

(1991) 02 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 90 of 1991

Vasantdada Dugdh Vyavasaik Vikas Zilla Sahakari Sangh
Maryadit and another

APPELLANT

Vs

Commissioner Dairy Development and others

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Co-operative Societies Act, 1960 — Section 154

Citation : (1991) MhLj 734

Hon'ble Judges : Sujata Manohar, J;P.S. Patankar, J

Bench : Division Bench

Advocate : Bhimrao N. Naik with N.M. Jamdar, for the Appellant; C.J. Sawam with R.B. Raghuvanshi, Asst. Government, For respondents Nos. 1 to 3, 5, 9 and 10, S.R. Bhonsale with S.V. Hande, Pleader, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—In this writ petition the petitioners have challenged Resolution/Circular of Government of Maharashtra dated 26th December 1990 and letter dated 4th January 1991 issued by the Dairy Development Commissioner, Maharashtra State, Bombay. The petitioners have also challenged the order in revision passed by the Joint Registrar, Co-operative Societies (Dairy Development), Maharashtra State, Bombay in a revision application u/s 154 of the Maharashtra Co operative Societies Act; setting aside the order of winding up against respondent No. 8 Society.

2. In view of the amendment to Rule 18 in Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, the question that we have to decide in the first instance is whether this petition and other similar petitions which challenge the said circular should be placed for admission and hearing before a Division Bench of this High Court or before a Single Judge. Under original Rule 18, sub rule (11), "Notwithstanding anything contained in Rules I. 4 and 17 of this Chapter, applications under Article 226 or Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226

of the Constitution) arising out of... .. the decisions given in proceedings in respect of disputes u/s 91 of the Maharashtra Co operative Societies Act..... may be heard and finally disposed of by a Single Judge.....".

Now under the amended Rule 18(12), "Notwithstanding anything contained in Rules 1. 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of..... the decisions given in proceedings in respect of disputes under the Maharashtra Co operative Societies Act....." are required to be heard and disposed of by a Single Judge. As a result of the amendment, therefore, the words "under section 91" have been deleted. The question is whether under the amended rule 18(12) any change is effected in the existing position. Clearly, the words "under section 91" have been omitted. As a result, the scope of the amended Rule 18(12) is necessarily wider than the scope of the original Rule 18(11). In order to attract rule 18(12) what is required is (i) that there should be a dispute under the Maharashtra Co operative Societies Act. (ii) that there should be a proceeding in respect of that dispute; and (iii) that there should be a decision given in such proceedings which is challenged before this Court.

3. Under the Maharashtra Co operative Societies Act it is undoubtedly true that Chapter IX deals with "Settlement of Disputes" and section 91 deals with the kind of disputes which could be referred to the Co operative Court. The submission, however, that these are the only disputes under the Maharashtra Co operative Societies Act. 1960 cannot be accepted. For example. u/s 144 T there can be a dispute relating to an election which is required to be referred to the Commissioner of the Division or other specified officer as set out in that section. u/s 152(1) of the Maharashtra Co-operative Societies Act, it is provided that an appeal against an order or decision under sections 4, 9, 11, 12. 13. 14. 17. 18. 19. 21. 21A. 29. 35. 77A, 78 and 105 shall lie to the authorities as set out therein. Sub section (2) of that section deals, inter alia, with orders and decisions under sections 79, 85 and 88. Clearly. therefore, under the Maharashtra Co operative Societies Act there can be orders or decisions in a number of proceedings under a number of sections from which an appeal is provided u/s 152. The Act. therefore, contemplates various types of disputes and various types of proceedings which require to be decided and from which appeals are permissible. The disputes are not confined to Chapter IX of the said Act. The disputes, therefore, which are referred to in rule 18(12) are not confined to section 91.

4. In the case of Dinkar Wasudeo Joshi Vs. Registrar, Co-operative Societies, a Division Bench of this Court considered what constitutes a dispute under the provisions of section 54 of the Bombay Co operative Societies Act of 1925. It negated the contention that a dispute is nothing more than a cause of action. The Court said that in ordinary connotation the word "dispute" implies some kind of disagreement between the Parties concerned. It would certainly refer to a

legal claim or liability. But it cannot be confined only to that. It said : "The word "dispute" ... cannot be altogether divorced from the connotation of a claim or demand or a question at issue, and it cannot be said to be the same thing as a cause of action or the mere incurring of a liability." Dispute therefore has a reference to a question at issue between contesting parties.

5. The next requirement is that there should be proceedings in connection with the dispute, which would imply a process of adjudication involving a representation or a hearing from the parties to the dispute. As set out by our High Court in *Prabhulal Chhogalal Vs. Bastiram Himatram and Another*, "proceeding" is of wide amplitude. Biswas" Encyclopaedic - Law Dictionary -, Second Edition, at page 536 states : "The word in its general acceptance is a term of wide amplitude and means a prescribed course of action for enforcing or protecting a legal right as also including the necessary steps to be taken, whether procedural or substantive." Therefore, proceedings are not confined only to proceedings in a Co-operative Court. The term "proceedings" implies a prescribed course of action for deciding a dispute before a prescribed forum.

6. The last requirement of rule 18(12) is that there should be a decision of the prescribed forum in such a proceeding. When this decision is challenged under Article 226 or under Article 227 or u/s 227 read with Article 226, the matter will go before a Single Judge.

7. Looking to this wide amplitude of the language in rule 18(12), in our view, whenever a decision is an adjudicatory proceeding under the Maharashtra Co-operative Societies Act is challenged, the same will be referred to a Single Judge of this Court.

8. In the present case, it was contended by the respondents that since the order of the Joint Registrar in revision u/s 154 of the Maharashtra Co-operative Societies Act relating to respondent No. 8 society is also under challenge, this petition should be placed before a Single Judge. Looking, however, to the nature of the petition, the main challenge is to the Government circular/resolution of 26th December 1990 issued by the Department of Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, of the State of Maharashtra, as also to a letter issued by the Dairy Development Commissioner on 4th January 1991. As a result, certain milk collection co-operative societies of Khanapur and Atpadi Taluka at Taluka level are sought to be revived. This challenge to the Government Circular and letter does not fall within Rule 18(12). The challenge to the order setting aside the winding up order against respondent No. 8 society is incidental to this main challenge. Hence the petition is required to be heard and finally decided by a Division Bench.

9. Dr. B. R. Naik has drawn our attention to a judgment of the Supreme Court in the case of *Pandurang vs. State of Maharashtra* reported in 89 Bom.L.R. 21 to the effect that when the rules require a matter to be decided by a Division Bench, the decision of this matter by a Single Judge is a nullity.

10. In the premises, Petition No. 90 of 1991 is required to be decided by a Division Bench as per rule 18(12).

11. Matter to be placed accordingly on board for admission on Thursday, 28th February, 1991.