

(2000) 05 BOM CK 0036

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 1559 of 2000

Jayprakash Salunke and others

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: May 3, 2000

Citation: AIR 2000 Bom 461 : (2000) 4 ALLMR 177 : (2000) 3 BomCR 306 : (2001) 4 BOMLR 164 : (2001) 3 MhLj 787 : (2000) 3 MhLj 714

Hon'ble Judges: D.S. Zoting, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: V.D. Hon, for the Appellant; E.P. Sawant, G.P., V.D. Salunke and Shah for Intervenor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.

Heard Shri Hon, learned Counsel for the petitioners, Shri Sawant, learned Government Pleader for respondent Nos. 1 and 2, respondent No. 3 is present personally and has made the record available through the learned Government Pleader. Heard Shri Salunke, learned Counsel for the added respondent No. 4 and Shri Shah, learned Counsel for the Intervenor/respondent Nos. 5 to 10.

2. Rule. Rule taken up, by consent, for final hearing forthwith.

3. The petitioners claim to be the members of the managing committee of the Trimurti Stalk Ply Sahakari Sanstha Limited Basmat, Taluka Basmat, District Hingoli which is a registered co-operative society under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, the Act). The respondent No. 4 is the Chairman of the said managing committee and the added respondents are other members of the said committee. It is contended that total number of managing committee members is 15. On 10th April, 2000 the petitioners submitted a motion of

no confidence before the District Deputy Registrar, against the respondent No. 4 Chairman, in the prescribed form and accordingly the District Deputy Registrar (respondent No. 2 herein) issued notice on 16th April, 2000 to all the members of the managing committee informing them that a special meeting of the managing committee to discuss the motion of no confidence and to vote on the said motion was called and fixed on 24th April, 2000. Alongwith the requisition of no confidence the list of managing committee members was also submitted by the petitioners-requisitionists.

4. On 20th April, 2000 the petitioner No. 1 submitted a representation to the respondent No. 2 inviting his attention to the amended provisions of section 73-ID of the Act, to the effect that the motion of no confidence was required to be passed by a simple majority of the total number of the managing committee members who are entitled to vote at the election of such managing committee and the provisions of Rule 57-A(7)(g)(iii) of the Maharashtra Co-operative Societies Rules, 1961 (for short, the Rules) would not operate. This petition was moved before us on 24th April, 2000 and was fixed for hearing on admission on 26th April, 2000. In the meanwhile, the meeting, as fixed by the respondent No. 2 was proceeded on 24th April, 2000 and the respondent No. 3 as directed by respondent No. 2 by a specific order presided over the said meeting. Respondent No. 3 passed an order on 24th April, 2000 stating therein that as required under Rule 57-A(7)(g)(iii) of the Rules, the 2/3rd members of the total members entitled for vote were not present and the motion of no confidence was rejected. The petition was, therefore, amended and this order passed on 24th April, 2000 by respondent No. 3 has been also challenged.

5. Respondent No. 4 as well as respondent Nos. 5 to 10 have also filed their affidavit in reply and opposed the petition. Shri Salunke, learned Counsel appearing for the respondent No. 4, at the out set, has taken objections to the maintainability of this petition on the grounds that (a) the petition involves disputed questions of fact, (b) petitioners have an alternative and efficacious remedy u/s 91 of the Act to approach the Co-operative Court by way of a Dispute, (c) the petitioners have failed to come with clean hands before this Court inasmuch they have suppressed the fact that one of them namely Shri Vinod Bhagwandas Zawar had already resigned prior to the date of requisition and his resignation was accepted, intimation was sent to the respondent No. 2 and he himself held a press conference and declared that he had resigned from the managing committee. Shri Salunke further contended that the petition is based on the orders passed by this Court in Writ Petition No. 5255 of 1997 and 1242 of 2000 and these orders cannot be treated to be laying down the correct position in law inasmuch as the initial order in Writ Petition No. 5255 of 1997 came to be passed on the basis of the concessions given by the Government and the contesting parties were not present before this Court. The second order came to be passed in Writ Petition No. 1424 of 2000 merely following the first order passed in Writ Petition No. 5255 of 1997 and in both the cases the contesting respondents were not before this Court and, therefore, those orders cannot be treated to lay a

general principle of law regarding the interpretations of section 73-ID of the Act or the validity of Rule 57-A (7)(g)(iii) of the Rules. Shri Salunke also submitted that even if the petition is maintainable it ought to be placed before the learned Single Judge in view of the Appellate Side Rules inasmuch as the order impugned is passed under the provisions of the Act.

6. Shri Shah, the learned Counsel appearing on behalf of the added respondents has urged before this Court that there is no anomaly or inconsistency between the amended provisions of section 73-ID of the Act and Rule 57-A (7)(g)(iii) of the Rules and in any case it is not the function of this Court to declare the provisions as inconsistent or to make laws. The Court must, while interpreting the provisions of the Act and the Rules thereunder try to harmonise the two and if there are any grey areas clarifications could be provided so as to make the intention of the legislature more clear rather than substitute the provisions of the statute or declaring the rules as void or unconstitutional. In support of his contentions he has relied upon the following judgments of the Supreme Court :

- (1) [P.K. Unni Vs. Nirmala Industries and others \[OVERRULED\]](#), ;
- (2) [G. Narayanaswami Vs. G. Pannerselvam and Others](#), and
- (3) [The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur](#), .

7. Both Shri Salunke and Shri Shah have endeavoured to impress upon us that the provisions of section 73-ID(1) of the Act and Rule 57-A(7)(g)(iii) of the Rules operate in different areas viz. for passing the resolution by simple majority, provisions of section 73-ID(1) of the Act are required to be considered and for deciding the Coram for the special meeting called by the Registrar by following the provisions of Rule 57-A of the Rules the provisions of sub-rule (7)(g)(iii) are required to be followed and in short there is no conflict between these two provisions. Shri Shah also submitted that the legislature has deliberately kept the provisions of Rule 57-A(7)(g)(iii) in tact even after the amendment of section 73-ID(1) of the Act and this shows the intention of the legislature to maintain the fixity of tenure of an elected managing committee in the interest of administration and management of the co-operative society and, therefore, the orders passed by this Court in the earlier petitions, as referred to hereinabove, cannot be treated to be laying a correct proposition of law.

8. Shri Hon, the learned Counsel for the petitioners submitted before us that the action of the respondent No. 3 in insisting on 2/3rd majority as a Coram for the meeting is illegal and the Coram for the meeting was required to be decided in keeping with the provisions of by-law No. G 3.2 of the said society's by-laws which have been duly approved by the competent authority. On this point, at the threshold, we must note that it is well settled by a catena of decisions that the provisions of by-laws are not statutory in nature and they do not have an overriding effect on the provisions of the Rules, though, no doubt, they are referred to and

relied upon for the matters for which there is no provision in the statutory Rules and, therefore, we are not impressed by the submissions of Shri Hon that the Coram for the special meeting scheduled on 24th April, 2000 ought to have been followed in keeping with the provisions of by-law No. G 3.2.

9. It would be desirable to reproduce the provisions of section 73-ID as well as Rule 57-A(7)(g)(iii) of the Rules.

Section 73-ID of the Act

"73-ID. Motion of non-Confidence against officers of societies.---(1) A President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatever designation called who holds office by virtue of his election to that office shall cease to be such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer, as the case may be, if a motion of no-confidence is passed at a meeting of the committee by (simple majority) of the total number of committee members who are (entitled to vote at the election of such President, Vice President, Chairman, Vice-Chairman. Secretary, Treasurer or any other officer) and the office of such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer, as the case may be, shall thereupon be deemed to be vacant.

(2) The requisition for such special meeting shall be signed by not less than one-third of the total number of members of the committee who are (entitled to elect the President, Vice President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer, as the case may be, of the committee) and shall be delivered to the Registrar. The requisition shall be made in such form and in such manner as may be prescribed.

(3) The Registrar shall, within seven days from the date of receipt of the requisition under sub-section (2), convene a special meeting of the committee. The meeting shall be held on a date not later than fifteen days from the date of issue of the notice of the meeting.

(4) The meeting shall be presided over by the Registrar or such officer not below the rank of an Assistant Registrar of Co-operative Societies authorised by him in this behalf. The Registrar or such officer shall, when presiding over such meeting, have the same powers as the President or Chairman when presiding over a committee meeting has, but shall not have the right to vote.

(5) The meeting called under this section shall not, for any reason, be adjourned.

(6) The names of the committee members voting for and against the motion shall be read in the meeting and recorded in the minute book of committee meetings.

(7) If the motion of no-confidence shall be brought before the committee within a period of one year from the date of such rejection of the motion."

Rule 57-A(7)(g)(iii)

"57-A. Motion of no-confidence against the officers of the society.---

xxx xxx xxx xxx xxx

(7) The Registrar or the officer authorised to preside over the meeting shall,---

xxx xxx xxx xxx xxx

(g) declare the motion or motions as rejected and take a note to that effect with reasons, in the minute book under the following circumstances:---

(i)... ..

(ii)

(iii) 2/3rd members are not present at the commencement of the meeting (if 2/3rd is fraction, it shall be rounded to next higher number)."

10. Section 73-ID(1) in the original scheme provided for 2/3rd majority and the said words have been replaced by the word "simple majority" by an amendment by Maharashtra 7 of 1997. If regards be had to the provisions of section 73-ID of the Act it must be held that for the meetings, which are called by the Registrar for discussing or for holding vote on the motion of no-confidence, the provisions of Rule 57-A of the Rules must be construed to be mandatory and such meetings shall be covered only by the procedure set out therein and not the bye-laws.

11. The unamended section 73-ID indicated that the requisition for special meeting in response to a motion of no-confidence was required to be signed by not less than 1/3rd of the total number of members of the committee who are entitled to vote, the coram for such a meeting was required to be 2/3rd of the members of the managing committee and if the 2/3rd is a fraction it was to be rounded to the next higher number and finally the motion of no confidence was required to be passed by 2/3rd majority. With the amendment, as made by Maharashtra 7 of 1997, the situation has changed so far as it relates to the motion to be passed by majority and the word "2/3rd majority" has been replaced by the word "simple majority". With amendment it is contended that (a) the requisition for no confidence be signed by 1/3rd of the members (b) the coram shall be complete with 2/3rd of the members and (c) the vote of no confidence shall be a simple majority. What is at issue before us between the parties is the interpretations of Rule 57-A(7)(g)(iii) of the Rules and whether there is a conflict between the provisions of these Rules and section 73-ID(1) of the Act.

12. The learned Counsel for the respondents have contended that there is no conflict and the provisions of Rule 57(7)(g)(iii) of the Rules only prescribe the conditions of coram for holding the meeting and passing of such motion of no-confidence is governed by the provisions of section 73-ID(1) of the Act. If this

interpretation is accepted, in the case of a managing committee whose members are, let us say 15, the coram as per the interpretations placed, shall be 10 members to go with the meeting and the simple majority will be 8 members. Even if the eight members have decided or they propose to vote in favour of the motion, they cannot express their democratic right of voting because the meeting will be aborted on the ground that 10 members are not present and this is where the conflict lies between the provisions of Rule 57-A(7)(g)(iii) and the provisions of section 73-ID(1) of the Act. The conflict is not simple, it is, in fact an head-on conflict and the interpretations placed by the learned Counsel makes the provisions of the Act ineffective, meaningless and inoperative in a given case. We must observe that it was not the intention of the legislature while amending the provisions of section 73-ID(1) of the Act in 1997.

13. Shri Hon has rightly relied upon the judgment of the Supreme Court in the case of [The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyia](#), wherein the Supreme Court held that the rules must be consistent with the provisions of the statute and the judgements of this Court in the case of Manohar Ramchandra Manekar and others v. G.S. Solanke, Mamlatdar, Gram Panchayat, Election Section, Daryapur and others, 1964 Mh.L.J. 739 (Division Bench) and in the case of Dattatraya Narhar Pitale v. Vibhakar Dinkar Gokhale and another, 1975 Mh.L.J. 701 (Full Bench). In the case of Manohar (supra) a Division Bench of this Court, in para 12, observed that the right given by the section could not be cut down or abridged by the rule and in the case of Dattatraya (supra) it was held that in case of a conflict between the provisions of an Act and the Rules thereunder, the provisions of the statute must prevail if the Act and Rules are not reconcilable. These enunciations, as relied upon by the learned Counsel for the petitioners, are squarely applicable in the instant case and if there has to be a reconciliation between the provisions of section 73-ID(1) of the Act and the provisions of Rule 57-A(7)(g)(iii) of the Rules, the State Government must act and take suitable steps at the earliest possible. We do not agree with the view expressed by the learned Counsel for the respondents that the two provisions operate in different areas and there is no conflict between the provisions of section 73-ID(1) of the Act and Rule 57-A(7)(g)(iii) of the Rules. The provisions of section 73-ID(1) of the Act must prevail over the provisions of Rule 57-A(7)(g)(iii) of the Rules and the subject meeting scheduled on 24th April, 2000 ought to have been proceeded further in keeping with the requirements of the said section. We are sorry to note that inspite of the fact that a representation was submitted before respondent No. 2 on 20th April, 2000 by petitioner No. 1 the said respondent did not take any steps to seek legal advice and there is nothing on record to show that such a step was taken by him. We do not find fault with the view taken by the respondent No. 3 inasmuch as he was not expected to be aware of the representation though it was submitted to the respondent No. 2 and the representation which was submitted before the respondent No. 3 on 24th April, 2000, was perhaps submitted after the meeting was aborted and in any case we do

not expect him to interpret the provisions of the Rules and the Act. We, therefore, do not find force in the submissions of Shri Hon that respondent No. 3 is required to be proceeded against for contempt of this Court. What was implicit in our orders passed in the earlier two writ petitions, has been made explicit by us in this judgment and the coram for the special meeting called for by the Registrar in respect of a motion of no confidence must be held to be a simple majority and not the 2/3rd majority as has been contemplated by the legislature by amending the said section in 1997. The intention of the legislature must be given its true meaning and the intention cannot be negated by the provisions of the Rules which have remained unamended, whether deliberately or inadvertently or for any other reasons.

14. We must also deal with the contentions raised by Shri Salunke regarding the petition being placed before the learned Single Judge. We have not done so for the simple reasons that the petitioners' claim was based on the orders passed by the Division Bench in two earlier writ petitions and it would be unsafe to place the matter before the learned Single Judge. So far as the issue regarding the resignation of one of the petitioners namely Shri Zawar is concerned, as is evident from the records that the matter is subjudice in a dispute filed before the Co-operative Court u/s 91 of the Act on 28th April, 2000 and we do not wish to express any opinion in that regard for the simple reason that the impugned order of rejecting the motion of no confidence has been passed on the only ground that 2/3rd majority of the coram was not fulfilled. We do not wish to consider an issue which was not before the respondent No. 3 or respondent No. 2 at any time prior to 24th April, 2000.

15. In the result, we allow the petition and hold that the special meeting for discussing the no confidence motion and casting vote thereon is required to be proceeded on the basis of a simple majority. We, therefore, direct the respondent No. 3 to hold a fresh meeting within a period of two weeks from today and respondent No. 2 shall give a notice to that effect to the petitioners as well as the respondent members, forthwith. We do not wish to deal with any further prayers inasmuch as those prayers cannot be gone into by us at this juncture. The impugned order passed by the respondent No. 3 is quashed and set aside.

16. Rule made absolute in terms of the above order but, in the facts and circumstances of this case, without any order as to costs.

17. At this juncture Shri Salunke, learned Counsel for the respondent No. 4 made an oral application for stay of this order for a period of ten days. Oral application is, hereby, rejected.

18. Parties to act on an ordinary copy of this order duly authenticated by the Shiresteders of this Court.

19. Petition allowed.