

(2004) 12 GUJ CK 0091
In the Gujarat High Court

Case No : Special Civil Application No. 871 of 2004 with Civil Application No's. 643, 644, 645 and 1303 of 2004

Harijan Joitaram Danabhai

APPELLANT

Vs

Additional Registrar (Appeals)

RESPONDENT

Date of Decision : 18-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Co-operative Societies Act, 1961 — Section 153, 155, 81

Citation : (2004) 12 GUJ CK 0091

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : B.B. Naik and P.Y. Divyeshvar, for Petitioner No. 1-5 in Special Civil application No. 871 of 2004, for the Appellant; Desai, Asst. Government Pleader for Respondent No. 1-2 and Harin P. Raval, in Special Civil Application No. 871 of 2004, for the Respondent

Judgement

Jayant Patel, J.—Heard Mr. Naik for the original petitioners in Special Civil Application No. 871/04 as well as for the parties who are joined as opponents in capacity as original petitioners, Mr. Raval for the applicants of CA Nos 643 to 645/04 and Mr. Naik for the applicants in CA No. 1303/04 and Mr Desai, Ld. AGP for the State authorities. With the consent of learned counsel for the parties main special civil application is taken up for final hearing while hearing the civil applications.

2. The short facts of the case are that the members of the Managing Committee of Titoda Dudh Utpadak Sahakari Mandali Ltd (hereinafter referred to as "the society") have preferred the present petition. It is the case of Mr. Raval that some of the petitioners have neither filed affidavit nor have signed the vakalatnama nor they have not preferred this petition and the present petition is filed at the instance of petitioner Nos 1 and 5 only. Mr. Naik submitted that the statement made in the applications that the petitioner Nos 2,3 & 4 have not signed the vakalatnama is not correct and the affidavits have been filed to

controvert the said statement. Even if it is considered that all the petitioners have filed the present petition, then also for the reasons recorded hereinafter same would not assume much importance as to whether some of the petitioners have approached this court by preferring this petition or not and therefore said aspect is not required to be dealt with in detail at this stage. It appears that the District Registrar issued show cause notice u/s 81 of the Gujarat Coop. Societies Act (hereinafter referred to as "the Act") for superseding the Managing committee of the society. It is the case of the petitioners as stated in the petition that the show cause notice was served to all the members of the Managing Committee and the five members of the Managing Committee who have preferred this petition submitted reply before the District Registrar contending that they have no objection for supersession and for appointment of the administrator whereas there are counter stands taken in the application that the petitioner Nos 2,3 & 4 were not at all aware of the show cause notice and the signatures of the petitioner Nos 2, 3 & 4 are manoeuvred by petitioner Nos 1 & 5. The District Registrar ultimately passed the order on 15.1.2004 whereby the managing committee is superceded and the appointment of the administrator is made and the administrator appointed is Banaskantha Dist. Coop. Milk Manufacturing Union Ltd, which is a federal body in the district so far as Milk Producers" Coop.Societies are concerned. It appears that the Secretary of the society preferred appeal against the order passed by the Dist. Registrar before the Addl. Registrar (Appeals) being Appeal No. 11/4. The appeal has been ultimately allowed as per the order, dated 21.1.2004 whereby the Addl. Registrar found that the proper procedure is not followed and it is not properly examined by the District Registrar that who are the members of the managing committee, and whether notices are genuinely served to all such persons or not. The Additional Registrar also found that further relevant aspects for exercise of powers u/s 81 of the Act are not properly examined by the Dist. Registrar and ultimately the matter is remanded for reconsideration and the interim order has been passed whereby the charge is directed to be handed over to the Managing Committee and the management is to be continued but no policy decision is to be taken. The said order of the Additional Registrar is challenged in the present petition by the petitioners.

3. It appears that on 23.1.2004 this court (K.M. Mehta, J) has passed the following order:

"Heard Mr. K.S. Jhaveri, learned counsel for the petitioner. Rule and notice as to interim relief returnable on 9.2.2004. Ad interim relief in terms of paragraph No. 6(B) is granted till then. DS is permitted."

Thereafter, on 4.2.2004 this court(K.M. Mehta, J) heard the main petition with the Civil Application and modified the order by directing maintenance of statusquo as on 16.1.2004. It is the case of the petitioners that the Secretary and the President of the society have committed breach of ad interim order passed by this court and therefore CA No. 1303/04 has been preferred for

directing the opponent Nos 2,3 & 4 to deposit the amount which has been withdrawn from the bank account of the society and to prosecute the opponent Nos 4,5,6 & 7 for contempt of this court.

4. Civil Application No. 643/04 has been preferred by the persons who are shown as petitioner Nos 2,3 & 4 for deleting their names as petitioners in the main special civil application and they have prayed for further direction for holding the inquiry against the conduct of original petitioner Nos 1 & 5 i.e. opponent Nos 1 & 2 in the civil application for misappropriation and for giving false evidence and for making false statement on oath before this court. They have also prayed for giving direction to the Registrar of this court to launch prosecution against the petitioner Nos 1 & 2 as prayed in para 14(C) of the application.

5. Civil Application No. 644 of 2004 is preferred by 13 members of the Managing Committee of the society including the Chairman and Vice Chairman for being impleaded as party in the main petition.

6. Civil Application No. 645/04 is preferred by the Secretary of the society for vacating of the interim relief granted in the main petition.

7. In the main petition, the major contention raised on behalf of the petitioners by Mr. Naik is that the Secretary of the society could not have preferred the appeal before the Additional Registrar since he is a paid employee of the society and not a member of the Managing Committee and thereby he can not be said as an aggrieved person by the order of the District Registrar. It has been further submitted that in the appeal memo there is no reference to the resolution passed by the elected body, i.e. the Managing committee of the society and therefore the appeal was not competent before the Additional Registrar and hence the power could not have been exercised by the Additional Registrar for entertaining the appeal and/or for allowing the appeal whereby the order for appointment of administrator is set aside and the matter is remanded. Mr. Naik has also submitted that the order passed by the District Registrar is dated 15.1.2004 and the Additional Registrar has finally allowed the appeal on 21/1/04 within a period of six days and therefore he submitted that the aforesaid shows the manner of exercise of power by the Additional Registrar. He also submitted that the said appeal was not competent before the Additional Registrar and the order was without jurisdiction and the petitioners have not preferred revision and have approached this court by invoking jurisdiction of this court under Article 226 of the Constitution.

8. On behalf of the applicants, who are claiming in the capacity as members of the Managing Committee it has been submitted by Mr. Raval that it is a case of misleading of this court and also for impersonation before the District Registrar as well as before this Court. He submitted that the petitioner Nos 2,3 & 4 are not aggrieved by the impugned order nor they have instructed to prefer the petition. He further submitted that as such initially as per the old bye-laws the members of the managing committee comprised of 9 persons till the bye-laws are

amended and the amendment is sanctioned by the District Registrar and as a consequence thereof the managing committee is comprised of 15 members, but as the bye-laws came to be amended after election, six persons have co-opted as the members of the managing committee. He submitted that 13 persons who are members of the managing committee are opposed to the supersession and appointment of administrator including the petitioner Nos 2,3 & 4 who are wrongly represented as aggrieved by the order. Mr. Raval also submitted that the resolution for preferring the appeal before the Addl. Registrar is passed by the members of the Managing Committee by majority and the copy of the said resolution is produced with Civil Application No. 645/04, wherein petitioner Nos 1 and 5 have not remained present and therefore it is incorrect to state that the Secretary of the society had no authority to prefer the appeal. He also submitted that on 16.1.04 the Managing Committee was functioning and therefore it can not be stated that any breach is committed by the applicants or by the President or the Secretary of the society in continuing with the management of the society. Mr. Raval also submitted that with a view to test the genuineness of the stand of the petitioners, the applicants have no objection that if the Dist. Registrar is assigned with the work of testing the willingness of the members of the managing committee as to whether they are agreeable for the supersession of the committee or not and he submitted that as per the applicants this court should direct for holding of inquiry for making false statement on oath by impersonation and it calls for further action against the petitioner Nos 1 & 5 who are parties to such proceedings and actions.

9. As such, it appears that against the impugned order, the petitioners herein could have preferred revision before the State Govt u/s 155 of the Act, but such an alternative remedy which was available to the petitioners was not exhausted. I would have considered the matter for relegating the petitioners to the remedy of preferring the revision before the State Govt, however, Mr. Naik for the petitioners submitted that as the matter is already admitted, this court may not relegate the petitioners to such remedy and may decide the matter on merits. I have heard the learned counsel for the parties on merits of main special civil application also so far as examining the legality and validity of the impugned order passed by the Additional Registrar.

10. The thrust of the contention raised on behalf of the petitioners is that no appeal was maintainable before the Additional Registrar at the instance of the Secretary of the society. It is true that the Secretary of the society who is a paid employee can not be said to be aggrieved by the order passed for supersession of the managing committee and/or for appointment of the administrator. However, the perusal of the record produced in Civil Application No. 645/04 shows that the resolution is passed by the members of the Managing Committee at annexure "N", dated 15.1.2004 whereby after the Resolution No. 2, note is taken of the order dated 15.1.2004 passed by the Dist. Registrar and the secretary of the society is authorised to prefer appeal/revision and other legal actions for such purpose. The xerox copies of said proceedings of the meeting

dated 15.1.2004 are produced at annexure N. The contention of Mr. Naik, Ld. advocate for the petitioners that there is no reference of the resolution in the memo of appeal submitted before the Addl. Registrar and therefore said proceedings which have been produced can not be relied upon, in my view, can not be accepted because when the resolution is produced before this court even if it is denied by the petitioner, at the most, it would result into a disputed question of fact which this court can not conveniently examine while exercising power under Article 226 of the Constitution. Further, merely because there is no reference in the memo of appeal its genuineness can not be nullified, as sought to be canvassed on behalf of the petitioner by Mr. Naik. Therefore, it can not be concluded that the appeal was not at all competent before the Addl. Registrar.

11. Mr. Naik, Ld. advocate for the petitioners raised additional contention that even if the resolution is there, the society can not be said to be aggrieved by the impugned order because, in his submission, the members of the managing committee can be said to be aggrieved and the appeal at the instance of the society was not competent. Mr. Raval, Ld. counsel for the applicants submitted that the society works through its managing committee and when there is statutory appeal provided as per section 153 of the Act, the appeal at the instance of the society is competent. He also submitted that such a contention was not raised before the appellate authority nor such contention is raised in this petition. Therefore, he submitted that the appeal is competent before the Addl. Registrar.

12. In my view, as per section 153 of the Act, a statutory appeal is provided against the order u/s 81 of the Act. It is the managing committee of the society which stands superseded in view of the order passed u/s 81 of the Act but thereby the society can not be said as the third party to the litigation. Even if it is considered that the right of the members of the managing committee is adversely affected by the order u/s 81 of the Act, but if the majority of the members of the Managing Committee have taken decision to challenge the same and for such purpose if the secretary of the society is authorised and if the secretary of the society has preferred the appeal on behalf of the society, it can not be said that the appeal was not at all competent before the Additional Registrar. In a given case, the authority may decline to exercise the power at the instance of the society, in case the appeal is preferred, on the ground that the revenue of the society should not suffer on account of carrying the matter into further litigation or it may also decline to exercise the power on the ground that the aggrieved or members who are removed from the power have chosen not to prefer the appeal, but, on such a contingency it can not be said that the appeal is not at all competent if filed by the society whose managing committee is to be superseded as per the order u/s 81 of the Act.

13. Further, there is one additional reason to consider the aforesaid aspects, so far as the entertaining of the appeal by the Addl. Registrar is concerned. It appears from the record of the present petition and the civil application that in all

there are 15 members in the managing committee and out of such 15 members even if the contention of the applicant before this court is not considered and the petition is considered as it is, then also only 5 members of the managing committee have approached this court supporting the order of supersession and challenging the order passed by the Addl. Registrar whereby the order of supersession is set aside and the matter is remanded. Mr. Naik during the course of hearing also submitted that three members have ceased to be the members of the managing committee. Even if those three members are excluded the strength of the members of the managing committee would be reduced to 12 and out of 12 only 5 members are challenging the order of interference made by the Addl. Registrar and it prima facie that the challenge made in the petition is not supported by the majority of the members of the managing committee and therefore when the majority of the members of the managing committee are aggrieved by the order of supersession, it would not be proper to hold at the instance of five members of the managing committee which can be said as in minority, that the Addl. Registrar ought not to have interfered in the appeal preferred on behalf of the society on the basis of resolution by the majority of the members of the society for the purpose of challenging the order of supersession. Therefore, I find that said contention of Mr. Naik can not be accepted.

14. A perusal of the order passed by the Addl. Registrar shows that while allowing the appeal it has been found by him that various aspects are not properly examined by the Dist. Registrar while exercising power u/s 81 of the Act and therefore he has exercised the discretion and has found that the matter deserves to be remanded to the Dist. Registrar for reconsideration of various aspects which are referred to in the impugned order. The exercise of such discretion and the power, by the Addl. Registrar while passing the impugned order in view of the reasons recorded therein can not be said to be wholly without jurisdiction nor can it be said that the discretion exercised is so perverse which would call for interference by this court under Article 226/227 of the Constitution. If the Addl. Registrar upon the examination of the merits of the appeal and for the reasons recorded has found that the Dist. Registrar has committed error and remanded to the Dist. Registrar and if pending the proceedings by interim order it is directed that the charge be handed over to the members of the Managing Committee with a rider that no policy decision shall be taken, it can not be said that passing of such interim arrangement would be arbitrary or unreasonable which would call for interference by this court under Article 226/227 of the Constitution. Even otherwise also, when the appellate authority finds that the mandatory procedure is not followed and record which is relevant for the purpose of coming to conclusion that the case is made out for exercise of power u/s 81 of the Act is not properly considered, it would be a case for setting aside of the said order passed u/s 81 of the Act and to direct the Dist. Registrar to reconsider the matter and normally as a consequence, the order would be set aside but in the present case the Addl. Registrar has while

considering the case for interim arrangement put a rider of not to take any policy decision. Therefore in my view such an order can be said as in exercise of proper discretion and the power. Under the above circumstances, the contention of Mr. Naik can not be accepted and therefore the challenge on such ground fails.

15. From the perusal of the case and more particularly the record sought to be relied upon by the petitioner and the submissions made in the petition read in comparison to the statement made in the applications preferred by the other members of the Managing Committee itself create doubt for petitioner Nos 2, 3 & 4. I would have considered the matter further for examining said aspects, but I find that in view of the reasons recorded hereinabove, if the challenge made by the petitioner on merits can not be sustained against the impugned order, no useful purpose would be served in examining the other aspects for undertaking the inquiry against the persons who have made statement before this court, may be as petitioners or may be as applicants in the respective civil applications, as the case may be. Further, by the order of remand made by the Addl. Registrar, the Dist. Registrar will have an opportunity to examine not only the questions for exercise of power u/s 81 of the Act, but, the Dist. Registrar, if it is so desired by both parties, can also examine the genuineness of the stand on behalf of the managing committee and therefore the allegations and the counter allegations which are made in this petition by the petitioner, which are made by the applicants in the respective applications, may be raised by them before the Dist. Registrar while putting forward their case in response to the proceedings u/s 81 of the Act. Therefore, as such, the order of remand which is made by the Addl. Registrar in his impugned order even otherwise also can not be said to be seriously prejudicial to the interest of the members of the managing committee who have challenged the order.

16. In view of the above, I find that the SCA No. 871/04 is meritless and no relief can be granted to the petitioners in this petition. Rule is discharged. In the facts and circumstances, there shall be no order as to costs.

17. In view of the reasons recorded hereinabove and in view of the final decision in the main petition, no further order is required to be passed in CA No. 643, 644 & 645 of 2004. Hence, all the three civil applications stand disposed of accordingly.

18. So far as Civil Application No. 1303/04 is concerned, as at the final outcome of the petition the petitioners have failed to establish their case and as there are disputes regarding the functioning of the managing committee of the society on 16.1.2004, I find that it not a case for initiation of proceedings against the President and the Secretary of the society for contempt of court. However, so far as the direction to deposit the amount for unauthorised operation of the bank account is concerned, it would be ultimately for the Dist. Registrar to consider the matter and to pass appropriate consequential order in case it is established by the petitioners who have preferred this application that the President and the Secretary of the society have unauthorisedly operated the bank account and

thereby any loss/damage is caused to the revenue of the society. Civil Application No. 1303/04 shall stand disposed of accordingly with no further orders. Rule is discharged. Interim relief vacated.

19. The Ld. counsel appearing for both sides have prayed that direction may be given to the Dist. Registrar to decide the matter within some stipulated time limit. Mr. Desai, Ld. AGP has left the matter to the court. Considering the facts and circumstances, the Dist. Registrar shall make an attempt to decide the proceedings u/s 81 of the Act as early as possible preferably within a period of three months from the date of receipt of writ of this court.