

DUDHGANGA VIKAS SEWA SANTHA MARYADIT
v.
DISTT. COLLECTOR-KOLHAPUR AND ORS.

MAY 2, 2006

[B.P. SINGH AND ALTAMAS KABIR, JJ.]

Co-operative Societies:

Maharashtra Co-operative Societies Act, 1960—Section 27(3)—Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971—Rule 4—Co-operative Society invested its funds in shares of federal society on 30.12.02 and on the same day enrolled as member—Election of office bearers of federal society due to be held in 2006—Member of co-operative society—Voting power—Held: In terms of section 27(3), co-operative society having completed three years from date of its investment in federal society, is entitled to appoint one of its members to vote on its behalf in affairs of federal society—As per Rule 4, having completed minimum period of 2 years as member from date of enrollment before the year preceding the election, the member is eligible to be included in the provisional list of voters.

Appellant-society invested its fund in the shares of a federal society-respondent No. 2 on 30.12.2002. It enrolled as a member of the federal society with effect from that very date. Election of the office bearers of the federal society was due to be held in April, 2006. The name of the appellant society was not included in the provisional list of voters. District Collector held that the appellant-society was not eligible to vote in the election due to be held. Aggrieved appellant society filed writ petition which was dismissed. Hence the present appeal.

Allowing the appeals, the Court

HELD: 1. On a mere reading of Section 27 of the Maharashtra Cooperative Societies Act, 1960 and Rule 4 of the Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971, it is clear that the appellant society is eligible to vote under section 27(3) and its name must also be included in the provisional list of voters prepared in accordance with

A Rule 4. [736-B-C]

B 2.1. A mere reading of Section 27 makes it explicit that a society, which has invested any part of its fund in the shares of a federal society, may appoint one of its members to vote on its behalf in the affairs of the federal society. Proviso to sub-Section (3) of Section 27 of the Act lays down the condition of eligibility which is to the effect that any new member of a federal society shall be eligible to vote in the affairs of the federal society only after the completion of the period of 3 years from the date of its investing any part of its fund in the shares of such federal society. The period of 3 years is reckoned from the date of the society investing any part of its fund in the shares of a federal society. Sub-Section (3A) of Section 27 of the Act provides that an individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. The period of 2 years shall be computed from the date of enrollment of an individual as a member of such federal society. [733-F-H; 734-A]

D 2.2. Appellant society invested its fund in the shares of respondent No. 2 on 30.12.2002. The date of investment by the appellant society and its enrollment as a member of the federal society is the same, namely, 30.12.2002. *Ex facie*, therefore, in terms of Section 27(3) of the Act, in April, 2006 when the election was due to be held, the appellant society was entitled to appoint one of its members to vote on its behalf in the affairs of the federal society-respondent No. 2, having completed the period of 3 years from the date of its investment in shares of respondent No. 2 society on 30.12.2005. [734-B-C]

F 2.3. Rule 4 of the Rules provides for the preparation of the provisional list of voters. The provisional list is required to be prepared by every specified cooperative society for the year in which general election is due to be held. According to Rule 4 persons who have completed a minimum period of 2 years as member from the date of their enrollment before 30th June of the year immediately preceding the year in which such election is due, shall be included in the said provisional list. The appellant society was enrolled as a member on 30.12.2002. It completed minimum period of 2 years as a member of such society as on 30.6.2005, since the election was scheduled to be held in April 2006. In terms of Rule 4 the name of the appellant society was eligible to be included in the provisional list. [734-E-G]

H 2.4. Rule 4 does not provide that a person whose name is to be included in the provisional list of voters should be one who has completed a minimum

period of 3 years as a member as on 30th June of the year immediately preceding the year in which election is due; as such submission of the State is misconceived. In fact, the express words of Rule 4 provide that he should have completed minimum period of 2 years. To read Rule 4 in the manner suggested by the respondents would amount to rewriting the rule. It was submitted that Rule 4 must be read into Section 27 and so read there may be inconsistency between the Act and the Rules. On a careful consideration of the provisions of the Act and the Rules, it is seen there is no inconsistency between Section 27 of the Act and Rule 4 of the Rules. Even if there was any inconsistency the Act must prevail over the Rules. [735-F-G]

2.5. By interim order of this Court appellant society and other similarly situated societies were permitted to cast their vote. It is directed that the votes cast by the appellant society and other similarly situated societies shall be counted and the result of the election declared. [736-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2122 of 2006.

From the Judgment and Order dated 12.1.2006 of the Bombay High Court in W.P. No. 49/2006.

WITH

2133/06, 2124/06 and 2125/06.

Shekhar Naphade, Himanshu Gupta and T. Raja for the Appellants.

Sudhanshu Choudhary, Naresh Kumar, Shivaji M. Jadhav, Murali Patil, S.S. Shinde and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

B.P. SINGH, J. In this batch of appeals since the issue involved is identical, they are being disposed of by this common judgment and order.

These appeals by special leave impugn the judgment and order of the High Court of Bombay dated 12.1.2006 in Writ Petition No. 49/2006. The High Court by its impugned judgment and order dismissed the writ petitions filed by the appellant-societies and upheld the order of the District Collector holding that the appellant-societies were not eligible to vote in the election which were to be held in the month of April, 2006. The answer to the question which arises for consideration is dependent upon the interpretation of Section 27(3) of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the "Act") and Rule 4 of the Maharashtra Specified Co-operative

A Societies Election to Committees Rules, 1971 (hereinafter referred to as the “Rules”).

For the sake of convenience we are taking the representative facts in C.A. No. 2122/2006.

B The facts not in dispute are that the appellant-society is a primary society. It contributed to the capital of a federal society known as “Kolhapur District Central Cooperative Bank Ltd.”-respondent No.2 herein on 30.12.2002. It is also not disputed before us that it became a member of the federal society with effect from that very date. Election of the office bearers of the federal society was due to be held in April, 2006 and a question arose as to whether
 C the appellant society was eligible to be a voter. The controversy arose because the name of the appellant society was not included in the provisional list of voters. The matter came for decision before the District Collector who rejected the contention of the appellant society and held that it was not eligible to vote. Aggrieved by the order of the District Collector, the appellant
 D society filed the instant writ petition before the High Court which has been dismissed by the impugned judgment and order.

The relevant part of Section 27 of the Act is as follows:-

E 27. *Voting powers of members*—(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.

F (2)

G (3) A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society:

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

H (3A) An individual member of a society shall not be eligible for voting

in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. A

(4) to (11)

The federal society being a specified cooperative society, election to the committees thereof are governed by the Rules. The relevant part of Rule 4 reads as follows:- B

“4. *Provisional list of voters*—(1) A provisional list of voters shall be prepared by every society for the year in which general election is due to be held. The persons who have completed minimum period of two years as members from the date of their enrollment before 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituencywise as laid down in the bye-law: C

Provided that, if in any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th June, the Collector may, in consultation with the Registrar in respect of the societies of the categories mentioned in clauses (i), (v), (vi) and (vii) of sub-section (1) of Section 73G, and in consultation with the District Deputy Registrar in respect of the societies the other categories mentioned in sub-section (1) of section 73G, by order, change the date of the 30th June and subsequent dates and fix revised dates for the purpose of these rules.”(sic) D E

A mere reading of Section 27 makes its explicit that a society which has invested any part of its fund in the shares of a federal society, may appoint one of its members to vote on its behalf in the affairs of the federal society. F Proviso to sub-Section (3) of Section 27 of the Act lays down the condition of eligibility which is to the effect that any new member of a federal society shall be eligible to vote in the affairs of the federal society only after the completion of the *period of 3 years from the date of its investing* any part of its fund in the shares of such federal society. We may also note sub-Section (3A) of Section 27 of the Act which relates to an individual member of a society. In his case it is provided that he shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. The Legislature has consciously employed in Sub-Sections (3) and (3A) words which are of significance. In G H

A the proviso to Sub-Section (3) the period of 3 years is reckoned from the date of the society investing any part of its fund in the shares of a federal society, whereas sub-Section (3A) provides that the period of 2 years shall be computed from the date of enrollment of an individual as a member of such federal society.

B Having regard to the plain word used in Section 27(3) of the Act, the appellant society having invested its fund in the shares of Kolhapur District Central Cooperative Bank Ltd. respondent No. 2 herein on 30.12.2002, it became eligible to vote in the affairs of the federal society after 30.12.2005. We are informed that the date of investment by the appellant society and its enrollment as a member of the federal society is the same, namely, 30.12.2002. C *Ex facie*, therefore, in terms of Section 27(3) of the Act, in April, 2006 when the election was due to be held, the appellant society was entitled to appoint one of its members to vote on its behalf in the affairs of the federal society-respondent No.2, having completed the period of 3 years from the date of its investment in shares of the respondent No. 2 society on 30.12.2005.

D The Collector as well as the High Court have, however, taken the contrary view relying upon Rule 4 of the Rules. We may in the passing notice that Section 27(3) of the Act was amended in year 2000 whereas Rule 4 of the Rules was modified in the year 1971 and thereafter again on 18.2.2002. Thus, the Act as it stood amended in the year 2000 and the Rules as they E stood w.e.f. 18.2.2002 are applicable to the case in hand.

Rule 4 of the Rules provides for the preparation of the provisional list of voters. We may observe that while Section 27 of the Act lays down the eligibility condition of a new member of a federal society to vote in the affairs of a federal society, Rule 4 of the Rules only relates to preparation of a F provisional voters list. The provisional list is required to be prepared by every specified cooperative society for the year in which general election is due to be held. According to Rule 4 persons who have completed a minimum period of 2 years as member from the date of their enrollment before 30th June of the year immediately preceding the year in which such election is due, shall G be included in the said provisional list. The question is whether for inclusion in the provisional list of voters the appellant society fulfilled the conditions laid down therein, namely, that it had completed minimum period of 2 years as a member of such society as on 30.6.2005, since the election was scheduled to be held in April, 2006. There is no dispute about the fact that the appellant society was enrolled as a member on 30.12.2002, the date on which it invested H

its fund in the capital of the respondent No. 2 federal society. We, therefore, find no difficulty in holding that in terms of Rule 4 of the Rules, which relates to preparation of the provisional voters list, the name of the appellant society had to be included in the provisional list. So viewed, under Section 27 of the Act the appellant society was eligible to vote in the elections to be held in April, 2006, and was also eligible to be included in the provisional list of voters to be prepared in accordance with Rule 4 of the Rules. That being the legal and factual position, we find no reason to reject the claim of the appellant society to cast its vote in the election scheduled to be held in April, 2006.

By an *interim* order of this Court the appellant society as well as other similarly situated societies were permitted to cast their votes which were to be kept in a separate sealed cover and were not to be counted until further orders.

Learned counsel appearing on behalf of the State of Maharashtra as well as the intervenors submitted that under Rule 4, though there were no express words to that effect, the eligibility of a society for its name to be included in the provisional voters list has to be considered in the light of the provisions of Section 27 of the Act. It was, therefore, submitted that unless a society is a member of the specified society for a period of at least 3 years on the 30th of June of the year immediately preceding the year in which such election is due, its name cannot be included in the provisional list of voters. The submission is wholly misconceived. Rule 4 of the Rules does not provide that a person whose name is to be included in the provisional list of voters should be one who has completed a minimum period of 3 years as a member as on 30th June of the year immediately preceding the year in which election is due. In fact, express words of Rule 4 provide that he should have completed minimum period of 2 years. To read Rule 4 in the matter suggested by the respondents would amount to rewriting the rule. It was submitted that Rule 4 must be read into Section 27 and so read there may be inconsistency between the Act and the Rules. In fact, the District Collector as well as the High Court took the view that the District Collector was bound by the Rules and, therefore, it has rejected the claim of the appellant society. On a careful consideration of the provisions of the Act and the Rules, there is no inconsistency between Section 27 of the Act and Rule 4 of the Rules. Even if there was any inconsistency as argued by the respondents, the Act must prevail over the Rules.

The appellant had relied upon a Full Bench decision of the High Court

A reported in 2005 (2) All Maharashtra Reports, 489. No doubt, the said decision related to a notified society and not a specified society, and therefore, the District Collector held that it did not apply to the facts of this case. Technically speaking, the District Collector may be right, but what was sought to be relied upon by the appellant was the principle laid down in the aforesaid Full Bench decision having regard to the similarity of the language of the provisions. It is, however, not necessary for us to consider the decision of the Full Bench, because on a mere reading of Section 27 of the Act and Rule 4 of the Rules, we are satisfied that the appellant society is eligible to vote under Section 27 (3) of the Act and its name must also be included in the provisional list of voters prepared in accordance with Rule 4 of the Rules.

C We, therefore, allow these appeals and set aside the impugned judgment and order of the High Court. Pursuant to the interim order of this Court made on 6.2.2006, election was held and the appellant society and other similarly situated societies were permitted to vote, but their votes were kept in a separate sealed cover and were not to be counted until further orders. By D subsequent order dated 31.3.2006, we also stayed the counting of votes and declaration of the result, until further orders.

E In view of the fact that we have allowed the appeals today, we direct that the votes cast by the appellant society other similarly situated societies shall be counted and the result of the election declared.

No order as to the costs.

N.J.

Appeals allowed.