(2003) 01 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 292 of 2000 with Civil Application No. 51 of 2003

Jamnagar District Co-op. Bank Ltd. APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 18-01-2003

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 13, 14, 14(2)
Gujarat Co-operative Societies Rules, 1965 — Rule 6, 7

Citation : (2003) 2 GLR 1258

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : K.S. Jhaveri, for the Appellant; Darshana Pandit, A.G.P., for the Respondent

Judgement

R.M. Doshit, J.—The petitioner before this Court is a Co-operative Bank (hereinafter referred to as "the Bank") duly registered under the Bombay Co-operative Societies Act, 1925. The Bank is governed by the bye-laws framed by it. In its Annual General Meeting convened on 11th September, 1998, the General Body resolved to accept the amendment, inter alia, of Bye-laws 30, 54 and 63B proposed by the Board of Directors. The Bye-law 30 deals with the election of the Chairman of the Board of Directors. The said amendment was forwarded to the Registrar of Co-operative Societies, the respondent No. 2 herein, for due registration as envisaged in Section 13 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act") read with Rule 6 of the Gujarat Co-operative Societies Rules, 1965 (hereinafter referred to as "the Rules"). The respondent No. 2, under communication dated 22nd September, 1999, communicated the registration of the said amended Bye-laws along with the amendment proposed by the respondent No. 2. Feeling aggrieved, the Bank has preferred the present petition.

2. Mr. Jhaveri has submitted that Section 13 of the Act does not empower the respondent No. 2 to make or even to propose amendment to the Bye-laws of the

Society. Section 13 of the Act empowers the respondent No. 2 either to register the amendment to the Bye-laws or to refuse such registration. He has further submitted that if at all any amendment to the Bye-law is necessitated in the interest of the Society, the respondent No. 2 can make such amendment but not without following the procedure as envisaged in Section 13 of the Act read with Rule 7 of the Rules. Mr. Jhaveri has submitted that in the present case, neither the Bank was served with the notice as envisaged under Rule 7 of the Rules nor the procedure prescribed in Section 14 of the Act has been followed. The impugned amendment has, thus, been registered by the respondent No. 2 without the authority of law and is null and void. Mr. Jhaveri has also submitted that in case where the respondent No. 2 refuses to register amendment u/s 13 of the Act an opportunity of hearing to the concerned society is a condition precedent. It is incumbent upon the signatory of the order to hear the concerned Society. However, in the present case, it was the Joint Registrar who heard the Bank, whereas the impugned order has been made by the respondent No. 2. The impugned order has, thus, been made in contravention of the principles of natural justice and fair play.

3. The learned A.G.P. Ms. Pandit has candidly admitted that no procedure as envisaged in Section 14 of the Act or Rule 7 of the Rules had been followed.

4. Section 13 of the Act deals with the amendment of the Bye-laws of the Societies. Sub-section (1) thereof makes the registration of the amendment to the Bye-law of a Society a condition precedent for its being valid. In other words, no amendment to a Bye-law would come into operation until it is registered. It is the Registrar who is empowered to register the amendment. Nothing in the said Section empowers the Registrar, on his own, to suggest an amendment to the bye-law. However, it is Section 14 of the Act which empowers the Registrar to issue direction to a society to amend its Bye-law. Sub-section (1) thereof empowers the Registrar to issue direction to a society to amend its bye-law if he considers it necessary or desirable in the interest of such society. In the event, the Society fails to make the amendment within the time specified, the Registrar, under Sub-section (2) thereof, is empowered to register the amendment after giving the society an opportunity of being heard and with the prior approval of the State Co-operative Council. Rule 7 of the Rules provides for the procedure to be followed by the Registrar for exercising power u/s 14 of the Act. Under the said Rule, the Registrar is required to call upon the Society to make the amendment by serving upon the Society a notice in Form ''C''. Such notice shall contain the draft of the amendment proposed by the Registrar. Sub-section (1) of Section 14 of the Act and Rule 7 of the Rules though have used the expression "may call upon the Society", the provisions are obviously mandatory. In my view, therefore, no amendment to a bye-law can be proposed by the Registrar without following the procedure as laid down in Rule 7 of the Rules and Sub-section (2) of Section 14 of the Act. In the present case, admittedly the Registrar has registered amendments to the Bye-laws 30, 54 and 63B forwarded to it for registration u/s 13 of the Act without following the due procedure as discussed

hereinabove. The proposed amendment has, thus, been registered without the authority of law and is null and void.

5. Since the petition deserves to be allowed on this ground alone, I do not deal with the other contention whether the respondent No. 2 himself should have heard the Bank. The petition is allowed. The amendment to the amended Bye-laws 30, 54 and 63B of the Bank registered by the respondent No. 2 under communication dated 22nd September, 1999 is quashed and set aside. The respondent No. 2 shall reconsider registration of the amendment to the Bye-laws 30, 54 and 63B as envisaged u/s 13 of the Act. Such exercise shall be completed within six weeks from today. The decision of the respondent No. 2 shall be communicated to the Bank forthwith. In the event, the respondent No. 2 intends to propose any amendment to the said Bye-laws, the respondent No. 2 shall follow the procedure as envisaged u/s 14 of the Act read with Rule 7 of the Rules. Rule is made absolute accordingly. There shall be no order as to costs.

6. In view of the above judgment, the Civil Application No. 51 of 2003 is rejected as not pressed.