

Gajanan Narayan Patil And Others Vs. ... vs State Of Maharashtra And Others on 20 February, 1990

Equivalent citations: AIR1990SC1023, I(1990)BC400(SC), (1990)92BOMLR332, [1990]69COMPCAS1(SC), JT1990(1)SC517, 1990(1)SCALE305, (1990)3SCC634, [1990]1SCR491, 1990(2)UJ174(SC)

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Bench: B.C. Ray, Kuldip Singh, R.M. Sahai

ORDER

B.C. Ray, J.

1. This is an appeal under Article 133 of the Constitution of India against the Judgment and Order dated October 26, 1989 passed by the High Court of Bombay in Writ Petition No. 3976 of 1989 whereby the High Court directed the Registrar of Cooperative Societies to give fresh notice to the elected members as well as to the 3 persons namely 2 nominees of the Financial Institutions and the expert co-opted member.

2. The matrix of the case is that the appellants who are the duly elected Directors of the Sanjay Sahakari Sakhar Karkhana Ltd. hereinafter to be termed as "Karkhana" signed a requisition and sent the same to the respondent No. 3, the Joint Director of Sugar and Joint Registrar Co-operative Societies, Maharashtra State, Pune requesting him to summon a special meeting of the Committee of the Karkhana to consider the proposed motion of no-confidence against the Chairman of the Committee, Dattatraya Waman Patil, respondent No. 1. This requisition was signed by more than 1/3rd of the total members of the committee in accordance with the provision of Clause (2) of Section 73ID of the Maharashtra Cooperative Societies Act 1960 (Maharashtra Act No. XXIV of 1961). The above requisition was received in the office of the Joint Director of Sugar and Joint Registrar, Cooperative Societies, Maharashtra State, Pune, the respondent No. 3.

3. On 6.9.1989 the respondent No. 3 issued a notice dated September 13, 1989 convening a special meeting of the Managing Committee of Karkhana i.e. Board of Directors of the Karkhana on 25.9.1989. This notice was issued as contemplated by Clause (3) of Section 73ID of the Act. This notice was sent to all the members of the Committee of the Karkhana who at that time were entitled to sit and vote at any meeting of the Committee i.e. the elected members of the said Committee of Management. Over and above a copy of the notice was sent to the office of Registrar, Deputy Director of Sugar, Aurangabad (Presiding Officer). A copy of this notice was also sent to the office of the Managing Director of the Karkhana as by way of this notice, the Managing Director had been

directed to produce the minute book of the Committee meeting and hand over possession thereof to the Presiding Officer at the commencement of the special meeting.

4. On 18.9.89 the respondent No. 1 filed writ petition No. 3976 of 1989 before the High Court at Bombay challenging the requisition notice dated 5.9.89 signed by the 10 appellants who are elected members of the Managing Committee as well as notice dated 13.9.89 issued by the respondent No. 3 mainly on the ground that under the scheme of the Act read with the Rules and the bye laws of the Karkhana, coopted member and nominees of the Financial Institutions who are members of the Board of Directors of the Karkhana and are entitled to sit and vote at the special meeting when the Committee considers the vote of no-confidence under Section 73ID of the Act are required to be served with the said notices of requisition enabling them to participate in the said special meeting. This writ petition was heard by the Division Bench of Bombay High Court on 26.10.89. On a consideration of the provisions of Section 73ID read with Rule 57A and bye-law No. 29 of the Bye-Laws of the Society the High Court allowed the writ petition holding that the 3 members of the second category who have got a limited right to vote at a meeting except at a meeting to elect Chairman or Vice-Chairman are entitled to be served with notices of the special meeting and to participate in the said meeting and as the two nominees of the Financial Institutions and the expert coopted members had not been served with the notices of requisition meeting, the requisition meeting cannot be held. Instead of quashing the notice issued by the respondent No. 3 convening the meeting, the High Court directed the Registrar, the respondent No. 3 to issue fresh notices to the elected members as well as to the 3 Directors of the Second category before holding the meeting and disposed of the writ petition accordingly. The High Court however restrained the Chairman to enter into new contracts and as well as giving any fresh commitment on behalf of the Karkhana.

5. The appellants filed a petition under Article 133 of the Constitution of India against the Judgment and order dated October 26, 1989 passed by the High Court, Bombay in Writ Petition No. 3976 of 1989. The High Court by Order dated 26.10.89 granted certificate for appeal to this Court under Article 134(1) of the Constitution of India on the following questions:

Whether the nominees of the Financial Institutions and the expert co-opted by the Committee under Bye-law 29 are included within the expression "Committee members who are for the time being entitled to sit and vote at any meeting of the Committee?

6. In order to decide the above question it is appropriate to consider the relevant provisions of the Maharashtra Cooperative Societies Act 1960 to be hereinafter called the 'Act' and the rules framed there under as well as the relevant bye laws of the particular Cooperative Society in question.

7. The Karkhana is a Cooperative Society governed by the Maharashtra Cooperative Societies Act. Section 2(7) defines Committee as the Committee of Management or Board of Directors or other directing body by whatever name called in which the management of the affairs of the society is vested under Section 73 of the said Act.

8. Section 27 which deals with the voting powers of the members provides in Sub-section '9' that no nominee of the Government or of any Financial Bank on any society shall be entitled to vote at any election of its Committee. Section 73 states that the management of every society shall vest in a Committee, constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, Rules and the Bye-laws. Therefore, the management of every Cooperative Society is vested in the Committee of management or for that in the Board of Directors of the Society. Section 73ID which is relevant for determination of the said question is quoted below:

73-ID "(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 two-third majority of the total number of Committee members who are for the time being entitled to sit and vote at any meeting of the committee 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 for the time being entitled to sit and vote at any meeting 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: Provided that, no such requisition for a special meeting shall be made within a period of six months from the date on which any of the officers referred to in Sub-section (1) as entered upon his office.

(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.

Rule 57A Motion of no-confidence against the officers of the Society (1) The requisition to call the special meeting of the committee of a society to consider a motion of no-confidence against the President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer, or other officer of the society, by whatever designation called, who holds office by virtue of his elections to that office, shall be made in Form M-18. The requisition shall be accompanied by

(a) the grounds of no-confidence,

(b) the text of the motion of no-confidence to be moved,

(c) the name of the committee members who shall move the motion of non-confidence,

(d) a list of members of the committee specifying their full names, and address who are, for the time being, entitled to sit and vote at any meeting of the committee,

(e) signatures of the members of committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government.

(2) The requisition referred to in Sub-rule (1) shall be delivered in person to the Registrar. Such requisition or requisitions shall be delivered in duplicate in each case. The Registrar on ascertaining that the requisition or requisitions, as the case may be, have been signed by not less than 1/3rd members of the Committee who for the time being are entitled to sit and vote in any meeting of the committee of society.

(a) receive and acknowledge the requisition under his signature with date and time,

(b) issue notice, within 7 days from the date of receipt of the requisition, convening the special meeting for that purpose specifying therein place, date, time name and designation of the officer who shall be presiding over such meeting, to all the members of the Committee, the Presiding Officer and the Managing Director, General Manager, Manager, Paid Secretary, Group Secretary or such employee of the society, to whom the Registrar has directed to produce minute book of Committee meetings of the society. This notice of no-confidence, shall also be issued, to the officer or officers against whom the motion of noconfidence is being moved, and shall be accompanied by the copy of the requisition along with enclosures and agenda.

(5) The time of the meeting shall be between office hours of the authorised officer. The meeting shall be held either in the office of the Registrar or in the office of the person authorised by the Registrar to preside over the meeting.

(6) No other subject, except the motion or motions of no-confidence shall be kept on the agenda.

(7d) The Registrar or the officer authorised to preside over the meeting shall not allow any other person to enter the place of meeting except the person or persons appointed to assist him, the officer of the society who has produced the minute book, the officer or officers against whom the motion of no-confidence is moved, the members of the committee who are for the time being entitled to sit and vote in any meeting of the committee, who are present at the commencement of the meeting and police officer or officers if called by him to maintain the law and order.

BYE LAW No. 29.

Board of Directors:

A. xxxxxxx B. xxxxxxx to E. xxxxxxx (F) "Managing Director, and representatives in Sub-Clause (d) and (e) (Coopted Technical Director) shall not be entitled to function as Chairman and Vice-Chairman. The representatives referred to in above

Sub-Clause (d) and technical expert coopted as per provisions of Sub-Clause (e) and Managing Director, will not be entitled to vote at the meeting for the election for Chairman and Vice-Chairman. The representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board. But his opinion will be recorded in the minute book. He will not be responsible for mismanagement and negligence of the Board. Further no action can be taken against him for any losses sustained to the Karkhana due to the mismanagement and the negligence of the Board.

9. It has been contended on behalf of the appellant that Section 27 Sub-section '9' debars the Government nominee or the nominee of any Financing Bank on any society to vote at any election of the Committee of the Society and as such except the elected Directors other Directors can not participate in the election of the Managing Committee of the Society and cannot vote for such election. It has been also submitted that under Section 73ID Clause (A) in the special meeting convened for consideration of no-confidence motion against the Chairman and Vice-Chairman of the society and other officers of the society only the members who are for the time being "entitled to sit and vote at any meeting of the Committee may participate and vote in the said meeting. It has also been provided therein that as soon as vote of no-confidence is passed against the Chairman of the managing committee of the society by 2/3rd majority of the total number of committee members who are for the time being entitled to sit and vote the office of Chairman etc. shall be deemed to be vacant. Therefore, it has been submitted that the word at any meeting of the committee shall be deemed to refer to all the meetings of the managing committee or the Board of Directors. The nominees of the Financial Institutions and also the coopted expert, coopted Technical Director having been not entitled to function as a Chairman and Vice-Chairman and not to vote at the meeting of the election for Chairman and Vice-Chairman of the Board of Directors are not entitled to sit and vote in the special meeting convened for the purpose of consideration of the no-confidence motion against the Chairman of the Board of Directors. It has also been contended in this connection that the Chairman of the managing committee or of the Board of Directors is elected by the elected Directors of the managing committee. It is against the democratic principles that the motion of no-confidence against the Chairman for removal from his elected office are to be passed by the 2/3rd majority of the members of the Board of Directors including the Directors who are representatives of the Financial Institutions and expert nominee (co-opted), Mr. S.S. Ray, learned Counsel appearing on behalf of the respondent No. 1 has on the other hand joined issues and submitted that the right to participate in the special meeting convened for consideration of no-confidence motion against the Chairman is a statutory right flowing from the provisions of the statute. This right has been conferred expressly by the provisions of Section 73ID read with Rule 57A Clause 2(b) read with Clause 7(D) i.e. "members of the committee who are for the time being entitled to sit and vote in any meeting of the Committee." Though Section 27 Sub-section 9 enjoins that no nominee of the Government or of financing bank or of any society shall be entitled to vote at any election of its committee. This merely means and signifies that the nominee of the Government as well as of the Financial Institutions are not entitled to participate in the election meeting of the society and from casting their votes in such meeting. Bye law 29 of the Bye Laws of the Society provides that the Board of Directors of the Karkhana would consist of the following members:

S. No. Particulars No. of Members. 1. Members falling under Bye elected producer, 11 law No. 29(A). members, 2. Members falling under Bye elected by society 01 law No. 29(B) members 3. Members falling under Bye Managing Director, 01 law No. 29(C) Ex-officio. 4. Members falling under Bye Representative of 01 law No. 29(D)(i) the financing agency. 5. Members falling under Bye Representatives of 01 law No. 29(D)(ii) Indian Finance Corporation of India, LIC, IDBI etc. (Not more than two) In the present case only. 6. Members falling under Representative of NIL Bye-law No. 29(D)(iii) ICICI (One) In the present case. 7. Members falling under Bye Nominee of the 01 law No. 29(D)(iv) State Government 8. Members falling under Bye Expert nominee 01 law No. 29(E). (co-opted). 9. Members falling under elected from SC/ 02 bye-law No. 29(G) ST and Weaker r/w Section 73B Section. _____ Total Strength 19

10. It is also evident from the provisions of Bye law No. 29 that the Representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board, but his opinion may be recorded in the minute book. So far the representatives referred to in Clause D(i) and (D)(ii) in Bye-law No. 29, that is, representative of the financing institutions as well as the expert nominee (co-opted) falling under Bye-law 29(E) are entitled to participate in the special meeting and also cast their votes in such meeting. This being the position, it is against the provisions of the Act, Rules and Bye-laws of the society to hold that the members falling under Bye-law 29(D)(i) and (ii) as well as the expert nominee (co-opted) under Bye-law 29(E) are not entitled to sit and vote in the meeting of the committee convened for consideration of the no-confidence motion against the Chairman, Board of Directors or for that of the Managing Committee. This interpretation will be wholly going against the clear meaning of the expression namely members who are entitled to sit and vote at any meeting of the committee. The right to participate in the special meeting as well as to vote for such meeting is a statutory right and it flows from the provision of the Act, Rules and Bye-laws of the Society. It has nothing to do with the democracy. The words "entitled to sit and vote in any meeting of the society" refer to member to sit and vote not in every meeting but in any meeting of the society. The only express bar as provided in Section 27 is that the members, that is, the Directors representatives of the Financial Institutions as well as the Expert Director (co-opted) are not competent to participate only in the election of members of the society. The said Directors have been conferred the right to participate in any meeting including the special meeting of the Board of Directors or of the Managing Committee of the society. It is appropriate to refer of Jamuna Prasad Mukhariya and Ors. v. Lachhi Ram and Ors., . It has been observed:

The right to stand as a candidate and contest the election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected Members of Parliament. If they want that they must observe the rules.

11. We have gone through the Judgment rendered by our Learned Brother, Hon'ble Mr. Justice R.M. Sahai, we are however, unable to concur with the views expressed by our Learned Brother and the findings arrived at therein. We therefore, hold that the requisition meeting that has been contended

cannot be held as the representatives of the Financial Institutions in the Board of Directors as well as the Expert Director (co-opted) under the relevant provisions of Bye-law No. 29 have not been served with the requisition notices of special meeting convened by the respondent No. 3 pursuant to the said requisition notice. The impugned notice convening the special meeting is wholly illegal and unwarranted. Furthermore, as we have found hereinbefore that the two Directors representing the Financial Institutions as well as the expert nominee (co-opted) are entitled to participate in the special meeting of the committee and also to vote at the same meeting as regards the no-confidence motion, the non-service of the notice of the said meeting on the aforesaid Directors renders the said special meeting illegal as there has been an infringement of the provisions of the said Act, Rule 57A of the Maharashtra Cooperative Societies Rules, 1961 and Bye-Laws 29D(i) and (ii) and 29E of the Bye-Laws of the Society. We, therefore, dismiss the appeal and allow the writ petition filed in the High Court. The appellants will pay costs quantified at Rs. 5,000 to the respondents.

R.M. Sahai, J.

12. The short question of law that arises for consideration in this appeal directed against the order of Bombay High Court, is whether the nominees of financial institutions and co-opted Technical Directors who are not entitled under bye-law 29 of the Sanjay Sahakari Sakhar Karkhana Ltd. (hereinafter called as 'Society') framed under Maharashtra Co-operative Societies Act, 1960 (for brevity 'Act') either to function as Chairman or Vice-Chairman of the Board of Directors of the Society or to vote at their election are entitled to participate in a special meeting requisitioned for consideration of motion of no-confidence under Section 73ID of the Act.

13. Resolution to requisition a special meeting to consider motion of no-confidence against Chairman of the Board, signed by more than 1/3rd members of the Board, was delivered to the Registrar as required by Rule 57-A along with a list of members who were entitled to sit and vote. Notices on it were issued under Clause (b) of Sub-rule (2) of Rule 57-A to elected members only. Validity of it and consequent proceedings were challenged before the High Court, amongst others, for being violative of Rule 57-A as it required the Registrar to issue notices to all members of the Board. Further nominees of financial institutions being vitally involved in the welfare of the Society, their presence was essential for effective and meaningful discussion even if they were not entitled to sit and vote. Various other objections were raised. But the High Court did not find merit in any except the one relating to non-issuance of notice to nominees of financial institutions and the expert co-opted by the Board. Reason for it was wider construction of the expression who are for the time being entitled to sit and vote at any meeting of the committee" used in Section 73ID of the Act. The High Court found that even though it would have been more logical to restrict such right to those alone who were entitled to elect yet it widened the ambit of expression because if two meanings were possible then the meaning which extended the right to vote rather than that limited should be accepted. It also found that right to vote on a resolution of no-confidence being an important matter affecting the Society, it should be extended to even nominated members who had a right to vote at some meeting.

14. Bye-law 29 framed by the Society, gives out the Constitution of the Board of Directors comprising of elected, ex-officio, representatives, and co-opted members. But right to be elected as

Chairman or Vice-Chairman of the Board or even voting at the meeting of such election has been confined to elected members by Clause (F) which is extracted below:

Managing Director, and (representatives in Sub-clauses (d) and (e) (Co-opted Technical Director) shall not be entitled to function as Chairman and Vice-Chairman. The representatives referred to in above Sub-Clause (d) and technical expert director coopted as per provisions of Sub-Clause (e) and Managing Director, will not be entitled to vote at the meeting for the election of Chairman and Vice-Chairman. The representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board. But his opinion will be recorded in the minute book. He will not be responsible for mismanagement and negligence of the board. Further no action can be taken against him for any losses sustained to the Karkhana due to the mismanagement and the negligence of the board.

15. The question is how does it reflect on the right to participate in a meeting of no-confidence against the Chairman of the Board? For this purpose it is necessary to extract Sub-section (1) of Section 73ID which reads as under:

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 two-third majority of the total number of committee members who are for the time being entitled to sit and vote at any meeting of the committee 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.

16. This sub-section provides the manner in which a Chairman or Vice-Chairman who holds such office by virtue of his election may cease to hold it. It also provides the method of such removal by two-third majority of the total members of the committee who are, for the time being, entitled to sit and vote in any meeting of the Committee. It is thus clear that the right to remove and elect Chairman and Vice-Chairman has been restricted to only limited class of members. Who are they?

17. Elections in a democracy have been conceived as an instrument of selecting the best qualitatively superior and politically valuable. Who should be entitled to reverse the selection? Those who elect or any other numbers increased by any methodology or law adding representatives and nominees not entitled to participate in selection. If the value of elective process has to have primacy then those worthy of choice should not be permitted to be squeezed out by those who are precluded from leadership or electing the leader. This basic concept does not stand altered or modified either by any provision in the Act or Rules. Literal construction of expression 'entitled to sit and vote' if it results in negation of democratic process or is against logic and is fraught with danger of removal of an elected representative by nominees of financial institutions or government then it has to be avoided.

18. Reverting to statutory right the scheme of the Act does not war rant the conclusion that such members are entitled to participate in meeting requisitioned under Section 73ID. Sub-section (9) of Section 27 reads as under:

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

19. It clearly and unequivocally debars nominees of financial institutions or Government representatives from exercising any right to vote at any election meeting. Therefore, the provisions in the bye-law debarring such a member from voting at election of Chairman or Vice-Chairman cannot be interpreted to mean as permitting such representatives to vote at other election meeting as that may result in invalidating the bye-law. Even if such members have some right to vote in some meetings other than election meetings or they have a right to record their opinion it does not entitle them to participate or even served with notice of vote of confidence as nature of meeting for considering motion of no-confidence has all the characteristics both in content and effect of an election meeting. Voting is sine qua non of election and under Clause (i) of Sub-rule (7) of Rule 57-A, the decision to retain Chairman is arrived at by voting and such right, namely, right to vote in election meeting being non-existent in nominees of financial institutions or of Government the expression "entitled to sit and vote" used in Section 73ID has to be read as excluding such members from its ambit. Such reading of the provision is necessary not only because it is more logical but also tht is the outcome of combined reading of Sub-section (9) of Section 27, Section 73ID and bye-law 29.

20. For these reasons, this appeal succeeds and is allowed. The Writ Petition filed in the High Court is dismissed. But there shall be no order as to costs.