A THE GOA STATE CO-OPERATIVE BANK LTD.

v.

PEDNE TALUKA PRATHAMIK SHIKSHAK PAT SAUNSTHA LTD AND ORS.

NOVEMBER 1, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Multi State Co-operative Societies (Registration, Membership, Direction and Amendment, Settlement of Disputes, Appeal and Revision) Rules, 1985:

C

Rule 104 and Schedule II--Election to Society—Applicability of the Rules with reference to which election is to be conducted---Respondent—Registrar directed to conduct the elections in accordance with the relevant rules applicable to the Society, Bank and bye-laws of the Society, the Act D *as also the Rules applicable as on the date of conducting elections.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14783 of 1996.

E From the Judgment and Order dated 26.4.96 of the Bombay High Court in W.P. No. 145 of 1996.

Anil B. Divan, Ms. Sunita Sharma and P.H. Parekh for the Appellant.

F A.M. Khanwilkar and Mukul Mudgal for the Respodents.

The following Order of the Court was delivered :

Leave granted.

G

We have heard the counsel on both sides.

This appeal by special leave arises from the judgment and order of the Bombay High Court, Panaji Bench, dated April 26, 1996 made in W.P. No. 145 of 1996. It is not necessary to dilate upon the entire controversy H that has arisen between the parties. Suffice it to state that on September

20, 1996, this Court, after hearing all the counsel, passed the following as: A

> "It is now an admitted position that the appellant Bank is neither National Co-operative Society, nor statewide notified Co-op. Society falling under Section 35 of Multi-State Co-op. Socities Act, 1984. In that perspective the only procedure for conducting the election to other Societies is as per B Paragraph 8 of the Schedule which envisages conducting of elections in accordance with the procedure prescribed therein. It is not in dispute that the General Body of the Society resolved to adopt paragraphs 2 to 7 of the Schedule for conducting elections to the society and resolution to that effect was passed and also the Bye-laws were amended. The area C of controversy is whether the amended Bye-laws have been approved by the Registrar. The High Court has proceeded on the premise that the Registrar must have approved the Bye-laws and on that premise directed the respondent to conduct the election. Unless the Bye-laws are approved by the D Registrar, they do not become effective. Resultantly any election conducted in transgression of the statutory rules would admittedly become invalid. Shri Mukul Mudgal, the learned counsel for the Registrar, is directed to file an affidavit whether the Bye-laws have been approved by the Registrar, or not." E

Pursuant thereto, the Registrar, Cooperative Societies, Sambhaji Dattajirao Desai has filed his affidavit in which he stated that an amendment to bye-law No. 36 was approved by the Central Registrar of the Cooperative Societies on September 6, 1994. The amended bye-law was appended as Annexure R-1 which would show that: F

> "The Board of Directors shall consist of 13 Directors of which 3 Directors or 1/3 of the number of Directors whichever is less shall be nominated by the Government or any authority specified by it, in this behalf, if the Government has purchased G share of the Bank. The Managing Director shall be the Ex-Office member of the Board of Directors. The other members of the Board of Directors shall be elected as per the Multi State Cooperative Societies Act 1984 and Rules as prescribed under para 2 of the Schedule to the Multi State Cooperative Societites Rules 1985. The Constituency and the Units of the H

A affiliated Societies to the Bank shall be as under.

> The voters in respective constituencies and units shall elect their own Directors. The representative of service and other Societies affiliated to the Bank shall be qualified to contest election through the respective units and constituency."

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It is not in dispute that it was further amended and the bye-law, as amended for the second time, was certified by the Registrar on February 8, 1996 which reads as under:-

> C "In pursuance of the provisions of the Multi-state Cooperative Societies Act, 1984, the amendments to bye-law No.1(a) of the Goa State Cooperative Bank. Ltd., Panaji, Goa is hereby registered under Section 9 of the Multi-State Cooperative Societies Act, 1984 (51 of 1984).
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> D Given under my hand and seal this the 8th day of Febraury, 1996."

Shri Anil C. Divan, the learned senior counsel appearing for the appellant, has brought to our notice the procedure applicable to the conduct of elections to the societies as envisaged in Rule 104 and Schedule II, of E the Multi-State Cooperative Societies (Registration, Membership, Direction and Amendment, Settlement of disputes, Appeal and Revision), 1985 (for short, 'the rules'). He contended that election to the Society should be conducted as per rules. Shri Khanwilkar, learned counsel appearing for the respondent, contended that after the amendment of the bye-laws a controversy has arisen as to what is the relevant rule with reference to F which election is to be conducted. We desist to go into the controversy for the reason that the election to the Society has yet to be conducted. It is axiomatic that the election requires to be conducted by the 7th respondent in accordance with the relevant rules and the bye-laws of the Societies applicable as on the date of the election. Therefore, it is for the 7th G respondent to conduct the elections in accordance with the relevant rules as applicable to the Society in tune with the bye-laws of the appellant-Society as applicable to the society.

The appeal is accordingly allowed. The judgment and order of the High Court stands set aside. The operative portion of the judgment also H stands set aside. The Registrar is directed to conduct the elections in

accordance with the relevant rules applicable to the Society, Bank and bye-laws of the Society, the Act as also the Rules applicable as on the date of conducting of the elections, No costs. A

G.N. Appeal allowed.