

Shivshankar Dudh Vyavsayek Va Utpadak Sanstha Maryadit and anr. Vs. State of Maharashtra and ors.

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Court : Mumbai

Decided On : Sep-20-2003

Reported in : 2004(1)MhLj779

Judge : A.P. Deshpande, J.

Acts : Maharashtra Co-operative Societies Act, 1961 - Sections 73(1), 79, 79(1), 79(2), 79A and 79A(3)

Appeal No. : Writ Petition No. 2652 of 2003

Appellant : Shivshankar Dudh Vyavsayek Va Utpadak Sanstha Maryadit and anr.

Respondent : State of Maharashtra and ors.

Advocate for Def. : S.V. Chillarge, AGP for Respondent Nos. 1 to 4, ;S.T. Shelke, Adv. for Respondent No. 5, ;V.D. Hon, Adv. for ;V.S. Tanwade, Adv. for Respondent No. 6

Advocate for Pet/Ap. : V.D. Salunke, Adv. for; Prasanna Chavan, Adv.

Disposition : Petition allowed

Judgement :

A. P. Deshpande, J.

1. Heard. Rule, Rule made returnable forthwith. By consent of parties, taken up for final hearing.

2. This petition is filed by the two Co-operative (Milk) Societies registered under Section 9 of the Maharashtra Co-operative Societies Act (hereinafter referred to as 'the Societies Act'). The petitioner societies are classified as Agricultural Societies and are the member societies of the respondent No. 5 Society, by name, Tuljabhavani Zilla and Sahakari Dudh Utpadak Va Prakriya Sangh Ltd., Osmanabad. It is the case of the petitioners that they are supplying milk to the respondent No. 5 Sangh since their formation, they being member societies of respondent No. 5 and are bound to supply milk under the bye-laws. The respondent No. 5 is a registered society having its registration since the year 1982 and the area of operation of respondent No. 5 is of 7 talukas by name, Osmanabad, Kallamb, Paranda, Umarga, Washi, Lohara and Tuljapur. The bye-laws of the respondent No. 5 are approved by the competent authority. The respondent No. 5, besides the activity of collection of milk from the 7 talukas, has also set up chilling plant in 2 talukas so as to cater to the needs in that regard. It is the case of the petitioner that the respondent No. 5 society is performing extremely well since years and it is the only society which is paying dividend to its members and at times it has also paid Bonus.

The respondent No. 6 is a proposed co-operative milk society, which has submitted proposal for registration as an independent Taluka Sangh in conformity with the new policy of the State Government which is contained in the Govt. Resolution dt. 6-1-1990 and the clarifications issued on 2-2-1990 by the Govt. in the form of guidelines. A long drawn litigation is being fought in between the respondent No. 5 (District level society) and respondent No. 6, a proposed taluka level Sangh before various forums. The fact remains that as on today, the respondent No. 6 is not registered. The respondent No. 6 has been granted permission to open a bank account and to collect milk from Osmanabad Tahsil and in view of the said permission, the District Deputy Registrar has issued orders directing the petitioner societies not to supply milk to the respondent No. 5 Sangh

(Registered society) and further directions are issued to supply milk to the proposed Taluka level Sangh - respondent No. 6, The orders issued in that regard by the District Deputy Registrar are challenged by filing the present petition.

3. The directions are purported to have been issued by the District Deputy Registrar in exercise of powers under Section 79 of the Societies Act.

4. The petitioners are challenging the impugned order on two grounds :

(1) That the District Deputy Registrar has no power, authority or jurisdiction to issue the impugned directions to the petitioners not to supply milk to respondent No. 5 Sangh and to supply milk to respondent No. 6, under Section 79 of the Act. Hence, the orders passed are without jurisdiction.

(2) That the petitioners who are members of the respondent No. 5 Sangh, are under an obligation under the bye-laws to supply milk to the respondent No. 5. The District Deputy Registrar cannot direct the petitioner to breach the terms of bye-laws, which would prejudicially affects the status of the petitioners as members of the respondent No. 5 and as such the said directions are bad in law.

5. The learned counsel for the respondent No. 6 has raised a preliminary objection about the maintainability of the petition contending that the impugned orders are appealable under Section 152 of the Co-operative Societies Act and as such, this Court should decline to entertain the petition on the ground of availability of an alternate remedy. To meet the said objection, the learned counsel for the petitioner has contended that the appellate authority has already made up its mind and has expressed its view in the judgment rendered by it in an appeal filed by the respondent No. 5, challenging an identical direction issued by the respondent No. 3 dated 17-3-2003, in its judgment dt. 26-5-2003. As the appellate authority has already held that the directions issued by the respondent No. 3 dated 17-3-2003 are legal and proper, filing of an appeal would be an exercise in futility. Perusal of the order dt. 17-3-2003 reveals that though the operative part of the order only directs the respondent No. 5 not to collect milk from Osmanabad Taluka, the directions issued to the subordinate officer seeking compliance in clause No. 2, reveals that the Divisional Joint Registrar has directed the Assistant Registrar that

he should personally go to Osmanabad to compel all the village level societies, from Osmanabad Taluka (which includes the petitioner), to supply milk only to respondent No. 6. The Assistant Registrar is further informed to seek compliance of the said directions by issuing notices/orders under Section 79 of the Act. Perusal of the directions contained in Clause 2, appearing at the bottom of the operative part of the order passed by the Divisional Joint Registrar, makes it crystal clear that the appellate authority has already made up its mind and has taken a view while dealing with the appeal preferred by the respondent No. 5, and as such, availability of remedy of an appeal is more illusory than real and hence, I reject the preliminary objection and proceed to consider the petition on its merit.

Before I proceed to consider the submissions made by the petitioners, it would be appropriate to refer to the long drawn litigation in between the respondent No. 5 and 6, as to some extent, it has a bearing on adjudication of the issues involved in this petition.

6. The respondent No. 5 was registered as District Sangh in the year 1982 and its area of operation comprises of 7 Talukas including Osmanabad, The bye-laws of respondent No. 5 are approved by the competent authority. The respondent No. 6 submitted a proposal for registration as an independent taluka Sangh, to the District Deputy Registrar, Co-operative Societies (Milk) under the scheme framed by Govt. Resolution dated 6-1-1990. The District Deputy Registrar issued notice to the respondent No. 5 as to why the respondent No. 6 should not be granted registration as taluka level Sangh at Osmanabad. The respondent No. 5 objected to the said registration and as such, the District Deputy Registrar - respondent No. 3, forwarded the proposal along with the objections to the State Govt. respondent No. 1.

7. On being noticed by the State Govt. the respondent No. 5 caused its appearance before the State Govt. After hearing the respondent Nos. 5 and 6, so also the employees union of respondent No. 5, the State Govt., by an order dated 13-10-2001, granted permission in favour of the respondent No. 6 proposed Sangh for opening a bank account and for collection of milk from Osmanabad taluka. In compliance with the decision of the Govt., the respondent No. 3 passed

an order on 12-10-2001 in 'favour of the respondent No. 6 permitting it to open bank account and for collection of milk from the said taluka. No doubt, by virtue of the said permission, the respondent No. 6 is very much entitled to collect milk from Osmanabad taluka. The respondent No. 5 challenged the said orders viz. one passed by the State Govt., and the other passed by the respondent No. 3 District Deputy Registrar, by filing a writ petition bearing No. 5454/2001 before the High Court, Bench at Aurangabad. By that time, similar petitions were already pending at the principal Bench at Bombay and as such, all the matters pending at the Benches were transferred to the Principal Seat at Bombay, for hearing. What is to be borne in mind is, that the proposed Sangh claims to set up a taluka level Sangh under a scheme framed by the Government vide resolution dated 6-1-1990, which seeks to alter the then existing four tier system, into a three tier system. Prior to the issuance of the Govt. Resolution dt. 6-1-1990, the system prevalent in the State was, that there were village level societies, taluka level societies, District level Sangh and the Federal Society at State level. Under Govt. Resolution dt. 6-1-1990, the govt. has decided to eliminate district level societies in a phased manner, and had in mind, at the middle level, only Taluka level societies in the three tier system. The validity of the Govt. Resolution dated 6-1-1990 was challenged by some other society by filing a petition at Aurangabad and the validity thereof, came to be upheld by the Division Bench at Aurangabad in W.P. No. 941 of 1999. The said judgment is reported in 2000 (3) All M.R. 559, Ahmednagar Zilla Sahakari Dugdha Vyaysayik Va Prakriya Sangh Ltd. v. State of Maharashtra and Ors. When the writ petition at Bombay came up for hearing, questioning the validity of Govt. Resolution dt. 6-1-1990, the Division Bench (Coram : Palshikar and Vazifdar, JJ.) referred the matters to the Full Bench and now, the Full Bench is seized of the matters.

8. When the writ petition filed by the respondent No. 5 was pending before the High Court at Bombay on its transfer from Aurangabad, the respondent No. 5 moved Civil Application No. 2051/2001 seeking interim relief. The said application was disposed of by the Division Bench by its order dated 7-11-2001, on a statement made by the learned counsel for the respondent No. 6, that it shall not take steps for registration of the respondent No. 6 Sangh, pursuant to the orders passed in its favour by the State Govt. It is also relevant to note that though a

Division Bench of this Court at Aurangabad has upheld the constitutional validity of the Govt. Resolution, the effect, operation and implementation of the Govt. resolution dated 6-1-1990 has been stayed by an order passed by the Division Bench in W. P. No. 673/1990. This fact is not in dispute.

9. Though the respondent No. 6 is not yet registered, the respondent No. 3 issued letters to the respondent No. 5 not to collect milk from Osmanabad taluka, as the same is assumed to be an area of operation of respondent No. 6. The respondent No. 5, challenged the said letters by moving an application in Writ Petition No. 5454/2001. The Division Bench, by its order dated 3-4-2002, rejected the said application on the ground that the 5th respondent ought to have challenged the impugned orders by filing substantive petition or by amending the main petition. By amending the main petition the orders are challenged by the respondent No. 5, so also, the order passed by the respondent No. 3, directing the 5th respondent not to collect milk from Osmanabad taluka was challenged by filing an appeal by the respondent No. 5 under Section 152 of the Act, before the respondent No. 2. The appellate authority confirmed the order passed by the respondent No. 3. Aggrieved thereby, a revision came to be filed by the respondent No. 5 before the State Govt. and the same is still pending.

10. It is as such evident that on the one hand, matters are pending before the Full Bench in regard to validity of the Govt. Resolution dated 6-1-1990 and on the other hand, a revision petition filed by the respondent No. 5, is pending with the State Govt., wherein, orders passed by the authorities directing the respondent No. 5 not to collect milk from Osmanabad taluka, are challenged. In the above backdrop of facts and litigation pending, the issues involved in the present petition are to be decided. As the writ petitions are pending before the Full Bench, I do not propose to scrutinize the scheme of G.R. dated 6-1-1990 and the clarification and guidelines issued in that regard by the State Govt. dt. 2-2-1990.

Turning to the questions raised in the present petition, challenging the orders passed by respondent No. 3 directing the petitioners not to supply milk to respondent No. 5 and requiring them to supply the same only to respondent No. 6, a proposed society, it is necessary to examine the scope of Section 79 of the Act,

as the impugned orders are purported to have been passed in exercise of powers under Section 79. Section 79 reads as under :

Section 79 '(1) The Registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by, the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein;

(2) Where any society is required to take any action under this Act, the rules or the bye-laws, or to comply with an order made under the foregoing sub-section and such action is not taken :-

(a) within the time provided in this Act, the rules or the bye-laws, or the order, as the case may, or

(b) Where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing.

the Registrar may himself, or through a person authorised by him, take such action at the expense of the society? and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under Sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under Sub-section (1), and, after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action, and to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's

directions are carried out.'

11. Section 79 of the Act is intended to invest the Registrar with powers to enforce performance of obligations. Sub-section (1) of Section 79 provides that the Registrar may direct any society or class of societies, to keep proper books of accounts (a) with respect of all grants of money received and expended, (b) all sales and purchases of goods by the society, (c) its assets and liabilities and obliges the society to furnish such statements and returns and to produce the record, as may be required from time to time. Section 79 precisely deal with issuance of directions in regard to maintenance of books of accounts, money received and expended by the society, sale and purchase of goods, its assets and liabilities and furnishing all the statements and returns called by the authorities. Sub-section (2) postulates a situation, wherein, the society is required to take any action under the Act, Rules or the Bye laws and if such action is not taken within the time prescribed, the Registrar is empowered to take such action at the expense of the society and Sub-section (3) provides for taking an action against the officer or officers of the society who are responsible for non-compliance.

12. A direction in the nature issued to the petitioners, not to supply milk to respondent No. 5 and to supply milk only to the respondent No. 6 does not at all fall under Sub-section (1) of Section 79. So far as Sub-section (2) is concerned, it has an application only when the society is required to take any action under the provisions of the Act, Rules, or Bye-laws and the society fails to comply with the same. In the present case, there is no requirement of the provision of the Act or the Rules or Bye-laws that the petitioners must supply milk to respondent No. 6 and not to respondent No. 5. If this be the position, then Sub-section (2) has no application.

13. On a pointed query made by this Court, Shri Hon, the learned counsel appearing for respondent No. 6 was unable to point out any provision either under the Act, Rules or Bye-laws, which obliges the petitioners to supply milk only to respondent No. 6 to the exclusion of respondent No. 5. If this be the position, there cannot be any iota of doubt that the impugned order cannot be sustained under Section 79 of the Act. Shri Hon submitted that even if a wrong section is quoted,

that cannot vitiate the order and the action could be sustained if the authority could be shown to have power to pass such an order. In the submission of Shri Hon, Adv. the order is referable to Section 79A, which reads thus :--

'If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government, or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interest of the members of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with such directions.'

The power contained in Section 79A is the general power of the State Government to issue directions in public interest. In the present case, the Govt. has not issued any order directing the petitioner to supply milk to respondent No. 6 and not to supply the same to respondent No. 5 and as such, there is no question of the Registrar being satisfied under Sub-section (3) of Section 79A about non-compliance of any such direction issued by the State and hence, the directions issued and which are challenged in the present petition, cannot be taken to be directions validly issued by the Registrar under Sub-section (3) of Section 79A as well.

14. The learned AGP has contended that the impugned directions are issued with a view to seek proper implementation of the Govt. policy contained in G.R. dt. 6-1-1990 and in his submission, the same is referable to Section 79. In my opinion, the respondent No. 3 has absolutely no power, authority or jurisdiction to issue directions under the orders impugned and the same cannot be sustained as there is no source of power for the respondent No. 3 to issue directions either under Section 79 or under Section 79A of the Act. No provision of the Act, Rules or bye-laws are brought to my notice, to show that the petitioners have not complied with

the same, which they were obliged to, and hence, the Registrar could not be held to be justified in issuing the impugned directions. In the result, I conclude that the impugned directions issued by the respondent No. 3 are without authority and jurisdiction and as such, deserve to be quashed and set aside.

15. While dealing with the next submission, it is required to be noted that the management of petitioners society is under an obligation to exercise such powers and perform such duties, as may be conferred or imposed respectively by the Act, the rules and the bye-laws, it being the mandate of Section 73(1) of the Act. Placing reliance on the language used in Sub-section (1) of Section 73 of the Act, the learned counsel appearing for the petitioner Shri Salunke has submitted that bye-law No. 7.1 of the respondent No. 5 Sangh casts an obligation on the petitioner to supply milk to the respondent No. 5. In his submission, by virtue of mandate of Section 73(1), the bye-laws, to the extent they relate to the performance of duties imposed by the bye-laws, would be mandatory and will have to be treated as enforceable in law. The submission is, that even if the bye laws may not have statutory character by itself, but, by virtue of mandate of Section 73(1), to the extent it falls within the compass of Section 73(1), the same will have to be strictly complied with, not only by the society and/or its members, but also by third parties such as the authorities of the State Government, exercising powers under the Act.

Per contra, the learned counsel for the respondent No. 6, Shri Hon, has submitted that bye-laws do not have force of law and cannot be equated with the term 'law' used in Article 13 of the Constitution of India. He submits that the impugned directions issued by the District Deputy Registrar are valid and cannot be assailed being not in conformity with the bye-laws. He submits that bye-laws of a society cannot bind the authorities and cannot be equated with a statutory provision.

16. Before I deal with the respective submissions, it would be appropriate to reproduce Section 73(1) of the Act, which reads thus :--

'73(1) 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, the rules and the bye-laws.'

Reading of Section 73(1) does clearly reveal the intention of the legislature which mandates (a) that the management of every society shall vest in a committee constituted in accordance with the Act, rules and the bye-laws and (b) the committee shall exercise such powers and perform such duties as may be conferred or imposed, respectively by the Act, rules and the bye-laws. The thrust of the later part of the section is clear, that the committee is mandated to exercise such powers and perform such duties as may be conferred or imposed respectively by the Act, rules and the bye-laws. Turning to the submission of the petitioner, the emphasis is that the bye-laws and to be precise, bye law No. 7.1 cast a duty on the committee to supply milk to the respondent No. 5 society, whereas, the respondent No. 3 is forcing the petitioners to supply milk to the respondent No. 6 alone to the exclusion of respondent No. 5. The petitioner, if forced to comply with the directions issued by the respondent No. 3 then they will in turn be required to breach the bye-law. For avoiding this anomalous situation, it is required to be found out as to what is the status of the bye-laws not only viz-a-viz the society and its members, but, in regard to the third party such as the respondent No. 3, the District Deputy Registrar. The learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court, reported in 1983 Mh.LJ. 1081, Pandurang Hindurao Patil v. State of Maharashtra and Ors. (Coram : M.N. Chandurkar, Acting Chief Justice and S.P. Kurdukar, J.).

The facts giving rise to the filing of the petition before the Division Bench are summarised hereinbelow :--

The petitioner, who was desirous of contesting an election to the managing committee of a specified society had filed nomination paper, which was rejected by the Returning Officer. The order passed by the Returning Officer was challenged in the said petition, mainly on the ground that the order was in breach of the bye-laws of the society. The High Court was moved in exercise of jurisdiction under Article 226 of the Constitution of India. The Division Bench of this Court was called upon to answer the question as to whether the committee, which is required to be constituted in accordance with the provisions of the Act, rule and the bye-laws, by

virtue of mandate of Section 73(1), could be allowed to be constituted in breach of the bye-laws, by the impugned order passed by the Returning Officer. Various judgments were cited before the Division Bench, including the judgment of the Apex Court reported in : (1969)IILLJ698SC , wherein the Apex Court has held that 'We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act, can be held to be law or to have the force of law. The said observations are made while interpreting a provision under the Andhra Pradesh Co-operative Societies Act which arose out of a reference made by the Government of Andhra Pradesh to the Industrial Tribunal, Hyderabad, under Section 10(1)(d) of the Industrial Disputes Act, 1947. The Division Bench, while distinguishing the said Judgment in the context of Section 73(1) of the Maharashtra Co-operative Societies Act, in para. 34 observed thus :--

'Section 73 of the Act, in our view, statutorily requires that the Managing Committee of every society has to be constituted not only in accordance with the Act and the Rules but also in accordance with the bye-laws. Now, if Section 73 requires the constitution of a Managing Committee in accordance with the bye-laws also, then it obviously casts a statutory obligation on the Returning Officer to comply not only with the Act and the Rules but also with the Bye-laws. Any decision which is not in conformity with the Bye-laws or which is in excess of the Bye-laws will clearly result in affecting the constitution of the Committee and infraction or violation of the provisions of Section 73 of the Act. If it is, therefore, possible to show in a given case that at some stage of the constitution of the Committee, the order of the Returning Officer has the effect of the Committee being constituted contrary to the mandate of Section 73 of the Act and this mandate requires constitution in accordance with the Act, the Rules and the Bye-laws, the matter can be brought before this Court and if this Court is satisfied that in a given case, interference is necessary, the petition cannot be rejected in limine on the ground that it does not lie and the dispute must only be resolved by recourse to the machinery under Section 91 after the result of the election is declared.'The Court, thereafter, proceeded to observe in para 37 that the provision like Section 73 of the Co-operative Societies Act did not fall for consideration of the Apex Court in the judgment reported in : (1969)IILLJ698SC . The Division Bench proceeded to observe thus :-- 'It is necessary to point out that the provision

like Section 73 of the Act which mandatorily required the constitution of a Managing Committee in accordance with the Act, the Rules and the Bye-laws did not fall for consideration before the Supreme Court. While it may not be possible to dispute the general proposition that bye-laws really form a contract between the parties, on that ground it is not possible to negative the argument that while implementing the bye-laws in the matter of election, there is a statutory obligation on the Returning Officer having regard to the exercise of provisions of Section 73 and Rule 8 of the Rules.'

17. What is to be noted is that the Division Bench has categorically held that even the Returning Officer, who is a third person, meaning thereby, neither the society nor its member, is also bound by the bye-laws of the society to the extent, the bye-laws are required to be followed by virtue of mandate of Section 73(1).

In the matters relating to the constitution of the committee, exercise of powers and performance of duties by the Committee are concerned, the same are required to be exercised or performed in accordance with the provisions of the Act, rules and the bye-laws.

18. The next judgment, on which reliance is placed by the learned counsel for the petitioner is a Judgment of the Supreme Court reported in 1992 Mh.L.J. 1684, M.G. Pandke and Ors. v. Municipal Council, Hinganghat. In the said case, a teacher, working in the employment of Municipal Council, Hinganghat claimed that his age of superannuation would be 60 years having regard to the provisions contained in the Secondary School Code, whereas the Municipal Council, framed bye law stipulating the age of superannuation to be 58 years. It was not in dispute that the provisions of Secondary School Code are in the nature of executive instructions and do not have a force of law. It was the contention of the teacher that though the Code may not have force of law, still, compliance of the conditions contained in the Code are required to be mandatorily adhered to, by virtue of a statutory regulation framed under the Act. The regulation provided that no Secondary school shall be recognised or continued to be recognised by the Divisional Board unless it fulfills the requirements and one of the requirement was, that the school shall comply with the provisions of the Secondary School Code. In

the above stated facts, the Apex Court held in para. 8 as under:--

'The provisions of the Maharashtra Act and the Maharashtra Regulations quoted above give statutory recognition to the Code. Under the Maharashtra Regulations it is obligatory for the schools, which have been given recognition under the Maharashtra Act and the Maharashtra Regulations, to follow the provisions of the Code. Once a school is recognised, the management is bound to extend to the teachers employed by it the conditions of service as laid down in the Code.'

As held by the Apex Court, a statute may give recognition to the Code, which is otherwise not enforceable in law. In my view, similar is the position that emerges on interpretation of Section 73(1) of the Act. Though the bye-laws, on their own may not cast an obligation on the third party in regard to its compliance, but, once the compliance of the bye-laws are mandated by a statute, not only the society and/or its members but also third party would be bound by the same. Section 73(1) is mandatory provision contained in the Act, and it makes it obligatory to follow the provisions of the bye laws when it relates to performance of duty. The bye laws may be non statutory, but the mandate to follow the same flows from Section 73(1) of the Act, which is mandatory. The trappings of mandatory character are super imposed on the bye-laws by the mandate of Section 73(1). By virtue of mandate of Section 73(1), the status of the bye-laws stands elevated and it ceases to be only of a nature of a contract or of a nature of Articles of Association of a Company but the bye-laws take the statutory colour. In this view of the matter, it is not possible to hold that the directions issued by the District Deputy Registrar, which run counter to the bye-law No. 7.1 are sustainable in law. It is also not possible to conceive power with the District Deputy Registrar either under Section 79 or 79A to issue directions in breach of bye-laws. Hence, the second submission canvassed by the learned counsel for the petitioner has also to be accepted.

19. In the result, the writ petition is allowed. The impugned order dated 19-6-2003 passed by the respondent No. 3 to the extent it relates to the petitioners is quashed and set aside. So also, the directions issued by respondent No. 3 to the Assistant Registrar, appearing below the operative order dt. 17-3-2003, in Clause

(2), to the effect that he shall compel all village level societies from Osmanabad Taluka to supply milk to respondent No. 6, to the extent they relate to petitioners are quashed and set aside.'

20. Rule made absolute in above terms, with no orders as to costs.

21. At this stage, the learned Counsel for respondent No. 6 prays for grant of stay of the judgment for a period of two weeks. As it is an undisputed fact, that the petitioners are not supplying milk to the respondent No. 6, as on today, and as the relief granted in the present petition is restricted to the petitioners alone, no case for stay is made out.

Hence, the prayer for stay is rejected.

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