

(1997) 09 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 2405 of 1997

The Jalgaon District Central Co-operative Bank Ltd. and
another

APPELLANT

Vs

The Maharashtra State Co-operative Bank Ltd. and others

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Citation : (1998) 2 ALLMR 439 : (1998) 2 BomCR 514

Hon'ble Judges : V.R. Dalar, J;N.P. Chapalgaonker, J

Bench : Division Bench

Advocate : L.L. Bendale and N.H. Patil, for the Appellant; R.N. Dhorde and K.G. Navandar, A.M. Kanade, Govt. Pleader, for the Respondent

Judgement

N.P. Chapalgaonker, J.—Respondent No. 2, Pralhadrao Eknathrao Patil is a Director representing petitioner No. 1, the Jalgaon District Central Co-operative Bank Ltd. a federal society on the apex bank, respondent No. 1 the Maharashtra State Co- operative Bank Ltd. Both petitioner No. 1 and respondent No. 1 are specified Cooperative societies within the meaning of section 73-G of the Maharashtra Cooperative Societies Act, 1960. Respondent No. 1 is an apex bank and naturally has on its own Board of Directors representatives of federal society like the District Central Cooperative Bank. Respondent No. 2 was elected as a representative of petitioner No. 1 bank on 10th April 1993. According to the petitioner it is a nomination and, therefore, is co-terminus with the term of office of the Board of Directors, which has nominated respondent No. 2 as its representative on respondent No. 1- bank whereas it is the case of respondent No. 2 that he is entitled to have a full term of five years as provided by law as Director of respondent No. 1 bank irrespective of the fact whether the Directors who have elected him to be their representative are in office or they have ceased to be in office and new Board of Directors has been elected.

2. We have heard Shri L.L. Bendale, learned Counsel for the petitioners, Shri R.N. Dhorde, learned Counsel for respondent No. 1, Shri K.G. Navandar for

respondent No. 2 and Shri A.M. Kanade for respondent No. 3 - State of Maharashtra.

3. The dispute before us will have to be resolved in the light of provisions of the bye-laws which determine the nature of representation of petitioner No. 1 on the respondent No. 1 society and then applying the relevant provisions of law. Bye-law No. 51 of the Maharashtra State Co-operative Bank Ltd. Bombay speaks about the constitution of the Board of Directors of the society and Clause (A) thereof reads:

"Representatives of such District Central Co-operative Banks, as have agreed to accept, by provisions in their bye-laws, inspection and supervision of this Bank for the purpose of providing agricultural credit and the Bombay District Central Co-op. Bank Ltd."

Therefore all District Central Co-operative Banks who have agreed to accept inspection and supervision of the respondent bank are entitled to have their representatives under this clause. Besides this, the Bombay District Central Co-operative Bank shall have a representative. The manner of the representation has been provided for in Bye-law No. 52(b) and (c). Clause (b) of Bye-law No. 52 provides that the constituencies under Bye-law No. 51 representing State Government and Employees of the Bank shall be invited to nominate their representatives whereas Clause (c) provides that all constituencies other than those mentioned in 52(b) above shall be filled in by election in terms of provisions in Chapter XI-A of the Maharashtra Co-operative Societies Act, 1960. Thus it is clear that except the constituencies mentioned in sub-Clause (b) of Bye-law No. 52 other constituencies will send their representatives by election and this election shall be in accordance with the provisions of Chapter XI-A of the Act of 1960. Chapter XI-A provides procedure of the elections of committees and officers of societies belonging to the categories specified in section 73-G. It, therefore, follows that, representative under Bye-law No. 51 (A) shall be through an election which is governed by Chapter XI-A of the Act of 1960 and it is not a nomination. Section 144-C of the Act lays down that every election shall be held on such date or dates as the Collector may fix and shall be conducted under his control by such Returning Officer and other officers as may be appointed by the Collector in this behalf. Therefore, a representative sent on respondent No. 1 bank by a District Central Co-operative Bank is an elected director elected by a process of election as provided by Chapter XI-A of the Act and is not a representative nominated by the Board of Directors of petitioner No. 1 - society. The term of office of an elected person is to be determined by the statutory provisions. If the term of office of an elected representative in a statutory body is to be determined by statutory provisions and not by the will of the persons electing him, then it does not depend even on the existence of the electoral college which actually elected him. There may be change in the voters, the Board of Directors electing a representative may itself change but that does not affect the term of office of an elected representative on a federal society. Section 73-

G(2) specifies that members elected on the committee at such general election shall hold office for a period of five years from the date on which the first meeting is held unless the period is extended by the State Government for reasons to be recorded in writing for a period not exceeding one year, so however that the total period does not exceed six years in the aggregate. Sub-section (2-A) provides that the term of office of the member who are appointed or nominated or co-opted or selected or elected on the committee including to fill the vacancy shall be co-terminus with term of office of the elected members under sub-section (1), notwithstanding the date of their such appointment, nomination, co-option, selection or election including to till the vacancy. Thus a representative elected by a process of election as provided by Chapter XI-A would enjoy a term of five years subject to the condition that his term shall be co-terminus with the rest of the members of the Board of which he is elected. It is not co-terminus with the term of office of the voters who have elected him.

4. Shri Bendale, learned Counsel for the petitioners, relying on the provisions of section 73-AB contended that respondent No. 2 shall cease to hold the office as soon as he ceases to hold the directorship of respondent No. 1. We do not see any justification to uphold this submission. Section 73-AB reads as under :--

"Where a person is elected, co-opted, appointed or nominated as member of a committee of any society by virtue of his holding office under the Central Government or the State Government or in any local authority or in any body corporate or in any organisation, he shall cease to be such member on the date on which he ceases to hold such office."

Shri Bendale submitted that petitioner No. 1 -society was a corporate body and respondent No. 2 was a representative of this corporate body.

5. When the bye-laws of a co-operative society prescribe that any Government officer of a particular designation or a representative of an institution like Government holding a particular rank shall be nominated on the Managing Committee then such person shall cease to be a member of that committee if he ceases to hold the office on the basis of which he was so nominated. If a Government servant or an officer of a co-operative bank by virtue of his office is ex-officio member of the Board of Directors, he will not continue on the board if he is not in office. This does not apply to a representative elected under Chapter XI-A of the Co-operative Societies Act. The right of a member elected under the provisions of this Chapter is independent and there is no right of recall given to the voters who have elected him.

6. Shri Bendale relies on the judgment of a learned Single Judge of this Court "(Ashok Agarwal, J.,) in the case of (S.B. Patil v. Kolhapur District Central Co-operative Bank Ltd.) 1991 C.T.J. 729. Following observations are pressed in service by learned Counsel for the petitioners:

"The petitioner was elected on the Board of Directors in the election held in March 1986. The office of the said Board of Directors has expired and the fresh

Board of Directors has been elected in March 1991. It so happened that the petitioner was re-elected in the elections held in March 1991. It might as well have been that he was not elected in which case his right to represent the third respondent under the provisions of section 73-AB would have come to an end. Merely because he was re-elected, can it successfully be contended that he would continue to represent the Bank under the newly elected Board of Directors of the first respondent Bank ? Under bye-law 51 of the third respondent, it is the representative of the District Central Cooperative Bank who can be on its Board of Directors.

In my view, the petitioner would not be entitled to claim to be a representative of the first respondent Bank after its Board of Directors was reconstituted in the election held in March 1991. The newly elected Directors would be justified in sending its representative on the Board of Directors of the third respondent Bank. It would be consistent with bye-law 52(e) which provides that the Director, nominated or elected, shall hold office until the next nomination or election by the electorate by which he was chosen. The petitioner's election in March, 1986 came to an end in March 1991. In March, 1991 fresh elections were held and a new body of the Board of Directors was elected. Merely because the petitioner happens to have been re-elected, he cannot claim to continue to represent the Bank even after the new body has come into being."

It was contended by the petitioner before the learned Judge that he has a right to continue to represent Kolhapur Bank on the Apex Bank upto October 1986 when the elections to the Apex Bank are scheduled to take place. The learned Judge appears to have relied on the provisions of Bye-law No. 52(e) which reads as under :

"A Director, nominated or elected, shall hold office until the next nomination or election by the electorate by which he was chosen."

This is a formal declaration of the right to continue the office till the new man enters in. It does not determine the term of office of the representative. The learned Judge took the view that since new elections have taken place in Kolhapur Bank the new directors of the said Bank have a right to send their new representative on the Apex Bank. We do not find any foundation for this right either in the Act or the rules or in the bye-laws. There is nothing to suggest that the term of office of a representative under Bye-law No. 51(A) would be co-terminus with the term of office of the person electing him. Even if there had been any provision in the bye-laws it could not abrogate the provisions in the statute since section 73-G(2) gives a term of office of five years to a representative elected to any specified society. A person elected has a statutory right to continue in office for five years. There is difference between a nominated representative whose term of office is not defined by the statute and is there at the will of the persons sending him and a representative elected by a statutory procedure whose term of office is defined by the statute itself. This distinction appears to have been not pointed out to the learned Judge. Therefore, the view

taken by the learned Judge in the above cited case will have to be overruled.

7. In the result, the writ petition fails and is dismissed summarily.

8. Petition dismissed.