

(1997) 05 BOM CK 0010

In the Bombay High Court

Case No : Letters Patent Appeal No. 16 of 1997 in Writ Petition No. 1796 of 1997

Sambhaji Patil Umrekar

APPELLANT

Vs

District Supply Officer and others

RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 42 Rule 1
Constitution of India, 1950 — Article 14, 19(1), 226
Maharashtra Co-operative Societies Act, 1960 — Section 152A, 73FF, 77FF(4), 78(1)

Citation : (1998) 2 BomCR 332 : (1997) 3 MhLj 309

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.N. Dhorde, for S.V. Kharde Patil, for the Appellant; A.M. Kanade, G.P., R.M. Borde, for the Respondent

Judgement

B.H. Marlapalle, J.—Heard Shri R.N. Dhorde, learned Counsel for the appellant with Shri S.V. Kharde Patil, Advocate, Shri R.M. Borde, learned Counsel for the respondent No. 2 and Shri A.M. Kanade, learned Government Pleader for the respondent No. 1-State. Respondents waive service.

2. Admit. With the consent of the parties, the appeal is being decided at the admission stage.

3. Few facts which are necessary to decide the appeal are as under. The appellant was Chairman of Kalambar Vibhag Sahakari Sakhar Karkhana Limited, Loha, District Nanded between the period 1986 to 1996. The respondent No. 2 is elected as M.L.A. from Loha Assembly Constituency. On 28-8-1996, the Regional Joint Director of Sugar issued an order u/s 78(1)(a) of the Maharashtra Co-operative Societies Act, 1960 superseding the entire Board of Directors of Kalambar Vibhag Sahakari Sakhar Karkhana Limited, of which the petitioner was the Chairman. The petitioner - appellant challenged the said order before the Appellate Authority who was pleased to reject the appeal and the Order dated 28-8-1996 came to be confirmed. In Writ Petition No. 5720 of 1996 filed by the

appellant interim order came to be passed on 23-12-1996 directing the Regional Joint Director to consult all the members of the Board of Directors except the appellant who had completed more than ten years as a Chairman. However, by further order dated 21st January, 1997, the Writ Petition No. 5720 of 1996 came to be rejected by the learned Single Judge of this Court. The appellant, therefore, filed Letters Patent Appeal No. 16 of 1997 and by order dated 6-2-1997, the interim order passed by the learned Single Judge on 23-12-1996 in Writ Petition No. 5720 of 1996 was continued. On 15-4-1997 the Collector at Nanded declared the elections for the Nanded District Central Co-operative Bank Ltd. and the appellant as well as respondent No. 2 filed their nomination forms in time from the same constituency. On 22-4-1997, at the time of scrutiny, the nomination form of the appellant came to be rejected by Respondent No. 1 on the ground that an order u/s 78(1)(a) of the Maharashtra Co-operative Societies Act has been passed against him and he is disqualified u/s 73-FF(4) of the said Act. The appellant alleges that this order was passed by respondent No. 1, at the instance of respondent No. 2. The said order dated 22-4-1997 rejecting the nomination form came to be challenged by the present appellant u/s 152-A of the Maharashtra Co-operative Societies Act, 1960 before the Divisional Commissioner, who by his Order dated 30-4-1997 held that though the nomination of the appellant is wrongly rejected by the respondent No. 1, in view of the order dated 23-12-1996 passed by this Court in Writ Petition No. 5720 of 1996, the order of rejection of nomination paper was proper. The appellant therefore, filed Writ Petition No. 1796 of 1997 and the learned Single Judge of this Court by his order dated 6-5-1997 granted Rule, returnable on 17-6-1997 and directed that the election would be subject to the result of the petition. Being aggrieved by the order of the learned Single Judge, the appellant/petitioner has filed the present Letters Patent Appeal.

4. It is not in dispute that by order dated 28-8-1996 passed by the Joint Regional Director (Sugar), Nanded and Assistant Registrar, Co-operative Societies, Nanded, the entire Board of Directors of the Kalambar Vibhag Sahakari Sakhar Karkhana Limited, has been dissolved u/s 78(1)(a) of the Maharashtra Co-operative Societies Act, 1960 and by invoking the powers u/s 78(1)(a)(i) and (ii) of the said Act, the Deputy Director of Sugar, Nanded came to be appointed as an Administrator of the Kalambar Vibhag Sahakari Sakhar Karkhana Limited. The Appellate Authority has confirmed the order on 3-12-1996 and Writ Petition No. 5720 of 1996 filed by the appellant came to be rejected by the learned Single Judge. Letters Patent Appeal No. 6 of 1997 filed by the petitioner is pending and interim order passed by the learned Single Judge on 23-12-1996 is continued. The nomination form filed by the appellant for the election to the Board of Directors of another Society namely; the Nanded District Central Co-operative Bank has been rejected by the Returning Officer on the ground that the appellant is disqualified to contest elections to any Co-operative Societies in view of section 73-FF(iv) of the Maharashtra Co-operative Societies Act as the Board of Directors of Kalambar Vibhag Sahakari Sakhar Karkhana Limited has been dissolved u/s

78(1)(a) of the said Act. The said order has been confirmed by the Appellate Authority and is subject matter of challenge in Writ Petition No. 1796 of 1997, which is presently pending before the learned Single Judge of this Court. The only question for our consideration is whether the appellant is disqualified from contesting elections of the managing committee of the Nanded District Central Co-operative Bank Limited just because the Board of Directors of another Society namely; The Kalambar Vibhag Sahakari Sakhar Karkhana of which the appellant was a Chairman has been dissolved u/s 78(1)(a) of the Act.

5. Mr. Borde, learned Counsel appearing for respondent No. 2 has vehemently opposed the appeal. He submitted that in view of the amendment carried out in 1997 to the proviso of section 78(1)(b), the present appellant is not eligible to be re-elected, re-appointed, re-nominated or re-co-opted as a member of any committee including the Nanded District Central Co-operative Bank Limited. He also challenged the maintainability of the Letters Patent Appeal on an interlocutory order passed by the learned Single Judge. It is also his contention that the order dated 23-12-1996 passed by this Court in Writ Petition No. 5720 of 1996 and continued in the pending Letters Patent Appeal No. 6 of 1997 amounts to individual disqualification of the appellant. However, the learned Counsel could not justify the order rejecting the nomination form in view of the provisions of section 73-FF(IV).

6. The nature of orders/judgments falling within the meaning of Clause 15 of the Letters Patent came to be examined by the Supreme Court in the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, and in para 120 of the said judgment, Their Lordships of the Apex Court have set down certain principles which might guide in deciding whether an order passed by the trial Judge within the meaning of the Letters Patent, and more specifically the interlocutory orders which may be treated as judgments are set out thereunder. In the instant case, learned Single Judge has admitted the petition but refused to grant stay and we are of the considered view that the said order passed by the Single Judge declining the stay will amount to order/judgment within the meaning of Clause 15 of the Letters Patent in pursuance of the guidelines laid down by the Supreme Court in the case of Shah Babulal Khimji (supra).

7. A Full Bench of this Court in the case of Sushilabai Laxminarayan Mudliyar and others v. Nihalchand Waghajibhai Shah and others, 1989 M.L.J. 695 has inter alia, held that the correct approach would be to consider not only the contents of the petition and the nature of the reliefs prayed for but also to examine the substance of the judgment passed by the learned Single Judge and the relief in order to determine whether the appeal under Clause 15 of the Letters Patent lies.

8. In another case between Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others, Supreme Court held that so long as the petition has been filed under Article 226 of the Constitution and the ground/relief/s therein go to show that it was a petition under Article 226, order passed in such a petition can be challenged in Letters Patent Appeal. In the instant case,

Writ Petition No. 1796 of 1997 has been filed under Articles 14, 19(1)(c) and 226 of the Constitution of India before the learned Single Judge and by the Order dated 6-5-1997, Rule has been granted and made returnable on 17-6-1997 and it has been further directed that the elections will be subject to the result of the petition. The petitioner has prayed for a writ of certiorari against the impugned orders and sought a direction in the nature of a writ, to accept his nomination form for the elections to the Nanded District Central Co-operative Bank Limited. As the order dated 22-4-1997 has not been stayed, the appellant has not been allowed to file nomination papers for the election and in case the appellant finally succeeds in the petition, the election so conducted shall be null and void. For these reasons, we hold that the Appeal is maintainable.

9. The learned Counsel for the respondent No. 2 has supported the order rejecting the nomination form only on the basis of proviso to section 78(1)(b) of the Maharashtra Co-operative Societies Act. He has further contended that interim order passed on 23-12-1996 in Writ Petition No. 5720 of 1996 and continued in L.P.A. No. 6 of 1997 amounts to individual disqualification of the present appellant. Admittedly, the present appellant has not been removed u/s 78(1)(b) of the Maharashtra Cooperative Societies Act and instead the entire body of the Managing Committee has been removed by invoking the powers u/s 78(1)(a) of the said Act. In addition, the petitioner has not been disqualified u/s 73-FF of the Maharashtra Co-operative Societies Act. The Returning Officer while rejecting the nomination form of the appellant has relied upon the provisions of section 73-FF(iv) which means that the nomination form of the appellant has been rejected on the ground that he has incurred disqualification under the said Act. It appears that the Returning Officer has held that the appellant has incurred disqualifications as the entire Board of Directors has been removed u/s 78(1)(a) of the Act. The said ground in support of the order rejecting the nomination form is totally baseless as there is no disqualification from contesting elections to any other Co-operative Societies in the provisions of section 78(1)(a). However, the proviso to section 78(1)(b) as amended in 1997, provides that any member who had been removed u/s 78(1)(b) shall not be eligible to be re-elected, re-appointed, re-nominated, or re-co-opted as a member of any committee till the expiry of the period of next one full term of the committee from the date on which he has been so removed or till such lesser period as may be laid down under the provisions of section 73-FFF or 144-E, as the case may be. In the instant case, no order u/s 78(1)(b) has been passed against the present appellant. Even otherwise, this Court in the case of Bhujangrao Narayanrao Deshmukh v. State of Maharashtra and others, as reported in 1995 (1) Mh.L.J. 437 and in the case of Gurunath Madhavrao Vs. Zilla Parishad Teachers Co-op. Credit Society Ltd. and Others, , had the occasion to interpret the provisions of section 78(1)(b) as well as its proviso. This Court held that the proviso is penal in nature and it has to be construed strictly and, therefore, unless the words of the statute are clear, we cannot bring more persons under the umbrella of this provision that is intended by the Legislature. It was further held that the proviso

speaks about the single member and not of the entire committee. The observations in paragraph No. 11 of the judgment in the case of Gurunath Jamalpure (supra) are reproduced below and the said observations were made by following the law laid down in Bhujangrao's case.

"The view that the proviso applies to the members when individually removed for individual act is not based on a mechanical approach that the proviso follows clause (b) of sub-section (1) but it is based on the consideration that the provisions about disqualification will have to be read as a whole and the statute will have to be put to a homogeneous construction. The purposeful reading of the proviso impugned brings one to an inevitable result that it was provided for a different purpose than was taken care in clause (a)(ii) of sub-section (1) of section 78, which is disqualifying the members of the erstwhile committee from being nominated as the members of the committee appointed by the Registrar. The Legislature thought that when an individual member is removed for his act or omission, he will have to be kept away from the co-operative movements for a certain period and the period has been prescribed in the proviso."

We are in respectful agreement with the law laid down in the above cases and we hold that the proviso to section 78(1)(b) of the Act is not applicable in the cases where the entire board/managing Committee has been dissolved u/s 78(1)(a) of the Act.

10. The learned Counsel Shri Borde appearing for respondent No. 2 and the learned Government Pleader appearing for respondent No. 1 conceded the law laid down by this Court as cited above regarding the interpretation of proviso to section 78(1)(b) and admitted that the bar of the said proviso is not applicable in the instant case. However, they contended that the interim order dated 23-12-1996 passed by the learned Single Judge in Writ Petition No. 5720 of 1996 which has been continued in L.P.A. No. 6 of 1997 amounts to individual disqualifications of the appellant. This submission requires to be considered only for being rejected. By Order dated 23-12-1996, the learned Single Judge had directed that the Administrator appointed should consult all the other members of the Board of Directors except the appellant. This order, by any stretch of imagination cannot be held to be an order of disqualification passed against the appellant. The learned Single Judge had only directed the Administrator to consult the remaining members of the old Board of Directors and nothing beyond that. It would be far-fetched to construe the said order to mean as an order of disqualification/removal passed against the present appellant u/s 78(1)(b) of the Act. The learned Counsel admitted that the powers available to the appropriate authority u/s 78(1)(b) of the Act could not be deemed to be exercised by this Court while passing the Order dated 23-12-1996 and this Court is not required to function as an authority as contemplated u/s 78(1)(b).

11. The order dated 22-4-1997 has been passed by the Returning Officer rejecting the nomination form of the petitioner for the elections to the managing committee of Nanded District Central Co-operative Bank Limited on patently

erroneous grounds and the Appellate Authority has rejected the Appeal solely on the basis of the Order dated 23-12-1996 passed by this Court. The allegations of the appellant that he has been disallowed to contest the elections at the behest of respondent No. 2 cannot be overruled in the facts of the present case. The actions of respondent No. 1 and 3 smack of mala fides. These respondents chose not to apply their mind to the facts and law in the present case deliberately to favour the opposite side is writ large and we, therefore, deprecate the actions of these officers. The impugned orders are contrary to the law laid down by this Court in the cases of Bhujangrao Narayanrao Deshmukh and Gurunath (supra), the appellant is likely to succeed before the learned Single Judge and in such circumstances, it will not be just and proper not to allow the present appellant to contest the ensuing elections of the Nanded District Central Co-operative Bank Limited. It is not in the public interest to allow a second round of election as the appellant has shown that the order of rejecting his nomination form is contrary to law and without application of mind to the facts of the present case.

12. For all the reasons stated hereinabove, we allow the Letters Patent Appeal and pass the following order :

The Returning Officer is directed to accept the nomination papers of the petitioner. Interim relief in terms of prayer (D) of the petition.

Certified copy to be issued.

13. Letters Patent Appeal allowed.