
(2004) 03 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 6777 of 1993

Amreli District Central Co-Operative Bank Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Constitution of India, 1950 — Article 225

Gujarat Co-operative Societies Act, 1961 — Section 74(C), 85, 86

Citation : (2004) 03 GUJ CK 0023

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Tushar Mehta, for the Appellant; Harsha Devani, A.G.P. for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—In this petition, under Article 225 of the Constitution of India, the challenge is against the show-cause notice dated 9th March, 1993, issued by the District Registrar, in exercise of the purported statutory powers u/s 86 of the Gujarat Cooperative Societies Act, 1961, on the premise of certain irregularities and breach of the regulations committed by the petitioner-Society.

2. The petitioner is a Cooperative Society ("Society") registered under the provisions of Gujarat Cooperative Societies Act, 1961 ("Act"). It is a specified society within the scheme of Section 74-C of the Act. It is engaged in the business of banking and is an Apex Society for the District of Amreli. The petitioner-Society is, also, having other Cooperative Societies as its members and, therefore, the petitioner-Society is a Federal Society, as defined under the provisions of the Act. This is the position and status of the petitioner-Society as stated and alleged by the petitioner.

3. Respondent No. 3, District Registrar, by notice dated 9th March, 1993 has initiated proceedings preceded by the show-cause. The show-cause notice is challenged by the petitioner on the ground that the proceedings u/s 86 of the Act

had been initiated and concluded; and, therefore, the second show-cause notice is bad in law. The learned Advocate appearing for the petitioner-society has relied on the decision of this Court rendered in Gujarat State Cooperative Marketing Federation Limited Vs. V.H. Parekh and Anr. 1995 (1) G.L.R. 857, (Coram: J.N. Bhatt, J.). In that, it has been contended that the District Registrar is a Member of the Society and, therefore, he cannot initiate any inquiry u/s 86 when he himself is a Member of the Board of the Directors. It has further been contended that the District Registrar, being one of the Directors of the Board of Director, is debarred from initiating actions against the petitioner-Company.

5. Ms. Devani, learned Assistant Government Pleader, has appeared. Affidavit-in-reply or written objections are not filed.

6. After having taking into consideration the submissions and the facts emerging from the record of the present case, it becomes clear that earlier show-cause notice u/s 86 of the Act had been issued by the District Registrar. Thereafter, an Inquiry Officer was appointed, who had submitted his report dated 23rd March, 1992. The petitioner-Society preferred a Revision Application, being No. 488 of 1992, which came to be allowed on 30-06-1992. Thus, second notice, on the same cause of action and ground, where issues had become concluded and decided finally, had been issued. Obviously, therefore, this contention is advanced on behalf of the petitioner-Society, that the second show-cause notice on the same ground is illegal, and, therefore, is required to be quashed.

7. This submission is quite weighty and supportable from the record and analogous principles of res judicata that when the matter has reached finality, it cannot be allowed to be reopened. This Court is satisfied that earlier proceedings, against the petitioner-Society, initiated by respondent No. 2-District Registrar by issuing show-cause notice u/s 85 of the Act, came to be concluded and had attained finality and, therefore, two show-cause notices on the same ground is not legal and permissible and, therefore, on this sole ground, the petition is required to be allowed. The petition is, therefore, allowed. Rule made absolute without any order as to costs.