

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14127 OF 2018

Balasaheb Devram Wagh and ors .. Petitioners
Versus
The Karmaveer Kakasaheb Wagh
Sahakari Karkhana Ltd and ors .. Respondents

WITH
WRIT PETITION NO. 7685 OF 2019

Dhondiram Murlidhar Shinde and ors .. Petitioners
Versus
The Karmaveer Kakasaheb Wagh
Sahakari Karkhana Ltd and ors .. Respondents

WITH
CIVIL APPLICATION NO.1471 of 2019
IN
WRIT PETITION NO. 14127 OF 2018

Sudhakar Nivrutti Dharma & Anr .. Applicants

In the matter between

Balasaheb Devram Wagh and ors .. Petitioners
Versus
The Karmaveer Kakasaheb Wagh
Sahakari Karkhana Ltd and ors .. Respondents

CIVIL APPLICATION NO.1470 of 2019
IN
WRIT PETITION NO. 14127 OF 2018

Arun Dada Kushare & Anr .. Applicants

In the matter between

Balasaheb Devram Wagh and ors .. Petitioners
Versus
The Karmaveer Kakasaheb Wagh
Sahakari Karkhana Ltd and ors .. Respondents

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Mr. Pramod Narayan Joshi a/w Mr. V.R. Raje for the Petitioner
in Writ Petition No.14127/2018 and Applicant in APPW
No.2652/2018 and CAW No.950/2019.

Mr. Surel S. Shah a/w. Mr. Amey C. Sawant for the Petitioner
in W.P. No.7685/2019.

Ms. Bhavana Khichi for the Applicants in CAW Nos.1470/2019
and 1471/2019.

Mr. Ashish Shivajirao Gaikwad a/w Ms. Prerana A. Agavekar
for Respondent Nos.1 and 2.

Mr. D.R. Kale i/b Mr. Yogesh Jaybhaye for Respondent No.6.

Mr. A.A. Alaspurkar, A.G.P. for the State.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON : 11th July, 2019.

PRONOUNCED ON: 26th July, 2019.

ORAL JUDGMENT :- (Per Bharati Dangre J)

1 Since both the writ petitions before us seek an
identical relief of terminating the liquidation proceedings in

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respect of the respondent no.1 Sakhar Karkhana, we have heard both the writ petitions finally by consent of the parties.

Writ Petitions are heard along with two Civil Applications i.e. C.A. Nos. 1470/19 and 1471/19 which seek intervention in the petition. Civil Applications for intervention are allowed.

2 We issue Rule and make it returnable forthwith.

3 Respondent no.1 – The Karmaveer Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd, at Niphad, District Nasik, as a processing Society has incurred financial losses which resulted into appointment of a liquidator by order under Section 102(1) (a) of Maharashtra Co-operative Societies Act, 1960 (for short 'MCS Act') and since then, the respondent no.1 is being managed by the respondent no.2 liquidator. As per the permission issued by the State Government, the affairs of the respondent no.1 came to be handed over to the respondent nos.6 and 7 and the Karkhana was given on lease in favour of respondent no.7 till October 2012 and further in favour of

respondent no.6 till November 2018.

4 The petitioners in Writ Petition No.14127 of 2018 are the Members/Shareholders of the respondent no.1 whereas the petitioners in Writ Petition No.7685 of 2019 are another set of the Member/Shareholders of the respondent no.1. The objection of both the petitioners is common i.e. though the period specified in Section 105 of the Maharashtra Co-operative Societies Act has expired, the liquidation proceedings are continued and it is not permissible to do so in the light of the statutory provision. Apart from this point, the second writ petition pose a challenge to the order dated 19th October 2018 passed by the State Government (Co-operative Department) under Section 157 of the Maharashtra Co-operative Societies Act, thereby extending the period of liquidation from 14th November 2016 to 13th November 2023. The said order is issued in the name and order of the Governor of the State of Maharashtra. The petitioners raise a serious objection to the said order and the learned counsel Shri Pramod Joshi and Shri Surel Shah would argue that in terms of Section 109,

liquidation proceedings cannot continue beyond the period of 10 years i.e. from 2006 to 2016. They also question the exercise of power by the State Government under Section 157 of the Co-operative Societies Act. Learned counsel would place reliance on the judgment of the Apex Court in *Indian Labour Co-operative Society Limited & Anr Vs. Union of India and Ors*,¹ and a judgment of this Court in case of *Dyandeo Mohan Salunkhe Vs. State of Maharashtra*² which follows the judgment in case of *Indian Labour Co-operative Societies*. Both the learned counsel vehemently submit that the exercise of power under Section 157 is misplaced in the factual circumstances and they would submit that since the period of liquidation has come to an end, the respondent no.2 liquidator cannot continue with the administration, and the management of the petitioner no.1 Karkhana is to be returned back to the members who would take appropriate steps for running of the Karkhana. We have also heard learned counsel Shri Patil appearing for the liquidator and learned AGP appearing for the State Government.

1 999(6) SCC 141

2 2013(4) Mh.L.J 785

Civil Application Nos.1470/19 and 1471/19 have been filed by the labours and the members of the sugar factories who are opposing the petition and submit that the lease agreement entered between liquidator and respondent no.6 expired on 31st June 2018 and they would urge to uphold the decision taken by the State Government to extend the period of liquidation in light of a hope that the Karkhana would be revived in future.

5 We have perused the writ petitions, application for intervention and affidavit in reply tendered by the respondent no.2 as well as respondent nos.6 and 7 and the affidavit placed on record by respondent nos.3, 4 and 5. The petitioner Karkhana was placed under liquidation by an order dated 16th August 2006 initially by an interim order passed under provisions of Section 102(1)(a) of the Maharashtra Co-operative Societies Act by the Regional Joint Director of Sugar. (Ahmednagar). The interim order was finalized on 14th November 2006 and the liquidator came to be appointed for conducting the winding up proceedings contemplated under

Section 102 of the Co-operative Societies Act. All the affairs of the respondent no.1 – Sugar factory were taken in control by the respondent no.2 liquidator. In order to have a viable working of the respondent no.1 and to manage its assets and affairs, with the approval of the Director of Sugar, the assets of the respondent no.1 Sugar Factory were leased in favour of respondent no.6 by executing an agreement on 18th October 2006, and thereafter, it was leased in favour of respondent no.7 in a similar fashion. The entire process was carried out with the approval of the State Government and the liquidation continued.

6 Perusal of Section 109 of the MCS Act would reveal that it provides for termination of the liquidation proceeding and it contemplates that the winding up process of a society shall be closed, as far as practicable, within six years from the date on which liquidator takes over the charge, unless the period is extended by the Registrar. The proviso appended to the Section impose a restriction on the Registrar not to grant any extension for a period exceeding one year at a time and

four years in the aggregate and makes it imperative upon him that he shall immediately, after expiry of 10 years from the date, terminate the liquidation and pass an order to that effect. However, we also take note of the second proviso appended to Section 109 which reads thus :-

“Provided further that, if, due to termination of liquidation proceedings at the end of ten years, the Registrar comes to a conclusion that, the work of liquidation under Section 105 could not be completed by the liquidator due to the reasons beyond his control, he shall call upon the liquidator to submit the report. After getting the report, if the Registrar is satisfied that the realisation of assets, properties, sale of properties still remained to be realised, he shall direct the liquidator to complete the entire work and carry out the activities only for the purposes of winding up and submit his report within such period not exceeding one year reckoned from the date of receipt from the liquidator.”

The proviso thus contemplate a further extension by the Registrar if he is satisfied that the liquidation is not complete. Mr.Joshi has relied upon sub-section (3) of Section 109 and it is on the basis of this sub-section he submits that since the liquidation proceedings have been terminated, the Registrar shall direct the liquidator to convene a general meeting of the members of the Society for recording his final

report. However, the said contention of Mr.Joshi is highly misconceived since sub-section (3) has to be read along with sub-section (2) of Section 109 which set out a mechanism when the Registrar shall terminate the liquidation proceedings on receipt of the final report, stating that the liquidation proceedings have been closed and claims of the society have been disposed of and then, the amount if any, standing to the credit of the society in liquidation and after paying off its liability, he would suggest how the surplus should be utilized and then, Section 110 of the MCS Act provides for disposal of the surplus assets. In any contingency, the said section do not contemplate termination of the liquidation proceedings and handing over the society to the members. In the present case, the liquidator had taken all the steps to keep the machinery of the respondent no.1 running by leasing out the business in favour of respondent nos.6 and 7.

The liquidator in his affidavit filed on 21st January 2019 in response to the Civil Application No.2652 of 2018 in the present writ petition had stated that at the time of liquidation, the total accumulated losses were Rs.4501.02

lakhs but it was reduced to 2095.63 lakhs as on 31st March 2018. The liquidator has also paid the loan amount of Rs. 866 lakhs to the Maharashtra State Co-operative Bank Mumbai and the amount payable to Bank of Baroda was settled for Rs.125 lakhs and paid to the bank. It also stated that an amount payable to Janlaxmi Bank was also settled. The liquidator has stated that in order to relieve the respondent no.1 of its financial distress, a request was made for extension of the liquidation so as to enable the liquidator to discharge the financial liability of the respondent no.1 and to make it revivable. The State Government considered the said request and considering the fact that 10 years has come to an end on 13th November 2016, exercised its power under Section 157 to exempt the respondent no.1 Society from applicability of the provisions of the MCS Act and inspite of lapse of period of 10 years contemplated under Section 109, the State Government by exempting the Karkhana from the provisions of Section 109 has extended the period of liquidation upto 31st November 2023 by passing an order on 19th October 2018. It is this order which is challenged in the second writ petition on the ground

that the State Government could not have exercised its powers under Section 157.

7 With the assistance of the learned counsel for the parties, we have perused Section 157 which is the power of the State Government to exempt societies from the provisions of the Act and which enables the State Government to exempt any society or class of societies from any of the provisions of the MCS Act or the rules made thereunder or it may direct that the provisions shall apply to such society or class of societies with such modification not affecting the substance thereof, as may be specified in the order. The proviso imposes a restriction that the State Government shall not exempt any society or class of societies from certain provisions and this do not include the provisions contained in Section 109 of the Act. By exercising this power, the State Government has exempted the respondent no.1 Society from applicability of the embargo of time schedule set out in Section 109 of the MCS Act and has deemed it fit to extend the period of liquidation from 14th November 2016 to 13th November 2023.

8 We do not find any legal impediment in the State Government exercising the said power of exemption. Reliance is placed by the learned counsel for the petitioner on two judgments to which we have referred above, to canvass their submission that the power could not be exercised by the State Government for extension of the term of the liquidation.

 The judgment by the Hon'ble Apex Court in case of *Indian Labour Co-operative Society Ltd* (supra) revolves around Section 99 of the Multi-State Co-operative Societies Act 1984 which empowered the Central Government to exempt a multi-state Co-operative Society from any of the provisions of the Act. In the said judgment, the Apex Court has held that the said section cannot be used to protect the individual persons from the rigors of Sections 36 and 37 which prohibit the holding of the office of the President or Vice-president or Vice-chairman of more than one multi-State cooperative society simultaneously and holding of such office for more than two consecutive terms respectively. The Apex Court clarified that the rigors of the provisions contained in Sections 36 and 37 is

qua an individual and not *qua* the Society, whereas Section 99(2) enables the Government to give relief to the Society from the operation of any provisions of the Act and what was attempted to be done was a relief being conferred on an individual i.e. respondent no.4 from operation of Section 36 and 37 and this was construed as not the intention nor the letter of law. This judgment was followed by a Division Bench of this Court in ***Dyandeo Mohan Salunkhe Vs. State of Maharashtra*** in reference to Section 73H and Section 73(i)(b) of the MCS Act, as against the power of exemption conferred under Section 157 of the MCS Act. The Division Bench of this Court, was dealing with the petition filed by the Members of the Co-operative Society who had approached the Court seeking a writ of mandamus to the respondents to make appointment of administrator to take over the functions of the management of respondent no.5 Society. The elections of the Society were held and the Managing Committee assumed the charge but the term of the Managing Committee expired and the Managing Committee did not take any steps for holding of the elections before the expiry of the term and made request to

the State Government for extension of their term. The proposal in that regard was submitted on behalf of the Managing Committee in pursuance to which notification came to be issued granting exemption under Section 73(1)(b) of the Act and directing extension of term of the Managing Committee for six months. After expiry of the extended period of six months, another order came to be passed extending the term for further period of six months and that order also came to an end. After this period was over, the State Government in exercise of powers conferred under Section 157 of the Maharashtra Co-operative Societies Act, continued to grant further extension until further orders.

It is in this factual background the petitioners contended that the power exercisable under Section 157 of the Act cannot be invoked for extending the benefits to the members of the Managing Committee of a society. Considering this factual aspect and after referring to the decision of the Apex Court in case of *Indian Labour Co-operative Society (supra)*, the Division Bench held that the powers under Section

157 of the Act can be exercised by the State Government for granting exemption to the society and not to the individuals or the Board of Directors of the societies. The ratio which can be deduced from the said judgment is that the power under Section 157 is not permitted to be exercised qua an individual but it can only be exercised exempting any society or class of societies from any of the provisions of the Maharashtra Co-operative Societies Act or rules made thereunder. In the present case, the power has been exercised by the State Government qua the petitioner no.1 Society, extending its period of liquidation and it has not granted extension to the liquidator, but by extending the period of liquidation specified under Section 109, has exempted the respondent no.1 Society from the rigors of the period within which the liquidation should terminate. Resultantly, though the period of liquidation of the respondent no.1 has come to an end on 14th November 2016, it has been extended till 23rd November 2023. In passing the said order, the State Government has also specifically recorded that the period of 10 years has come to an end on 13th November 2016, but if the respondent no.1 Karkhana is given

on lease for a further period of five years, that would help the respondent no.1 coming out of liquidation and it would lead to a possibility of revival and therefore, the State Government was satisfied and exercised the power under Section 157 by exempting the respondent no.1 Society from the fetters of the time limit contained in Section 109 of the Societies Act for the liquidation proceedings to come to an end. It thus appears that the State Government has bonafidely exercised a power since the liquidator has put before it the chances of its revival and that is how the State has passed the order dated 19th October 2018 justifying the exercise of its power under Section 157.

In light of the reasoned order justifying the exercise of power under Section 157 by the State Government, we do not deem it appropriate to interfere in the same and we are inclined to uphold the said orders and dismiss the Writ Petitions facing a challenge to the said order. As far as Civil Application No. 2652 of 2018 is concerned, where the petitioner has prayed for grant of stay to the process of e-tender issued by the respondent no.5 is concerned, in light of the

extension granted by the respondent no.2 by the order dated 19th October 2018, the same do not survive and is disposed off as such.

For the reasons recorded above, Writ Petitions are dismissed.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)