

Supreme Court of India

Pundalik vs District Deputy Registrar, ... on 22 February, 1991

Equivalent citations: 1991 SCR (1) 675, 1991 SCC (2) 423

Author: K Saikia

Bench: Saikia, K.N. (J)

PETITIONER:

PUNDALIK

Vs.

RESPONDENT:

DISTRICT DEPUTY REGISTRAR, CO-OPERATIVESOCIETIES, CHANDRAPUR

DATE OF JUDGMENT22/02/1991

BENCH:

SAIKIA, K.N. (J)

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SAIKIA, K.N. (J)

PUNCHHI, M.M.

CITATION:

1991 SCR (1) 675

1991 SCC (2) 423

JT 1991 (1) 576

1991 SCALE (1)299

ACT:

Maharashtra Co-operative Societies Act, 1960: Section 78(1) and 73FF-Power of removal of members/committees- Default in repayment of loan installments- Disqualifications for being member of a committee.

HEADNOTE:

The appellant was elected on 18.8.1986 as one of the Directors of the District Central Co-operative Bank, Chandrapur, Maharashtra from the Brehmapuri Agricultural Sales and Purchase Society. On 8.1.1987 the District Deputy Registrar of the Co-operative Societies, Chandrapur issued a notice to him under section 78(1) of the Act to show cause as to why he should not be removed from the Board of Directors of the Bank and from the Executive Committees of other Co-operative Societies in the District for having remained in arrears of the loan instalments due from him on the date of filing of nomination papers for election to the post of Director of the Bank and thereafter till 21.10.1986 when he actually repaid the dues thereby incurring the disqualification as contemplated by section 73FF of the Act. The appellant showed cause and by additional reply took the stand that he had not committed any default after the amended section 73FF came into existence. This was rejected

and by Order dated 7.12.1987 passed by the Assistant Registrar Co-operative Societies, Chandrapur he was removed from the post of Director holding him to be a defaulter under section 73FF of the Act. Appeal against that order was dismissed by the District Joint Registrar and his revision therefrom made under section 154 of the Act too met the same fate at the hands of the Cooperative & Textile Department, State of Maharashtra, Bombay Dismissing his Writ Petition filed thereafter, the High Court of Bombay held that when the appellant contested the election he was a defaulter and even though he had paid all the debts on 21.10.1986 yet he could not be absolved of the disqualification on the day he contested the election.

In the appeal before this Court it was argued on behalf of the appellant that the impugned order of the Assistant Registrar removing him from the Board of Directors was without jurisdiction in as-much-as

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the Act prescribes separate procedure for calling in question the election and that procedure having not been followed the Assistant Registrar could not have acted under section 78(1) of the Act; that the entire loan having been repaid before the issue of notice under section 78(1) he was not a defaulter in presenti and lastly even assuming that the disqualification on the ground of default is common both for election and continuation as Director in the Committee, the special provision for calling in question an election must prevail over section 78. Rejecting the contentions and dismissing the appeal, the Court.

HELD: If the impugned order is found to have been passed by way of setting aside the election of the appellant, it would be bad as his election had not been called in question in accordance with the procedure prescribed by the Act. However, the notice has ex facie been issued under section 78 of the Act. No doubt there is reference to his having been a defaulter and disqualified for being elected but it has been addressed to him as Director on the Board of Directors. It also refers to his being disqualified "to be elected or to continue as Director or Executive Committee member of the Executive Committee" under section 73FF of the Act and about ceasing to be a Director by committing default. From the above contents, there is no room for holding that the appellant's election has been set aside by the impugned order. On the other hand, the emphasis is on his being disqualified to continue as Director or ceasing to be Director on account of his having committed default. [682F-683A]

The day an instalment falls due on its due date, failure to pay results in default and this default continues day after day until it is repaid. The appellant can be said to have made default on the first day of his directorship and on every subsequent day till instalments were paid. The appellant was a defaulter immediately on the coming into

force of section 73FF and so long that default continued he must be taken to have made default until repayment. [683G-684A]

Sub-section (2) of Section 73FF says that a member who has incurred any disqualification under sub-section (1) shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant. Therefore, the moment the appellant after election continued to be in default and must be taken to have made default, stood disqualified and thereby ceased to be a member of the Committee and his seat deemed to have fallen vacant. In this view of the matter the notice of the Deputy Registrar was in effect to say that the appellant had already ceased to be a director and his seat already fell vacant. In Keshaorao

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Narayanrao Patil v. District Deputy Registrar, reported in 1987 Maharashtra Law Journal 709, Bombay High Court held that section 73FF(2) did not operate automatically and that passing of an order of removal was necessary. This has to be interpreted in the context of the provisions in the section. [684B-D]

Hundraj Kanayalal Sajnani v. Union of India, A.I.R. 1990 S.C. 1106 at 1121; Zaverbhai Amaidas v. The State of Bombay, [1955] 1 S.C.R. 799; Maharashtra State Board of Education v. Paritosh Sheoth, [1985] 1 S.C.R. 29, distinguished.

Keshaorao Narayanrao Patil v. District Deputy Registrar, [1987] Maharashtra Law Journal 709, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4974 of 1990.

From the Judgment and Order dated 20.6.1990 of the Bombay High Court in W.P. 2403 of 1989.

G.L. Sanghi, Mrs. Jayshree Wad, Dhruv Mehta and Ms. Tamali Das Gupta for the Appellant S.V. Deshpande, V.N. Patil and A. S. Bhasme (NP), for the Respondents.

The Judgment of the Court was delivered by K.N. SAIKIA, J. Pursuant to the Notification issued in June 1986 the elections of Directors to the District Central Cooperative Bank, Chandrapur, hereinafter referred to as 'the Bank' the appellant filed his nomination papers in July 1986, and he was elected on 18.8.1986 as one of the Directors of the Bank from the Brehmapuri Agricultral Sales and Purchase Society. His election was not called in question according to the procedure prescribed by the Maharashtra Cooperative Societies Act, 1960, hereinafter referred to as 'the Act'.

On 8.1.1987, the District Deputy Registrar of the Cooperative Societies, Chandrapur, hereinafter referred to as 'the Deputy Registrar', issued a notice to the appellant under section 78(1) of the Act to

show cause within 15 days as to why he should not be removed from the Board of Directors of the Bank as per the provisions of section 73FF, and directed him to remain present on 2.2.1987 at 11 A.M. in the Deputy Director's office. The notice stated that the appellant had borrowed a loan of total Rs. 10,000 (Rs. 7,000 as debt and Rs. 3,000 subsidy) from the Bank and he kept the loan constantly in arrears till 21.10.1986, and being elected as Director of the Bank on 18.8.1986. till then he was working as the Director of the Bank. The notice further said:

"Because you have remained in arrears of the loan instalments as referred above to the Maharashtra State Cooperative Land Development Bank, under Section 73FF(i)(b) of the Maharashtra State Cooperative Societies Act, 1960, you are disqualified to be elected or to continue as Director or Executive Committee Member of the Executive Committee of a Cooperative Society and u/s 73FF(2) of Maharashtra State Cooperative Societies Act, 1960 a person committing defaults ceased to be the Executive Committee (member) or Director.

From the information above given because the loan instalments of Maharashtra State Cooperative Land Development Bank remained due from you on the date of filing nomination papers for the election of post of Director of Chandrapur District Central Cooperative Bank and also on the date of your election and thereafter, you are disqualified to contest the election to the post of Director of Chandrapur District Central Cooperative Bank as also to be elected and to continue as Director. And therefore under powers given to me by Section 78(1) of Maharashtra State Cooperative Societies Act, 1960 and order No. CSL/1481/24982/15-C(87) dated 1.7.81 of Agriculture and Cooperation Department of Maharashtra State Government. I, K.M. Deshpande, District Dy, Registrar, Cooperative Societies, Chandrapur hereby ask you to show cause in writing as to why you should not be removed from the Board of Directors of Chandrapur District Central Cooperative Bank and from the Executive Committees of the other cooperative societies in the District. Your explanation in writing should be submitted to this office within 15 days from the receipt of this notice."

The appellant showed cause and also filed an additional reply on 10.11.87 stating that he "had not committed any default after the amended section 73FF came into existence."

The Assistant Registrar, Cooperative Societies, Chandrapur by his order dated 7.12.1987 removed the appellant from the Committee of Directors of the Bank holding that appellant was defaulter on 31.1.1986, on 31.3.1986 and he became defaulter under the provisions of section 73FF(1) of the Act, and rejected the appellant's contention that section 73FF became applicable from 6.8.1986 as per the Government Notification issued on 18.4.1986 and that as he had accepted that he paid the dues on 21.10.1986, on 18.8.1986 when he was elected as Director, he was defaulter under section 73FF(1) of the Act.

The order of the Assistant Registrar dated 7.12.1987 was served on the appellant on 8.12.87. The appellant's appeal against that order was dismissed by the Divisional Joint Registrar of the Cooperative Societies, Nagpur on 15.2.1988, holding, inter alia, that section 73FF of the Act came into force on 12.5.1986 and the appellant could be treated as a defaulter under that section; and the mere making of payment on 21.10.86 did not mean that the disqualification on account of his being defaulter which continued from 18.8.1986 to 21.10.1986 was extinguished and hence the appellant

was not at all eligible to contest the election. The appellant's revision petition therefrom under section 154 of the Act was dismissed on 30.8.89 by the Cooperation and textile Department, State of Maharashtra, Bombay holding that the appellant was defaulter under section 73FF of the said Act on 18.8.1986 i.e. the date when he was declared elected as Director.

The appellant's writ petition in the High Court filed on 1.9.1989 challenging the above order dated 30.8.89 was dismissed by the impugned Judgment and Order dated 20.6.90, holding that the dues calculated on 31.1.86 became recurring dues every following day and on 12.5.1986 when section 73FF came into force the outstanding dues continued even on 18.8.1986 when the appellant contested the election; and that the question of giving retrospective effect to the section did not arise because the appellant was a defaulter when he contested the election and though he paid all the debts on 21.10.1986 yet he could not be "absolved of the disqualification on the day he contested the election". Hence this appeal by special leave.

Mr. G. L. Sanghi, the learned counsel for the appellant submits, inter alia, that the impugned order of the Assistant Registrar removing the appellant from the Committee of the Directors is without jurisdiction inasmuch as the Act prescribes a separate procedure for calling in question the appellant's election as a Director of the Bank and that procedure having not been followed the Assistant Registrar could not have acted under section 78(1) of the Act which did not envisage the setting aside of an election as has been done by the impugned order; that the appellant having repaid the entire loan before the impugned notice under section 78(1) of the Act was issued, he was surely not a defaulter in presenti on the date of the notice and the provisions of section 78(1) were not attracted; and that even assuming that the disqualification on the ground of default is common both for election and for continuation as a Director in the Committee, the special provision for setting aside an election must prevail over section 78 as there would be apparent conflict between the two and the maxim *generalalia specialibus non derogant* general words do not derogate from special, would apply. Mr. V. N. Patil, the learned counsel for the State of Maharashtra, submits that the disqualification as defaulter continued after the election of the appellant and section 78 envisaged such a default and the appellant having continued to be a defaulter was lawfully removed and the fact that he repaid the loan before the notice was issued would not be material for the purpose of taking action under section 78.

Chapter XI-A of the Act deals with election of committees and officers of certain societies. Admittedly this Chapter applies to the Bank. Section 144E deals with disqualification for membership. Under sub-section (1) thereof a person shall be disqualified for being elected as, and for being a member, of the committee of any specified society,(e) if he is so disqualified by or under any other provision of this Act. Section 144T deals with disputes relating to election and provides in sub-section (1) that notwithstanding anything contained in section 91 or any other provisions of this Act, any dispute relating to an election shall be referred to the Commissioner of the Division in which such election is held or to an officer not below the rank of Additional Commissioner of division authorised by the State Government in this behalf. The procedure for an election petition is prescribed by the subsequent section of that Chapter. Admittedly the appellant's election was not called in question under the above provision. Section 144E, as have noted, over and above the other specified disqualifications in sub-section

(e) included disqualifications by or under any other provisions of the Act. Section 78(1) which deals with powers of removal of committees or member thereof provides as follows:

"78(1) If, in the opinion of the Registrar, the committee of any society or any member of such committee makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, or wilfully disobeys interests of the society or its members, or wilfully disobeys directions issued by the State Government, or by the Registrar for the purposes of securing proper implementation of cooperative policy and development programme approved or undertaken by the State Government or is otherwise not discharging its or his functions properly and diligently and the business of the society has or is likely to come to a standstill, or where any member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice, and after consultation with the federal society to which the society is affiliated, by order-

(a) (i) remove the committee, and

(ii) appoint a committee consisting of three or more members (who shall not be the members of the committee so removed) of the society in its place, or appoint one or more Administrators who need not be the members of the society, but who shall not be the members of the committee so removed, to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, be extended by a further period not exceeding three months so, however, that the total period does not exceed nine months in the aggregate:

Provided that, the Registrar shall have the power to change the committee or any member thereof or the Administrator or Administrators appointed under paragraph (ii) at his discretion even before the expiry of the period specified in the order made under this sub-section;

(b)	xxx	xxx
xxx"		

Section 78(1) empowers the Registrar to remove a member of a committee who "makes default" or where any member of such committee "stands disqualified by or under this Act for being a member". Section 73FF deals with disqualification for membership of committee. Sub-section (1) provides: "Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he-

(i) is a defaulter of any society;

Explanation-For the purposes of this clause, the term "defaulter" includes-

(a) in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;

(b) in the case of term lending society, a member who defaults the payment of any instalment of the loan granted to him;

xxx xxx xxx xxx xxx Sub-section (2) says: "A member who has incurred any disqualification under sub-section (1), shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant."

This section was inserted by Maharashtra Act, XX of 1986 with effect from 12.5.86. If the impugned order is found to have been passed by way of setting aside the election of the appellant the order would be bad as the appellant's election had not been called in question in accordance with the procedure prescribed by the Act. However, the notice has *ex facie* been issued under section 78 of the Act. No doubt there is reference to the appellant's having been a defaulter and disqualified for being elected but it has been addressed to the appellant as Director of the Bank and also stated: "You have been elected as Director on the Board of Directors of Chandrapur District Central Cooperative Bank on 18.8.1986 and today on this date you are working as the Director of the said Bank." It also refers to the appellant's being disqualified or to continue as Director or Executive Committee member of the Executive Committee' under section 73FF of the Act and about ceasing too be a Director by committing default. From the above contents, there is no room for holding that the appellant's election has been set aside by the impugned order; on the other hand, the emphasis is on the appellant's being disqualified to continue as Director or ceasing to be Director on account of his having committed default. The question of *generalibus specialia derogant*-special things take from general or *generalalia specialibus non derogant* general words do not derogate from special, therefore, does not arise. What was stated in para 36 of the report in *Hundraj Kanayalal Sajnani v. Union of India*, AIR 1990 SC 1106 at 1121 will not be relevant. The question of repugnancy involved in *Zaverbhai Amaidas. v. The State of Bombay*, [1955] 1 SCR 799 does not arise in this case. The decision in *Maharashtra State Board of Education v. Paritosh Sheth*, [1985] 1 SCR 29 is also not apposite. The provisions relating to election have to be interpreted harmoniously with other provisions of the Act such as in section 78(1). *Interpretare concordare leges legibus est optimus interpretendi modus*. To interpret and in such a way as to harmonize laws with laws is the best mode of interpretation.

Mr. Sanghi does not dispute that the appellant was in arrear in respect of instalments on the date of his election and till 21.10.1986 i.e. both prior and posterior to his election on 18.8.1986. Admittedly the instalment was not paid on due date. There was of course some dispute as to the amount of interest payable and appropriation of the amount paid against interest instead of capital but all this would not exonerate the appellant from being in default on non-payment of instalment on due date.

Mr. Sanghi, however, submits that the expression, "makes default" or "stands disqualified" being in present the default must have been committed after the coming into force of section 73FF and that his default even, if any, was prior to that date and not after that date. We are unable to persuade ourselves to accept this submission. The day an instalment falls due on its due date failure to pay results in default and that default continues from day to day until it is repaid. Every day thereafter until payment results in making of default and, therefore, it could not be said that default could be on the due date only and thereafter no default but only liability. Considered by this principle the

appellant can be said to have made default on the first day of his directorship and on every subsequent day till the instalment or instalments were paid. The submission, has therefore, to be rejected.

Similarly the submission that the default must have been one committed after the Act came into force has also to be rejected on the same ground that immediately on the Act coming into force the appellant was a defaulter and so long that default continued he must be taken to have made default until repayment.

What then would be the consequence of such a default. Sub-section (2) of section 73FF says that a member who has incurred any disqualification under sub-section (1) shall cease to be a member of the Committee and his seat shall thereupon be deemed to be vacant. Therefore, the moment the appellant after election continued to be in default, and, therefore, must be taken to have made default, stood disqualified and thereby ceased to be a member of the committee and his seat deemed to have fallen vacant. In this view of the matter the notice of the Deputy Registrar was in effect to say that the appellant had already ceased to be a Director and his seat already fell vacant. In *Keshaorao Narayanrao Patil v. District Deputy Registrar* reported in 1987 *Maharashtra Law Journal* 709 Bombay High Court held that s. 73FF(2) did not operate automatically and that passing of an order of removal was necessary. This has to be interpreted in the context of the provisions in the section.

In this view of the matter there could not be any infirmity either in the notice or in the impugned order of removal.

The result is that this appeal fails and is dismissed. The interim orders, if any, stand vacated. No costs.

R.N.J.

Appeal dismissed.