(2001) 07 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 4137 of 1992

Gujarat State Co-operative Bank Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Citation : (2002) 22 GLH 9

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : Tushar Mehta, for the Appellant; P.R. Abichandani, AGP, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Shah, J.—The Gujarat State Cooperative Bank Ltd., the Apex Cooperative Bank in the State has filed this petition under Articles 226 and 227 of the Constitution challenging the order dated 26-3-1992 passed by the State Government in the Agriculture, Cooperation and Rural Development Department dismissing the petitioner Bank''s appeal and confirming the order dated 2-7-1991 passed by the Registrar, Cooperative Societies, Gujarat State (hereinafter referred to as `the Registrar'') refusing to grant permission for amendment of the petitioner-Society''s byelaws.

2. The petitioner is a Cooperative Society registered under the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as `the Act''). The petitioner is an Apex Cooperative Society in the State of Gujarat dispensing agricultural and nonagricultural credit/loans to its members. The petitioner is also a financing institution to the district level cooperative Banks. All the members of the petitioner-Society are Cooperative Societies.

The General body of the petitioner-Society passed a Resolution at its annual general meeting held on 30th September, 1990 for amending byelaws No.34 (2) and 43 (3) (a). The original byelaws read as under:

34. Without prejudice to the general powers conferred by these byelaws the following powers and authorities are expressly given to and conferred upon the Board.

(1) * * * * * * * (2) To authorise the Managing Director, General Manager, Manager and other officers, for the time being, of the Bank to exercise and perform all or any of the powers, authorities and duties conferred or imposed upon by the Board by these presents, subject to such restrictions and conditions as the Board may think proper to impose and from time to time to appoint and to remove the Managing Director, the General Manager, the Manager, agent or other officers and clerks for the management of the business of the Bank and to fix their remuneration. The appointment and the removal of the Managing Director, the General Manager and the Manager will be subject to the approval of the State Government.

BYE LAW NO. 42 (iii) (a):

42. Subject to such resolution as the Board or the Executive Committee may, from time to time, pass in this behalf, the several officers of the Bank shall have the powers mentioned below:

(i) * * * * * * (ii) * * * * * * (iii) APPOINTMENT OF MANAGING DIRECTOR

Managing Director:-

(a) The Board of Directors may appoint a Managing Director who shall be an ex-officio Director of the Board and the general management of the Bank shall, subject to the control of the Board of Directors and the Executive Committee, be vested in him. The Managing Director so appointed shall hold office for a period not exceeding five years on such terms and the remuneration as may be fixed by the Board of Directors and approved by the State Government and shall be eligible for reappointment. The Managing director shall perform such duties and functions as the Board my entrust or delegate to him.

Rule 6 of the Gujarat Co-operative Societies Rules, 1963 (hereinafter referred to as `the Rules'') prescribes the procedure for passing the Resolution of amendment of the bye-laws and for forwarding the propsoal for amendment with the Resolution to the Registrar. There is no controversy about compliance with the requirements of the Rule.

The underlined words in the aforesaid byelaws were resolved to be deleted by the amendment. The said resolution for amending the byelaws was duly passed and was sent for registration to the Registrar of Cooperative Societies, under sec. 13 of the Act read with Rule 6 of the Rules. By order dated 2-7-1991, the Registrar rejected the said application for amendment and refused to register the amendment.

Being aggrieved by the aforesaid order, the petitioner preferred an appeal under sec.153 of the Act being Appeal No.l79/1991. After hearing the petitioner, the

State Government dismissed the appeal by order dated 26-3-1992 (Annexure B). It is the said order which is under challenge in this petition.

3. Mr. K.G. Vakharia learned Senior Counsel with Mr. Tushar Mehta, for the petitioner Bank have raised the following contentions:

(i) Upon insertion of section 76-A in the Act by Gujarat Act No.23 of 1982, the State Government had assumed the control over appointment and removal of Managing Director or Chief Executive Officer of a notified Society in which category the petitioner-Society''s case falls. The constitutional validity of the said provision was challenged before this Court. A Division Bench of this Court by its judgment rendered in Amreli District Co-operative Sale and Purchase Union Ltd. and Others Vs. State of Gujarat, struck down the provisions of sec. 76-A as violative of Article 19(1)(c) and 19(1)(g) of the Constitution.

In view of the said judgment, there is no statutory provision requiring the petitioner -Society to obtain the approval of the State Government in the matter of appointment or removal of the Managing Director/Chief Executive Officer/ General Manager/Manager. The reasoning contained in the said judgment would squarely apply in the matter of amendment of the byelaws also and, therefore, the Registrar could not have refused to grant sanction for amendment of the byelaws.

(ii) Even otherwise, the matter of amendment of byelaws and sanction thereof is governed by the provisions of sec. 13 of the Act read with sec. 4 of the Act. The Registrar could not have refused to register the amendment when the amendment was not found to be contrary to the Act or the Rules.

(iii) While considering the question of registering amendment of the byelaws, the Registrar cannot go beyond the considerations mentioned in the proviso to sec. 4 of the Act. Hence, registration of the amendment could not have been refused unless there was a finding to the effect that the amendment would lead to economic unsoundness of the Society or the amendment would have an adverse effect upon any other Society or that the amendment was opposed to, or its working was likely to be in contravention of, the public policy.

(iv) Adequate safeguards for protection of public interest are available in section 80 of the Act. Hence, the Registrar was not justified in invoking public interest for rejecting the prayer for amendment.

4. On the other hand, Mr. P.R. Abichandani, learned Assistant Government Pleader, has opposed the petition and submitted that the Registrar has a discretionary power u/s 13 of the Act for accepting or rejecting the request for registration of the amendment. Subsection (2) of section 13 provides that if the Registrar is satisfied that the amendment is not contrary to the Act or the Rules, he may register the amendment. It is, therefore, submitted that the Registrar is not bound to register the amendment only on the ground that it is not contrary to the Act or the Rules.

The petitioner -Society is not an ordinary Cooperative Society. It is the Apex Cooperative Society in the State and is the bankers'' Bank. Hence, the Government control over the appointment and removal of the Managing Director/ Chief Executive Officer of the petitioner-Bank and its General Manager and Manager is necessary and the exercise of discretion by the Registrar in refusing to grant the amendment is to be looked at in the context of the aforesaid facts and not merely on the basis that the petitioner is a Cooperative Society to which only the considerations mentioned in paragraph 77 of the judgment of the Division Bench would apply.

5. Before dealing with the rival submissions, it will be useful to set out the provisions of section 4 and 13 of the Act relied upon by Mr. Vakharia.

4. Societies which may be registered. - 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 this Act:

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

13. Amendment of bye-laws of societies.-

(1) No amendment of the bye-laws of a society shall be valid until registered under this Act. For the purpose of registration of an amendment of the bye-laws, a copy of the amendment passed, in the manner prescribed, at a general meeting of the society, shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that the amendment so forwarded is not contrary to this 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.

(3) When the Registrar registers an amendment of the bye-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.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a society, he shall communicate the order of refusal, together with his reasons therefor, to the society.

6. Having heard the learned counsel for the parties, it appears to the Court that in view of the decision of the Division Bench of this Court, the provisions of sec. 76-A as inserted by the Gujarat Act No. 23/82 are nonexistent and therefore the State Government may not have any statutory power of controlling the appointment and removal of the Managing Director/Chief Executive Officer of a

Cooperative Society in general. However, when the byelaws of the petitioner-Bank themselves provide for this control in the matter of appointment and removal of Managing Director/ Chief Executive Officer/ General Manager/ Manager of the Apex Cooperative Bank in the State and the said byelaws have been holding the field since 1961, looking to the relevant factors taken into consideration by the Registrar the discretion exercised by the Registrar in refusing to grant the amendment cannot be said to be arbitrary or perverse so as to call for interference by this Court under Article 226 of the Constitution.

7. The Registrar has noted in the impugned order that apart from the fact that while establishing the petitioner-Bank, the State Government had contributed share capital of Rs. 2.56 crores and had also given financial assistance of Rs. 7 crores and Rs. 3 crores to the primary cooperative Societies through the petitioner-Bank; the State Government has also given guarantees to other financial institutions for enabling the petitioner-Bank to obtain loans of Rs. 342.60 crores. The Registrar has also noted that several District Cooperative Banks and other Cooperative Banks were required to deposit the stipulated banking reserves under the provisions of the Banking Regulation Act, 1950 with the petitioner-Bank in its capacity as the Apex Cooperative Bank in the State. Moreover, several Cooperative Societies obtain their loans from NABARD upon recommendations of the petitioner-Bank.

Thus, the petitioner-Bank holds a very important position in the entire Cooperative sector in the State and, therefore, the Managing Director/Chief Executive Officer and General Manager/Managers who are appointed without the approval of the State Government may only look at the interest of those who are on the Board of Directors of the petitioner - Bank and may not look after the short term as well as the long term public interest and interest of depositors which are themselves cooperative banks. Moreover, Managing Director/ Chief Executive Officer, General Manager and Managers who are carrying out the objectives underlying the provisions of the Act may be removed by the Board of Directors and, therefore, it is necessary for the State Government to have its control in the matter of removal of Managing Director/Chief Executive Officer, General Manager and Manager.

8. It is true that Mr. Vakharia has vehemently contended that if the State Government wants to retain the control over the petitioner-Bank in public interest, then the provisions of section 80 provide sufficient safeguards and the State Government can appoint its nominees on the Board of Directors of the petitioner-Bank.

This safeguard would not, however, take care of the day-to-day administration of the Bank. By now it is well-known that formulation of policy and execution of policy are not to be treated as falling in two watertight compartments. The rigid dichotomy between policy and administration was given up more than half a century ago. In his "Policy and Administration" (1949) Applely Paul H. propounded the thesis that policy and administration are inseparable twins.

Administration has to be responsive to public interest. The process of formulating a policy does not take place in the vacuum. It is on the basis of the data furnished by the administrators at the middle level management, and some times after taking into consideration their experiences, perceptions and suggestions (where made available) that the top level administrators like Managing Director/ Chief Executive Officer and the General Manager submit recommendations before the Board of Directors for formulating certain policies. The drafts of such policies are also ordinarily prepared by the Managing Director and General Manager with the assistance of Managers. In the process of execution of the policy also, the administrators can bring it to the notice of the policy makers the impediments in implementation of the policy and, therefore, the need to modify or reformulate the policy. Even otherwise in the process of implementation of policy the administrators exercise considerable discretion in practice by having various options in interpreting the policy embodied in a particular rule and the scope of the policy may be marginally enlarged or narrowed down depending on the interpretation which may be placed on a rule in the process of implementing the rule and enforcing it. Hence, the appointment of Government nominees on the policy making body like the Board of Directors (which is ordinarily not concerned with the day to day administration of the Bank) would not be a sufficient safeguard for taking care of the public interest which the petitioner-Bank has to serve as the Bankers'' Bank i.e. the Apex Cooperative Bank occupying the most important position in the entire Cooperative banking sector in the State. As already stated above, a large number of district Cooperative banks and other Cooperative banks are required to deposit their banking reserves with the petitioner-Bank. Hence, it is not unreasonable or arbitrary on the part of the State Government to hold that the existing byelaws requiring approval of the State Government for appointment of the Managing Director/ Chief Executive Officer, General Manager and Managers in the petitioner-Bank do not require to be amended.

9. As regards the contention of Mr. Vakharia that the Registrar has no discretion to refuse to register the amendment, if the amendment is not contrary to the Act or the Rules, the contention proceeds on the footing that the expression "may" must be read as "shall". The contention cannot be accepted because as per the settled rules of interpretation, the expression "may" confers discretion on the repository of the power. Of course in a given case for compelling reasons the expression "may" may have to be construed as "shall". However, there are no such compelling reasons why the ordinary meaning of the expression "may" should not be given to that expression in the instant case. If at all the intention of the legislature were as canvassed by the learned counsel for the petitioner, then the legislature would have provided as under:-

"The Registrar shall not refuse to register the amendment, if the Registrar is satisfied that the amendment so forwarded is not contrary to the Act or the Rules."

However, the legislature, which is not unfamiliar with the negative language as would be found in so many provisions of various legislations, has conferred the power on the Registrar in the positive terms that the Registrar "may" register the amendment if he is satisfied that the amendment is not contrary to the Act or the Rules. Hence, what the legislature has provided is that the amendment being not contrary to the Act or to the Rules is the condition precedent or the first requirement before the Registrar can exercise his discretion for registering the amendment. The discretion to register or not to register the amendment of a byelaw would involve weighing the pros and cons of several relevant facts. The only limiting factor on his power would be that the considerations to be weighed by the Registrar shall not be inconsistent with the Act or the Rules. Since the considerations which have weighed with the Registrar in refusing to approve the amendment in question are very much consistent with the underlying object of the Gujarat Cooperative Societies Act, 1961 and the Gujarat Cooperative Societies Rules, 1963, the exercise of discretion by the Registrar, as confirmed by the State Government, in the context of the refusal to amend the byelaws No.34 (2) and 43 (3) of the Apex Cooperative Bank of the State cannot be said to be arbitrary or unreasonable.

10. The petition is therefore devoid of merit. The petition is accordingly dismissed. Rule is discharged with no order as to costs.