

(1980) 12 BOM CK 0034

In the Bombay High Court

Case No : Special Civil Application No. 1449 of 1977

S.S. Pilani (Smt.)

APPELLANT

Vs

J.P. Sawe and Others

RESPONDENT

Date of Decision : 06-12-1980

Acts Referred:

Citation : (1980) 12 BOM CK 0034

Hon'ble Judges : P.G. Palshikar, J

Bench : Single Bench

Advocate : B.R. Naik and Y.R. Naik, for the Appellant; S.P. Kanuga, A.G.P. for respondents 2 and 3, P.L. Nain, for respondent Nos. 4 (A to D), R.R. Soni, for the Respondent

Final Decision : Allowed

Judgement

P.G. Palshikar, J.—A dispute u/s 91 of the Maharashtra Co-operative Societies Act was filed by respondent No. 4 (since deceased) against the petitioner. It has been pending since 1965. Initially the proceedings were referred to the nominee of the Registrar and thereafter to the officers on Special Duty. Later on Co-operative Courts were constituted. This dispute came to be decided by respondent No. 1. He passed an award on 20th April, 1977. The petitioner has filed an appeal against the said award before the Maharashtra State Co-operative Appellate Court and it is still pending.

2. In the present petition the petitioner challenges the validity of the award dated 20th April 1977 on the ground that the appointment of respondent No. 1 was not according to law and, therefore, the award passed by him is without jurisdiction.

3. Respondent No. 1 was appointed as a Judge of the First Co-operative Court by the State Government on 18th March, 1976 u/s 91-A(2) of the Maharashtra Co-operative Societies Act, 1960 read with Rule 77-A of the Maharashtra Co-operative Societies Rules, 1961. Initially this appointment was for a period of six

months or till the Maharashtra Public Service Commission selected eligible persons, whichever was earlier. However, the appointment was further continued by Government order dated 28th September, 1976 which was published in the Maharashtra Government Gazette on 30th September, 1976. Respondent No. 1, therefore, continued to hold the office as a Judge of the Co-operative Court. His term as a Judge of the Co-operative Court expired on 1st April 1977.

4. The petitioner alleges that on 5th July, 1977 respondent No. 1 attained the age of 60 years. The learned Counsel for the petitioner pointed out that under Rule 77-B(1) of the Co-operative Societies Rules, no person could hold or continue to hold the office of a Judge of a Co-operative Court after he attains the age of 60 years. According to him, since respondent No. 1 attained the age of 60 years on 5th July, 1977 he could not hold or continue to hold the office of a Judge of the Co-operative Court. He further argued that the award passed by the respondent No. 1 on 20th April, 1977 was, therefore, without jurisdiction as he had no right to hold the office under law. Rule 77-B(1) was subsequently amended by a notification dated 15th February, 1978 and the age was raised from 60 to 62 years. Even after attaining the age of 60 years respondent No. 1 continued to decide the disputes before him. The State Government, therefore, by an order, published in the Official Gazette dated 22nd July, 1977 appointed respondent No. 1 with effect from 1st April 1977 to 31st July 1977. The learned Counsel for the petitioner argues that even this notification does not confer power or jurisdiction upon the State Government to continue the appointment of respondent No. 1 as the amendment to Rule 77-B(1) came into force with effect from 15th February, 1978 and after 5th July, 1977 respondent No. 1 could not be appointed.

5. Shri Kanuga for the State argued that under Rule 77-B(2) of the Co-operative Societies Rules, the Government had the power to appoint persons as Judges of the Co-operative Court notwithstanding anything contained in Sub-Rule (1) of Rule 77-B. He, therefore, justified the appointment of respondent No. 1.

6. It appears that Rule 77-B(2) provided for appointment of Officers on Special duty as Judges of the Co-operative Courts who were holding the office as such officers immediately before the said rule came into force and who were otherwise qualified to be the judges of the Co-operative Courts, this is only a provision for a limited period when the posts of the Special Officers on Duty were abolished and the posts of the judges of Co-operative Courts were created. This does not enable the Government to appoint any person as a Judge of the Co-operative Court beyond the prescribed age. The State Government, therefore, could not appoint respondent No. 1 after he attained the age of 60 years on 5th July 1977. His appointment was, therefore, illegal as he could not hold or continue to hold office of a Judge of the Co-operative Court after he attained the age of 60 years. His appointment, therefore, after 5th July, 1977 was in violation of Rule 77-B(1) and was consequently illegal. The award passed by him on 20th April, 1977 was, therefore, clearly without jurisdiction and cannot be sustained.

7. In the view that I have taken, I set aside the award passed by respondent No. 1 on 20th April, 1977 in case No. ABN/268/65. The petition is therefore, allowed. Rule is made absolute. However, in the circumstances of the case, there will be no order as to costs.