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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6681 OF 2023**

The Managing Director Sahakari Shiromani ... Petitioner
Vasantrao Kale Sahakari Sakhar Karkhana Ltd

vs.

The State of Maharashtra and Ors ... Respondents

Mr. Y.S. Jahagirdar i/b. Mr. Suhas S. Inamdar, for Petitioner.

Mr. Dinesh Bhosale for Respondent No.4.

Mrs. M.P. Thakur, AGP for State.

CORAM : GAURI GODSE, J.

DATED : 6th FEBRUARY, 2024

P.C. :-

1. This petition takes exception to the order dated 13th April 2023, passed by the learned Minister, Cooperative Societies, in an appeal filed by respondent no.4 under section 152 of the Maharashtra Cooperative Societies Act 1960 ("MCS Act"). By the impugned order, the appeal filed by respondent no.4 is allowed and the order dated 22nd July 2022 passed by the Regional Joint Director(Sugar), Solapur division ("Respondent No. 3") is quashed and set aside and the membership of respondent no. 4 is restored.

2. By order dated 22nd July 2022, respondent no.3 had approved the resolution passed by the General Body of the petitioner-society under section 35 of the MCS Act for expelling respondent no.4.

3. Learned Senior Counsel appearing for the petitioner submitted that by the impugned order an appeal filed by respondent no.4, is allowed mainly on the ground that only 189 members had attended the online meeting scheduled by the petitioner to confirm the resolution passed by the managing committee for expulsion of respondent no.4. He submitted that in view of the restriction during the relevant covid time, it was not possible to hold physical meeting and thus after taking necessary permission, in terms of the prohibitory orders passed by the State Government, the virtual meeting was conducted by the petitioner after informing all the members. It is submitted that all the members were informed as per the procedure laid down under section 35 read with rule 29 of the Maharashtra Cooperative Societies Rules 1961 ("the MCS Rules"), and the resolution was passed in the Special General Body Meeting. Thus, the appeal of respondent no. 4 could not have been allowed by the learned Minister only on the ground that all the members did not attend the meeting.

4. The learned senior counsel relied upon section 35 of the MCS Act and submitted that the society had passed the resolution by a majority of more than three-fourths of the members present in the Special General Meeting conducted to confirm the resolution of the managing committee to expel the member by following the procedure as laid down under Rule 28 read with Rule 29 of the MCS Rules. He submitted that on 1st January 2022, the Managing Committee had decided to issue notice to respondent no. 4 for his expulsion, and after giving him notice the Managing Committee in its meeting dated 5th March 2022 resolved to expel respondent no. 4 on the ground that the activities of respondent no. 4 were detrimental to the working of the petitioner-society due to which the petitioner-society had incurred financial loss.

5. Learned senior counsel submitted that pursuant to the resolution passed by the Managing Committee, notices were issued to the members and after obtaining necessary permission Special General Body Meeting was conducted in virtual mode and the resolution of the Managing Committee was accepted by the General Body. He submitted that respondent no.3 had approved the resolution passed by the General Body. He submitted that the learned Minister has set aside the approval by recording a finding

that though the restrictions for holding physical meetings were being relaxed, the petitioner-society hurriedly conducted a Special General Body Meeting by virtual mode for approval of the resolution passed for expulsion of respondent no.4. The learned senior counsel submitted that once procedure prescribed under section 35 read with Rules 28 and 29 are followed and the meeting was held after taking necessary permission for virtual mode, no fault can be found in the resolution passed by the General Body to uphold and decision of the Managing Committee to expel respondent no.4. He thus submitted that the reasons recorded by the learned Minister in the impugned order are illegal and not sustainable. He, therefore, submitted that the resolution passed by the General Body for expelling respondent no.4, needs to be upheld and cannot be set aside once the procedure prescribed is followed.

6. Learned counsel appearing for respondent no.4 submitted that in total there are 11000 members of the petitioner society. He submitted that in an unholy haste without issuing notice to all the members the Special General Body Meeting was conducted in virtual mode, though restrictions were being relaxed by the State Government. He submitted that as the Special General Body Meeting was conducted by virtual mode though the number of

members is 11000 only 189 members could attend the meeting. He submitted that there was no record produced to show in what manner all the members were intimated about holding the virtual meeting. He submitted that there was a specific grievance raised on behalf of respondent no.4 in the appeal that all the members were not intimated and hence, the Special General Body Meeting held by virtual mode was with a malafide intention to expel respondent no.4 hurriedly. He supports the impugned order on the ground that the learned Minister has rightly taken into consideration the manner in which the Special General Body Meeting was held where only 189 members had attended the meeting. He submitted that it is necessary to follow the procedure as prescribed under Rules 28 and 29 in its true letter and spirit when a resolution passed by the Managing Committee to expel a member is to be approved by the General Body. He thus, submitted that the agenda for approval of the resolution passed by the managing committee could have been added in the next General Body Meeting and there was no emergency to hold a Special General Body Meeting. However, the managing committee with a malafide intention chose to conduct a special general body meeting in an unholy haste by conducting it in virtual mode, so that all the members do not attend the meeting. He submits that the resolution passed against respondent no.4, by

holding the Special General Body Meeting, is contrary to the prescribed rules. He therefore submitted that no fault can be found in the impugned order and the same may not interfered with.

7. Learned AGP supported the impugned order and submitted that the impugned order rightly records that though the number of members was 11000, only 189 members had attended the online meeting.

8. I have considered the submissions made by the parties. Perused the papers. There is no dispute on the dates of passing a resolution by the managing committee and holding the Special General Body Meeting in virtual mode. It is also not disputed that the total number of members of the petitioner-society are is 11,000 and only 189 members attended the meeting. So far as holding the Special General Body Meeting by virtual mode again is not disputed, as restrictions were prevailing at the relevant time. The petitioner had conducted a Special General Body Meeting for approval of the resolution passed by the Managing Committee for expelling respondent no.4.

9. So far as Rules 28 and 29 of the MCS Rules are concerned Rule 29 provides that when the committee decides to bring a resolution for expelling a member, consideration of such resolution

shall be included in the agenda in the next General Body Meeting and notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to remain present at the General Body Meeting. The rule further provides that such a meeting is to be held not earlier than a period of one month from the date of such notice and to show cause against the expulsion to the General Body of the members. The rule further prescribes that after hearing the member and after taking into consideration any written representation of the member, the General Body of the members shall proceed to consider the resolution.

10. Thus, the rule indicates that if a resolution is passed by the Managing Committee, the same is required to be approved by the General Body. Even, the concerned member is permitted to make representation before the General Body. In the present case, the resolution was passed by the Managing Committee on 1st January 2022 to take action for expulsion and after issuing notice decision was taken by the Managing Committee on 5th March 2022 and resolved to hold the Special General Body Meeting for approval of resolution passed by the Managing Committee. Pursuant to the said resolution, permission was taken from the Collector on 22nd March 2022 for holding a Special General Meeting by virtual mode. It is the

case of the petitioner-society that pursuant to the said permission, members were given notice by hand delivery and through newspaper publication for holding a meeting on 5th April 2022 in virtual mode. Pursuant to the said notice the Special General Body Meeting was held on 5th April 2022 by virtual mode and a resolution was passed by the general body and the resolution of the Managing Committee was approved for expelling respondent no.4.

11. Though the Special General Body Meeting through virtual mode was conducted after obtaining necessary permission, it is not disputed that the meeting was attended only by 189 members out of a total of 11000 members of the petitioner-society as per the record. Thus, the learned Minister i.e. the Appellate Authority has held that though the restrictions were to be relaxed shortly, the online meeting was conducted for the expulsion of the member which was not justified. It is thus, recorded that the action of the petitioner-society to hold a meeting online was with some malafide intention, knowing the fact that restrictions were to be relaxed soon. Thus, if proper procedure as per section 35 read with rules 28 and 29 of the MCS Rules, was properly followed for conducting physical meeting where all members could attend the meeting, no doubt on the intentions of the managing committee could have been raised. It is further held in

the impugned order that the managing committee failed to show any valid reason to hurriedly conduct the meeting in virtual mode.

12. Conjoint reading of section 35 of the MCS Act and Rules 28 and 29 of the MCS Rules, indicate that the procedure intends to enable a member to represent himself before the General Body. Hence, Rule 29 provides for adding a resolution for expulsion of a member in the agenda for the next General Body Meeting. In the present case, there is no reason shown for holding a Special General Body Meeting hurriedly. There is no record shown that sufficient notice was given to all the members and that all the members were intimated about holding a Special General Body Meeting in virtual mode. It is not disputed that the total number of members is 11000 and the meeting held through virtual mode was attended by only 189 members. Thus, it appears that respondent no.4, was unable to make his representation before the entire General Body as is contemplated under Rule 28 read with Rules 29. In such circumstances, I do not see any infirmity and illegality in the reasons recorded in the impugned order, by the learned Minister while deciding the appeal preferred by respondent no.4.

13. I do not find any jurisdictional error or failure of justice, warranting interference in the impugned order. In writ jurisdiction,

the order impugned cannot undergo any scrutiny of an appellate court. General Body's approval to the decision of the managing committee to expel a member cannot be said to be an empty formality. The opportunity to show cause as contemplated by Rule 29 of the MCS Rules requires observance of natural justice and thus, an opportunity of hearing before the General Body ought to have been in its proper letter and spirit. In case of expulsion of a member, the society is expected to follow the doctrine of "fairness" and "good faith" and act reasonably.

14. Hence, I do not see any illegality and infirmity in the impugned order. The petition is devoid of any merits. Hence, for the reasons stated above, the petition is dismissed.

(GAURI GODSE, J.)