

Chandrakant Lumchand Gogad

v.

Nashik District Central Cooperative Bank Ltd. & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI  
MUKHOP PADHAYA

C. A. No. 8378 of 2011 with C. A. No. 8379 of 2011 | 15-02-2012

1. Whether the Divisional Joint Registrar, Cooperative Societies, Nashik could have, within three days of his having declared that the amendments made by respondent no. 1-Nashik District Central Cooperative Bank Ltd. in the Model Bye-Laws are contrary to the provisions of Maharashtra Cooperative Societies Act, (for short, 'the Act') and the Model Bye-Laws accorded approval to the amended Bye-Law No. increasing the tenure of the Chairman/Vice-Chairman from one year to two-and-a-half years and that too without giving any indication of the application of mind to the representation/explanation dated.10.2010 allegedly submitted by respondent no. and without taking into consideration the policy contained in letter dated .12.2008 issued by the Cooperative Commissioner and Registrar, Cooperative Societies, Maharashtra is the question which arises for consideration in these appeals filed against judgment dated.8.2011 of the Division Bench of the Bombay High Court.

2. In furtherance of an agreement entered into by the Government of Maharashtra with National Bank for Agriculture and Rural Development (NABARD) and the Central Government for implementation of the recommendations of Vaidayanathan Committee certain amendments were carried out in the Act. Simultaneously, Model Bye-Laws were framed and circulated to the cooperative societies in the State including the respondent no. vide letter dated 12.12.2008. In that letter it was made clear that while implementing the Model Bye-Laws, the banks are entitled to carry out necessary changes in the provisions relating to formation of the Managing Committee and other provisions as per local circumstances without impinging upon any statutory provision.

3. On receipt of letter dated.12.2008, respondent no. 1 passed Resolution No. dated.8.2009 for adoption of the Model Bye-Laws with certain amendments. That resolution was forwarded to the Divisional Joint Registrar vide letter dated.10.2009, who after scrutinizing resolution and the amendments made in the Model Bye-Laws passed order dated 23.11.2009 under Section(3) of the Act, the operative portions of which read thus:

“ORDER:

I, B.S. Yampalle, Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik in exercise of the powers conferred upon me under section(3) of the Maharashtra Co-operative Societies Act, the amendments proposed by the bank the Nashik District Central Co-operative Bank Ltd. Nashik from the Introduction Sub-Rule No. in Model Byelaw submitted vide Read No. to the general Sub-Rule No. and the appendix to be handed over under Sub-Rule No. to the Chief Executive Officer being inconsistent with the provisions in the Co-operative Act, Rule and Model Byelaws the Model Sub-Rule proposed to be adopted by the bank is being rejected for the reasons mentioned above."

4. After about one month and six days the Managing Committee of respondent no. passed Resolution dated 29.12.2009 for adoption of the Model Bye-Laws with the rider that the matter be placed in the General Meeting. After another seven months and a half, notice dated 17.7.2010 was issued for convening a Special General Meeting of respondent no. without giving any indication of the agenda. However, during the meeting some members are said to have suggested that the tenure of the Chairman and the Vice-Chairman should be increased to two-and-a-half years instead of one year as specified in the Model Bye-Laws. Some other amendments were suggested in Clauses, 33,(a) and(5) of the Model Bye-Laws. It is said that majority of those present in the meeting passed resolution to amend the Model Bye-Laws. The relevant portion of Resolution dated.7.2010 is extracted below:

"In Byelaw No., the duration of elected Chairman and Vice-Chairman is one year. However, same shall be for months (i.e. 1/2 year) and the said provision shall be applicable to present Chairman and Vice-Chairman. This amendment to be carried out."

5. The aforesaid resolution was forwarded to the Divisional Joint Registrar vide letter dated.10.2010. He passed order dated .10.2010 and declared that the amendments carried out by respondent no. are contrary to the Act and the Model Bye-Laws and called upon the latter to furnish explanation in the context of observations contained in paragraph of the order, the relevant portion of which is extracted below:

"This office has received Applications from representatives of Members of Society and Complaint Applications of individuals after Special General Meeting dated/7/2010 and the said complaint applications were sent to Sub- Registrar, Cooperative Society, Taluka Nashik, Nashik from District Sub-Registrar, Cooperative Society, Nashik. As mentioned in the Report dated /10/2010 of Sub-Registrar, Cooperative Societies, Taluka Nashik, Nashik, it was informed to Bank to cooperate within days from the receipt of letter dated/9/2010. However, Bank has not cooperated and therefore, inquiry could not be carried out. Therefore, order was given to the Circle Office to carry out inquiry and submit his report. The Inquiry officer visited the Bank on/9/2010 and/9/2010 and tried to contact, the Managing Director and Officer of Bank Shri Mali, for information and inquiry. The said officer informed that the documents of inquiry is with Chairman of the Bank and therefore, same is not available. The

said report is submitted. Hence, kindly submit the details of the inquiry along with original Minutes."

6. Respondent no. is said to have sent communication dated .10.2010 to the Divisional Joint Registrar purporting to explain the reasons for the proposed amendment of various Bye-Laws including Bye-Law No. . Paragraph(b) and the last paragraph of that communication read as under:

"2(b) In bye-laws No., the tenure of the Chairman is mentioned as months (Two and half years).

The above changes are made as per the circular issued by the Commissioner and Registrar Co-op. Societies, Maharashtra State, Pune dated 12.12.2008 as while adopting the provisions of Model Bye-Laws it was permitted to the Bank to made necessary changes regarding the constitution of managing committee and other provisions may be changed as per the local condition and which are not contrary to the act and the rules.

Accordingly the resolution passed in the Special General Body Meeting of the Bank on.07.2010 amending the bye-laws is not contrary to the law and the same is incorporated in the proposal."

7. There is serious dispute between the parties whether the aforementioned communication was actually received in the office of the Divisional Joint Registrar but it is an agreed position that on the very next day, i.e., 22.10.2010, the Divisional Joint Registrar issued a communication and approved the amended Bye-Laws in terms of the resolution passed in the Special General Meeting held on.7.2010, which reads as under:

"Ref. No. VN-1/GSM-Nashik/A. Byelaw/Approved/10 Office of Divisional Sub-Registrar, Cooperative Society, Nashik Division, Nashik, rd Floor, Grihanirman Bhavan, Gadkari Chowk, Nashik

Date:/10/2010

To,

1. Managing Director, Divisional Sub-Registrar, Cooperative Society (All)

2. Chief General Manager, National Agricultural and Rural Development Bank (NABARD)  
Shivajinagar, Pune-05

3. Hon'ble Principal Secretary (Cooperative & Marketing) Cooperative, Marketing Division,  
Mantralaya, Mumbai-32

Name of Society: Nashik District Central Cooperative Bank Date & No. of Registration: ,  
dated /01/1955.

Read:

As per the approved Resolution No. of Nashik District Central Cooperative Bank passed in  
Special General Meeting dated/07/2010 with respect of proposal of approval of amended  
Bye-laws, I, B.S. Yampalle, Divisional Sub-Registrar, Cooperative Society, Nashik Division,  
Nashik, pursuant authority given to me under section of the Maharashtra Cooperative Society  
Act, approving below mentioned Bye-law of Supplement No. 4.

Bye-law Number Wording of approved/rejected Bye-Law

Schedule of Bye-law No.1 Introduction approved as per enclosed Model No. 24 General and  
also No. 41 of Chief Byelaws. Executive Officer as per order bearing No.  
FIN/GSM/Byelaw/Vaidyanathan/2008, dated 12.12.2008, Cooperative Commissioner and  
Registrar, Cooperative Society, State of Maharashtra Pune The said approval shall be annexed  
to supplement 4 of Bank's byelaws.

Sd/-

(B.S. Yampalle),

Divisional Sub-Registrar, Cooperative Society,

Nashik Division, Nashik

C.C.:

1. Chairman/Managing Director, Nashik District Central Cooperative Bank

2. Divisional Sub-Registrar, Cooperative Society (Audit), Nashik Division, Nashik."

8. The appellants challenged order dated.10.2010 by filing appeals under Section of the Act, which were dismissed by the Appellate Authority as not maintainable. Thereupon, they filed Writ Petition Nos. and of 2011 challenging order dated.10.2010 on various grounds including the one that after having declared that resolution dated .7.2010 was inconsistent with the statutory provisions and the Model Bye-Laws, the Divisional Joint Registrar was not legally justified in according his approval to the amendment made in Bye-Law no. and that too without assigning any reason.

9. The Learned Single Judge allowed the writ petitions and quashed the order of the Divisional Joint Registrar and remanded the matter to the concerned authority with a direction to pass fresh order on the question of approval of Resolution dated.7.2010.

10. On appeal, the Division Bench of the High Court referred to Section(3) of the Act and the Maharashtra Cooperative Societies Rules, (for short, 'the Rules') and held that while approving amendment in the Bye- Laws the Registrar is not required to record reasons. The Division Bench also referred to the nothings recorded in the file and concluded that the Divisional Joint Registrar had issued communication dated .10.2010 after duly considering the explanation given by respondent no..

11. We have heard Shri Uday U. Lalit, learned senior counsel appearing for the appellants and Shri Vinod A. Bobde, learned senior counsel appearing for respondent nos. 1 and and scrutinized the record.

12. At the outset, we consider it necessary to observe that the English translation of some of the documents filed by the parties which are in vernacular (Marathi) is inaccurate and till the conclusion of hearing, we entertained doubts about correctness of the translation of the documents. With this handicap, we proceed to consider whether the Division Bench of the High Court was right in upsetting an otherwise well reasoned order of the learned Single Judge whereby he had remitted the matter to the Divisional Joint Registrar for fresh consideration of Resolution dated.7.2010 passed by respondent no.1.

13. It has not been disputed before us that in terms of Clause (a) of the Bye-Laws framed at the time of registration of respondent no. in , notice of Ordinary General Meeting and Extraordinary General Meeting is required to be given to all the members. The notices also also required to be published in local newspapers indicating therein the place, date and hour of the meeting and the business to be transacted thereat. Rule(2) of the Rules postulates that the Society shall give due notice in accordance with its Bye-Laws to all members for considering any amendment thereof. However, notice dated 17.7.2010 issued for Special General Meeting of Respondent no. did not contain any indication of the proposed amendment of the four clauses of the Model Bye-Laws including Bye-Law No. relating to tenure of the Chairman and the Vice-Chairman.

14. Shri Bobde, learned senior counsel for respondent nos. 1 and submitted that even in the absence of an agenda having been circulated along with the notice, it was open to the members to discuss the proposal made by anyone of them for amendment of the Model Bye-Laws including Bye-Law No. and the very fact that large number of members had actively participated in the discussion show that no prejudice had been suffered by the members on account of absence of an agenda having been circulated in relation to the proposed amendment.

15. In a given case, an argument like the one advanced by Shri Bobde could have been accepted but having regard to the fact that Resolution dated .7.2010 bears the signatures of the Chairman and the Managing Director only and the fact that as many as representatives of the Cooperative Societies lodged protest and individuals made complaints show that the resolution did not contain accurate reflection of what had actually transpired in the meeting. The failure of respondent no. to supply full information to the Divisional Joint Registrar and to avoid enquiry and the attitude of non-cooperative exhibited by it shows that an attempt was made to mislead the Divisional Joint Registrar, who was competent to approve the resolution. Therefore, the officer concerned was fully justified in refusing to approve the amendments and to call for an explanation.

16. Although, the Division Bench of the High Court has taken cognizance of the notings which are said to have been recorded in the file of the Divisional Joint Registrar who issued communication dated.02.2010, this Court has been deprived of that opportunity because the counsel representing the State and the Registrar, Cooperative Societies has thought it proper not to appear and produce the relevant records.

17. Be that as it may, on a careful reading of order dated 19.10.2010 and communication dated .02.2010, we are convinced that the learned Single Judge had rightly quashed the communication and directed the Divisional Joint Registrar to decide the matter afresh after considering the rival contentions.

18. Since, we are approving the order passed by the learned Single Judge, we do not consider it necessary and proper to go into the legality or otherwise of the amendments made vide Resolution dated 27.7.2010 in the Model Bye-Laws but make it clear that the Divisional Joint Registrar shall pass appropriate order keeping in view the relevant records, the policy contained in letter dated 12.12.2008 and indicate reasons, howsoever briefly, for approving or not approving the resolution.

19. In the result, the appeals are allowed, the impugned judgment is set aside and the order passed by the learned Single Judge is restored. The Divisional Joint Registrar shall hear the parties, carefully and objectively examine the entire record to be produced by respondent no. and pass appropriate order within a period of eight weeks from the date of receipt/ production of a copy of this order.

20. Since, as the tenure of the Chairman and Vice-Chairman is coming to an end on 09.03.2012, we deem it proper to make it clear that they shall be allowed to continue in their respective positions till that date.

21. The parties are left to bear their own costs.