

SPECIAL CIVIL APPLICATION

*Before the Hon'ble Mr. Bhaskar Bhattacharya, Acting Chief Justice
and the Hon'ble Mr. Justice J. B. Pardiwala*

BANASKANTHA DISTRICT CO-OP. MILK PRODUCERS UNION
LTD. v. STATE OF GUJARAT THROUGH SECRETARY & ORS.*

Gujarat Co-operative Societies Act, 1961 (10 of 1962) — Secs. 74C(3), 145A, 145Y & 168 — Gujarat Specified Co-operative Societies Election to Committees Rules, 1982 — Rule 3A(8) — Challenge to *vires* of Rule 3A(8) — Contention by petitioners that Rule restricting constituencies is inconsistent with Sec. 74C(3) of parent Act — Considering that Rule has approval of State Legislature challenge negated — Further, Rule creating constituencies/delimitation comes within power of State Government under Sec. 145Y to regulate “any matter relating to various stages of election” — Petitions dismissed.

ગુજરાત સહકારી મંડળી અધિનિયમ, ૧૯૬૧ — કલમ ૭૪સી(૩), ૧૪૫એ, ૧૪૫વાય અને ૧૬૮ — ગુજરાત નિર્દિષ્ટ સહકારી મંડળી સમિતિ ચૂંટણી નિયમો, ૧૯૮૨ — નિયમ ૩એ(૮) — નિયમ ૩એ(૮)ની કાયદેસરતાને પડકાર — અરજદારોએ દલીલ કરી કે મતદાનક્ષેત્ર અંગે મર્યાદા લાદતો નિયમ અધિનિયમની કલમ ૭૪સી(૩) સાથે સુસંગત નથી — નિયમને રાજ્ય વિધાનસભાની મંજૂરી મળી હોવાથી દલીલ નકારવામાં આવી — વધુમાં, મતદાનક્ષેત્ર બનાવવાનો/તેની હદ રદ કરવાનો નિયમ, કલમ ૧૪૫વાય હેઠળ રાજ્ય સરકારના સત્તાક્ષેત્રમાં આવે છે જે “ચૂંટણીના વિવિધ તબક્કા અંગેની કોઈપણ બાબતનું નિયમન કરવા અંગે છે” — દાવા અરજી રદ કરવામાં આવી.

Therefore, the first branch of argument advanced by the Counsel for the petitioner that the provisions contained in Rule 3A(8) takes away the right of the members of Co-operative Societies to frame their bye-laws according to their choice and is, consequently, illegal, cannot be accepted. As pointed out earlier, the members, in order to form a society under the Act, must frame their bye-laws strictly in accordance with the provisions of the Act and the Rules framed thereunder. If any of the Rules, *lawfully framed under the provisions of the Act*, creates a restriction in relation to the subject-matter of any of the clauses of the bye-laws, such restriction must be adhered to and any such clause in violation of the restriction imposed by the Rules should be deleted. (Para 8)

According to the said mandate of the Act, the members of the Committee of management should be elected direct by the general body of the members and not by indirect way like nomination except those provided in the said proviso. The State Government while enacting the impugned provision of the Rule has not deviated from the aforesaid principle mentioned in Sec. 74C(3) of the Act, but has only created a provision by making divisions of the members of the general body. Even by way of creation of constituencies and allowing its members to participate as provided in the rule, the Committee of management will still

*Decided on 30-1-2012. Special Civil Application Nos. 11115 to 11118 of 2011.

be elected by the general body of members and not in any way otherwise than by the general body of the members. (Para 20)

It is rightly pointed out by the learned Counsel appearing on behalf of the respondents that Sec. 145Y specifically confers powers upon the State Government to make rules consistent with the Act to provide for or regulate any matters relating to various stages of election, and creation of constituency or delimitation thereof also come within the purview of the expression “*provide for and to regulate all or any of the other matters relating to the various stages of the elections (including preparation of the list of voters)*” as mentioned in the above Section. (Para 20)

Bearing in mind the principles laid down by the Supreme Court and also taking into consideration the fact that even the impugned Rule 3A(8) has the approval of the State Legislature since the same was placed before it for approval in accordance with the provisions contained in Sec. 168, whether the delegated legislation in terms of Rule 3A(8) should be held to be beyond the scope of the Act. (Para 18)

Cases Relied on :

- (1) *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, 2008 (3) GLR 2501 (SC) : 2008 (5) SCC 33
- (2) *M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai*, JT 2006 (12) SC 379 : 2006 (12) SCC 583
- (3) *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth*, AIR 1984 SC 1543

K. S. Nanavati, Sr. Counsel with *Devan Parikh*, Sr. Counsel with *Kunal K. Nanavati*, for Nanavati Associates, for the Petitioner.

Ashish H. Shah with *B. S. Patel*, for Newly Joined Party.

Kamal Trivedi, Advocate General with *P. K. Jani*, G. P., with *Ms. S. K. Vishen*, A.G.P., for the Respondents.

BHASKAR BHATTACHARYA, ACTG.C.J. All these Special Civil Applications were taken up together as a common question of law is involved in all these matters.

2. The petitioners in these writ petitions have prayed for a declaration that Rule 3A(8) of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 (hereafter referred to as ‘the Rules’) is *ultra vires* the Constitution of India and/or the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as ‘the Act’) and the Rules made thereunder under the provisions of the said Act.

3. The Rules are framed pursuant to the powers conferred under Sec. 168 read with Sec. 148A of the Act and accordingly, after compliance of the provisions contained in those provisions of the Act, the Rules were framed by the Government.

4. The sum and substance of the contentions advanced by Mr. Parikh, learned Senior Advocate appearing on behalf of the petitioners in these applications, was that Rule 3A(8) restricting the number of constituencies cannot be enacted by way of a delegated legislation as the Act does not authorise the delegated authority to put any restriction with regard to the formation of constituency. According to Mr. Parikh, the Act has authorised the Co-operative Societies to frame its bye-laws in accordance with the provisions of the Act and the Rules made thereunder but by enacting the aforesaid provisions in the Rules by delegated legislation, something which is in conflict with the provisions of the Act cannot be introduced. In other words, according to Mr. Parikh, Rule 3A(8) is in conflict with the main provisions of the Act, particularly, the provisions contained in Sec. 74C(3) of the Act which gives a mandate that the Committee of the management should be elected by the general body of the members of the Society. According to Mr. Parikh, the provisions contained in Rule 3A(8) of the Rules violates the aforesaid provisions of Sec. 74C(3) of the Act inasmuch as by virtue of the aforesaid provisions of the Rules, the Committee of management now can be elected by the choice of a restricted members of the general body of the society. Mr. Parikh contends that such provision is in direct conflict with the intention expressed by the Legislature.

5. All the learned Counsel appearing on behalf of the respondents have, however, opposed the aforesaid contentions of Mr. Parikh. They have submitted before us that the provisions contained in Rule 3A(8) are in no way conflict with any of the provisions of the Act and Sec. 145Y of the Act specifically authorises the delegated authority to frame Rules relating to election of the committee which includes creation of constituencies or delimitation of such constituencies. They have further contended that the Rules having been framed not only under Sec. 145A of the Act but also in compliance with the requirement provided in Sec. 168 of the Act, the contentions advanced on behalf of the petitioners are not tenable in the eye of law and the State Legislative Assembly has explicit approval of the Rules.

6. Therefore, the only question that falls for determination in these writ-petitions is whether the provisions contained in Rule 3A(8) of the Rules are inconsistent with any of the provisions of the Act or beyond the scope of legislative delegation provided under Sec. 145A or Sec. 168.

7. In order to appreciate the aforesaid contentions, it will be profitable to refer to the following provisions of the Act :

“Sec. 2(2). ‘Bye-Laws’ - Means bye-laws registered under this Act and for the time being in force, and include registered-amendments of such bye-laws;

Sec. 2(5). 'Committee' – Means the Committee of management, or other directing body, to which the management of the affairs of a society is entrusted;

Sec. 9. *Registration and provisional registration, Certificate of registration :*

- (1) On receipt of an application for registration from a society —
 - (a) If the Registrar is satisfied that the society has complied with the provisions of this Act and the Rules as to registration and that its bye-laws are not contrary to this Act and the Rules, he shall register the society and its bye-laws; and
 - (b) If the Registrar is of the opinion that the application complies with the requirements of Sec. 8 but its bye-laws are not in conformity with the provisions of this Act and the Rules, he may provisionally register the society and by an order in writing permit the society to perform such functions subject to such condition as he may specify in the order and may also by an order in writing direct the society to amend within the period prescribed in this behalf its bye-laws so as to bring them in conformity with this Act and the Rules.
- (2) When a society has been provisionally registered, the Registrar shall, on its compliance with the order made under clause (b) of sub-sec. (1) finally register it and its bye-laws, and on its failure to comply with the order shall cancel its provisional registration.
- (3) A provisionally registered society shall not be deemed to be a society registered under this Act.
- (4) On the registration of a society, the Registrar shall issue to it a Certificate of registration signed by him.
- (5) A Certificate of registration issued under sub-sec. (4) shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration has been cancelled.
- (6) If the Registrar refuses to register the society, he shall forthwith communicate his decision with reasons thereof, to the person who has signed first on the application.

Sec. 74. *Committee, its powers and functions :*

- (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 on it respectively by this Act, the Rules and the Bye-laws :

Provided that a committee of a society falling in any of the categories mentioned in sub-sec. (1) of Sec. 74C shall not be so constituted as to require a certain part or number, of its members to periodically retire by rotation and any bye-laws of such society containing such provision shall with effect on and from the commencement of Sec. 2 of the Gujarat

Co-operative Societies (Amendment) Act, 1981 (6 of 1981) cease to be in force.

- (2) There shall be two professionals on the committee of the Central Co-operative Bank and the State Co-operative Bank having qualification prescribed by the Reserve Bank of India or, as the case may be, the National Bank. If such members are not elected on committee of the Central Co-operative Bank and the State Co-operative Bank, the Registrar shall direct the concerned Bank to co-opt such professional on the committee within the time-limit specified in such direction of the Registrar. If the Bank fails to comply with the aforesaid direction, the Registrar shall appoint such professional member on the committee of the concerned Bank. The professional member shall have all the rights of members inclusive of voting right and the term of such member shall be co-extensive with the term of other elected members.”

Sec. 74-BB. *Reservation of seats for woman in committee of society :*

- (1) There shall be reserved for women,-
- (a) one seat in a committee consisting of not more than eleven members, and
 - (b) two seats in committee consisting of more than eleven members.
- (2)(a) Where in a committee, existing on the date of commencement of the Gujarat Co-operative Societies (Amendment) Ordinance, 1997 (Guj. Ord. 8 of 1997)—
- (i) consisting of not more than eleven members, there is no woman as a member,
 - (ii) Consisting of more than eleven members, there is no woman as a member or only one woman as a member, the society shall, notwithstanding anything contained in the bye-laws of the society, elect, co-opt or appoint in accordance with its bye-laws, in addition to the existing members of the committee, one woman as a member in a committee referred to in clause (i) and two women as members or, as the case may, one woman as a member in a committee referred to in clause (ii).

(b) Where a society does not elect, co-opt, or appoint a member under sub-sec. (2) within two months from the commencement of the Gujarat Co-operative Societies (Amendment) Ordinance, 1997 (Guj. Ord. 8 of 1997), the Registrar shall, notwithstanding anything contained in the bye-laws of the Society, appoint additional member or members in the committee in accordance with the provisions of sub-sec (2).

(3) The term of office of the members so elected, co-opted or appointed under clause (a) or (b) of sub-sec. (2) shall expire on the expiry of the term of office of the other members of the Committee.

Sec. 74C. *Provision for conduct of elections of committees and officers of certain societies and term of office of members of the committee :*

(1) The election of members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter :

- (i) Apex societies mentioned in the Schedule and such other Apex societies as the State Government may, by general or special order, published in the Official Gazette, from time to time specify in this behalf having regard to financial position and share capital of such societies;
- (ii) All District Central Co-operative Banks;
- (iii) All Primary Land Development Banks;
- (iv) (a) all District Co-operative Sales and Purchase Organizations;
(b) all Taluka Co-operative Sales and Purchase Organizations.
- (v) All Co-operative Sugar Factories;
- (vi) All Co-operative Spinning Mills
 - (a) all District Co-operative Milk Unions;
 - (b) all Taluka Co-operative Processing Societies
- (vii) Any other society or class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time specify in this behalf, regard being had to the financial position and share capital of such institutions.

2. When the election of all the members of the Committee of any such societies held at the same time, the members elected on the Committee at such general election shall hold office for a period of three years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new Committee.

3. Notwithstanding anything in the bye-laws of any such society, the Committee of management shall be elected by a general body of members of the society and all other Committees authorized by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the Committee of management, and all such Committees shall be sub-committees of the Committee of management, and shall be subordinate to it :

Provided that it shall be lawful for the State Government,-

- (a) to nominate its representative on a Committee of any such society under Sec. 80, or
- (b) to nominate the first Committee of Management of any such society where the bye-laws of such society so provide :

Provided further that it shall be lawful for any body or authority to nominate its representative on a Committee of such society where the bye-laws of such society so provide.

145A. *Application* :

All Sections of this Chapter except Sec. 145Z shall apply to election to Committees of societies belonging to the categories specified in Sec. 74C.

145B (b) “*election*” – means election of a member or members of the committee of a specified society;

(c) “*specified society*” means a society belonging to any of the categories specified in Sec. 74C.

145Y. *Power to make rules for purposes of this Chapter* :

Without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections (including preparation of the list of voters).

168. *Rules*.

- (1) The State Government may, by notification in the Official Gazettee, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may be made—
 - (a) for the whole or any part of the State of Gujarat and for any society or class of societies, and
 - (b) to provide for all matters expressly required or allowed by this Act to be prescribed by Rules.
- (3) The power to make Rules conferred by this Section is subject to the condition of the Rules being made after previous publication.
- (4) All Rules made under this Section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to such modification as the Legislature may make during the Session in which they are so laid, or the Session immediately following.
- (5) Any modifications so made by the State Legislature shall be published in the Official Gazettee, and shall thereupon take effect.”

After hearing the learned Counsel for the parties and after going through the aforesaid provisions contained in the Act, we find that the members of a society have not been given power to prepare their bye-laws in an unrestricted way. As provided for in Sec. 9(1) of the Act, before registration of the bye-laws, it is the duty of the Registrar to see that such bye-laws are not contrary to any of the provisions of the Act and the Rules framed thereunder.

8. Therefore, the first branch of argument advanced by Mr. Parikh that the provisions contained in Rule 3A(8) takes away the right of the members of Co-operative Societies to frame their bye-laws according to their choice

and is, consequently, illegal, cannot be accepted. As pointed out earlier, the members, in order to form a society under the Act, must frame their bye-laws strictly in accordance with the provisions of the Act and the Rules framed thereunder. If any of the Rules, *lawfully framed under the provisions of the Act*, creates a restriction in relation to the subject-matter of any of the clauses of the bye-laws, such restriction must be adhered to and any such clause in violation of the restriction imposed by the Rules should be deleted.

9. Therefore, the next question is whether Rule 3A(8) is *lawfully enacted* by virtue of the powers conferred under the Act and within the scope of the provisions contained in the Act.

10. By virtue of an amendment of the Act in the year 1981, Chapter XIA was introduced by the Legislature containing provisions of Secs. 145A to 145Z. The said Chapter deals with the elections of the Committees and officers of certain societies. According to Sec. 145B(b), “election” means election of a member or members of the committee of a specified society and according to sub-sec. (c), “specified society” means a society belonging to any of the categories specified in Sec. 74C. Section 145Y confers powers upon the State Government, without prejudice to any other power, to make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to *the various stages of the elections (including preparation of the list of voters)*.

11. Similarly, Sec. 168 of the Act confers powers upon the State Government to frame Rules by Notification in the Official Gazette, for carrying out the purposes of this Act and in particular and without prejudice to the generality of the power, such Rules may be made for the whole or any part of the State of Gujarat and for any society or class of societies, and to provide for all matters expressly required or allowed by this Act to be prescribed by Rules. However, according to sub-sec. (4) of Sec. 168, all rules made under Sec. 168 should be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to such modification as the Legislature may make during the Session in which they are so laid, or the Session immediately following. According to sub-sec. (5), any modifications so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

12. A comparison between Sec. 145Y and Sec. 168 makes it abundantly clear that while under Sec. 145Y limited power has been given to the State Government to frame rules relating to election, under Sec. 168, general power has been conferred upon the State Government to make provisions in the Rules relating to all matters expressly required or allowed by the Act to be prescribed by the Rules.

13. It would thus appear from the aforesaid two provisions that while in respect of rules framed under Sec. 168, the same must be placed before the Legislature and may be modified by the Legislature as provided therein, in the matter of framing of Rules under Sec. 145Y relating to election, the State Government has been given unfettered powers to frame Rules consistent with the provisions of the Act relating to election without even placing the same before the State Legislature as provided in Secs. 168(4) and 168(5) of the Act.

14. However, in the case before us, the Rules we are concerned with, were framed by taking aid of both Sec. 145Y and Sec. 168 and the requirements provided under Sec. 168(4) have been complied with although in relation to rules under Sec. 145Y there was no necessity of taking approval of the State Legislature.

15. Therefore, before proceeding further, we must bear in mind that it is not a case of framing of Rules without approval of the State Legislature and even if there is any manner of deviation of rule making powers conferred under the Act, the State Legislature has taken no exception to such exercise of power and has approved the same.

16. Bearing in mind the aforesaid principle, we now propose to summarise the law a Court is required to follow before scrutinising whether any rule framed under the provisions is *ultra vires* the provisions of the Constitution.

17. In this connection, we may profitably refer to the following observations of the Supreme Court in the case of *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, reported in 2008 (5) SCC 33 : [2008 (3) GLR 2501 (SC)], where in Paragraph 39, the following observations have been made by the Supreme Court.

“39. We have recently held in *Government of A.P. v. P. Laxmi Devi*, 2008(4) SCC 720 that the Court should exercise judicial restraint while judging the constitutional validity of the statutes. In our opinion, the same principle also applied when judging the constitutional validity of delegated legislation and here also there should be judicial restraint. There is a presumption in favour of the constitutionality of statutes as well as delegated legislation, and it is only when there is a clear violation of a constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the Court should declare it to be unconstitutional.”

At this stage, it will also be relevant to refer to the following observations of the Supreme Court in the case of *M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai*, reported in JT 2006 (12) SC 379 : 2006 (12) SCC 583, while dealing with the question of conflict between the

provisions of an Act and the provisions of Rules (Para 27 pp 393 JT, Para 29 pp 597 SCC) :

“Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail. However, every effort should be made to give an interpretation to the Rules to uphold its validity. This can only be possible if the Rules can be interpreted in a manner as to be in conformity with the provisions in the Act, which can be done by giving it an interpretation which may be different from the interpretation which the Rules could have if it was construed independently of the provisions in the Act. In other words, to uphold the validity of the Rule sometimes a strained meaning can be given to it, which may depart from the ordinary meaning, if that is necessary to make the Rule in conformity with the provisions of the Act. This is because it is a well settled principle of interpretation that if there are two interpretations possible of a Rule, one of which would uphold its validity while the other which would invalidate it, the former should be preferred.”

Similarly, the following observations of the Supreme Court in the case of *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth*, reported in AIR 1984 SC 1543 on the above subject is also worthy of reference :

“In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate as to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be *ultra vires* merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court

to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.”

18. Bearing in mind the aforesaid principles laid down by the Supreme Court and also taking into consideration the fact that even the impugned Rule 3A(8) has the approval of the State Legislature since the same was placed before it for approval in accordance with the provisions contained in Sec. 168, whether the delegated legislation in terms of Rule 3A(8) should be held to be beyond the scope of the Act.

18A. Mr. Parikh, in this connection, strenuously relied upon the provisions contained in Sec. 74C(3) of the Act which says that notwithstanding anything in the bye-laws of any such society, the Committee of management shall be elected by a general body of members of the society and all other committees authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the Committee of management, and all such committees shall be sub-committees of the Committee of management, and shall be subordinate to it. The proviso to the said Section, however, gives powers to the State Government to nominate its representative on a Committee of any such society under Sec. 80, or to nominate the first Committee of Management of any such society where the bye-laws of such society so provide. It further provides that it shall be lawful for any body or authority to nominate its representative on a Committee of such society where the bye-laws of such society so provides.

19. A plain reading of the aforesaid provisions makes it abundantly clear that the Committee of the management should be elected by the general body of the members of the society whereas the other committee authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the Committee of management. In other words, according to the said mandate of the Act, the members of the Committee of management should be elected direct by the general body of the members and not by indirect way like nomination except those provided in the said proviso. The State Government while enacting the impugned provision of the Rule has not deviated from the aforesaid principle mentioned in Sec. 74C(3) of the Act, but has only created a provision by making divisions of the members of the general body. Even by way of creation of constituencies and allowing its members to participate as provided in the rule, the Committee of management will still be elected by the general body of members and not in any way otherwise than by the general body of the members.

20. It is rightly pointed out by the learned Counsel appearing on behalf of the respondents that Sec. 145Y specifically confers powers upon the State Government to make rules consistent with the Act to provide for or regulate any matters relating to various stages of election, and in our view, creation of constituency or delimitation thereof also come within the purview of the expression “*provide for and to regulate all or any of the other matters relating to the various stages of the elections (including preparation of the list of voters)*” as mentioned in the above Section.

21. Moreover, we find that though without laying this provision before the State Legislature, the State Government could have straight way framed the Rules, yet, the State Government by taking recourse to Sec. 168 of the Act has placed the Rules before the State Legislature, the parent body which enacted the Act, for its suggestion and approval.

22. Thus, we find no substance in the contentions of Mr. Parikh that the act of creation of constituencies is inconsistent with any of the provisions of the Act and thus, curtails the purpose of the Act. The object of the Act as provided in Sec. 74C(3) of the Act is to confer powers upon the general body of the members alone to elect its Committee of the management and that power has not been curtailed in any way. Even within the framework of our Constitution, Members of Parliament and Legislative Assemblies are elected in the same way by creation of various constituencies and by such election, the right of the people to elect its representatives is in no way taken away.

23. Similarly, the endeavour on the part of Mr. Parikh in placing reliance upon Sec. 28(1) of the Act has failed to create any impression upon us. The said provision merely points out that except in the case of equality of votes where the Chairman shall have a casting vote, no member of any society shall have more than one vote in its affairs. The Rule impugned in these writ applications has not infringed the said provision of the Act in any way, as the same has not conferred upon any member more than one vote in the affair of the society violating the said provision of the Act.

24. We, thus, find that the provisions contained in Rule 3A(8) is in no way conflict with any of the provisions of the Act nor does it suffer from want of authority of the delegated legislation. Over and above, the delegated authority has taken approval of the State Legislature in framing the Rules, although under Sec. 145Y of the Act, it was not required to take such consent; therefore, *mala fide* intention on the part of the State Government cannot be alleged.

25. We, consequently, find that these writ petitions have no merit once we hold that the provisions contained in Rule 3A(8) is legal, valid and within the power of the delegated authority and accordingly, the other prayer made

in the writ petitions also cannot be granted as the same is in conformity to the provisions of Rule 3A(8) of the Act.

26. All the writ petitions are thus dismissed. Rules are discharged. Interim relief, if any, stands vacated forthwith. In the facts and circumstances of the case, there will be, however, no order as to costs.

(HSS)

Petitions dismissed.

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CRIMINAL REVISION APPLICATION

Before the Hon'ble Mr. Justice A. J. Desai

KISHORBHAI BABUBHAI DESAI v. STATE OF GUJARAT
& ANR.*

Prevention of Food Adulteration Act, 1954 (37 of 1954) — Secs. 13(2), 7(1) & 16 — Notice under Sec. 13(2) not addressed to accused though sent to place where accused was doing business and same received by father of accused; held, not a compliance of Sec. 13(2) — Accused has lost a valuable right due to breach of Sec. 13(2), therefore, proceedings vitiated — Conviction set aside.

બાદ્યપદાર્થ ભેળસેળ પ્રતિબંધક અધિનિયમ, ૧૯૫૪ — કલમ ૧૩(૨), ૭(૧) અને ૧૬ — કલમ ૧૩(૨) હેઠળની નોટિસ આરોપીને સંબોધવામાં આવી ન હતી પણ તે આરોપી જે જગ્યાએ ધંધો કરતો હતો ત્યાં મોકલવામાં આવી અને આરોપીના પિતાએ તે સ્વીકારી હતી, ઠરાવવામાં આવ્યું કે, કલમ ૧૩(૨)નું પાલન થયેલ નથી — કલમ ૧૩(૨)નો ભંગ થયો હોવાથી આરોપીએ કિંમતી હક્ક ગુમાવેલ છે, તેથી કાર્યવાહી દુષિત થયેલ છે — આરોપીને તકસીરવાર ઠરાવતો હુકમ રદ થયો.

In the present case, though the intimation is attached with the detailed report, the same has not been sent to the accused. It was the duty of the Food Inspector to send the report to the accused. The accused lost his valuable right, which would vitiate the proceedings undertaken by the prosecution. (Para 11)

It has been held in the case of *Rameshwar Dayal v. State of U.P.*, 1996 SCC (Cri.) 75 by the Apex Court that if there is a breach of compliance under Sec. 13(2) of the Act, a very valuable right given to the accused is vitiated and would cause great prejudice to him. As stated hereinabove, it is an admitted position that the report, though, sent at the address, where the accused was doing his business, was not received by the accused and the same was not addressed to the accused. (Para 12)

It has been held in the case of *Shahniwaj v. State of Himachal Pradesh*, 1990 Cri.LJ 1337 by the Court that if the notice under Sec. 13(2) of the Act is received by the father of the accused, is not a good service of the notice under Sec. 13(2) of the Act. It has been further held that if we presume that the father must have handed over the report to the accused, that would not suffice to establish that the accused has received the same in accordance with the provisions of the Act. It has been held that in such situation, the matter

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