

(2013) 05 BOM CK 0058

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 2629 of 2013

Dnyandeo Mohan Salunke and
Popatrao Baburao Jadhav

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: May 10, 2013

Acts Referred:

- Maharashtra Co-operative Societies Act, 1960 - Section 157, 73(1B), 73(IB), 73G, 73G(15)
- Multi-State Cooperative Societies Act, 1984 - Section 36, 37, 99, 99(2), 99(2)(a)

Citation: (2013) 4 ABR 489 : (2013) 4 ALLMR 498 : (2013) 4 BomCR 559 : (2013) 4 MhLj 785

Hon'ble Judges: Sunil P. Deshmukh, J; R.M. Borde, J

Bench: Division Bench

Advocate: V.D. Salunke, instructed by Mr. R.R. Karpe, for the Appellant; K.G. Patil, A.G.P. for Respondents No. 1 to 4 and Mr. V.D. Hon, Advocate for Respondents No. 5 and 6, for the Respondent

Final Decision: Allowed

Judgement

1. Petitioners, who are members of Respondent No. 5-Mula-Pravara Electric Co-operative Society Ltd. Shrirampur, Tq. Shrirampur, District Ahmednagar, have approached this Court with a request to issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus, directing the Respondents to make appointment of Administrator of the rank of District Deputy Registrar/Collector or the Officer of equivalent rank to take over the functions of Management of Respondent No. 5-Society. Respondent No. 5-Society is a specified Co-operative Society within the meaning of Section 73G of the Maharashtra Co-operative Societies Act, 1960 (herein after referred to as "the Act"). The last elections to the Managing Committee of Respondent No. 5-Society were held and elected Managing Committee assumed charge of the administration of the Society

on 27.11.2006. The term of the elected Managing Committee is of five years which expired on 26.11.2011. According to petitioners, the Managing Committee of Respondent No. 5-Society did not take steps for holding elections before expiry of their term, however, made a request to the State Government for granting extension of the term. The proposal, in that regard, was submitted on behalf of the Managing Committee, in pursuance to which notification came to be issued granting exemption u/s 73 (IB) of the Act and directing extension of term of Managing Committee for the period of six months. After expiry of extended term of six months, on second occasion, Government orders came to be issued granting exemption u/s 73(IB) of the Act and further extending term of Managing Committee of Respondent No. 5-Society for further period of six months on 30.05.2012. The extended term of the Managing Committee has also come to an end in November 2012.

2. It is to be noted that the orders directing exemption from the operation of provisions of Section 73(IB) were issued by the State Government on 15.12.2011 and 30.05.2012 in exercise of powers conferred u/s 157 of the Act. The State Government, at the request of the Managing Committee of Respondent No. 5 Society, in spite of expiry of term of elective office as well as extended term of one year, granted further exemption in exercise of powers conferred u/s 157 of the Act on 27.11.2012 and granted extension of the term of Managing Committee until further orders.

3. Petitioners contend that it was not open for the State Government to grant exemption from operation of provisions of Section 73 (IB) of the Act and extend term of the Managing Committee in exercise of powers u/s 157 of the Act. The powers exercisable u/s 157 of the Act cannot be invoked for extending benefits to the Managing Committee of a Society. The exercise of powers by the State Government is against the mandate of the Supreme Court as well as of this Court in various reported matters.

4. It is the contention of petitioners that on perusal of the orders of exemption granted by the State Government itself, it is evident that the orders have been issued by the State Government at the request of the Managing Committee and the Managing Committee, in stead of taking steps for holding of elections, has tendered a request to the State Government for grant of extension. It is the contention of petitioners that in view of provisions of Section 73H of the Act, the Managing Committee, whose term has already come to an end, does not have entitlement to continue in office and as such, direction needs to be issued to appoint Administrator to take over the affairs of Society.

5. Learned Counsel appearing for Respondent No. 6-Managing Committee of Respondent No. 5-Society has vehemently opposed the contentions raised by petitioners. According to Respondent No. 6, for the valid reasons recorded in the orders dated 15.12.2011 and 30.05.2012, the State Government has granted

extension of term in favour of the Managing Committee. The learned Counsel has invited our attention to provisions of Section 73G (2B) proviso and contended that since the Collector has failed to hold elections to the Managing Committee of the Society, the term of office of members of the Managing Committee, shall be deemed to have been till the date immediately preceding the date of first meeting of the newly constituted Committee. According to Respondent No. 6, there is no failure on the part of Managing Committee of Respondent No. 5-Society to hold elections. It is contended that since Respondent No. 5 is a specified Cooperative Society, in view of provisions of Election Rules of 1971, it is the responsibility of the Collector to hold elections and for the failure of the Collector to hold elections, the Managing Committee cannot be held responsible and is not liable to be removed from office.

6. An affidavit-in-reply has been presented on behalf of the State Government on 7th May, 2013 and it has been pointed out that the order of exemption passed on 30.05.2012 u/s 157 of the Maharashtra Co-operative Societies Act, has been cancelled and an order has been issued by the State Government on 06.05.2013 thereby extending term of the Managing Committee of Respondent No. 5-Society till 31.12.2013. According to the State Government, elections to the specified Co-operative Societies are required to be held in accordance with amended provisions of Maharashtra Co-operative Societies Act. It is further stated that an Ordinance has been issued by the State Government directing amendment to the provisions of Maharashtra Co-operative Societies Act and in view of the amended provisions, elections to the specified co-operative society are required to be conducted by the State Co-operative Election Authority, which is yet not constituted. It is further stated that in view of provisions of Section 73G (15) of the Act, elections to the Committees of the Society, which is due on the date of commencement of Maharashtra Co-operative Societies Amendment Ordinance, 2013, or may become due after said date until 31st December, 2013, shall be held before 31st December, 2013. It is, thus, contended that in view of the amended provisions, elections to Respondent No. 5-Society are required to be held before 31st December, 2013 and as such, term of the Managing Committee of the Society has been extended up to 31st December, 2013.

7. The term of the elected Managing Committee of the Society is for the period of five years. Section 73G(2) provides that, when the election of all the members of the committee of any such society is held at the same time, the members elected on the committee at such general election shall hold office for a period of five years from the date on which the first meeting is held unless the period is extended by the State Government, for reasons to be recorded in writing for a period not exceeding one year so however that the total period does not exceed six years in the aggregate. Section 73G of the Act makes a provision for the conduct of elections to the committees and of officers on certain societies and term of office of member of such committees. The class of societies, mentioned in answering description of

sub-section (1) of Section 73G, are the specified societies. In view of provisions of sub-section (2) of Section 73G, the term of the Committee is for a period of five years and with the powers of extension available with the State Government, the extended term cannot exceed beyond six years. Sub-section (2B) of Section 73G provides that, where, for any reason whatsoever, the election of the members of the committee was held or could not be held before the expiry of the term or the extended term, as the case may be, of the existing committee, the members, (including the officers of the committee) shall cease to hold office on the expiry of its term, extended term, as the case may be and they shall be deemed to have vacated their offices. Proviso to sub-section (2B) of Section 73G provides that, where the Collector fails to hold election to the committee of any such society, the term of office of the members of the committee of that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee.

8. On perusal of provisions of Section 73G, thus, it would be clear that on expiry of extended period of the Committee of a society, the members shall be deemed to have vacated their office, subject to the exception provided under the proviso to sub-section (2B) of Section 73G of the Act.

9. At this juncture, it would be relevant to refer to the provisions of Section 73H of the Act, which provides thus:

73H Responsibility of committee to hold election before expiry of term:

(1) It shall be the duty of the committee of every society to arrange for holding the election of its members before the expiry of its term.

(2) Where there is a willful failure on the part of the committee to hold the election to the committee before the expiration of its term, the committee, [shall cease to function on the expiration of its term and the members thereof shall cease to hold office and the Registrar may himself take over the management of the society or appoint an Administrator (who shall not be from amongst the members of the committee, the term of which has so expired) and the Registrar or Administrator shall hold election within a period of six months and the committee shall be constituted before the expiration of that period

Provided that, in the case of co-operative credit structure entity, the Registrar or Administrator shall hold election within a period of two months from the date of taking over the management of the society.

10. There is a mandate laid down under sub-section (2) of Section 73H that in case of failure on the part of the committee to hold elections of the Committee before expiry of its term, the committee shall cease to function on the expiration of its term and the members shall cease to hold the office and it would be responsibility of the Registrar to take over the management of the society or appoint an Administrator,

who shall not be from amongst the members of the Committee whose term has come to an end.

11. Section 73-1B and Section 157 of the Maharashtra Cooperative Societies Act, are quoted as below:

73-1B Powers of State Government to postpone election:

Where due to scarcity, drought, flood, fire, or any other natural calamity or rainy season of any election programme, of the State Legislative Assembly or Council or the House of the People or a local authority coinciding with the election programme of any society or class of societies or such other reasons as, in the opinion of the State Government, are exceptional, it is not in the public interest to hold elections to any society or class of societies, the State Government may, notwithstanding anything contained in this Act, or in any rules, or bye-laws made thereunder, or any other law for the time being in force, for reasons to be recorded in writing, by general or special order, postpone the election of any society or class of societies, for a period not exceeding six months at a time which period may further be extended so, however, that the total period shall not exceed one year in the aggregate.

157 Power to exempt societies from provisions of Act.

The State Government may, by general or special order, exempt any society or class of societies (other than co-operative credit structure entity) from any of the provisions of this Act, (or of the rules made thereunder) or may direct that such provisions shall apply to such society or class of societies (other than cooperative credit structure entity) with such modifications not affecting the substance thereof as may be specified in the order.

Provided that, no order to the prejudice of any society shall be passed, without an opportunity being given to such society to represent its case.

12. In the instant matter, admittedly term of elected committee has come to an end on 26.11.2011 and the extended term permissible under the provisions of the Act has also come to an end in the month of November-2012. The Managing Committee of Respondent No. 5-Society continued to run affairs of the society in view of the exemption orders issued by the State Government on 15.12.2011, 30.05.2012, 27.11.2012 and recent order passed during pendency of this petition, on 06.05.2013. All the orders referred to above, are issued by the State Government in exercise of powers u/s 157 of the Act. On perusal of the orders passed by the State Government on 15.12.2011, 30.05.2012 and 27.11.2012, it is evident that the exemption orders are issued by the State Government considering the request made by Respondent No. 5-Society. By virtue of the exemption orders, issued by the State government, referred to above, the society has been granted exemption from operation of provisions of Section 73(1B) of the Act and term of office of managing committee

has been extended for a period specified in the aforesaid orders.

13. According to petitioners, orders issued by the State Government, in exercise of powers u/s 157 of the Act, are illegal and the State ought not to have granted exemption in favour of managing committee of the society and ought not to have extended term of the Committee. Reliance can be placed on a judgment of the Supreme Court in the matter of Indian Labour Co. Op. Society V/s Union of India, reported in 1999 (7) SRJ 386. The question, that was posed before the Supreme Court, was, as to whether in exercise of powers u/s 99 of the Multi-State Co-operative Societies Act, 1984, exemption can be granted from operation of provisions of law for benefit of members of the Committee. While considering the issue, the Supreme Court, in paragraphs no. 9 to 11, has observed thus:

9. As we read Section 99(2)(a) it appears to us that the power of the Central Government under the said provision is to exempt a multi-state cooperative society or any class of such societies from any of the provisions of the Act or the rules and this provision does not contemplate given exemption to anyone else. In other words, if the society is required to comply with any of the provisions or the rules and a case is made out for granting exemption then the Central Government can, in the manner provided by the said section, grant exemption.

10. What is contended before us is that u/s 99(2) it is the society which is granted exemption from complying with the provisions of Section 36 and Section 37.

11. Section 36 and Section 37 are provisions which inter alia create a bar or an impediment on a person holding office of more than one society as the president at the same time or for continuing to hold such office for more than two consecutive terms. The rigour of these two provisions is qua an individual and not qua the society. Section 99(2) enables the Government to give relief to the society from the operation of any provisions of the Act but what has now been done is to give relief to an individual, namely, respondent No. 4 from the operation of Section 36 and Section 37. That certainly is not the intention nor the letter of the law.

The provisions of Section 99 of the Multi-State Cooperative Societies Act are in pari materia with the provisions of Section 157 of the Maharashtra Co-operative Societies Act, as such, ratio laid down in the above noted judgment of the Supreme Court is squarely applicable to the instant case.

14. In the matter of [Purna Cooperative Sugar Factory \(Purna Sahakari Sakhar Karkhana\) and Jaiprakash Salunke Vs. Dr. Jaiprakash Mundada, The Commissioner of Sugar, Maharashtra State, The Regional Joint Director \(Sugar\) and Joint Registrar, Cooperative Societies, The Secretary, Cooperation Department and State of Maharashtra](#), it is held by this Court that the protection, which could be granted by the State Government, in exercise of powers u/s 157, is referable to the society or societies and not to the Committees or the members of the Committees.

15. In Writ Petition No. 8040/2006, decided by the Division Bench of this Court (Coram: P.V. Hardas & S.P. Kukday, JJ.) on 24.07.2008, similar issue was taken up for consideration, as to whether Section 157 of the Act could be pressed into aid in order to grant extension beyond maximum period specified under the provisions of the Act. While answering the issue, on consideration of the judgment of the Supreme Court, cited supra, it is observed by the Division Bench, thus:

Section 99(2) of the Multi-State Co-operative Societies Act, 1984 is in pari materia with Section 157 of the Maharashtra Co-operative Societies Act, 1960. If there is no provision in the Maharashtra Co-operative Societies Act, 1960, for granting extension to the provisional Board of Directors from holding office beyond the maximum provided by the Statute, the provisions of Section 157 of the Act cannot be used to extend the period of the term and such an exercise resorting to the provisions of Section 157 of the Act is wholly impermissible in law. Powers u/s 157 of the Act can be exercised by the Government for granting exemption to society and not to individuals or the provisional Board of Directors.

❖ Similar view is taken by the Division Bench of this Court in the matter of Maroti Vishnu Borkar Vs. State of Maharashtra & others, reported in 2008 B.C.I. 6; as well as in the matter of Shivaji Annasaheb Gadhve & another Vs. State of Maharashtra & others (Writ Petition No. 27 of 2011, decided on 14th March, 2011).

16. On consideration of the judgments referred to above, the arguments advanced by the petitioners that the orders issued by the State Government on 15.12.2011, 30.05.2012, 27.11.2012, are illegal and beyond the powers exercisable u/s 157 of the Maharashtra Co-operative Societies Act, by the State Government, need to be accepted. The powers u/s 157 of the Act can be exercised by the State Government for granting exemption to the societies and not to individuals or the board of Directors of the societies. Since the orders passed by the State Government, granting extension of term in favour of Respondent No. 6-Committee, in exercise of powers u/s 157 of the Act, are illegal, the Managing Committee of the society i.e. Respondent No. 6 does not have entitlement to continue in the office beyond the period of five years.

17. Shri Hon, learned Counsel appearing for Respondent No. 6-Managing Committee, represented by its Chairman, relying upon provisions of Section 73G (2B) proviso, contends that since there is a failure on the part of the Collector to hold elections to the Committee, the term of office of members of the office of the committee, shall be deemed to have been extended till the date immediately preceding the date of first meeting of the newly constituted committee. In view of provisions of Section 73H of the Act, it is the duty of the committee of every society to arrange for holding the election of its members before the expiry of its term. Sub-section (2) of Section 73H prescribes that where there is a failure on the part of the Committee to hold election, it is the responsibility of the Registrar to take over management of the society or appoint an Administrator. The primary responsibility

of holding the election rests on the society subject to provisions of Specified Co-operative Societies Rules, 1971. Rule (4) thereof provides that a provisional list of voters shall be prepared by every society for the year in which general election is due to be held and in view of sub-rule (2) of Rule 4, it is the responsibility of the society to send four copies of authenticated provisional lists of voters to the Collector through District Deputy Registrar so as to reach the Collector by 15th July of the year in which general election is due.

18. In the instant matter, instead of taking steps, as contemplated by provisions of Rule 4 or as mandated by Section 73H (1), the Society has made a request to the State Government for grant of extension of a period of one year by sending proposal on 03.12.2011. In a similar fashion, the Society, instead of taking steps for holding the election, has tendered yet another proposal for granting extension of the term on 15.05.2012. After expiry of the period extended by the State Government on two occasions, it appears that the State Government granted extension to the Managing Committee of Respondent No. 5-society for an indefinite period by issuing an order on 27.11.2012.

19. It is, thus, clear on perusal of the orders issued by the State Government on 15.12.2011, 30.05.2012, 27.11.2012 and the last order issued during pendency of this petition, on 06.05.2013, that the State Government has granted extension in favour of Managing Committee of Respondent No. 5-Society, which facilitated the Committee to continue to remain in office beyond the term of five years so also extended period permissible under the Act and even beyond the said period. The first two orders of granting exemption u/s 157 of the Act and directing extension of the term are at the request of the Managing Committee of the Society, which is clear on reading text of the order. Thus, it has to be concluded that the Managing Committee of the Society, in stead of taking steps for holding elections, tendered request to the State Government for granting extensions u/s 157 of the Act and requesting for extending the term. The State Government has also, surprisingly, granted exemptions beyond the period prescribed under the Act and by virtue of the order issued on 27.11.2012, term of the Managing Committee has been extended for indefinite period.

20. Thus, in the facts and circumstances of this case, contentions raised by Respondent No. 6 that in view of proviso to sub-section (2B) of Section 73G, the Committee is entitled to continue to remain in office till the date immediately preceding the first meeting of the newly constituted committee, cannot be accepted. We do not find any failure on the part of the Collector to hold elections of the Committee. However, there appears to be failure on the part of the Committee to take steps and it is evident, on perusal of the orders of extensions granted by the State Government on 15.12.2011 and 30.05.2012, which are issued at the request of Managing Committee of the Society.

21. In this context, it would be appropriate to refer to the judgment of the Division Bench of this Court in the matter of Anandrao Yashwantrao Nalawade V/s State of Maharashtra, reported in 2005 (6) B.C.R. 174. This Court, while considering similar issue, has considered provisions of sub-section (2B) of Section 73G of the Act. In paragraphs no. 16 and 21 of the judgment, it is observed thus:

16. Mr. Patil, learned Counsel appearing for the petitioner, has drawn our attention to a Division Bench judgment of this Court in the case of [Jayaram Sakharam Pachore and Others Vs. The State of Maharashtra and Others](#), . This judgment was rendered when there did not exist the proviso to Section 73-G(2-B). That proviso rests the responsibility on the Collector if he fails to hold the elections in time. In that case, it is laid down that the Committee will not be responsible. However, what the judgment lays down with respect to Section 73-G(2-B) is relevant for our purpose. In para-8 of this judgment, the Division Bench observed as follows:-

8. Section 73-G(2-B) of the Act stipulates that where, for any reason whatsoever, the election of the members of the Committee was held or could not be held before the expiry of the term or the extended term, as the case may be, all the existing Committee members, including the officers of the Committee, shall cease to hold office on the expiry of its term or extended term, as the case may be, and they shall be deemed to have vacated their offices. The operation of these provisions is automatic on expiry of the original term or the extended terms, as the case may be.

Thereafter in para-10, the Division Bench explained the co-relation between Section 73-G(2B) and Section 77-A. It has been explained that whereas Section 73-G(2B) deals with the first stage in the event of failure to hold elections, Section 77-A deals with the second stage to take over the administration. It is pointed out in this paragraph that the order passed by the Division Bench in this behalf was left undisturbed by the Apex Court in an SLP. The relevant observations in para-10 read as follows:

10. Section 73-G(2B) read with Section 73-G(2) of the Act states that on expiry of the original tenure or the extended tenure, the outer limit being of six years, the elected members cease to hold office of the Managing Committee. However, these provisions do not stipulate any alternative arrangement for the administration of the society in that eventuality namely when the elected members cease to hold office on completion of their original term or extended term. Such an issue had also come up for our consideration in the case of (Ratnakar Anand Daste and others v. State of Maharashtra and others) 2. Writ Petition No. 1136 of 2000 and we had relied upon the provisions of section 73-H of the Act which states that the Committee shall cease to function on the expiry of its term and the members hereof shall cease to hold office and the Registrar may himself take over the management of the society or appoint an Administrator who shall not be from amongst the members of the Committee, the term of which has so expired and the Registrar or Administrator shall hold the elections within a period of six months and the Committee shall be

constituted before the expiration of that period. This provision empowers the Registrar, at the first instance, to take over the administration of the society, which includes a specified society as well and in the second stage it empowers the Registrar to appoint an Administrator.

Section 77-A empowers the State Government or the Registrar to appoint a new Committee or Administrator or constitute a Committee by following the procedure as laid down therein. Our order dated 18th April, 2000 in Writ Petition No. 1136 of 2000 was challenged before the Supreme Court and the SLP came to be rejected.

21. With respect to this submission of Mr. Naik, we have to note the mandate of Section 73-H of the MCS Act. It is clear that if the election is not held before expiry of the period for which the Committee is constituted, the Committee has no authority to function any further. That is also the law laid down by the Division Bench in *supra* Jayram Sakharam's case (*supra*). The section clearly provides that the Committee shall cease to function on the expiry of its term and the member thereafter shall cease to hold office. This statutory provision is known to the Committee members. It is, therefore, their duty to see to it that the election is held in time. If they do not hold the elections in time, their authority comes to an end. It is only to avoid the resultant vacuum that Section 73H(2) provides that in view of the eventuality, the Registrar may take over the management and appoint an Administrator. When we read this section with Section 77A(ii), we find that the Registrar can appoint a Committee of three members of the Society or one or more Administrators who need not be members of the Society to manage its affairs till the new Committee enters upon the office.

22. An affidavit-in-reply has been presented on behalf of Respondents No. 1 to 3 on 06.05.2013 and it has been stated therein that the Government of Maharashtra has cancelled the order dated 27.11.2012, issued u/s 157 of the Act. It is further stated that in view of promulgation of Maharashtra Ordinance No. 6/2013, amending the Maharashtra Co-operative Societies Act, 1960, the managing committee of Respondent No. 5-society shall be granted extension until 31.12.2013 or the date on which elections to the committee are held by the State Co-operative Election Authority, whichever is earlier. It is stated that in view of amended Section 73CB of the Act, elections are required to be held by the State Co-operative Election Authority, which is yet not constituted. The provisions of Section 73CB(1) and (15) are quoted as below:

73CB (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to a society shall vest in the authority called as "the State Co-operative Election Authority", as may be constituted by the State Government in that behalf. Every general election of the members of the committee and election of the office bearers of a society including any casual vacancy to the extent applicable shall be held as per the procedure prescribed.

(15) Notwithstanding anything contained in this Act, the rules or the by-laws of any co-operative society, the election to the committee and consequent election of the office-bearers which is due on the date of commencement of the Maharashtra Cooperative Societies (Amendment) Ordinance, 2013, or may become due after such date, until 31st March 2013, shall be held before the 31st December 2013.

The aforesaid provisions do not empower the State Government to grant extension of term in favour of the managing committee of Respondent No. 5-society whose term has already expired long back in the year 2011. Grant of extension of term by the State Government, by virtue of intervening orders dated 15.12.2011, 30.05.2012 and 27.11.2012, in exercise of powers u/s 157 of the Act, is itself illegal and as such, managing committee of the society would not be entitled to continue in the office. It is the responsibility of the Registrar, in view of provisions of Section 73H to take steps and appoint Administrator.

23. In this view of the matter, request made by the petitioners in the petition for issuing directions to the Registrar to appoint an Administrator to take over functions of the society, needs to be granted. The order issued by the State Government on 06.05.2013 deserves to be set aside and it is accordingly set aside. For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The order issued by the State Government, during the course of hearing of the petition, on 06.05.2013, is quashed and set aside. Respondent No. 2-Commissioner for Co-operation, Maharashtra State, Pune, is directed to appoint an Officer of the rank of District Deputy Registrar, to take over the Management of Respondent No. 5-Society, forthwith.

Rule is accordingly made absolute. There shall be no order as to costs.