

2013 (0) GLHEL-HC 230393

GUJARAT HIGH COURT

Hon'ble Judges:Ravi R.Tripathi, J.

Gujarat Co-operative Milk Versus Vipulbhai M Chaudhary

LETTERS PATENT APPEAL No. 1413 of 2013 ; *J.Date :- DECEMBER 04, 2013

- [GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961](#) Section - [24\(1\)](#), [27](#), [28](#)
- KERALA CO-OPERATIVE SOCIETIES ACT, 1969 Section - 9
- [CONSTITUTION OF INDIA](#) Article - [19\(1\)\(c\)](#)

GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961 - S.24(1) - S.27 - S.28 - OPEN MEMBERSHIP - NO RIGHTS OF MEMBERSHIP TO BE EXERCISED TILL DUE PAYMENTS ARE MADE - VOTING POWERS OF MEMBERS - KERALA COOPERATIVE SOCIETIES ACT - SECTION - 9, - CONSTITUTION OF INDIA - ART.19(1)(C) - PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC - PETITION STANDS ALLOWED.

Cases Referred to :

1. [Assistant Collector Of Central Excise, West Bengal V. Dunlop India Ltd., 1985 1 SCC 260 : 1985 GLH 25 : 1985 \(154\) ITR 172 : 1984 \(2\) Scale 819 : 1985 AIR SC 330](#)
2. Bank Of Maharashtra V. Race Shipping Transport Company Pvt. Ltd. & Anr., AIR 1995 SC 1368
3. Co-operative Central Credit Bank Ltd. V. Industrial Tribunal, Hyderabad, AIR 1970 SC 245
4. [Jain Merchants Co-operative Housing Society V. Huf Of Manubhai, 1995 1 GLR 19 : 1995 AIHC 2412 : 1995 CTJ 285 : 1994 GLHEL HC 205366](#)
5. Karvanagar Sahakari Griha Rachana Sanstha Maryadit And Others V. State, AIR 1989 Bom 392
6. [State Of Maharashtra And Others V. Karvanagar Sahakari Griya Rachana Sanstha Maryadit And Others, 2000 9 SCC 295 : 2000 \(3\) GLH 191 : JT 2000 \(8\) 68 : 2000 \(8\) Supreme 23 : 2000 \(Supp\) BCR 864](#)
7. State Of Rajasthan V. M:s Swaika Properties, 1985 3 SCC 217
8. [Thalappalam Ser. Co.Op. Bank Ltd. And Others V. State Of Kerala & Ors., 2013 3 GLH 591 : 2013 \(16\) SCC 82 : 2013 \(12\) Scale 527 : 2013 \(11\) Scale 527 : 2013 AIR SCW 5683](#)
9. [Zoroastrian Co.-op. Housing Society Ltd. & Anr. V. District Registrar, Co-operative Societies \(Urban\) And Others, AIR 2005 SC 2306 : 2005 \(3\) GLH 571 : 2005 \(2\) GLR 1530 : 2005 \(10\) GHJ 317 : 2005 \(5\) SCC 632](#)

Equivalent Citation(s):

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2013 JX(Guj) 980 : 2013 GLHEL_HC 230393

JUDGMENT :-

RAVI R. TRIPATHI, J.

1 The matters were mentioned in the morning for priority hearing. The request was granted. The matters are heard.

1.1 Learned Senior Advocate Mr.S.N.Shelat for Nanavati Associates in Letters Patent Appeal No.1413 of 2013, learned advocate Mr.B.S.Patel for learned advocate, Mr.Chirag B. Patel for appellant in Letters Patent Appeal No.1414 of 2013 and learned advocate, Mr.Amit M. Panchal with learned advocate Ms.Shivani S. Rajpurohit for Letters Patent Appeal No.1416 of 2013, are heard.

2 All these Letters Patent Appeals are filed being aggrieved by order passed by the learned Single Judge in SCA Nos.16515 of 2013 and 16594 of 2013. Incidentally, all these Letters Patent Appeals are filed in SCA No.16515 of 2013. The learned Single Judge by common order dated 29.11.2013 is pleased to order as under :

11. Keeping all these questions open, issue RULE in both the petitions which is made returnable on 23.12.2013. Waived by learned Counsel appearing for the respective parties.

12. As far as interim relief in Special Civil Application No. 16515 of 2013 is concerned, earlier, Coordinate Bench of this Court (Coram: Honble Mr. Justice Anant S. Dave) has specifically dealt with the question of calling a meeting of the Managing Committee for considering `Motion of No Confidence against the Chairman of a District Level Society by passing an elaborate judgment dated 1.11.2012 in Special Civil Application No.11351 of 2012 with Special Civil Application No.4087 of 2012 and considering the provisions of the Cooperative Societies Act, 1961, it has been held that in absence of any provisions either under the Act or under the Byelaws, authority has no power to call such a meeting and, therefore, such motion is illegal and accordingly the said `Motion of No Confidence was quashed and set aside. The said judgment has become final. In that case, the motion was made by the Deputy Collector at the instance of some of the Directors. The only difference in the present case is the Managing Director has moved the motion at the instance of few Directors. Therefore, interim relief in Special Civil Application No.16515 of 2013 is concerned, I am of the opinion that, the ad interim relief which has been granted by this Court vide Order dated 25.10.2013 is required to be confirmed. Accordingly, ad interim relief in terms of Para15(E) of the petition granted by this Court, vide order dated 25.10.2013, is confirmed till the final disposal of the petition.

3 So far as Para.13 is concerned, it deals with SCA No.16594 of 2013 and is not relevant for our purpose. The order dated 25.10.2013 is produced at Annexure-B. Relevant part of which reads as under :

6. Having heard learned senior advocate Mr. B.B. Naik with learned advocate Mr. P.S. Champaneri for the petitioner, learned senior advocate Mr. K.S. Nanavati with learned advocate Mr. B.S. Patel for respondent No.3 and learned Government Pleader Mr. P.K. Jani for respondent Nos.1 and 2 on the question of grant of interim relief while issuing notice in the matter, the Court finds that in view of the final view taken

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by this Court in the decision dated 1.11.2012 in Special Civil Application No.11351 of 2012 with Special Civil Application No.4087 of 2012 and in view of the impugned notice at Annexure-C, giving very short period for holding the meeting for No Confidence Motion against the petitioner without reference to any requisition notice, ad-interim relief deserves to be granted in terms of para 15(E). Hence, ad- interim relief in terms of para 15(E) of the petition is granted till 12th November 2013.

2.3 Para.15(E) in the petition reads as under : This Honble Court will be pleased to stay the implementation and further operations of the impugned communication dated 23.10.2013 including agenda of the convening the meeting on 26.10.2013 at 11.00 a.m. at the office of the respondent No.3, Federation for transacting the business enumerated at Item No.1 annexed to the communication Annexure-C in any manner till pending, hearing and final disposal of this petition.

Learned Senior Advocate Mr.S.N.Shelat for the appellant invited attention of the Court to the impugned order passed by the learned Single Judge and submitted that the learned Single Judge was influenced by the span of the activities of the appellant - Federation. Learned Senior Advocate submitted that span of the activities of the Federation cannot be a decisive factor to decide whether a writ petition is maintainable against the Federation or not. However, he submitted that as the SCA is already admitted, he would like to address the Court on the question of grant of interim relief, more so in light of the balance of convenience.

3.1 Learned Senior Advocate for the appellant submitted that the Board of Directors of the Federation consists of 17 members (elected). Learned Senior Advocate further submitted that out of these 17, 14 members have moved a requisition to call for a meeting as they want to table the No Confidence Motion. Learned Senior Advocate submitted that non-suiting the majority of the elected members by an interim relief in a petition, maintainability of which is very much contested more particularly in light of the judgments of the Honble the Apex Court which are though referred to by the learned Single Judge, the learned Single Judge has failed to give due attention to the ratio laid down by those judgments. Learned Senior Advocate submitted that for the present, keeping the issue of maintainability open only because the petition is already admitted, this Court may consider the question of continuing the interim relief granted by the learned Single Judge. In this regard, learned Senior Advocate invited attention of the Court to a decision of the Honble the Apex Court in the matter of Bank of Maharashtra V. Race Shipping Transport Company Pvt. Ltd. & Anr., reported in AIR 1995 SC 1368. Learned Senior Advocate relied upon the observations made by the Honble the Apex Court in Para.10, 11, 12 and 13, which read as under :

10. Since the Writ Petition is still pending in the High Court and the question of maintainability of the Writ Petition has yet to be considered we do not propose to go into the said question. All that we wish to say at this stage is that the objections that have been raised by the appellant-bank against the maintainability of the writ petition are not such that they may be disregarded as lacking in substance. This is a factor which has bearing on the exercise of by the Court while passing the interim order in the writ petition.

11. By the interim order the High Court has directed the appellant-bank to credit a sum of Rs. 95,000/- in the current account No. 318 of respondent No.1. The High

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Court has recorded that respondent through their counsel had given an undertaking to bring back the amount if the Court so desires. The said interim order, in substance, grants the relief which the respondent would have been given at the final stage in the event of their writ petition being allowed by the High Court.

12. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See : Assistant Collector of Central Excise, West Bengal V. Dunlop India Ltd. (1985) 1 SCC 260 at P. 265 : (AIR 1985 SC 330 at P. 333) State of Rajasthan V. M/s Swaika Properties (1985) 3 SCC 217 at P. 224 : (AIR 1985 SC 1289 at P. 1292), Relied on.]

13. In the instant case since there is serious dispute on facts it cannot even be said that a prima facie case had been made out for grant of an interim order in favour of the respondents which enables them to have the reimbursement of the sum of Rs. 95,000/- that was debited to their account in view of the encashment of the cheque in question . We are of the view that this was not a case in which the High Court while admitting the Writ Petition should have passed an interim order giving such a direction. In the circumstances we are unable to uphold the said interim order passed by the High Court.

Learned Senior Advocate for the appellant submitted that it is a trite law that no relief by way of interim relief should be granted by the Court which is in the nature of the final relief and the petition stands allowed at the admission stage.

Learned Senior Advocate next relied upon a decision of the Honble the Apex Court in the matter of Thalappalam Ser. Co.op. Bank Ltd. and Others V. State of Kerala & Ors., reported in 2013 (3) GLH 591. The observations made by the Honble the Apex Court in Para.15 reads as under :

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Cooperative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

Learned Senior Advocate next relied upon a decision of the Honble the Apex Court in the matter of Zoroastrian Co.-op. Housing Society Ltd. & Anr. V. District Registrar, Co-operative Societies (Urban) and Others, reported in AIR 2005 SC 2306. Learned Senior Advocate submitted that the Honble the Apex Court while considering the

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controversy between the parties at length is pleased to observe about the bye-laws of the society in Para.15, 16, 17 and 21 which are as under :

15. Membership in a co-operative society only brings about a contractual relationship among the members forming it subject of course to the Act and the Rules. One becomes a member in a co-operative society either at the time of its formation or acquires membership in it on possessing the requisite qualification under the bye-laws of the society and on being accepted as a member. It is not as if one has a fundamental right to become a member of a co-operative society. But certainly, if the application of one for membership, who is otherwise qualified to be a member under the Act, Rules and the bye-laws of the society, is rejected unreasonably or for frivolous reasons, the person may be entitled to enforce his claim to become a member in an appropriate forum or court of law. This is the effect of the decision in Jain Merchants Co-operative Housing Society V. HUF of Manubhai (1995 (1) Gujarat Law Reporter 19) relied on by the High Court. The said decision does not lay down a proposition, nor can it lay down a proposition, that even a person who does not qualify to be a member in terms of the bye-laws of a society can enforce a right to become a member of that society. It is one thing to say that it is not desirable to restrict membership in a society based solely on religion or sex but it is quite different thing to say that any such voluntary approved bye-law containing such a restriction could be ignored or declared unconstitutional by an authority or a tribunal created under the Act itself. Normally, the bye-laws of a society do not have the status of a statute and as held by this Court in Co-operative Central Credit Bank Ltd. V. Industrial Tribunal, Hyderabad (AIR 1970 SC 245) bye-laws are only the rules which governs the internal management or administration of a society and they are of the nature of articles of association of a company incorporated under the Companies Act. They may be binding between the persons affected by them but they do not have the force of a statute.

16. The validity of a bye-law, that too an approved bye-law, has to be tested in the light of the provisions of the Act and the rules governing co-operative societies. In so testing, the search should be to see whether a particular bye-law violates the mandate of any of the provisions of the Act or runs counter to any of its provisions or to any of the rules. Section 24(1) of the Act only provides for open membership subject to a person, aspiring to be a member, possessing the qualification prescribed by the bye-laws. It is not an open membership dehors the qualification prescribed by the bye-laws. When in Daman Singh this Court held that when a co-operative society is governed by the appropriate legislation it will be subject to the intervention made by the concerned legislation, it only meant that a legislative provision in the Act can be introduced for the purpose of eliminating a qualification for membership based on sex, religion or a persuasion or mode of life. But so long as there is no legislative intervention of that nature, it is not open to the court to coin a theory that a particular bye-law is not desirable and would be opposed to public policy as indicated by the Constitution. The Constitution no doubt provides that in any State action there shall be no discrimination based either on religion or on sex. But Part III of the Constitution has not interfered with the right of a citizen to enter into a contract for his own benefit and at the same time incurring a certain liability arising out of the contract. As observed by the High Court of Bombay in Karvanagar Sahakari Griha Rachana Sanstha Maryadit and others V. State (AIR 1989 Bombay 392) the members have joined the society in accordance with the bye-laws and the members join a housing

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society by ascertaining what would be the environment in which they will reside. It is not permissible for the State Government to compel the society to amend its bye-laws as it would defeat the object of formation of the society. In that case, the society was constituted with the object of providing peaceful accommodation to its members. Though there may be circumstances justifying the State taking steps to meet shortage of accommodation, it was not open to the State Government to issue a direction to the Registrar of Co-operative Societies to direct a cooperative society to make requisite amendments to their bye-laws and grant permission to its members to raise multistoried constructions. In appeal from that decision reported as State of Maharashtra and others V. Karvanagar Sahakari Griya Rachana Sanstha Maryadit and others (2000 (9) SCC 295) this Court while dismissing the appeal stated that it was clear that though a power was conferred on the Registrar to direct amendment of the bye-laws of a society, yet the paramount consideration is the interest of the society. So also, the power of the State Government to issue directions in public interest, could not be exercised so as to be prejudicial to the interest of the society. In the view of this Court, what was in the interest of the society was primarily for the society alone to decide and it was not for an outside agency to say. Where, however, the government or the Registrar exercised statutory powers to issue directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the society. This makes it clear that the interest of the society is paramount and that interest would prevail so long as there is nothing in the Act or the Rules prohibiting the promotion of such interest. Going by Chheoki Employees Cooperative Society Ltd.,s case, neither the member, respondent No.2, nor the aspirant to membership, respondent No.3 had the competence to challenge the validity of the bye-laws of the Society or to claim a right to membership in the Society.

17. It appears to us that unless appropriate amendments are brought to the various Cooperative Societies Acts incorporating a policy that no society shall be formed or if formed, membership in no society shall be confined to persons of a particular persuasion, religion, belief or region, it could not be said that a society would be disentitled to refuse membership to a person who is not duly qualified to be one in terms of its bye-laws.

18 to 20 xxxxx

21. Under the Indian Contract Act, a person sui juris has the freedom to enter into a contract. The bye-laws of a cooperative society setting out the terms of membership to it, is a contract entered into by a person when he seeks to become a member of that society. Even the formation of the society is based on a contract. This freedom to contract available to a citizen cannot be curtailed or curbed relying on the fundamental rights enshrined in Part III of the Constitution of India against State action. A right to enforce a fundamental right against State action, cannot be extended to challenge a right to enter into a contract giving up an absolute right in oneself in the interests of an association to be formed or in the interests of the members in general of that association. This is also in lieu of advantages derived by that person by accepting a membership in the Society. The restriction imposed, is generally for retaining the identity of the society and to carry forward the object for which the society was originally formed. It is, therefore, a fallacy to consider, in the context of cooperative societies, that the surrendering of an absolute right by a citizen who becomes a member of that society, could be challenged by the said member by taking up the

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position that the restriction he had placed on himself by entering into the compact, is in violation of his fundamental right of freedom of movement, trade or right to settle in any part of the country. He exercises his right of association when he becomes a member of a society by entering into a contract with others regulating his conduct vis-à-vis the society, the members constituting it, and submerging his rights in the common right to be enjoyed by all and he is really exercising his right of association guaranteed by Article 19(1)(c) of the Constitution of India in that process. His rights merge in the rights of the society and are controlled by the Act and the bye-laws of the society.

Learned Senior Advocate for the appellant then invited attention of the Court to Bye-law 18.2, which reads as under : 18.2 The Chairperson of the Federation will be elected by the Board for the term of three years and he/she shall continue to hold his/her office till the new Chairperson is elected and takes over. He/She shall be honorary Chairperson. In case the elected Chairperson vacates his/her office before expiry of his/her term or due to any other reason the post of Chairman falls vacant, the Board shall elect the new Chairperson for the remaining term.

The election of the Chairperson will take place in the first Board meeting of the Federation after the expiry of the term of the elected Chairperson or when the Chairpersons post falls vacant. In his/her absence, the meeting shall elect its own Chairperson for that meeting from amongst the eligible members present. The Chairperson in such event shall exercise such power as may be delegated to him by the Board of Directors. The Managing Director of the Federation shall not be entitled to vote and contest the election for the post of Chairperson.

3.7.1 Learned Senior Advocate for the appellant then invited attention of the Court to Bye-law 22, which reads as under :

22. The Board may meet as often as it considers necessary, but it shall meet at least once in every three months.

Last but not the least, learned Senior advocate also invited attention of the Court to bye-law 23, which reads as under :

23. POWERS AND FUNCTIONS OF THE BOARD The entire administration, management and control of the Federation shall be vested in the Board of Directors. The Board of Directors shall have and exercise all such powers and enter into all such agreements made, all such arrangements, take all such proceedings and do all such acts and things as may be necessary or proper for the due management of the Federation and for carrying out objects for which the Federation is established and for securing and furthering its interest subject to the provisions of the Act or such act as shall hereafter take its place and to any Rules which may be passed by the State Government in pursuance of the said Act and subject also to these Bye-laws and/or any Bye-law which may be duly made by the Federation....

Bye-law 23.9 provides as under : To recommend to the General Body, expulsion of any member whose conduct in the opinion of the Board is detrimental to the interest of the Federation by majority of the members present in the meeting.

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3.8 Learned Senior Advocate for the appellant submitted that in view of the aforesaid facts, the learned Single Judge has committed an error in granting the interim relief and continuing the same till final disposal of the petition. Learned Senior Advocate for the appellant submitted that it is true that the learned Single Judge has fixed the final hearing of the matter is fixed on 23.12.2013 but, the experience tells us that there is hardly any possibility of the petition being taken up for final hearing. In that situation, grant of interim relief amounts to allowing of the petition at the admission stage and therefore, the appellant is before this Court and urging this Court to take into consideration the balance of convenience.

4 This Court is of the opinion that the learned Single Judge ought to have considered the aspect of balance of convenience and at the most, ought to have issued direction to the appellant to defer the implementation of the resolution, if passed against the chairperson.

5 In view of the above, all these Letters Patent Appeals are Admitted. ORDER ON CIVIL APPLICATIONS Rule.

The interim relief granted by the learned Single Judge is modified to the extent that it will be open for the appellant Federation to convene the meeting and transact the agenda item in Agenda dated 23.10.2013 and place the same before this Court. It will be open for the appellant - Federation to take all necessary and required steps. The same shall not be implemented without prior permission of this Court.

Direct service is permitted today.

It will also be open for the learned advocate for the appellant to effect direct service by Regd. Post A.D. in addition to the regular mode of service.

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