

(1997) 10 BOM CK 0072
In the Bombay High Court
Case No : W.P.No. 2350 of 1997

Shalikram Shivram Khobragade and others APPELLANT
Vs
Divisional Joint Registrar, Co-operative Societies, Nagpur and others RESPONDENT

Date of Decision : 07-10-1997

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 45(1)

Citation : AIR 1998 Bom 255 : (1998) 2 ALLMR 333 : (1998) 2 BomCR 525 : (1998) 1 BOMLR 672 : (1998) 1 MhLj 206

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Mrs. K.V. Sirpurkar, for the Appellant; A.G. Mujumdar, A.G.P., for the Respondent

Judgement

F.I. Rebello, J.—Rule. By consent, rule heard forthwith.

2. The petitioners were Directors of respondent No. 4 Society which is a Cooperative Society registered under the Maharashtra Co-operative Societies Act, 1960 (for short, the "Act"). The elections to the Society were held on 3-12-1995 and thirteen members were elected out of which petitioners Nos. 1 to 6 are some of the elected members and petitioners Nos. 7 to 9 are the co-opted members. It seems that the action of the Board of Directors in co-opting two members in place of two other members who had been disqualified, was enquired into the respondent No. 2. By order dated 19-9-1996, respondent No. 2 directed the members of the Managing Committee that they were to invite the disqualified members to attend the meetings of the Managing Committee as according to respondent No. 2, they were not disqualified in law, failing which action u/s 78 of the Act would be taken against the office bearers of the Society. A show cause notice thereafter came to be issued to six Directors u/s 78(1) on 13-2-1997. The petitioners Nos. 1 to 6 submitted their reply on 28-2-1997 and pointed out therein that the notice should be withdrawn. No show cause notice was issued to

petitioners Nos. 7 to 9. Thereafter, by an order dated 10-3-1997, respondent No. 2 appointed one Shri Bhandari as an Administrator. The petitioners herein preferred an appeal against the order dated 10-3-1997. Application for stay was also moved and prayed for. No order was passed thereon. However, the matter was finally heard on 2-4-1997 and by order dated 17-7-1997, the appeal preferred by the petitioners was rejected, It is the order appointing the Administrator as also the order rejecting the appeal which are impugned by this writ petition.

3. The principal contention raised on behalf of the petitioners is that before appointing the Administrator, the respondent No. 2 did not consult the Federal Society of which the respondent No. 4 was the member and as such, the order dated 10-3-1997 is liable to be set aside and consequently also the order dated 17-7-1997 is liable to be set aside.

Against this, on behalf of the respondents Nos. 1 to 3, it is contended that the respondent No. 4 is not a Federal Society; that assuming but not admitting that the respondent No. 4 is a Federal Society, copy of the show cause notice was issued to the respondent No. 4 and the respondent No. 4 has chosen not to offer its comments and as such, there has been consultation with the respondent No. 4. At any rate, it is pointed out that consultation is not mandatory but directory, as held by this Court in the case of Karbhari Govindrao Patil v. B.D. Pawar, 1976 M.L.J. 841. It is further pointed out that there are subsequent Division Bench judgments taking a contrary view, a learned Single Judge of this Court in Writ Petition No, 322 of 1996 has come to the conclusion that the views taken by the Division Bench in Karbhari's case (supra) is diametrically opposite to the view taken by another Division Bench of this Court in Suresh Dnyandeo Khumkar and Others Vs. State of Maharashtra and Others, and the same has been referred for consideration by a larger Bench. It is contended that this is a judgment by itself and as such, this Court should not, in the view of the reference, take any other view of the matter.

4. Several judgments in the matter of precedents have been cited, but no judgment has been cited at the bar or brought to my notice to point out that in a case where one learned Single Judge of this Court, on coming to a view that there is conflict between two Division Bench judgment, has referred the matter for consideration to a larger Bench, another Single Judge is precluded from considering the matter based on the Division Bench judgment of this Court.

5. In the first instance, affidavits and counter-affidavits have been filed to point out that the District Central Co-operative Bank Limited, Chandrapur which the petitioners claim to be a Federal Society, is not a Federal Society within the meaning of section 2(13) of the Act. Section 2(13) of the Act reads as under :---

"Federal Society" means a society ---

(a) not less than five members of which are themselves societies, and

(b) in which the voting rights are so regulated that the members which are societies have not less than four-fifths of the total number of votes in the general meeting of such society."

6. No other provision of the Act has been pointed out insofar as the Federal Society is concerned. From the definition clause, all that can be seen is that Federal Societies are the societies where not less than five members are themselves societies and insofar as voting rights are concerned, they are so regulated that the members which are societies have not less than four-fifths of the total number of votes in the general meeting of such societies. In the instant case, on behalf of the respondents is annexed a certificate issued by the Deputy Manager of the Chandrapur District Central Co-operative Bank Limited showing that the respondent is their member holding shares of Rs. 15,80,030/- upto the end of March 1997 and that the Chandrapur District Central Co-operative Bank Limited is a "federal Society." It is also shown that there are over 1000 societies which are its members. It is further pointed out that all the federal Societies have right to vote. These facts have not been controverted by the respondents Nos. 1 to 3. In the face of that, it would be clear that the Chandrapur District Central Co-operative Bank Limited is a federal Society. In fact, copy of the show cause notice was served on petitioners Nos. 1 to 6, so also a copy forwarded to the Chandrapur District Central Co-operative Bank Limited. There is, however, no record to show whether, in fact, the said copy has been received by the Chandrapur District Central Co-operative Bank Limited. Thus, the first contention on behalf of the respondents Nos. 1 to 3 that the Chandrapur District Central Co-operative Bank Limited is not a Federal Society, has to be rejected. It is clear that it is a Federal Society within the meaning of section 2(13) of the Act.

7. The next contention which would be dealt with, would be that the consultation as required by section 78 of the Act is directory and not mandatory and even if it is to be held to be mandatory, it will be seen that copy of show cause notice was served on the Chandrapur District Central Co-operative Bank Limited which has chosen not to give any reply and as such, it cannot be said that there has been no consultation. Before dealing with the said issue, it may be relevant to also consider the contention on behalf of the respondents Nos. 1 to 3 that as in Writ Petition No. 322/96 a learned Single Judge of this Court on finding that two Division Benches have taken a diametrically opposite view and the same need to be resolved has referred the same to the Chief Justice for constituting the larger Bench, and whether this will preclude this Court from considering the legality of the impugned order.

8. My attention was invited to a judgment of the Apex Court in the case of *Lala Shri Bhagwan v. Ram Chand*, AIR 1955 S.C. 1767 to point out that even a Single Judge of the High Court if he wishes to differ from the view taken by the earlier Division Bench or Single Judge of the High Court, must refer the matter to a larger Bench or refer the matter to the Chief Justice for constituting the larger Bench. This practice is founded on healthy principles of judicial decorum and

propriety. The other judgments referred to are, in the case of State of West Bengal Vs. Falguni Dutta and Another, and Rajesh Kumar Verma Vs. State of Madhya Pradesh and others, . In Falguni's case it is set out that a Single Judge disinclined to follow the earlier Division Bench judgment of the same High Court, should refer the matter to larger Bench. In the case of Rajesh v. State of M.P. (supra) it is pointed out that where one Division Bench takes a view different from the another Division Bench, in such cases proper course is to refer the matter to a larger Bench.

9. With respect, I am bound by the views expressed by the Apex Court. The only question is, where one Single Judge finds that two different views have been taken by the two Division Bench judgments and refers the matter for constitution of a larger Bench, whether such an order would constitute a judgment by itself. Would that preclude another Single Judge from considering the law laid down by the Division Bench judgments of this Court, even if he arrives at the conclusion that there is no conflict in the judgments or on the matter of interpretation of the ratio of the two Division Bench judgments he arrives at a conclusion that the judgment of the Division Bench passed earlier has been overruled by the subsequent Division Bench judgment. No authority has been cited for that purpose. The question that would arise, therefore, is what would be the effect if on such a reference the matter is not decided, more so, in the light of adverse orders passed against citizens. Would courts be precluded from looking into the correctness or legality of the matter merely because the reference has been so made and merely restrict themselves to passing interim orders. If the Court considering the matter, is of the opinion that there is no conflict on considerations of the two judgments, I see no reason as to why it is precluded from considering the matter as by a reference, all that the Judge does is on seeing a conflict in the two judgments refers the matter.

In Karbhari's case (supra), the Division Bench of this Court held that the consultation u/s 78 of the Act was not mandatory, but directory. Thereafter section 78 of the Act came up for consideration before another Division Bench in the case of Patesingh v. R.B. Deshmukh, reported in 1981 M.L.J. 78. The Division Bench was confronted with the judgment in Karbhari's case and has considered the same in para 27 of the judgment. The Division Bench noted the judgment of the Apex Court in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, which held that the consultation is not an empty formality and that the judgment in Karbhari's case (supra) as such would be no longer good law in view of the same. A judgment of the Madhya Pradesh High Court in Radheshyam Sharma Vs. Govt. of M.P. through C.K. Jaiswal and Others, was also relied upon. The Division Bench, however, felt that on account of the view taken in the matter, it was not necessary to deal with the said issue.

10. Section 45(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1964 thereafter came up for consideration before another Division Bench of this Court in APMC, Dharni v. Dist. Dy. Registrar, Co-operative Societies,

Amravati, 1986 M.L.J. 374. The Division Bench noted the judgment in Karbhari's case and held that the comparison between section 78 of the aforesaid Act and the proviso in question indicates that language, used is not similar and that degree of emphasis is different. It also noted that the Division Bench of this Court in Patesingh Rao's case had doubted the correctness of the Division Bench in the case of Karbhari Patil v. B.D. Pawar (supra).

11. Section 78 again came up for consideration before another Division Bench of this Court in the case of Suresh Dyandeo Khumkar v. State of Mah., 1987 M. L.J. 474. The Division Bench noted that the judgment in the case of Karbhari Patil was distinguished in the case of Patesingh (supra) and APMC, Dharni v. Dist. Dy. Registrar, Co-operative Societies (supra). The Division Bench thereafter noted that after decision in Karbhari's case, the Apex Court has considered the requirement of consultation in the case of Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, in which the question of consultation on the transfers of the High Court Judges was considered and the subsequent judgment of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, . The Division Bench thereafter noted that in the judgment in the case of APMC, Dharni v. District Dy Registrar (supra) the law in regard to consultation was considered by this Court and it was held that the consultation was not an empty formality, but it must be real, full and effective. The Division Bench has noted that after Karbhari's case, the Supreme Court has considered the requirement of consultation in the case of Union of India v. Sakalchand and the later decisions of this Court have based their views on the judgment of the Apex Court in Sakalchand's case. The Division Bench also noted another judgment of the Apex Court in S. Kewal Ram v. District Registrar of Co-operative Societies etc., reported in 1986 (2) SCALE 398. The Division Bench thereafter noted that Rule 64(2) was neither referred to nor considered in Karbhari's case and Rule 64(2) clearly lays down that before any order under sub-rule (1) is made, the Registrar shall consult the federal Society to which the Society is affiliated and, therefore, it is clear that consultation u/s 78 of the Act read with Rule, 64(2) of the Rules shows that consultation is mandatory and that such consultation should be meaningful and effective. It is, therefore, clear from the Division Bench judgment of this Court in the case of Suresh v. State that the judgment in Karbhari's case was considered and held to be no longer a good law in view of the subsequent judgments of the Apex Court and non-consideration of Rule 64(2) of the Rules. In my opinion, there is no conflict whatsoever in the Division Bench judgments of this Court in Karbhari's case and in the case of Suresh v. State. I am, therefore, unable to accept the contention canvassed on behalf of the respondents Nos. 1 to 3 that another learned Single Judge once having once referred the matter to a larger Bench, this Court should not enter into the arena as that would be improper. As I have already pointed out, in Suresh v. State this Court has clearly held that the law laid down by the Division Bench in Karbhari's case is no longer good law.

12. Having held that there is no conflict in the Division Benches of this Court and

law is as laid down in Suresh's case, the question is, whether there has been effective consultation. As pointed out earlier, consultation is not an empty formality and a ritual. It has to be real and meaningful. It has to be real, full and effective and not an empty formality or a ritual. Consultation would mean that the person who is sought to be consulted is provided the material based on which order is to be passed in order to enable the authority responsible to pass the order after considering the advice as given and sufficient opportunity must be given to such person to tender the advice. In the instant case, admittedly, the show cause notice was issued on 13-2-1997. Copy of the show cause notice has been purportedly sent to the Federal Society. There is nothing on record to show that the Federal Society, in fact, has received the said notice. Even assuming that the said notice was received, what is apparent is that the petitioners had filed their reply on 28-12-1997. There is nothing on record to show that copy of the reply filed by the petitioners to the show cause notice was made available to the Federal Society. The order was passed on 10-3-1997. Therefore, even if it is held that copy of the said show cause notice was sent to the Federal Society, it cannot be said that there was real, meaningful and effective consultation inasmuch as the reply given by the petitioners was not made available to the Federal Society. In the light of the aforesaid discussion, the order dated 10-3-1997 has necessarily to be quashed and set aside. Once the order dated 10-3-1997 is set aside consequently, the order dated 17-7-1997 of the Appellate Authority has also to be quashed and set aside.

13. It is, however, made clear that this petition has proceeded on the point regarding consultation. The merits of the matter have not been gone into. It will always be open to the respondent No. 2 to issue fresh notice and act according to law if he is so inclined.

In the result, rule made absolute in terms of prayer clause (1) of the petition. There shall be no order as to costs.

14. Order accordingly.