

(2011) 05 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 1133 of 2011

Yuvraj Dattatraya Patil and Others

APPELLANT

Vs

Regional Joint Director (Sugar) Kolhapur Region, Sadashivrao
Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. and
State of Maharashtra

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : (2011) 4 ALLMR 51 : (2012) 1 BomCR 625 : (2011) 113 BOMLR
2242 : (2011) 4 MhLj 325

Hon'ble Judges : Ranjit More, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar and Shirniwas Sudhir Patwardhan, for the Appellant;
Ashutosh A. Kumbhakoni, instructed by Amit Borkar and R.M. Patne, AGP for
State, for the Respondent

Final Decision : Allowed

Judgement

Ranjit More, J.—Rule. Rule made returnable forthwith and heard finally by consent of the parties. By this writ petition, the Petitioners challenge the order dated 18th January 2011 passed by Respondent No. 3- Minister whereby 2nd Respondent's appeal is allowed by setting aside the order dated 10th November 2010 passed by 1st Respondent Regional Joint Director(Sugar) Kolhapur Region, Kolhapur and the matter is remanded for hearing afresh.

2. The brief facts giving rise to the present writ petition are as follows:

The Petitioners are the members of Respondent No. 2. Respondent No. 2- Sadashivrao Mandlik Kagal Taluka Sahakari Karkhana Ltd for the sake of brevity, hereinafter referred to as "Karkhana" is a specified co-operative society engaged in the business of crushing sugarcane and manufacturing of sugar. Respondent No. 1 is an authority who exercises control and supervision on Karkhana. Respondent No. 3 is the appellate authority u/s 152 of the Maharashtra Co-operative Societies Act, 1960 [for short "the said Act"].

On 7/7/2010, the Petitioners made an application to Karkhana making a request for issuance of members' list of Karkhana. By this application, the Petitioners also showed willingness to pay the copying charges. The Petitioners by separate application dated 26/7/2010 also applied for the certified copy of Agenda and Minutes of Meetings of Board Directors of Karkhana held during the period 1st April 2008 to 30th June 2010. By its order dated 9th August 2010, Respondent No. 1 informed the Managing Director of Karkhana about the Petitioners' grievance that they are not getting the list of members of Karkhana and it was therefore directed that the Petitioners be given list of members of the Karkhana after payment of copying fees. On 1/9/2010 the Petitioners made representation to the Chairman/Managing Director of Karkhana and pointed out the order of Respondent No. 1 dated 9/8/2010. It was informed that even though the period of 1 month has elapsed, and the Petitioners are ready and willing to pay the copying charges, still the list of members is not given. Fresh request was made to Karkhana to supply a list of its members. Thereafter again on 13/9/2010 and 9/10/2010, the reminders were sent by the Petitioners to Karkhana.

The 1st Respondent on 24/9/2010 wrote a letter to the Managing Director of Karkhana and gave second direction to him to supply a list of members to the Petitioners. On 25/9/2010, 2nd Respondent wrote a letter to Petitioner No. 5 and informed that the Petitioners' request to supply members' list will be considered after payment of copying charges at the rate of 50 paise per 200 words. The Petitioners thereafter tried to deposit an amount of Rs. 20,000/- with Respondent No. 2 towards the copying charges. However, same was not accepted. Therefore, Petitioners deposited the said amount in the bank account of Karkhana. The Karkhana acknowledged the said deposit under the letter dated 22/10/2010 written to Petitioner No. 4.

By the separate letter dated 25/9/2010, the Managing Director of Karkhana informed Petitioner No. 5 that Minutes of Meetings of Board Directors of Karkhana held during the period 1st April 2008 to 30th June 2010 do not contain any reference about the Petitioners and therefore the Petitioners' prayer for certified copy of those minutes could not be accepted.

The 1st Respondent thereafter on 10/11/2010 at the instance of Petitioners passed an order under the provisions of Section 79 of the said Act thereby directing Karkhana to supply the list of its members and copies of Agenda and Minutes of Meetings of Board Directors of Karkhana held during the period 1st April 2008 to 30th June 2010. This order was challenged by the Karkhana by filing an appeal before Respondent No. 3. As stated above, Respondent No. 3 has allowed the said appeal and remanded the matter to Respondent No. 1. This order is impugned in the present petition.

3. Mr. Jahagirdar, learned senior counsel appearing on behalf of the Petitioners submitted that the impugned order was passed on two grounds, viz., the 1st Respondent before passing an order u/s 79 did not grant an opportunity of hearing to the Karkhana and secondly that the payment of Rs. 20,000/- alleged

to be made, is required to be verified. He submitted that these grounds are not at all sustainable, firstly, because the hearing is not contemplated u/s 79 of the said Act, and, secondly the payment of Rs. 20,000/- by the Petitioners is accepted by Karkhana. Mr. Jahagirdar relied upon the provisions of Section 32 of the said Act and submitted that it is the right of members to get copies of documents mentioned in Clause (1) of said Section within one month from the date of payment of fees, however, Karkhana with the ulterior and oblique motive refused to give copies of the said documents. He prayed that the impugned order be set aside and petition be allowed.

4. Mr. Kumbhakoni, learned Counsel appearing on behalf of Karkhana, per contra, contested the petition by supporting the impugned order. He submitted that by the impugned order the matter is remanded to Respondent No. 1 with direction to follow the principles of natural justice and therefore this Court should not interfere with the said order. He relied upon Sub-section (3) of Section 79 of the said Act to contend that before issuing directions under Sub-section (2) of Section 79, the hearing is required to be given to the concerned parties. He further invited my attention to Section 32 of the said Act and submitted that the Petitioners are not entitled to get Minutes of Meetings of Board of Directors of Karkhana inasmuch as these Minutes do not disclose any transaction between the Petitioners and the society. In order to support his case, Mr. Kumbhakoni relied upon the decisions of the Apex Court in (1990)2 SCC Management of M/s. M.S. Nally Bharat Engineering Co. Ltd v. State of Bihar and Ors. Indian National Congress (I) Vs. Institute of Social Welfare and Others, . and M.K. Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Others, .

5. Having heard learned Counsel for the respective parties and having gone through the impugned order as well as the case laws relied upon by them, I find merit in the petition. The Petitioners claim to be the members of Karkhana, is not denied by Karkhana. The Petitioners' applications dated 7/7/2010 and 26/7/2010 addressed to Karkhana demanding copies of relevant documents as well as reminders dated 1/9/2010, 13/9/2010 and 9/10/2010 are also not disputed by Karkhana. The orders dated 9/8/2010 and 24/9/2010 issued by Respondent No. 1, directing the Karkhana to supply copies of the relevant documents to the Petitioners are also not disputed. The Karkhana directed the Petitioners to deposit copying charges @50 paise per 200 words and the Petitioners in pursuance of these directions tried to deposit the amount of Rs. 20,000/- with the Karkhana, however, same was not accepted and therefore they were constrained to deposit the said amount in the bank account of Karkhana. This fact is also not denied by Karkhana. In fact, Karkhana acknowledged the receipt of Rs. 20,000/- from the Petitioners vide its letter dated 20/10/2010 issued to Petitioner No. 4.

6. For the first time on 25/9/2010, Karkhana informed Petitioner No. 5 that the certified copy of Agenda and Minutes of Meetings of Board Directors of Karkhana held during the period 1st April 2008 to 30th June 2010 cannot be given for want

of reference to the Petitioners in the said proceedings. As stated above, Respondent No. 1 passed an order u/s 79 of the said Act, directing Karkhana to supply copies of the relevant documents to the Petitioners and this order was set aside by Respondent No. 3 on two grounds, viz., the principles of natural justice are not followed and for verification of deposit of Rs. 20,000/- alleged to be made by the Petitioners.

7. Firstly, I would like to consider submission advanced on behalf of the Karkhana that the order u/s 79(2) of the said Act could not have been passed by Respondent No. 1 without giving an opportunity of hearing to them. Section 79 of the said Act reads as follows:

79. Registrar's power to enforce performance of obligations-

1. The Registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

2. Where any society is required to take any action under this Act, the Rules or the bye-laws, or to comply with an order made under the foregoing Sub-section, and such actions is not taken-

(a) within the time provided in this Act, the Rules or the Bye-laws, or the order as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing,

the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

3. Where the Registrar takes action under Sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the Rules or the Bye-laws, or the order made under Sub-section (1) and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's direction are carried out.

8. A minute perusal of Section 79 makes it clear that Sub-section (1) has no

application to the facts of the present case. Under Sub-section (2), where any society is required to take any action under the said Act, the Rules or the Bye-laws, and such an action is not taken, then the Registrar himself, or through a person authorised by him, may take such action at the expense of the society; and such expense shall be recoverable from the society as if it were the arrears of land revenue. Under Sub-section (3), where action is taken under Sub-section (2), the Registrar may call upon the Officer of the society whom he considers to be responsible for non compliance of the provisions of the Act, the Rules or Bye-laws, and after giving an opportunity of hearing to the said officer, may require him to pay to the said Society the expenses paid or payable by it to the State Government as a result of their failure to take action. A conjoint reading of Sub-sections (2) and (3) of Section 79 makes it clear that before issuance of order under Sub-section (2), no hearing is contemplated to the concerned society. However, the opportunity of hearing is contemplated under Sub-section (3) to the officer of the society subsequent to the action under Sub-section (2), who, according to the Registrar, is responsible for non compliance of the provisions of the Act, the Rules and Bye-laws.

9. In the present case, Karkhana has accepted the Petitioners' right to get the members' list, however, contended that the same cannot be given without payment of copying charges. Mr. Kumbhakoni, learned Counsel appearing on behalf of Karkhana in this regard submitted that under Sub-section (2) of Section 79 the Registrar could not have issued directions to the Karkhana. I am not impressed by this submission inasmuch as the words "the Registrar may himself or through a person authorised by him take such action" includes necessary directions to the concerned society. Mr. Kumbhakoni, to support his contention relied upon the decision of the Apex Court in Management of M/s. M.S. Nally Bharat Engineering (supra). In the said case, the Apex Court held that the implication of principles of natural justice being presumptive, it should be followed by the authorities unless it is excluded by express words of statute or by necessary implication. Similar view is taken by the Apex Court in Indian National Congress (supra). In my considered view, the ratio of these decisions cannot be made applicable to the facts and circumstances of the present case. As stated above, the Karkhana never denied the Petitioners' right to get the members' list. On the contrary, this right is accepted by demanding copying charges. Time and again Petitioners made requests to the Karkhana to give the members' list. Respondent No. 1 also gave directions to the Karkhana on two occasions to comply with the requests of the Petitioners. Therefore, Karkhana now cannot complain that the order u/s 79(2) was passed without granting it an opportunity, especially in the absence of statutory provision to that effect in Section 79. Respondent No. 1 by issuing directions has not decided the right/lis between the parties; and therefore in my opinion the hearing may not be required to be given to the Karkhana.

10. This takes me to consider the second objection of the Karkhana about the Petitioners' right to get the copies of Minutes of the Meetings Board of Directors.

Section 32 of the said Act would be relevant, which reads as follows:

32. Rights of members to see books, etc.

(1) Every member of a society shall be entitled to inspect, free of cost, a the society's office during hours, or any time fixed for the purpose by the society, a copy of the Act, the Rules and bylaws, the last audited annual balance sheet, the profit and loss Account, a list of members of the committee a register of members, the minutes of general meeting, minutes of committee meetings and those portions of the books of records in which his transactions with the society have been recorded.

(2) A society shall furnish to a member, on request in writing and on payment of such fees as may be prescribed therefore, a copy of the documents mentioned in the foregoing Sub-section within one month from the date of payment of such fees.

11. Relying upon the provisions of Section 32(1), Mr. Kumbhakoni, learned Counsel for the Karkhana submitted that though the Petitioners are entitled for the list of members, they are not entitled to get the certified copies of Minutes of the Meetings of Board of Directors, as these meetings do not make any reference to any transaction between the Petitioners and the Karkhana. He submitted that in the absence of punctuation "comma" after the words "minutes of committee meetings" and before the word "and", the last portion of Sub-section (1) of Section 32 is required to be read conjointly. In this regard, he relied upon the Apex Court decision in Dr. M.K. Salpekar (supra).

12. u/s 32, the member's right to inspect documents of the society, free of cost, is recognized. The member is also entitled, on payment of cost, to have copies of any of the documents and/or Registers within one month from the date of payment of such cost. The object of Section 32 seems to be to make the members aware about every transaction of the society. The member cannot be denied right to see how the society is functioning. u/s 32, the member of the society is entitled for the copies of following documents:

- (i) the Act,
- (ii) the Rules,
- (iii) the bye-laws,
- (iv) the last audited annual balance sheet,
- (v) the profit and loss Account,
- (vi) the list of members of committee,
- (vii) the Register of members,
- (viii) the minutes of general meeting,

(ix) the minutes of committee meetings and

(x) those portions of books and records in which his transactions with the society have been recorded.

13. In my view, each of the aforesaid categories of document is separate and distinct and therefore the words "those portions of books and records" should go with the words "in which his transactions with the society have been recorded" and the words "and" after "minutes of committee meetings" and before "those portions of books and records" has to be interpreted as punctuation "comma". In my considered view, in order to give effective meaning to Section 32, the words "minutes of committee meetings" should not be read along with the last portion of Section 32(1), namely, "in which his transaction with the society have been recorded." If the interpretation as suggested by Mr. Kumbhakoni, is accepted, the member would not be entitled to challenge illegal/wrong enrollment by the society. If the loans are granted by the society illegally, then this transaction cannot also be challenged. Section 32 cannot be interpreted in hyper technical manner. The Apex Court in Dr. M.K. Salpekar (supra) was considering the provisions of Clause 13(3)(v) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949. Clause Sub-clause (v) of Clause 13(1) of the said Order of 1949 reads as under:

(v) that the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house;

The argument before the Apex Court was that clause "and does not reasonably need the house" applies as necessary condition to both category of cases, i.e., where the tenant has secured alternative accommodation as also he has left the area for a continuous period of 4 months. While disagreeing with this argument, the Apex Court held that the punctuation "comma" in the said sub-clause after the words "alternative accommodation" and before rest of the sentence indicates that the last part of the sub-clause, namely, "and does not reasonably need the house" governs only the second part of sub-clause. From perusal of Sub-clause (v) of Clause 13(1) of the said Order, it is clear that the grounds of eviction that the tenant has secured alternative accommodation and he has left the area for a continuous period of four months, are separated by the word "or". The second ground, namely, "has left the area for a continuous period of four months" therefore required to be read with the last portion of that Sub-clause, namely, "does not reasonably needs the house." In the present case the word "and" appearing between two categories of documents, namely, "minutes of committee meetings" and "those partitions of books and records in which his transaction with the society have been recorded" makes both the categories of documents separate and distinct. In my considered opinion, looking to the object of Section 32 of the said act, and the facts of the present case, the ratio of the Dr. M.K. Salpekar (supra) cannot be made applicable in the instant case.

14. By the impugned order, Respondent No. 3 has allowed the appeal preferred

by Karkhana on the grounds of non grant of opportunity of hearing and secondly, for want of verification of deposit of Rs. 20,000/- made by the Petitioners. So far as the first ground is concerned, I have held that order u/s 79 does not contemplate any prior hearing. Insofar as payment of Rs. 20,000/- towards the copying charges is concerned, the Karkhana has already acknowledged the said deposit. Both the grounds are therefore not sustainable. Impugned order therefore deserves to be quashed and set aside. Hence, impugned order is quashed and set aside. Rule is made absolute.

15. At this stage, Mr. Kumbhakoni, seeks stay of this order for a period of four weeks in order to enable the Petitioner to approach the higher Court. Mr. Patwardhan objected for the grant of stay. However, in the interest of justice and in order to enable the Petitioner to approach the higher Court, this order is stayed for the period of four weeks from today.