



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 2231 of 2018

Anant S/o Narayanrao Gharad and others

Versus

The Hon'ble Minister, Co-operation, Marketing Textiles and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.S.Dharmadhikari, Advocate for the petitioners.

Mrs. Mrunal Naik, AGP for the respondents/State.

Shri A.M.Sudame, Advocate for the respondent no.5.

CORAM : N.R.BORKAR, J.

DATED : 26th September, 2024.

This petition takes exception to the order dated 20th December, 2017 passed by the respondent no.1 in Revision No. 254 of 2015.

2. The petitioners are the erstwhile Directors of the Nagrik Sahakari Rugnalaya and Research Center Limited. The said Nagrik Sahakari Rugnalaya and Research Center Limited is a Cooperative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960.

3. At the time of registration of the Society on 8th June, 1976, the authorised share capital of the society was Rs.15,00,000/- which was divided into 15000/- shares and face value of each share was Rs.100/-.

4. The eligibility to contest the election of the 'Board of Directors' as per Bye-Law No. 29(1) was as under :

'No member shall eligible for being elected continued on the Board of Directors unless he holds five fully paid-up shares of Rs.100 each'.

5. In the annual general meeting held on 29th November, 1981, the Society amended the Bye Law no. 29(i) and requirement was changed from five to one fully paid up share of Rs.100/-.

6. On 27th January, 1991, the share capital of the society was increased from Rs.15,00,000/- to Rs.30,00,000/- and face value of each share was increased from Rs.100/- to Rs.500/-.

7. In the annual general meeting held on 13th August, 2003, the Society again amended the Bye-Law

No. 29(i) and the eligibility to contest the election of Board of Directors was changed from one fully paid up share of Rs.100/- to 10 fully paid up shares of Rs.500 each.

8. The society submitted the said amendment to respondent no.3 for approval / registration in terms of Section 13 of the Maharashtra Co-operative Societies Act, 1960.

9. By order dated 3rd November, 2003, respondent No.3 declined to approve the said amendment.

10. The society being aggrieved by the order of respondent no.3 dated 3rd November, 2003 had filed the appeal before the respondent no.1.

11. By order dated 19th March, 2004, respondent No.1 allowed the said appeal.

12. Pursuant to the order of respondent no.1, the respondent no.3 vide order dated 21st April, 2004

registered the amendment dated 13th August, 2003, to Bye-Law No. 29(i).

13 According to the petitioners in the Special General Meeting held on 13th April, 2013 the Society amended the Bye-Law No. 29(i) to the extent of removing the exception in favour of the weaker section in respect of eligibility to contest the election of the Board of Directors.

14. The society submitted the said amendment to the respondent no.3 for approval/registration.

15. By order dated 11th October, 2013 respondent no.3 had approved the said amendment.

16. The contesting respondents herein being aggrieved by the order of respondent no.3 dated 11th October, 2013 approving the amendment dated 13th April, 2013 and order dated 21st April, 2004 approving the amendment dated 13th August, 2003 had filed the appeal before respondent no.1.

17. By order dated 23rd January, 2017, respondent no.1 allowed the said revision.

18. The Society being aggrieved by the said order of respondent no.1 dated 23rd January, 2017 had filed writ petition before this Court being Writ Petition No. 977 of 2017. By order dated 13th September, 2017, this Court partly allowed the said petition and remanded back the matter to the respondent no.1 for deciding it afresh.

19. By the impugned order, the respondent no.1 has again allowed the revision. Respondent no.1 has set aside the order dated 21st April, 2004 and 11th October, 2013 passed by respondent no.3.

20. I have heard learned counsel for the petitioner and learned counsel for the contesting respondent.

21. The learned counsel for the petitioner has filed the pursis restricting the challenge to the impugned

order to the extent of setting aside the order dated 21st April, 2004.

22. Learned counsel for the petitioner submits that respondent no.1 has erred in setting aside the order dated 21st April, 2004. It is submitted that order dated 21st April, 2004 was only consequential order which was passed pursuant to order of respondent no.1 only approving the amendment dated 13th August, 2003. It is submitted that by the order impugned respondent no.1 has infact reviewed it's own order dated 19th March, 2004. It is submitted that there is no provision of review under the Maharashtra Co-operative Societies Act and in absence of such provision the order impugned cannot be allowed to stand as the same is without jurisdiction. In support of the submission, learned counsel for the petitioner has relied upon the judgment in *Naresh Kumar and others Vs. Government (NCT of Delhi)* reported in 2019(9) SCC 416.

23. On the other hand, the learned counsel for the contesting respondents has supported the impugned order. It is submitted that in all there are 5000 members, however, only 30 members are holding 10 share of Rs.500/- each. It is submitted that if the order impugned is set aside and the amendment dated 13th August, 2003 is allowed to stand, then the said 30 members only would be eligible to contest the election of the Board of Directors. It is submitted that respondent no.1 has thus rightly set aside the order dated 21st April, 2024 as the amendment dated 13th August, 2003 was against democratic principles.

24. It is not in dispute that the amendment dated 13th August, 2003 to the Bye-Law No. 29(i) was initially not approved/registered by respondent no.3. The appeal was therefore filed before respondent no.1. The appeal was allowed by order dated 19th March, 2004 and pursuant to the said order, the amendment dated 13th August, 2003 was registered.

25. Admittedly, the order passed by respondent no.1 dated 19th March, 2004 was never challenged. The learned counsel for the contesting respondent has not pointed out any provision of review under the Maharashtra Co-operative Societies Act, 1960. In absence of such provision respondent no.1 has erred in reviewing the order dated 19th March, 2004 and setting aside the consequential order dated 21st April, 2004.

26. The order impugned dated 20th December, 2017 passed by the respondent no.1 in Revision No. 254 of 2015 to the extent of quashing the order dated 21st April, 2004 cannot be allowed to stand and the same is set aside. The petition is partly allowed in aforesaid terms.

[N.R.BORKAR, J.]