

Jaisingrao Pandurang Badadare and etc. Vs State of Maharashtra and Others

Court: Bombay High Court

Date of Decision: Jan. 8, 1985

Acts Referred: Constitution of India, 1950 " Article 14

Citation: AIR 1985 Bom 454 : (1985) 2 BomCR 213 : (1985) 87 BOMLR 29

Hon'ble Judges: Jamdar, J; Dharmadhikari, J

Bench: Division Bench

Advocate: C.J. Sawant, P.D. Kamerkar, B.R. Naik, Y.R. Naik and Prashant Naik, for the Appellant; T.K. Tope, Penal Counsel, J.C. Satpute, A.G.P., V. Limaye, M.A. Rane, M.L. Dudhat, P.K. Dhakephalkar, for the Respondent

Judgement

Dharmadhikari, J.

All these writ petitions were heard together as they involve common question of law and fact and. therefore, are being disposed of by this common judgment.

2. In all these writ petitions, the first proviso to sub-section (3) of Section 27 of the Maharashtra Co-operative Societies Act. as amended, is

challenged on various grounds. In Writ Petition No. 3952 of 1984, Respondent No.6 the Nasik District Central Co-operative Bank Ltd., Nashik

- is a co-operative society duly registered under the Act. It is also a Central Co-operative Bank within the meaning of the said expression as

defined in section 2(6) of the Act. It is an apex co-operative bank for the Nasik District. It is also a co-operative bank within the meaning of the

said expression in sub-section (10) of Section 2. It is also a federal society as defined in subsection (13) of section 2 of the Act. Consequently,

therefore, the voting rights in regard to the election of the Board of Directors of Respondent No. 66 are regulated in accordance with the first

proviso to sub-section (3) of section 27 of the Act, as amended. On the basis of the said provision, the Respondents have prepared a voters list

for the election. These facts are not disputed. it is the contention of the petitioners that the first proviso to sub-section (3) of section 27, which

came into force with effect from 26th December 1983, is wholly null and void, it being violative of the guarantee enshrined in Article 14 of the

Constitution of India. As in these writ petitions, we are concerned with the said challenge only, it is not necessary to make a detailed reference to

the averments or the allegations made in the other writ petitions. However, it is pertinent to note that in none of these writ petitions the respondents

have chosen to file any return and, therefore it can safely be presumed that so far as the factual averments or allegations are concerned, they stand

admitted.

3. Dr. Naik, Shri C. J. Sawant and Shri Kamerkar, the learned Counsel appearing for the petitioners in the various writ petitions, have contended

before us that a federal society has several co-operative societies as its members. The members of the Managing Committee of these member

societies differ in strength. Some primary co-operative societies have only 5 members on the Managing Committee, while other primary co-

operative societies have differing membership ranging up to 21. This number, therefore, varies from primary co-operative society to society. All

these primary co-operative societies are members of and are affiliated to the Federal Co-operative Society. Prior to 26-12-1983 all these primary

co-operative societies had only one vote under sub-section (3) of section 27 of the said Act. Now, by reason of the first proviso to sub-section (3)

of section 27, each co-operative society will have as many votes as will be the total number of its members on the Managing Committee. In other

words, within the same class of primary co-operative societies affiliated to the federal co-operative society, there is discrimination between the

same class and some co-operative societies will have more voting rights than the other depending upon the number of members on their Managing

Committee. The strength of the Managing Committee of a society is not determined by any statutory provision. It is entirely decided by the by laws

of the co-operative society. Therefore, there is an obvious hostile discrimination between co-operative societies similarly circumstanced. Further,

this will create an unhealthy competition amongst the co-operative societies since each society will try to increase the number of members on its

Managing Committee, which will run counter to the very object of the legislature. In this context, Shri C. J. Sawant, the learned Counsel appearing

for the petitioner in Writ Petition No.2170 of 1984 has drawn our attention to the allegations made in para 7 of the said petition, which apparently

shows variation in the number of directors or members of the Managing Committee of the various Dairy Societies,

4. The first proviso to sub-section (3) of section 27 is also challenged on the ground that so far as elections to the reserved seat u/s 73B are

concerned, no person shall have more than one vote, which means that the member society will have only one vote and, therefore, an apparent

discrimination is made between the election of two categories of persons to the same body. Apart from the fact that it amounts to hostile

discrimination, it will create complications since two different and distinct voters' lists will have to be prepared for the purpose of these two sets of

elections. It is also contended by the learned Counsel appearing for the petitioners that no guidelines are laid down in the Act fixing the ratio or

strength of the members of the committee. There is no parity or uniformity in the strength of the committee members. Before the impugned

amendment only the primary society was the voter. Now by enacting the first proviso to sub-section (3) of section 27, the right of the society is

taken away and it is now conferred on the members of the Managing Committee.

5. In Writ Petition No. 2054 of 1984, Shri Kamerkar has brought to our notice that in the meeting held on 11-3-1984 the whole of the Managing

Committee of the society was removed as a result of the passing of the vote of no confidence. However, since the list of voters qua the election to

the federal society was prepared with respect to the specified date viz. 31-12-1983, the persons who were removed from the office are given

voting rights and the persons who are newly elected are deprived of the said right. This is not the end of the matter. As a matter of fact, persons

who are hostile to the society are given voting rights in preference to the right of the society itself. Re has also brought to our notice another

anomaly. According to him, on the relevant date i.e. 31-12-1983, the society stood superseded and elections to the Managing Committee were

held thereafter. Because of the provisions of the amended proviso and the relevant rules, the elected members are deprived of their right to vote as

on 31-12-1983 the Managing Committee itself was not in existence. Now since the right of the society as a voter is taken away, the society is

deprived of representation or the right to vote. Therefore, according to Shri Kamerkar, the said proviso is not only arbitrary and unreasonable, but

is also wholly unworkable, and has resulted in hostile discrimination between the same class of co-operative societies.

6. On the other hand, Shri Tope, the learned Counsel appearing for the State of Maharashtra, has contended before us that the first proviso to

sub-section (3) of section 27 operates within a specified area and the field. By subsequent amendment to the said proviso by Act. No. XVIII of

1984 the application of the said proviso is restricted to the elections of the committee of the federal society. Therefore, in substance, by enacting

the said proviso the legislature has created an electoral college only for a limited purpose i.e. for holding elections to the Managing Committee of

the federal society. This has been done to make the electorate broad-based and more representative in character where the other society is a

federal society belonging to any of the categories u/s 73-G. It is also restricted to the societies which have invested part of their funds in the shares

of another society, and, therefore, it cannot be said that the said proviso is any way -discriminatory or any way unreasonable. It cannot also be

said that it has no nexus with the object sought to be achieved. As a matter of fact, by creating a broad-based electorate. more rights have been

conferred upon the co-operative societies which have invested part of their funds in the shares of the federal society, so as to protect financial

interests of the said society.

7. For properly appreciating the controversy raised before us, it will be worthwhile if detailed reference is made to the provisions of Section 27 of

the Act. Section 27, as it stood prior to the impugned amendment, read as under :-

27(1) No member of any society shall have more than one vote in its affairs provided that, in the case of an equality of votes the chairman shall

have a casting vote. Save as otherwise provided in sub-sections (2) to (7) every right to vote shall be exercised personally, and not by proxy.

(2) Where a share of a society is held jointly by more than one person, the person whose name 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 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 a

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 the first Society.

(4) A company or any other body corporate constituted under any law for the time being in force which has invested any part of its funds in the

shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society; and accordingly such director

or officer shall have the right to vote on behalf of the company or body corporate.

(5) Where a firm has invested any part of its funds in the shares of a society, any one of its partners appointed by the firm shall be entitled to vote in

the affairs of the society on behalf of the firm.

(6) A local authority or public trust which has invested any part of its funds in the shares of a society may appoint any of its members or trustees, to

vote on its behalf in the affairs of that society; and accordingly such person shall have the right to vote on behalf of the local authority or the public

trust, as the case may be.

(7) In the case of a federal society, the voting rights of individual members thereof shall be such as may be regulated by the rules made under this

Act and by the bye-laws of the society.

(8) No nominal or sympathiser member shall have the right to vote and no such member shall be eligible to be a member of a committee or for

appointment a representative of the society on any other society.

(9) No nominee of the Government or of any financing bank on any society shall be entitled to vote at any election of its committee.

(10) In the case of an agricultural credit society, if a member has taken a loan from the society, such member shall, whenever he is a defaulter in

paying two or more consecutive instalments towards repayment of the loan on the due dates, have no right to vote in the affairs of the society.

Provided that, a member shall not be deemed to be a defaulter if he has discharged his obligation to deliver his marketable produce to the

marketing or processing society and the value of such produce is not less than the amount of his dues even if the actual settlement of his dues, either

in whole or in part, takes place at later stage.

(11) The agricultural credit society may issue suitable orders for the purpose of carrying out the provisions of sub-section (10)."

Thereafter by Maharashtra Act No. XLV of 1983, section 27 came to be amended and by the said amendment sub-section (1) of Section 27 has

substituted in the following terms

(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 by proxy.

Provided that, in the case of an equality of votes the Chairman shall have a casting vote.

Then to sub-section (3), the following proviso was added :-

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 u/s 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.

Thereafter by Act No. XVIII of 1984, the words ""in the affairs of such other society"" were substituted by the words ""at the election of the

committee of such other society."" It was also declared that these words shall be deemed always to have been substituted. Therefore, we will have

to test the challenge to the first proviso to sub-section (3) of the section 27, as amended by Act No. XVIII of 1984.

8. The main challenge to the proviso is based on Article 14 of the Constitution of India"". The ambit and the scope of the said Article is by now

well-settled. After an exhaustive review of almost all the decisions bearing on the question of Article 14, the Supreme Court in *re The Special*

Courts Bill In *Re: The Special Courts Bill, 1978*, restated the settled propositions which emerged from the various judgments of the Supreme

Court. So far as they are relevant to the controversy before us the propositions emerging are :

(1) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian

territory or that the same remedies should be made available to them irrespective of difference of circumstances, It only means that all persons

similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the

same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their

position is substantially the same.

(2) The classification must not be arbitrary but must be rational that is to say, it must not only be based on some qualities or characteristics which

are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable

relation to the object of the legislation. In order to pass the test two conditions must be fulfilled, namely. (1) that the classification must be founded

on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation, to

the object sought to be achieved by the Act. The Supreme Court had again an occasion to consider the said question in *D.S. Nakara and Others*

Vs. Union of India (UOI), wherein after making a reference to its earlier decisions the Supreme Court observed : -

Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which

classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are

grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought- to be achieved by the

statute in question.

Therefore, we will have to test the challenge raised before us on the touchstone of these well-settled propositions.

9. The first challenge raised is based on the ground of discrimination between the same class of co-operative societies. Subsection (I) of Section

27 declares in clearest terms that 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 by proxy. Therefore, the principle of one man, one vote is accepted by sub-section (1) of Section 27 of the Act. By sub-

sections (3) to (6), the right of representation and vote is conferred upon institutions which have invested any part of their funds in the shares of the

concerned society. These institutions include a co-operative society, a company or any other body corporate constituted under any law for the

time being in force, a firm a local authority or public trust etc. Prior to the amendment, all these institutions were treated equally. By adding the first

provision to sub-section (3) of Section 27, which begins with the non-obstante clause, all the members elected to, and the members, if any, co-

opted or appointed u/s 73-B on the committee of the member society have been given a right to vote on behalf of the member society. By the

second proviso an exception is again made to the first proviso by declaring that the first proviso shall not apply where the election is to a reserved

seat u/s 73-B. Therefore, the policy of the section seems to confer the voting right on the member society itself. In the case of a co-operative

society, the society itself is a member. A co-operative society registered under the Co-operative Societies Act is a body corporate with perpetual

succession. Therefore, for all practical purposes, it is the co-operative society which is the member of the federal society. If such a society has

invested any part of its funds in the shares of another society then the member society is entitled to appoint one of its members to vote in its behalf

in the affair of that society. Such an appointed member shall have a right to vote on behalf of the society itself. Therefore, it is the representation of

the society through its delegate which is contemplated. However, by the first proviso to sub-section (3), a right is conferred on the members

elected to, and the members, if any, co-opted or appointed u/s 7-B on the committee of the member society to vote on behalf of the said society at

the election of the committee of the federal society. This is practically a departure from the substantive provisions of Section 27. To say the least, it

is an exception to the general rule. Shri Tope has placed reliance upon the statements of objects and reasons and has contended that this proviso

has been enacted to make the electorate broad-based and more representative in character. The co-operative society is treated as a class by itself

for this purpose and therefore, it cannot be said that either the classification is unreasonable or the right conferred upon the members of the

committee of the member society is any way unreasonable or arbitrary. It is not possible for us to accept this contention of Shri Tope in view of the

admitted position. It is quite clear from the material placed before us that the member co-operative societies affiliated to a specified federal society,

though forming one class and are equally placed and circumstanced, will have unequal voting rights depending upon the members of the Managing

Committee of such member society. The constitution of the Managing Committee depends upon the bye-laws of the society. Every co-operative

society is entitled to frame its own bye-laws. Therefore, obviously there will be different bye-laws for different co-operative societies providing for

the different strength of the members on the managing Committee. From the illustrations placed before us it is quite clear that at present this number

is between 5 to 21. No guidelines have been laid down in the enactment fixing the ratio or the strength of the members of the Managing Committee

of the co-operative society or class of societies. There is also no parity or uniformity in the pattern or the strength of the Managing Committee.

Therefore practically it is the admitted position that the strength of the member of the Managing Committee belonging to a similar class of co-

operative societies differs from society to society. This variation is not marginal, but is substantial. This being the position, it will have to be held that

though the member co-operative societies affiliated to the specified federal society, form one class and are equally placed and circumstanced,

unequal voting rights have been conferred upon them. It is also an admitted position that it is the primary society which is the member of the federal

society. Therefore, these member societies are grouped together and form one class and are equally placed and circumstanced.

10. Further, it is admitted on both the sides that once it is accepted that each member of the Managing Committee of the member society is a voter

and has an independent right to vote and contest the election, then a contest between the members of the same society is not ruled out. Since they

are entitled to exercise right of vote independently, in substance, they will not be voting on behalf of the member society, but will be voting on their

own behalf. Since they are voters, they are also entitled to contest the election to the committee of the federal society. Therefore, inter se contest

between the members of the Managing Committee of the member society is not ruled out. Practically, they will be contesting against each other,

which, in substance, will run counter to the very object of the legislation i.e. co-operation amongst the members of the co-operative society. In this

context, it cannot be forgotten that the Co-operative Societies -Act has been enacted keeping in view the Directive Principle of the State Policy as

enshrined in the Constitution of India. Co-operative movement is a socio-economic and moral movement. It is a part of the scheme for

decentralisation of wealth and power. Collective power intoxication is not co-operation. Co-operative movement cannot be permitted to be

polluted or choked by internal or individual strife nor can it be permitted to be polluted by group politics. Co-operative capitalism; or despotism is

not co-operation. On the other hand, co-operation is a substitute for self-interest of an individual or group of individuals, for the benefit of the

whole community. The so called broad-based mandate theory cannot be pushed to ridiculous extremes to convert the co-operative movement into

an arena or "akhada" of power politics. To say the least, this is the effect of the first proviso to sub-section (3) of Section 27. Instead of fostering

co-operation between the members of the Managing Committee of the same society, it postulates a contest between themselves which, in

substance, amounts to non co-operation. The before it can safely be said that the said proviso has no nexus with the object sought to be achieved

by the legislation. Only because each and every member of the Managing Committee of a member society is permitted to vote, the voting pattern

does not become broad-based or more representative in character. The contest or conflict between the members of the same society is bound to

defeat the interest of the co-operative society, which they claim to represent. Therefore, in our view, the said proviso has no nexus with the object

sought to be achieved, rather it runs counter to it.

11. Further, as already observed, it creates a hostile discrimination between the same class of societies. The classification of the societies

contemplated by sub-section (3) of Section 27 is that the concerned member society should have invested part of its funds in the shares of the

federal society. A co-operative society which invests a part of its funds in the shares of a federal society forms a class by itself. The membership

contemplated is of a co-operative society. The right to vote conferred upon the delegate is also for and on behalf of the co-operative society. The

scheme of the Act does not recognise any individual or independent right in a member of the committee. By conferring a blanket right upon every

member on the committee of the member society, an independent status has been conferred upon such members who are not obliged to act for

and on behalf of the society, but can exercise their right to vote and contest independently. The member can utilise his position to achieve his own

interest. A contest between two members of the same society is also not ruled out. Further, the right to vote is also unequal between the same class

of societies since it depends upon the strength of the Managing Committee of such affiliated society. Therefore, we have no other alternative but to

hold that the societies belonging to the same class are treated unequally and that too without any rational basis.

12. The proviso contemplates two types of representation on behalf of the member society. So far as the other affairs of the federal society are

concerned, viz. other than election of the committee of such other society, the member society will have to appoint one of its members to vote on

its behalf. Appointment of such a delegate will also be necessary for representing the society for the election to a reserved seat u/s 7-B. Therefore,

in substance, it contemplates representation of the same society in two different ways. In crucial decisions involving even financial implications, the

society will be represented by one delegate and only in the matters of elections of the committee, it will have more than one vote. We fail to

understand the logic behind this, nor was it possible for the learned Counsel for the respondents to disclose any reason for this unequal treatment

or distinction. We also fail to understand as to why the election to reserved seat has been treated differently. This in itself also creates

discrimination between the elections to general seats and reserved seats to the same committee. In case of elections of some members a person,

i.e. a member society, is given a right to cast more than one vote, whereas for the election covered by the second proviso to sub-section (3) it is

declared that no person shall have more than one vote. This discrimination is also unreasonable and is not founded on any intelligible differentia,

having any reasonable nexus with the object sought to be achieved. This amounts to conferring second class status upon reserve seats and giving

preferential treatment to other seats. These two sets of members are treated unequally without any rhyme or reason. This runs counter to the law

laid down by the Supreme Court in Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, , wherein it is

observed by the Supreme Court

Therefore, the pride of place is accorded to election of persons eligible to fill in reserved seats. Let there be no mistake that there is no reserved

constituency which may divide the society or the electorate. The constituency is the general constituency. Only the seats are reserved. This would

imply that the general body of members will elect persons eligible to fill in reserved seats.

13. It is also an admitted position that qua a federal society, there could be a member co-operative society which has not invested any part of its

funds in the shares of the federal society. Such a society will have to appoint one of its members to vote on its behalf in the affairs of the federal

society, which will also include voting at the election of the committee. Only an exception is made qua the society which has invested any part of its

funds in the shares of the federal society. The voting right is not determined by the extent of funds invested in the shares of the federal society.

Therefore, it has no nexus with the investment or financial involvement of the member society. Even if it is assumed that the so called broad-based

electorate is created for protecting the financial interests of the member society, then also we fail to understand as to why the same right is not

conferred upon the other financial institutions, such as the local authority or the public trust, or a firm or a company or a body corporate constituted

under any law for the time being in force. All these institutions have also financial stakes. Therefore, conferring unequal voting right upon a class of

financing institutions only for the purposes of elections has no nexus with the object sought to be achieved viz. protecting the financial interest of the

member society. Therefore, taking any view of the matter, there is no escape from the conclusion that the first proviso to sub-section (3) of Section

27 results in hostile discrimination between the societies similarly placed and circumstanced. It is also arbitrary and unreasonable and has no nexus

with the object sought to be achieved.

14. However, it was contended by Shri Dudhat and Shri Tope that under Sections 9, 13 and 14 of the Maharashtra Co-operative Societies Act,

the competent authority viz. the Registrar can exercise control so far as the strength of the Managing Committee of the member society is

concerned either by refusing registration to the society or refusing to register the amendment of the bye-laws. In our view, this argument is far-

fetched. Even for refusing or for bringing out; a uniformity into the pattern or strength of the members of the Managing Committee, the competent

authority should be armed with sufficient powers. Apart from this the enactment should provide the guidelines in this behalf, on the basis of which it

will be possible for the Registrar to fix the ratio or the strength of the members on the committee. Admittedly, such a power or guideline is lacking

in the enactment. It is further an admitted position as the things stand today, that there is no parity or uniformity in the strength of the members of

the Managing Committee of the member societies which are similarly circumstanced. Therefore, as the law stands today, it will have to be held: that

the first proviso results in hostile discrimination and is also unreasonable. Therefore, taking any view of the matter, it will have to be held that the

said proviso violates the mandate of Article 14 of the Constitution of India and is, therefore null and void.

15. In the result. therefore, the Rule is made absolute. It is declared that the first proviso to sub-section (3) of Section 27, enacted by Act No.

XLV of 1983 and further amended by Act No. XVIII of 1984 is null and void and, therefore, inoperative. As a necessary consequence of this, all

steps taken in the process of elections on the basis of the said proviso will also be null and void. However, in the circumstances of the case, there

will be no order as to costs.

16. We are informed that in view of the pendency of these writ petitions and the ad interim stay and injunction granted by this Court, elections of

the committees of the respondent federal societies could not be held. Therefore, the authorities are directed to take the necessary steps for holding

the said elections as expeditiously as possible, overlooking the first proviso to sub-section (3) of Section 27 of the Act, which is hereby declared

as void and inoperative.

17. Order accordingly.