

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 978 OF 2019

1. Shri Ashok Harakkchand Sanghvi
Age: 61 years, Occu: Business,
Chairman Pachora Peoples Co-operative
Bank Ltd. Pachora, Tq. Pachora Dist. Jalgaon
2. Shri. Rajmal Badrilal Agrawal,
Age: 70 years Occu: Business,
R/o Shendurni Tal. Jamner,
Dist. Jalgaon
3. Shri Chandrakant Meghji Lodhaya
Age: 67 years Occu: Business,
R/o Bhadgaon Road, Prachora,
Dist. Jalgaon.
4. Shri Alpesh Brijlal Sanghavi
Age: 40 years Ocu: Business,
R/o Gandhi Chowk, Prachora,
Dist. Jalgaon.
5. Shri Jitendrakumaran (Jivan) Champalal Jain
Age: 41 years Ocu: Business,
R/o Gandhi Chowk, Prachora,
Dist. Jalgaon.
6. Shri Kishor Harischandra Shirude,
Age: 62 years Ocu: Business,
R/o Gandhi Chowk, Prachora,
Dist. Jalgaon.
7. Shri Ashok Rupchand Bafana
Age: 62 years Ocu: CA,
R/o -4 Hareshwar Nagar, Prachora,
Dist. Jalgaon

8. Shri Parasmal Z. Lalwani,
Age: 55 years Occu: Business,
R/o Pachora Road,, Jamner, Prachora,
Dist. Jalgaon.

9. Shri Nandkumar Shridhar Sonar,
Age: 45 years Ocu: Business,
R/o Prachora, Dist. Jalgaon

...Petitioners

Versus

1 The State of Maharashtra
Through the Principal Secretary
Co-operation Mantralaya at Mumbai

2. The Divisional Joint Registrar
Co-operative Societies, Nashik
Division, Nashik

3. The District Deputy Registrar
Cooperative Societies, Jalgaon,
Akashwani Chowk, Jalgaon,
Dist. Jalgaon.

4. Shri. V. N. Jagtap,
Authorized officer, (appointed by DDR)
Pachora Peoples Cooperative Bank Ltd.
Station Road, Pachora, Dist. Jalgaon.

5. Sau. Mayuri Mukund Bildikar
R/o Ashirwad, Bhadgaon Road,
Pachora Dist. Jalgaon.

6. Avinash Mukund Bhalerao,
R/o Milind Housing Bank,
Pachora Dist. Jalgaon.

7. Prakash Eknath Patil,
R/o Vivekanand nagar,
Pachora dist. Jalgaon.

8. Bhagwat Eknath Mahalpure,
R/o Pachora Tq. Pachora,
Dist. Jalgaon.

9. Kalpana Sudhakar Patil
R/o Pachora, Tq. Pachora,
Dist. Jalgaon

...Respondents

...

Mr. M. D. Narwadkar, Advcoate h/f Mr. Tapse A. R.,
Advocate for petitioners

Mr. S. B. Pulkundwar, Assistant Government Pleader for
respondents no. 1 to 3

Mr. Thoke Patil, Advocate for respondent no. 4

Mr. A. D. Sonkawade, Advocate h/f Mr. A. V. Hon,
Advocate for respondent no. 6

Mr M. S. Deshmukh, Advocate for respondent no. 8

...

CORAM: SUNIL P. DESHMUKH, J.

Date: 6th February, 2019

ORDER :

1. The petitioners pose a challenge to order dated 18th January, 2019 passed by respondent no. 1 on interim application in pending revision bearing no. 817 of 2018 whereunder request for interim relief of stay is rejected.

2. The revision has been moved by present petitioners in respect of order dated 23rd October passed by respondent no. 3, appointing authorized officer putting

him in charge of affairs of the Pachora Peoples Co-operative Bank Ltd., Pachora Tq. Pachora Dist. Jalgaon (for brevity, "the bank"), substituting board of directors.

3. Petitioners, save petitioner no. 9, were directors of the bank since January, 2016. The board of directors comprises 17 directors. It is being claimed by petitioners that petitioner no. 9 is a co-opted director in place of a director who had resigned. Respondents dispute said position, stating that litigation is pending in respect of the same.

4. On 23rd October, 2018, eight directors, whose names have been mentioned in the order by respondent no. 3 - District Deputy Registrar, are stated to have tendered their resignations and order appointing respondent no. 4 as authorized officer over the bank came to be passed on very day, invoking powers under the Maharashtra Cooperative Societies Act, 1960 (" the Act ") considering that the case falls under section 77A (1)(b-1) of the Act.

5. Present petitioners had preferred appeal bearing no. A-113 of 2018 before respondent no. 2 – Divisional Joint Registrar, Co-operative Societies, Nashik Division against

aforesaid order of respondent no. 3. It appears that operation of order dated 23rd October, 2018 of respondent no. 3 had been stayed under an order dated 29th October, 2018 passed on interim relief application in said appeal. Subsequently, under order dated 22nd November, 2018 said appeal has been rejected by respondent no. 2.

6. Present petitioners have approached the State government in revision bearing no. 817 of 2018 and the same is pending. Along with revision, application for interim relief had also been filed.

7. Since no orders had been passed on said stay application, writ petition bearing no. 13818 of 2018 had been moved by petitioners before division bench. Division bench of this court had under order dated 12th December, 2018 granted ad-interim relief in terms of prayer clause (C) thereof. Subsequently, said order of stay was continued by further order of division bench dated 21st December, 2018 and said writ petition was disposed of with direction to respondent no. 1 to decide stay application in pending revision in six weeks and the revision expeditiously.

8. While disposing of writ petition under order dated 21st December, 2018, civil application filed in writ petition, seeking intervention in revision had been disposed of without any order.

9. Learned counsel for the petitioners submits that respondents authorities are hand in glove with eight directors, who purportedly have tendered resignations. He submits that as a matter of fact and law, resignations tendered by eight directors are not valid and would not amount to resignations in law. He further submits that section 77A of the Act is only available for exercise of power in the circumstances referred to therein otherwise not. He purports to refer to that having regard to the provisions, it cannot be said that circumstances for exercise of power are / were subsisting.

10. He further purports to refer to that even taking into account that the board consists of 17 directors and 8 directors have resigned, yet, when 9 directors continue to be on board and requisite quorum is available for

functioning of the bank as per section of 77A of the Act. However, power under said provision is exercised with an ulterior motive to ensure that the nine directors would not be able to function.

11. During the course of hearing learned counsel for petitioners has referred to a decision of division bench of this court in the case of *Ghatageppa Pareppa Mugeru and others vs. M. R. Naik and others* reported in 1983 Mah.L.J. 984. He submits that the situation obtaining in present matter is fully governed by observations in said decision as appearing in paragraph no. 6 and sub paragraphs thereunder. According to him, it is referred to that circumstances enumerated in section 73CB of the Act need not necessarily impel the authority concerned to exercise power of appointment of an administrator, in the sense, such power is a drastic power because the effect of exercise of this power would, in a given case, mean that an elected body would stand removed. It is submitted that said provision *ipso facto* is the same as section 77A(1).

12. He submitted that it was imperative, before order dated 23rd October, 2018 had been passed, to call for objections and suggestions, however, such exercise had not been carried out. He submits, in present matter, the case is not so grave so as to be covered by first proviso to section 77A(1) whereunder publication of notice can be dispensed with. He submits that provision of notice could not have been dispensed with in the facts and circumstances and it was necessary to have notice published. He submits that the authority was bound to put on record circumstances which, according to it, justified non-compliance or dispensation of requirements under the first proviso to section 77A(1). It is, thus, being submitted that impugned order *per se* is untenable and cannot be allowed to stand.

13. With respect to taking over charge as claimed by the respondents, judgment of this court in the case of *Babasaheb s/o Apparao Akat and others vs. State of Maharashtra and others* reported in 2010 (4) Mh.L.J. 360 had been cited by learned counsel on behalf of petitioners in support of his

submissions, particularly referring to observations under paragraph no. 9 in the same. Since the petitioners claim that charge is yet not handed over by them to the authorized officer appointed, he submits, situation in present matter has been similar to the one in cited case. Since it is being claimed by the other side that the charge is already taken over by appointed authorized officer, he submits, while there are rival claims, it would not be proper to give credence to the such claim by respondents as requirements for the same as referred to in cited case have not been followed.

14. He submits that as a fallout of order dated 23rd October, 2018, as a result of machination, under apprehension about financial position of the bank, huge amount has been withdrawn by the depositors, almost to the tune of Rs. 40,64,00,000/- and Reserve Bank of India has imposed penalty on the bank. According to learned counsel, action at the behest of resignee eight directors is colourable and malafide.

15. He submits that while protection during pendency of appeal and during revision had been subsisting under the

orders of this court and had been continued as directed revision itself should be heard at an early date. Stalling further functioning of the bank would not be proper by intercepting interim order. He submits that all these aspects have not received their due while order impugned in present petition, had been passed.

16. He urges that writ petition be allowed or alternatively application for interim relief before revisional authority be granted pending revision.

17. On the other hand, learned counsel for respective respondents contend that order dated 23rd October, 2018 passed by respondent no. 3 appointing authorized officer over the bank has already been implemented and the authorized officer has already taken over charge.

18. It is being contended that the situation as on 23rd October, 2018 had been fully covered by the provisions under section 77A (1) (b-1).

19. It is submitted that there is no substance in the contention of the petitioners that there are 9 directors available for carrying on functions of the bank. According

to respondents, 9th director had been purportedly co-opted even before period for co-option had been available. According to article 243 ZJ of the Constitution of India, hiatus for co-option had not been over. According to learned counsel for respondents, the litigation at the behest of said directors about co-option is pending before co-operative court. In the facts of the case, there is no substance in the contention that legality of co-option of a director ought not be considered.

20. It is submitted that in appeal, matter had been elaborately considered and exception taken to order dated 23th October, 2018 had been negated. It is an attempt by petitioners to continue whiling away time, with a view to enjoy powers and diminish image and deplete resources of the bank.

21. Learned counsel for respondents state that functioning by petitioners would not be said to be in accordance with the statutory provisions and, thus, order entailed and accordingly had been passed.

22. It is being submitted that observations of division bench in decision in the case of *Ghatageppa Pareppa (supra)* would not be able to govern the fact-situation in present case since said decision had been rendered on different factual background. It is further being contended that the charge has been taken by the administrator and he has already commenced functioning in bank. It is being submitted that petitioners had meddled with resources and financial affairs of the bank after 23rd October, 2018 and the same had been during the time while present petitioners had been enjoying interim order passed in appeal and then in writ petition no. 13818 of 2018.

23. Learned counsel for respondents refer to that it would be proper to say that the case of *Ghatageppa Pareppa (supra)* stands explained and would not be able to hold present situation as observed by learned single Judge of this court in the case of *Rahul s/o Appasaheb Patare & ors. vs. The Divisional Joint Registrar, Co-operative Societies & ors*, reported in 2017(4) ALL MR 778.

24. It is also being purportedly referred to by respondents that it would not be said that *Ghatagepa's* case had been followed having regard to paragraph no. 7 of said decision and also having regard to decision in the case of *Ashok Maharu vs. State of Maharashtra* reported in 2002(3) *Mh. L.J.* 358, particularly, paragraph no. 14 thereunder.

25. It is submitted that by resignations of eight directors, it has emerged on record that there would not be sufficient quorum for carrying on functions of bank and compliance of publication of notice under first proviso to section 77A of the Act was not necessary since situation and circumstances warranted immediate order which accordingly had been passed. In such case, allegation about non compliance of requirement under first proviso to said section is untenable and, as a matter of fact, it would emerge that the situation had been wholly covered by second proviso.

26. Perusal of order impugned in present writ petition, shows that revisional authority while exercising its

discretionary powers, had referred to the constitution of the board of directors and had found that one of the directors, namely, Amol Pandit Shinde resigned on 12th September, 2018 and eight directors had resigned on 22nd October, 2018. Thus, the requisite quorum for transacting business of the bank would not be available, and had observed that situation warrants order dated 23th October, 2018, under section 77A appointing respondent no. 4 as authorized officer to look after affairs of the bank. It is further referred to that the nomination for co-option of petitioner no. 9 – Nandkumar Shridhar Sonar, would not be in accordance with law since the election had taken place on 1st January, 2017 (according to parties, it is January, 2018) and thus is not proper according to the State Cooperative Election Authority's (SCEA) circular dated 26th October, 2018. In respect of the same, the parties would require opportunity. The revisional authority then refers to the provisions of section 77A (2) and 77A (1) clause (f) and considers invoking proviso thereunder appears to be proper and, thus, observed that the case does not give rise to situation warranting exercise of discretionary power.

27. It appears that there are rival claims in respect of availability of 9 directors and the situation whether can be said to be covered by section 77A(1) of the Act calling for invoking of second proviso to said section is a matter of challenge in the revision. Thus, it would not be proper to dwell upon the same and pre-empt decision in revisional proceedings pending consideration before the authority.

28. While it appears that the decision impugned has been passed taking into account, relevant considerations at *prima facie* stage and accordingly the order has been passed, after giving opportunity to parties to deal with their respective contentions in exercise of discretion. In the circumstances, it would not be said that such exercise of discretion is out of context requiring exercise of further discretionary power by this court.

29. Writ petition is not being entertained and is rejected.

30. It is being made clear that the revision proceeding be proceeded with expeditiously and decided within the period as referred to under order of this court referred to earlier.

31. Observations in this order are limited only for the purpose of decision in writ petition would not have any influence or efficacy or mandatory nature any further.

32. It is further expected that no policy decision or financial decision would be taken by the authorized officer except concerning routine / daily transactions. It, however, does not mean that authorized officer would not be able to carry on day to day affairs of the bank.

[SUNIL P. DESHMUKH, J.]

vdk