

(1988) 03 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 2098 of 1986

The Bhandara District Central Co-operative Bank Ltd. and
Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 21-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)

Citation : AIR 1988 Bom 399 : (1988) 3 BomCR 632 : (1988) MhLj 883

Hon'ble Judges : C. Mookerjee, C.J.;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : B.R. Naik and Y.R. Naik, for the Appellant; A.S. Bobde, General, M.B. Mehera and V.A. Gangal, Asst. Govt. Pleaders, for the Respondent

Final Decision : Dismissed

Judgement

Mookerjee, C.J.—Petitioner No. 1 Bhandara District Central Co-operative Bank which has been in existence since the year 1911 is a society falling within the categories of the co-operative societies mentioned in Sub-section (2) of Section 73A of the Maharashtra Cooperative Societies Act, 1960. Petitioners Nos. 2 and 3 at the relevant time were elected Directors on the Board of petitioner No. 1. Since the year 1975, petitioner No. 2 has been acting as the Chairman of petitioner No. 1 Bank. The petitioners Nos. 2 and 3 are designated officers" within the meaning of Sub-section (1) of Section 73A of the said Act. By filing this writ petition the petitioners have impugned the constitutional validity of Section 73A of the Maharashtra Co-operative Societies Act, 1960. The said Section 73A was inserted along with Sections 73B to 73G in the Maharashtra Cooperative Societies Act, 1960, by Maharashtra Co-operative Societies (Amendment) Act. 1969 (Maharashtra Act XXVII of 1969). Different sub-sections of Section 73A of the said Act were subsequently amended to which reference would be made hereinafter.

2. Sub-section (1) of Section 73A of the said Act, lays down that in the said

section and in Sections 73C, 73D and 73E "a designated officer" means the Chairman and the President and includes any other officer of the society as may be declared by the State Government by notification in the Official Gazette to be a designated officer but does not include any officer appointed or nominated by the State Government or by the Registrar. Sub-section (2) of Section 73A of the said Act sets out the three categories of the societies in which no person shall, at the same time, be or continue to be, a designated officer in the manner provided. A person is disqualified from being simultaneously a designated officer of more than one society falling in Category I or Category II or Category III. He is also disqualified from continuing to be a designated officer in more than two societies in the three categories. In other words, Sub-section (2) of Section 73A purports to restrict simultaneous membership of the different categories of societies specified in Sub-section (2) of Section 73A of the Act. By explanation added by Maharashtra Act XX of 1986 for the purpose of Sub-section (2) of Section 73A, the expression "society" does not include a society with no share capital and a society not engaged in commercial activities. The Registrar has been authorised by Sub-section (2A) of Section 73A (which is inserted by Maharashtra Act III of 1974) to decide any question which may arise as to whether or not a society falls in any of the categories referred to in Sub-section (2) of Section 73A of the Act. Sub-section (4) of Section 73A, inter alia, provides that if any person becomes, at the same time, a designated officer of societies in excess of the number prescribed under Sub-section (2) of Section 73A, unless he resigns his office in the society or societies in excess of the said number within a period of ninety days from the date on which he is elected or appointed a designated officer of more than the permissible number of society or societies, or if the elections or appointments are held or made simultaneously from the date on which the result of last of such elections or appointments is declared, he shall, at the expiration of the said period of ninety days, cease to be a designated officer of all such societies. Sub-section (5) of Section 73A as originally enacted by Maharashtra Act XXVII of 1969 was substituted by Maharashtra Act XXVII of 1971. Further amendments were effected by Maharashtra Act XLV of 1983 and Maharashtra Act XX of 1986 so far as Sub-section (5) of Section 73A is concerned. At this stage, we may note that in the facts of this case it would be more relevant to consider Sub-section (5) of Section 73A of the Act, inasmuch as petitioner No. 2 in this case does not claim to have held simultaneously the post of a designated officer in more than one society or societies in the categories set out in Sub-section (2) of Section 73A of the Act. The vires of Sub-sections (1), (2) and (4) of Section 73A have been, however, questioned in the other writ petitions which have been heard along with the present one. The learned counsel for the petitioners has also made lengthy submissions regarding the constitutional validity not only of Sub-section (5) but also of Sub-sections (1), (2) and (4) of Section 73A. Therefore, we propose to deal with the submissions made on either side on the vires of Sub-sections (1), (2), (4) and (5).

3. The provisions of Sub-sections (1), (2) and (4) were previously challenged

before two Division Benches of this Court both of which had rejected the contentions that the said provisions were ultra vires Article 19 of the Constitution of India, vide the decision of Chandurkar, Acting C.J. (as he then was) and Kurdukar, J, in the case of Shree Siddheshwar Sahakari Sankar Karkhana Ltd. and Another Vs. State of Maharashtra and Another, and the decision of Shah and Mohta, JJ. in the case of Manohar Vs. State of Maharashtra and Others, . Shah and Mohta, JJ. in the case of Manohar v. State of Maharashtra had also rejected the contention that Section 73A of the Maharashtra Co-operative Societies Act contravened Article 14 of the Constitution of India. In view of these binding decisions, it is not necessary for us to again set out in extenso the reasonings for which we conclude that the challenge to the vires of Sub-sections (1) to (5) of Section 73A of the Maharashtra Co-operative Societies Act is bound to fail. We follow the aforesaid two Division Bench decisions with which we respectfully agree and we only set out some additional reasons for upholding the validity of Section 73A.

4. We are unable to accept the contention that Sub-section (1) of Section 73A makes an arbitrary differentiation among officers of a co-operative society as defined in Clause (20) of Section 2 of the Maharashtra Co-operative Societies Act, 1960, or that there is no basis for making a separate set of provisions relating to disqualification in the matter of simultaneous membership of categories of cooperative societies and in the matter of holding office in one such society for a period in excess of the aggregate period specified in Sub-section (5) of Section 73A. The section itself has specified the Chairman as a designated officer. Secondly, the State Government under Sub-section (1) has seen empowered to make other officers of co-operative societies designated officers by issuing notification. Therefore, all officers of co-operative societies belonging to the three categories mentioned in Section 73A(2) who may also create vested interests may be declared as designated officers and may be restricted from simultaneously holding their offices in more than one society on getting themselves repeatedly elected/appointed as designated officers. The exclusion from the ambit of Section 73A of officers appointed or nominated by the State Government or by the Registrar is reasonable. There is intelligible basis for differentiating these officers from other designated officers of co-operative societies. The source of appointment of those excluded from the ambit of Section 73A is neither election nor appointment by the co-operative societies themselves. Their tenure as officers depends upon appointment and/or nomination made by the State Government or by the Registrar. Therefore, in case of officers appointed by the Government and the Registrar, there is hardly any possibility of their indefinitely perpetuating their hold upon co-operative societies. The Maharashtra Co-operative Societies Act, 1960, in general and in particular in the words of Section 73A provide enough guidelines for exercise of the delegated power conferred by Section 73A(1) upon the State Government. There has been no delegation to the State Government of the power of formulation of legislative policy. It is settled law that a Legislature cannot foresee and provide for all future

contingencies. Therefore, the Legislature may provide for delegated legislation within the ambit of the policy laid down by the Legislature. The argument of under-classification was sought to be raised both with reference to Sub-section (1) and Sub-section (2) of Section 73A, but we may indicate that taking into account the provisions of Sub-section (1) and Sub-section (2) of Section 73A together it is possible to include all officers within the scope of Section 73A.

5. We find no substance in the objections raised against the specification of the three categories of societies in Sub-section (2) of Section 73A. We agree with the views expressed in the unreported Division Bench decision dated 18th Sept. 1984 in the case of *Anandrao Dnyandeo Patil v. State of Maharashtra*, Writ Petn. No. 3470 of 1984. In the said unreported decision reliance had been placed upon the earlier Division Bench decision in the case of *Kisan Govindrao Walke v. State of Maharashtra* 1984 Mah LJ 162. In *Anandrao Dnyandeo Patil's* case, the Division Bench held that use of the expression "or" in Clause (iii) of Section 73A(2) was made in the disjunctive sense and did not mean "and". It was further held that the classification made by Section 73A(2) was not violative of Article 14. We respectfully agree with the above interpretation of Sub-section (2) of Section 73A. Categorisation on the basis of geographical situation or amount of share capital was legitimate and valid.

6. We may now advert to the other part of the arguments made on behalf of the petitioners regarding the vires of Sub-sections (1) and (4) of Section 73A of the Act. Dr. Naik had fairly conceded that right to hold the office as a designated officer of a co-operative society was a statutory one and, therefore, subject to the compliance of the constitutional mandates it was within the power of the State Legislature to modify, or alter or restrict the right to act as designated officers of specified society.

7. We regret that we are unable to agree with the view of the Gujarat High Court in the case of *Amreli Dist. Co-op. Sale & Purchase Union v. State*, 1984 (2) 25 Guj LR 1244, that restriction on holding of the office of the Chairman or any other designated officer would be violative of Article 19(1)(g) of the Constitution of India. We may respectfully point out that it is not for the Court to question the legislative wisdom in enacting provisions for imposing restrictions upon simultaneously becoming designated officers of more than one specified co-operative society or from continuing as such designated officers of specified societies in excess of an aggregate period. It is not for the Court to decide whether in fact the President, the Chairman or any other designated officer really control the working of the specified societies. A measure for prevention of creation of vested interests in co-operative societies would be in public interest. The Court can further decide how such mischief can be prevented. It must be left to the Legislature to decide whether by imposing ban upon designated officer the evil can be checked or not. The Court cannot decide the question whether the management of the co-operative society might be more efficiently carried on in the event, persons without any limitation are allowed to simultaneously become

designated officers in the specified categories of cooperative societies or to remain in office for indefinite period of time. The earlier Division Benches of this Court had taken a view contrary to the above views of the Gujarat High Court. We find no reason for not following the binding decisions of this Court about the validity of Section 73A. The Division Bench of the Gujarat High Court in the case of *Amreli Dist. Co-op. Sale & Purchase Union v. State* had, inter alia, referred to the All India Conference of the Chief Ministers and of State Ministers for Co-operation held at Madras on 12th June 1968, Chandurkar, Ag. C.J. and Kurdukar, J. in their judgment also had cited hereinbefore in para 37 had set out these recommendations made by the All India Conference of [he Chief Ministers and of State Ministers for Co-operation held on 12th June 1968. The said Conference had suggested measures for curbing of vested interests in co-operative societies by restriction, inter alia on holding offices for more than the prescribed number of terms and also by imposing restriction on holding office simultaneously in a number of societies. Section 73A was originally inserted by Maharashtra Act XXVII of 1969 in order to implement the said recommendations of the Conference. Therefore, in considering the validity of Section 73A, the Court ought to take into consideration the entire recommendations regarding curing this illicit growth of vested interests in the co-operative societies by reason of simultaneously holding office by designated officers and by holding for indefinite length of time such offices.

8. Dr. Naik in his fairness has himself referred to the decision of the Division Bench of the Allahabad High Court in the case of, *Trilok Singh v. State of U.P.*, ILR (1974) All 1. The Division Bench of the Allahabad; High Court had upheld Rule 449 of the U.P. Co-operative Societies Rules read with Section 130 of the U.P. Co-operative Societies Act, 1965, which provided that after two consecutive terms an elected Director of Co-operative Society a person shall be ineligible for election for a third term as a Director, The Respondents have also relied upon the said Division Bench decision. The Division Bench of Allahabad High Court had, inter alia, observed :

"Judicial notice can be taken of the fact that those who find their way to elective offices have a tendency to use their official position to perpetuate their power and continuance in office. Rule 449 is in our opinion, designed to prevent this being done in disregard of "co-operative principle". Such a provision, in our view, merely places reasonable restrictions in the interest of the general public on the rights guaranteed under Articles 19(1)(f) and 19(1)(g)."

We may also add that strictly speaking Article 19(1)(g) has already any application to the facts of the present case because Section 73A does not seek to restrict the right of the cooperative societies to carry on their business. Holding of posts of designated officers cannot be also termed as profession, trade or business. We respectfully agree with the above views. The said decision of the Allahabad High Court cannot be distinguished on the ground that while Section 73A of the Maharashtra Act imposes bar upon only designated officers of

specified societies the Uttar Pradesh Rule applies to all holding elective offices in co-operative societies.

9. In the course of his submissions. Dr. Naik also submitted that the basis adopted for the categories mentioned in Sub-section (2) of Section 73A was not fair. We have already concurred with the view taken in the earlier decisions of this Court that such categorisation was reasonable and fair. We are unable to accept the contention made on behalf of the petitioners that such categorisation should have been not on the basis of geographical situation and authorised share capital but the same ought to have been on the basis of subscribed share capital. Again, it is not the business of the Court to find out whether in any alternative manner the classification of societies could have been possible. The Court has to examine whether the classification adopted by the Legislature in a particular statute fulfills the requirements of Article 14 of the Constitution of India. In the instant case, we find that classification into different categories according to geographical situation of the societies and the amount of authorised share capital have nexus with the object of the legislation in prohibiting growth of vested interests in the co-operative societies.

10. We may next examine the submission of Dr. Naik that Sub-section (4) of Section 73A of the Act is arbitrary, inasmuch as the scope of Sub-section (4) of Section 73A would not extend to those who might resign within ninety days from the date on which they are elected or appointed as designated officers of more than the permissible number of society or societies. According to Dr. Naik, one could evade the bar of Sub-section (1) of Section 73A of the Act by repeatedly resigning from his office within ninety days from the date on which he begins to incur disability u/s 73A(i). In the first place, in considering the constitutional validity of the provisions, we have to consider the normal working of the section and not the exceptional cases or of possible evasion of the statutory bar imposed by Section 73A(1). Secondly, the cases of persons likely to repeatedly resign within ninety days to evade the bar u/s 73A(1) are likely to be very few. A person who is simultaneously elected to more than one co-operative society belonging to the categories specified in Sub-section (2) ought to be granted a reasonable time to exercise his option whether he would prefer to continue and thereby incur the adverse legal consequence of such simultaneous membership or would resign or relinquish his post of designated officer in one of the societies of the specified categories and thereby retain his post in one society only. It is reasonable to give such opportunity to exercise one's option within a certain time.

11. The main thrust of the arguments in the present case is against the vires of Sub-section (5) of Section 73A of the Maharashtra Cooperative Societies Act. We have also noted that the said Sub-section (5) of Section 73A by successive legislative amendments has undergone some change. Chandurkar, Ag. C. J. (as he then was) and Kurdukar, J. and Shah and Mohta, JJ. had upheld the validity of Sub-section (5) (as the same stood then) along with the other Sub-sections of

Section 73A of the Act. Shah and Mohta, JJ. had also rejected the contentions similar to those raised before us and had held that the provisions were not violative either of Article 14 or of Article 19 of the Constitution of India. Sub-section (5) of Section 73A (as originally enacted) had mentioned "consecutive six years". Thereafter in Sub-section (5) the prescribed period was consecutive ten years (vide Maharashtra Act XLV of 1983). In our view, the legal position has not changed merely by reason of the amendment of Sub-section (5) made by Maharashtra Act XX of 1986 by substituting the words "for a period of more than ten years in the aggregate" in place of the words "for a consecutive period of more than ten years". Whether the period mentioned in Section 73A(5) ought to be consecutive or in aggregate was a matter for the Legislature to decide. Therefore, substitution of ten years in the aggregate in place of consecutive ten years would not affect the constitutional validity of the section. In computing the aggregate period of ten years in office, the explanation (a) to Sub-section (5) of Section 73A may be noted; under said explanation any period for which a person concerned who has held such office before the commencement of the Maharashtra Co-operative Societies (Amendment) Act, 1969, has to be ignored. Therefore, the commencement of the period of ten years must be on a date subsequent to the commencement of the Maharashtra Cooperative Societies (Amendment) Act, 1969. Clause (b) of the said explanation to Sub-section (5) has also provided that if any person resigns his office as a designated officer at any time within twelve months of the date on which the aggregate period of ten years would but for his resignation, have been completed, he shall be deemed to have completed the period of ten years on his resignation. Therefore, explanation (b) to Sub-section (5) seeks to prevent evasion of the bar under the main part of Sub-section (1) by taking into reckoning, the period of office held by an designated officer who resigns within twelve months of the day on which he was to complete ten years in aggregate. It may be also noted that the disqualification under Sub-section (5) of Section 73A would operate until a period of one term of the Committee would elapse after completion of the aforesaid period of ten years. In other words, the disqualification under Sub-section (5) is temporary and after expiry of one term, the person who was once disqualified u/s 73A(5) would again be qualified to be elected or appointed. In fact, such limitation of the period of disqualification is to ensure the reasonableness of the provision.

12. Another submission on behalf of the petitioners was that Sub-section (5) of Section 73A while providing one uniform aggregate period of ten years for incurring disqualification from continuing as a designated officer of any society has laid down that such officer shall not be eligible for being re-elected or re-appointed as a designated officer until a period of one term of the Committee has elapsed after completion of the aforesaid period of ten years. Dr. Naik has submitted that only in respect of election to committees of the cooperative bodies set out in Section 75G statute has prescribed a term of five years from the date on which the first meetings are held. In case of other co-operative societies, the terms of the elected and appointed members are to be fixed

according to bye-laws. According to Dr. Naik, the provisions relating to terms in the bye-laws differ from society to society and, therefore, the period of disqualification under Sub-section (5) of Section 73A would be different in case of different societies which do not come within the ambit of Section 73G of the Act. This lack of uniformity in the period of the term, according to Dr. Naik, would result in discrimination. In case of some societies the designated officers would be disqualified u/s 73A for one term of two years and in case of other societies the term of disqualification may be five years or some other length of time. We have given our anxious consideration to the point but regret that there is no substance in this submission. The learned counsel for the petitioners may be right when he contends that the period of more than ten years in the aggregate specified in the first part of Sub-section (5) of Section 73A was probably provided in view of the amendments made to Section 73G(2) by Maharashtra Act XX of 1986 which prescribed that the term of officers of certain societies would be five years instead of three years as prescribed previously. The said period for incurring disqualification u/s 73A(5) really brings about uniformity in case of designated officers of the societies of the categories referred to in Sub-section (2) of Section 73A. In order to prevent growth of vested interests and in order to discourage perpetuation of offices held by designated officers, after completing aggregate period of ten years, they have been disqualified for one term of the society. This cannot create any inequality or discrimination, inasmuch as in respect of each particular society all its designated members would remain disqualified for the same length of time. Therefore, in the matter of such disqualification, Section 73A(5) has equally treated all designated officers of one society. When the term of office of disqualified officer varies from society to society (which are not covered by Section 73G), the Legislature has rightly mentioned in Section 73A(5) "a period of one term of the Committee" instead of specifying any fixed number of years. If the Legislature had instead fixed a certain length of time, the same might have caused anomaly as to the date on which a person who was once disqualified u/s 73A(5) would again acquire qualification to be a designated officer. It was perfectly legitimate to provide in Section 73A(5) that on the expiry of one term, the disqualification would end.

13. The learned Advocate-General appearing on behalf of the Respondents in support of the submission that the provisions of Section 73A did not violate either Article 14 or Article 19 has urged that by enacting Section 73A in the first instance attempt has been made to provide disqualification in case of designated officers who simultaneously hold offices as designated officers of specified societies or remain as such officers of one society for certain length of years. According to the learned Advocate-General, the provisions in Section 73A are not really in the nature of disqualification but they are in the nature of requirements which are to be fulfilled in order to hold office of designated officers in the societies specified in Section 73A(2). The learned Advocate-General repelled the contention of the petitioners that Section 73A(5) as amended by Maharashtra Act XX of 1986 cannot lawfully affect the rights of those designated officers who had

become disqualified under Sub-section (5) as if it existed prior to the enactment of Maharashtra Act No. XX of 1986 and had also become eligible after the expiry of the period of six years. In construing Sub-section (5) of Section 73A, saving provisions in Section 7 of the Maharashtra General Clauses Act have really no application. Sub-section (5) of Section 73A has, inter alia, laid down that no person shall continue to be a designated officer of any society of any of the categories referred to in Sub-section (2) of Section 73A for a period of more than ten years in the aggregate until the expiry of one term of office specified in the said Sub-section (5). In respect of any election or appointment by the Commissioner as designated officer, after Sub-section (5) had been inserted in Section 73A, a person's right to be elected or appointed as a designated officer must be determined according to the provisions of Sub-section (5) as it stands now. Sub-section (5) does not purport to retrospectively divest the right or the authority of the designated officers to function in any period prior to the insertion of Sub-section (5) of Section 73A. The only effect of Sub-section (5) of Section 73A is that in considering qualification a disqualification to be elected or appointed as designated officers after Sub-section (5) had been inserted, the aggregate period of their acting as designated officers shall be taken into reckoning. Therefore, Sub-section (5) only takes notice of events which might have happened either before or after the insertion of Sub-section (5) of Section 73A but does not retrospectively disqualify designated officers.

14. We also uphold the contention of the learned Advocate-General that Section 73A cannot be struck down as suffering from vices of under inclusive legislation. While considering some of the provisions of the Foreign Exchange Regulation Act, the Supreme Court in the case of *Supdt. and Remembrancer*.

The Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Girish Kumar Navalakha and Others, , had pointed out:

"Often times the Courts hold that under-inclusion does not deny the equal protection of laws under Article 14. In strict theory, this involves an abandonment of the principle that classification must include all who are similarly situated with respect to the purpose. This under-inclusion is often explained by saying that the legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most acute."

The Supreme Court had further held that there were two main considerations which justified an under inclusive classification : (1) administrative necessity and (2) the Legislature may not be fully convinced that a particular policy which it adopts would be fully successful or wise. Adopting these reasonings, the learned Advocate-General rightly pointed out that in order to curb the vice of vested interests in the co-operative societies, the Legislature has thought fit to include some of the officers of the specified co-operative societies described as designated officers, The State has at the first instance tried to disqualify those officers who are more prone to perpetuate their offices and to acquire vested interests. Nothing prevents the Legislature from enlarging the scope of Section

73A by including other officers who may also exhibit the same tendency to acquire vested interests in the co-operative societies. We approve of this reasoning.

15. For the foregoing reasons, we are not prepared to allow this writ petition and the same accordingly fails. The rule is discharged. There will be no order as to costs.

16. The prayer for a certificate to file an Appeal in the Supreme Court is refused. Interim relief to continue till 21st July, 1988.