IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10049 OF 2017

Ryan I. Fernandes .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

Ms Neeta Karnik for the Petitioner.
Ms Jyoti Jadhav, AGP for the Respondent - State.
Mr.P.S. Dani, Sr. Advocate a/w. Mr. Mangesh Chavan for Respondent No.3.
Brian A. D'Lima i/b D'Lima & Associates for Respondent No.5.
A.J. Almedia for the Intervenor.

CORAM : M. S. SONAK, J.
DATE : 14 SEPTEMBER 2017.

P.C. :-

1] This petition takes exception to the order dated 17th May 2017, by which, the revisional authority has stayed the disqualification of respondent No.3 from being a Director of respondent No.5 Bank.

2] The order dated 9th March 2017 disqualifying respondent No.3 was made by the Commissioner for Cooperative and Registrar (respondent No.6) on the ground that respondent No.3 has more than two children and therefore, the provisions of Section 73CA (f) (vii) of the Maharashtra Cooperative Societies Act, 1960 (MCS Act) are attracted.

3] There is no dispute in this case that respondent No.3 has more than two children. However, the contention is that the child who is borne after the date of election as a Director, is to be ignored for the purposes of applicability of the said legal provision. Apart from this contention, Mr. Dani learned Senior Advocate for respondent No.3, submits that the provision itself is inapplicable because the bank of which respondent No.3 is a Director, neither a District Central Cooperative Bank nor a State Cooperative Bank. Mr. Dani submits that the provision in sub-section (f) of Section 73CA of the MCS Act applies only in case of District Central Cooperative Bank or State Cooperative Bank.

4] Now if the impugned order made by the revisional authority is perused, there is absolutely no reference to the aforesaid contentions. Ms Karnik, learned Counsel for the petitioner, submits that such contentions were never raised either before the Commissioner for Cooperative and Registrar (respondent No.6) or for that matter before the revisional authority.

5] The impugned order, by which, disqualification of respondent No.3 has been stayed is based upon two grounds:

a] That there is a petition filed before the Nagpur Bench of this Court questioning the constitutional validity of the provision and since the said matter is *sub-judice,* it is appropriate that the disqualification is stayed; and

b] That the provision operates quite harshly in the facts and circumstances of the present case;

6] Ms Karnik, learned Counsel for the petitioner, is quite right in her submissions that none of these two grounds suffice for grant of interim reliefs, which have the effect of permitting respondent No.3, who according to her, has incurred disqualification from continuing as Director of the bank.

7] Merely because a petition is pending in which the *vires* of the provision may have been challenged is not a ground not to implement the provision, if, the provision is found to be clearly attracted. Admittedly, this Court has not granted any stay to the operation of the legislative provision. The revisional authority, was therefore, not at all justified in granting the stay order on the basis that the petition is pending questioning the *vires* of the legal provision. Indirectly, the revisional authority, has stayed the operation of the provision, when, admittedly, this Court, has not granted any such stay. The revision authority obviously is not permitted to stay or frustrate the operation of the legislative provisions in this manner.

8] Similarly, stay could not have been granted on the ground that the provision operates harshly. If the provision is indeed applicable and is directed to the facts and circumstances of the particular case, then, the authorities under the Act cannot refuse to comply with such provisions or enforce with such provisions only on the ground of alleged harshness of the consequences. The second reason for grant of stay is also unsustainable.

9] However, the final conclusion as regards stay need not be interfered with, because the fundamental issue as to whether sub-clause (f) of Section 73-CA of the MCS Act is required to be determined and decided. It is possible that such a contention was not raised before the Commissioner or for that matter before the revisional authority. However, such a contention is a contention based upon law not requiring any detailed evidence for its determination. If indeed, the provision, applies only to District Central Cooperative Bank or State Cooperative Bank and if respondent No.5 bank is not either, then it is certainly arguable as to whether respondent No.3 can be said to have incurred disqualification in question or not. Accordingly, the stay granted by the revisional authority can continue until disposal of the revision application. However, it is necessary that the revision application itself is disposed of as expeditiously as possible on its own merits and in accordance with law within a period of four weeks from the date of production of authenticated copy of this order.

10] It must be noted that Mr. Dani learned Senior Advocate for respondent No.3, at the very outset had questioned the *locus standi* of the petitioner to institute the present petition by submitting that the petitioner was not the complainant upon whose complaint the Commissioner (respondent No. 6) disqualified respondent No.3. Ms Karnik, learned counsel for the petitioner, submits that the complainant, is in fact now cooperating with respondent No.3. She submits that the complainant was not even present when the impugned order was made. In these circumstances, Ms Karnik submits that not only does the petitioner have *locus standi* to institute the present petition, but further the petitioner, should be permitted to take part in the proceedings before the revisional authority. She submits that the petitioner is also the Director of the

Bank and every member or Director of the Society undoubtedly has interest in ensuring that Members or Directors who are disqualified do not take part in the administration of the bank.

11] The contention of Mr. Dani as regards the applicability of the provision was entertained, at this stage, even though, it does appear that no such contention was ever raised either before the Commissioner (respondent No. 6) or the revisional authority. The contention was entertained because the proceedings of this nature are representative and if there is reason to believe that disqualification has not been incurred, then, technicality ought not to come in the way. In the similar manner, if there is some issue of the original complainant colluding with any of the parties, there is no reason to either deny *locus standi* to the petitioner to institute the present petition.

12] In this case, it is pertinent to note that the original complainant has neither questioned the impugned order of interim relief nor has urged expeditious disposal of the revision petition. In the matter of this nature, every member or director, certainly has legitimate interest to urge that the issue of disqualification of a director be decided expeditiously, so that, if the director is really found to be disqualified, he does not, continue in office and impact the governance of the bank. In the peculiar facts of this case therefore, without going into the issue of collusion, the interests of justice will be served, not only, by upholding the *locus standi* of the petitioner, bur further, accepting the contention of Ms Karnik that the petitioner be impleaded as a respondent in the revision petition and be heard at the stage of final disposal of the revision petition by the revisional authority.

13] In a matter of this nature where the Commissioner (respondent No. 6) has already ordered disqualification of the respondent no. 3, which disqualification, has now been stayed by the revisional authority, it is expected that the respondent no. 3 does not, precipitate matters by piloting any major policy decisions or decisions involving major financial repercussions. The stay, which is not being interfered with shall, therefore, be subject to this condition.

14] This petition is accordingly disposed of with the following order:-

(A) The impugned stay order is not being interfered with. However, the stay order shall be subject to the condition that the respondent No. 3 shall not pilot any major policy decisions or decisions which involve major financial repercussions to the bank;

(B) The petitioner herein shall stand impleaded as a respondent in the revision petition instituted by the respondent no. 3 before the revisional authority. Accordingly, the petitioner shall be heard before the disposal of the revision petition along with respondent No. 3 and other parties;

(C) The revisional authority is directed to dispose of the revision petition on its own merits and in accordance with law as expeditiously as possible and in any case within a period of four weeks from the date of production of authenticated copy of this order;

(D) All parties to cooperate in the matter of expeditious disposal of the revision petition;

(E) The parties to appear before the revisional authority on 19th September 2017 at 3 p.m. and produce authenticated copy of this Order.

(F) The observations, if any, in this order, are only *prima facie*. Therefore, all contentions of all parties on merits are kept open to be decided by the revisional authority.

(G) The petition is disposed of in the aforesaid terms.

(H) The parties to act on an authenticated copy of this order.

(M. S. SONAK, J.)