(1991) 08 MP CK 0022

Madhya Pradesh High Court

Case No: M.P. No. 2932 of 1990

A.R. Ramteke and Another		APPELLANT
	Vs	
Board of Revenue and Others		RESPONDENT

Date of Decision: Aug. 22, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1992) 37 MPLJ 20 : (1992) MPLJ 20

Hon'ble Judges: P.N.S. Chouhan, J; B.C. Varma, J

Bench: Division Bench

Advocate: V.G. Tamaskar, for the Appellant; M.V. Tamaskar, S. Upadhyaya and Ku. A. Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.C. Varma, J.

Smriti Grih Nirman Sahkari Sanstha Maryadit, Bhilai Nagar, is a co-operative society duly registered under the Co-operative Societies Act. At the relevant time, the petitioner No. 1 was elected as a member of the Board of Directors of the Society. During the process of co-option, in accordance with rules, respondent No. 6 was co-opted as one of the Directors on 8-11-1989. He was then co-opted as the President of the Society. The petitioners seek to challenge the co-option as also the election of respondent No. 6 as President of the Society. It may be mentioned that the petitioner No. 2 is a member of that Society.

Before we deal with the question raised in this petition, a few more facts may be stated. By an order dated 29-4-1987 (Annexure P-1), the then Board of Directors, including respondent No. 6 as its member, was superseded. The respondent No. 6 was declared disqualified to contest the election of the Board of Directors for a

period of seven years. That order is in force and has become final. The disqualification, therefore, continues to be attached to respondent No. 6. When the Board of Directors was reconstituted and petitioner No. 1 was co-opted as a Director and subsequently elected as President of the Society, his co-option and election as the President were challenged. The Deputy Registrar, Co-operative Societies, Durg, vide order dated 14-3-1990, set aside the co-option and also declared respondent No. 6 as disqualified to contest the election to the office of the Board of Directors for a period of seven years. The order is Annexure P-3A. In appeal, the same was upheld vide Annexure P-4 by the Joint Registrar (respondent No. 3). Respondent No. 6, however, preferred an appeal before the Board of Revenue which allowed the same and set aside the orders (Annexures P-3A and P-4). The co-option of respondent No. 6 as a member of the Board of Directors and his election as President of the Society were upheld by the Board of Revenue, vide order (Annexure P-5). It is this order of the Board of Revenue which is challenged in this petition, which is also said to have the colour of public interest litigation.

At the time of hearing of this petition, counsel for the petitioners informed the Court through an application that on 18-1-1991, a notice was issued to the existing body of the Board of Directors to show cause as to why the same be not suspended and on 19-3-1991, the Deputy Registrar, Co-operative Societies, has directed suspension of the Board of Directors, including the President, pending action for supersession of the Board of Directors. An officer-in-charge has been appointed to look after the functioning of the Board of Directors pending those proceedings. The document is Annexure P-13. This position has not been controverted by the counsel for the opposite party.

Before considering the contentions raised in support of the merits of the petition, we may dispose of the preliminary objection raised by the learned counsel for the respondents. At the first place, it was argued that since the petitioner No. 1 himself was the person who was a member of the Board of Directors, and as such participated in co-opting respondent No. 6 to that body, he has no locus standi to question the co-option of respondent No. 6. It was added that in such circumstances, this Court shall not exercise its discretion under Article 226 of the Constitution in favour of petitioner No. 1. As an answer, it was submitted that the petitioner No. 2, although a member of the Co-operative Society, did not participate in the process of the co-option and, therefore, could maintain this petition. In our opinion, and in the circumstances of the case, which we will demonstrate further, we are not inclined to assist the petitioners in exercise of writ jurisdiction under Article 226 of the Constitution. As we have mentioned above, it is common ground that the petitioner No. 1 had. co-opted respondent No. 6 and then also elected him as President of the Society. The alleged incompetence/disqualification of respondent No. 6 to be so elected and so co-opted was well known to those who participated in his co-option and, therefore, they cannot be permitted to question the co-option of respondent No. 6. It is true that the petitioner No. 2 has been added as a party but

in view of the fact that the Society itself has now been suspended and action to supersede the Society is in progress, the petitioner No. 2 also should not be permitted to question the co-option of respondent No. 6. This apart, we find that it is the petitioner No. 1, who is responsible and had been actively participating in challenging the co-option and that petitioner No. 1 has joined hands with petitioner No. 2 only with ulterior motives. Counsel for the petitioners, however, drew attention of this Court to a decision of the Supreme Court in Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, in support of his stand and submitted that despite participating in the process of co-opting respondent No. 6, the petitioner No. 1 is also entitled to challenge that co-option. No doubt, in para 4 of the said decision, the finding of the High Court has been reproduced to the following effect: -

"The Court further held that the first petitioner did not take any objection until the whole election process was completed and at a later stage approached the Court to ''throttle down'' the election of the office bearers and that this might indicate a waiver of the right on the part of the petitioner and also it amounts to acquiescence and, therefore, no interference is called for at the instance of the petitioner-2."

We, however, do not find at any stage of the judgment that the Supreme Court has set aside this finding. The entire discussion in the judgment is based upon the provisions of Section 73B of the Maharashtra Co-operative Societies Act and on the import of the term ''election'' as appears in that provision. The decision is, therefore, not an authority for the proposition whether in such circumstances the Court should or should not decline to grant indulgence in exercise of its jurisdiction under Article 226 of the Constitution. In the circumstances of the present case and particularly in view of the subsequent events where the entire Board of Directors, including the petitioner No. 1 and respondent No. 6, stand suspended pending an enquiry for its complete supersession, we feel inclined not to permit indulgence to the petitioners in exercise of our discretionary jurisdiction under Article 226 of the Constitution.

4A. The contention of the petitioners is that when a member of a committee (Board of Directors) of the society is suspended under sub-section (1) of Section 53 of the Co-operative Societies Act, he shall not be eligible for contesting the election as a member of the committee of that society for a period of seven years. Since the respondent No. 6 suffers such a disqualification when the Board of Directors was also superseded earlier on 29-4-1987, vide Annexure P-1, he could not be co-opted as a member of the Board of Directors and could also not be elected as the President of the Society, since the term ''election'', it is argued by the learned counsel for the petitioners, must be held to include ''co-option''. In order to appreciate the contention, we may reproduce Section 53(12), as it now stands : -

"53(1). When a committee of a society has been "superseded under sub-section (1), the members of the committee notwithstanding anything contained in this Act, rules made thereunder or byelaws of the society, shall not be eligible for contesting the

election as a member of the committee of that society for a period of seven years."

The decision on the issue whether the term ''election'' will also include ''co-option'' will turn upon the construction to be put on the meaning to be given to the words ''contesting election as a member of the committee'' appearing in Section 52(12) of the Act. It is clear that the legislature has deliberately omitted the use of the word ''co-option'' and has restricted the disqualification only to contesting the election as a member. The language makes it clear that the ineligibility created by the provision is restricted to contesting the election. In the process of co-option, as distinct from election, there is no element of contest. It is more or less a process of selection. Since the matter relates to election of a member in the Board of Directors, a strict construction should be made of the terms used and no addition of words may be permissible even if the legislature had in its mind some other intention. It can well be taken as settled law that we cannot aid the legislature''s defective phrasing of an Act, we cannot add or mend and, by construction, make up deficiencies which are left there. A matter which should have been but has not been provided for in a statute cannot be supplied by Courts, as, to do so, will be legislation and not construction. In Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, Bhagwati, J. (as he then was), speaking for the Court observed that it is certainly not the duty of the court to stretch the word used by the legislature to fill in gaps or omissions in the provisions of an Act. We are aware of the decision of Denning, L. J. which has been cited with approval by the Supreme Court in Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, that when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give ''force and life'' to the intention of the Legislature. A judge must not alter the material of which the Act is woven but he can and should iron out the creases. These and the like observations of the same learned Judge in Magor and St. Mellons Rural District Council v. Newport Corporation 1950 2 AILE.R. 1226, were severely criticised by the House of Lords and were disapproved in Magor and St. Mellons R.D.C. v. Newport Corporation 1951 2 All. E.R. 839 (HL). Lord Simonds observed : ''It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation''. Lord Morton observed : "These heroics are out of place". Lord Tucker said "Your Lorships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L. J. were to prevail".

In view of the above state of law and the canons of interpretation, it will not be the function of this Court to supply the word, namely, ''co-option'' even if the Legislature so intended. We, as has been said earlier, strongly feel that the Legislature intended a member, subject to the provisions of Section 53(12), to be ineligibile only for contesting the election. In our view, the ineligibility created by force of that provision does not extend to members for co-option but is restricted to contesting the election as member of the committee of that society-for a period of seven years.

Learned counsel for the petitioners relied upon the decision in Revenue Divisional Officer v. Pushpam, AIR 1976 Madras 252, to say that election would also include co-option. No doubt, broadly speaking, the decision supports what the learned counsel contends. The Court there was concerned with interpreting the use of the word ''co-option'' appearing in Section 15(4) of the Tamil Nadu Panchayats Act, 1958. There was a conflict as to its import earlier between a few single Bench decisions. The question was whether in exercise of powers u/s 147 of the Tamil Nadu Panchayats Act, the Inspector could rescind the resolution of co-option. After referring to the dictionary meaning of the word ''co-option'', the Court observed that the process involves ascertaining the wishes of each of the members of the Panchayat already elected into the body politic. The Court was also impressed with certain Government notifications which provided that co-option of a woman member to a Panchayat u/s 15(4) shall be by the very process by which President and Vice-Presidents are elected and observed that the President and the Vice-Presidents are elected by the ordinary process of election with all its trappings. The Court held that for the purposes of that Panchayat Act and in the context of Sections 15(4) and 147, the term ''co-option'' in that case did involve election in its full sense and the result of the election can be called in question only through an election petition and not by reference to the Inspector. In our view, the contest in which the term ''election'' appears in Section 53(12) of the M.P. Co- operative Societies Act, the prohibition is only to contest election. We are of the opinion that the Madras decision is distinguishable on its own facts and the terms of the provision which fell for consideration before their Lordships. That case, therefore, is not applicable in the present context and circumstances of this case and the setting in which the phrase for our consideration occurs.

There is yet another reason why we are inclined to give a restricted meaning to the term ''contesting the election as a member of the committee'' appearing in Section 53(12) of the Act. The reason is that Rule 44 of the M.P. Co-operative Societies Rules, 1962, enumerates the grounds on which a person may be disqualified for being a member of the committee. Significantly, it does include a person disqualified u/s 53(12). Therefore, the terms of Section 53(12) must be strictly construed and the phrase ''contesting the election'' must be given a restricted meanining and in the context in which it has been used.

It was also urged that even if respondent No. 6 could be co-opted, he could not contest the election to the Office of the President of the Society. Suffice it to say that what Section 53(12) prohibits is contesting the election of a member of the committee. Once a person is a member of the committee in his own right, there is no prohibition in terms of Section 53(12) to be elected as President. This contention is, therefore, rejected.

For the aforesaid reasons, we uphold the impugned order of the Board of Revenue (Annexure P-5) and dismiss this petition with costs. Counsel''s fee Rs. 500/-. Security

amount, if any, be returned to the petitioners.