

RAJENDRA PRATAPRAO MANE & ORS.

v.

SADASHIVRAO MANDALIK K.T.S.S.K. LTD. & ORS.
(Civil Appeal Nos. 2990-2991 of 2012)

MARCH 22, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

Co-operative Societies:

Maharashtra Co-operative Societies Act, 1960 - s. 152 - Rules of Business - r. 6-A - Interpretation of - Statutory appeals filed before the State u/s. 152 - Competency of the Secretary of the Department to hear the appeals - On facts, controversy with regard to disqualification of 6617 voters found ineligible to be members of Sugarcane Factory by the regional Joint Director - Appeals filed before the State Government u/s. 152 - Due to allegations of bias, Minister for Co-operation transferred the cases to the Secretary, Department of Co-operation - Writ petition - High Court holding that the said power contained in r. 6-A would have to be exercised by the Chief Minister since the appeals were already pending before the State Government - Interference with - Held: Not called for - r.6-A does not contemplate the functions of a Minister being discharged by the Secretary of the Department or any other officer for that matter - Order passed by the Single Judge of the High Court was a pragmatic attempt to ensure that the elections were duly held and the same was within the parameters of r. 6-A, which indicates that if the Chief Minister was unable to discharge his functions for the reasons indicated, he could direct any other Minister to discharge all or any of his functions during his absence - Likewise, if any Minister was unable to discharge his functions, the Chief Minister could direct any other Minister to discharge all or any of the functions of the Minister during the absence of the said Minister.

A Appellants filed an application before the
 Commissioner of Sugar alleging that respondent Sugar
 B Factory had enrolled persons who did not fulfill the
 required criteria and were ineligible from becoming
 members of the factory. The Commissioner or his
 subordinates did not take any action. The appellants
 then filed a writ petition. The High Court ordered for an
 inquiry and submission of report. The Regional Joint
 C Director (Sugar) found that 6617 persons did not satisfy
 the required criteria to become members of the
 respondent sugar factory and passed an order under
 Section 11 read with Section 11A of the Maharashtra Co-
 operative Societies Act, 1960. Thereafter, the respondent
 sugar factory and several of the members who were held
 D to be ineligible from becoming members filed appeals
 before the State under Section 152 of the Act. Due to
 allegations of bias, Minister for Co-operation transferred
 the cases to the Secretary, Department of Co-operation.
 The respondent raised an objection to the same and also
 raised the said objection in the writ petition. The High
 E Court held that the power contained in r. 6-A would have
 to be exercised by the Chief Minister since the appeals
 were already pending before the State Government and
 directed the Chief Minister to either hear the appeals
 himself or to appoint any other Minister to hear and
 F decide the same by performing the function of the
 Minister for Co-operation. Thus, the instant appeals were
 filed.

Disposing of the appeals with directions, the Court

G HELD: 1.1 Respondent Nos. 3, 4 and 5 who are likely
 to be affected by the order, should have been given
 notice before the impugned order was passed. Such
 being the position, the normal course would have been
 to remand the matter to the High Court for a fresh
 H decision after hearing the appellants but nothing fruitful

would materialize if such an order was passed in view of the reasoning of the judge while making the impugned order. On the legal aspect of the question regarding the competence of the Secretary of the Department to hear the appeals in the light of Rule 6-A of the Rules of Business, the counsel for the appellant is heard. Any further hearing before the High Court on the said question would only amount to duplication and waste of judicial time. [Para 16] [139-C-F]

1.2 The order passed by the Single Judge of the High Court was a pragmatic attempt by the High Court to ensure that the elections to the Board of Directors of the Karkhana were duly held and the same was within the parameters of Rule 6-A of the Rules of Business, which indicates that if the Chief Minister was unable to discharge his functions for the reasons indicated, he could direct any other Minister to discharge all or any of his functions during his absence. Likewise, if any other Minister was unable to discharge his functions, the Chief Minister could direct any other Minister to discharge all or any of the functions of the Minister during the absence of the said Minister. Rule 6-A of the Rules of Business does not contemplate the functions of a Minister being discharged by the Secretary of the Department or any other officer for that matter. [Paras 17 and 18] [139-F-H; 140-A-B]

1.3 There is no reason to interfere with the order passed by the Single Judge of the High Court. So as not to delay the elections any further, the Chief Minister is requested to take immediate steps to have the appeals filed by the appellants under Section 152 of the M.C.S. Act, 1960, heard and disposed of within the stipulated period. In the event the Chief Minister is unable to hear the appeals himself and entrusts the hearing to one of the other Ministers, which would also include the Minister of State of the concerned Department, he should also

A **impress upon the said Minister the urgency of the matter since the elections to the Board of the Karkhana have not been held since 2007. [Para 19] [140-C-E]**

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2990-2991 of 2012.

From the Judgment & Order dated 29.2.2012 of the High Court of Judicature of Bombay in Writ Petition Nos. 1800 & 1801 of 2012.]

C Mukul Rohatgi, Parag P. Tripathi, Shivaji M. Jadhav, Anish R. Shah, Jayant Bhatt for the Appellants.

Uday U. Lalit, Devdutt Kamat, Gaurav Agrawal, Rajesh Inamdar, Priyanka Telang, Sanjay Kharde for the Respondents.

D The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

E 2. The facts of these appeals give rise to an interesting question of law regarding the interpretation of the Rules of Business framed by the Governor of Maharashtra in exercise of powers conferred under Article 166(2) and (3) of the Constitution of India. According to the said Rules of Business, statutory appeals filed under Section 152 of the Maharashtra Cooperative Societies Act, 1960, hereinafter referred to as “the M.C.S. Act, 1960”, are to be heard by the Minister-in-charge of the concerned Department.

G 3. A few facts are required to be set out in order to appreciate the question which has been raised in these appeals.

H 4. On 30th June, 2011, the appellants filed an application before the Commissioner of Sugar, Maharashtra State, Pune, complaining about the unlawful manner in which persons had been enrolled by the respondent Karkhana, despite the fact that they did not fulfill the required criteria and were ineligible from

becoming members. As the Commissioner, or his subordinates, did not take any action on the application filed by the appellants they filed a writ petition, being W.P. No.7257 of 2011, before the Bombay High Court, for a writ in the nature of Mandamus upon the authorities under the M.C.S. Act, 1960, to conduct an inquiry into the allegations made by the appellants.

5. On 27th September, 2011, the Division Bench of the Bombay High Court passed an order on the statement made by the Regional Joint Director (Sugar), Kolhapur, to the effect that an inquiry team would look into the allegations made by the appellant. The Division Bench directed that the inquiry be completed within the stipulated time and the report be submitted before it. The order of the Division Bench was challenged by the respondent Karkhana by way of S.L.P.(C)No.28880 of 2011, which was dismissed by this Court and it was also indicated that the inquiry to be conducted would be one under Section 11 of the M.C.S. Act, 1960.

6. Writ Petition No. 7257 of 2011, and the connected Writ Petition No.10133 of 2011, were disposed of on a statement made by the Government Pleader that the inquiry into the complaint by the appellants would be completed within 15th February, 2012. While disposing of the Writ Petitions, the High Court directed that the previous list of voters for election to the Managing Committee of the respondent sugar factory should be published only after the inquiry was completed. In his report dated 10th February, 2012, the Regional Joint Director (Sugar), Kolhapur, found that a total number of 6617 persons did not satisfy the required criteria to become members of the respondent sugar factory and passed an order under Section 11 read with Section 11A of the Act.

7. Immediately, thereafter, the respondent sugar factory and several of the members, who were held to be ineligible from becoming members of the factory, challenged the order passed by the Regional Joint Director (Sugar), Kolhapur, by filing

A appeals before the State of Maharashtra, under Section 152 of the M.C.S. Act, 1960. On 22nd February, 2012, the said appeals were listed for admission and interim orders before the Minister for Cooperation, State of Maharashtra, but in view of the allegations of bias made against him in W.P.No.1685
 B of 2012, the Minister recused himself from hearing the appeals and transferred the cases to the Secretary, Department of Cooperation, for hearing and disposal. The appellants appeared before the Secretary on 24.2.2012, but raised an objection to his jurisdiction to hear a substantive appeals under
 C Section 152 of the M.C.S. Act, 1960. The order of the Joint Director (Sugar), Kolhapur was also challenged by the respondent sugar factory and some of the persons who were held to be ineligible, notwithstanding the pendency of their substantive appeals under Section 152 of the Act, challenging the very same order before the State of Maharashtra.
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8. In the above-mentioned appeals assigned for hearing to the Secretary, Cooperation Department, an objection was raised on behalf of the Respondent No.2 that neither under the Maharashtra Cooperative Societies Act and Rules, nor under
 E the provisions of the Rules of Business of the Government of Maharashtra, was the Secretary of the Department entitled to hear the appeals and that it was only the Minister in charge of the Department who could do so. The same objection was raised in the writ petitions also. The learned Single Judge of
 F the High Court, while disagreeing with the said decision, and referring the matter for determination of the issue by a larger Bench, also observed that the judgment of the Bombay High Court in the case of *Ravindra V. Gaikwad & Ors. Vs. State of Maharashtra & Ors.* still held the field and, accordingly,
 G attempted to work out a solution to solve the deadlock. The learned Single Judge was of the view that the answer to the question which had arisen, lay in Rules 6 and 6-A of the Rules of Business of the Government, which provides as follows :

H "6. The Chief Minister and a Minister in consultation with

the Chief Minister may allot to a Minister of State or a Deputy Minister any business appertaining to a Department or part of a Department.

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6-A. When the Chief Minister is unable to discharge his functions owing to absence, illness, or for any other cause, the Chief Minister may direct any other Minister to discharge all or any of his functions during his absence. When any Minister is likewise unable to discharge his functions, the Chief Minister may direct any other Minister to discharge all or any of the functions of the Ministers during the Minister's absence."

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9. The learned Judge, after recording that the Minister for Cooperation had expressed his inability to hear and decide the appeals, felt that this was a case, where the Chief Minister could himself hear the appeals or direct any other Minister to exercise the function of the Minister for Cooperation for hearing the appeals. The learned Judge was of the view that the said power contained in Rule 6-A would have to be exercised by the Chief Minister. Since, the appeals were already pending before the State Government, the learned Single Judge directed the Chief Minister to either hear the appeals himself or to appoint any other Minister to hear and decide the same by performing the function of the Minister for Cooperation, in relation to the hearing of the above appeals.

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10. The present appeals have been filed by the Respondent Nos.3, 4 and 5 on various grounds. The first ground, which has been urged by Mr. Mukul Rohatgi, learned Senior Advocate, appearing for the Appellants, is that the High Court was not justified in disposing of the writ petitions with directions, without giving the Appellants herein an opportunity of being heard.

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11. The second ground taken for filing the appeals is whether the High Court could have directed the Chief Minister of Maharashtra to invoke the Rules of Business in terms of

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- A Rules 6 and 6-A thereof and also whether the appeals could at all be heard by the Secretary of the Cooperation Department. Mr. Rohtagi contended that when the Minister of State for the Department of Cooperation was available, as were other Ministers who could decide the appeals in terms of
- B Rule 6-A of the Rules of Business, there was no reason for having the appeals heard by the Secretary of the Department.

12. Yet another ground was taken as to whether the High Court was justified in hearing the writ petition of the Respondent, when its substantive appeal under Section 152 of the M.C.S. Act, 1960, in respect of the same order, was pending before the Government of Maharashtra. Mr. Rohatgi also urged that Rule 10 of the Rules of Business were probably overlooked by the High Court while passing the impugned order, since by virtue of the said Rule, it was the Minister in
- C charge of the Department, who was to be primarily responsible for the disposal of the business of the Department.
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13. On the other hand, Mr. Uday U. Lalit, learned Senior Advocate, urged that in view of the peculiar situation created by the Minister concerned and, thereafter, the Chief Minister who also recused himself from the hearing of the appeals, on account of the allegation of bias against them, the Court had no alternative but to work out a solution so that the elections to the Cooperative Societies could be held. The ground realities
- E were such as to make it almost impossible to have the appeals heard out, unless the Secretary of the Department was directed to do so.
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14. At this stage, it may be recalled that the entire controversy arose on account of the disqualification of 6617 voters, who were found ineligible to be members of Respondent No.1 Karkhana by the Regional Joint Director (Sugar), Kolhapur.
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15. As indicated hereinbefore, the order passed under
- H Section 11 read with Section 25A of the Maharashtra

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Cooperative Societies Act, was challenged by the members of the said factory. The Appellants herein, who appeared before the Secretary, brought to his notice that in view of the decision of the Bombay High Court in the case of *Ravindra V. Gaikwad* (supra), he possibly did not have jurisdiction to hear the appeals under Section 152 of the said Act. It was, thereafter, that the writ petitions were filed and orders were passed by the learned Single Judge, whereby he directed the Chief Minister to exercise his powers under Rule 6-A of the Rules of Business.

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16. The Writ Petitions were heard and disposed of by the learned Single Judge of the Bombay High Court by the order impugned in these appeals, at the very threshold, without issuing notice to the Respondent Nos.3, 4 and 5. In our view, the said Respondents, who are likely to be affected by the order, should have been given notice before the impugned order was passed. Such being the position, the normal course for us would have been to remand the matter to the High Court for a fresh decision after hearing the Appellants herein, but nothing fruitful will materialize if we were to pass such an order, in view of the reasoning of the learned Judge while making the impugned order. Apart from the above, we have heard Mr. Rohtagi on the legal aspect of the question regarding the competence of the Secretary of the Department to hear the appeals in the light of Rule 6-A of the Rules of Business. Any further hearing before the High Court on this question would only amount to duplication and waste of judicial time.

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17. In our view, the order passed by the learned Single Judge, was a pragmatic attempt by the High Court to ensure that the elections were duly held and the same was within the parameters of Rule 6-A of the Rules of Business, which has been extracted hereinabove and indicates that if the Chief Minister was unable to discharge his functions for the reasons indicated, he could direct any other Minister to discharge all or any of his functions during his absence. Likewise, if any other Minister was unable to discharge his functions, the Chief

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A Minister could direct any other Minister to discharge all or any of the functions of the Minister during the absence of the said Minister.

B 18. The order of the learned Single Judge has been made within the framework of the aforesaid Rules and as indicated hereinabove, was a pragmatic attempt to break the impasse so that the elections to the Board of Directors of the Karkhana could be held. Rule 6-A of the Rules of Business does not contemplate the functions of a Minister being discharged by the Secretary of the Department or any other officer for that matter.

C 19. We, therefore, see no reason to interfere with the order passed by the learned Single Judge, and the appeals are, therefore, dismissed. So as not to delay the elections any further, we request the Chief Minister to take immediate steps to have the appeals filed by the Appellants herein under Section 152 of the M.C.S. Act, 1960, heard and disposed of as early as possible, but not later than 2 months from the date of communication of this judgment. In the event the Chief Minister is unable to hear the appeals himself and entrusts the hearing to one of the other Ministers, which, in our view, would also include the Minister of State of the concerned Department, he should also impress upon the said Minister the urgency of the matter since the elections to the Board of the Karkhana have not been held since 2007.

F 20. The appeals are accordingly disposed of with the aforesaid directions.

21. There will be no order as to costs.

G N.J. Appeals disposed of.