
(1999) 03 GUJ CK 0064
In the Gujarat High Court

Bhadreshkumar Ramanlal Patel and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Co-operative Societies Act, 1961 — Section 145, 145F, 145R, 145S, 145U

Penal Code, 1860 (IPC) — Section 505

Citation : (1999) 3 GLR 2549

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—The petitioners by this Special Civil Application under Article 226 of the Constitution are challenging the legality, validity and propriety of the action of the respondent No. 2 of refusing to take action u/s 145-F of the Gujarat Co-operative Societies Act, 1961 against the respondent No. 5.

2. The petitioners are the agriculturists having their agricultural lands at village of their native places disclosed in the cause title of the petition. The petitioners are the members of the respondent No. 4-Co-operative Society. The election of the Board of Directors of the respondent No. 4-Society was held recently and result thereof was declared in December, 1998. On 6th January, 1999 after election of the new Board of Directors, meeting of the newly constituted Board of Directors was held. The petitioners first time learnt by an advertisement in the Gujarat Samachar in its daily edition of 7-1-1999 that the respondent No. 5 functions as the Manager of the Milk Society. The respondent No. 5 is the member of the Board of Directors of the respondent No. 4-Society. On 17th January, 1999, the petitioners raised the objection that the respondent No. 5 is functioning as the Manager of the Milk Society, cannot continue as member of the Board of Directors of the respondent No. 4-Society. On 8th January, 1999, the petitioner submitted an application making this complaint to the respondent No. 3. On 11th January, 1999, the petitioners submitted another application to the respondent No. 3 pointing out that the election of respondent No. 5 as Vice-

Chairman of respondent No. 4 is illegal since he has incurred disqualification to continue as such in view of the provisions as contained in Section 145 of the Act. The respondent No. 3 vide its letter dated 15th January, 1999 called upon the petitioner No. 1 to remain present in its office on 23rd January, 1999 at 16-00 hours with the evidence to show as to how the respondent No. 5 is not qualified to continue as member of the Board of Directors of the respondent No. 4-Society. The respondent No. 5 submitted its reply to this notice on 2nd February, 1999 before the respondent No. 3. The respondent No. 3 vide its communication dated 25th February, 1999 in-formed that the application submitted by the petitioners dated 11th January, 1999 was considered and since the subject-matter of the application being one of the election dispute, the petitioners may approach to the Tribunal within time-limit and may obtain the appropriate relief. The petitioner instead of filing election petition in the matter filed this Special Civil Application before this Court.

3. Learned Counsel for the petitioner contended that this Order of the respondent No. 2 is wholly arbitrary and unjustified. It is a case where the respondent No. 5 has incurred disqualification to continue as member of the Board of Directors of the respondent No. 4-Society and by virtue of the provisions as contained in Section 76-B and Section 145-F of the Act, 1961, the respondent No. 2 should have declared him to be disqualified to hold the office. It has next been contended that the representation has been made by the petitioners to the respondent No. 3 and the respondent No. 3 has called upon them for hearing but the Order has been passed by the respondent No. 2 which is contrary to the basic principles of natural justice.

4. I have given my thoughtful consideration to the submissions made by the learned Counsel for the petitioner.

5. To appreciate the contentions raised by the learned Counsel for the petitioner, first of all I consider it to be appropriate to have a glance at the relevant provisions of the Act, 1961.

Section 76-B of the Act, 1961 reads as under:

Removal of office:- (1) If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the Rules or the bye-laws or does anything which is prejudicial to the interest of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by Order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.

(2) The Registrar may, by Order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years

from the date of the Order and such officer shall stand disqualified accordingly.

Section 145-F of the Act, 1961 reads as under:

Disqualification for membership: - (1) A person shall be disqualified for being elected, as, and for being a member of the committee of any specified society:

(a) If he is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office under the society declared by the State Government by general or special Order not to disqualify its holder;

(b) If he has been convicted of an offence punishable u/s 153A or Section 171F or Sub-section (2) or Sub-section (3) of Section 505 of the Indian Penal Code (XLV of 1860) or u/s 145R or clause (a) of Sub-section (2) of Section 145S of this Act, unless a period six years has elapsed since the date of his conviction;

(c) If he has been convicted by a Court in India for any offence and sentenced to imprisonment for not less than two years, unless a period of five years has elapsed since his release;

(d) If he is found guilty of a corrupt practice under this Chapter by the State Government unless a period of six years has elapsed since the date on which the decision of the State Government take effect;

(e) If he is also disqualified by or under any other provision of this Act.

(2) Any salaried employee of a society who was a member of the committee of a specified society immediately before the commencement of the Gujarat Co-operative Society (Amendment) Act, 1981 (Gujarat VI of 1981) shall not be disqualified, and be deemed never to have disqualified, under clause (a) of Sub-section (1), if he was at that time holding any office saved from disqualification under the said clause (a) and shall continue to be such member for such period or subject to such term and conditions for which or on which he would have otherwise continued as such member; and anything done or any action taken by such person shall be deemed to be duly done or taken and the committee shall be deemed to be properly constituted, and such thing done or action taken shall not be called in question in any Court or authority on the ground only that the committee was not properly constituted or that the person was disqualified to continue as a member.

(3) Notwithstanding anything contained in Clause (b) or (c) of Sub-section (1), disqualification under either clause shall not, in the case of a person who on the date of the conviction is a member of any specified society, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence until that appeal or application is disposed of by the Court.

Section 145U of the Act, 1961 reads as under:

Disputes relating to elections to be submitted to the (Tribunal) :-(1) Notwithstanding anything contained in Section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the (Tribunal).

(2) Such reference may be made by an aggrieved party by presenting an election petition to the (Tribunal).

Provided that no such petition shall be made till after the final result of the election is declared and where any such petition is made it shall not be admitted by the (Tribunal) unless it is made within two months from the date of such declaration :

Provided further that, the (Tribunal); may admit any petition after the expiry of that period, if the petitioner satisfies the (Tribunal) that he had sufficient cause for not preferring the petition within the said period.

(3) In exercising the functions conferred on it by or under this chapter, the Tribunal shall have the same powers as are vested in a Court in respect of:

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling discovery or the production of documents, and

(d) Issuing commissions for the examination of witnesses.

In the case of any such affidavit, an officer appointed by the (Tribunal) in this behalf may administer the oath to the deponent.

(4) (Subject to any regulations) made by the (Tribunal) in this behalf, any such petition shall be heard and disposed of by the (Tribunal) as expeditiously as possible. An Order made by the (Tribunal) on such petition shall be final and conclusive and shall not be called in question in any Court.

6. In this Special Civil Application the point arises for consideration of this Court is as to whether for the disqualification which the respondent No. 5 alleged to have incurred he can be removed from the office of the Vice-President of the society as well as its member and for which the remedy is to be taken u/s 76-B of the Act, 1961 or a remedy of filing an election petition.

7. Section 76B of the Act provides for removal of the member from the office of the society. This provision empowers the Registrar of the co-operative society, in his opinion if any officer found defaulter can disqualify by or under the Act. The Registrar after giving an opportunity of being heard, by Order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy occurred by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have hold if the vacancy had not occurred. It is the contention of the learned Counsel for the petitioner that the Registrar should have exercised

its power u/s 76B of the Act, 1961 as the respondent No. 5 stands disqualified under the Act and should have been removed from office rather than to relegate the petitioner to the remedy of the election petition. In his submission in case the respondent No. 5 would have been removed u/s 76B of the Act, 1961 he would have incurred further disqualification to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding 4 years from the date of the Order. In case the remedy of the election petition would have been resorted to by the petitioners in this case the election of the respondent No. 5 would have been declared to be illegal and he would have been Ordered to be removed from the office of the respondent No.4 but it would not have been incurred further disqualification as provided under Sub-section (1) of Section 76B of the Act, 1961.

8. It is not the case of the petitioner that the alleged disqualification has been incurred by the respondent No. 5 after he was elected as the member of the Board of Directors of the respondent No. 4-Society. If we go by the pleadings of the petitioner in this Special Civil Application coupled with the fact that it is also not the contention of the learned Counsel for the petitioner that the respondent No. 5 has incurred disqualification as alleged against him, after his election as the member of the Board of Directors of the Society. The only inference falls from that is that he was already disqualified to contest election for the member of the Board of Directors of the respondent No. 4-Society. The first meeting of the Board of Directors was held on 6-1-1999 and if we go by the facts of this petition, the petitioners came to know about this disqualification of the respondent No. 5 on 7-1-1999. From Section 145F of the Act, I find that if what the petitioners are alleging against the respondent No. 5 is correct then the respondent No. 5 shall be disqualified from being elected as and for being a member of the Committee of the specified society. It is not in dispute that the respondent No. 4 is a specified society and the respondent No. 5 is a salaried employee of a society other than the society of the employees themselves. The Section 145-U provides remedy for adjudication of the disputes relating to election of the specified society. Dispute relating to the election of the specified society has to be referred to the Tribunal. As stated earlier, in case the respondent No.5 was already suffering from this disqualification for being elected as and for being a member of the Committee of the specified society and this dispute, there cannot be two views, relates to election and the remedy for the petitioners in this matter would have been only to file election petition before the Tribunal in view of the provisions of Section 145-U of the Act. The approach of the Registrar in this case not to entertain the complaint of the petitioners made against the respondent No. 5 and to observe that only election petition is appropriate remedy cannot be said to be arbitrary or perverse or contrary to the provisions of the Act, 1961. If we go by the provisions of Section 76B of the Act, 1961, coupled with the dispute raised by the petitioners relating to an election of the member of the Board of Directors of the respondent-society and the provisions of the Section 145U of the said Act in case where the member of the

Board of Directors of the Society was already disqualified for being elected as and for being elected as member of the Committee of any specified society this case will certainly not fall within four corners of Section 76B of the Act. It is not the case of the petitioner nor the contention of the learned Counsel for the petitioner before this Court that the dispute which has been raised by the petitioners against the respondent No. 5 does not relate to any election. So this is not in dispute that the complaint made by the petitioners against the respondent No. 5 before the District Registrar is in respect of a dispute relating to election of a person as a member of the Board of Directors of the specified society and the fact that the respondent No. 5 was already suffering from this disqualification earlier to the date of filing of his nomination, the only appropriate and available remedy for decision or/and the adjudication of this dispute is as provided u/s 145U of the Act, 1961. A conjoint reading of Sections 76B and 145U of the Act, 1961 gives out that these provisions work and operate in altogether two different and distinct fields. Though dividing line of the jurisdiction of the authorities under Sections 76B and 145U of the Act, 1961 may be thin but it clearly remarks the scope of the jurisdiction of the authorities under these two provisions to be exercised. Section 76B of the Act, 1961 is very specific and clear and only in case where after election a member of the Board of Directors of the specified society incurs any disqualification to continue as a member, the power vested with that authority to remove that member from the office. But, where the person who has been elected as a member, was not qualified to contest the election for the office of the member of the Board of Directors of the society and but still his nomination was accepted and he has been elected then only remedy available to the aggrieved party is to file an election petition before the Tribunal as provided u/s 145U of the Act, 1961. In view of this position of the law and the facts of this case the District Registrar has not committed any illegality whatsoever in passing of the impugned Order.

9. In the result, this Special Civil Application fails and the same is dismissed.