
(2003) 11 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 3694 of 2003

Sadashiv Hatkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-11-2003

Acts Referred:

Citation : (2003) 2 ALD(Cri) 142 : (2004) 2 ALLMR 813 : (2004) 1 MhLj 744

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Rajeev Madkholkar, for the Appellant; B.H. Dangre, Asstt. Government Pleader for respondent Nos. 1 and 2 and B.P. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—Rule returnable forthwith. Heard by consent.

2. By this petition, the petitioner questions the jurisdiction of the State Government to entertain an appeal against an order passed by the Divisional Joint Registrar, Co-operative Societies, Amravati.

3. The petitioner filed a Complaint, u/s 78 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act") before the Divisional Joint Registrar, Co-operative Societies, Amravati Division, Amravati, claiming that the respondent is disqualified and cannot continue to be a member of the Board of Director of Buldhana District Central Co-operative Bank and sought action against the respondent No. 3. By order dated 27th June, 2003, the Divisional Joint Registrar, Co-operative Societies, Amravati Division, Amravati, removed the respondent No. 3 from the Board of Directors of the said Bank.

4. Against the said order of the Divisional Joint Registrar, the third respondent preferred an appeal u/s 152 of the Act before the State Government. After hearing the parties, by the order dated 25th July, 2003, passed by the Minister of State (Co-operation), Mantralaya, Mumbai, stay was granted to the order of the

Divisional Joint Registrar. It is this order dated 25th July, 2003, passed by the Minister of State, which is impugned in this petition and in particular question of jurisdiction of the State Government to entertain the appeal u/s 152 of the Act.

5. Mr. Madkholkar, the learned Counsel appearing on behalf of the petitioner, submitted that the State Government has no jurisdiction to entertain the appeal in view of the provisions of Section 152 of the Act. Section 152 of the Act, to the extent it is relevant reads as under:

"152(1) An appeal against an order or decision under Sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 79, 85, 88 and 105 including against an order for paying compensation to society shall lie, --

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar of the Additional or Joint Registrar on whom the powers of the Registrar are conferred to the Registrar."

6. According to the learned Counsel for the petitioner the order passed by the Divisional Joint Registrar, Co-operative Societies, Amravati Division, Amravati being an authority or person other than the Registrar or Additional or Joint Registrar, jurisdiction to entertain such an appeal is vested only on the Registrar. In view of this, the only point that requires consideration is : Whether a Divisional Joint Registrar, is equivalent to a Registrar, Additional or Joint Registrar and whether an appeal would lie to the State Government under Clause (a) of Section 152 of the Act.

7. Mrs. Dangre, the learned Asstt. Govt. Pleader, appearing on behalf of the respondent - State and Shri B.P. Dharmadhikari, the learned Counsel appearing for the respondent No. 3, submitted that the Registrar. Additional or Joint Registrar are, for the purpose of Section 152 of the Act, of the same status. It is contended by them that the Divisional Joint Registrar is an authority equivalent to a Joint Registrar. Section 3 of the said Act is relevant for the purpose, which reads thus :

"3. The State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint one or more persons to assist such Registrar, with such designations, and in such local areas or throughout the State as it may specify in that behalf, and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar. They shall be subordinate to the Registrar, and subordination of such persons amongst themselves shall be such as may be determined by the State Government."

8. A bare perusal of aforesaid provision would make it clear that the persons appointed to assist the Registrar may be appointed to function as such in such local areas or throughout the State. The section further provides that they shall be subordinate to the Registrar and the subordination of such persons amongst themselves shall be such as may be determined by the State Government.

Mrs. Dangre, A.G.P., has placed on record a copy of relevant extract of orders and Notification, particularly bearing No. 19. CSL. 1479/46226-15-C, dated 18-9-1979, which reads thus :

"19. CSL. 1479/46226-15-C, dated 18-9-1979

(Mah. Govt. Gazette, dated 27.9.1979, Part 4-B, p. 1600)

In exercise of the powers conferred by Section 3 of the Mah. Co-op. Societies Act, 1960 and in supersession of Govt. Notification, Agriculture and Co-operation Department, No. WPC. 2871/15026-III-C-5, dated 6-7-1971, the Government of Maharashtra hereby determines that the subordination of the persons appointed to assist the Registrar, amongst themselves, shall be as follows, namely :--

Designation of the officer appointed to assist the Registrar Designation of the Officer or officers to whom he shall be subordinate.

1 2

1. Joint Registrar at the Headquarters and Divisional Joint Registrar Additional Registrar

2. Deputy Registrar at the Head quarters Joint Registrar at the Head quarters and Additional Registrar.

3. District Deputy Registrar Divisional Joint Registrar and Additional Registrar.

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9. It appears from the aforesaid Notification that the Divisional Joint Registrar is not subordinate to the Registrar, Additional or Joint Registrar. In fact, vide item 3 above. The District Deputy Registrar is subordinate both to the Divisional Joint Registrar and Additional Registrar, the two being of the same status. Nothing is pointed out to show that a Divisional Joint Registrar is subordinate to a Joint Registrar.

10. Having regard to the provisions of Section 3 of the Act, which empowers the State Government to appoint one or more persons to assist such Registrar with

such designation and in such local areas or throughout the State, as it may specify in that behalf, it is clear that the Divisional Joint Registrar is equivalent to that of Registrar, Joint Registrar for local areas such as Division. In this view of the matter, the decision taken by the Divisional Joint Registrar in the present case, must be construed to be a decision of the Joint Registrar and, therefore, the same is appealable to the State Government under Clause (a) of Section 152(1) of the Act and the State has rightly entertained and decided the appeal. In view of this, I am of the considered view that the contention of the petitioner cannot be accepted. There is no merit in the petition which is hereby dismissed.