

PRALHAD & ORS.

v.

DEORAO & ORS.

(Civil Appeal No. 3493 of 2009)

MAY 12, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Maharashtra Co-operative Societies Act, 1960 – s. 157 – Co-operative society registered under the Act – Writ petition for direction to conduct election of Board of Directors of Society and for quashing the order passed by State u/s.157 appointing nominated Board of Administrators of the Society – High Court quashing the order, directing that election of the Society be held – Interference with – Held: Not called for – Purported order passed by State u/s.157 was not in accordance with law.

Respondent No. 3-Co-operative society was registered under the Maharashtra Cooperative Societies Act, 1960 in year 1991. The Sate Government had a share capital. The affairs of the society were not managed and no meeting was held. The State appointed a committee to manage the affairs of the society for of three years but it took no steps. The term of the Committee was extended and an administrator was appointed. Since 1994 no election was held. In 2004, a Special General Meeting was convened and request was made to the State to grant financial assistance and also to appoint an Administrative Board. It was also resolved that no election be held unless respondent no. 3 becomes functional. First Respondent filed writ petition for a direction upon the respondent no.5 to conduct election of the Board of Directors of the Society within a fixed time frame, and that the order dated 29.6.2007 passed by the respondent no. 6 appointing a nominated Board of Administrators of the

- A Society till 19.6.2009 be quashed. The said order was passed during pendency of the writ petition but was not produced before the High Court. By the said order, the Administrative Board appointed by the State Government was dissolved, and in exercise of powers u/s 157 of the
- B Act, the State Government appointed Administrative Board of new persons who were eligible for appointment as Administrator, for a period of 2 years i.e. till 19.06.2009. High Court quashed the said order directing the appellants to hold the election of the Society. Hence the
- C present appeal.

Dismissing the appeal, the Court

- HELD:1.1. Section 157 of the Maharashtra Co-operative Societies Act, 1960 empowers the State by
- D general or special order to exempt any society or class of societies other than co-operative credit structure entity from any of the provisions of Act, or of the rules made thereunder, and/or to direct that such provisions would
- E apply to such society or class of societies other than co-operative credit structure entity with such modifications not affecting the substance thereof as may be specified therein. The proviso appended thereto, however, provides that no order to the prejudice of any society shall be passed, without an opportunity being given to
- F such society to represent its case. The Act was evidently enacted for the purpose of giving effect to the cooperative movement. It is based on a constitutional policy. [Paras 13 and 14] [787-F-H; 788-A]

- G 1.2. The preamble of the Act clearly shows that the same was enacted with a view to give effect to the provisions contained in Part IV of the Constitution of India. The State is empowered under the Act to issue a general or special order directing exemption from application of the provisions of the Act. It must, however,
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be done in an exceptional situation. An order by the State providing for a power of delegated legislation must be exercised in the manner laid down therein. An order in terms of section 157 of the Act must be issued in terms of the provisions contained in Article 162 of the Constitution of India. [Para 14] [788-F-H]

1.3. The State of Maharashtra before the High Court as also before this Court did not bring on record any material to show as to under what circumstances the said power was exercised. The necessity to exercise the said power has not been disclosed. However, exercise of such power is a conditional one. The proviso appended to Section 157 mandates an opportunity of being heard. There is nothing on record to show that such an opportunity was provided. It cannot be understood as to why the copy of the Government Order as such is not available. In whose name the Government Order was issued is not known. Such a power is not to be exercised only for the purpose of continuation of the Administrator for a period longer than the one specified under the Act. If the intention and purpose of the State was merely to keep the affairs of the society under its control, it could have done so only for the maximum period specified under the Act. It was bound to hold election within the maximum period provided for therein. It in the name of exercising a special power could not have sought to achieve indirectly what it could not have done directly. There is no reason as to why such a drastic power had to be taken recourse to during pendency of the Writ Petition. Had before the High Court the said order been produced, the first respondent could have even questioned the validity thereof on any ground other than the one urged before the High Court. In view of the fact the purported order passed by the State under section 157 of the Act was not in accordance with law, no case has been made out for interference with the impugned

A judgment. [Para 16 and 17] [790-A-G]

The Registrar of Co-operative Societies, Trivandrum and Anr. v. K. Kunjabmu and Ors. (1980) 1 SCC 340, referred to.

Case Law Reference:

B (1980) 1 SCC 340 Referred to. Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3493 of 2009.

C From the Judgment & Order dated 6.5.2008 of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 1056 of 2006.

WITH

D C.A. No. 3494 of 2009.

Shekhar Naphade, Shivaji M. Jadhav, Lenin S. Hijam, Chintaman Deshmukh and Sanjay V. Kharde (for Asha Gopalan Nair) for the Appellants.

E Dr. R.R. Deshpande (for Anjani Kumar Jha) and Jitendra Kumar for the Respondent.

The Judgment of the Court was delivered by

F S.B. SINHA, J. 1. Leave granted.

G 2. These appeals are directed against a judgment and order dated 6.5.2008 passed by a Division Bench of the High Court of Judicature at Bombay bench at Aurangabad in Writ Petition No. 1056 of 2006 whereby and whereunder the Writ Petition filed by the first respondent herein was allowed.

3. Respondent No. 3 is a society registered under the Maharashtra Cooperative Societies Act, 1960 (for short, "the Act"). It was registered on or about 4.12.1991. The State of

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Maharashtra is said to have been holding share capital of Rs.26 lakhs therein. Its contribution is said to be running into several crores of rupees. No effort, however, was made for running and managing its affairs for a long time. As no action had been taken for the said purpose, no share was collected and no meeting was held.

4. On or about 6.6.1995, the State of Maharashtra appointed a first Committee to manage the affairs of the society consisting of 13 persons for a period of three years. The said Committee is also said to have taken no step for effective functioning of the said cooperative society. No plant and machinery was acquired nor any other step was taken for erection of the mill. The term of the said Committee was extended by an order dated 6.7.1998 upto 3.6.2000. It was continued till 2002.

5. The Assistant Registrar, Cooperative Society, Vasamat was thereafter appointed as an Administrator. It is stated that some plants and machinery had been purchased in the year 2000 but they had been lying idle. Theft of articles belonging to the society had also taken place on several occasions. Indisputably, since 1994 no election was held. It is stated that on or about 23.12.2004, a Special General Meeting was convened wherein a request was made to the State to grant financial assistance. A request was also made to appoint an Administrative Board. It was furthermore resolved that no election be held unless the respondent No. 3 – cooperative society becomes functional. Pursuant thereto, a proposal was forwarded to the Director of Handloom, Nagpur which in turn was sent to the Department of Textile of the State of Maharashtra on or about 18.1.2005.

6. The State Government sanctioned a sum of Rs.544 lakhs towards erection of the spinning mill as the Government share capital.

7. First Respondent filed a Writ Petition before the High

- A Court, which was marked as Writ Petition No. 1056 of 2006, *inter alia*, for a direction upon the respondent No.5 herein to conduct election of the Board of Directors of the Society within a fixed time frame. The said writ petition was subsequently amended and a further prayer was added for quashing and
 B setting aside an order dated 29.6.2007 passed by the respondent No. 6 herein appointing a nominated Board of Administrators of the Society till 19.6.2009.

8. Indisputably, the State of Maharashtra during pendency of the said Writ Petition issued a Government Order dated
 C 27.06.2007, which was not produced before the High Court. However, after the judgment was reserved, the State had produced before us a copy of the said order dated 27.6.2007 issued by the Desk Officer, Cooperation Marketing & Textile Department, Government of Maharashtra, which is to the
 D following effect:

"No. :Spinning Mill 1407/PK69/Tex.1(V) Mantralaya,
 Mumbai – 32, Dt. 27.06.2007

- E Sub: Appointment of Administrative Board to the Rokdeshwar Sahakari Soot Girni Ltd. Basamathnagar.

Ref.: Your letter No. Desk-6(4)/A/Soot Giri/7641/2007 dated 11th May 2007.

- F The Administrative Board appointed by the State Government vide order dated 04.10.2005 to the Rokdeshwar Sahakari Soot Girni Ltd., Basanathnagar is hereby dissolved, and in exercise of powers u/s 157 of the
 G Maharashtra Cooperative Societies Act, 1960 the State Government has appointed Administrative Board of following persons, who are eligible for appointment as Administrator, for a period of 2 years i.e. till 19.06.2009.

"Sr.No.	Name	Address	A
1.	Shri Prahlad Ramrao Rakhude	R/o Aral Tal. Basmat District Hingoli.	
2.	Shri Chandrakant @ Rajendra Ramakant Navghere	R/o Vabhulgaon, Tal. Basmat, Dist. Hingoli.	B
3.	Shri Rajesh @ Raju Niranjn Ingole.	R/o Kurunda, Tal. Basmat Dist. Hingoli.	C
4.	Shri Kaluram Devji Kurunde	R/o Sirli, Tal. Basmat Dist. Hingoli	D
5.	Shri Chandramuni Namdev Mhaske.	R/o Chikhli, Tal. Basmat Dist. Hingoli"	

2. An amount of Rs.1.50 Lakhs was given to soot Girni by Purna Sahakari Sakhar Karkhana for purchase of shares of Soot Girni however, the said amount was taken back by members of purna S.S.K. Ltd. Now it is the responsibility of new Administrative Board to see that the said amount of Rs.1.50 lakhs is transferred back to soot Girni." E F

The Director of Textiles, Government of Maharashtra, respondent No. 6 herein, thereafter issued an order on or about 29.6.2007, which reads as under:

"In exercise of powers under Section 78(1)(a)(ii) of the Maharashtra Coop. Societies Act, 1960 and in exercise of powers under Maharashtra Government, Agriculture and Cooperation Department, Mumbai, Govt. Resolution No.

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A CSG/1071/C3 dated 22.3.1972 and in exercise of powers under Government Resolution No. CSL-1493/1162/CR-47/15-C dated 7.8.1993 of Government of Maharashtra Cooperation and Textile Department and in accordance with Government order dated 27.6.2007, I, Vijay Kavare,
 B Director Textile and Addl. Registrar Coop. Societies, Maharashtra State, Nagpur, hereby appoint an Administrative Board of five members in supersession of earlier Board of Directors appointed to the Rokadeshwar, Sahakari Soot Girni Maryadit, Vasmatnagar, Hingoli as per
 C Government order dated 4.10.2005 and order dated 5.6.2006 of the Directorate. In accordance with the order dated 27.6.2007 of the State Government in exercise of powers under Section 157 of the Maharashtra Coop. Societies Act, 1960 the term of the Administrative Board shall be till 19.6.2009.

D	"Sr. No.	Name	Address
E	1.	Shri Prahlad Ramrao Rakhude	R/o Aral Tal. Basmat District Hingoli.
F	2.	Shri Chandrakant @ Rajendra Ramakant Navghere	R/o Vabhulgaon, Tal. Basmat, Dist. Hingoli.
G	3.	Shri Rajesh @ Raju Niranjana Ingole.	R/o Kurunda, Tal. Basmat Dist. Hingoli.
H	4.	Shri Kaluram Devji Kurunde	R/o Sirki, Tal. Basmat Dist. Hingoli
	5.	Shri Chandramuni Namdev Mhaske.	R/o Chikhli, Tal. Basmat Dist. Hingoli"

Administrative Board shall exercise all the powers of the Board of Directors as per the by-laws of the Spinning Mill and they shall discharge their duties under the supervision of Directorate. It is the responsibility of the newly appointed administrative board to persuade the members of the Purna Coop. Sugar Factory to secure redeposit Rs.150.00 lacs amount, which was withdrawn, by the said members of Purna Sakhar Karkhana from the Spinning Mill."

9. By reason of the impugned judgment, the High Court quashed the said order dated 29.6.2007 directing the appellants herein to hold the election of the said Society.

10. Appellants are, thus, before us.

11. Mr. Shekhar Naphade, learned Senior Counsel appearing on behalf of appellants would contend that the High Court committed a serious error in passing the impugned judgment insofar it failed to take into consideration that as in terms of Section 157 of the Act, the State Government has the legislative power to exempt societies from the provisions thereof, the question of applicability of Section 73 (1A) (b) thereof does not arise. It was urged that the power conferred by Section 157 being a power of delegated legislation, the State of Maharashtra was entitled to exercise the same at any point of time and unless and until the same was declared to be *ultra vires*, the directions to hold elections could not have been issued.

12. Dr. R.R. Deshpande, learned counsel appearing on behalf of the respondents, however, supported the impugned judgment.

13. The Act was enacted to consolidate and amend the law relating to cooperative societies in the State of Maharashtra. It was enacted with a view to providing for the orderly development of the co-operative movement in the State of Maharashtra in accordance with the relevant directive

- A principles of State policy enunciated in the Constitution of India. Chapter VI of the Act provides for property and fund of Societies. Chapter VII thereof provides for management of Societies. Section 72 mandates that the final authority of every society shall vest in the general body of members in general
- B meeting, summoned in such a manner as may be specified in the by-laws. Section 73 of the Act provides that the management of every society shall vest in a committee, constituted in accordance with the Act, the rules and by-laws, which shall exercise such powers and perform such duties as
- C may be conferred or imposed respectively by the Act, the rules and the by-laws framed thereunder. Section 73 (1AB) makes the members of the Committee jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. Sub-Section (1A) of Section 73 of the Act, however, provides for a non-obstante clause. It reads as under:-
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“(1A) Notwithstanding anything contained in this Act, the rules made thereunder or in the bye-laws of any society or class of societies,—

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(a) the first general meeting of a society shall be convened within three months from the date of its registration to appoint a provisional committee and to transact other business as may be prescribed. The term of the members of such provisional committee shall be for a period of one year from the date on which it has been first appointed or till the date on which a regular committee is duly constituted in accordance with the provisions of the rules or bye-laws made under this Act, whichever is earlier; and all the members of such provisional committee shall vacate office on the date of expiry of such period or such constitution of the committee.

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(b) notwithstanding anything contained in clause (a), the provisional committees for the Co-operative Sugar Factories and Co-operative Spinning Mills and such other

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class of societies, as the State Government may, by special or general order, in the Official Gazette, specify in this behalf, shall be appointed by the State Government; and the members thereof shall hold office for a period of three years, which period may be extended by one year, at a time, so however that, the total period shall not exceed five years, in the aggregate:

Provided that, the State Government shall have the power to change or reconstitute such committee or, any or all members thereof at its discretion even before the expiry of the period for which a member or members were nominated thereon:

Provided further that, the member or members assuming office on such change or reconstitution of the committee shall hold office for the period for which the provisional committee has been appointed under this clause.

(c) pending the first constitution of the committee of a society, the provisional committee of the society shall exercise the powers and perform the duties of the committee of such society as provided in this Act, the rules and bye-laws and make necessary arrangements for holding election of the committee, before the expiry of its term."

Section 157 of the Act, however, empowers the State by general or special order to exempt any society or class of societies other than co-operative credit structure entity from any of the provisions of Act, or of the rules made thereunder, and/or to direct that such provisions would apply to such society or class of societies other than co-operative credit structure entity with such modifications not affecting the substance thereof as may be specified therein. The proviso appended thereto, however, provides that no order to the prejudice of any society shall be passed, without an opportunity being given to such

A society to represent its case.

14. The Act was evidently enacted for the purpose of giving effect to the cooperative movement. It based on a constitutional policy.

B Clauses (b) and (c) of Article 39 of the Constitution of India read as under:

"39. *Certain principles of policy to be followed by the State.*—The State shall, in particular, direct its policy towards securing—

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(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

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(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

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The preamble of the Act clearly shows that the same was enacted with a view to give effect to the provisions contained in Part IV of the Constitution of India. Indisputably, the State is empowered under the Act to issue a general or special order directing exemption from application of the provisions of the Act. It must, however, be done in an exceptional situation. An order by the State providing for a power of delegated legislation must be exercised in the manner laid down therein. An order in terms of Section 157 of the Act must be issued in terms of the provisions contained in Article 162 of the Constitution of India.

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15. Mr. Naphade submitted that while considering a similar provision, a Division Bench of this Court in *The Registrar of Co-operative Societies, Trivandrum & Anr. vs. K. Kunjabmu & Ors.* [(1980) 1 SCC 340], held as under:

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"12. The policy of the Act is there and so are the guidelines. Why the legislation? "To facilitate the formation and working of Cooperative Societies." Cooperative Societies, for what purpose? "For the promotion of thrift, self-help and mutual aid." Amongst whom? "Amongst agriculturists and other persons with common economic needs." To what end? "To bring about better living, better business and better methods of production." The objectives are clear, the guidelines are there. There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committee of societies, dissolution of societies, surcharge and attachment, arbitration, etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objectives set out in the preamble. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous applications of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the government under Section 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we

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A have already pointed out, are clear."

16. The State of Maharashtra before the High Court as also before us did not bring on record any material to show as to under what circumstances the said power was exercised. The necessity to exercise the said power has not been disclosed. Exercise of such power, however, indisputably is a conditional one. The proviso appended to Section 157 mandates an opportunity of being heard. There is nothing on record to show that such an opportunity was provided. We fail to understand as to why the copy of the Government Order as such is not available. In whose name the Government Order was issued is not known. Such a power is not to be exercised only for the purpose of continuation of the Administrator for a period longer than the one specified under the Act. If the intention and purpose of the State was merely to keep the affairs of the society under its control, it could have done so only for the maximum period specified under the Act. It was bound to hold election within the maximum period provided for therein. It in the name of exercising a special power could not have sought to achieve indirectly what it could not have done directly. We do not see any reason as to why such a drastic power had to be taken recourse to during pendency of the Writ Petition. Had before the High Court the said order been produced, the first respondent herein could have even questioned the validity thereof on any ground other than the one urged before the High court.

17. In view of the fact that we are satisfied that the purported order passed by the State under Section 157 of the Act was not in accordance with law, in our opinion, no case has been made out for interference with the impugned judgment. These appeals are dismissed accordingly with costs. Counsel fee in each case assessed at Rs.50,000/-.

N.J.

Appeals dismissed.