

Sharayu

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

WRIT PETITION NO. 2646 OF 1998

- 1. Mr. Lalsing C. Rajput**
- 2. Kisinrao K. Lotke**
- 3. A.K. Kakade**
- 4. Arvind B. Chavan**
- 5. Ramchandra T. Margaj**
- 6. Mahadev M. Katre**
- 7. Raghuvir G. Samant**
- 8. Shri D.B. Bhandekar**
- 9. Smt. Shobatai Potdukhe**
- 10. Smt. Kanta B. Parvekar,**
- 11. V.S. Mane,**
- 12. Gangadhar M. Patne,
All C/o. The Maharashtra
State Co-operative Finance
Corporation Ltd., Vashani
Chambers, 3rd Floor, Sir
Vithaldas Thackersey Marg,
Mumbai – 400 020.**

...Petitioners

Versus

1. The Commissioner for
Co-operation and Registrar
of Co-operative Societies,
Maharashtra State, Pune.
2. Shri. B.L. Jadhav,
The Additional Registrar,
(Inspection and Planning)
Co-operative Societies,
Maharashtra State, Pune.
3. Shri Sudhir D. Thakare,
Joint Registrar, Co-op. Societies
and Enquiry Officer,
Maharashtra State Co-operative
Finance Corporation Ltd.,
Vashani Chambers, 3rd Floor,
Sir Vithaldas Thackersey Marg,
Mumbai – 400 020.
4. The Joint Registrar, (Audits)
Co-operative Societies,
Maharashtra State, Pune.
5. The Maharashtra State
Co-operative Finance
Corporation Ltd.,
Vashani Chambers, 3rd Floor,
Sir Vithaldas Thackersey Marg,
Mumbai – 400 020.
6. The Honourable Minister of Co-
operation and Textile, Mantralaya,

Mumbai – 400 032

7. The Collector of Bombay

**Housefin Employees Union
a Trade Union Registered under the
Trade Unions Act, 1926, having its
Office at C/o. The Maharashtra
State Co-op. Housing Finance
Corporation Ltd.
Sir Vithaldas Thackersey Marg,
Mumbai – 400 020.**

...Respondents

Mr. Pradeep D. Dalvi, for the Petitioners.

Mr. A.I. Patel, Addl. G.P., for the Respondents No. 1 to 4, 6 & 7.

Mr. Vijay Patil, a/w Mr. Abhijit Patil & Mr. Saurabh Karede, for Respondent No. 5.

Mr. K.S. Bapat, for Intervener.

**CORAM : ABHAY S. OKA & AND
RIYAZ I. CHAGLA, JJ.**

DATE : 22 September 2017

ORAL JUDGMENT : [Per Abhay S. Oka, J.]

1. Heard the learned Counsel appearing for the

Petitioner, the learned Counsel appearing for the 5th Respondent, the learned Counsel appearing for the Interveners and the learned AGP appearing for the Respondents No. 1 to 4, 6 and 7.

2. In normal course, this Petition ought to have been placed before the learned Single Judge. However, in view of Clause 3 of the order dated 10 November 1998 passed by a Division Bench of this Court, the present Petition is kept for final disposal before a Division Bench.

3. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 17 March 1998 passed by the Additional Registrar of the Co-operative Societies under the Maharashtra Co-operative Societies Act, 1960 (for short "*the said Act*"), by which an order under Sub-Section 1 of Section 78 of the said Act was passed by him. By the said order, the Petitioners who were the members of the Board of Directors of the 5th Respondent were removed. The Petitioners were

elected in the election held in May 1995 and their tenure was of five years. In the impugned order of the Additional Registrar of Co-operative Societies it was directed that the Petitioners shall not be eligible for re-election till the expiry of the period of next one full term.

4. The order passed by the Additional Registrar was confirmed by the State Government in the Appeal preferred by the present Petitioners by an order dated 2 May 1998. These two orders are essentially challenged by way of this Writ Petition.

5. The first submission of the learned Counsel appearing for the Petitioners is that, there is a mandatory requirement of Sub-section 1 of Section 78 of the said Act of making a proper consultation with the Federal Society before exercising the drastic power under Sub-section 1 of Section 78. His submission is that firstly the Federal Society never submitted its opinion before the impugned order was passed by the

Registrar and therefore, there is no consultation at all. Secondly, he submitted that neither in the impugned order passed by the Additional Registrar nor in the order of the Appellate Authority, a finding has been recorded that a copy of the Reply submitted by the Petitioners to the Show Cause Notice served under Sub-section 1 of Section 78 was forwarded to the Federal Society. He submitted that the requirement of forwarding a Reply to the Federal Society is mandatory and its non compliance results into the order being vitiated.

6. He placed reliance on the decision of the Apex Court in the case of *Kewal Ram Vs. Maharashtra State Cooperative Societies & Ors.*¹. He urged that before passing the order, the Additional Registrar ought to have insisted on getting the opinion of Federal Society one way or the other. He urged that the order of removal of the Petitioners passed under Sub-section 1 of Section 78 is blatantly illegal. The Registrar did not ensure that a Reply is issued by the Federal Society. He placed reliance on the decision of the Apex Court in the case of *State of*

¹ 1986(2) SCALE

*Madhya Pradesh & Ors. Vs. Sanjay Nagayach & Ors.*². He urged that as held by the Apex Court, it cannot be said that in absence of the Reply of the Federal Society that there was an effective consultation with the Federal Society. He submitted that even in the Affidavit in Reply filed to this Petition, it is not the case made out that any effort was made to get a Reply of the Federal Society. He pointed out that the Affidavit-in-Reply does not show that a copy of the Reply was forwarded to the Federal Society.

7. The learned Counsel appearing for the 5th Respondent submitted that though the failure on the part of the Registrar to forward copy of Reply to the Show Cause Notice to the Federal Society may not have been specifically pleaded, the law mandates that a copy of the Reply should be forwarded to the Federal Society to ensure effective consultation. The learned Counsel appearing for the Interveners invited our attention to the language used in Section 45 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. He

² (2013)7 SCC 25

submitted that in any event, the decision of the Apex Court in the case of *Kewal Ram* (supra) does not lay down as an absolute proposition of law that in every case where a Reply is not submitted by the Federal Society, the Consultation cannot be said to be effective. As far as the decision in the case of *State of Madhya Pradesh* (supra) is concerned, he invited our attention to Section 53 of the M.P. Co-operative Societies Act, 1960 and submitted that the Apex Court was dealing with the case of a banking society and therefore, there was a specific requirement of the Reserve Bank of India (for short “**RBI**”) being informed about the charge against the Co-operative Bank. He, therefore, submitted that the said decision will not apply to a case under Section 78 of the said Act. Placing reliance on a decision of Constitutional Bench of Apex Court in case of *State of U.P. Vs. Manbodhan Lal Srivastava*³ he urged that in view of interpretation put by the Apex Court, the failure of the Federal Society to forward a Reply to the Registrar will not afford a ground to the Petitioners to challenge the impugned orders as the requirement of the consultation cannot be said to

³ AIR 1957 SC 912

be mandatory.

8. The learned Counsel appearing for the 5th Respondent by relying upon the decision of this Court in the case of *Madan S/o Babanrao Zade Vs. Honble Minister of State & Ors.*⁴ submitted that as the term of Board of Directors came to an end in the year 2005, even the period of disqualification has expired.

9. We have given careful consideration to the submissions. It cannot be disputed that for the purpose of effective consultation under Sub-section 1 of Section 78, along with a copy of the Show Cause Notice issued by the Registrar, a copy of the Reply to Show Cause Notice submitted by the Society or Members of the Managing Committee, as the case may be, is required to be forwarded to the Federal Society. It is not in dispute that in this Writ Petition, there is no specific contention raised that a copy of the Reply submitted by the Petitioners was not forwarded to the Federal Society. We have

⁴ (2006) 5 Mh.L.J. 409

carefully perused the common judgment of the Appellate Authority in statutory Appeals preferred by the Petitioners for challenging the order of the Additional Registrar. The Petitioners were represented by an Advocate. The contentions raised by the Petitioners in support of their Appeal have been noted in detail by the Appellate Authority. As regards the consultation with the Federal Society, the only contention raised was that there was no effective consultation with the Federal Society. Thus, even in Appeal, no such contention was raised and therefore, the Appellate Authority was not under an obligation to go into the same. In the impugned order passed by the Additional Registrar, he has recorded that he forwarded a copy of the Show Cause Notice dated 11 September 1997 to the Federal Society. The Federal Society called upon the Registrar by a letter dated 29 September 1997 to forward certain documents. The said documents were forwarded by the Registrar's office on 4 October 1997. By the letter dated 4 October 1997, the Federal Society was called upon to submit its Reply. Thereafter, on 30 December 1997 a reminder was issued

to the Federal Society. As noted earlier, till the date of passing the order on 17 march 1998, no communication was received from the Federal Society.

10. As noted earlier, in the order of the Appellate Authority, the submissions of the learned Counsel for the parties were noted in some detail. One of the submissions made on behalf of the contesting Respondent was that the Registrar had forwarded along with the Show Cause Notice under Section 78, the copies of the Reply to the Federal Society.

11. In the impugned order passed by the Additional Registrar, it is specifically recorded that the documents demanded by the Federal Society were forwarded. As stated earlier, the Appellate Authority was under no obligation to consider the case now made out that a copy of the Reply to the show cause notice was not forwarded. Even though in this Writ Petition no such contention has been raised, we called upon the learned AGP to produce the file of the case. The

learned AGP stated that though search was made with due diligence, the file could not be located. We must note here that the period of 19 years has lapsed from the date of the order passed by the Registrar as well as the Appellate Tribunal and therefore, it is difficult to find fault with the failure of the State Government to produce the record.

12. The only issue to be considered is, whether there can be said to be an effective consultation with the Federal Society, though no response was received from Federal Society. Our attention was invited to a decision of the learned Single Judge in the case of *Arjun Panditrao Khotkar Vs. State of Maharashtra & Ors.*⁵ In paragraph 12 of the decision, the learned Single Judge held thus:-

“It cannot be disputed that the consultation is a mandatory requirement and precondition for an appropriate decision under section 78(1) of the said Act. Equally it is to be noted that the consultation has

⁵ 2002(5) Mh.L.J. 236

to be effective and meaningful and not a mere formality. In other words, before taking any final decision under section 78, the authority has to supply all the materials based on which the decision is to be taken, to the authority to be consulted before taking a final decision under the said section. Equally, it is to be noted that mere furnishing of such information is also not sufficient but, sufficient opportunity and time also must be afforded to the authority to be consulted before taking any decision in the matter. It is only after compliance of both these conditions, it can be said that there is effective consultation empowering the authority to take appropriate decision in the matter.”

13. Our attention was invited by the learned Counsel appearing for the Petitioners to a decision of the another learned Single Judge of this Court in ***Sadashiv s/o Ganpatrao Mahajan Vs. Hon'ble Minister for Co-operation***

*and Textile, Mumbai & Ors.*⁶, wherein the view taken appears to be contrary to the view taken in the case of *Arjun Panditrao Khotkar* (supra). After perusing the said decision, we find that the learned Single Judge has placed reliance on a decision of another the learned Single Judge in the case of *Ravindra V. Gaikwad & Ors. Vs. State of Maharashtra & Ors.*⁷. We find that the learned Single Judges' in case of *Ravindra* (supra) and even in the case of *Sadashiv Mahajan* (supra) have placed heavy reliance on the decision of the Apex Court in the case of *Kewal Ram* (supra). In the case of *Kewal Ram* (supra), the Apex Court was dealing with the issue of legality of an order to supersede a Market Committee constituted under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short "*the said Act of 1963*"). The power to supersede the Market Committee vests in the State Government under Sub-section 1 of Section 45 of the Act of 1963. Sub-section 1 of Section 45 reads thus:-

⁶ 2012(6) Mh.L.J. 213

⁷ 2002(5) Mh.L.J. 464

“If, in the opinion of the State Government, a Market Committee or any member thereof, is not competent to perform or persistently makes default in performing the duties imposed on it or him by or under this Act, or abuses its or his powers or willfully disregards any instructions issued by the State Government or any officer duly authorised by it in this behalf arising out of audit of accounts of the Market Committee or inspection of the office and work thereof, the State Government may, after giving the Committee or member, as the case may be, an opportunity of rendering an explanation, by notification in the Official Gazette, with reasons therefor, superseded such Market Committee, or remove the member as the case may be; and where a member is removed, the State Government shall appoint any person as a member of such Committee in his place for the remainder of his term of office.

[Provided that, no Market Committee shall be superseded without the [State Marketing Board] referred to in section 44 being previously consulted.]”

(emphasis added)

14. At this stage, it will be also necessary to note the difference in the language used in Sub-section 1 of Section 78 of the said Act and Sub-section 1 of Section 45 of the said Act of 1963. There is a proviso to Sub-section (1) of Section 45 of the said Act that no Market Committee shall be superseded without the Marketing Board referred in Section 44 being previously consulted. The requirement of Sub-section 1 of Section 78 of the said Act is that the order of removal of a Committee or a Member can be passed after consultation with Federal Society with which the concerned society affiliated.

15. In the case of **Kewal Ram** (supra), the issue canvased was that there was no consultation with Federation as the Federation did not reply one way or the other to the requisition sent to it. In paragraph 2 of the decision in the case

of **Kewal Ram** (supra), the Apex Court observed thus:-

“The impugned order of supersession of A.P.M.C. Armori dated 3.9.1985 has been passed without consulting the Federation of Market Committees as enjoined by proviso to section 45(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. The learned counsel for the respondents has placed reliance on the affidavit in reply to show that a request was made in the Federation in order to elicit its opinion in regard to the proposed supersession but that the Federation had not given reply one way or the other. The expression “Previously consulted” means that the opinion of the Federation one way or the other must be taken into account before reaching the conclusion whether or not to supersede. It is no good answer to say that the opinion of the Federation could not be taken into account because no opinion was expressed by it. In the

eye of law supercession cannot be said to have been made in consultation with the Federation. A reply from the Federation one way or the other should have been insisted upon and the opinion expressed by the Federation should have entered into the reckoning before the conclusion to supersede was reached. The order therefore is unsustainable in law. The appeal is allowed. The impugned order is quashed and set aside. There will be no order as to costs.”

(underlined added)

16. The phraseology used in Sub-section 1 of Section 45 of the said Act of 1963 appears to be different from that of Sub-section 1 of Section 78 of the said Act. The proviso to Sub-section 1 of Section 45, as noted above, provides that no Market Committee shall be superceded without the Marketing Board being previously consulted. The decision of the Apex Court in **Kewal Ram** (supra) does not lay down as an absolute proposition of law that there can be an effective previous

consultation, only if a Reply is received one way or other from the Federation. The said decision does not deal with a case where a reply is not sent by the Federation after providing all relevant documents to it and after giving reasonable time to it to respond.

17. In the case of ***State of Madhya Pradesh*** (supra), the Apex Court was dealing with a Banking Co-operative Society wherein the action of superseding the Board was taken under Section 53 of the M.P. Co-operative Societies Act, 1960. In paragraph 23, which is relied upon by the learned Counsel, the Apex Court held thus:-

“The mere serving a copy of the show-cause-notice on RBI with supporting documents is not what is contemplated under the second proviso to Section 53(1). For a meaningful and effective consultation, the copy of the reply filed by the Bank to the various charges and allegations levelled against them should

also be made available to the RBI as well as the action proposed by the Joint Registrar, after examining the reply submitted by the Bank. On the other hand, RBI should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the views expressed by the RBI will be a relevant material for deciding whether the elected Board be superseded or not. In other words, the previous consultation is a condition precedent before forming an opinion by the Joint Registrar to supersede the Board of Directors or not.”

(underlined added)

18. The requirement of previous consultation with the Reserve Bank of India contained in the first proviso to Sub-section 1 of Section 53 is applicable only when the question is of supersession of the Board of Directors of a Co-operative Bank. The second proviso lays down that if no communication containing the views of the Reserve Bank of India (RBI) on

action proposed is received within thirty days of the receipt by that Bank of the request soliciting consultation, it shall be presumed that the said Bank agrees with the proposed action. It is in the context of this requirement that the Apex Court has made the observations in paragraph 23.

19. It is true that there cannot be effective consultation with the Federal Society unless a copy of show cause notice and a copy of reply to the show cause notice is provided to the Federal Society. In the facts of the present case, the Show Cause Notice was issued on 11 September 1997. By addressing a letter, the Federal Society was called upon to give its opinion within 15 days. But the Federal Society by a letter dated 29 September 1997 called upon the Registrar to submit documents. On 4 October 1997 the documents demanded by the Federal Society were forwarded to the Federal Society. On 30 December 1997, there was a reminder issued to the Federal Society. Till 17 March 1997 when the order of removal was passed by the Registrar, the Federal Society did not submit its

views. As noted earlier, the contention that the Reply to the Show Cause Notice was not forwarded cannot be allowed to be agitated in the present Petition. In the facts of the case, on 4 October 1997 the documents as demanded by the Federal Society were forwarded by the Registrar.

20. If after forwarding all the requisite documents, which are necessary for having effective consultation, the Federal Society refuses to submit its views notwithstanding reminders within a reasonable time, the Registrar cannot be prevented from passing appropriate order in accordance with law. Otherwise the very object of conferring the power to remove a committee or its members will be frustrated. If after making compliance with the requirement of law, after forwarding necessary documents to the Federal Society and after making efforts to secure the views of the Federal Society, the opinion of the Federal Society is not received within a reasonable time, the action of passing an order under Sub-section 1 of Section 78 is not vitiated only on the ground that

there is no effective consultation with the Federal Society. In a given case, if the Registrar fails to forward all the requisite documents to the Federal Society and passes an order under Sub-section 1 of Section 78 on the ground that the opinion of the Federal Society is not received, the said order can be termed as illegal as there could not have been effective consultation with the Federal Society on account of the failure to supply the requisite documents. In a given case, the order made by the Registrar under Sub-section 1 of Section 78 without there being any opinion placed on record of the Federal Society may be not illegal, if it is found from the record that the Registrar had supplied all relevant documents to the Federal Society and the Federal Society had neglected to submit its views within a reasonable time even after sending a reminder.

21. In the present case, the Registrar had forwarded a copy of the Show Cause Notice dated 11 September 1997 to the Federal Society requesting Federal Society to submit a Reply within 15 days. On 29 September 1997, a letter was

received from Federal Society by which the Registrar was called upon to submit certain documents. The said documents were forwarded along with the letter dated 4 October 1997 with a request to the Federal Society to submit its opinion. Therefore, in the facts of the case, on 17 March 1998, the Registrar was justified in proceeding without reply of the Federal Society.

22. Hence, the impugned order, in the facts of the case cannot be faulted with on the ground that the Registrar did not wait till the Federal Society submitted its response.

23. Once we hold that the impugned action is legal and proper, in this Petition, it is not necessary for us to go into the issue whether the order of disqualification can be enforced now with the passage of time. If at all the order of disqualification is sought to be enforced, the issue will remain open which can be agitated by the Petitioners in appropriate proceedings filed before the appropriate Authority.

24. Subject to what is observed above, Writ Petition is rejected. Rule is discharged with no order as to costs.

25. The learned Counsel prayed for extension of an *interim* relief which is operative till today. The request is opposed.

26. We direct that the interim relief which is operative till today, will continue to operate for a period of six weeks from the date on which this judgment and order is uploaded.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]