

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2163 OF 2017

Pandurang Daji Dhundare ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. P. D. Dalvi for Petitioner.
Ms Vaishali Nimbalkar, AGP for Respondents No.1 and 2.
Mr. S. G. Deshmukh i/b. Mr. Dilip Shinde for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 19, 2017

P.C. :

Heard Mr. Dalvi, learned Counsel for petitioner, Ms Nimbalkar, learned Counsel for respondents No.1 and 2, State and Mr. Deshmukh, learned Counsel for respondent No.3 at length. Mr. Dalvi orally prays for deleting respondent No.4 on the ground that respondent No.4, sugar factory is a formal party. Leave to delete respondent No.4 is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 13.01.2017 passed by the Hon'ble Minister for Co-operation, Marketing and Textiles in Revision Application preferred by the respondent No.3 challenging the judgment and order dated 28.10.2015 passed by the respondent No.2, Regional Joint Director (Sugar) cum Joint Registrar, Co-operative Societies, Kolhapur. By order dated 28.10.2015, in exercise of powers under Section 73CA (c)(i) and Section 78-A of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'), respondent No.2 declared respondent No.3 as disqualified to continue as member of the Board of Directors of respondent No.4 sugar factory and further declared that respondent No.3 shall not be eligible to act as member of any committee

of the society till expiry of period of next one term of the committee from the date from which he was removed. Aggrieved by this decision, respondent No.3 preferred revision application under Section 154 of the Act. By order dated 13.11.2016, the Hon'ble Minister has allowed revision application and set aside the order dated 28.10.2015.

3. Rule. Learned Counsel for respective respondents waive service. Having regard to the nature of the controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Dalvi submitted that respondent No.3 is the Director of respondent No.4, sugar factory. On 17.08.2012, he had taken anamat of Rs.10,000/-. On 09.04.2013, respondent No.3 had taken anamant of Rs.15,000/- from the respondent No.4. He had repaid that amount namely Rs.25,000/- on 19.06.2013. Thus, the anamat of Rs.10,000/- taken on 17.08.2012 was repaid after 10 months and 2 days. Anamat of Rs.15,000/- taken on 09.04.2013 was repaid by the respondent No.3 after 2 months and 10 days. He submitted that Section 73-CA provides for disqualification of committee and its members. Section 73CA(1), clause (c) 1 (ii) lays down that no person shall be eligible for being appointed, nominated, elected, co-opted or being a member of a committee of any society, if he has taken anamat or advance and fails to repay the full amount of such anamat or advance after receipt of notice of demand by him from the concerned society or within 30 days from the date of withdrawal of anamat or advance by him, whichever is earlier. In the present case, admittedly, respondent No.3 did not repay anamat within 30 days from the date of withdrawal. He submitted that sub-section (2) of Section 73CA lays down that 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. He submitted that once respondent No.3 failed to repay anamat within 30 days from the date of withdrawal, namely from 17.08.2012 as also 09.04.2013, he ceased to be a member of the committee and his seat has deemed to be vacant. He relied upon the decision of the Full Bench of this Court in ***Narayan G. Bhoyar Vs. Yeotmal Zilla Parishad, 2009 (6) Bom.C.R.277***, and in particular paragraphs 56 and 57 thereof. The Full Bench has considered Section 73FF. Section 73FF is substituted on 13.08.2013 and Section 73CA is brought into force with effect from 14.02.2013. Full Bench considered Section 73FF(2) which is para materia with Section 73CA(2). Full Bench has held that provisions of Section 73FF would come into play automatically by deemed fiction of law once the declaration of a member being defaulter as contemplated under Section 73FF(1) is made in accordance with law and with due compliance to the basic principles of natural justice in terms of Rule 58 of the Maharashtra Co-operative Societies Rules, 1961 (for short 'Rules'). He also relied upon Full Bench decision of this Court in ***Anant H. Ulahalkar Vs. Chief Election Commissioner and others, 2017 (1) ALL M.R.1***, and in particular paragraph 98 thereof. He, therefore, submitted that impugned order is liable to be set aside thereby restoring the order dated 28.10.2015 passed by the respondent No.2, Regional Joint Director (Sugar).

5. On the other hand, Mr. Deshmukh and Ms Nimbalkar supported the impugned order. Mr. Deshmukh submitted that Section 73CA provides for penal consequences and the said provision has to be construed strictly. Section 73CA(1)(c)(ii) lays down that if a member has taken anamat or advance and fails to repay the amount of such anamat or advance, after receipt of notice of demand by him from the concerned society then alone he is disqualified to continue as member of

the committee. In the present case, respondent No.4 society did not issue notice of demand and consequently, it cannot be held that third respondent had incurred disqualification as contemplated by Section 73CA.

6. Mr. Deshmukh further submitted that aggrieved by the decision of respondent No.2 dated 28.10.2015, respondent No.3 preferred revision application. Pending the revision application, the order passed by the second respondent was stayed. Petitioner herein had challenged the stay granted by the Hon'ble Minister by instituting Writ Petition in this Court and the same was unconditionally withdrawn. In other words, he submitted that pending the revision application, the order dated 28.10.2015 was stayed. Mr. Deshmukh further submitted that petitioner made complaint on 16.12.2013 that is after the entire amount was repaid by the third respondent on 19.06.2013. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The facts which are not in dispute are that respondent No.3 is Director of respondent No.4 sugar factory. On 17.08.2012, he had taken anamat of Rs.10,000/-. On 09.04.2013, he had taken anamat of Rs.15,000/-. He had repaid Rs.25,000/- on 19.06.2013. Thus, the third respondent had repaid amount of Rs.10,000/- after 10 months and 2 days from 17.08.2012. He had repaid Rs.15,000/- after 2 months and 10 days from 09.04.2013. Section 73CA(1) (explanation) (c)(i) and (ii) and sub-section (2) read thus,

73CA. Disqualification of committee and its members.

(A1) ...

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being

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-

Explanation.- For the purposes of this clause, the term “defaulter” includes-

- (a) ...
- (b) ...
- (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;
- ...
- (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.”

8. A perusal of the impugned order shows that the Hon'ble Minister has only considered first part of sub-clause (ii) of clause (c) of Section 73CA(1). In other words, the Hon'ble Minister has not considered the latter portion of **sub-clause (ii) of clause (c) of sub-section (1) of Section 73CA, namely, or within 30 days from the date of withdrawal of anamat or advance, whichever is earlier.** In view thereof, the impugned order cannot be sustained and as such is liable to be set aside thereby restoring the revision application preferred by the third respondent before the Hon'ble Minister.

(emphasis supplied)

9. Mr. Dalvi submitted that in view of sub-section (2) of Section 73CA, third respondent, by deeming fiction, is disqualified and the seat is required to be declared as vacant. On the other hand, Mr. Deshmukh submitted that during the pendency of the revision application, order dated 28.10.2015 passed by the second respondent was stayed and the

challenge to that order had failed in the earlier round of litigation.

10. It is not in dispute that during the pendency of the revision application, order dated 28.10.2015 passed by the second respondent was stayed. The order granting stay was challenged in this Court by instituting Writ Petition. It is also not in dispute that the Petition was disposed of as withdrawn. In short, the stay granted to the order dated 28.10.2015 was not vacated. Since I am relegating the parties before the Hon'ble Minister by restoring the revision application, the interim order that was operating pending the revision application also needs to be revived.

11. Mr. Dalvi relied upon the full Bench decision of this Court in the case of **Narayan G. Bhoyar** (*supra*) and **Anant H. Ulahalkar** (*supra*). In the case of Anant H. Ulahalkar (*supra*), Full Bench was considering Section 9A of the Maharashtra Councils, Nagar Panchayats and Industrial Townships Act, 1965. In paragraph 98, the Full Bench considered Section 9A, which uses the expression “his election shall be deemed to have been terminated **retrospectively** and he shall be disqualified being the councilor.”.

12. In the present case, admittedly, respondent No.3 had repaid the amount on 19.06.2013 and the petitioner had made complaint on 16.06.2013. That apart, pending the revision application, order dated 28.10.2015 passed by the respondent No.2 was stayed. The order granting stay was challenged by the petitioner by instituting Writ Petition in this Court and that Petition was withdrawn. In short, the stay granted during the pendency of revision application was not vacated. In view thereof, it is not possible to accept submission of Mr. Dalvi that even if the matter is relegated and the revision application is restored,

the interim order should not be continued. Hence, the Petition is disposed of in the following terms:

- a. The impugned order dated 13.01.2017 passed by the Hon'ble Minister for Co-operation, Marketing and Textiles is set aside. Revision Application No.RVA-2015/Case No.790/15-S is restored to the file along with the interim order that was in force pending revision application;
- b. Learned Counsel for the petitioner and respondent No.3 assure that they will appear before the Hon'ble Minister on 21.04.2017 at 3.00 pm. and for that purpose no fresh notice be issued to them;
- c. Hon'ble Minister shall decide the Revision Application within two months from 21.04.2017;
- d. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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