

(1995) 11 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No's. 5177, 5178 and 5180 of 1995

Sambha Pikale

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Citation : (1996) 2 BomCR 700 : (1996) 2 MhLj 182

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : S.B. Talekar, for the Appellant; K.M. Gadhave-Patil, A.G.P., for respondent Nos. 1 and 2 and S.A. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Chapalgaonker, J.—The nominations of the three petitioners in these petitions were rejected on the ground that they violate the requirement prescribed under Clause "E" of Election Rule No. 2 appended to the bye-laws. The requirement is that the candidate, on the date of filing of the nomination, should not be himself defaulter, or should not be a surety to a defaulter-borrower. The fact that the petitioners are sureties for the borrowing members who are defaulters is not in dispute.

2 The rejection of the nomination papers by the respondent No. 3 has been challenged firstly on the ground that there is no power with the Co-operative Society-respondent No. 4 to frame such a bye-law since it would be in derogation with the specific provision made by the Maharashtra Co-operative Societies Act, 1960, in section 73-FF and section 73-FFF. It is also contended by the petitioners, that there cannot be a bye-law which could further make restriction on the democratic right of the member to contest election apart from those which have been provided for by the Maharashtra Co-operative Societies Act, 1960 and under the rules made thereunder. Further submission made by Shri Talekar, Counsel appearing on behalf of petitioners, is that every bye-law should have a nexus with the object to be achieved. To put a restriction that the

candidate should not have been defaulter is understandable since it has nexus with the object that the defaulter should not be allowed to administer the Co-operative Society. But if a person for whom the candidate stands surety commits a default, the candidate cannot be blamed and, therefore, on this count, the bye-laws will have to be struck down since it does not further betterment of the co-operative movement. Shri Talekar further submitted that even in the case of Specified Co-operative Societies which have been assigned an important position in the co-operative movement and is recognised so by the Maharashtra Co-operative Societies Act, 1960, there is no disqualification prescribed on these lines as is prescribed in the present Society. On this count, the submission made by the petitioners is that the order of the Returning Officer rejecting nomination papers of the petitioners, confirmed in appeal by learned Assistant Registrar of Co-operative Societies, should be set aside and they be allowed to contest the election.

3. There is no difficulty in accepting the proposition that a bye-law cannot override the Rules or the Act. It is also well settled that the bye-law have no statutory force. As was observed by the Supreme Court in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, :

"The bye-law that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute."

The purpose for providing for the bye-laws in the constitution of the Co-operative Societies is to enable the members who form a Society to frame additional rules for the governance of the Society. However, one Co-operative Society may have requirements different from the other Co-operative Society and it may frame bye-laws which would suit its purposes including providing for the qualifications and disqualifications in the election of the Society.

4. Section 2(5) of the Maharashtra Co-operative Societies Act, 1960, defines "bye-laws" as bye-laws registered under this Act and for the time being in force and includes registered amendments of such bye-laws. Section 8 of the said Act requires that the copy of the proposed bye-laws should be forwarded to the Registrar along with the application for registration. While deciding the application for registration, the Registrar has to approve the bye-laws and section 13 provides that the amendment of the bye-laws will not come into force unless it is accepted by the Registrar or there is a failure on the part of the Registrar to dispose of the application within the statutory period. Thus the bye-laws are integral part of the rules for administration of a Co-operative Society. Only condition is that they should not be repugnant to the Act or the rules made thereunder. They are binding on the members of the Society.

5. Shri Talekar submitted that since disqualifications have been prescribed u/s 73-FF and section 73-FFF of the Act of 1960 and under Rule 58 of the Maharashtra Co-operative Societies Rules, 1961, no further qualifications can be laid down under the bye-laws. The argument is fallacious. What has been prescribed in the Act and Rules are the minimum things which cannot be given go by any Co-operative Society. Therefore, disqualifications as are laid down in the Act and Rules cannot be watered down by the Society by framing bye-laws contrary to it. But it does not mean that the additional qualifications cannot be prescribed under the bye-laws. In many cases, qualification in respect of residence is prescribed. In many cases, number of shares which should be held by a member for being entitled for election as Director are also prescribed. It cannot be said that no additional qualifications can be prescribed under the rules. It would be within the jurisdiction of the Registrar to examine whether the bye-laws including such qualifications are proper and reasonable. Since the present bye-law is approved by the Registrar, it can well be presumed that the Registrar has accepted its necessity.

6. Shri Talekar also advanced an argument that the bye-law would put an unnecessary restriction on the rights of the members to contest an election and such restriction would be injurious to the democratic principles. There is no fundamental right conferred on any citizen to contest any election (see decision of Supreme Court in (N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . To vote and contest at the election are rights created by the statute and will have to be exercised within the framed statute, rules or bye-laws as are applicable. It appears that the members of the Society framing the bye-laws thought it fit that a person who could not persuade his fellow members to pay his dues in time, should not be allowed to contest the election and, therefore, a bye-law was framed that a candidate should not be surety to a defaulter member at the time of filing of the nomination. In view of this, it is not necessary to further examine the purpose of the bye-law which was framed well within the powers of the Society.

7. Shri Talekar further contended that section 165(2)(iii) of the Maharashtra Co-operative Societies Act, 1960 gives power to the State Government to frame rules as to how the Society should make bye-law or the Registrar may direct the Society to make bye-laws. Since disputed bye-law was not framed as per directions of the Government or Registrar, it is not a valid provision. Afforested is enabling provision. It is not that a bye-law cannot be framed without specific directions of the State Government or Registrar. It is the function of the Society to frame bye-law and the Registrar has to consider it and approve it. It is not the case of any of the parties that State Government has given any direction contrary to the bye-law in dispute and, therefore, this submission will have to be rejected.

8. In this view of the matter, no interference is called for. Petitions are summarily rejected.