



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13806 OF 2023

1. Shri Ganesh Sahakari Sakhar
Karkhana Ltd., Ganesh Nagar,
Tq. Rahata, Dist. Ahmednagar
through its Incharge Managing Director
Nitin Ramchandra Bhosale
 2. Babasaheb Bhaskar Wagh
Age : 56 years, Occu: Agri.,
R/o at Chitali, Post Chitali
Tq. Rahata, Dist. Ahmednagar
 3. Dilip Dada Kshirsagar
Age : 54 years, Occu: Agri.,
R/o at Ekrukhe, Post Ekrukhe,
Tq. Rahata, Dist. Ahmednagar
- ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Principal Secretary
Department of Cooperation
Mantralaya, Mumbai – 32
 2. The Commissioner of Sugar,
Maharashtra Sate, Pune
 3. Regional Joint Director of Sugar,
Ahmednagar
 4. Padmashree Dr. Vitthalrao Vikhe Patil
Sahakari Sakhar Karkhana Ltd.,
at Pravara Nagar, Tq. Rahata,
Dist. Ahmednagar
through its Managing Director
 5. Shri Radha Krishna E. Vikhe Patil
Age : 65 years, Occ: Cabinet Minister
and the Hon'ble Minister for Revenue
and Dairy Development, Mantralaya,
Mumbai – 32
 6. The Ahmednagar District Centrally
Co-operative Bank Ltd.,
Head Office, Station Road,
Ahmednagar
through its Chief Executive Officer
- ... **RESPONDENTS**

...
 Advocate for petitioners : Mr. R.N. Dhorde, Senior advocate a/w. Mr. R.L. Kute i/b. Mr. Sanjay S. Dudhane,
 Addl. G.P. for respondent Nos.1 to 3 : Mr. S.K. Tambe
 Advocate for respondent No.4 : Mr. V.D. Hon, Senior advocate i/b. Mr. A.V. Hon
 Advocate for respondent No.6 : Mr. D.R. Kale
 ...

**CORAM : MANGESH S. PATIL &
 NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 12 DECEMBER 2023
 PRONOUNCED ON: 19 DECEMBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned Additional Government Pleader Mr. S.K. Tambe waives service on behalf of respondent Nos.1 to 3. Learned Senior advocate Mr. Hon waives notice on behalf of the respondent No.4 and learned advocate Mr. D.R. Kale also waives service of notice for the respondent No.6. At the joint request of the parties the matter is heard finally at the stage of admission.

2. The long and short of the dispute is to the effect that the partnership agreement entered into between the petitioner which is a Cooperative Sugar Factory and the respondent No.4 which is also another Cooperative Sugar Factory, under the enabling provisions of Section 20 of the Maharashtra Co-operative Societies Act, 1960 (the Act) came to an end in the crushing season of 2022. The requisite resolution was passed by the General Body of the petitioner on 23.10.2012. The partnership deed was executed on 26.05.2014 and it was agreed that it would last up

to 30.06.2022.

3. On completion of the period of agreement the respondent No.4 handed over the Management of the petitioner - factory to its board of directors. They took charge of the factory and completed the crushing season 2022-2023 by obtaining the requisite licence from the respondent No.2 who is the Commissioner of Sugar, on 17.10.2022.

4. The board of directors of the petitioner who were elected in the year 2016 and whose term was to end, was granted extension due to the Covid-pandemic and it continued to officiate and manage the petitioner in the crushing season of 2022-2023.

5. The process for electing a new board of directors was started, wherein, programme for the preparation of the provisional voters list was published on 05.04.2023. The final list of voters was published on 30.05.2023 and the elections were successfully completed on 19.06.2023. Out of the 19 seats, only one seat was elected from the panel led by the respondent No.5 - Hon'ble Minister, who has been made respondent by name but to whom no notice before admission was issued. The rest of the 18 directors from the rival political group were elected and now constitute board of directors. The chairman and vice-chairman were also elected on 28.06.2023 and the new board of directors has actually resumed office.

6. The petition has been filed through the Managing Director under the directions of the board of directors. It is now being alleged

that by preparing a bogus and illegal resolution of the then board of directors stated to have been passed on 24.04.2023, it was being claimed that there would be an extension to the partnership agreement for a period of five years from 2024 to 2029. In fact, the term of the earlier agreement was already over, one crushing season had lapsed interregnum and there was no attempt even by the respondent No.4 - Factory to seek extension. It is alleged that newly elected board of directors received the letters from the respondent no.3 – the Regional Joint Director of Sugar (RJDS) calling upon them to submit a draft proposal for entering into the new partnership agreement. The board of directors were taken aback and made representations to the respondent No.3. It was thereafter revealed that on the basis of the resolution of the then board of directors dated 24.04.2023 a proposal for seeking necessary approval under Section 20 was moved on 26.04.2023 by passing resolution on 24.04.2023. The Ministerial Committee convened meeting on the same day through video conferencing and sanction was granted under Section 20 for the proposed partnership between the petitioner and the respondent No.4 for a period of 5 years. The petitioner was never served with any notice.

7. It is then alleged that the newly elected board of directors after taking over charge on 28.06.2023 applied for crushing licence and also applied for loan to the respondent No.6 which is a District Central Cooperative Bank for pre-seasonal loan. The respondent No.6 granted

the pre-seasonal loan. However, the respondent No.3 – RJDS, by communication dated 14.08.2023 informed the respondent No.6 – Bank with a deliberate and *mala fide* intention not to extend the loan to the petitioner. It is being alleged that the Hon'ble Minister has been putting pressure and influencing the Government Offices in creating obstacles. Hence the petition with following main prayer :

“B. Quash and set aside the impugned sanction for extension dated 30.05.2023 issued by Ministerial Committee of which the respondent No.2 is the Secretary and letter dated 14.08.2023 issued by the respondent No.3 being illegal, arbitrary and violative of Article 14, 19(1)(c) and 19(1)(g) of the Constitution of India holding the same to be illegal, arbitrary and for that purpose issue necessary order.”

8. Learned Senior advocate Mr. Dhorde for the petitioners would narrate the aforementioned history by taking us through the papers and would submit that the sanction granted for the proposed partnership agreement between the petitioner and respondent No.4 suffers from many illegalities. When Section 20 contemplates resolution to be passed by three-fourths majority of the members present at the voting of the general meeting of each such society, without there being any such resolution having ever been passed by the General Body of the petitioner, the board of directors acting on behalf of the respondent No.4 during the tenure of the previous partnership agreement passed on lopsided resolution and on their own communicated with the respondent Nos.1 to 3 for grant of prior approval. He submits that even if all other aspects are ignored, this fact in itself goes to the root of the approval

granted under Section 20 and is sufficient to allow the petition. Mr. Dhorde would submit that the decision to grant prior approval is without following the principles of natural justice, the decision was taken in haste. There was no notice to the board of directors and on the same day the approval was granted in lightning speed. All the respondents have acted with a sinister design to take over the Management of the petitioner - factory circuitously, the Hon'ble Minister's panel having failed to come in power.

9. Mr. Dhorde would also point out that though it is being conveniently sought to be demonstrated that the respondent No.6 - Bank had made a query with the respondent No.3 regarding feasibility of crushing loan to the petitioner, the response given by the respondent No.6 - Bank would clearly indicate that the first of this correspondence was initiated by the respondent No.3. If he is a Government Officer acting as a Regional Joint Director of Sugar, there was no reason and occasion for him to have triggered anything and one can easily read between the lines as to at whose behest he was acting. He would, therefore, submit that obstruction is being created to the present Board of Directors in running the petitioner - sugar factory.

10. Mr. Dhorde would submit that in fact the State Cooperative Election Authority had declared the elections of the petitioner in March 2023 for electing the board of directors for the period of 2023-2028. The respondent No.3 himself was the officer in charge of the election as a

District Election Officer. He himself had supervised preparation of the voters list and the actual program was declared for finalization of the voters list on 03.04.2023 and the final voter list was published on 02.05.2023. He would submit that during this very period, the panel led by the Hon'ble Minister which was interested in getting elected could initiate the proposal through the Board of Directors which was in office merely by way of an extension. It had initiated such proposal and obviously the approval was granted in a lightning speed before the actual election took place and the new board of directors came on board. He would further submit that the entire process leading to grant of prior approval is illegal arbitrary and violative of Articles 14, 19 (1)(c) and 19(1)(g) of the Constitution of India.

11. The learned Senior advocate Mr. Hon and the learned Addl. G.P. Mr. Tambe would submit that it may be that the new Board of Directors which has come into power in the recent elections may not be interested in going ahead with the proposal to enter into a fresh partnership agreement. However, that would not make the entire process fraudulent or prompted with *mala fide*. The then board of directors in the office had taken a decision, passed a resolution and a proposal was forwarded which was merely processed by respondent Nos.1 to 3. The members of the present board of directors were aware about the happenings. Nothing was happening behind the curtains. It is only because of change of mind and the political rivalry, the petition has been

filed. There is no actionable wrong. It is only after a proposal was submitted that it was duly processed and the approval was granted. If the present board of directors have taken initiative and have again put up the proposal before the general body which has obliged it by passing the resolution not to enter into any partnership with the respondent No.4, that would not make the decision to grant prior approval faulty or illegal.

12. Learned Senior advocate Mr. Hon and learned Addl.G.P would take us through the earlier partnership agreement from the record and would advert our attention to clause No.4, therein, regarding nature and duration of the agreement. They would submit that the petitioner was running in losses. Since the respondent No.4 is being run successfully for decades, the petitioner itself had taken initiative and the partnership agreement was entered into, to overcome the losses. It is in that context that the duration of the contract was in the manner as provided in clause 4 enabled extension of the tenure beyond the agreed duration. A conscious decision was taken by the board of directors in the office who voluntarily resolved to extend the tenure. Necessary proposal was forwarded and accordingly prior approval has been granted. There are no *mala fides* or any design to control the petitioner against the wish of its general body.

13. Mr. Hon would further submit that the respondent No.4 is alive about the limitations on its rights. It was merely taking initiative since the resolution was passed by the board of directors. Considering

the dispute, already respondent No.4 has resorted to arbitration as was agreed in clause No.26 of the Agreement. Mr. Hon would then submit that even if the present Board of Directors of the petitioners are no longer interested in entering into a partnership agreement, they may do so but that would not make the happening illegal *per se*. There was no reason for the respondent No.4 to prompt the respondent No.3 – RJDS. The petition is nothing but an attempt to seek a stamp of approval from this Court to the decision of the present general body of the petitioner and the views of the newly elected board of directors.

14. They would submit that there is no illegality in the communications being assailed. It is also being pointed out that one of the directors of the present board of directors of the petitioner was also the party to the decision taken by the board of directors which was earlier in the office which had passed the resolution for extension.

15. Lastly, Mr. Hon and Mr. Tambe would submit that though several allegations are being levelled against the erstwhile board of directors and even are being cast against the respondent Nos.1 to 4, the present board of directors are not seeking cancellation of the resolution. The prayer clause 'B' (supra) is articulated in an ingenious manner.

16. We have considered the rival submissions and perused the papers. Section 20 of the Act reads as under :

“Section 20 - Partnership of Societies

(1) Any two or more societies may, with the prior approval of the Registrar, by resolution passed by three-fourths majority of

the members present and voting at a general meeting of each such society, enter into partnership for carrying out any specific business or business, provided that each member has had clear ten days, written notice of the resolution and the date of the meeting:

***Provided** that, in case of a society which has not taken any financial assistance from the Government, in the form of share capital, loan or guarantee, the prior approval of the Registrar for entering into such partnership shall not be required.*

(2) Nothing in the Indian Partnership Act, 1932, shall apply to such partnership.”

A plain reading of the provision clearly demonstrates that the pre-requisite for any such partnership between or amongst the societies is that there should be resolution to that effect passed by three-fourths majority of the members present and voting at the general meeting of each such society. Once this is borne in mind, when admittedly, the prior approval granted by the respondent No.1 for extension on 30.05.2023 was granted ignoring such an important pre-requisite, in our considered view that in itself is sufficient to struck down the entire process leading to the grant of sanction or prior approval in a meeting dated 30.05.2023 of the Ministerial Committee.

17. The attempt was made by Mr. Hon and Mr. Tambe to refer to the clause from the previous partnership agreement contained in clause No.4 regarding nature and duration. They would submit that when the previous agreement itself contemplated extension of the tenure of the agreement, when that agreement itself had preceded by the prior approval granted pursuant to the requisite resolution of the general body,

it should be assumed that the power was delegated to the then board of directors to include such a stipulation regarding duration. If the board of directors which were in the office had decided to go for extension, it was not necessary that there should have been again a decision by the general body.

18. In this regard it is important to note that admittedly, irrespective of whatever had happened or preceded before the impugned communication dated 30.05.2023, admittedly, both the sides that is the petitioner and the respondent No.4 are now before the respondent No.2 who is an arbitrator pursuant to the stipulation contained in clause No.26 of the partnership agreement. The respondent No.4 has filed that petition *inter alia* alleging about breach of the contract and particularly the stipulation regarding extension of the period of the earlier partnership agreement and has claimed damages. We are precisely pointing out this circumstance as the issue as to if the petitioner has illegally and or prematurely terminated the partnership agreement by refusing to extend the period as per this very clause is a matter which is directly and substantially in issue before the respondent No.2 – Arbitrator. In view of such peculiar circumstance, we consciously feel that it would not be appropriate for this Court to embark upon and record comments in respect of interpretation of clause No.4, while exercising the powers under Article 226 of the Constitution of India. It would be a dispute which would reach finality in that process of

arbitration.

19. However, the fact remains that even the resolution passed by the Ministerial Committee on 30.05.2023 in paragraph No.2 expressly mentioned that the tenure of the earlier partnership agreement had come to an end in June 2022. Admittedly, there was one intervening crushing season thereafter which was managed by the board of directors of the petitioner independently, of the year 2022-2023. The respondent No.4 has not controverted this aspect in the reply. If that is so, we have our own reservation as to how the approval granted by the respondent No.1 pursuant to the decision of the Ministerial Committee of which respondent No.2 was Secretary could have treated this as an extension.

20. Independently, admittedly, no new partnership agreement has been entered into between the petitioner and the respondent No.4. Even if it is assumed that some process was legitimately initiated leading to the disputed prior approval granted by the respondent No.1, in the absence of any actual agreement as contemplated under Section 20, the matter has clearly come to a stand still. Section 20 does not provide for a contingency where grant of such prior approval mandates either or any of the societies who had earlier decided to go for a partnership agreement but have decided to not to go ahead, can be compelled to do so. Interestingly, the impugned resolution of the Ministerial Committee also contemplates and grants prior approval for the period of five years from 2023-2024 which excludes the intervening period of one year 2022-2023.

If this is so, when even the respondent No.4 now alleges about breach of the earlier agreement by the petitioner, there could hardly be any such extension and it would *prima facie* constitute a fresh tenure of five years, granting approval as contemplated under Section 20. When, admittedly, the decision for grant of prior approval was initiated by the then board of directors and there was no decision by the general body as contemplated under that provision, in our considered view, prior approval granted on 30.05.2023 is clearly illegal.

21. The petitioner has been alleging about the decision resulting in impugned approval and extension was without following the principle of natural justice. In our considered view, merely because the decision was taken in a day would not make it as a decision suffering from the vice. The board of directors which were in the office are not coming with these allegations. It is the successor body which got elected and has now filed a petition has come into power only on 28.06.2023 is not coming with the grievance. We are, therefore, not impressed with the stand of the petitioner about the impugned decision having been taken without following the principle of natural justice.

22. Once having seen that the impugned decision dated 30.05.2023 was a prior approval contemplated under Section 20 for a fresh tenure of five years from 2023 – 2027 and was not merely an extension, and having seen that there was no requisite resolution at the general body by three-fourths majority, the impugned sanction would not

stand the scrutiny of law and is clearly illegal.

23. As far as the impugned communication dated 14.08.2023 is concerned (Exhibit-N), *prima facie* the respondent No.3 – RJDS had informed the respondent No.6 – Bank about the history leading to grant of the impugned sanction on 30.05.2023 and expressing a view that in view of such dispute the present board of directors of the petitioner would not be legally capable of running the sugar factory on its own and it would not be legal to grant it short term loan for the crushing season 2023-2024. The respondent No.4 in his affidavit-in-reply has tried to justify this communication in following words :

“10. I say that the State Government taking into consideration the resolution passed by the petitioners Karkhana as well as the respondent No.4 Karkhana so also the Government policy decision for maintaining the co-operative structure, had taken decision on 31.5.2023 to extend the period of agreement dated 26.5.2014 for a period of another five years. I say that there is no illegality or irregularity committed by the State Government in granting extension to the agreement. I therefore, deny all contentions which are raised in this petition and put the petitioners to the strict proof thereof.

11. I say that in the meanwhile on 21.6.2023 the newly elected managing committee members of the petitioner Karkhana had addressed a communication to the Commissioner of Sugar, whereby they have opposed the extension and that they wanted to run the sugar factory. The petitioners thereafter with a view to create encumbrances on the properties of the petitioner Karkhana had applied for loan of Rs.40.00 Crores to respondent No.6 Bank. Respondent No.6 bank after receipt of the said proposal have sought for the status of the petitioner Karkhana from Regional Joint Director of Sugar, respondent No.3 herein, regarding the agreement and its extension from the State Government. In response to the same, respondent No.3 on 14.8.2023 has informed the bank that the State Government has approved the agreement for extension of running the petitioner Karkhana by respondent

No.4 for further period of five years i.e. from 2023-2027. It was therefore, not be legal and proper to grant loan independently to the petitioner Karkhana. I say that respondent No.3 has only acted by making the said communication dated 14.8.2023 by way of response to the information sought by respondent No.6 bank. I say that the challenge raised by the petitioner to the communication dated 14.8.2023 is misconceived as the same is not in the nature of order and/or direction but is only internal communication between respondent No.6 bank and respondent No.3 Regional Joint Director Sugar who had pointed out the orders of the State Government granting extension. I say that the petition to that extent is not maintainable.”

24. An attempt has been made by the respondent No.4 in his affidavit-in-reply and even Mr. Tambe the learned Addl. G.P. has also substantiated it by pointing out that this impugned communication dated 07.08.2023 was merely a reply to the communication received from the respondent No.6 - Bank mentioned in the reference column of this impugned communication. Even a copy of that reference dated 07.08.2023 has been placed on record by the respondent No.4 (Exhibit R-4). At the first blush, an attractive attempt has been made to dodge the allegations in the manner aforesaid. However, as has been pointed out by Mr. Dhorde, this communication dated 07.08.2023 whereby, the respondent No.6 – Bank purportedly sought opinion from the respondent No.3 as to if it would be appropriate for the Bank to extend loan to the petitioner factory for the crushing season 2023-2024, conspicuously, even this communication dated 07.08.2023 refers to a letter received by the respondent No.6 – Bank from the respondent No.4 dated 20.07.2023

expressly referred to in this communication. Mr. Dhorde would submit that the respondent No.4, is a Government Servant but has been acting at the behest of someone else. There was no reason or occasion for him to initiate such correspondence by his letter dated 20.07.2023. He would submit that the respondent No.4 is conspicuously silent about this original correspondence dated 20.07.2023.

25. Certainly, this exchange of correspondence between the respondent No.4 – RJDS and the respondent No.6 – Bank seems to have been triggered initially by the former vide his communication dated 20.07.2023. In spite of serious allegations being levelled against him, the affidavit-in-reply filed by him also makes a lame attempt to demonstrate that the impugned communication was merely a response to the query raised by the respondent No.6 – Bank. If this was so straight, there was no reason for him to hold back the communication dated 20.07.2023. More importantly his conspicuous silence in the affidavit-in-reply about this original correspondence dated 20.07.2023 speaks in volume. He having failed to come clean, the impugned communication narrating the history of the dispute and expressly informing the respondent No.6 – Bank that it would not be legal and proper to extend the short term loan for the current crushing season to the petitioner clearly shows that the respondent No.4 without having any authority has been making attempt to obstruct the petitioner's functioning.

26. Again a careful reading of the impugned communication

dated 14.08.2023 would reveal that the respondent No.4 has not merely put up the facts before the respondent No.6 – Bank but has gone ahead and has also given an opinion *ex facie* with a view to prevent the respondent No.6 – Bank from extending any loan to the petitioner. In view of such a state of affairs, this letter dated 14.08.2023 will have to be struck down.

27. The petition is allowed in terms of prayer clause ‘B’ (supra).

28. Rule is made absolute accordingly.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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