
(2014) 11 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 4824 of 2013

Vinod Ghanshyam Meshram

APPELLANT

Vs

The Hon'ble Minister of State

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 152, 154, 158, 2, 2(13)

Citation : (2015) 1 ABR 302 : (2015) 1 BomCR 834 : (2016) 1 MhLj 367

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : Rohan Chhabra, Advocate for the Appellant; N.P. Mehta, AGP, S.D. Paliwal and P.D. Meghe, Advocate for the Respondent

Judgement

R.K. Deshpande, J.—The respondent No. 4-Ordnance Factory Bhandara Karmachari Sahakari Pat Sanstha at Jawahar Nagar, Bhandara ("the respondent No. 4-Society"), is classified as a resource Society under sub-class of credit resource Society and is restricted to the Salary Earners" (Employees) Credit Co-operative Society of the Ordnance Factory, Jawaharnagar, Bhandara. The petitioner Nos. 1 to 8 along with two other persons were duly elected as the members of the Managing Committee of the respondent No. 4-Society in the month of December, 2009. The tenure of this Managing Committee is of five years, which would come to an end in the month of December, 2014.

2. In exercise of the powers conferred by sub-section (1) of Section 78 of the Maharashtra Co-operative Societies Act, 1960 ("the said Act"), a show cause notice was issued on 16-4-2012 by the Assistant Registrar, Co-operative Societies, Bhandara, levelling certain charges of making defaults, negligence in performance of duties under the Act, Rules and Bye-laws, committing the acts prejudicial to the interests of the Society or its members and willfully disobeying the directions issued by the authorities, and calling upon the petitioners as to why the Managing Committee of the Society should not be removed or superseded and an Administrator be appointed to manage the affairs of the

Society. The petitioners submitted their reply to the said show cause notice on 27-6-2012. The final order was passed under sub-section (1) of Section 78 of the said Act on 13-9-2012 removing the members of the Managing Committee and appointing an Administrator over the Society.

3. Being aggrieved by the aforesaid action, Appeal No. 42 of 2012 was preferred under Section 152 of the said Act before the Divisional Joint Registrar, Co-operative Societies. The order impugned therein was stayed on 8-10-2012, but by ultimate decision given on 5-12-2012, the appeal was dismissed. Revision Application No. 1027 of 2012 preferred under Section 154 of the said Act before the Minister of State for Co-operation was dismissed on 14-3-2013. Hence, the petitioners are before this Court in this petition.

4. The only question pressed in this petition is the non-compliance of the mandatory requirement of effective consultation with a federal society to which the respondent No. 4-Society is affiliated, before taking an action of removal of Committee of the respondent No. 4-Society under Section 78 of the said Act. Initially on 17-10-2013, when the matter was listed before this Court, the direction was issued to the respondent No. 2-Divisional Joint Registrar, Co-operative Societies, as under:

1. Amongst the other issues, the main issue involved in the present case is regarding compliance of the requirement of consultation under sub-section (1) of Section 78 of the Maharashtra Co-operative Societies Act, 1960.

2. The respondent No. 4 is classified as a Credit Resource Society under clause 8, sub-rule (1) of Rule 10 of the Maharashtra Co-operative Societies Rules, 1961 dealing with the classification and sub-classification of societies.

3. The contention of the learned counsel for the petitioners is that the respondent No. 4-Society is affiliated to the Bhandara District Central Co-operative Bank, and hence it is the Bhandara District Central Co-operative Bank, which is a "federal society" within the meaning of sub-section (13) of Section 2 of the Maharashtra Co-operative Societies Act. According to him, since there is no effective consultation to the said federal society, the order of supersession of the Managing Body of the respondent No. 4-Society is liable to be set aside.

4. The stand of the respondent No. 4-Society and the respondent No. 2-Divisional Joint Registrar, Co-operative Societies, Nagpur Division, Nagpur, is that it is the Zilla Karmachari Sahakari Pata Sansthantha Sangha Maryadit, Bhandara, which is a federal society in respect of the respondent No. 4-Society. However, since the respondent No. 4-Society is not affiliated to the said federal society, the requirement of consultation under sub-section (1) of Section 78 of the Maharashtra Co-operative Societies Act is not at all attracted. It is also the stand that the Bhandara District Central Co-operative Bank, though a "federal society" within the meaning of sub-section (13) of Section 2 of the said Act, is a financial institution, which disburses loans to individuals and societies, and whenever such loans are disbursed, the share certificates are issued, and by virtue of it, the

respondent No. 4-Society becomes a member of the said federal society (Bhandara District Central Co-operative Bank).

5. In view of above, the respondent No. 2-Divisional Joint Registrar, Co-operative Societies, Nagpur Division, Nagpur, to file an affidavit stating as to what criteria are adopted to hold that it is the respondent No. 4-Society, which is required to be affiliated to the Zilla Karmachari Sahakari Pata Sansthantha Sangha Maryadit, Bhandara, attracting the provision of consultation under sub-section (1) of Section 78 of the said Act. The affidavit should also state as to why the Bhandara District Central Co-operative Bank cannot be termed as a "federal society" so far as the respondent No. 4-Society is concerned.

6. Put up the matter on 11-11-2013.

7. Steno copy of this order be furnished to the learned counsels for the parties to act upon."

(Zilla Karmachari Sahakari Pat Sansthantha Sangh Maryadit, Bhandara referred to in the aforesaid order is also referred to as the Bhandara District Employees Co-operative Pat Sanstha Sangh, Bhandara, which is one and the same and hence "the said Sangh")

5. In response to the aforesaid order, an affidavit is filed by the respondent No. 2 on 31-10-2013. It is the specific stand taken in the affidavit as under:

(a) The Bhandara District Central Co-operative Bank, Bhandara is a central financing agency classified as Cooperative Bank and sub-classified as Central Bank, whereas the classification of the respondent No. 4-Society is resource Society and sub-classified as Salary Earners" Credit Co-operative Society. The aims and objects of both these Societies are different, and hence the said Bank cannot be termed as a "federal society", though the respondent No. 4-Society holds the shares in the said Bank.

(b) The Commissioner for Co-operation and Registrar, Co-operative Societies, vide his letter dated 17-9-1990, formulated the norms for registration of federation of the Urban Credit Co-operative Society and Salary Earners" Credit Co-operative Society at the district level. According to the said letter, there would be only one federation for these types of societies at the district level and the membership of it was kept optional for the primary Salary Earners" Credit Co-operative Society. The Bhandara District Employees" Co-operative Pat Sanstha Sangh, Bhandara came to be registered under Section 9 of the said Act and it is a federal society for the Salary Earners" Credit Co-operative Society. The respondent No. 4-Society is not affiliated to the said federal society and also does not contribute regular subscription, as required under the bye-laws and, therefore, the respondent No. 4-Society cannot be said to be affiliated to the said Sangh, which is a federal society.

(c) The respondent No. 4-Society is neither affiliated to the Bhandara District Central Co-operative Bank nor to the Bhandara District Employees Co-operative

Credit Sangh Maryadit.

6. In the present case, the order passed by the Assistant Registrar, Co-operative Societies, under sub-section (1) of Section 78 shows that prior consultation was done with the said Bank and the said Sangh as the federal societies within the meaning of Section 2(13) of the said Act. The further finding is that the said Bank, by the communication dated 2-7-2012, has informed no-objection to take action as per the provisions of the said Act and the Rules framed thereunder for bringing the said respondent No. 4-Society to an end. There is no response from the said Sangh. The appellate and the revisional authorities under Sections 152 and 158 of the said Act respectively have recorded the finding that merely because the respondent No. 4-Society holds the shares in the said Bank, it cannot be said that it is affiliated to the said Bank, which is a federal society. It is also the finding recorded that so far as the respondent No. 4-Society is concerned, it is the said Sangh, which is a "federal society" within the meaning of Section 2(13) of the said Act, as the objects of both these Societies are common. It is the finding recorded that the respondent No. 4-Society has not acquired the membership of the said Sangh, and hence it is not affiliated to the said Sangh. The sum and substance of the findings recorded by any of the authorities below is that there is no federal society to which the respondent No. 4-Society affiliated, and hence the requirement of prior consultation is not at all attracted.

7. Under sub-section (1) of Section 78 of the said Act, the action of removal of a Committee of any Society can be taken only after consultation with the federal society to which such Society is affiliated. The requirements are three-fold-(i) there existed a federal society, as defined under Section 2(13) of the said Act, (ii) the Society of which a Committee is sought to be removed is affiliated to such federal society, and (iii) the action of removal of Committee of Society is taken only after consultation with the federal society to which such Society is affiliated. A "federal society" is defined under Section 2(13) of the said Act 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."

It is not disputed that the said Bank as well as the said Sangh are covered by a definition of a "federal society", as defined under Section 2(13) of the said Act. Thus, there existed federal societies with which the affiliation needs to be established.

8. The word "affiliated" used under sub-section (1) of Section 78 of the said Act is the past tense of the word "affiliate". The word "affiliate" has not been defined anywhere either under the said Act or the Rules framed thereunder, and hence a

dictionary meaning of the word "affiliate" will have to be looked into. The Black's Law Dictionary defines the word "affiliate" as under:

"Affiliate-1. A corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation...."

In The Major Law Lexicon by P. Ramanatha Aiyar, the word "affiliate" is defined as under:

"Affiliate. (As noun) An affiliated person or organization" specifically a business entity effectively controlling or controlled by another or associated with others under common ownership or control.

(As verb) To bring or receive into close association as a member or division; to join or associate as a member or division; to connect or associate oneself."

In the Oxford English Dictionary, the meaning of the word "affiliate" is given as under:

"Affiliate-v. officially attach or connect to an organization (of an organization) admit as a member an affiliated person or organization."

"To affiliate" means to attach, to connect, to relate or to associate. The affiliation means the process by which one Society is attached to, connected to, related to, or associated with the another Society. The word "affiliated" is the past tense of the word "affiliate" and indicates the existence of affiliation. In the absence of there being any definition of the words "affiliate", "affiliation", or "affiliated" under the said Act or the Rules framed thereunder, it will have to be held that the word "affiliated" used under sub-section (1) of Section 78 of the said Act means attached to, connected to, related to or associated with the federal society, as defined under Section 2(13) of the said Act. In the absence of any mode, manner and the form of affiliation being prescribed under the said Act or the Rules framed thereunder, the affiliation may be by any mode, manner and the form which may include by way of membership or shareholdings or by way of control as a parent or subsidiary Society or as subservient or co-related to the objects of each other.

9. Undisputedly, the authority acting under Section 78 of the said Act has in fact consulted the said Bank prior to passing of an order. The findings recorded by the appellate and the revisional authorities to the effect that the respondent No. 4-Society is not affiliated to the said Bank, which is a federal society, and that the said Bank cannot be a federal society so far as the respondent No. 4-Society is concerned, cannot be accepted. There is material brought on record in the form of share certificates at pages 280 to 309 of the petition showing that the respondent No. 4-Society holds the shares in the federal society, viz. The Bhandara District Central Co-operative Bank Ltd., Bhandara ("the said Bank"). To hold the shares in the said Bank, can be one of the modes of acquiring affiliation. Merely because the objects and functions of the said Bank include disbursement of loan to the primary agricultural credit societies in rural areas, it cannot be said

that there cannot be affiliation of the said respondent No. 4-Society with the said Bank.

10. Section 27 of the said Act deals with the voting powers of members, and sub-section (3) therein being relevant, is reproduced below:

"27. Voting powers of members.--

...

(3) A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its active members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society;

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

Provided further that, where the election is to a reserved seat under section 73-B, no person shall have more than one vote"

It is also not in dispute that in every election of the Managing Committee of the said Bank, the respondent No. 4-Society appoints one of its members to vote on its behalf and to participate in the affairs of the said Bank as a representative. Accordingly, such member has exercised the right to vote on behalf of the respondent No. 4-Society. The respondent No. 4-Society has also voice in the affairs of the said Bank as a federal society. Such a right to vote and have voice in the affairs of the Society are the instances of acquiring membership in the said Act. Thus, the respondent No. 4-Society is intimately connected, attached, or associated with the said Bank by way of shareholding and membership, which can be called as an affiliation to the federal society. Such affiliation existed prior to the date of taking action under Section 78 and hence it has to be held that the respondent No. 4-Society was affiliated to The Bhandara District Central Co-operative Bank Ltd., Bhandara, which is a "federal society", as defined under Section 2(13) of the said Act.

11. It is the common stand of all the respondent-authorities that the Bhandara District Employees Co-operative Credit Sangh Maryadit is notified to be a federal society for all the Salary Earners" Credit Co-operative Societies, like the respondent No. 4-Society. It is the fact that the Assistant Registrar, Co-operative Societies, Bhandara, before taking action under Section 78 of the said Act, has consulted The Bhandara District Employees Co-operative Credit Sangh Maryadit ("the said Sangh") as a federal society of the respondent No. 4-Society, assuming that the respondent No. 4-Society is affiliated to the said Sangh. The appellate and the revisional authority have recorded the finding that the said Sangh was brought into force to support, guide and to have a supervisory control over the primary societies and to help them in crisis. It is also the stand taken

that the aims and objects of the said Sangh are co-related with the aims and objects of the respondent No. 4-Society. Therefore, under the amended bye-laws of the said Sangh, each and every affiliated society needs to pay regular yearly subscription to the said Sangh and it was optional. The respondent No. 4-Society is not affiliated to the said Sangh, as it has not paid any subscription for membership of the said Bank.

12. The learned counsels appearing for the parties were asked to point out any specific provision either under the Act or the Rules framed thereunder empowering the State Government to notify the federal society. My attention is invited to sub-section (1) of Section 90 of the said Act titled as Constitution of recognition of federal authority to supervise working of societies, which is reproduced below:

"90. Constitution of recognition of federal authority to supervise working of societies-

(1) The State Government may constitute or recognise one or more co-operative federal authorities, in such manner as may be prescribed and subject to such conditions as the State Government may impose, for the supervision of a society or a class of societies and may frame rules for making grants to such an authority."

The aforesaid provision empowers the State Government to constitute or recognise one or more co-operative federal authorities in such manner as may be prescribed and subject to such conditions as the State Government may impose for the supervision of a society or a class of societies and may frame rules for making grants to such an authority. My attention is also invited to a letter dated 17-9-1990 issued by the Commissioner, Co-operation, and Registrar, Co-operative Societies, Maharashtra State, Pune, said to be formulating the norms for registration of the federation of the Urban Co-operative Credit Societies and The Salary Earners" Co-operative Credit Societies at the district level. If the aims and objects of The Bhandara District Employees Co-operative Pat Sanstha Sangh, Bhandara ("the said Sangh"), which is said to be notified as a federal society under sub-section (1) of Section 90 of the said Act, are co-related with the aims and objects of the respondent No. 4-Society, then both the societies are connected or associated with each other on the basis of their aims and objects. Once the said Sangh is notified under sub-section (1) of Section 90 of the said Act to be a federal society within the meaning of Section 2(13) of the said Act so far as the respondent No. 4-Society is concerned, then on the basis of the aims and objects of both the societies, it has to be held that the respondent No. 4-Society is affiliated to the said Sangh, particularly in the absence of any form of affiliation prescribed either under the said Act or the Rules framed thereunder.

13. The net result of the aforesaid discussion would be that there existed two federal societies, viz. the said Bank and the said Sangh, to which the respondent No. 4-Society was affiliated. The authority acting under Section 78 was also

under impression that there existed two federal societies, to which the respondent No. 4-Society was affiliated, and hence the consultation was sought with them prior to taking action under Section 78 of the said Act. The questions whether there would be two federal societies for one society, and whether the consultation with both the federal societies would be mandatory before taking action under Section 78 of the said Act, do not arise in the present case. Hence, it is not necessary for me to deal with any such aspect of the matter. The fact remains that the appellate and the revisional authority have committed an error in holding that the said Bank was not a federal society so far as the respondent No. 4-Society is concerned, and that the requirement of consultation was not attracted in the present case, because there did not exist any federal society, to which the respondent No. 4-Society was affiliated when the order under Section 78 of the said Act was passed.

14. Before proceeding to decide the aspect of effective consultation, the law on the point of prior consultation needs to be seen. In the decision of the Apex Court in the case of State of M.P. and Others Vs. Sanjay Nagayach and Others, , the question was regarding previous consultation with the Reserve Bank of India while removing the Board of Directors of the Co-operative Bank and appointing an Administrator to manage the affairs of the Society. While considering such requirement of previous consultation in the proviso below sub-section (1) of Section 53 of the Madhya Pradesh Co-operative Societies Act, 1960, the Apex Court has held in para 23 therein as under:

"23. The mere serving a copy of the show-cause notice on RBI with supporting documents is not what is contemplated under the second proviso to Section 53(1). For a meaningful and effective consultation, the copy of the reply filed by the Bank to the various charges and allegations levelled against them should also be made available to RBI as well as the action proposed by the Joint Registrar, after examining the reply submitted by the Bank. On the other hand, RBI should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the view expressed by RBI will be a relevant material for deciding whether the elected Board be superseded or not. In other words, the previous consultation is a condition precedent before the forming of an opinion by the Joint Registrar to supersede the Board of Directors or not."

It has been held that mere serving a copy of show cause notice on the Reserve Bank of India with supporting documents, is not what is contemplated under second proviso to Section 53(1) of the said Act. For a meaningful and effective consultation, the copy of the reply filed by the Bank to the various charges and allegations levelled against them, should also be made available to the Reserve Bank of India as well as the action proposed by the Joint Registrar, after examining the reply submitted by the Bank. On the other hand, the Reserve Bank of India should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the views expressed by the Reserve Bank of India will be a relevant material for deciding whether the elected

Board be superseded or not. It has been held that the previous consultation is a condition precedent before forming an opinion by the Joint Registrar to supersede the Board of Directors or not.

15. It is now well-settled position of law that the requirement of prior consultation under sub-section (1) of Section 78 of the said Act is mandatory and in order to demonstrate that there was an effective consultation with the federal society, the record must indicate that there was a meeting of minds of the Committee of the Management of the federal society amongst themselves and with the consulting authority, culminating into the passing of the resolution either one way or the other. The consulting body must keep in mind the object of consultation, its statutory duties and obligations as the body of experts and it cannot sit tight over the issue or leave it to be tackled by any individual officer of this federal society. The record must indicate such a resolution and in the absence of it, there cannot be the compliance of effective consultation. The simple communication from the Managing Director, a paid employee, without disclosing any authority from the Committee of a federal society, is not the compliance of the requirement of consultation. This is what I have held in the decision rendered in the case of Sadashiv Mahajan Vs. The Hon'ble Minister for Cooperation and Textile, State of Maharashtra, Yavatmal District Central Cooperative Bank Limited and Prafulla Mankar, .

16. The Assistant Registrar, who has taken action under sub-section (1) of Section 78 of the said Act, rightly sought consultation from the said Bank and the said Sangh ("the federal societies"). He holds that by the communication dated 2-7-2012, the said Bank has informed its no-objection to take action as per the provisions of the said Act or the Rules framed thereunder for bringing the respondent No. 4-Society to an end. He also holds that the said Sangh has not forwarded any response to the consultation under Section 78 of the said Act. There is nothing on record to show that there was a meeting of minds of the members of the Committee of the Management of the said two federal societies amongst themselves, and with the consulting authority culminating into passing of any such resolution, as has been laid down by this Court in the case of Sadashiv Ganpatrao Mahajan, cited supra. In terms of the decision of the Apex Court in the case of Sanjay Nagayach, cited supra, there is nothing on record to show that what documents were forwarded to the said federal societies for effecting consultation. It is not the stand taken that the federal societies were informed of the action proposed to be taken by the authority under Section 78 of the said Act. There is total non-compliance of the requirement of effective consultation with the federal society before taking action, as contemplated under sub-section (1) of Section 78 of the said Act. The entire action taken under Section 78 to supersede the Managing Committee of the respondent No. 4-Society, stands vitiated on this sole ground. The orders dismissing the appeal and the revision preferred by the petitioners cannot also be sustained, and a direction is required to be issued to restore the petitioners as the members of the Managing Committee of the respondent No. 4-Society forthwith.

17. It is urged by Shri Chhabra, the learned counsel appearing for the petitioners, that the tenure of the elected body is coming to an end in the month of December, 2014. The Administrator was appointed after removing the petitioners. According to him, the period during which the Administrator was functioning over the respondent No. 4-Society, should be excluded from the tenure of five years for which the petitioners were entitled to continue. For this proposition, he has relied upon the decision of the Apex Court in the case of Sanjay Nagayach, cited supra. The proposition, as canvassed, cannot be accepted. In the said decision, the Apex Court has directed compliance of the mandatory requirements of Section 49(7-A) of the Madhya Pradesh Co-operative Societies Act, 1960. There is no such provision to exclude the period of removal in computing the period of the term in the event if the Board of Directors is required to be reinstated in position. So far as the Maharashtra Co-operative Societies Act, 1960 is concerned, the said relief cannot, therefore, be granted.

18. In the result, the petition is allowed. The order dated 13-9-2012 passed by the Assistant Registrar, Co-operative Societies, Nagpur, under Section 78(1) of the Maharashtra Co-operative Societies Act, 1960, the order dated 5-12-2012 passed by the Divisional Joint Registrar, Co-operative Societies, Nagpur, in appeal under Section 152 of the said Act, and the order dated 14-3-2013 passed by the Minister (Co-operation), Maharashtra State, in revision under Section 154 of the said Act, are hereby quashed and set aside. The respondents are directed to forthwith remove the Administrator appointed over the respondent No. 4-Society and to restore the petitioners back to their position prevailing prior to the order of their removal passed on 13-9-2012.

19. Rule is made absolute in above terms. No order as to costs.

20. At this stage, Shri Paliwal, the learned counsel appearing for the respondent No. 4-Society, submits that the judgment and order passed by this Court be stayed for a further period of three weeks so as to enable the respondent No. 4-Society to adopt further course of action, as is available in law.

The request is opposed by Shri Chhabra, the learned counsel appearing for the petitioners.

Keeping in view the short tenure of the body, which is left over now, and the fact that the respondent No. 4-Society does not have any locus to raise any such objection, the prayer for grant of stay of judgment and order passed by this Court, is rejected. The respondent-authorities are directed to act forthwith on the basis of this judgment and order.