

(1980) 09 GUJ CK 0010
In the Gujarat High Court

B.B. Shroff and Another

APPELLANT

Vs

Sardar Bhilandwala Pardi People"s Co. Op. Bank Ltd.

RESPONDENT

Date of Decision : 11-09-1980

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 13(2), 13(2)

Citation : (1981) 22 GLR 805

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Judgement

P.D. Desai, J.—Rule to be heard today. Mr. V.C. Desai waives service of the Rule on behalf of the first respondent and Mr. M.I. Hava waives service of the Rule on behalf of the second and third respondents.

2. The question herein relates to the validity of an order dated April 23, 1979 made by the second respondent u/s 13(2) of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the "Act") registering the amendment of the by-laws of the first respondent cooperative Society, which has been confirmed by the order dated May 29, 1980 passed by the third respondent by dismissal of the appeal preferred against the said order by the petitioner Society.

3. Section 13(1) provides that no amendment of the by-laws of a society shall be valid until registered under the Act. For the purpose of registration of an amendment of the by-laws, a copy of the amendment passed in the manner prescribed, at a general meeting of the society, is required to be forwarded to the Registrar. Sub-section (2) provides that if the Registrar is satisfied that the amendment so forwarded is not contrary to the Act or the rules, he may register the amendment, provided that no order refusing to register the amendment shall be passed except after giving the society an opportunity of being heard. Under Sub-section (3), when the Registrar registers an amendment of the by-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of its registration. Sub-section (4) requires the Registrar, when he refuses to register an amendment of the by-laws of a

society, to communicate the order of refusal, together with his reasons therefore, to the society.

4. On a bare perusal of the statutory provisions, it would appear that the power of the Registrar to register an amendment is to be exercised upon his being satisfied that the proposed amendment is not "contrary to this Act or the rules". If the proposed amendment is contrary to the provisions of the Act or Rules-and this requirement necessitates taking into consideration all the provisions of the Act or Rules the Registrar will have no power to register the amendment.

5. Section 4 is a pivotal provision in the Act. It provides that a society, which has as its object the promotion of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles, or a society established with the object of facilitating the operations of any such society, may be registered under the Act. The proviso to the said section, which is material, reads as under:

Provided that it shall not be registered if, in the opinion of the Registrar, it is economically unsound, or its registration may have any adverse effect upon any other society, or it is opposed to, or its working is likely to be in contravention of public policy.

(underlining supplied)

It would appear, therefore, that only such society can be registered under the Act which is to function on co-operative principles and the registration of which, in the opinion of the Registrar, will not have an adverse effect upon any other society. This provision, which has been enacted to apply at the stage of registration of a society, is relevant even at the stage of considering the question whether to register an amendment of the by-laws of a society, by reason of the provisions of Section 13(2). If it is found, therefore, upon examination of all the relevant facts and circumstances of a given case, that the registration of an amendment of the by-laws of a society whereunder, for example, the area of operation of the society is to be extended, is likely to undermine the co-operative principles or to have an adverse effect upon any other society, such amendment could not possibly be said to be in accordance with the Act or, to put it negatively, not contrary to the Act and, therefore, the Registrar cannot possibly grant registration to such an amendment.

6. In the instant case, the petitioner society is a banking co-operative society and so is the first respondent society. The grievance of the petitioner-society is that by registering the amendment of the by-laws, which extends the area of operation of the first respondent society to the area in which the petitioner-society is already operating, there will be unhealthy competition. This is a relevant aspect to be considered, if true. The attention of the authority registering the amendment was required to be focussed upon this aspect of the matter and the decision with regard to registration of the amendment of the by-laws could only have been arrived at after it was found, upon investigation of all

the relevant facts and circumstances, that the registration of the amendment of the by-laws extending the area of operation is not likely to have an adverse effect upon the petitioner-society and to undermine the co-operative principles in general. The order of the original authority being not before me, it is not possible to ascertain whether this perspective was kept in mind. The order of the appellate authority does not disclose that this perspective was present to its mind. Under the circumstances, the conclusion is inevitable that the power with regard to registration of the amendment of the by-laws is exercised without applying mind to the most relevant aspect and to the fundamental questions which were required to be taken into account.

7. Under the circumstances, both the order dated April 23, 1979 and the order dated May 29, 1980 are quashed and set aside. The second respondent will consider afresh the question of registration of the amendment of the by-laws of the first respondent-Society, in accordance with law and in the light of the observations made in this judgment. Having regard to the fact that the petitioner-Society is seriously contesting the proposed amendment of the by-laws of the first respondent-Society, it would be in the interest of justice to direct the second respondent to afford to the said Society an opportunity of being heard before arriving at a final decision. Rule made absolute accordingly with no order as to costs.