
(1999) 12 GUJ CK 0072
In the Gujarat High Court

Case No : Special Civil Application No. 10220 of 1999 with Civil Application No. 2673 of 1999

Ghanshyam Hiralal Amin

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-12-1999

Acts Referred:

Citation : (2000) 4 GLR 215

Hon'ble Judges : C.K.Thakker, Acting C.J.;D.P. Buch, J

Bench : Division Bench

Advocate : N.D. Nanavati and Amar D. Mithani, for the Appellant; P.G. Desai, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. On December 23, 1999, we issued notice and granted status quo . The said order read as under :

"Notice returnable on 30th December 1999. Status quo as on today to be maintained till then. D.S. permitted."

2. Petitioners have filed the above petition for the reliefs in terms of para 67 which reads as under:

"67. The petitioners , therfore, pray that:-

(A) This Honourable court will be pleased to admit this petition.

(B) That this Honourable court will be pleased to issue a writ of mandamus and any other appropriate writ, direction or order in the nature of mandamus by declaring section 80(2) of the Gujarat Cooperative Societies Act, 1961 as unconstitutional, ultra vires as being violative of Articles 14, 19(1)(c) and 19(1)(g) of the Cosntitution of India;

(C) That this Honourable court will be pleased to issue a writ of mandamus and/

or any other appropriate writ, direction or order in the nature of mandamus be issued, declaring the action of the respondent No.1 herein in seeking to invoke the provisions of section 80(2) of the Gujarat Cooperative Societies Act, 1961 as ex facie illegal, unlawful, arbitrary, ultra vires, and further be pleased to restrain the respondent No.1, its officers, servants and agents from appointing any Government nominees upon the said bank i.e. Ahmedabad District Cooperative Bank Limited in exercise of powers u/s 80(2) of the Gujarat Cooperative Societies Act, 1961;

(D) This Honourable court will be pleased to issue an appropriate writ, direction or order, quashing and setting aside the order dated 12.11.1998, Annexure K to this petition passed by the respondent No.3 herein, appointing three Government nominees u/s 80(2) of the Gujarat Cooperative Societies Act, 1961 upon the said Bank Ahmedabad District Cooperative Bank Limited;

(E) Pending admission, hearing and final disposal of this petition, this Honourable court be pleased to stay and suspend the operation, execution and implementation of the order dated 12.11.1998, Annexure K to this petition, and further be pleased to restrain the said Government nominees/ representatives named therein from exercising their right to vote in the election of Chairman and Vice Chairman , Ahmedabad District Cooperative Bank Limited and/or further be pleased to restrain the respondents Nos.1 to 3, their officers, servants and agents from making any fresh appointment of Government nominees on the Managing Committee/ Board of Directors of the Ahmedabad District Cooperative Bank Limited by invoking the powers u/s 80(2) of the Gujarat Cooperative Societies Act, 1961;

(F) Be pleased to pass such other and further reliefs as the facts and circumstances of the present case may require."

3. At the time of preliminary hearing, a contention was raised on behalf of learned counsel for the petitioners that though constitutional validity of sub-section (2) of Section 80 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") was upheld by a Division Bench of this Court in Amreli District Co-operative Sale and Purchase Union Ltd. and Others Vs. State of Gujarat, and SLP filed against the said decision was also disposed of without entering into the merits of the matter, subsequently constitutional validity of the same provisions came to be challenged before the Supreme Court in SLP (C) No. 7165 of 1999 from the judgment and order passed by this Court in SCA No. 2412 of 1999 decided on April 8, 1999. On May 13, 1999, the Supreme Court passed the following order:

"Issue notice. Pending further orders, no further steps shall be taken pursuant to the notice dated 16th February 1999 addressed to the petitioners by the Section officer, Agricultural and Cooperation Department, Sachivalaya, Gandhinagar."

4. It appears that thereafter, leave was granted by the Supreme Court and the relief which was granted on May 13, 1999 was ordered to continue till pendency

and disposal of the appeal . That order was passed on July 30, 1999.

5. In view of the above development , when some petitions were filed , this Court referred to the order passed by the Supreme Court, issued notices and granted interim relief. One of such orders passed in SCA No. 9771 of 1999 on December 8, 1999 is produced at page 114 of the petition.

6. In the light of the order dated December 8, 1999 in the instant case also, similar order was passed.

7. Ad-interim relief is upto today. We have heard learned counsel for the petitioners as also learned Government Pleader. An application is also filed by two nominees appointed by the Government in exercise of powers u/s 80(2) of the Act who have not been joined as party respondents in the petition. In that C.A., we have issued Rule.

8. Mr. N.D. Nanavati, senior advocate for Mr. Mithani submitted that the matter is pending before the Supreme Court as well as before this Court and ad-interim relief was granted by the Apex Court as well as this Court in some matters. This is, therefore, a fit case in which ad-interim relief granted earlier deserves to be continued. He also submitted that the civil application filed by the Government nominees is till not granted and hence, learned counsel for the applicants of that application has no locus standi at this stage. He, therefore, prayed for continuation of ad-interim relief granted earlier.

9. On the other hand, it was contended by the respondents that ad-interim relief does not deserve to be continued in the instant case as the matter has gone upto to the Supreme Court and appointment of three Government nominees has not been stayed even by the Apex Court. Our attention was invited, in this connection, by the respondents to the fact that three nominees were appointed by the Government in exercise of powers under sub-section (2) of Section 80 and legality and validity of the appointment of those nominees was challenged in SCA No. 9781 of 1998. The learned Single Judge issued Rule and granted interim relief vide an order dated December 9, 1999 . LPA No. 1493 of 1999 was filed in this Court against the said order and the Division Bench consisting of K.G. Balakrishnan, C.J. and M.S. Shah, J. on December 24, 1998 vacated interim relief by allowing the appeal. Being aggrieved by the said order, SLP (C) No. 87 of 1999 was filed before the Supreme Court. It was stated that some orders were passed by the Supreme Court and finally vide order dated April 24, 1999. SLP was dismissed and following order was passed:

"SLP is dismissed"

10. Contention of the respondents is that even if constitutional validity of sub-section (2) of Section 80 is at large before the Supreme Court as well as before this Court, no stay against implementation of provisions of sub-section (2) of Section 80 is granted as no such relief is granted in any case. But even if it is assumed for the sake of argument that some interim order was passed by this

Court or by the Supreme Court, in the instant case, the order passed by the Supreme Court in SLP (C) No. 87 of 1999 would hold the field inasmuch as no stay is granted against three appointments. Interim relief granted by the learned Single Judge came to be vacated by the Division Bench and the said order was not disturbed by the Supreme Court.

11. No doubt, the contention of Mr. Nanavati in this connection is that the Supreme Court merely refused to grant leave. According to him, that cannot be termed as a decision or law declared by the Supreme Court with regard to validity or otherwise of sub-section (2) of Section 80 of the Act. It was further stated that so far as SCA No. 9781 of 1998 is concerned, constitutional validity of sub-section (2) of Section 80 was not challenged in SCA No. 9781 of 1998 . He is right in that submission inasmuch as the order was passed by the learned Single Judge. Now, in accordance with the provisions of the High Court Rules, when a statutory provision of any Act is challenged, the matter will have to be placed before a Division Bench.

12. In our opinion, however, an important fact is that the order has been passed by the Supreme Court wherein the appointment of three nominees of the Government has not been disturbed. Interim order passed by the learned Single Judge which was set aside by the Division Bench is operative till today. Hence, in the present proceedings in respect of those nominees, no interim relief can be granted by this Court. The order passed by the Supreme Court may not be said to be the law declared by the Supreme Court so as to invoke provisions of Article 141 of the Constitution of India or may create res-judicata but this court cannot be oblivious or unmindful of the said order of the Apex Court in the above matter (vide Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others, .

13. It was, however, submitted that election of Chairman and Vice Chairman has yet not been announced and hence, there is no reason not to continue ad-interim relief granted earlier. It was also submitted that no reply affidavit has been filed either by the State or by any of the respondents and only oral submissions have been made. It was stated that all the facts and circumstances which have been pointed out to this Court were very much in existence when ad-interim order was passed by the Court with the necessary record and hence, there is no ground to vacate ad-interim relief.

14. In our opinion, however, when appointments of Government nominees were challenged and the Supreme Court also did not interfere with appointments of those nominees, atleast in the instant case, ad-interim relief granted earlier, cannot be continued.

15. It was submitted that since the main petition is pending, validity or otherwise of appointments of those nominees is res- sub judice and it cannot be held to be valid and legal. This is correct. The petition is still pending . At the same time, however, it is equally correct that interim relief which was granted by the learned

Single Judge was vacated by the Division Bench and the said order was not disturbed by the Supreme Court . In these circumstances, in our opinion, no interim relief can be continued in the present petition.

16. At this stage, learned counsel for the petitioners submitted that a practical approach may be adopted so that there would not be injustice to either party. He submitted that there is prima facie case in favour of the petitioners and hence, the petition is admitted. In fact, the matter is pending before the Supreme Court. Balance of convenience and irreparable loss are in favour of the petitioners inasmuch as if ultimately this Court and the Apex Court find that the provisions of Section 80(2) of the Act are ultra vires or unconstitutional, great prejudice will be caused to them because by that time, the right to which otherwise the Government nominees are not entitled would have been exercised by them. The learned counsel, therefore, submitted that a direction may be issued to the effect that they may be permitted to exercise right to vote, but those votes may be placed in a sealed cover.

17. In our opinion, when the order is passed by the Supreme Court to which a reference is made by us hereinabove, no such direction can be issued. Hence, the said prayer is rejected.

18. Finally, it was submitted that if this Court is not extending ad interim relief, such relief granted earlier, may be continued for some time so as to enable the petitioners to approach the Supreme Court. In view of the fact that the order is passed by the Supreme Court so far as Government nominees in the instant case are concerned, in our considered opinion, the prayer cannot be granted. Hence, that prayer is rejected

19. For the foregoing reasons, interim relief granted earlier stands vacated. No costs.

20. In view of the order passed in the main matter, no order on Civil Application No. 2673 of 1999.