2024:BHC-AUG:5044-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8939 OF 2022

1. Shri. Rajesh Sudhakar Wattamwar,
Age: 49 years, Occu.: Business,
R/o. "Matoshri", Shivajinagar,
Jintur, Dist. Parbhani.

2. Shri. Sanjay Changoji Kavle,
Age: 40 years, Occu.: Business,
R/o. Hutatma Smarak Colony,
Jintur, Dist. Parbhani.

3. Shri. Shyam Ramrao Katare,
Age: 56 years, Occu.: Business,
R/o. Near Siddheshwar Mandir,
Jintur, Dist. Parbhani.

4. Shri. Ganesh Ramrao Medewar,
Age: 75 years, Occu.: Business,
R/o. Vaibhavnagar, Near Vishnu
Hotel, Parbhani.

5. Shri. Vishnu Atmaram Shahane,
Age: 45years, Occu.: Business,
R/o. Harsh Jewelers, Gandhi Park,
Parbhani.

(All are the members of Respondent
No.6 Co-operative Society) .. PETITIONERS

VERSUS

1. The Secretary,
Co-operation, Marketing and
Textiles Department Mantralaya
(Annexe), Madam Cama Marg,
Hutatma Rajguru Chowk,
Mumbai 400032

2. The Commissioner for Co-operation
and The Registrar, Co-operative
Societies, Maharashtra State,

New Central Building,
Ambedkar Wellesly Rd.,
Pune 411001

3. The State Co-operative Election Authority, Maharashtra State, Old Central Building, B. J. Road, Pune 411001.

4. The District Co-operative Election Officer, O/o. The District Deputy Registrar, Co-operative Societies, Parbhani.

5. The Returning Officer, Sundarlal Sawji Urban Co-operative Bank Ltd., Jintur, Jintur, District Parbhani.

6. The Chief Executive Officer/Managing Director, Sundarlal Sawji Urban Co-operative Bank Ltd., Jintur, Jintur, Dist. Parbhani.

7. The Governor, Reserve Bank of India, Department of Regulation, Central Office, Central Office Building, 12/13 Floor, Shahid Bhagat Singh Marg, Fort, Mumbai 400001

8. Kalamkar Mukundkumar Sundarlal

9. Khandagale Raosaheb Rangnathrao

10. Jinturkar Dilip Yashwantrao

11. Sharma Subhash Mohanlal

12. Shep Dhondiram Manikrao

13. Shaikh Hamid Shaikh Hanif

14. Soni Shriram Chhaganlal

15. Goyal Ghanshyamdas Chunnilalji

16. Jain Prakashchand Bodhulal

17. Lalpotu Subhash Madhav

18. Kade Chandrakant Narayan

(Respondent Nos.8 to 18 :
Age: All Major, Occu. : Business,
All are Directors of R-6 Bank) **.. RESPONDENTS**

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Mr. Sudhir D. Patil, Advocate for the petitioners.
Mr. N. S. Tekale, AGP for respondent Nos.1 and 2 – State.
Mr. D. R. Talankar, Advocate a/w Mr. N. K. Tungar, Advocate for respondent Nos.6, 8 to 18.

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CORAM : SMT. VIBHA KANKANWADI AND S. G. CHAPALGAONKAR, JJ.

RESERVED ON : 26th FEBRUARY, 2024.
PRONOUNCED ON : 11th MARCH, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. Present petition has been filed by the petitioners for following reliefs :-

> "B) This Hon'ble Court may kindly be pleased to issue Writ of Mandamus or any other Writ under Article 226 of the Constitution of India thereby directing the Respondent Nos.1 to 5 to properly interpret and implement the provisions of Section 10 2A of the Banking Regulation Act as it will have to be deemed to be part of the Bye-laws of the Respondent No.6 Co-operative Society and needs such interpretation and consequent implementation;

C) Directions in the nature of Writ of Quo Warranto may kindly be issued to the Respondent Nos.8 to 18 and it may kindly be declared that the Respondents who have been directors for a continued 8 years are automatically disqualified to be director in view of the provisions of Section 19 (2A) of the Banking Regulation Act as per which no director shall hold the office continuously for a period exceeding eight years;

D) That, By Law No.39(i)(a) of Respondent no.6 Society (annexed as Exhibit-"B" may kindly be declared illegal, unreasonable and unconstitutional, and against the right to represent i.e. right of proportionate representation and the said provision of the Bye-laws may kindly be quashed and set aside from the date of its inception."

3. The petitioners claim that they are the members of respondent No.6 – Co-operative Society. Respondent No.6 has been granted licence by Reserve Bank of India to carry banking business. Respondent No.6 has 21 branches in the State. It is said that the area of operation of the society/bank is the entire State of Maharashtra having 20420 members as on 01.04.2022. According to the petitioners, there are Model of Bye Laws of the Co-operative Societies, which they want to rely, especially Bye-law No.39, which has been reproduced in the petition. According to the petitioners, respondent No.2 by its letter No.21/1094 dated 31.05.2021 granted approval to the amendment of the Bye Laws of respondent No.6 – Co-operative Society. The petitioner contend that the said bye-laws are not as per

the model bye-laws. The bye-laws now provide that the Executive Management of the Bank shall vest in the hands of Board of Directors consisting of nineteen Directors including General Category Directors, Reserve Category Directors, Expert Directors and Functional Directors. Nine Directors from General Category Directors should be from the distance within 25 kilometers from head office and three Directors would be from the above 25 Kilometers from head office. The classification that has been made, i.e. two Directors from women, one Director from SC/ST category, one Director from OBC category, one Director from VJNT/SBC/DTNT category, is unreasonable, illogical and illegal. The petitioners claim that they are unaware whether respondent No.6 and respondent No.2 have followed the procedure prescribed in the Act and Rules or not. It is then stated that the kilometer rule is also illegal and unreasonable. It is then stated that respondent No.5 had given an advertisement in newspaper on 06.06.2022 intimating the election programme of respondent No.6 as per Section 19 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. The schedule has been given. Petitioner No.1 had taken objection. Representations were also sent to the concerned ministry. According to the petitioners, the candidates, who were directors for more than eight years, were not eligible to contest the election again and, therefore, the petitioners have approached by way of this writ petition for the above-said reliefs.

4. Affidavit-in-reply has been filed on behalf of respondent No.6 by Nilesh Nirmalkumar Kalamkar working as Chief Executive Officer of respondent No.6/Bank. According to him the Banking Regulation Act, 1949 is applicable to the co-operative banks only regarding banking operations and not for the management of the co-operative banks. Respondent No.6 had amended the bye-laws and then they have been approved by respondent No.2. Those bye-laws were never challenged by the petitioners, which were in existence prior to the amendment. The amendments were passed unanimously by the members present in the general body meeting on 28.04.2013. The registering authority approved those bye-laws on 12.03.2014. The said approval, therefore, was not challenged till the date of the present petition by the petitioners. Now, when the elections have been declared, they have been challenged as back door entry to take objection in respect of candidature of a particular person. The rules of the bye-laws which are challenged are not illogical or illegal. In fact, similar terms are seen in almost every co-operative society/bank, as the members who have association with the bank from the beginning attached to bank and residing within the periphery of the banks, are always allotted more seats.

5. Heard learned Advocate Mr. Sudhir D. Patil for the petitioners, learned AGP Mr. N. S. Tekale for respondent Nos.1 and 2 – State and

learned Advocate Mr. D. R. Talankar along with Advocate Mr. N. K. Tungar for respondent Nos.6, 8 to 18.

6. At the outset, we would like to say that though the amendment to the bye-laws appears to have been made in the year 2021 i.e. approved by respondent No.2 by letter No.21/1094 on 31.05.2021, we are unable to get from the copy that has been produced, as to which amendment was carried out by the said approved letter. The earlier by-laws i.e. prior to 31.05.2021 are not produced on record, especially on the background that in the affidavit-in-reply it has been specifically stated that the amendments were passed unanimously by the members present in the general body meeting on 28.04.2013 and were approved by the registering authority on 12.03.2014. Respondent No.6 has, therefore, specifically contended that the rules of the bye-laws, which the petitioners want to challenge, were approved in 2013 and 2014, then challenge to the same by filing petition on 04.08.2022, therefore, suffers from delay and laches. So many inactions had taken place in between 2013 to 2021.

7. Another fact to be noted is that when the bye-laws were amended in the general body meeting where in fact the petitioners had the opportunity to object, in absence of any evidence that such objection was raised by the petitioners in the general body meeting; the petitioners cannot be allowed to agitate it by filing writ petition.

Writ of mandamus or any other kind of writ under Article 226 of the Constitution of India, therefore, cannot be issued when such decision was taken to amend the bye-laws in the general body meeting.

8. The learned Advocate for the petitioners had taken us through the relevant provisions of Banking Regulation Act and the Maharashtra Cooperative Societies Act. Learned Advocate for respondent No.6 has also taken us through those provisions. The petitioners want to rely on Section 10A(2A)(i) of the Banking Regulation Act, as amended in 2020. In fact, as aforesaid, evidence has not been produced before this Court as to exactly when rule No.39 of the bye-laws of respondent No.6 – Society which the petitioners want to challenge, came into existence. If it is as per respondent No.6 amended in 2013, then it is doubtful as to whether Section 10A(2A)(i) of Banking Regulation Act would be applicable. Learned Advocate for respondent No.6 has rightly submitted that the Banking Regulation (Amendment) Act, 2020 came into effect from 29.06.2020 and was made applicable to banking sector/banks and consequently to co-operative banks subject to modifications. Section 56 stood amended by the Banking Regulation (Amendment) Act, 2020 and it was made applicable to co-operative banks. Section 4 of the Banking Regulation (Amendment) Act, 2020 clearly states that clauses f(i), f(ii) and (g) were omitted. Thereafter, Section 53-A came to be added which had reference of the powers to exempt co-operative banks in certain cases. In fact, the Banking

Regulation Act (as applicable to co-operative societies) is applicable to respondent No.6, which deletes the application of Section 10(2A) of the Banking Regulation Act for the cooperative banks.

9. Thus, it can be seen that the supreme authority to enact the bye-laws was the general body meeting as regards respondent No.6 and it appears that the petitioners had not challenged those rules and regulations within reasonable time. Now, when the elections have been declared, it appears that the attempt is made by way of writ petition. If those persons, who want to contest the elections, who according to the petitioners are not entitled to fill forms, then definitely the petitioners would be at liberty to take objections whereupon the competent authority would decide the said objection. The petitioners cannot use Article 226 of the Constitution of India to stall the election programme and, therefore, this is not a fit case where we should exercise our constitutional powers. The petition therefore stands dismissed.

10. Rule is discharged.

[S. G. CHAPALGAONKAR] JUDGE	[SMT. VIBHA KANKANWADI] JUDGE

scm