

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 4592 OF 2013
WITH CA/4963/2014 IN WP/4592/2013

EX. M.L.A. K.B. ROHAMARE CO-OPERATIVE MILK
PRODUCTIVESOCIETY LIMITED
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Gandhi Amol S.

AGP for Respondents: Mr. M.M. Nerlikar

Advocate for Respondents : Mr. R.N. Dhorde h/f. V.R. Dhorde

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CORAM : S.V. GANGAPURWALA, J.

DATE : 29.08.2017

P.C. :

. The present respondent nos. 5 to 12 filed an appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960 with regard to the amendment to the bye-laws of the petitioner society. With regard to the area of operation the appeal came to be allowed. The present petitioner filed revision under Section 154 before the State i.e. the Joint Registrar. The revision came to be dismissed aggrieved thereby, the present writ petition.

2. Mr. Gandhi, the learned counsel submits that the bye-laws of the petitioner-society with regard to area of operation is amended in the year 1986 and the same was never assailed by any society. The present respondent nos. 5 to 12 have come into existence in the year 2000, when the amendment was effected the respondent-society were not in existence. They do not have any

locus standi to challenge the amendment to the bye-laws effectuated in the year 1986. The learned counsel further submits that the appeal and the application for condonation of delay, though, were decided by separate orders were decided on one and the same date. In view of that principles of natural justice are violated. No proper opportunity is given to the petitioner to put forth its case. The learned counsel further submits that the amendment incorporated in the bye-laws of the petitioner society in the year 1986 is approved by the office of the Registrar, order to that effect is also passed. The Assistant Registrar has filed his say before the Appellate Authority clearly accepting that the amendment to the bye-laws with regard to area of operation was sanctioned on 23.01.1986. The said say of the Assistant Registrar is not considered by the authorities. The learned counsel further submits that the subsequent policy of 04.01.2000 cannot effect the bye-laws of the petitioner-society. The restriction with regard to the area of operation was introduced on 04.01.2000 and the amendment to the bye-laws is of the year 1986. The learned counsel further submits that, subsequently in the year 2011 the policy has further undergone change and now there is no restriction with regard to the area of operation. The co-operative society can lift the milk from any place without any restriction.

3. Mr. Dhorde, the learned senior advocate for the respondent nos. 5 to 12 submits that respondent no.12 is a federal

society and respondent nos. 5 to 11 are the societies situated in the adjoining villages. The learned senior advocate submits that, the say filed by the Assistant Registrar before the Appellate Authority was against the record, as such, the Appellate Authority, as well as, the Revisional Authority had directed the petitioner and respondent no.3 to produce on record the documents showing the amendment being sanctioned in the year 1986, no such order was produced. The amendment which was shown to have been incorporated is in the year 2005 only. Not only the name but also the area of operation was sought to be amended in the year 2005 without following the procedure. No objections at any point of time were called from the societies of the adjoining areas, their rights are affected. Even the resolution of the general body was not placed on record nor the same was got approved from the authority. Both the authorities have concurrently held that said bye-laws are also against the policy dated 04.01.2000 of the Government which restricts the area of operation to the revenue village only.

4. The learned A.G.P. submits that this Court in writ petition no. 10150/2010 under order dated 19.07.2012 directed the respondent no.4 to look into the representation made by the petitioner therein at the earliest. As per the said direction the respondent no.4 again made an inquiry and passed an order on 19.03.2013, which says that the area of operation of the petitioner society is limited to Shahpur village only. The respondent no.3 has

cancelled the rectification of the bye-law of the petitioner-society dated 19.11.2005 which was about the area of operation. The Government Resolution dated 04.01.2000 restricts the area of operation of the primary dairy society to one revenue village only. It is submitted that the Assistant Commissioner has issued a letter dated 04.01.2012, the same is restricted to the private/union and it states that private/union can collect milk from anywhere within the State. The same would not be applicable to the petitioner-society which is a primary co-operative society.

5. I have considered the submission. The jurisdiction of this Court under Article 226 and 227 of the Constitution of India would be in a narrow compass more particularly while appreciating the orders passed by the Appellate and Revisional Authority.

6. The gravamen of the contention of the petitioner is that the amendment was effectuated in the year 1986, whereas, that of the respondents is that the same was for the first time effectuated in the year 2005. Before this Court there is no order dated 23.01.1986 produced on record. Even the Appellate Authority, as well as, Revisional Authority has observed that such an order was not produced and the order which was produced of amendment is dated 19.11.2005.

7. Be that as it may, the policy dated 04.01.2000 restricts the area of operation to one revenue village of a primary co-

operative society, the same is considered. It was a disputed question of fact as to actually when the amendment to the bye-laws with regard to the area of operation was effectuated i.e. whether in the year 1986 or 2005. Before this Court the order of 23.01.1986 relied by the petitioner to state that the amendment was effectuated and approved is not on record, so also the Appellate Authority states that opportunity was given to the parties to produce the same and the same was not produced.

8. The resolution of the year 1986 is also not before the Court. Considering the above, the said aspect cannot be considered in favour of the petitioner.

9. The another contention of the petitioner is that now as per the policy the restriction on the area of operation has been lifted, if that is so the petitioner can very well take steps with regard to the change of policy and the same can be considered by the authorities in accordance with law and policy.

10. With these observations, the writ petition accordingly stands disposed of. In view of disposal of the writ petition, civil application also stands disposed of.

(S.V. GANGAPURWALA)
JUDGE