

**(1987) 04 BOM CK 0054**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 365 of 1987**

|                                  |    |            |
|----------------------------------|----|------------|
| Vishwanath and Another           | Vs | APPELLANT  |
| The Collector, Wardha and Others |    | RESPONDENT |

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**Date of Decision :** 27-04-1987

**Acts Referred:**

**Citation :** AIR 1988 Bom 110 : (1987) 89 BOMLR 632 : (1987) MhLj 597

**Hon'ble Judges :** V.A. Mohta, J;A.A. Desai, J

**Bench :** Division Bench

**Advocate :** V.C. Daga, for the Appellant; G.D. Patil, A.G.P. and D.K. Deshmukh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.A. Mohta, J.—By this petition, election of nine members of the Managing Committee of Ashti Sahakari Shetki Kharedi Vikri Samiti Limited, Tahsil Ashti, District Wardha is challenged on the ground that the election programme itself was void on account of failure to simultaneously hold election for two reserved seats u/s 73-B of the Maharashtra Co-operative Societies Act (the Act).

2. The facts lie in a narrow compass and are these :

The petitioner 1 Vishwanath Chopde was a voter and petitioner 2 Deepak Bokade was a defeated candidate at that election, programme for which was issued on 6th Jan. 1987. Result was declared on 16th Feb. and this petition came to be filed on 20th February. It came up for hearing on 23rd Feb., 1987 when notice before admission was issued and by interim order election of Chairman and Vice-Chairman of the Society was stayed. First respondent Collector, Wardha has made a statement in the return that the fresh election programme for two reserved seats will be issued shortly and unless further procedure laid down in Section 73-B is followed, the election of the Chairman and Vice-Chairman will not be held.

3. The question mark before us in this background is should we in writ

jurisdiction tinker with the election process already undergone at this stage at the behest of parties who have participated at the election took their chance in the same and have approached only because they or their group have lost.

4. As the contention of Shri Daga, the learned counsel for the petitioners that non-inclusion of the two reserved seats in the election programme by itself vitiates the election is based on the case of Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, , it is necessary to examine the same in some details. By that judgment, Supreme Court has reversed two decisions of this Court. The first is the case of Balashaheb Rajaramji Dampurikar v. Collector of Parbhani District 1981 Mah LJ 893. That was a case where election for two reserved seats was not held. The Collector fixed the date for the election of the Chairman and Vice-Chairman. This procedure was challenged. This Court has issued a mandate to fill in two seats by co-option in the first meeting of the Committee and then to hold the election of Chairman and Vice-Chairman. The second decision is the case of Hukumchand Chunnilal Bagmar v. Nasik Merchants Cooperative Bank Limited 1983 Mah LJ 921 where also election for two reserved seats : was not held and fourteen Directors were elected. In the first meeting of the elected Directors, election of the Chairman, Vice-Chairman and the Managing Directors was held. Provision of S. 73-B was sought to be complied in a subsequent meeting by cooption of two directors amongst the members of backward classes and economically weaker section. Even before that stage arrived, election petition u/s 144-T challenging the election of office bearers was filed. The election petition was allowed by the Additional Commissioner whose order was challenged in a writ petition. This Court held inter alia that there was no separate electorate to elect a person for reserved seat, the Collector has no power to reduce the number of seats for which the elections are to be held by the number of reserved seats, the number of the seats has to be determined on the basis of bye-laws only and the mandatory provision to grant representation to the two reserved categories can be complied even by co-option or nomination of persons belonging to reserved categories even subsequent to first meeting of the Committee. In conclusion, the order of the Additional Commissioner setting aside the election was quashed. Appeals against both the aforesaid cases were heard by the Supreme Court together. Supreme Court set aside both the above decisions after noticing the history of the legislation, the purpose behind the introduction of Section 73-B, the scheme of the provision in general and the words "If no such persons are elected to any of the two reserved seats" used in Sub-section (4) in particular.

5. Supreme Court had ruled that holding of the election for the reserved seat is mandatory and not directory and if despite holding the election no candidates of that category are elected, then only the second alternative of filling the seats by cooption is possible. The view of the High Court that giving representation to persons of reserved category either by election or by cooption or by nomination provision of Section 73-B was complied with was set aside. Following observations in para 13 are to the point.

"The submission that method of filling in reserved seats is directory and, therefore, any one of the three modes can be adopted to comply with the mandatory part of Section 73-B viz. filling in reserved seats does not commend to us."

6. While there can be no manner of doubt that the correct way of complying with the provisions of Section 73-B is to have the election of the entire Committee including the two reserved seats simultaneously, the crux of the problem before us is whether election process and the result have to be quashed merely on the ground that election of general seats and reserved seats has taken place or is to take place at two stages, without anything more. It is contended that point has to be answered in the affirmative in view of the observation made in the above referred Supreme Court decision. We do not agree. Observations of the Supreme Court will have to be read in the context of the controversy before it and not in isolation.

7. That apart, Section 73-B has since then undergone some changes. Section 73-B as it then stood reads thus :--

"On the Committee of such society or class of societies as the State Government may, by general or special order, direct, two seats shall be reserved, one for the members who belong to the scheduled castes or scheduled tribes and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200/- during the year immediately preceding. If no such persons are elected or appointed, the committee shall coopt the required number of members on the committee from amongst the persons entitled to such representations."

Section 73-B was amended by Act No. 45 of 1983. Amended Section reads thus :  
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"73-B. (1) Notwithstanding anything contained in this Act or in the rules made thereunder or in any bye-laws of any society, on the committee of such society or class of societies as the State Government may, by general or special order, direct, two seats shall be reserved,--

(a) one for the members belonging to the Scheduled Castes or Scheduled Tribes; and

(b) one for the members belonging to the weaker section.

(2) The two reserved seats referred to in Sub-section (1), shall be in addition to the strength of the members of the committee of such a society or class of societies.

(3) Any individual member of the society, or any elected member of the Committee of a member society, or any member of the committee of a member society, whether elected, coopted or appointed under this section, belonging to the Scheduled Castes or Scheduled Tribes, or as the case may be, weaker

section, shall be eligible to contest the election to a reserved seat and every person who is entitled to vote at the election to the Committee shall be entitled to upto at the election to any such reserved seat.

(4)(a) If no person is elected to any of the two reserved seats, the committee shall, within fifteen days from the date of the first meeting of the Committee after election, co-opt a member, or as the case may be, members on the committee from amongst the persons entitled to contest the election under Sub-section (3).

(b) Where there is a failure of the Committee to so co-opt a member, or as the case may be, members, the Registrar shall appoint a member, or as the case may be, members on the Committee from amongst the persons entitled to contest the election to the reserved seats under Sub-section (3).

Explanation.-- For the purposes of this section -

(a) a general or special order, if any, issued by the State Government u/s 73-B as it existed before the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act 1983 shall be deemed to have been issued under Sub-section (1) of this section and shall continue to be in force until duly repealed or amended;

(b) the expression "Scheduled Castes", includes "Nav-Budhas", and the expression "Scheduled Tribes" includes "Denotified Tribes and Nomadic Tribes";

(c) the expression "members belonging to weaker section" means a member or such class of members as the State Government may by general or special order from time to time, declare."

The examination of the objects and reasons of the 1983 Amending Act will reveal that interpretation put on Section 73-B by the above referred Supreme Court decision was one of the reasons for introducing changes in the Act. By Maharashtra Act No. 18 of 1984, Section 73-B came to be further amended. In Sub-section (2), the words "unless where bye-laws of the society already provide for the reserved seats" were inserted in Sub-section (2) after the words "shall" and before the words "be in addition" and Sub-section (4) was substituted. Section 73-B, as it stands today, reads thus :

"73-B. (1) Notwithstanding anything contained in this Act or in the rules made thereunder or in any bye-laws of any society, on the Committee of such society or class of societies as the State Government may, by general or special order, direct, two seats shall be reserved,--

(a) one for the members belonging to the Scheduled Castes or Scheduled Tribes; and

(b) one for the members belonging to the weaker section.

(2) The two reserved seats referred to in Sub-section (1), shall (unless where the

bye-laws of the society already provide for the reserved seats), be in addition to the strength of the members of the committee of such a society or class of societies.

(3) Any individual member of the society or any elected member of the Committee of a member-society, or any member of the committee of a member-society, whether elected, co-opted or appointed under this section, belonging to the Scheduled Castes or Scheduled Tribes, or as the case may be, weaker section, shall be eligible to contest the election to a reserved seat and every person who is entitled to vote at the election to the Committee shall be entitled to vote at the election to any such reserved seat.

(4) If no person is elected to any of the two reserved seats, the Collector, shall call a meeting of the elected members of the committee to co-opt a member or, as the case may be, members on the committee from amongst the persons entitled to contest the election under Sub-section (3), such meeting shall be presided over by the Collector or an officer nominated by him in this behalf. If no member is co-opted at such meeting the Collector shall report the fact to the Registrar within a period of seven days from the date of such meeting, and thereupon the Registrar shall, within a period of seven days from the receipt of the report of the Collector, appoint on the committee a person, or persons, as the case may be, from amongst the persons entitled to contest the election to the reserved seats under Sub-section (3).

Explanation.-- For the purposes of this section,--

(a) a general or special order, if any, issued by the State Government u/s 73-B as it existed before the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 1983 shall be deemed to have been issued under Sub-section (1) of this section and shall continue to be in force until duly repealed or amended;

(b) the expression "Scheduled Castes", includes "Nav-Boudhas", and the expression "Scheduled Tribes" includes "Denotified Tribes and Nomadic Tribes.";

(c) the expression "members belonging to weaker section" means a member or such class of members as the State Government may, by general or special order from time to time, declare."

8. It seems to us that the following major changes were brought about.

(a) Two reserved seats were made additional to the strength of the members of the Committee unless bye-laws provide for the reserved seats.

(b) Any member belonging to reserved category irrespective of his constituency can contest the election and every voter-irrespective of his constituency and category is entitled to cast his vote at the election of a reserved seat.

(c) Elaborate procedure is laid down for calling a meeting of elected members by a Collector to co-opt a member/members from reserved category if no person is

elected to any of the reserved seats. Such meeting has to be presided over by him or his delegate. If no co-option takes place the matter is to be reported to the Registrar within seven days and the Registrar is obliged to nominate the member or members from amongst the persons entitled to contest the election to the reserved seats.

It may be mentioned that previously constituency for the reserved seat was not statutorily fixed as a result the constituency was left to the bye-laws.

9. It seems to us that even though in the basic scheme the two amendments have made no dent, one change relevant for the purposes of decision of the point evolved is that now the two reserved seats have a defined constituency in which all the different constitutions (constituencies) are merged. As a result voters at every election of membership of the Committee are not necessarily common. Previously the position was different. Voter at the election of reserved seat depended upon the constituency from which the contest was made. We may hasten to add that it is not our view that this change grants general license not to have simultaneous election. Holding of simultaneous election, we reiterate, should be the normal rule.

10. Point is, whether in the peculiar background of the matter at hand, an interference is called for. Our answer is in the negative. Under the circumstances we dismiss the petition. We direct the respondents 1 and 2 to notify election programme for the two reserved seats within a period of one month from today. We further direct that no meeting of the Committee shall be held unless Section 73-B as interpreted is first complied with.

11. Rule accordingly. No order as to costs.