

(1997) 04 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 917 of 1997

Vishwanath Kasture

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 29, 29(2)

Citation : (1997) 4 ALLMR 495 : (1997) 99 BOMLR 597

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard Shri N.P. Patil, Advocate, for the petitioner, Shri Kadam, A.G.P. for respondents No. 1, 2, 7 and 8, Shri S.B. Wakure, Advocate, for respondent Nos. 3 to 5 and Shri N.B. Khandare, Advocate, for Respondent No. 6.

2. Rule. By consent of the parties, rule made returnable forthwith.

3. Writ Petition No. 5248 of 1996 was filed before this Court, challenging the order dated 22.11.1995 passed by the Administrator Shetkari Sahakari Sakhar Karkhana Limited, appointing administrative committee in place of the old Committee. By order dated 18th December, 1996 passed by this Court (Coram: N.P. Chapalgaonkar & V.K. Barde, JJ.) the said writ petition was disposed of by passing the following order:

We direct Collector, Latur to Publish the programme for finalisation of the voters list of Shetkari Sahakari Sakhar Karkhana Ltd. Killari, Tq. Ausa, within 15 days from today and will thereafter follow the rules applicable to the specified societies. The Collector will declare further election programme and will complete the elections of the said society on or before 31.5.1997. This direction should be scrupulously followed.

We direct the present Board of Administrator not to make any appointments, not

to enrol new members, not to make advances, not to purchase new machinery or make any contract in that behalf or to take any other policy decision including disposal of any of the properties belonging to the society.

We clarify that transferring shares to the heirs of the deceased members is not to be construed as enrolling new members. With these directions, petition stands disposed of. No order as to costs.

4. It appears that on 21.2.1997, the Collector, Latur, informed the petitioner that as per the investigations carried out by the Deputy Registrar, Co-operative societies, Latur, it is revealed that Vividh Karyakari Seva Sahakari Sanstha Limited, Koregaon, Chincholi (Jahagir) and Kondajigad Taluka Omerga, are within the area of Shetkari Sahakari Sakhar Karkhana Ltd. Killari and they are the proper members of the said Karkhana and they have decided to send a delegate to participate in the elections of the said Karkhana. Being aggrieved by the said communication, the petitioner has filed the present petition, seeking for a mandamus directing the Collector to delete the names of the respondent Nos. 3 to 5 from the voters list and set aside the order dated 21.2.1997.

5. By the above referred order dated 18th December, 1996 passed by this Court in Writ Petition No. 5248 of 1996, the present Board of Administrators of the respondent No. 6 -Karkhana were directed, inter alia, not to enrol any new members, It was further clarified that transferring shares to the heirs of the deceased members was not to be construed as enrolling new members. Shri Khandare, learned Counsel appearing for respondent No. 6 - Karkhana has contended that the respondent Nos. 3 to 5 have been validly made members of the respondent No. 6 Karkhana and the provisional voters list published by the Collector on 26.1.1997 does not suffer from any infirmities. It is further contended that Chincholi (Bhuyar) Vividh Karyakari Sahakari Sanstha was holding four shares and the said society applied to the respondent No. 6 - Sugar-factory for transferring three shares in favour of the respondents No. 3 and 5 and these shares have been legally and validly transferred to the respondents No. 3 and 5 and that the said transfer is not in contravention of the order passed by this Court on 18th December, 1996

6. Mr. Patil, learned Counsel appearing for the petitioner submitted that the transfer of the shares is illegal and the inclusion of the names of the respondent Nos. 3 to 5 in the provisional voters list published by the collector is null and void. Mr. Patil further alleged that the respondent Nos. 3 to 5 have been enrolled as members subsequent to the order passed by this Court on 18th December, 1996, but record has been papered and manipulated to show that these respondents were members prior to the order passed by this Court. Mr. Patil also submitted that the action of the respondent No. 6 -Karkhana in enrolling the respondents No. 3 to 5 as members is contrary to Section 29 of the Maharashtra Co-operative Societies Act read with Rule 20 of the Maharashtra Co-operative Societies Rules, 1961.

7. To ascertain the factual position regarding date of enrolment of the respondent Nos. 3 to 5 as members of the respondent No. 6 - Karkhana, we directed the learned Counsel for the Karkhana to make available to the Court the original records and the same was produced before the Court. As we were not impressed by the way in which the proceeding book was written for the meeting held on 6th December, 1996 and 28th December, 1996, on our directions, the learned Counsel for the respondent No. 6 - Karkhana has also submitted the rough proceeding book. Mr. Patil, also has submitted a copy of the letter dated 3.1.1997, addressed by the Assistant Registrar, Ausa, to the Deputy Registrar Co-operative Societies at Latur. Mr. Patil has also submitted the xerox copies of the receipts dated 1.1.1997 indicating the payment of Rs. 1000/- from Chincholi (Jahagir) Vividh Karyakari Seva Sahakari Society Limited. Combined reading of the Resolution No. 19(17) claims to have been passed by the respondent No. 6 - Karkhana on 6th December, 1996 for transferring of shares in the name of the respondents No. 3 to 5 with the copies of receipts submitted by Mr. Patil, it is clear that the respondent No. 6 Karkhana has resorted to give go-bye to the order passed by this Court on 18th December, 1996.8. Section 29(2) of the Maharashtra Co-operative Societies Act, 1960, reads as under :-

29. Restrictions on transfer or charge of share or interest.

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society, or any part thereof, unless-

(a) he has no such share or interest for not less than one year.

(b) the transfer is made to a member of the society or to a person whose application for membership has been accepted by the society, or to a person whose appeal u/s 23 of the Act has been allowed by the Registrar; or to a person who is deemed to be a member under Sub-section (1 A) of Section 23.

Rule 24(1) of the Maharashtra Co-operative Societies Rules, 1961, which deals with the procedure for transfer of shares, reads as under :-"24. Procedure for transfer of shares.-

(1) No transfer of shares shall be effective unless,-

(a) it is made in accordance with the provisions of the by-laws;

(b) a clear fifteen days" notice in writing is given to the society indicating therein the name of the proposed transferee, his consent, his application for membership, where necessary, and the value proposed to be paid by the transferee;

(c) all liabilities of the transferor due to the society are discharged; and

(d) the transfer is registered in the books of the society.

9. As per Section 29(2)(b), a member shall not transfer any share held by him unless the transfer is made to a member of the society or to a person whose

application for membership has been accepted by the society or to a person who is deemed to be a member under Sub-section (1 A) of Section 23 of the Maharashtra Co-operative Societies Act, 1960. Further, the reading of Rule 24(1) of the Maharashtra Co-operative Societies Rules, 1961 clearly stipulates that no transfer of share will be effective unless it is made in accordance with the provisions of the bye-laws, a clear 15 days notice in writing is given to the society indicating therein the name of the proposed transferee, his consent, his application for membership were necessary and the value proposed to be paid by the transferee and the transfer is registered in the books of the society. On perusal of the original proceeding book as well as the receipts and the rough proceeding book as made available to us, we are of the view that the enrolment of membership of the respondent Nos. 3 to 5 is contrary to the provisions of Section 29(2) of the Maharashtra Co-operative Societies Act read with Rule 24(1) of the Maharashtra Co-operative Societies Rules, 1961. In addition, by order dated 18th December, 1996, the respondent No. 6 - Karkhana was prohibited from enrolling any new members. We find from the record made available to us that the respondent Nos. 3 to 5 have been enrolled as members after the said order was passed by this Court and only to escape from the clutches of the said order, it has been shown that the respondents No. 3 to 5 have been enrolled as members prior to 18th December, 1996. In any case, as we have observed hereinabove the enrolment of respondents No. 3 to 5 as members of the respondent No. 6 - Karkhana is illegal and null and void.

10. The learned advocate for the respondent No. 6 - Karkhana has relied upon the recent judgment of this Court (Single Bench) in the case of *Rajan Dinkarrao v. State of Maharashtra* 1997 (1) M.L.J. 552 and contended that it was not within the jurisdiction of the Collector to decide the validity of the membership of the respondents No. 3 to 5 and hence his action of publishing the provisional voters list on 26.1.1997 cannot be faulted with. We are not impressed by the said argument made by Shri N.B. Khandare, learned advocate for the respondent No. 6 - Karkhana. The judgment of this Court (supra) is not relevant to the facts and circumstances of this case. This Court by order dated 18th December, 1996 had prohibited the respondent No. 6 Karkhana from enrolling any new members and, therefore, inclusion of any members enrolled after 18th December, 1996, in the provisional voters list is in violation of the said order. We, therefore, hold that the provisional voters list published by the Collector on 26.1.1997 is illegal, to the extent that it has included the names of the respondents No. 3 to 5 as voters. We, therefore, direct the Collector to delete the names of the respondents No. 3 to 5. We further declare that the enrolment of membership of the respondents No. 3 to 5 is not only contrary to the orders passed by this Court on 18th December, 1996 but it is also against the provisions of Section 29(2) of the Maharashtra Co-operative Societies Act, 1960 read with Rule 24(1) of the Maharashtra Co-operative Societies Rules, 1961. We allow the petition and make the rule absolute in terms of prayer Clauses (B) and (C) with no order as to costs. The Collector will now proceed to take further steps to conduct the

elections of the respondent No. 6 - Karkhana as per the directions of this Court vide earlier order dated 18th December, 1996.