

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 412 OF 2021
(Arising out of S.L.P. (Civil) No. 8138 of 2020)

Swati Ulhas Kerkar and Ors.

... Appellants

versus

Sanjay Walavalkar and Ors.

...Respondents

J U D G M E N T

A. M. KHANWILKAR, J.

1. The central question in this appeal is: Whether the invalidation of membership of appellants and the impleaded appellants¹ (and two others), solely on the ground that the then Managing Committee on its way out and facing no confidence motion before the Special General Body Meeting² demanded by the majority of existing members of the Society ought not to have hastened admission of new members, is just and proper and the appropriate direction necessary in that regard?

¹ For short, “the appellants”

² For short, “SGBM”

FACTUAL MATRIX

2. Briefly stated, Prabodhan Education Society³ is a registered society under the Societies Registration Act, 1860⁴. The Society consisted of 32 members – before induction of 22 persons (including the appellants) as members on 17.09.2017 and their subsequent removal in terms of the impugned decision.

3. The bye-laws of the Society mandate that the elections to the Karyakari Samiti (Managing Committee) be held every three years. The elections to the Managing Committee were due in September 2013, however, there was a delay in conducting elections, which ultimately came to be held on 05.10.2014. While the Managing Committee elected in 2014 was at the helm of affairs of the Society, it was served with a requisition dated 07.11.2016 signed by 18 of the 32 existing members of the Society, to convene a SGBM for removal of the Chairman, Secretary and Treasurer and for conducting elections therefor. The removal of the Managing Committee was sought on various grounds of abuse of power and mismanagement, resulting in loss of confidence.

4. In furtherance of the said requisition, the Secretary vide letter dated 22.11.2016, scheduled a SGBM on 07.12.2016.

³ For short, “the Society”.

⁴ For short, “the 1860 Act”.

However, upon objections raised by the members of the Managing Committee to hold such SGBM, the said decision came to be reviewed and the SGBM stood cancelled. That decision was communicated to the members of the general body vide letter dated 03.12.2016.

5. Aggrieved by the cancellation of the SGBM by the Managing Committee, Sanjay Walavalkar (respondent No. 1 herein and one other member of the Society) approached the High Court of Bombay, Bench at Goa⁵ vide Writ Petition No. 1195 of 2016 for the following reliefs:

“(a) This Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Respondent No.4 to convene a Special General Body Meeting to transact the agenda as requisitioned by the 18 requisitioning members vide their letter dated 07.11.2016 addressed to the Chairman/Secretary of the said society and to hold the same under the supervision and control of the Respondent Nos.2 and/or 3 as the observers to oversee such meeting.

(b) This Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Respondent Nos. 2 and/or Respondent No.3 to direct the Respondent No.4 to convene a Special General Body Meeting to transact the agenda as requisitioned by the 18 requisitioning members vide their letter dated 07.11.2016 addressed to the Chairman/Secretary of the said society and to hold the same under the supervision and control of the Respondent Nos.2 and/or 3 as the observers to oversee such meeting.”

⁵ For short, “the High Court”

6. Indisputably, 22 persons (including the appellants – vide letters dated 12.09.2016, 19.09.2016, 22.09.2016, 18.10.2016, 12.12.2016 and 19.12.2016) had filed applications for being enrolled as a member of the Society. The Secretary issued notice dated 29.12.2016 proposing to convene a meeting of the Managing Committee on 02.01.2017 to induct new members. The induction was, however, deferred. The Secretary issued another notice on 16.09.2017 for convening a meeting of the Managing Committee on 17.09.2017, to consider induction of new members. In that meeting, the Managing Committee went on to induct the aforesaid 22 persons (including the appellants) as members, despite objections raised by the Treasurer. In the same meeting, it was decided to convene an Annual General Body Meeting⁶ on 08.10.2017 for conducting elections to constitute new Managing Committee. The relevant portion of the minutes of meeting dated 17.09.2017 is as under:

“3. It was decided that the 34th General Body Meeting be convened on Sunday, 8th October 2017 at 10:00 AM, in the school premises. Notices be sent 15 days in advance.

4. Following new 22 (Twenty two) members were inducted today as members of Prabhodhan Education Society (General Body). (Their applications were pending since Sept/Oct 2016). It was done to complete the pending work/task of the present committee before expiry of the term.

⁶ For short, “AGM”

...

Shri Vithal G.P. Parrikar, the Treasurer, raised his objection to induction of new members. He said he would not mind their induction after General Body and expressed fear that this act may invite contempt of court.”

7. Respondent No. 1, aggrieved by the said development, sought additional reliefs in the above writ petition as under:

“(a) This Hon'ble Court be pleased to declare that the Notice dated 29/12/2016 addressed by the Secretary of the Respondent No.4, thereby proposing to convene the meeting of the Managing Committee inter-alia to induct new members to the General Body of the Respondent No.4 is illegal and bad in law and the same be quashed and set aside.

(b) This Hon'ble Court be pleased to declare that the holding of the Meetings of the Managing Committee of the Prabodhan Education Society on 17/09/2017 and 18/09/2017 and the decisions taken there-at (including in respect of induction of Respondent No.5 to 26) are illegal and non-est and the same be quashed and set aside and the Respondent No.5 to 26 be restrained from acting as members of the Respondent No.4 for all intents and purposes.

(c) This Honourable Court be pleased to restrain the Managing Committee of the Respondent No.4 from admitting or inducting any new members to the General Body of the Respondent No.4, pending holding of the Special General Body Meeting as requisitioned by 18 members of the Respondent No.4 vide their letter dated 07.11.2016.”

8. As the decision of the Managing Committee dated 17.09.2017 came to be assailed before the Court, the Managing Committee deferred elections.

9. The High Court vide interim order dated 05.10.2017 permitted respondent No. 1, to bring on record the 22 newly

inducted members, as they were likely to be affected by the outcome of the further reliefs claimed in the stated writ petition.

The relevant portion of the interim order is extracted hereunder:

“1. The matter is moved urgently at the instance of the Petitioner. It could not be taken up yesterday.

2. Mr Kantak, learned Senior Advocate on behalf of the 4th Respondent, states, on instructions, that the elections scheduled on 8th October 2017 will be deferred till 5th November 2017.

3. However, it is pointed out that the term of the current Managing Committee and its office bearers ends by 7th October 2017. In view of the statement made, the present Managing Committee will continue as a pro tem or caretaker Managing Committee till the next elections but will not take any major financial, policy or other decisions until that time. It may attend to routine management and administrative issues alone.

4. List the Petition high on the supplementary board on 31st October 2017.

5. In the meantime, leave to amend to join the newly inducted members. Amendment to be carried out without need of verification by 10th October 2017. Notice to be issued to the newly added Respondents returnable on 31st October 2017. An amendment is also permitted to add an additional prayer. Liberty to file an additional affidavit after the amendment is carried out.”

10. The above writ petition was ultimately disposed of vide order dated 08.11.2017, directing the Inspector General of Societies/District Registrar⁷ to decide the dispute on its merits as per law, in the following words:

“8. Since the Petitioner has already approached the Inspector General under Section 20(A) and the Inspector General is considering the complaint and that

⁷ For short, “the Authority”

it is the grievance of the Petitioner that certain developments have taken place pending the decision of the complaint, even the subsequent grievance of the Petitioner can be considered by the Inspector General on its own merits. Since the Inspector General is an authority under the Act, it will be appropriate that the matter is first looked into by the Authority under the Act, before this Court is called upon to decide the issue of internal management of the society at first instance.

.....

10. Accordingly, we dispose of the Writ Petition by directing Respondent No.3 i.e. the Inspector General, before whom the complaint is made by the Petitioner is pending, to consider the additional grievance made by the Petitioner as well. The Inspector General will decide the matter on its own merits as per law. All contentions of all parties are kept open, including the one mentioned above.

11. The ad-interim order passed in this petition, in the form of statement recorded will continue till disposal of the complaint and two weeks thereafter.”

11. Pursuant to the aforesaid order, respondent No. 1 filed a consolidated complaint dated 16.11.2017 before the Authority. The Authority registered Case No. DRN/RDS/794/2017 wherein it adjudged three original complaints dated 13.10.2016, 04.11.2016 and 05.12.2016 along with the consolidated complaint.

12. The Authority, after having heard the parties to the complaint as well as the newly inducted 22 members, vide judgment and order dated 09.03.2018, was pleased to issue directions and also set aside the decision of the Managing Committee dated 17.09.2017 giving membership to 22 persons (including the appellants) on the ground that the same was illegal

and arbitrary. The operative order of the Authority is reproduced hereunder:

“A) I hereby declare that the induction of Shri. Gajanan Harishchandra Mandrekar, Shri Subhash Vinayak Desai, Adv. Sau. Swati Ulhas Kerkar, Dr. Sitaram V. Korgaonkar, Shri Pandharinath Lakshman Mapari, Dr. Bhiva Ladu Malik, Shri Milind Vaman Karkhanis, Shri Krishnaraj Narcinha Sukerkar, Shri. Atmaram Vaman Gaonkar, Shri. Pravin Punaji Neswankar, Shri. Sandeep V. Palni, Shri. Kiran Ramchandra Naik, Shri. Datta Purushottam Naik, Shri. Shashank Gokuldas Kamat, Shri. Audhut Ramchandra Kamat, Sau. Medha R. Prabhudessai, Shri. Devidas J. Saraf, Shri. Abhai Bhamaikar, Shri. Ashish Sarvottam Prabhudessai, Shri. Vivek P. Navare, Shri. Vasudev Subrai Naik Khaunte and Dr. Kedareshwar P.S. Narvekar, as members of the Prabodhan Education Society, by virtue of the decision taken by the majority members of the managing committee at its meeting held on 17.09.2017, is illegal, arbitrary and is hereby set-aside;

B) I hereby declare that the decision of the majority members of the managing committee of the Prabodhan Education Society not to hold the SGM as requisitioned by 18 members vide their letter dated 07.11.2016, is illegal, arbitrary, de-hors the power of the managing committee and mala-fide;

C) For the detailed stated in the foregoing part of this Order, I hereby declare and hold the act of managing committee as guilty of mismanagement of affairs of the Prabodhan Education Society and breach of their fiduciary obligations towards the general body of the society;

D) I hereby direct the managing committee of the Prabodhan Education Society and particularly its Secretary Shri Velingkar to take step to convene an Annual General Body Meeting of the Society, within a period of 7 days from the date of receipt of this Order, with due procedure laid there in under the Societies Registration Act for the specific purpose of holding elections to the various posts of the managing

committee of the Prabodhan Education Society for the period 2018-2021;

E) with the view to ensure free, fair and impartial conduct of elections, I hereby direct that the aforesaid proposed AGM shall be held under the supervision, direction and control of Shri Suraj Vernekar, Civil Registrar-cum-Sub Registrar as the observer; and that the agenda concerning elections of managing committee members shall be transacted first, before any other item/business is taken up for consideration;

F) I hereby direct the managing committee elected after the forthcoming elections (subject to the approval of the general body) may frame necessary rules concerning regulation of its affairs. Considering the situation in which the society is placed presently and considering the fact that there are certain gaps in the byelaws of the society concerning certain aspects, the managing committee may consider formulating rules on the following amongst other issues:

i. Rules giving further details on the manner in which the managing committee shall act after receiving requisitions by members directing it to convene a SGM.

ii. Rules stipulating whether any other item (such as induction of new members or change to the constitution of the society etc. shall be permitted during the pendency and consideration of a requisition under Clause 3(V) of the Society byelaws;

iii. Rules whether there should be any cap/outer limit on the maximum number of members that can be inducted at any given point of time and further whether such induction of new members can be done on the eve elections (if not, up till what time can such induction be done);

iv. Rules dealing with the manner and prescribing further details as to how meetings of the managing committee and the general body shall be held (including prescribing notice period for meetings, mode/manner of intimation etc.),

v. Rules dealing with procedural aspects of conduction meetings and recording of minutes etc.”

(emphasis supplied)

13. Assailing the said judgment and order, the Society represented through Secretary, Chairman and Secretary (in individual capacity) filed Writ Petition No. 373 of 2018 before the High Court, wherein, the stay granted in the previous proceedings was extended until disposal of the writ petition by an interim order dated 22.03.2018.

14. The High Court vide final judgment and order dated 28.05.2020, framed and adjudged five issues. The issues read as under:

“1. Can a Society, on its own, maintain a writ petition against an order passed by a statutory authority concerning the resolutions its Governing Body or Managing Committee passed?

2. Is the impugned order ultra vires of the Registrar? In the alternative, has the Registrar got the power to rule on the allegations of mismanagement by the Managing Committee?

3. Has the Managing Committee committed an illegality in not convening the Special General Body Meeting at the request of 18 of 32 Society members?

4. In the absence of any provision in the bylaws or under the act for bringing up a no-confidence motion or to remove the office bearers, could the applicants have insisted on having a Special General Body meeting for discussing those issues?

5. Has the Managing Committee legitimately inducted 22 new members, especially, pending the writ petition and on the eve of the elections?”

While addressing the fourth issue, the High Court placed reliance on a decision of this Court in **Vipulbhai M. Chaudhary v.**

Gujarat Cooperative Milk Marketing Federation Limited &

Ors.⁸ and held that no confidence motion can be maintained even in absence of provision therefor in the bye-laws. The relevant portion of the impugned judgment is reproduced below:

“71. *Vipulbhai M. Chaudhary*, I reckon, clinches the issue. In any democratically constituted institution, the office bearers continue to hold the office during the pleasure of the members that have chosen those office bearers. Sometimes the governing rules or regulations of that institution are silent about how the governing members must account for their misdeeds or maladministration when their tenure is subsisting. But it is no license for them to wreak havoc in the name of administration and annihilate the institution. In other words, it is institutionally inherent that the governing members must administer the affairs of the institution faithfully, honestly, and diligently; they should always remain accountable to the members for their omissions and commissions. In the same reckoning, the members' right to unseat these governing members is equally inherent in the scheme of the things, despite no express provision to that effect, say, in the byelaws.

72. So we cannot hear the petitioners saying that they were justified in not holding the SGBM. In this context, we may reiterate what the Registrar has held: once the majority members, especially in tune with the bylaws, required the Managing Committee to hold a general body meeting for whatever purpose, it is the Managing Committee's bounden duty to abide by that demand. Let us assume that the majority members wanted the general body meeting to discuss frivolous or unimportant issues; still it is not for the Managing Committee to sit in judgement over the tenability of the majority members' demand. Once meeting convened, it is for the entire body of the membership to examine the demands and decide on them. This observation, as made by the Registrar, remains even more relevant because, here, the allegations concerned the very Managing Committee.

.....

⁸ (2015) 8 SCC 1

74. Nevertheless, for the reasons mentioned above, I must confirm the findings of the Registrar that the Managing Committee has acted with material irregularity by refusing to abide by the majority members' demand for an SGBM. Now, we will examine the last issue, keeping in view our answer to this issue.”

With respect to the fifth issue, pertaining to the validity of induction of the 22 new members, the High Court disagreed with the findings of the Authority on material aspects. However, it held that the same was bad being taken by the Managing Committee pending no confidence requisition. The High Court adverted to the dictum in ***Vipulbhai*** (supra) and observed thus:

“95. Then, what vitiates the Managing Committee’s decision to induct new members?

96. We have already held that the Managing Committee’s refusal to hold the SGBM even when majority members demanded is an act of illegality. Now, we should examine the induction of the new members in the context of that refusal. On the converse, if there was no demand for an SGBM by the majority and no expression of no-confidence, then the governing body may induct new members at any stage during its tenure—the beginning, the middle, or the end of the tenure making no difference.

97. Here, the majority members—18 out of 32—demanded an SGBM; it was, among other things, to express their no confidence against certain office bearers, too. The case holding of *Vipulbhai M. Chaudhary* dispels all doubts about whether the statute or the byelaws should provide for unseating of an office bearer. No need. It is a constitutionally conferred right.

98. Thus, inferentially, we may hold that once majority members express no confidence on the governing body or any office bearer and demand an SGBM, until the governing body proves its majority, it loses legitimacy to take policy decisions. And that legitimacy includes induction of new members.

Otherwise, the moment a governing body, that is the Managing Committee, faces a no-confidence motion, the easy—and devious—way out for the governing body is put the SGBM on hold, induct new members indiscriminately, alter the membership equation, and then hold the SGBM. **It is abuse of power that upsets the democratic design of any society and that should be struck at.**

99. **So the inescapable conclusion is that the Managing Committee inducting new members in the face of no confidence and the impending SGBM is illegal and arbitrary.”**

(emphasis supplied)

Finally, the High Court concluded by holding thus:

“Under these circumstances, I refuse to interfere with the impugned order, dated 9th March 2018, of the District Registrar. As a result, I dismiss the writ petition. No order on costs. Interim relief, if any, stands vacated.”

15. In view of disposal of the Writ Petition No. 373 of 2018, the Civil Registrar-cum-Sub Registrar of Societies, vide letter dated 01.06.2020, directed the Secretary to convene an AGM to conduct elections for constituting a new Managing Committee by 04.06.2020 (within 7 days from the date of High Court’s order dated 28.05.2020), failing which the Authority shall conduct such elections forthwith.

16. In the meantime, aggrieved by the impugned decision of the High Court, the Society, Chairman and Secretary approached this Court vide SLP (Civil) No. 7352 of 2020 on 04.06.2020. Simultaneously, the Chairman and Secretary also addressed letter

dated 04.06.2020 to the Authority, informing that the Managing Committee held a meeting on 03.06.2020 wherein it had decided to fix the AGM tentatively on 28.06.2020 for holding elections. Further, it informed that final date of election would be fixed at a later date, after withdrawal of Section 144 of Cr.P.C., 1973 which was in force due to lockdown ordered on account of prevailing pandemic situation (Covid-19).

17. On the other hand, since the Managing Committee failed to convene an AGM within 7 days, the Authority vide notice dated 09.06.2020 convened an AGM on 25.06.2020 for conducting elections.

18. Be that as it may, the stated SLP filed by the Society was listed before this Court on 15.06.2020, whence the same came to be disposed of in the following terms:

“We decline to interfere in this Special Leave Petition at the instance of the petitioners. The Special Leave Petition is dismissed accordingly.

If the 22 person(s) who have been dis-membered file independent Special Leave Petition(s) to assail the decision of the High Court at their instance, the issue can be considered on its own merits.

Pending applications, if any, stand disposed of.”

(emphasis supplied)

19. Taking cue from the aforementioned observations made by this Court, the appellants have approached this Court, by way of

this appeal, to impugn the order dated 28.05.2020 passed by the High Court. With permission of this Court, 12 other persons (out of the 22 dismembered persons) similarly placed as the original appellants have been impleaded as appellants in this appeal.

20. During pendency of the present proceedings, in response to the Authority's notice dated 09.06.2020, the Secretary addressed letter dated 22.06.2020, informing that as per the bye-laws, 15 days' notice is essential for convening an AGM and the same cannot be convened within 7 days as directed by the Authority. The said letter also informed that the direction vide order dated 09.03.2018 was only to start the process of elections and not to conduct elections per se. Further, the Managing Committee had convened a meeting on 20.06.2020 to fix the AGM on 12.07.2020 for conducting elections. On the same day, the Secretary had also addressed a letter to the District Magistrate seeking permission to conduct elections on 12.07.2020.

21. The appellants had addressed letters to the Authority on 24.06.2020 informing about the pendency of the present appeal and requesting to defer the elections. Despite receiving this intimation, the Authority proceeded to conduct the elections on 25.06.2020 and constituted the new Managing Committee. This

Court upon being appraised of the said development, vide order dated 25.06.2020, clarified that any steps taken by the Authority would be subject to the outcome of this proceedings. The order reads thus:

“Permission to file Special Leave Petition is granted.

Heard learned counsel for the petitioner(s).

It has been brought to our notice that despite the pendency of this Special Leave Petition and which fact was brought to the notice of the Registrar, for reasons best known to the Registrar, he hastened the election process.

This factual position be placed on record by way of a formal application, to be filed by the petitioner(s) and for appropriate reliefs, as may be advised.

In addition, it will be open to the left over persons who are similarly placed as the petitioner(s), to file a formal application for impleading them as party to the present proceedings.

Both these applications to be filed within one week from today through email/online.

Issue notice to the respondents on this Special Leave Petition and proposed applications, returnable within four weeks.

Dasti, in addition, is permitted.

Any steps taken by the Registrar, including elections allegedly conducted by him today, i.e. 25.06.2020 will be subject to the outcome of this Special Leave Petition.”

(emphasis supplied)

22. Curiously, the District Magistrate, in response to the letter dated 22.06.2020 of the Secretary, refused to grant permission to conduct elections on 12.07.2020 in view of the restrictions

imposed under Section 144 of Cr.P.C. The same was intimated by letter dated 10.07.2020.

23. Meanwhile, the newly elected Managing Committee addressed letters dated 25.06.2020 and 11.07.2020 to the schools run by the Society intimating about the change in management of the Society as well as the schools.

24. We may now advert to the challenge before us in the present appeal.

SUBMISSIONS

25. The thrust of the arguments of the appellants is that in terms of clause 1(c) of the bye-laws of the Society, a person automatically gets inducted as member of the Society upon submitting application in the prescribed form along with prescribed fees. As such, the appellants were validly inducted as members of the Society as they had duly submitted their applications in form prescribed under the bye-laws of the Society. Reliance was placed upon the dictum of this Court in ***Zoroastrian Cooperative Housing Society Ltd. & Anr. v. District Registrar, Cooperative Societies (Urban) & Ors.***⁹ to contend that the right to

⁹ (2005) 5 SCC 632

membership in any Society would have to be tested on the touchstone of the bye-laws and nothing else.

26. It was urged that in any case 5 out of the 22 persons had submitted their applications for membership before the requisition of no confidence had been moved. Whereas, rest of the persons had filed their applications in December 2016. It was urged that their applications for membership were eventually approved on 17.09.2017 after noting that each one of them was an eminent and well acclaimed person in educational field. Moreover, the Managing Committee had wide discretion to induct a member and they did exercise that power bonafide whilst inducting the appellants. Reliance was placed on the findings of the High Court to contend that the decision taken by the Managing Committee (to induct appellants) was during the subsistence of its tenure and cannot be faulted with. It was also urged that the High Court had noted that there was no illegality in admitting the members on the eve of elections or at the end of the tenure of the Managing Committee. Further, there was no finding by the Courts below that the appellants did not fulfil the requirements under the bye-laws.

27. It was submitted that reliance upon the decision of this Court in **Vipulbhai** (supra) by the High Court was misplaced as the said decision concerned a co-operative society, whereas the Society in this case is registered under the 1860 Act. Further, it was urged that the said decision was based on the 97th Amendment to the Constitution of India¹⁰, which had been struck down by a Division Bench of Gujarat High Court in **Rajendra N. Shah v. Union of India & Anr.**¹¹. Reliance was then placed on the dictum of this Court in **Kusum Ingots & Alloys Ltd. v. Union of India & Anr.**¹² to contend that though an appeal had been preferred before this Court against the decision of Gujarat High Court in **Rajendra N. Shah** (supra), the same is pending adjudication (vide Civil Appeal Nos. 9108-9109 of 2014) and there being no order suspending the operation of the said judgment, the 97th Amendment is not currently in existence. Therefore, the decision in **Vipulbhai** (supra) was inapplicable. The appellants also relied upon a decision of Delhi High Court in **Mukund L. Abhyankar v. Chief Executive Officer, National Federation of**

¹⁰ For short, “the 97th Amendment”

¹¹ 2013 SCC OnLine Guj 2242

¹² (2004) 6 SCC 254

Urban Co-op. Bank and Credit Societies Ltd. & Ors.¹³ to urge that the fundamental basis of the decision in **Vipulbhai** (supra) stood fully eroded without the 97th Constitutional Amendment.

28. The appellants also submitted that the Authority hastened the election despite being informed of the pendency of the present appeal. This was done to defeat the rights of the appellants. It is contended that *mala fides* of the authorities are manifest from the fact that permission to conduct the election proposed by the Managing Committee was refused by the District Magistrate in view of the Covid-19 protocol, while the election scheduled by the Authority during the same time was conducted in breach of the said protocols. Further, as on the date of elections, the electoral college consisted of 52 members including 30 existing members and the 22 dismembered persons. However, despite pendency of the present appeal (wherein the rights of the 22 dismembered persons are under consideration), the Authority conducted elections with electoral of only 30 members. This was nothing short of abuse of process of law.

29. Per contra, respondent no. 1 contended that the appellants were aware of the proceedings before the Authority yet chose not

¹³ (2017) 241 DLT 358

to challenge its judgment and order. Hence, the appellants are bound by the findings therein. Resultantly, it is not open to the appellants to assail the order of the High Court. Further, with the dismissal of SLP (preferred by the Society, Chairman and Secretary), the order of the High Court stands confirmed and it cannot be further challenged. In that, the finding that the Managing Committee inducted 22 persons illegally and arbitrarily, also had attained finality. Significantly, the appellants had no right whatsoever, much less vested right on the date of election and *ex-consequenti* no locus to file the present appeal.

30. It was urged that the said 22 persons were intentionally inducted by the then office bearers of the Society, so as to alter the composition of the Society in their favour and to consolidate their control over the Society. Further, it was submitted that the SLP (filed by the Society, Chairman and Secretary) was dismissed on 15.06.2020 and on the same day, the appellants approached this Court by filing fresh appeal through the same Advocate-on-Record, which clearly shows collusion between them. Furthermore, the controversy is about the validity of induction of the appellants and not their removal. As such, the *lis* is inter-se between the Managing Committee and members and the appellants being

outsiders had no causal connection with the Society whatsoever. Even if the appellants had any vested right, that stood defeated by the order of the Authority and of the High Court confirming the same including this Court.

31. It was then contended that the High Court had rightly held that in democratically constituted institutions, the office bearers continue to hold office during the pleasure of the members and they can be unseated despite any express provision in the bye-laws. Reliance was placed upon a decision of this Court in **T. Varghese George v. Kora K. George & Ors.**¹⁴ to urge that the Managing Committee had no power to take any policy decision once a no confidence motion is moved, as that would be against their fiduciary duties towards the Society. It was submitted that any decision taken after the no confidence motion is moved ought to be tested on the touchstone of 'legal malice' or malice in fact, whilst relying upon the decision of this Court in **State of Punjab & Anr. v. Gurdial Singh & Ors.**¹⁵.

32. It was also urged that the appellants cannot claim the principle of open membership as envisaged in Section 22 of the Goa Co-operative Societies Act, 2001, to apply to them. For, the

¹⁴ (2012) 1 SCC 369

¹⁵ (1980) 2 SCC 471

respondent-Society is not a co-operative society. At best, the applications of the 22 members may be considered afresh.

33. The argument set forth by the Authority is that this appeal is not maintainable as the impugned order dated 28.05.2020 has attained finality upon dismissal of the SLP (Civil) No. 7352 of 2020 (filed by the Society, Chairman and Secretary). It is urged that upon disposal of Writ Petition No. 373 of 2018 vide order dated 28.05.2020, the interim order therein stood vacated and the elections were required to be conducted since there was no order staying the elections. In fact, the High Court in its order had observed that elections should be conducted expeditiously. It was submitted that the Authority had to conduct elections due to inaction of the Managing Committee in that regard. It was then urged that the Authority conducted elections on 25.06.2020, that too one month after the order dated 28.05.2020, by duly putting the members on 15 days' notice, which cannot be termed as acting in undue haste. The learned Solicitor General, for the Authority elaborated upon **Vipulbhai** (supra) to contend that the said judgment had rightly dealt with the democratic principles, which apply to cooperative societies and other societies alike. It was submitted that the said judgment is binding and does not lose its

force as the democratic principles were in existence since a long time and were merely given a constitutional frame by the 97th Amendment. It was further submitted that in light of the said decision, no confidence motion is maintainable even in absence of express provision in that regard in the bye-laws; and the silence in the bye-laws cannot be treated as a gap. Finally, it was urged that in a democratically governed body, members can be inducted by the Managing Committee only when it enjoys confidence of the members. However, once the requisition of no confidence was pending, the Managing Committee ought not to have inducted new members into the Society and more so as many as 22 in number which would inevitably change the constitution of the Society.

34. We have heard Mr. Huzefa Ahmadi, learned senior counsel and Ms. Anshula Grover, learned counsel for appellants; Mr. Tushar Mehta, learned Solicitor General, Mr. Arun R. Pedneker, learned Standing Counsel for the State of Goa and Ms. Mukti Chowdhary, learned counsel for the Authority; and Mr. Vinay Navare, learned senior counsel and Mr. R.P. Gupta, learned counsel for respondent No. 1.

CONSIDERATION

35. At the outset, be it noted that the scope of present appeal is limited to the question of justness of induction of the appellants as members of the Society by the then Managing Committee on its way out and despite the pending requisition expressing no confidence against it; including the correctness and sweep of the order passed by the Registrar and as upheld by the High Court *vide* impugned judgment, *qua* the appellants herein. No other issue decided by the Registrar or the High Court need be addressed in the present appeal at the instance of these appellants.

36. The High Court, *vide* impugned judgment, went on to hold against the Society due to the manner in which the requisition of no confidence motion moved by the majority of the existing members (18 out of 32) to convene SGBM came to be delayed and frustrated by the stratagem adopted by the then Managing Committee, who had allegedly indulged in mismanagement and maladministration of the affairs of the Society. That action of the then Managing Committee has been held to be illegal and bad in law as it was bordering on colourable exercise of power. Having said that, the High Court then dealt with the issue of justness of induction of 22 new members (including appellants herein) by the

then Managing Committee vide decision dated 17.09.2017 and declared the same as illegal being consequence of illegal action of not convening the SGBM demanded by the majority of members of the Society for removal of office bearers and instead hastening the induction of new members. The finding of the High Court that the decision of the then Managing Committee dated 17.09.2017 hastening the admission of 22 new members whilst no confidence motion was pending, is illegal and bad in law has become final with the dismissal of SLP filed by the Society vide order dated 15.06.2020.

37. Before we dwell upon the core issue involved in this appeal, it is apposite to examine the preliminary objection raised by respondent No. 1 regarding maintainability of the appeal at the instance of these appellants. According to respondent No. 1, the question whether the appellants have been legally and properly admitted as members or not is a *lis* between the existing members and the Managing Committee, to which the appellants herein are strangers and have no locus in that regard. This argument, in our opinion, is tenuous and cannot be sustained. For, the real question posed at the instance of these appellants is whether they had a right to be considered for being admitted as members of the

Society and further whether the order of the Registrar results in dismembering them despite they being validly admitted as members at the relevant point of time vide decision of the then Managing Committee dated 17.09.2017. Indeed, it is open to the existing members to object to any new person being admitted as member of the Society by the outgoing Managing Committee and that would be a *lis* between the existing members and the outgoing Managing Committee. That, however, does not denude the appellants of cause of action, who desired to be admitted as members of the Society being eligible in all respects, to be considered for such admission. Similarly, if a person has been dismembered by the Society including on account of direction issued by the competent authority, such a person will have independent remedy to assail that decision. In either case, therefore, being affected by such non-consideration or by virtue of dismembering, the aggrieved person would be competent to pursue remedy before the concerned forum for redressal of his grievance and for enforcement of his legal rights.

38. In the present case, the appellants were admitted by the then Managing Committee to be members of the Society, but they have been subsequently dismembered only because of the order passed

by the Registrar having become final. Further, they were made party to the proceedings before the Registrar, who had set aside the decisions of the then Managing Committee, dated 17.09.2017. Thus understood, the objection regarding maintainability of challenge to the decision of the Registrar and of the High Court by such affected persons (appellants herein) cannot be countenanced.

39. It is then urged by respondent no.1 that these appellants had not challenged the decision of the Registrar dated 09.03.2018 before the High Court and thus had acquiesced of the same. Resultantly, they were not entitled to maintain this appeal. It is true that the appellants did not file separate writ petition before the High Court despite the unambiguous order passed by the Registrar on 09.03.2018 directly affecting them in declaring the decision of the then Managing Committee dated 17.09.2017 to admit them as members of the Society, as illegal, arbitrary and to set it aside on that count. However, undisputedly, that part of the order of the Registrar was assailed by the Society before the High Court by way of Writ Petition No. 373 of 2018. The reliefs claimed in the stated writ petition by the Society were, to also espouse the cause of the appellants herein. For, the appellants were admitted by the then Managing Committee as members of the Society. They

came to be dismembered subsequently only because of the order of the Registrar of setting aside the decision of the then Managing Committee dated 17.09.2017 attaining finality. Indubitably, the Society is competent to espouse the cause of its members and more so to justify its actions in the form of decision of the then Managing Committee in office. So understood, the appellants herein cannot be faulted for having directly assailed the decision of the High Court confirming the declaration and subject order of the Registrar resulting in their being dismembered from the membership of the Society. As a matter of fact, this Court while dismissing SLP (Civil) No. 7352 of 2020 filed by the Society, vide order dated 15.06.2020, had made it amply clear that if the 22 persons, who have been dismembered, were to file independent special leave petition(s) questioning the correctness of the order of the Registrar in setting aside the decision of the then Managing Committee dated 17.09.2017 resulting in their being dismembered from the Society and of the High Court confirming that part of the Registrar's order, that challenge could be considered on its own merits. To put it differently, the limited issue involved in this appeal is expressly kept open by this Court for being agitated by the appellants. Indeed, this observation came to be made by this

Court whilst rejecting the challenge of the Society and the office bearers of the then Managing Committee to the decision of the Registrar and of the High Court vide impugned judgment. Nevertheless, as aforesaid, the rejection of earlier special leave petition filed by the Society and the office bearers of the then Managing Committee will not come in the way of the appellants herein to espouse their cause in their own rights.

40. Reverting to the merits of the issue involved in this appeal, we must hasten to add that the appellants cannot be denuded of their right to assail the order of the Registrar and of the High Court denying them of their core right of being considered to be admitted as member of the Society, being eligible in all respects. They claim to possess the requisite qualification and had expressed intention to abide by the bye-laws of the Society. Their right to be considered for being admitted as members of the Society cannot be linked to the acts of commission and omission of the office bearers of the then Managing Committee. Neither the Registrar nor the High Court has dismembered the appellants on the ground of being ineligible in any manner or because it has been established that they were the henchmen of the office bearers of the then Managing Committee. Notably, even the no confidence

motion does not mention that the then Managing Committee wanted to intentionally change the constitution of the Society (membership pattern) by admitting new members. In that sense, until contrary is proved the appellants (and two others) must be regarded as bonafide applicants. Only the decision of the then Managing Committee dated 17.09.2017, stands vitiated for the reason noted by the High Court. Admittedly, at least five appellants had submitted their applications for being admitted as members of the Society even before the no confidence motion was moved on 07.11.2016. It is a different matter that upon consideration of request for admitting as members of the Society, the newly elected Managing Committee may accept or reject the same on merits. Depending upon that outcome, the appellants may even resort to further remedies permissible in law.

41. For elaborating this grievance of the appellants, we must advert to the bye-laws of the Society under which the appellants had submitted application(s) for being admitted as member of the respondent-Society. Bye-law 1(a) postulates that any person irrespective of his race, caste, religion and sex, shall be entitled to be considered for being admitted as member upon complying with

the conditions specified therein. The other relevant clause in the bye-laws is clause 1(c), which reads thus:

“1) MEMBERSHIP:

(c) Members shall be admitted by the Karyakari Samiti only on an application made in the prescribed form and on payment of the prescribed fees. Such application form shall be considered only when it is proposed by a member of the Karyakari Samiti. The Karyakari Samiti is competent to reject any application without assigning any reason therefor.”

42. For the present, it is not necessary for us to dwell upon the wider question of whether the membership in the respondent-Society is one of open membership concept or otherwise. Suffice it to note that 22 persons (including appellants herein) had applied for being admitted as member of the respondent-Society between 12.09.2016 to 19.12.2016. Notably, 5 appellants (out of 22 persons) had already submitted their application until 18.10.2016 before the stated requisition was moved by 18 out 32 existing members of the Society on 07.11.2016 expressing no confidence in the then Managing Committee. Indisputably, requisition/notice of no confidence makes no reference to the apprehension about any attempt being made by the office bearers of the then Managing Committee to change the constitution (membership pattern) of the Society. The membership applications were placed for

consideration of the Managing Committee, in its meeting convened on 02.01.2017 for that purpose but the decision was deferred.

43. Be it noted that as per clause 1(c) of the bye-laws, it is the prerogative of the Managing Committee to admit a person as member of the Society or to reject his application without assigning any reason therefor. The eligibility for being enrolled as a member of the Society is spelt out in clause 1(a). The further condition in clause 1(c) is of being proposed by the member of the Managing Committee and submitting application in the prescribed form and payment of prescribed fee.

44. The problem in the present case is the manner of consideration of stated applications of appellants (and two others) by the outgoing Managing Committee including by unjustly protracting the requisition for convening SGBM demanded by majority of existing members. For, upon receipt of such requisition, it was the bounden duty of the Secretary of the Society, in terms of clause 3(v), to immediately issue notice to convene SGBM within 15 days from the date of receipt of requisition and to issue 15 days' notice to all the members intimating about date of such meeting. The Secretary had issued such notice on 22.11.2016 scheduling SGBM for 07.12.2016.

But, before the date of meeting, the Managing Committee deferred the SGBM on some specious objection. That meeting was not held. Instead, the then Managing Committee hastened to take a decision about admitting 22 new members in its meeting held on 17.09.2017 by giving a short notice of only one day. This action did not find favour with the Registrar for the reasons recorded in his decision dated 09.03.2018 including for setting aside the minutes of Managing Committee meeting dated 17.09.2017, some of which commended to the High Court as is discerned from the impugned judgment.

45. The High Court had adverted to each of the findings of the Registrar regarding factual aspects. It is unnecessary to analyse the same in the present appeal, considering the cause propounded by the appellants. What is relevant is the view taken by the High Court that the then Managing Committee was amiss in admitting the 22 new members. The High Court agreed with the view of the Registrar that only after the outgoing Managing Committee had secured the trust vote and confidence of the majority of SGBM, it could have proceeded to admit new members. For, with the issue of no confidence requisition by the majority (18 out of 32), it had lost legitimacy to take any policy decision regarding the

management and administration of the Society, which included induction of new members. The High Court expounded about the danger of resorting to such stratagem — as it was likely to upset the constitution (membership pattern) of the Society and inevitably strengthen the hands of the office bearers of the outgoing Managing Committee and enable them to cling to the power, despite being under a cloud due to expression of no confidence against them by majority of members vide letter dated 07.11.2016.

46. The view so taken by the High Court in the impugned judgment has been assailed by the appellants. According to them, at least 5 appellants had submitted applications for being inducted as member of the Society, much before the majority of existing members (18 out of 32) had moved requisition on 07.11.2016. Even the remaining applicants (17 out of 22 including appellant herein) had submitted applications in December 2016 itself, which were placed for consideration before the then Managing Committee on 02.01.2017 and finally on 17.09.2017. Until that date, there was no restrictive order issued by any Court or competent forum against the then Managing Committee prohibiting it from admitting new members. Further, no case has been made out that the appellants were ineligible to

become member of the Society or that they had not submitted the prescribed form or failed to pay prescribed fees therefor. Furthermore, there is no finding by the Registrar or in particular by the High Court that the appellants were the henchmen of the office bearers of the then Managing Committee. The Registrar as well as the High Court have proceeded on the basis of surmise and hypothesis that the appellants were being inducted as new members to strengthen the hands of office bearers of the then Managing Committee and to defuse the threat of removal from the office due to the pending no confidence motion against them.

47. We find force in the argument of the appellants that for some acts of commission or omission of the then Managing Committee, the appellants who are otherwise eligible to be enrolled as members of the Society in their own rights need not be denied of the same. They have a right to be considered for being admitted as members of the Society by the newly elected Managing Committee.

48. Be that as it may, we now proceed to examine the argument of the appellants that at least the case of 5 appellants, who had applied for grant of membership before the majority of the existing members had moved no confidence motion on 07.11.2016 be

treated differently. After cogitating over all facets, we are of the considered opinion that it would be unwise to accede to this submission. We say so because as noted earlier, at the instance of these appellants it is not permissible to reopen the findings and conclusion reached by the High Court, as regards illegality committed by the then Managing Committee in deferring the SGBM despite the mandate in that regard in terms of clause 3(v) of the bye-laws and instead hastening the process of admitting 22 new members thereby changing the constitution of the Society of only 32 existing members. That finding and conclusion has become final with the rejection of the SLP filed by the Society and the office bearers of the then Managing Committee on 15.06.2020. Resultantly, it must follow that the decision of the then Managing Committee dated 17.09.2017 admitting 22 new members has been rendered *non-est*. This logic uniformly applies to all the 22 persons enrolled as new members of the respondent-Society. There is no legal basis to segregate the claim of 5 appellants on the basis of date of (prior) applications. Indubitably, merely upon making an application it does not follow that he/she would stand admitted as a member of the Society. The applicant must fulfil other eligibility and procedural conditions and eventually, the

Managing Committee must find the candidature fit and deserving for being admitted as a member of the Society. In other words, the decision of the then Managing Committee dated 17.09.2017, “as a whole”, suffers from the vice of unseemly haste, and thus colourable exercise of power and *non-est* in the eyes of law. It cannot be viewed differently for 5 appellants just because of prior date of application.

49. This is precisely the effect of the decision of the Registrar in his operative order [paragraph (A)] as applicable to the appellants and similarly placed two other persons, who are not before us. The High Court has rightly upheld that conclusion of the Registrar vide impugned judgment dismissing the writ petition of the Society.

50. In our opinion, however, the Registrar as well as the High Court, after so observing, ought to have clarified the position that the parties (appellants and Society) are relegated to the situation as it obtained prior to 17.09.2017. That would have been a just and proper order. That means the applications filed by the appellants and similarly placed two other persons between September 2016 to December 2016, ought to be regarded as pending for scrutiny and for being processed by the newly

constituted Managing Committee after conducting elections, which were due since October 2016. To this limited extent, the appellants ought to succeed in the present appeal. We say so because the Registrar as well as the High Court has not given any finding regarding ineligibility of the appellants to be member of the Society. In any case, that would be a matter to be considered by the newly constituted Managing Committee in the first instance, on case-to-case basis, on its own merits in accordance with law uninfluenced by any observation made by the Registrar, the High Court or for that matter in this judgment. If the decision is adverse to any applicant, he would be free to pursue further remedies as may be permissible in law.

51. To conclude, we uphold the view taken by the High Court that the decision of the Managing Committee dated 17.09.2017 suffers from the vice of colourable exercise of power and thus, illegal and bad in law. The same is *non-est* in the eyes of law. However, the parties (appellants and Society) need to be relegated to the stage before 17.09.2017, meaning thereby the applications submitted by the appellants and two other similarly placed persons for grant of membership, be regarded as pending and/or deemed to be revived in terms of this judgment. Their applications

for grant of membership be considered by the newly constituted Managing Committee on its own merits in accordance with law. All contentions available to the parties in that regard are left open.

52. While parting and for the completion of record, we may advert to the challenge of the appellants to the continuation of election process and having been taken forward to constitute the newly elected Managing Committee despite pendency of this appeal. In light of our above analysis, this grievance cannot be maintained at the instance of these appellants - as the status of these appellants is merely that of the applicants for grant of membership. Until they are admitted as members of the Society, they would have no right whatsoever to participate in the election process culminated in June 2020.

53. Accordingly, this appeal partly succeeds to the extent of clarifying/modifying the order passed by the Registrar (paragraph (A) of his operative order) as affirmed by the High Court, to mean that the applications made by the appellants and similarly placed two other persons for grant of membership of the Society, are deemed to be pending and/or revived and be considered by the newly constituted Managing Committee on its own merits in

accordance with law, keeping in mind the observations made in this judgment.

54. The appeal is disposed of in the above terms. Pending applications, if any, also stand disposed of. No order as to costs.

.....**J.**
(A.M. Khanwilkar)

.....**J.**
(S. Ravindra Bhat)

New Delhi;
February 10, 2021.