

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3201 OF 2015

1. Irshad Abdul Sattar Deshmukh
Age: 34 years, Occ.: Agril.,
R/o Pakni, Tq. Mantha,
Dist. Jalna.

2. Rama S/o Seva Chavan,
Age: 50 years, IOccu. : Agril.,
R/o Pakni, Tq. Mantha,
Dist. Jalna.

...PETITIONERS

V E R S U S.

1. Pakni Vividh Karyakari Seva
Sahakari Society Ltd. Pakni,
Tq. Mantha, Dist. Jalna.

2. The Returning Officer,
Pakni Vividh Karyakari Seva
Sahakari Society Ltd. Pakni,
Tq. Mantha, Dist. Jalna.
AND
Assistant Registrar,
Co-operative Societies, Mantha,
Tq. Mantha, Dist. Jalna.

3. Mumtazmiya Mahemoodmiya Deshmukh,
Age: Major, Occ.:Agril.,
R/o Pakni, Tq. Mantha,
Dist. Jalna.

4. Narsingh Kaniram Chavan,
Age: Major, Occ.:Agril.,
R/o Pakni, Tq. Mantha,
Dist. Jalna.

5. Asaram Sakharam Pisal,
Age: Major, Occ.:Agril.,
R/o Pakni, Tq. Mantha,
Dist. Jalna.

6. Narayan Nivrutti Kharwane,
Age: Major, Occ.:Agril.,
R/o Pakni, Tq. Mantha,
Dist. Jalna.

...RESPONDENTS

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Mr. Avinash A. Khande, Advocate holding for
Mr. G.V. Sukale , Advocate for Petitioners
Smt. S.G. Chincholkar, A.G.P. for respondent No. 2
Mr. M.P. Kale, Advocate for respondents No. 3 to 6
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 26th MARCH, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the petitioners and respondents.
2. Petitioners have moved this petition, questioning legality, validity and propriety of order dated 09-03-2015 passed by respondent No. 2, rejecting objection of the petitioners to nomination of respondents No. 3 to 6 for election to the Board of Directors of respondent No. 1 - Pakni Vividh Karyakari Seva Sahakari Society Ltd., Pakni, Ta. Mantha, District Jalna, for the term 2015-2020 on the ground that under order dated 24-01-2011, Assistant Registrar of the Co-operative Societies, Mantha, in exercise of powers under Section 78(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter, for brevity, referred to as "the MCS Act") as was then subsisting, removed them from membership of the Managing Committee of

respondent No. 1, them being defaulters of the society under section 73-FF(i) of the MCS Act and pursuant to the then subsisting Rule 58(2) of the Maharashtra Co-operative Societies Rules, 1960 (hereinafter referred to as "the MCS Rules"). According to petitioners, said respondents are thus disqualified, ineligible and dis-entitled to contest present election to the Board of Directors for the term 2015-2020.

3. Mr. Khande, learned counsel for petitioners submits that respondents No. 3 to 6 are disqualified for next one term pursuant to proviso to Section 78(1)(b) of the MCS Act, since their removal from membership of Managing Committee has been incurred under order dated 24-01-2011. He refers to provisions as were then subsisting under Section 78 of the Act and contends that rejection of petitioners' objection is improper, unfair and without application of mind to the relevant provisions. He further submits that letting respondents No. 3 to 6 to contest the election is illegal and invalid.

4. Learned counsel, in support of his submissions, places reliance on a decision of full bench of this court in the case of *Narayan S/o Gujabrao Bhoyar Vs. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Marayadit, Yeotmal and another* reported in 2009 (6) Mh.L.J. 500, and submits that distinction has been drawn between cessation and removal from membership. All removals would

result in cessation but all cessations may not necessarily result into removals. Cessation indicates by its very nature a temporary or a short term effect whereas removal has different statutory consequences.

5. Since respondents No. 3 to 6 have been removed, they incurred disqualification pursuant to proviso to Section 78(1)(b) of the Act and, therefore, learned counsel for petitioners submits that respondent No. 2 has been in gross error in rejecting the objection, as there is statutory bar for respondents No. 3 to 6 for contesting the election to Board of Directors of respondent-Society for the term 2015-2020.

6. Mr. Kale, learned counsel appearing for respondents No. 3 to 6 and Mrs. Chincholkar, learned Assistant Government Pleader, however, contend otherwise.

7. It is being submitted on behalf of respondents that order passed is pursuant to the provisions of Section 73-FFF of the MCS Act as it stood earlier as was subsisting and as such, period of disqualification is already over and respondents No. 3 to 6 are eligible and qualified to contest the election to Board of Directors of respondent No. 1 - Society for the term 2015-2020. It is being submitted that impugned order refers to relevant provisions of the Maharashtra Co-operative Societies Act, particularly, Sections

73-FFF(1) and 73-FF(1) and that disqualification, incurred but the period of disqualification having expired, and as such, order impugned may not be faulted with. It is being submitted that the election process is already on and it should not be interfered with. It is further submitted that courts have abhorred interference with election process at such a stage.

8. It is further being submitted by Mr. Kale that petitioners would not qualify to contest the election, if the same yardstick as contended by them is applied. He, however, submits that no objection to the candidature of petitioners has been taken by respondents No. 3 to 6 at the relevant stage.

9. Mr. Khande, learned counsel appearing for petitioners in support of his contention places reliance on the observations as appearing in the decision of this Court in the case of *Bhujangrao Naryanrao Deshmukh Vs. State of Maharashtra and others* reported in *[1995(1) Mh.L.J. 437]*. According to him, taking into account gist underlying observations of the court, respondents No. 3 to 6 are not qualified for the term 2015-2020 being the next one full term, as they have incurred disqualification to contest present election. Paragraph No. 9 of the judgment is reproduced below:

“9. Keeping in view the principles of interpretation the proviso as herein above discussed, I have no hesitation to hold that when the language of the proviso is explicit and unambiguous, the proviso would apply only in case of the Act.” It is in that

case only that the proviso to clause (b) would operate and create a bar to the eligibility of a member to be re-elected before expiry of clause (b). In the present case, admittedly the petitioner as individual member was not removed but the Committee as a whole was removed under clause (a)(i) to sub-clause(1) of the Act. The construction of the proviso so as to apply also in the case of the 'Committee', apart from being in conflict with the plain language of the proviso would also defeat the object of the legislation. However, it is not possible to give regard to the proposition that singular includes plural when the proviso does not contain the expression 'provided further'. It may be emphasized that it is a rule of legal policy that law should be altered deliberately rather than casually, the Legislature does not make radical changes in law"by side-wind but only by measured and considered provision". They very object of the proviso in question is to exclude that member who has been removed and not the committee of the members removed under sub-clause(i) of clause (a) to sub-section (1) of Section 78 of the Act."

10. He also places reliance on the decision of this court in the case of *Sunil Pundlikrao Bhise Vs. Assistant Registrar, Co-operative Societies Arvi and others* reported in **2010(2) Mh.L.J. 377**.

"Efforts of Adv. Chopde to distinguish earlier 2 judgments on strength of these subsequent provisions added by amendments can not be countenanced. Language of each provision is unambiguous and they operate in distinct field earmarked for them by the legislature. It is apparent that they have no bearing on each other and any attempt to artificially stretch them to reach the goal desired by Adv. Chopde militates with express words thereof & is totally misconceived

and unsustainable. Section 78 itself is a penal provision necessitating strict interpretation. Intention of imposing a disqualification for next term also therefore must be clearly spelt out. In Gurunath Madhavrao Jamalpure vs. Zilla Parishad Teacher Cooperative Credit Society (supra) reconsideration of view in Bhujangrao Narayanrao Deshmukh vs. State of Maharashtra (supra) was sought and that request was rightly rejected. Scheme of S.78 shows that collective defaults and individual wrongs are separately dealt with there and legislative intent to provide different consequences is apparent. Supersession/removal of managing committee and removal of a member/s are mutually exclusive concepts dealt with accordingly thereunder by the legislature. Nothing could be pointed out to ignore the words " the member who has been so removed" used in first proviso of S.78(1)(b). The underlined words unerringly indicate removal for individual faults under that part i.e. S. 78(1)(b) of the MCS Act. It is to be noted that there is no & there can not be any challenge to legislative wisdom in these proceedings."

11. According to learned counsel for petitioners, learned Single Judge in the case of *Sunil Pundlikrao Bhise Vs. Assistant Registrar, Co-operative Societies Arvi and others* reported in 2010(2) Mh.L.J. 377 has relied on and followed the observations in the case of *Bhujangrao Naryanrao Deshmukh Vs. State of Maharashtra and others* (Supra). Thus, according to him, as it is a natural outcome, respondents No. 3 to 6 stand disqualified under the proviso to Section 78(1)(b) to contest the election to Board to Directors for the term 2015-2020.

12. In order to appreciate the contentions advanced on either side, it would be worthwhile to take into account the provisions of Maharashtra Co-Operative Societies Act, 1960.

13. The term "Committee" has been defined under sub-section (7) of Section 2 of said enactment so as to mean management committee or Board of Directors [or the governing body or other directing Board of a co-operative society, by whatever name called, in which the management of the affairs of society is vested under Section 73. Present elections are in respect of membership of Board of Directors for the term 2015-2020.

14. Section 78 of the MCS Act as was subsisting in 2011, the relevant period, reads as under :

78. (1) If, in the opinion of the Registrar, the committee of any society or any member of such committee makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, or wilfully disobeys directions issued by the State Government, or by the Registrar for the purposes of securing proper implementation of co-operative policy and development programme approved or undertaken by the State Government or is otherwise not discharging its or his functions properly and diligently [or where a situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions] and the business of the society has or is likely to come to a stand-still, or where any

member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice and after consultation with the federal society to which the society is affiliated, by order—

(a) (i) remove the committee, and—

(ii) appoint a committee consisting of three or more members (who shall not be the members of the committees so removed) of the society in its place, or appoint one or more Administrators who need not be members of the society, but who shall not be the members of the committee so removed to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, be extended by a further period not exceeding three months so, however, that the total period does not exceed nine months in the aggregate :

Provided that, the Registrar shall have the power to change the committee or any member thereof or the administrator or administrators appointed under paragraph (ii) at his discretion even before the expiry of the period specified in the order made under this sub-section ;

(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed :]

[Provided that, the member who has been so removed, shall not be eligible to be re-elected, re-appointed, re-nominated, or re-co-opted, as a member of the Committee till the expiry of the period of next one full term of the Committee from the date on which he has been so removed or till such lessor period as may be laid down under the provisions of Section 73FFF or 144E, as the case may be:]

[Provided further that the supersession or removal of the committee of the District central Co-operative Bank or the State Co-operative Bank or the State Co-operative Bank under this sub-section shall not be done without prior consultation with the Reserve Bank of India:

(1A)

(2)

[(2A)]

(3)

(4)

(5) All acts done or purported to be done by the committee or administrator during the period the affairs of the society are carried on by the committee or administrator appointed under sub-section (1), shall be binding on the new committee."

15. It would also be worthwhile to take into account sections 73-FF and 73-FFF of the MCS Act, as were then subsisting, reading as under.

73-FF (1) *Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he—*

(i) *is a defaulter of any society ;*

Explanation.—For the purposes, of this clause, the term "defaulter" includes—

(a) *in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date ;*

(b) *in the case of term lending society, a member who defaults the payment of any instalment of the loan granted to him ;*

(c) *in the case of any society,—*

(i) *a member who has taken anamat or advance; or*

(ii) *a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such anamat or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society or within thirty days from the date of withdrawal of anamat or advance by him or from the date of delivery of goods to him or availing of services by him, whichever is earlier ;*

(d) *in the case of non-agricultural credit societies, a member who defaults the payment of any instalment of the loan granted ;*

(e) in the case of housing societies, a member, who defaults the payment of dues to the society within three months from the date of service of notice, in writing served by post under certificate of posting demanding the payment of dues;

(ii) has, in the opinion of the Registrar, deliberately committed breach of co-operative discipline with reference to linking up of credit with co-operative marketing or co-operative processing; or

(iii) has been held responsible under section 79 or 88 or has been held responsible for payment of costs of inquiry under section 85; or

(iv)

(vi)

(vii)

(2) A member who has incurred any disqualification under sub-section (1) shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant.

73-FFF. *(1) A member of a committee who has ceased to be a member thereof on account of having incurred disqualification under clause (ii) of sub-section (1) of section 73FF shall be eligible to be re-appointed, renominated, re-co-opted or as member re-elected as a member of the committee after the expiry of the period of two years of committee from the date on which he has so ceased to be a member of the committee.*

(2) A member of a committee who has ceased to be a member thereof on account of having incurred disqualification under clause (iii) of sub-section (1) of section 73-FF, shall be eligible to be re-appointed, re-nominated, re-co-opted, or re-elected as a member of the committee after the expiry of the period of five years from the date on which he has so ceased to be a member

of the committee.

(3) A member of a committee who has ceased to be a member thereof on account of having incurred any disqualification other than disqualifications referred to in sub-sections (1) and (2), shall, unless otherwise specifically provided in this Act, be eligible to be re-nominated, re-co-opted, re-appointed or re-elected as a member of the committee, as soon as such disqualification ceases to exist.]

16. On perusal of orders disqualifying respondents No. 3 to 6, it is apparent that those have been passed under Section 78(1) (b) removing them individually as members of the society. Nobody has disputed the position.

17. Proviso to clause (b) to sub-section (1) of section 78 of the Act itself stipulates that the member who has been so removed shall not be eligible to be re-elected, re-appointed, re-nominated and re-co-opted as member of the managing committee till the expiry of period of next one full term from the date on which he has been so removed or till such period as may be laid down under the provisions of sections 73-FFF or 144(E) of the MCS Act.

18. Perusal of impugned order shows that respondent No. 2 although purportedly referred to Section 78(1)(b) of the MCS Act, he was oblivious of the proviso thereunder disqualifying the members for the period of "next one full term". He appears to be under impression that disqualification had been incurred under

Section 73-FF(1)(ii) which does not appear to be the case as, disqualification incurred has not been for the opinion of the Registrar, such member has deliberately committed breach of co-operative discipline with reference to linking up of credit with co-operative marketing or co-operative processing.

19. The term "next" means and has been described in dictionary as "nearest or adjacent in place or position" and or as immediately followed in time or importance. The word "term" has various meanings under dictionary, however, so far as present matter is concerned it relates to time or period and/or it also means time or period through which something lasts or period of time to which limits have been set or appointed or set time. As such, phrase "next one full term" referred to under proviso to erstwhile section 78(1)(b) of MCS Act, will have to be construed properly. Taking into account legislative intent "next one full term" in the present case, as such, appears to mean exclusion of existing term and refers to whole of term/period adjacent to the existing term/period as the word "one" has been specifically inserted. In this case, it would naturally mean ensuing term/period as a whole. Legislative intent appears to disqualify a person for "next one full term". Proviso makes ineligible a removed member of committee from being re-elected, re-appointed, re-nominated, re-co-opted as member of the

committee till expiry of period of "next one full term" of the committee from the date on which he has been so removed. In such a case, next one full term of the committee after date of removal of respondents No. 3 to 6 shall be/would mean a period of next term of the committee after the expiry of term which was subsisting while order dated 24-01-2011 of removal of respondents No. 3 to 6 was passed and that would be 2015-2020 for which elections are taking place.

20. In the orders dated 24-01-2011 and impugned order dated 9-3-2015 annexed to the petition at pages 11 to 18, disqualification of respondents No. 3 to 6 appears to be for default under clause (i) of sub-section (1) of section 73-FF. Thus, period of disqualification under Section 73-FFF(1) would hardly be applicable, for, disqualification is not referable clause (ii) of sub-section (1) of Section 73-FF, and as such, impugned orders appear to be incorrect. Provisions which are germane have been of ignored, and particularly, proviso to Section 78(1)(b) of the MCS Act. It is apparent that respondents No. 3 to 6 had incurred statutory disqualification under order dated 24-01-2011 for the period of next one full term. Next full term in the present case appears to be for the period 2015-2020 and existing term being the period 2010-2015.

21. Although generally, High Court does not interfere with

election programme, this appears to be an exceptional case warranting interference as respondents No. 3 to 6 having incurred statutory disqualification are not eligible to contest election and the order impugned in the present petition has been passed in ignorance of applicable relevant statutory provisions as are appearing under section 78(1)(b) of the MCS Act. In view of aforesaid, the petition deserves consideration. As such, following order:

:: O R D E R ::

- (i) Writ Petition is allowed in terms of prayer clause "C".
- (ii) Rule is made absolute accordingly.
- (iii) No order as to costs.

Sd/-
(SUNIL P. DESHMUKH, J.)

MTK
