

PETITIONER:
BEED DISTRICT CENTRAL CO-OP BANK LTD. AND ANR

Vs.

RESPONDENT:
JAGANNATH S. SHAHANE AND ORS.

DATE OF JUDGMENT 13/03/1992

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
YOGESHWAR DAYAL (J)

CITATION:
1992 AIR 1249 1992 SCR (2) 296
1992 SCC (2) 604 JT 1992 (2) 367
1992 SCALE (1) 716

ACT:

Maharashtra Co-operative Societies Act, 1960 :
Section 73 (2) (As inserted by Maharashtra Amendment Act XX
of 1986).

Specified Society-Co-operative Bank-Board of
Directors-Election-Provision requiring Registrar to describe
the maximum number of members on the Society held directory-
Purpose of Section 73 (2) Explained.

Section 27 (3)-Proviso-Deletion of Proviso-Effect of.

HEADNOTE:

Election to the Board of Directors of the appellant Bank, a specified co-operative Society under the Maharashtra Co-operative Societies Act, 1960, were to be held as provided under Section 73 (G) of the Act read with Maharashtra Specified Co-operative Societies (Elections to Committees) Rules, 1971. By the Maharashtra Act No. XLV of 1983 the Maharashtra Co-operative Societies Act was amended and a proviso was added to sub-section (3) of Section 27. This amendment was challenged and the High Court declared the proviso to sub-section (3) of Section 27 as void and inoperative. Thereafter respondent. No. 1 and 2 filed a writ petition in the High Court which was allowed by directing that all steps taken on the basis of proviso to section 27(3) were null and void. The parties aggrieved against the aforesaid decision filed appeals before this Court. During the pendency of the appeals Section 73 of the Maharashtra Co-operative Societies Act was amended and sub-section (2) was added to it. Further by Act No. X of 1988 Ist proviso to Section 27(3) was deleted. After the aforesaid changes in the 1960 Act, this Court, by its order dated March 13, 1989, disposed of the appeals directing that elections to the Co-operative Societies may be held in accordance with the amended law. Thereafter the Collector declared the election programme of the appellant bank under which last date for filing nominations was 23.10.1991 last date for scrutiny was 25.10.1991, last date for withdrawal was 11.11.1991 and the date of polling was fixed on 27.11.1991. By a notification dated 27th December,

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1991 the State of Maharashtra postponed elections upto 15th

April, 1992.

Respondents No. 1 and 2 filed a writ petition in the Bombay High Court challenging the election programme. By its judgment dated November 19, 1991 the High Court allowed the petition holding that (i) in view of the mandatory provision of section 73(2) it was incumbent on the Registrar of Co-operative Societies to prescribe the maximum number of members on the Committee of the appellant bank by publishing an order in the official gazette; (ii) since no such order was published, the election process fixed by the Collector was illegal and invalid; and (iii) the election process was in violation of this Court's order dated March 15, 1989. Against the decision of the High Court the Co-operative Bank filed an appeal in this Court.

On behalf of the appellant bank it was contended that (i) with the deletion of proviso to section 27(3), section 73(2) has become redundant; (ii) that the word 'may' in section 73(2) clearly meant that it was an enabling provision and the said sub-section does not cast any duty on the Registrar to exercise the power of prescribing maximum number in every case but only confers upon him the discretion to make such an order if the circumstances enumerated in the said provision necessitated the exercise of such power; and (iii) since bye-law No.28 of the Bank already prescribed the maximum number of members in the Committee to 21 members and as such there was no question of passing any order under section 73(2).

For the respondents it was contended that unless the Registrar applied his mind in the light of Section 73(2) no elections could have been declared by the Collector. It was necessary for the Registrar to apply his mind as to whether the maximum number prescribed in the bye-laws of a society was justified or not and thereafter issue an order and to publish the same in the official gazette.

Allowing the appeal, this Court,

HELD: 1. The main purpose of introducing proviso to sub-section (3) of Section 27 was to widen and make the scope of voters as broad based while electing members to the Committees of a federal society. It was laid down that all the members elected as well as co-opted shall have the right to vote on behalf of such society while electing the members to the Committee of a federal society. The provision was declared invalid by the High

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Court and thereafter it was also deleted by a Legislative fiat by Maharashtra Act No. (X) of 1988. The position as now stands is that in case of an election to the members of the Committee of a federal society, any member of such society shall not have more than one vote. [305 C-E]

The purpose of inserting sub-section (2) of Section 73 of the Act was that there was a necessity to control the large number, if any, of the elected and co-opted members getting a right of vote allowed under the proviso to sub-section (3) of section 27 of the Act. However, when the proviso to sub-section (3) of Section 27 was struck down by the High Court and also deleted by the legislature itself, the purpose of introducing sub-section(2) in Section 73, lost its thrust and relevance and even if it continued in the Statute, it would be considered as directory and not mandatory. [305 E-F]

1.1 It is no doubt that sub-section (2) of Section 73 of the Maharashtra Co-operative Societies Act starts with a non obstante clause overriding anything contained in any bye laws of a society, but at the same time the discretion has been left to the Registrar to prescribe the maximum number

of members of Committee of the society or class of societies. This provision does not compel the Registrar nor makes it obligatory to prescribe maximum number even when the Registrar may be satisfied with the maximum number already prescribed in the bye-laws of such society. [305 F-G]

2. The order dated 27th December 1991 issued by the Government postponing the elections upto 15th April, 1992 would not apply to such co-operative societies in whose case the election process from the stage of 1991. In view of this, the notification dated 27th December, 1991 cannot apply in the case of the appellant Beed District Central Co-operative Bank as the election process of filing nominations was fixed for 23.10.1991 and even the date of polling was 27.11.1991 i.e. much before 26th December, 1991. [306 B-C]

3. The Collector District Beed shall complete the left out stage for election to the Board of Directors of the appellant Bank. [306-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1111 of 1992.

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From the Judgment and Order dated 19.11.91 of the Bombay High Court in W.P. No. 3398 of 1991.

Soli J. Sorabjee and A.M. Khanwilkar for the Appellants.

U.R. Lalit, V.N. Ganpule and K. Madhava Reddy, V.B. Joshi, S.M. Jadhav and A.S. Bhasme for the Respondents.

S.K. Dholakia, R.B. Masodkar and K.L. Taneja for the Intervenors.

The Judgment of the Court was delivered by

KASLIWAL, J. Special leave granted.

This appeal is directed against the Judgment of High Court of Judicature of Bombay at Aurangabad dated November 19, 1991. Brief facts of the case are that elections to the Board of Directors of the Beed District Central Co-op. Bank Limited a specified co-operative society under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Principal Act') were to be held for the years 1991-1996. The elections are held as provided under the provisions of Section 73(G) of the Act read with Maharashtra specified Co-operative Societies (Elections to Committees) Rules, 1971 (hereinafter referred to as 'the Rules of 1971'). The Constitution of the Board of Directors of the Beed District Central Co-op. Bank Ltd., (hereinafter referred to as 'the Beed Co-op. Bank. The elections of the Board of Directors for the years 1991-96 had become due in November, 1990. With a view to conduct the elections, voters lists were initially finalised on 28.2.1990 but the same were postponed on account of Government directions. Eventually the Collector declared the elections of the Beed Co-op. Bank under Rule 16 of the Rules of 1971 on 8.10.1991. According to the election programme last date for filing nominations was 23.10.1991, last date for scrutiny on 25.10.1991, last date for withdrawal 11.11.91 and the date of polling was fixed on 27.11.91, Jagannath, respondent No. 1 and individual member of the Beed Co-op. Bank and Ramkirshana Maroti being member of Agriculture Service Co-operative Society, Bhayala and delegate of the said society in the Beed Co-op. Bank filed writ petition in the Bombay High Court challenging the aforesaid election. The High Court took the view that the election process had been

started in derogation and violation of Section 73(2) of the Act and as such

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the same was declared is illegal and invalid . It was directed that it will be open to the authorities to start a new election programme adhering to the mandatory requirement of Section 73(2) of the Act taking every step in a proper and careful manner. The Beed Co-op. Bank and its Chairman have come in appeal before this Court challenging the order of the High Court.

In order to appreciate the controversy we find it necessary to mention the background of the litigation as well as the various changes brought from time to time in the relevant provisions of law. The Maharashtra Legislature by the Maharashtra Act No. (XLV) of 1983 sought several amendments in the Maharashtra Co-operative Societies Act, 1960. The relevant amendment for our purpose is the following proviso added to sub-sec. (3) of Sec. 27 of the Act:

"Provided that, notwithstanding anything contained in this Act or in the rules made thereunder or in any bye-laws of any society, where such other society is a federal society belonging to any of the categories specified in Section 73-G, then all the members elected to , and the members, if any, co-opted or appointed under Section 73-B on the committee of such first society shall have the right to vote on its behalf in the affairs of such other society;

Provided further that, where the election is to a reserved seat under Section 73-B, no person shall have more than one vote".

The aforesaid amendment was challenged by filing writ petitions Nos. 2170 and 2054 of 1984 and the High Court by its order dated 8.1.1985 declared the aforesaid proviso to sub-section (3) of Section 27 as void and inoperative. After the said decision a writ petition No. 787 of 1984 was filed by four petitioners including Jagannath and Ramakrishan, the present respondents Nos. 1 and 2 and the High Court following its earlier decision dated 8.1.1985 rendered in Writ petition Nos. 2170 and 2054 of 1984, by an order dated 15.1.1985 allowed the writ petition and gave a declaration that all steps taken by the Beed Central co-op. Bank Ltd., for holding elections of the Bank and all the steps taken on the basis of Proviso to sub-s.(3) of Section 27 were null and void. The parties aggrieved against the aforesaid decision filed Special Leave Petition before this Court. This Court granted Special Leave and registered Civil Appeals Nos. 1907 and 1908 of 1989. Before the aforesaid appeals came up for final hearing by

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this Court the Maharashtra Legislature brought the Maharashtra Act No. (XX) of 1986 an Act further to amend the Maharashtra Co-operative Societies Act, 1960. By this amendment Act, Section 73 of the Principal Act was renumbered as sub-s.(1) thereof; and after sub-s.(1) as so renumbered, the following; sub-s.(2) inserted:

"(2) Notwithstanding anything contained in any bye-laws of a society or class of societies, the Registrar may, having regard to the area of operation, subscribed share capital or turnover of a society or class of societies, by general or special order, published in Official Gazette, prescribe the maximum number of members on the committee of such society or class of societies,

as may be specified in such order".

The Maharashtra Legislature further brought an amendment by Maharashtra Act No. (X) of 1988 to amend the Maharashtra Co-operative Societies Act, 1960 and the Ist proviso to sub-s.(3) of section 27 was deleted. After the aforesaid changes in the principal Act, this Court by order dated March 13, 1989 disposed of the Civil Appeal Nos. 1907 and 1908 of 1989. This Court passed the following order:-

"It is brought to our notice by the learned counsel for both the parties that subsequent to the Judgment of the High Court Section 73 of the Maharashtra Co-operative Societies Act has been amended by addition of sub-section (2) of Section 73 of the Act in 1986. In view of the above amendment it is submitted by learned counsel for both the parties that the elections to the co-operative societies in question have to be held in accordance with the amended law. We accordingly make an order in substitution of the order of the High Court that elections to the co-operative societies may be held in accordance with the amended law as early as possible. The appeals are disposed of accordingly."

Thereafter the Collector fixed the programme of election mentioned above and the respondents Jagannath and Ramakrishna filed the writ petition challenging the programme of election and the writ petition filed by them was allowed by order dated November 19, 1991 which is now the subject matter of challenge before us.

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We have heard learned counsel for the parties and have thoroughly perused the record. The short controversy raised before us is regarding sub-s. (2) of Section 73 of the Act inserted in the Act by Maharashtra Amendment Act (XX) of 1986, to be mandatory or directory. The High Court has taken the view that the above provision is mandatory and it was incumbent on the Registrar of the co-operative societies to prescribe the maximum number of members of the Committee of the Beed Co-operative Bank by issuing a specific order and to publish such order in the Official Gazette. The High Court further held that in the absence of such order in respect of the Beed Co-operative Bank followed by publication in the official Gazette, the election process fixed by the Collector was liable to be declared illegal and invalid. The High Court also took the view that this Court also in its order dated 15.3.1989 had clearly given a direction to comply with the provisions of sub-s. (2) of Section 73 and as such the programme of election fixed by the Collector was in violation of the order of this Court also.

Shri Soli J Sorabji, Learned Senior Counsel, appearing on behalf of the appellants submitted that sub-s. (2) of Section 73 was inserted only with a view to curtail the unequal voting rights conferred on the members of the society circumstanced on account of insertion of proviso to sub-s. (3) of Section 27 of the Act. It was contended that admittedly the aforesaid proviso to sub-s. (3) of Section 27 was deleted on 22.4.1988 by Maharashtra Act No.X of 1988. With the deletion of the above proviso sub-s. (2) of Sec. 73 became redundant. It was contended that the insertion of sub-s. (2) of Section 73 was necessitated for validating the proviso to sub-s. (3) of Section 27 as both these provisions were complimentary to each other. It was contended that prior to the insertion of sub-s. (2) of Section 73, the constitution of the Committee of the Beed Co-operative Bank

was dependent on its own bye laws which were dully approved by the Registrar of the co-operative societies. The bye law No. 28 of the Beed Co-operative Bank already prescribed the maximum number of members in the committee to 21 members and as such there was no question of passing any order under sub-s. (2) of Section 73. It was submitted that the word 'may' in sub-s. (2) of Section 73 clearly meant that the said provision was an enabling provision and not mandatory as held by the High Court. The said sub-section does not cast any duty on the Registrar to exercise the power of prescribing maximum number in every case but only confers upon him the discretion to make such an order if the circumstances enumerated in the

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said provision necessitated the exercise of such power. It was also contended that such power could alone be exercised by the Registrar where either the maximum number of members on the Committee fixed in the bye laws was required to be changed in the opinion of the Registrar or where the bye laws of a society may not have fixed the maximum number at all. In that kind of case, if any, order was passed by the Registrar then such order was required to be published in the official Gazette.

It was also contended that if this provision is held to be mandatory, it would result in invalidating the constitution of numerous managing Committees of the co-operative societies in the State of Maharashtra and this could never have been the intention of the Legislature.

On the other hand Sh. U.R. Lalit, Learned Senior counsel for the respondents Nos. 1 and 2 Sh. Dholakia, Learned Senior Counsel for one of the Intervenors supported the impugned Judgment of the High Court. It was contended that unless the Registrar applied his mind in the light of the provisions contained in sub-s.(2) of Section 73 no elections could have been declared by the Collector. It was necessary for the Registrar to apply his mind as to whether the maximum number prescribed in the bye laws of a society was justified or not and thereafter issue an order and to publish the same in the official Gazette. In the alternative it was submitted that in the event of this Hon'ble Court taking a different view from that of the High Court, it was necessary to issue a fresh election programme in view of the fact that all the contesting candidates were informed that the election programme fixed by the Collector had been set aside by the High Court. It was also submitted that the State of Maharashtra has now issued a Notification on 27th December, 1991 postponing such elections upto 15th April, 1992.

It is worthwhile to note that the stand taken by the State of Maharashtra before us is that proviso to sub-s. (3) of Section 27 was inserted in order to make the electorate broad based and more representative in character, where the other society was federal society belonging to any of the category mentioned in sub-s. (3) of Section 27 of the Act, it was proposed to provide that the right to vote on behalf of the members of society should be conferred on all the elected members and co-opted members appointed on the committee under Section 73 instead of single representative exercising such right of vote. The said provision was

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declared invalid by the High Court of Bombay by its Judgment dated 8.1.1985 and the said proviso was deleted by Act No. (X) of 1988. As the said proviso has been deleted, the sub-s.(2) of Section 73 has lost its relevance now and it has remained only as an enabling provision

instead of a mandatory one.

We shall have to consider the question of sub-s. (2) of Section 73 being mandatory or directory in the background of changes made from time to time in the Principal Act and the effect of the directions given by this Court in its order dated 13.3.1989. The Beed District Central Co-operative Bank is a specified Co-operative Society having a federal character. The elections to the Board of Directors have to be held according to the provisions of the Rules of 1971 in conformity with the provisions of the Act and the bye laws made by it. The constitution of the Board of Directors is provided in bye law No.28 which clearly states that the management of business and affairs of the bank shall be entrusted to a Board of Directors which shall hold office for five years consisting of not more than 21 members. Thus the bye-laws clearly specify that the maximum number of the Board of Directors would be 21. The bye laws have been made with the approval of the Registrar Co-operative Societies. Proviso to Sub-s.(3) of Section 27 was inserted by Act No.(XLV) of 1983. Section 27 dealt with voting powers of members. After deletion, of the proviso to Sub-s. (3) of Section 27, by Maharashtra Act (XX) of 1988, Sub-s. (3) of Section reads as under : (p.103) (Annexure-D)

S. 27 Members and their Rights and Liabilities :

Voting powers of members 1[(1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally and not be proxy :

Provided that, in the case of equality of votes of the Chairman shall have a casting vote;]

(2) Where a share of a society is held jointly by more than one person 2 [the person whose names stands first in the share certificate, if present, shall have the right to vote. But in his absence the person whose name stands second, and in the

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absence of both, the person whose name stands next, and likewise, in the absence of the preceding persons the person whose name is next on the share certificate, who is present and who is not, minor, shall have the right to vote.]

(3) A society which has invested any part of its funds in the shares of another society, may appoint one of its members; to vote on its behalf in the affairs of that other society; and accordingly such member shall have the right to vote on behalf of first society;

The main purpose of introducing proviso to sub-s.(3) of Section 27 was to widen and make the scope of voters as broad based while electing members to the committee of a federal society. It was laid down that all the members elected as well as co-opted shall have the right to vote on behalf of such society while electing the members to the Committee of a federal society. The provision was declared invalid by the High Court and thereafter it was also deleted by a Legislative fiat by Maharashtra Act No.(X) of 1988. The position as now stands is that in case of an election to the members of the committee of a federal society, any member of such society shall not have more than one vote. The purpose of inserting sub-s. (2) of Section 73 of the Act was that there was a necessity to control the large number, if any, of the elected and co-opted members getting a right

of vote allowed under the proviso to sub-s. (3) of Section 27 of the Act. However, when the proviso to sub-s. (3) of Section 27 was struck down by the High Court and also deleted by the Legislature itself, the purpose of introducing sub-s.(2) in Section 73, lost its thrust and relevance and in our view even if it continued in the Statute, it would be considered as directory and not mandatory. It is no doubt that sub-s. (2) of Section 73 starts with a non obstante clause overriding anything contained in any bye laws of a society, but at the same time the discretion has been left to the Registrar to prescribe the maximum number of members of the Committee of the society or class of societies. In our view this provision does not compel the Registrar nor makes it obligatory to prescribe maximum number even when the Registrar may be satisfied with the maximum number already prescribed in the bye laws of such society. As already mentioned above the State of Maharashtra has also taken the stand in their written submissions placed before us that after the deletion of the proviso to sub-s. (3) of Section 27 the provision of sub-s. (2) of Section 73 has lost its relevance

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and it has remained only as an enabling provision instead a mandatory one.

Thus we find force in the submissions made on behalf of the Beed Co-operative Bank, the appellant before us that the provision of section 73(2) are directory and not mandatory.

As regards the order dated 27th December, 1991 issued by the Government postponing the elections upto 15th April, 1992 and placed on the record of the case suffice to say that the same would not apply to such co-operative societies in whose case the election process from the stage of making nominations has already commenced on or before 26th December, 1991. In view of this, the notification dated 27th December, 1991 cannot apply in the case of the appellant Beed District Central Co-operative Bank as the election process of filing nominations was fixed for 23.10.91 and even the date of polling was 27.11.1991 i.e. much before 26th December, 1991. In view of these circumstances we allow this appeal, set aside the Judgment of the High Court and dismiss the Writ petition filed by the respondents Nos. 1 and 2. In the facts and circumstances of the case we pass no order as to costs. As a result of the above order the Collector District Beed shall complete the left out stage for election to the Board of Directors of the Beed District Central Co-operative Bank limited.

T.N.A.

Appeal allowed.

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