

(2014) 05 BOM CK 0006

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition Nos. 5020 and 5025 of 2000

Ahmednagar Postal Division
Co-Operative Credit Society Ltd.

APPELLANT

Vs

Chief Post Master General

RESPONDENT

Date of Decision: May 9, 2014

Acts Referred:

- Maharashtra Co-operative Societies Act, 1960 - Section 12, 13, 14, 2, 72

Citation: (2014) 6 ABR 451 : (2014) 5 MhLj 477

Hon'ble Judges: S.V. Gangapurwala, J; N.W. Sambre, J

Bench: Division Bench

Advocate: V.D. Hon, Advocate for the Appellant; Alok Sharma, ASG, Advocate for the Respondent

Judgement

N.W. Sambre, J.

Heard learned Counsel for respective parties. Impugned in the present petition is an order dated 23rd November, 2000, passed by the respondent-Sr. Superintendent of Post Offices, Ahmednagar Division, Ahmednagar, informing the Chairman of the petitioner-Co-operative Society about withdrawal of the facilities provided to the said Society in view of failure on the part of the petitioner-Society to nominate the Divisional Head of the Postal Department as Ex-Officio Chairman and to have 1/3rd strength of Managing/Executive Committee or 3 members, whichever is less, to be nominated on the Board of petitioner-Society.

2. Facts giving rise to the present petition are as under:

The petitioner-Society claims to be in existence since 1920, and subsequently by virtue of provisions of the Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder (hereinafter shall be referred to as the "Act" and the "Rules" for the sake of brevity) is deemed to be registered. The petitioner-Society is carrying out the business in the nature of Credit Co-operative Society and the

employees of the Postal Department from the jurisdiction of petitioner-Society are entitled to be members of petitioner-Society. In view of the fact that, the petitioner Society consists of members, who are employees of the respondent-Department, is entitled for certain facilities and privileges. The facilities or the privileges which are admissible to the petitioner-Society are as under:--

- i) Recovery of monthly subscription, loan repayment installments of the society at the time of disbursement of their monthly salaries and remitting it in one lump to the credit society without charging any fees.
- ii) Provision of accommodation for the office of the said credit society in the premises of the post office in Govt. Building without rent and at very normal monthly rate of rent.
- iii) Providing of electricity and water supply facility to the office of the Society.
- iv) Grant of special casual leave to the managing body members society for the society work.

3. The above referred facilities, according to the petitioner, are in accordance with the conditions as prescribed under Rules framed by the respondent-Postal Department for the welfare of postal employees, who are only eligible to be members of the petitioner-Society.

4. As a consequences of above, the communication impugned dated 23rd November, 2000 came to be issued. By way of impugned communication, the respondent No. 4 has informed the petitioner-Society that the facilities such as recovery of subscription and other society dues from the pay and allowances of the staff of the Postal Department provided to the petitioner-Society are withdrawn. The privileges made available to the petitioner-Society in the office building of the respondent-Department also stood withdrawn. It is further informed that the members of the Managing Committee/Executive Committee, who were entitled to the facility like special casual leave/convenient duties etc. also stood withdrawn with immediate effect. The petitioner's-society was further put to notice that unless the directions referred to in the communication dated 23rd November, 2000 are complied, the facilities cannot be restored, which has prompted the petitioner to prefer present petition.

5. The petitioner further claimed that, the respondent No. 1 - Chief Post Master General, Maharashtra Circle, Mumbai, has issued directions on 29th March, 2000 directing the office bearers of the Societies like the present petitioner that the Chairman of the Society has to be an official representative of the Govt. of India and 1/3rd strength of the Managing/Executive Committee of the Society concerned or three members, whichever is less, should be the official nominees on the Board of Society. The respondent No. 1 as such has instructed the respondents No. 2, 3 and 4 to take appropriate steps at its level to ensure the compliance of above referred

directions by issuing suitable notices to the Head of the Societies who in turn shall be liable to take steps for amending their bye-laws, failing which the facilities/privileges made available to the societies and its members should be stopped.

6. The respondent-herein claimed that the petitioner-Society was initially headed by the Chairman and three members from the Executive Head of the concerned Division and senior officials however, the petitioner-Society has amended the bye-laws framed under the above referred Act and has stopped fulfilling the conditions of nomination of Chairman and three Executive Members, from last about 20 years. It is further claimed by the respondents that, in spite of the above referred act on the part of the petitioner-Society, the petitioner-Society continued to enjoy the facilities/privileges from the respondent-Department.

7. It is the submission of the petitioner that, the petitioner-Society was in existence since 1920, it is deemed to be registered under the provisions of section 9 of the Act and the Rules framed thereunder. The petitioner-Society as such submits that they are required to conduct their business, and the constitution of Managing Committee in accordance with the provisions of the Co-operative Societies Act, rules framed thereunder and bye-laws. The petitioner further claimed that section 9 of the said Act provides for "registration of the Society" and section 12 provides for "a classification of Society". The classification of the Society is provided under section 12. Same is required to be carried out by the Registrar in accordance with the definition of "Society" in section 2 and also sub-clauses thereof as prescribed under the Rules. The petitioner-Society claims to be carrying out business of providing credit facilities to its members and as such classified accordingly under the Act and the Rules framed thereunder. The petitioner submits that, the classification as is done is adhering to the principles of Co-operative Laws. It is a bounden duty of the Managing Committee of the petitioner Society to follow the principles of Co-operative Law. The direction herein to the extent of the nomination of members and Chairman from the Executive Head and Executive of the respondent-Department shall be in violation to the object of the Co-operative Societies Act. The petitioner further submits that, for becoming the member of the Managing Committee, it is necessary that a person must be shareholder and member of the petitioner-Society. The directions issued by the respondent which are impugned in the present petition makes it clear that, the respondents are asking the petitioner to give go by to the provisions of the Co-operative Societies Act and rules framed thereunder. It is the case of the petitioner that, so far as the facilities provided to the petitioner-Society and its members are concerned, same have nothing to do with the right of the respondent under the Co-operative Societies Act as the same is in the light of the welfare scheme framed by the Central Government for the postal Department employees. As such, it is not open for the respondents to withdraw the facilities just because the petitioner has failed to comply with direction of respondent to act contrary to the provisions of the Co-operative Societies Act.

8. While responding to the above referred submissions, the respondents have invited attention of this Court to the fact that the petitioner-Society is a Credit Society and is functioning for providing loans and other facilities to the postal employees since 1920. It is further submitted by the respondent that, the petitioner Co-operative Credit Society has been established to provide financial assistance to the postal employees from the funds raised by way of share capital and monthly fees subscription. The facilities provided to the petitioner-society and its office bearers are as per the Rules framed by the Department for the welfare of the postal employees. The respondents further submitted that the above-referred instructions are issued based upon the directions issued by the Director General of P and T, New Delhi, as is mentioned in the communication dated 23rd July, 1966. The respondents further submit that petitioner-Society has issued a communication dated 15th September, 2000, to the respondent thereby promising that the petitioner-Society shall place the said subject of amendment of bye-laws so as to give place to the Chairman and Executive Members of the Board of petitioner-Society in the next general meeting, which was due in June-2001, however, the petitioner instead of complying the same, has chosen to prefer present petition. The respondent further pointed out that, merely registration of the petitioner-Society as Credit Society, does not invite the provisions of the Co-operative Societies Act, 1960 as the same is not registered as the Co-operative Bank. According to the respondents, the communications issued are in accordance with P and T Financial Rules, governing the procedure of providing "facilities be extended" to the Co-operative Societies like the present petitioner and as such directions to nominate Divisional Head as Chairman and other officer as Ex. Committee Member are in accordance with the said Rules and within the powers of the respondents. The respondent further submits that, the petitioner-Society comes within the purview of the Consumer Co-operative Society and as such the provisions of Co-operative Societies Act, 1960 are not applicable and prayed for dismissal of the petition.

9. The submissions of the petitioner and respondents, if are tested in the light of the provisions of Maharashtra Co-operative Societies Act, 1960, for amending the bye-laws of Co-operative Societies, the procedure is provided under the provisions of section 13 whereas; section 14 of the said Act provides for powers of the Registrar to amend the bye-laws. Section 13 of the Act provides for validity of an amendment which is required to be registered after passing of a resolution to that effect in the general meeting of the Society with a Registrar. It further provides that, if the Registrar fails to take a decision on the proposed amendment within a period of two months after the date of receipt of proposed amendment, the same is required to be brought to the notice of the higher officer within a period of fifteen days from the date of expiration of two months period. If the Higher Officer or State Government failed to dispose of the application for amendment within a stipulated time, then there is deeming grant of such amendment. It further provides for a rider that even such amendment which is repugnant to the policy directives issued by the State

Government, is not liable to be granted under the deeming provision.

10. That the Registrar is empowered to issue directions under section 14 for amendment of bye-laws in case he feels it necessary or desirable in the interest of such Society or any bye-laws of the Society are inconsistent with the provisions of the Act and the Rules, then it is open for the Registrar to call upon the Society to make the amendment to the bye-laws. Failure on the part of the Society to make amendment as directed under sub-section (1) of section 14, empowers the Registrar or the State Government to notify the amendment as desired after granting opportunity of hearing to the Society and after consulting the Federal Society.

The power to amend the bye-laws so as to give effect to the impugned direction of the respondent vest in the General Body and not Managing Committee. The amendment of bye-law can be made either by General Body or by Registrar in the light of provision of sections 13 and 14 of the Act.

11. In the present case, the petitioner-Society is managed by its members who happen to be employees of the respondent-Postal Department. The directives of the Central Government which are impugned in the petition, are though addressed to the Chairman of the petitioner-Society. If it was necessary for the respondent-Department of the Central Government to give effect to its impugned order by carrying out the amendment in bye-laws for nomination of Chairman and three executive members, it was open for the respondent to bring the same to the notice of Registrar in the light of provision of section 14 of the Act. Be that as it may, the directions as are issued by the respondents which are impugned in the present petition are also required to be tested in the light of the provisions of the Co-operative Societies Act and the rules framed thereunder. The directions appear to be in the nature of mandate to the office bearers of the petitioner-Society to amend its bye-laws so as to make provision for the nomination of Chairman and 3 executive members. Such modality is not recognized under any of the principles of the Co-operative Societies Act or the Rules framed thereunder. The source of power to issue directions which are impugned in the present petition are mentioned by the respondents "to be the rules governing the working of their Department". Such rules empowering the respondent to issue directions which are impugned in the petition are not brought to the notice of the Court. In that view of the matter, the directions issued by the respondent would be contrary to the principles of Co-operative Law unless the statute empowers the respondent to do so.

12. Section 73(1AB) of the Co-operative Societies Act, was inserted by Maharashtra Act No. 20 of 1986. The said section 73(1AB) reads thus:

73(1AB) - The members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society.

Provided that, before fixing any responsibility mentioned above, the Registrar shall inspect the records of the society and decide as to whether the losses incurred by the society are on account of acts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members:

Provided further that, any member of the committee, who does not agree with any of the resolution or decision of the committee, may express his dissenting opinion which shall be recorded in the proceedings of the meeting and such member shall not be held responsible for the decision embodied in the said resolution or such acts or omissions committed by the committee of that society as per the said resolution. Such dissenting member, if he so desires, may also communicate in writing his dissenting note to the Registrar within seven days from the date of the said resolution or decision. Any member, who is not present for the meeting in which the business of the society is transacted, and who has not subsequently confirmed the proceedings of that meeting, such member shall also not be held responsible for any of the business transacted in that meeting of the society.

13. The Maharashtra Co-operative Societies Act, 1960, has further undergone substantial amendment in view of the 97th constitutional amendment. The said section 73(1AB) was deleted by Maharashtra Ordinance No. II of 2013 with effect from 14th February, 2013. The earlier section 73(1AB) provides for suggestion of membership of the Committee held by virtue of office under the Government. Section 72 of the Co-operative Societies Act provides for the final authority of the society, which by virtue of said section, vest in the general body of members in general meeting, summoned in the manner as may be specified in the bye-laws. Section 73 of the Act provides for Committee, its powers and functions. Section 73(1) provides for vesting of management of every society in a Committee, constituted in accordance with the Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, rules and the bye-laws. Section 73(1AB) provides for the members of the Committee to be jointly and severally responsible for all the decisions taken by the Committee during its term relating to business of the Society. It further provides for joint and several responsibility for all the acts and omissions detrimental to the interest of Society. Section 73-A(7) of the Co-operative Societies Act, which was brought to the statute book vide Ordinance No. II of 2013 after deletion of section 73(1AB), provides for suggestion of membership of a person elected, co-opted, appointed or nominated as a member of Committee of any Society by virtue of his holding of office under the Central Government or the State Government or in any local authority or in any body corporate or in any organization, he shall cease to be such member on the date on which he ceases to hold such office.

14. The above referred provisions of the Act do not show any recognition or power with the respondent to issue impugned directions.

15. The directions issued by the respondent-authorities directing the petitioner-Society to amend the bye-laws so as to make provision for the officials from the Department of Posts, Central Government to be members of Executive Committee, even if taken to be permissible in law however, such amendment cannot be carried out upon directions of respondents. If it is the requirement of the respondent that there should be appropriate amendment to the bye-laws of the petitioner-Society, it is open for the respondent to take appropriate steps in the light of the provisions of the section 14 of Maharashtra Co-operative Societies Act, where Registrar will have an opportunity to deal with said issue in the light of Scheme of Co-operative Act.

16. As such the directions impugned are illegal and not sustainable in the eyes of law. In that view of the matter, the writ petition is allowed. The communication dated 23rd November, 2000 issued by the Sr. Superintendent of Post Offices, Ahmednagar Division, Ahmednagar is quashed and set aside. However, it is made clear that the respondents are at liberty to take appropriate steps in accordance with the principles of Co-operative Law and the provisions of the Maharashtra Co-operative Societies Act. Rule made absolute in above terms. In the facts and circumstances, there shall be no order as to costs.