

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11706 OF 2014

The Maharashtra State Co-op.)
Housing Finance Co-operation Ltd.)
Mumbai, a Co-operative society)
registered under the provision of)
The Maharashtra Co-op. Societies Act, 1960)
having its Head office at 'Housefin)
Bhavan', Plot No.C-21, E-Block,)
Bandra-Kurla Complex, Bandra (E),)
Mumbai-400 051) .. Petitioner

Versus

1. The Hon'ble Minister for Co-operation,)
Maharashtra State, Mantralaya,)
Mumbai.)
2. The Additional Registrar, (Inspection)
& Election), Co-op. Societies,)
Maharashtra State, having his)
office at Central Building, Pune.)
3. Mr. Deorao Bhayyaji Bhandekar,)
having his address at Deonil,)
Tadala Road, Mul, Tal- Mul,)
Dist- Chandrapur, Pin Code-441224.)
4. Mr. Vinod Babasaheb Dhone,)

- having his address at Plot No.15,)
Ganesh Nagar, Near P&T Colony,)
Sainagar Wardha. Pin Code-442001.)
5. Mr. Mukund Bhikuji Pannase,)
having his address at 4,)
Rakesh Bhavan, Mukund Nagar,)
Nagpur. Pin Code-440022.)
6. Mr. Dhananjay Sopanrao Mohokar,)
having his address at Partha,)
Pragati Colony Station Road,)
Bhandara. Pin Code-441904.)
7. Mr. Vivek Prabhakar Wasekar,)
having his address at Rampuri)
Ward, Camp Area, At & Post Tal. &)
Dist- Gadchiroli.)
8. Mr. Gopikishan Chaturbhuj Mundada)
having his address at Shri. Swastik)
Crushers, 40 Gorakshan Market,)
Gondia. Pin Code-441601.)
9. The Registrar, Marketing Federation)
Maharashtra State, Pune.)
10. The Registrar, Co-op. Societies,)
Maharashtra State, Pune.)
11. The Dy. Registrar, (Inspection & Election))

Co-op. Societies, Maharashtra State,)
Pune.) .. Respondents

Shri. N. N. Bhadrashete, for the Petitioner.

Shri. P. D. Dalvi i/by Shri. Abhijit S. Deshmukh, for the Respondent Nos.3 to 8.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.1, 2, 10 & 11.

CORAM : R.M. SAVANT, J.
DATE : 09th APRIL, 2015

ORAL JUDGMENT

1. At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent No.9 from the array of Respondents, as the Respondent No.9 is only a formal party in the context of the challenge raised in the above Petition. The said Respondent No.9 to accordingly stand deleted.

2. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3. The Writ Jurisdiction of this Court is invoked against the order dated 19.09.2014 passed by the State Government i.e. the then Hon'ble Minister for Co-operation, by which order the Appeal filed by the Respondent Nos.3 to 8 being Appeal No.472 of 2014 came to be allowed and resultantly the order dated 27.04.2014 in so far as it approves the amended bye law No.56(i)(a) came to be set aside and the Respondent

No.2 to the proceedings was directed to issue orders for giving equal representation of two representatives from the Mumbai, Nashik, Pune, Aurangabad, Nagpur and Amravati regions and to submit the amended bye law accordingly.

4. It is not necessary to burden this order with unnecessary details having regard to the nature of the directions to be issued. In keeping with the mandate of the 97th amendment to the Constitution of India, the State Government through the Registrar, Co-operative Societies issued directions to the co-operative societies to bring their bye laws in consonance with the approvals of the amended Act which amendments were also carried out having regard to the mandate of the 97th amendment to the Constitution of India. In keeping with the said mandate, the Petitioner herein made amendments to its bye laws and sent them for approval to the Registrar, Co-operative Societies. The controversy in the instant matter relates to bye law No.56(I) of the bye laws applicable to the Petitioner society. The Petitioner society can be said to be a Federal Society whose area of operation is throughout the State and who has members in all the districts of the State. The object of the Petitioner society is to grant loans or advances to the co-operative housing societies registered in the State of Maharashtra and loans and advances are made on the particular society becoming its member. In so far as bye law No.56(I) is concerned, it

prescribes the composition of the Board of Directors of the Petitioner society. In the context of the present challenge, it is required to be noted that as per the said bye law No.56(I), prior to its amendment each district was to have one representative and there were to be 8 representatives from the reserved category etc. to make a total of 43 directors of the Petitioner society. The said bye law was in operation till the present amendments were proposed and for which approval was sought from the Registrar of Co-operative Societies. In so far as the composition of the Board of Directors of the class to which the Petitioner society belongs by Section 73AAA, the maximum number of directors prescribed is 21 which includes the nominated and reserved category directors. In view of Section 73AAA that the Petitioner society felt the need to amend its bye law No.56(I) so as to bring it in consonance with the mandate of Section 73AAA. A meeting of the Board of Directors was therefore convened on 16.04.2013 in which meeting the amendment to bye law No.56(I) was proposed and the proposed representation on the Board of Directors was accordingly to be 16 from the general category and 5 members from the nominated and reserved category making a total of 21 so as to be within the outer limit prescribed by Section 73AAA. The said amendment to bye law No.56(I) was approved in the Meeting of the Board of Directors. The amendment of bye law No.56(I) was thereafter placed before the general

body of the Petitioner society in its meeting held on 05.05.2013 and in the said general body meeting also the amendment to bye law No.56(I) providing for 16 directors from the general category and 5 directors from the nominated and reserved category came to be approved. The Petitioner society thereafter sent the proposal for amendments of the bye laws which include bye law No.56(i) to the Registrar of Co-operative Societies. The Additional Registrar (Inspection & Election), Co-operative Societies by his order dated 24.04.2014 has granted approval to the amendments which have been carried out to the Petitioner society to its bye laws which includes the amended bye law No.56(i)(a).

5. The Respondent Nos.3 to 8 herein who are the members of the Board of Directors of the Petitioner society took exception to the said approval granted by the Additional Registrar vide his order dated 27.04.2014 by filing an Appeal under Section 152 of the said Act before the State Government. The said approval was challenged inter-alia on various grounds which find a place in the said Appeal. However, the principal ground as can be deciphered from the Appeal memo is the ground that if the bye law is approved, then there would be discrimination between regions as there is unequal representation on the Board of Directors amongst various regions in the State of Maharashtra. It was therefore, the contention of the Appellants that on account of unequal

representation a particular region would suffer, as the said region would be in minority in so far as the representation on the Board of Directors is concerned. As indicated above, there are other grounds on which the Appeal was founded, but it is not necessary to refer to the said grounds in the instant matter. In terms of the statutory regime which is applicable under the said Act, since the approval is granted by the Registrar under Section 13 of the said Act an Appeal lies under Section 152 of the said Act to the State Government. The State Government i.e. then Hon'ble Minister for Co-operation considered the said Appeal and allowed the said Appeal principally on the ground that since the amended bye law provided unequal representation, the same cannot be countenanced and therefore set aside the approval granted by the Additional Registrar vide the impugned order dated 27.04.2014 and in turn directed the Respondent No.2 to the Appeal to direct the Petitioner society to propose a bye law providing for equal representation to all the regions by election of two representatives from each of the said regions so as to have 12 directors from the general category and to make a total of 17 directors inclusive of the nominated and the directors from the reserved category. As indicated above, it is the said order dated 19.09.2014 is taken exception by way of the above Petition.

6. Heard the Learned Counsel for the parties. The principal

contention of the Learned Counsel appearing for the Petitioner society Shri. N. N. Bhadrashete is that whilst exercising the Appellate powers the Appellate Authority could not have by setting aside the approval granted directed how the Board of Directors should be comprised. It is the submission of the Learned Counsel that the jurisdiction of the Appellate Authority in the instant case was only to see to it if the amendment was not in violation of the Act and Rules and the policy of the State Government. It is also the submission of the Learned Counsel that the bye law having been approved by the managing committee as well as the general body, the Hon'ble Minister exercising the Appellate powers could not have interfered with the approval granted as the decision taken by the general body of the Petitioner society is in terms of the Act and the general body being the ultimate authority in so far as co-operative society is concerned.

7. Per contra, it is the submission of the Learned Counsel Shri. P. D. Dalvi appearing for the Respondent Nos.3 to 8 i.e. Appellants before the State Government that the basis for the proposed unequal representation has not been stated. The Learned Counsel would contend that till the present amendment to the bye law No.56(I) was proposed there was to be one representative from each district and hence, the essence of the bye laws was equal representation to all the districts. The Learned Counsel

would also contend that in the appeal filed the manner in which the resolution was passed was also questioned by the Respondent Nos.3 to 8, but the Appellate Authority having allowed the Appeal has not adverted and dealt with the same.

8. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the amended bye law No.56(i) has been approved by the Registrar, Co-operative Societies in exercise of the powers conferred by Section 13 of the said Act. The said decision of the Registrar as contained in his order dated 27.04.2014 is therefore amenable to the Appellate Jurisdiction under Section 152 of the said Act. Section 13 mandates that the amendment has to be in consonance to the Act and the Rules and therefore, one of the aspects which has to be taken into consideration by the Appellate Authority is whether the amendment proposed is in terms of the Act and the Rules or the policy of the Government which would encompass within itself the spirit behind the co-operative movement. However, unfortunately in the instant case, the Appellate Authority has not adjudicated the Appeal from the said perspective and has gone on the basis of their being unequal representation between different regions of the State. Undoubtedly, that can be also one of the aspects that can be taken into consideration by the Appellate Authority, but cannot be said to be the stand alone consideration

on the basis of which the Appeal is required to be adjudicated. The Appellate Authority has also not referred to or dealt with the other grounds on the basis of which the proposed amendment was challenged by the Respondent Nos.3 to 8. This probably might not have been done, in view of the Appellate Authority allowing the Appeal though for a different reason. The Appellate Authority has also referred to the case of the Marketing Federation, in respect of which it has stated that a similar amendment sought by the Marketing Federation has been rejected by the Registrar, but has not been done so in respect of the Petitioner society. How the case of the Marketing Federation stands at par with the case of the Petitioner society has not been stated by the Appellate Authority. The Appellate Authority has therefore not adjudicated upon the Appeal in the manner required. In my view therefore, it would be just and proper to set aside the impugned order dated 19.09.2014 passed by the Appellate Authority i.e. Hon'ble Minister for Co-operation and remand the matter back to the Appellate Authority for a de-novo consideration of the Appeal in terms of the observations made herein above. In view of the directions which were proposed to be issued, this Court has not gone into the aspect as to the locus-standi of the Respondent Nos.3 to 8 to question the amendment which would include the aspect of whether they as being the members of the Board of Directors are now estopped from challenging the

amendments. The said aspect can also be urged before the Appellate Authority and can be dealt with by the Appellate Authority. The impugned order dated 19.09.2014 is accordingly quashed and set aside and the matter is relegated back to the Appellate Authority for a de-novo consideration of the Appeal No.472 of 2014. The Petitioner and the Respondents to appear before the Appellate Authority on 16.04.2015 at 3.00 p.m. The Appellate Authority thereafter to decide the Appeal expeditiously and latest by 15.05.2015. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

[R.M. SAVANT, J]