliance on *Murlidhar Bhaulal Malu v. Sudhakar Honaji Patil and Anr.* 1987 Mh.L.J. 944. A Division Bench of this Court held that Clause (c) of Section 73FF(1) (i)(c) would apply to the cases where price of goods or charges for services or amount of anamat or advance are payable or refundable in cash and not otherwise. In *Narayan Bhoyar Vs. Yeotmal Zilla Parishad Karmachari and Rajudas Jadhav*, , the Full Bench of this Court held that provisions of Section 73FF and Section 78 of the MCS Act are independent provisions and operate in their respective fields on the stated grounds and their consequences are distinct and different. It is relevant to re-produce certain observations made by the Full Bench in paragraph 29 of the said judgement, as follows:

This means that it will be appropriate to read these provisions collectively. It will be clear that the person who had taken anamat or advance does not ipso facto becomes a defaulter but it is only when he fails to repay the full amount of such anamat or advance or pay the price of such goods or commodities or charges for such service after receipt of notice of demand, he becomes defaulter. It is also required of the Member that he would within 30 days from receipt of notice or from the date of withdrawal or taking the benefits, whichever is earlier, repay the

full amount.

10. In the present case, the respondents No. 6 and 7 cannot be regarded as defaulters only because the petitioners had produced some documents. There is no evidence to show that they failed to clear the dues after receiving the notice of demand. As regards appointment of administrator, it is difficult to reach conclusion that the business of the Society was likely to come to a standstill. The proper remedy in such a case would be to conduct by-elections for the vacant seats. Section 144B of the MCS Act provides that if the vacancy occurs, it shall be filled as early as practicable. The appointment of administrator is rather drastic remedy.

11. Considering the foregoing reasons, I do not find any substance in the petition. Petition is accordingly dismissed. No costs.