

(2011) 05 GUJ CK 0121
In the Gujarat High Court

Case No : Special Civil Application No. 3730 of 2011

Banaskantha District Co-op. Union Ltd.	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 GLH 1707 : (2011) 2 GLR 1707 : (2011) 8 RCR(Civil) 151

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Dipen A. Desai, for the Appellant; K.P. Raval, AGP for Respondents 1-3 and V.C. Vaghela, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Rule. Shri K.P. Raval, learned AGP waives service of notice of Rule on behalf of Respondent Nos. 1, 2 and 3 and Shri V.C. Vaghela learned advocate waives service of notice of Rule on behalf of the Respondent No. 4. Rule is fixed forthwith at the request of the learned advocates appearing for the parties.

2. The Petitioner, a registered cooperative society has approached this Court under Article 226 of the Constitution of India, challenging the orders dated 10.03.2011 passed by Respondent No. 1 confirming the order dated 22.10.2010 passed by Respondent No. 2, where under the appeal of Respondent No. 4 was allowed and the order of District Registrar, Cooperative Societies, Banaskantha, an amendment in the bye-laws, dated 26.03.2010 was quashed and set aside.

- 3. The facts in brief leading to filing of this petition deserves to be set out as under.

4. The Petitioner society, with a view to carry out the statutory mandate embedded in provision 74(B)(B) for providing representations to women in the committee of the society. The society's bye-laws prior to the amendment

provided for nomination of two women individual members by way of reservation in the committee, instead thereof an amendment was proposed to provide for reservation to three from amongst individual members in the committee. The bye-law number 24(9) and 24(11) were thus required to be amended suitably. The bye-law No. 24(9) was required to be amended. The agenda item came to be circulated for the meeting to be held on 29.06.2009. In the said agenda item of the meeting to be held on 29.06.2009, item No. 5 was in respect of amendment in the bye-law so as to provide for representation to women individual members. The said agenda item was also forming part of the annual report for the year 2008-2009. The copy of the proposed bye-law in a tabular form is produced at page 37 and it is averred in the oath of the memo of the petition that this copy along with the agenda were sent to individual members under certificate of posting and those documents indicating posting to members are produced on record. Pursuant to the said agenda, annual general meeting of the society was held on 29.06.2009, wherein the resolution was passed, as proposed amendment. After resolving to amend the bye-laws, the requisite proposal was sent to the concerned authority namely Respondent No. 3 for according his approval. The said bye-laws came to be approved by the competent authority vide his order dated 26.03.2010, however the approval granted, did not reflect the exact amendment which was proposed and resolved. The change and modification was at the end of Registrar without it being notified to the society. The change was to the effect that instead of three members as proposed, the Registrar while approving the bye-laws reduced it to two women members out of originally four individual members in the original bye-laws as proposed contained amendment so as to elect five life time individual members out of which three women members were to be given representation, whereas the approved amendment reflected it to four, election of life time members out of which two members were to be women members. This approval was accepted by the society as no protest at all was registered by the society and society, therefore, was not aggrieved at all by not notifying the society for changing the proposal of bye-law and approved the changed bye-law. The present Respondent No. 4 who happen to be individual member of the society preferred an appeal u/s 153 of the Gujarat Co-operative Societies Act, 1961 ("the Act" for short), inter alia contending that the bye-law as proposed ought not to have been approved as the mandatory requirement of Section 13 and Rule 6 had not been complied with. The appeal was preferred on 07.09.2010, meaning thereby after the prescribed period for filing appeal and hence a prayer for delay condonation was also made. The Appellate Authority after recording reasons indicating non compliance, accepted the appeal and quashed the order according approval dated 26.03.2010. Being aggrieved and dissatisfied with the said order of the Appellate Authority made on 22.10.2010, preferred Revision Application u/s 155 of the Act and the Revisional Authority did not accept the revision and confirmed the order dated 22.10.2010. Being aggrieved and dissatisfied with this, the present petition is preferred for the reasons stated in the memo of the petition.

5. Learned advocate appearing for the Petitioner contended that the grounds urged on behalf of the Respondent No. 4 before the Appellate Authority as well as the Revisional Authorities do not indicate anywhere as to what prejudice is caused on account of order of approving amendment to the individual member. The so called illegality pleaded and said to have been proved would not constitute prejudice, as it is and therefore, the individual member in the first instance could not have maintained the appeal, challenging the decision of the Registrar dated 26.03.2010, which society has accepted as it is.

6. Learned advocate for the Petitioner invited this Court's attention to the documents and averments made on oath indicating that the agenda item when was sent to the individual members containing accompaniment of proposed amendment, though the agenda item itself is containing only narration, the details are not mentioned in the agenda item. The accompaniment which is produced at page No. 37 on the record, is forming part and partial of the communication sent to individual members. Learned advocate for the Petitioner, therefore, contended that the findings with regard to non compliance of the provision of Section 13 and Rule 6 of the Act are not based upon the record available with the authorities and therefore the same cannot be sustained.

7. Learned advocate for the Petitioner thereafter contended that assuming for the sake of argument that the accompaniment of agenda, if not said to have been sent and the agenda item as it is not explicit enough to denote the real purpose of proposed amendment, then also nobody prevented members including Respondent No. 4 for remaining present and registering his obligation to the said proposed amendment. The proposed amendment had been passed unanimously in the meeting held on 29.06.2009. The individual member, Respondent No. 4, therefore, was not justified in belatedly filing appeal on so called irregularities or defect in notifying agenda of proposed amendment.

8. Learned advocate appearing for the Respondent No. 4 contended that the Court under Article 226 of the Constitution of India, may not disturb the finding of facts recorded by two authorities concurrently. The concurrent finding of fact with regard to non compliance of the mandatory provision of Section 13 and specifically provision of Rule 6 of the Gujarat Co-operative Societies Rules, cannot be disturbed by this Court, in a petition filed under Article 226 of the Constitution of India. The Rule 6 specifically provides that due notice of any proposal for altering, abrogating or amending of the bye-law is to be given to all the members of the society in accordance with the bye-laws of the society. Learned advocate for the Respondent No. 4, therefore contended that the authorities have recorded findings with regard to non compliance as agenda item produced in the annual report in the year 2008-2009, did not contain sufficient notice to all the members with regard to the contents of bye-laws and the change proposed to be made in the bye-laws. This amounts to non compliance or deliberate omission on the part of the Petitioner and therefore, the authorities were justified in quashing the order according approval to the bye-laws.

9. Learned advocate for the Respondent No. 4 invited this Court's attention to the agenda item and submitted that reading of the agenda item itself would show that the said agenda item did not contain any details of the bye-laws proposed to be amended. The amendment proposed is required to be brought to the notice of all the members and therefore, the item No. 5 in the agenda of the meeting of 29.06.2009 cannot be said to be due notice to all the members of the proposed amendment in bye-laws. Therefore, individual member has legitimate right to seek redressal of the grievances, as proposed bye-laws is having effect of inflating the voter lists so as to still march over rival fraction of the members who are not supporting the present managing committee. The reduction in membership fees, so far as the women are concerned that is also not being specifically invited and therefore, the proposed amendment in the bye-laws came to be approved without appreciating these things and therefore the same should have been quashed and is rightly quashed.

10. Learned advocate appearing for the Respondent No. 4 further submitted that the District Registrar while passing the order dated 26.03.2010 has not accepted the amendment as proposed by the society and when the proposed amendment is not approved as it is, then he was under obligation to notify it to the society and in turn society was required to put it before the members. The entire exercise is, therefore, not in accordance with law, hence it is rightly quashed and set aside.

11. I have heard learned advocates appearing for the parties and perused the orders impugned. The entire scheme of the cooperative society and the rights conferred upon the society under the Act are required to be constantly borne in mind while adjudicating upon the disputes arising out of operation and function of the society. The entire scheme of the cooperative society would inform all and one unequivocally that certain rights are conferred upon the society and certain rights are conferred upon individual members. There are rights which are to be exercised collectively. There are rights which are to be exercised exclusively by the society. There are rights which are to be enforced at the behest of the society and there are rights which are available to the members against the society. Without appreciating this scheme of rights as embedded in the Gujarat Cooperative Societies Act, one cannot undertake task of adjudicating the disputes arising from functions and operations of the Cooperative Societies Act. In the instant case, the plain language of Section 13 indicate clearly that the societies' requirement of amendment in the bye-law needs to be in-consonance with the provision of law and it should be by general body of the society. Section 13 do not contain any other restrictions whatsoever upon the societies' right to amend its bye-laws. The societies' bye-law are to be amended by the provision of law namely the procedure laid down under the law. In case, if, the resolution of the society is not in-consonance with the scheme of the Act or prevalent law, then the remedy is also provided under the Act. In the instant case, the restrictions embedded in Section 13 upon Registrar, is that he has to hear the society, in case, if he is inclined to refuse registration of the amendment. In

other words it can well be said that the Registrar has no other active role to play so far as the amendment in the bye-law is proposed and sent to him for his approval. The Registrar has to only look at the bye-law and examine as to whether the proposed amendment in the bye-laws is not in contrary to the provision of the Act or Rules and after satisfying himself about the same he may register it and in case, if he is not inclined to register the same on account of it being not in consonance with the provisions of Act and Rules in that case only he is to call upon "the society" for affording it them an opportunity of being heard as to why the bye-laws should be registered. In other words one can say that according the approval of the bye-law not strictly as proposed, if capable of being factor of aggrieving, then that aggrieving party should be society and not the individual member. The individual member, if aggrieved by the approval to the proposed bye-law in a modified form, then he has remedy for mustering support of the members and urging the managing committee to challenge the same. The individual members, if is aggrieved by the proposed change which according to him is contrary to law, then even he can file appeal as provided u/s 153 of the Act, therefore what is required to be looked into by the authorities is whether the bye-law is in-consonance with Act or not. The appeal as envisaged u/s 153 of the Act is an appeal against the order made u/s 13 of the Act, but that in itself cannot be so construed as opening of the entire scope of examining the issues with regard to non compliance of other provisions. Assuming for the sake of examining this argument that it was open to the individual members to challenge the according of approval on all the grounds then it will lead to a situation where no society would be in a position to function as an individual member dehoars the society's resolution without having it set aside, take out remedy which will end into a chaotic situation which cannot be handled by anyone.

12. The Court has not conclusively opined in this judgment as to whether individual has right to challenge the decision of Registrar u/s 13 of the Act by way of Appeal u/s 153 of the Act, as the matter is capable of being decided on issues without finally pronouncing upon individual rights to file Appeal u/s 153 of the Act for examining this matter. It is accepted that individual has limited right to file Appeal against the amendment which absolutely contrary to the law. This Court has not decided at this stage, the individual member's right to challenge the granting of approval to bye-law on the ground that the said bye-law is contrary to the provision of law. The Court is of the prima facie opinion that illegality can always be challenged by individual upon following of law u/s 153 of the Act that the bye-law approved, is contrary to the provisions of law of Cooperative Societies Act as well as any other law prevalent as no one has right including the managing committee of the society to frame a bye-law or amend the bye-law which may be contrary to provision of any law including law of Cooperative Societies Act. The question, therefore, arises as to whether the individual has any right to challenge the bye-law approved by the Registrar at the request of society, though the same may not in the perception of the individual member be in the interest of society. The answer would be in negative,

however, if the said bye-law is capable of being challenged on account of it being bye-law illegal, then the managing committee and/or majority of the member also cannot lend any legality to such bye-law and depriving the individual member for voicing his grievance against such an action by observing that he has no right u/s 153 of the Act, would amount to render may remediless, therefore, the Court at this stage need not go into the maintainability of the Appeal by an individual member on this question and Court has not opined on the aspect of the maintainability of the Appeal u/s 153 of the Act, challenging the order of approval granted by the learned Registrar in exercise of the power u/s 13 of the Act. This issue is kept open, as the matter is being capable of decided without expressing any opinion on this aspect.

13. Against the aforesaid backdrop, now let us examine the contentions raised by learned advocate for the Respondent No. 4 who admittedly have not protested when the resolution came to be passed, pursuant to the agenda item in the meeting dated 29.06.2009. The resolution is explicitly clear which reflects the amendment in the bye-law. Learned advocate for the Respondent No. 4 is not unjustified in arguing that the item No. 5 is cryptic and did not denote adequately the purport of amendment or the details of amendment but that alone, in my view, would not be considered to be so sufficient as to disturb the approval when the general body meeting approved the bye-law and the resolution shows details by the Respondent No. 4 being really aggrieved by such a situation or a proposed amendment, then nothing prevented him from participating in the meeting and lodging his protest against the same. The protest, which is sought to be made out before the authority is in respect of lack of appropriate notice to the members in respect of the details of the proposed amendment, then in the case item No. 5 in the agenda, would be sufficient enough to put him in guard, that there is a proposal for amendment so as to give representation to women and in the case had he been so vigilant and conscious he could have remained present and protested against the same. The resolution could have been challenged by him in appropriate forum. As he has not done either of the things, now at a belated stage filing of the appeal bearing coming elections in mind, would indicate that this was an attempt to throw spanner in the wheel otherwise it was running smoothly. Therefore, in my view this petition is required to be allowed. The orders of authorities are bereft of merits as the authorities have not appreciated this aspect and gone on technicality without recording reasons as to why the society should not be believed that the agenda item along with annexures was sent. The petition is required to be allowed.

14. The impugned orders are based upon only the agenda item and has proceeded as if there is no enough notice and proposed amendment to the members. The members, therefore, could have challenged the resolution in fact which contain in detail the proposed amendment which was conferred into the resolution of the society in its general body meeting. Such a resolution has not been challenged by any member including the present Petitioner, would have been sufficient ground for rejecting the Appeal as well as the Revision, would

have been sufficient ground for holding against the present Respondent No. 4. The order in the Appeal could not have been, therefore, made quashing the approval. The approval is inconsonance with the law laid down in respect of reserving two sets in the managing committee for women and the Respondent No. 4 being not in any way indicating any likely prejudice cannot be permitted to through spanner in the wheel by way of belated Appeal, challenging the said approval. At this stage, it is required to be noted that the prejudice is sought to be indicated in the submission is not itself effect of increasing the voters list, as the fees for lady member is reduced from Rs. 500/- to 100/-. This, in my view, cannot be a ground for resisting the amendment. The reduction of the fees is clearly mentioned in the resolution and fact remains to be noted that when the resolution itself is not challenged, there is no scope for disturbing the said bye-law subsequently on a specious ground that the society was not heard while according approval with slight modification. The Court hasten to add here that the requirement of law is that Registrar if is interested in making any change or modifying the proposed amendment, then he has to here the society but in the instant case society has not made any grievance and it was accepted the amendment as approved, which is slightly different, than the original proposed amendment but that in itself would not faced the Respondent No. 4 with any right to challenge the same in absence of any prejudice likely to be caused to him. The inflation of the voter list have farfetched not germen to the real challenge and hence on this count also the petition is required to be allowed. The orders impugned are required to be quashed and set aside.

15. The orders impugned namely order dated 22.10.2010 passed in Appeal No. 320/2010 and order dated 10.03.2011 passed in Revision Application No. 289 of 2010 are quashed and set aside. Rule is made absolute. No costs.