(2016) 12 GUJ CK 0037

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1460 of 2016 in Special Civil Application No. 21053 of 2016 with Civil Application No. 13013 of 2016

Bhavanbhai Bharabhai Bharwad APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 23-12-2016

Acts Referred:
Gujarat Agricultural Produce Markets Act, 1963 — Section 17-A

Citation : (2017) 2 GCD 919 : (2017) 2 GujLH 22

Hon'ble Judges : Mr. R. Subhash Reddy, CJ. and Mr. Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Mr. S.I. Nanavati, Sr. Advocate with Mr. Dipen Desai, Advocate, for the Appellant No. 1; Mr. P.K. Jani, Additional AG, for the Respondent No. 1; Mr. Mihir Thakore, Sr. Advocate with Mr. Parthiv B. Shah, Caveator, for the Respondent Nos. 5 - 6; Mr. V.C. Va

Final Decision : Dismissed

Judgement

Mr. R. Subhash Reddy, C.J. (Oral)—This Letters Patent Appeal is filed under Clause 15 of the Letters Patent, by the original petitioner in Special Civil Application No.21053 of 2016 aggrieved by the order of the learned Single Judge dated 20/12/2016. By aforesaid order, the learned Single Judge has dismissed the petition.

2. The appellant herein is elected as member of the Agriculture Produce Market Committee ("APMC" for short), Ahmedabad on 22/01/2015. Further, he was elected as Vice-Chairman on 20/02/2015. Since then, he is continued as such.

3. The Gujarat Agricultural Produce Markets Act, 1963 ("the Act" for short) is amended by amending Act No.14 of 2015, by which Section 17A is inserted giving powers to remove Chairman and Vice-Chairman of the Market Committee by way of No Confidence Motion. Based on the requisition of some of the members of the Market Committee, Director has passed order on 13/12/2016 appointing 3rd respondent as Authorised Officer to convene meeting of the

members of the APMC for considering motion of no confidence against the appellant. After service of notice, the appellant has filed Special Civil Application No.21053 of 2016 seeking following reliefs :

"7(A) Your Lordships may be pleased to admit and allow this application;

(B) Your Lordships may be pleased to issue a Writ of certiorari or in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the communication/agenda notice dated 14.12.2016 issued by the respondent no.3 Deputy Director and District Registrar Cooperative Societies, Ahmedabad Rural, Ahmedabad at Annexure - A to this petition.

(C) Pending admission, hearing and final disposal of the present Special Civil Application, Your Lordships may be pleased to stay the implementation, execution and operation of the communication/agenda notice dated 14.12.2016 issued by the respondent no.3 Deputy Director and District Registrar Cooperative Societies, Ahmedabad Rural, Ahmedabad at Annexure-A to this petition.

(D) Your Lordships may be pleased to stay such other and further order(s) that may be deemed fit and proper in the facts and circumstances of the case."

4. Mainly agenda notice was challenged on three grounds before the learned Single Judge. It was contended by the appellant that it was not known as to who had moved no confidence motion. But in the proceedings, along with affidavit-in-reply filed by the respondents, copy of notice dated 07/12/2016 given to the Director, APMC was placed on record, which was given under the provisions of section 17A of the Act, it mentioned signatures of 12 members satisfying requirement of one-third of the total strength of APMC and having regard to total number of members signed, such requisition was conferred on the law on the subject and as contained under section 17A of the Act.

5. Secondly, it was pleaded that there was no reasons for moving such no confidence motion. Same was not accepted by the learned Single Judge on the ground that in democratic institutions it is always open to move no confidence motion for variety of reasons and such reasons cannot be ordinarily amenable to judicial review. It is held by the learned Single Judge that once an elected person looses the confidence of the members, he has no right to continue in the office and when such no confidence is moved, it is always be considered so as to examine whether confidence of such person is lost or not by majority of members as contemplated under law.

6. Thirdly, it was also pleaded by the appellant that as very section 17A of the Act was brought into force subsequent to petitioner''s election as Vice Chairman, same cannot be applied to his case. The said contention was also not accepted by the learned Single in the impugned order dated 20/12/2016.

7. Heard Mr. S.I. Nanavati, learned Senior Advocate for the appellant, Mr. P.K. Jani, learned Additional Advocate General for the respondent authorities and Mr. Mihir Thakore, learned Senior Advocate for the private respondent.

8. In this appeal, the only contention advanced on behalf of the appellant by Mr. S.I. Nanavati, learned Senior Advocate is that when the appellant - original petitioner was elected as Vice Chairman of the Market Committee, there was no law which empowers removal of Chairman and Vice-Chairman by way of no confidence motion. Learned Senior Advocate has placed reliance on the judgment of the Hon''ble Supreme Court in the case of Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and Others reported in (2015) 8 SCC 1 and decision of Division Bench of this Court in the case of Shailesh G. Patel v. State of Gujarat decided on 27/12/2013 in Letters Patent Appeal No.1503 of 2013. It is contended by learned Senior Advocate that in the case of Vipulbhai M. Chaudhary (supra), the Hon''ble Supreme Court has held that motion of no confidence against office bearers can be moved only after two years of assumption of office. It is submitted that ratio laid down in said judgment is to be applied to the case of the appellant as much as section 17A was not there in the statue when he was elected as Vice Chairman of the Market Committee.

9. Mr. P.K. Jani, learned Additional Advocate General appearing for the respondent authorities submitted that in the very judgment of Vipulbhai M. Chaudhary (supra) relied on by the appellant, it is kept open to modify and give statutory shape by the competent legislature/authority by inserting appropriate provision for the purpose of removal by way of no confidence motion. Learned Additional Advocate General reiterated case law on the subject which is referred to by the learned Single Judge and also placed reliance on the judgment of the Hon''ble Supreme Court in the case of Darshan Singh v. Ram Pal Singh and another reported in AIR 1991 SC 1654.

10. On the above lines, it is contended by Mr. Mihir Thakore, learned Senior Advocate appearing for the private respondent that question of retrospective as pleaded would not arise, as it is submitted by virtue of amended provision, it is declaratory law which is introduced and same is to be applied in absence of taking away any right accrued to the appellant. It is submitted that in view of provisions under section 17A of the Act, it is always open for the members of the Market Committee to move no confidence motion after expiry of period of six months. It is also submitted that in view of provisions under section 17A of the Act, judgment in the case of Vipulbhai M. Chaudhary (supra) cannot be applied to the facts of the present case.

11. In this case, it is not in dispute that the appellant herein is elected member of the Market Committee on 22/01/2015 and was elected as Vice Chairman without any contest on 20/02/2015. Since then he is continuing as Vice Chairman. The Act is amended by virtue of Act No.14 of 2015, by which section 17A is inserted which read as under:

"17A. (1) One-third of the total number of members of the market committee intending to move a motion of non confidence against the Chairman or the Vice Chairman, as the case may be, may give a notice thereof to the Director, where the Deputy Director and District Registrar (Cooperative Societies) is the member of such committee; and to the Deputy Director and the District Registrar (Cooperative Societies) where the Cooperative Officer (Marketing) is the member of such committee:

Provided that no such no confidence motion shall be moved against the Chairman or, as the case may be, the Vice Chairman, unless he has completed a period of six months in his office: Provided further that no such no-confidence motion shall be moved again within six months from the date such motion had failed earlier.

(2) The Director or the Deputy Director and District Registrar referred to in subsection(1) or any officer authorised by him shall convene an extraordinary general meeting of the members of the market committee within thirty days of the receipt of the notice of such no-confidence motion to decide on such motion by method of secret ballet voting.

(3) Where the no confidence motion is carried by the majority or not less than two-thirds of the total number of members present at the meeting and voting, the Chairman or, as the case may be, the Vice Chairman shall cease to hold the office."

12. By virtue of aforesaid provision, power is conferred on the members to move no confidence motion against the Chairman and Vice Chairman and one-third of total members of the Market committee is required strength to sent requisition for moving no confidence motion. Such no confidence motion is permissible after completion of six months in the office by the Chairman and Vice Chairman. Further as per second priviso once no confidence motion is moved, again same cannot be moved within period of six months from the date such motion, if it is failed.

13. In the case of Vipulbhai M. Chaudhary (supra), the Hon''ble Supreme Court has issued guidelines for moving such no confidence motion in cooperative institutions. Paragraph No.52, 52(1) and 52(2) of the said judgment read as under :

"52. Now that this Court has declared the law regarding the democratic set up of a cooperative society and that it is permissible to remove an elected office bearer through motion of no confidence, and since in many States, the relevant statutes have not carried out the required statutory changes in terms of the constitutional mandate, we feel it just and necessary to lay down certain guidelines. However, we make it clear that these guidelines are open to be appropriately modified and given statutory shape by the competent legislature/authority.

52.1. Having gone through the provisions regarding motion of no confidence in local self-governments, we find that there is no uniformity with regard to the procedure and process regarding motion of no confidence. Some States provide for a protection of two years, some for one year and a few for six months, to the office bearers in office before moving a motion of no confidence. However, majority of the States provide for two years and a gap of another one year in case one motion of no confidence is defeated. Bihar Panchayat Raj Act, 2006 provides for a protection of two years and one year, Bihar Municipal Act, 2007 provides for a protection of two years and one year, Himachal Pradesh Panchayati Raj Act, 1994 provides for a protection of two years and two years, Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 provides for a protection of two and a half years, Madhya Pradesh Municipalities Act, 1961 provides for a protection of two years and one year, Manipur Panchayati Raj Act, 1994 provides for a protection of two years and one year, Orissa Panchayat Samiti Act, 1959 provides for a protection of two years, Orissa Grama Panchayats Act, 1964 provides for a protection of two years, Punjab Panchayati Raj Act, 1994 provides for a protection of two years, Rajasthan Panchayati Raj Act, 1994 provides for a protection of two years and one year, Rajasthan Municipalities Act, 2009 provides for a protection of two years and Uttar Pradesh Panchayati Raj Act, 1947, as followed by Uttarakhand, provides for a protection of two years and one year.

5.2. Having regard to the set up in local self-governments prevailing in many of the States as above, we direct that in the case of cooperative societies registered under any Central or State law, a motion of no confidence against an office bearer shall be moved only after two years of his assumption of office. In case the motion of no confidence is once defeated, a fresh motion shall not be introduced within another one year. A motion of no confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the cooperative society concerned. The motion of no confidence shall be carried in case the motion is supported by more than fifty per cent of the elected members present in the meeting."

14. In the aforesaid judgment, the Hon''ble Supreme Court has issued guidelines that no confidence motion can be moved against the office bearers in the cooperative institutions from the date of election of two years. But in the very judgment, in clear terms it is held that such guidelines are to be permitted to be modified and given statutory shape by the competent legislature/authority. In that view of the matter, after amendment made in the Act by virtue of Act No.14 of 2015, if any provision is made covering area of guidelines, such statue should be given effect to. In that view of the matter, we are of the view that said judgment would not render any assistance having regard to insertion of section 17A in the Act.

15. Learned Senior advocate Mr. S.I. Nanavati has placed reliance on the judgment in the case of Shaileshbhai Govindbhai Patel (supra). In the aforesaid case, the question involved was whether the petitioners who were office bearers of the Baroda District Cooperative Milk Producers Union, elected for a period of one year as per the existing byelaws which was in force, could have been continued for longer period in view of amendment in Clause (1C) of Section 74 of the Act.

Learned Single Judge as well as Division Bench did not accept such contention.

Facts in the aforesaid case was quite different and the issue which fell for consideration would not come to rescue the appellant having regard to question which fall for consideration in this case.

16. Learned Single Judge has referred to cases on the subject relied by the learned advocate for the respondents. We do not reiterate the same. But suffice it to say that decisions in the case of Darshan Singh (supra), Zile Singh v. State of Haryana and Others reported in (2004) 8 SCC 1, M/s. Orient Paper and Industries Limited v. State of Orissa reported in AIR 1991 SC 672, Yadlapati Venkateswarlu v. State of Andra Pradesh reported in AIR 1991 SC 704, the Courts have explained as to how the declaratory statue would operate. The principles of interpretation propounded by the aforesaid decisions are helpful for appreciating provisions of section 17A of the Act. By virtue of election as Vice Chairman, even in absence of any provision for removal of no confidence motion, it is always open for the electors to remove elected person by way of no confidence motion, once they loose confidence of such person.

17. Full Bench of this Court in the Case of Nandlal Bavanjibhai Posiya v. Director of Agriculture Market and Rural Finance reported in 2002 (2) GLR 1132 (FB) is helpful in this regard. In the aforesaid judgment while interpreting the Act, 1963, Full Bench of this Court has held that even in absence of statutory provision, the functionaries can be removed from office by way of no confidence motion. In the said judgment, it is held that office bearers are elected by the Market Committee, as such they can be removed by way of no confidence motion by way of simple majority of members present in the meeting. In view of ratio laid down by the Full Bench of this Court, merely on the ground that there was no provision is the statue for moving no confidence motion, the appellant is not entitled to have benefit of guidelines in the case of Vipulbhai M. Chaudhary (supra) as to accept his plea for his continuance for a period of two years.

18. By virtue of appellant''s election as Vice Chairman, it cannot be said that he has acquired right to continue, as such, to accept theory of retrospective. It is useful to refer the judgment relied on by the learned Additional Advocate General in the case of Darshan Singh (supra) wherein the meaning of ''retrospective'' is discussed, as discussed in Halsbury''s Laws of England, 4th Edition, Volume 44 at paragraph No.921. Paragraph No.36 of the said judgment read as under :

36. Halsbury''s Laws of England, 4th Edn., Vol. 44, at paragraph 921 we find :

"921. Meaning of ''retrospective''. It has been said that ''retrospective'' is somewhat ambiguous and that a good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the Courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing."

19. By applying such meaning and further in absence of any right much less any vested right in view of appellant''s election as Vice Chairman on 22.01.2015, it is not possible to accept contention of the learned Senior Advocate for the appellant that inserted provision under section 17A cannot be applied retrospectively. Provision inserted by way of section 17A is declaratory law and it will apply for removal of Chairman and Vice Chairman of the Market Committee once they complete six months period as contemplated under first provisio to Section 17A of the Act.

20. In view of aforesaid reasons and having regard to detail reasons recorded by the learned Single Judge, we do not find any merit in the appeal so as to interfere with the order of the learned Single Judge. Accordingly, the appeal is dismissed. Consequently, the Civil Application stands dismissed. No order as to costs.

