

(1987) 03 GUJ CK 0004
In the Gujarat High Court

Case No : Spl. Civil Application No. 5606 of 1986

Kantilal Chandulal Shah

APPELLANT

Vs

C.J. Jose and Another

RESPONDENT

Date of Decision : 05-03-1987

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 76B(1), 76B(2)

Citation : AIR 1987 Guj 284 : (1988) 64 CompCas 445 : (1987) 1 GLR 602

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Advocate : K.G. Vakharia, for the Appellant; Deepak Trivedi, for the Respondent

Judgement

S.B. Majmudar, J.—In this petition under article 226 of the constitution, the petitioner has challenged the legality of the order dated October 14/15, 1986, passed by the Registrar of Co-operative Societies, Gujarat, respondent No.1 herein, whereby he confirmed the order dated September 19, 1986, passed by the second respondent, District Registrar of Co-operative Societies. The impugned orders are at annexures A and B to the petition. By the original order at annexure "A" which is confirmed by the first respondent, the petitioner has been disqualified to hold any elected post for a period of four years either on the managing committee of Navdeep Co-operative Bank Ltd., Navrangpura, Ahmedabad, or on the managing committee of any other co-operative society. The said order has been passed by the second respondent u/s 76B(2) of the Gujarat Co-operative Societies Act, 1961 ("the Act", for short). The said order has been challenged on diverse grounds, but it is not necessary to mention all of them for the simple reason that one ground put in the forefront goes to the root of the matter and entitles the petitioner to succeed. The said ground runs as under:

The competent authority exercising power u/s 76B(2) can order disqualification of the concerned officer of a society only if the competent authority has first passed an order of removal of such officer from the society wherein he operated at the

relevant time. In the absence of any removal order passed u/s 76B(1) against the concerned officer, no subsequent disqualification order u/s 76B(1) can be passed against such officer and in the present case, as there is no order passed against the petitioner removing him from the society, as per section 76B(1), the order passed by the second respondent u/s 76B(2) is ex facie without jurisdiction and null and void and its confirmation by the appellate authority viz., respondent No.1, is also equally otiose and an exercise in futility.

2. In order to appreciate the aforesaid contention in its true perspective, it is necessary to note a few relevant facts leading to this petition. The petitioner at the relevant time was working as a director in Navdeep Co-operative Bank which is a co-operative society duly registered under the provisions of the Act. He was served with a show cause notice dated August 30, 1986, calling upon him to show cause why he should not be removed from the office of the director of the said society on the grounds mentioned in the show-cause notice. He was also called upon to show cause why he should not be declared disqualified from being elected as a member of the committee of any other co-operative society. A copy of the said show-cause notice is at annexure "C" to the petition. It clearly covers the proposed actions u/s 76B(1) as well as section 76B(2) of the Act. It will be profitable at the outset to have a look at the aforesaid relevant provisions of section 76B:

"If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the by-laws or does anything which is prejudicial to the interest of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office as long only as the office if the vacancy had not occurred.

(2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer shall stand disqualified accordingly".

3. It transpires that after service of the show-cause notice on the petitioner, he tendered his resignation as a director of the bank on September 12, 1986. The said resignation was accepted by the board of directors on September 13, 1986. This fact was also pointed out to the second respondent by the petitioner by his letter dated September 17, 1986, and he was requested to drop the proceedings proposed to be initiated against him as per the show-cause notice dated August 30, 1986, as he had already ceased to be a director of the said bank. Another application was submitted before the second respondent on September 19, 1986. However, it appears that the second respondent, by his order dated September 19, 1986, instead of dropping the proceeding, directed that the petitioner should be disqualified from being elected to the managing committee of Navdeep Co-

operative Bank or to any other co-operative society for a period of four years from the date of the order. The said order obviously was passed u/s 76B(2) of the Act, though the order merely mentioned section 76B. The petitioner challenged the said order by filing an appeal-cum-revision u/s 1 of the Act before the Registrar of Co-operative Societies, Gujarat. His appeal along with appeals of four other members of the loan committee of Navdeep Co-operative Bank who were also removed and disqualified by the Registrar for their alleged irregularities and illegalities, were heard together and were disposed of by a common order. So far as the petitioner is concerned, his appeal was No.102 of 1986. It came to be dismissed on October 14/15, 1986 by the revisional authority, which confirmed the order passed by the second respondent. The aforesaid orders at annexures "A" and "B" to the petition passed by the revisional authority and the original authority, as stated earlier, are brought in challenge in the present proceedings.

4. Mr.Vakharia, for the petitioner, placing reliance on section 76B(1) and (2) of the Act, vehemently contended that the order of disqualification u/s 76B(2) can be passed against the concerned officer of the society provided in the first instance the authority is satisfied about the need to remove such officer from the society and after having passed an order of removal of such officer u/s 76B(1), he can proceed further and pass further order u/s 76B(2). In the facts of the present case, no order of removal is passed by the second respondent against the petitioner as the petitioner himself walked out by resigning his membership in the board of directors and his resignation was accepted, much prior to the date on which the second respondent passed his order on September 19, 1986. It was therefore, contended that the very condition precedent to the passing of the order u/s 76B(2) is absent in the present case and hence, the said order of disqualification is patently null and void and ultra vires and without jurisdiction.

5. In order to support his contention, Mr.Vakharia invited my attention to the provision of section 49, 61 and 73 of the Gujarat Panchayats Act, 1961, and submitted that the same Legislature which has enacted both these Acts has clearly made a difference in case of the exigency of the situation in which the authority acting under the Gujarat Panchayats Act may deal with suitably and may disqualify any person from holding any elected post even after he resigns from the existing post. However, so far as section 76B(2) of the Act are concerned, the State Legislature has exhibited quite a different intention. The State Legislature never contemplated that any order of disqualification can be passed against any officer of the society by the competent authority exercising powers under the Act unless that authority first decides to remove the concerned officer and passes a proper u/s 76B(1). I asked Mr. Trivedi for the respondents to point out whether the second respondent has passed any order of removal of the petitioner from the board of director of the Navdeep Co-operative Bank. He fairly stated that there is no such order passed by the second respondent but he submitted that that was so because the petitioner has already walked out from the membership of the bank on September 12, 1986, which was accepted by the

board of directors on September 13, 1986. He further submitted that there did not appear to be sufficient evidence on record to indicate that this resignation was genuine. In my view, the contention of Mr. Trivedi cannot be accepted for the simple reason that a mere look at the last para of the judgment of the second respondent shows that he has impliedly accepted the fact that the petitioner had already resigned as a director and having accepted that fact, he has naturally concentrated on the order which he had to pass viz, disqualification of the petitioner from being elected to the board of directors of Navdeep Co-operative Bank or any other co-operative society for a period of four years. It is pertinent to reproduce at this stage the English version on the relevant aspect as found in the order of the second respondent as found in the order of the second respondent:

"Only because resignation has been given as a director of the bank, it is not possible to accept the contention that notice u/s 76B(2) should be canceled and as it is found that you are responsible for many irregularities as mentioned in the notice, it is necessary to disqualify you u/s 76B from being elected to the board of management of the said or any other co-operative society, for period of four years."

6. The aforesaid reasoning adopted by the second respondent clearly indicates that he was conscious of the fact that the petitioner had already resigned as a director of the said bank. That is the reason why he did not pass any order removing the petitioner from the membership as it would have amounted to saying the slain. He, therefore, proceeded to pass only the order of disqualification for a period of four years from being elected to the membership of any committee of such society. This is clearly an order u/s 76B(2). It must, therefore, be held that the second respondent has not passed any order u/s 76B(1) removing the petitioner from the membership of the board of directors of Navdeep Co-operative Bank and straightway has passed the order of disqualification u/s 76B(2). If section 76B(2) was worded on the same lines as section 49(2) of the Gujarat Panchayats Act, the situation might have been different. It would be profitable to reproduce section 49(1),(2) of the Gujarat Panchayats Act which also deals with the same type of removal of elected officers of gram panchayats, and under that circumstances they can be disqualified from holding such posts in further:

"49. (1) The competent authority may remove from office any member of a Panchayats or the sarpanch, the up-sarpanch, the chairman, or, as the case may be, the vice-chairman, thereof after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it necessary, if such members sarpanch, up-sarpanch, chairman or vice-chairman, as the case may be, has been guilty of misconduct in the discharge of his duties or of of any disgraceful conduct or abuse his powers or makes persistent default in the performance of his duties and functions this Act or has become incapable of performing his duties under this Act. The sarpanch upasarpanch, chairman or,

as the case may be, the vice-chairman, so removed may, at the discretion of the competent authority, also be removed from the membership of the panchayat.

(2) The competent authority may, after following the procedure laid down in sub-section (1), disqualify for a period not exceeding four years, any person, who has resigned his office as a member, sarpanch upasarpanch, chairman or vice-chairman or otherwise ceased to hold any such office and has been guilty of misconduct specified in sub-section (1) or has been incapable performing his duties:

Provided that an action shall be taken within six months from the date on which the person resigns or ceases to hold any such office."

7. Section 61 and 73 of the Gujarat Panchayats Act are also identical in nature. They deal with removal of officers of taluk and district panchayats.

8. A mere look at section 49(2) of the Gujarat Panchayats Act and reading it in juxtaposition with section 76B(2) of present Act, leaves no room for doubt that the Legislature, in its wisdom, while enacting section 76B(2), did not contemplate a situation in which the competent authority can order disqualification of an officer of the society who is not first removed by him for alleged misconduct. In short, no order of disqualification u/s 76B(2) can be passed by the competent authority without there being in the field, as a condition precedent, a valid order of removal of the concerned officer from the membership of the managing committee of the society. May be, this is a case of omission on the part of the Legislature which be willful or otherwise. But as far as the provision stand on the statute book, there cannot be any escape from the conclusion that no order of disqualification u/s 76B(2) can be passed against an officer of the society unless, in the first instance, there is a valid order in the field u/s 76B(1) ordering his removal from the concerned office occupied by him in the managing committee of the society. Mr. Vakharia's contention, therefore, has to be accepted.

9. Mr. Trivedi then submitted that if the authorities have come to the conclusion that the called resignation of the petitioner was not genuine, it would amount to their impliedly passing the order of removal. In this connection, he invited my attention to the revisional order passed by the first respondent wherein, in the penultimate page of the order, at second para thereof, the following observations are made by the revisional authority:

"It was urged that the present appellant had tendered his resignation from the board of directors on September 12, 1986. In support of this, a copy of the agenda dated september 9, 1986, where at serial No.3, mention is made of the item regarding resignation members and transfers. From the records of the District Registrar, it is clear as to when and whether the present appellant has tendered his resignation and the same was accepted by the board of directors as enjoined by bye law 29(2)(1). In any case, not was produced to that effect."

10. It is true that the revisional authority found that there was not clear evidence about the petitioner from the board of directors of Navdeep Co-operative Bank. However, this is neither here nor there. It is the first authority, viz, the second respondent who has to hold that the so called resignation was a make-believe or was a camouflage and that the petitioner has continued to occupy the post of a director and, therefore, he was required to remove the petitioner first before passing any disqualification order against him. That exercise was never undertaken by the second respondent. Instead, as seen earlier, assuming that the resignation was valid, he did not pass any removal order but straight away proceeded to pass a disqualification order. Under these circumstances, the observation of revisional authority in the aforesaid para cannot be of any avail to the respondents. Ultimately the revisional authority has confirmed the order of the second respondent by dismissing the revision-cum-appeal. Therefore, the operative order which holds the field against the petitioner is the order passed by the second respondent directing him to be disqualified and for a period of four years from holding any elected post in the concerned bank. Now, that order squarely falls u/s 76B(2) for the Act. As there is no order passed by the second respondent removing the petitioner from the directorship of the bank u/s 76B(1) of the Act, it must be held that the very condition precedent which must exist for passing a disqualification order u/s 76B(2) is not available in the present case. It must be kept in view that section 78B(2) in terms provides that the Registrar may, by order, direct that the officer so removed shall be disqualified. Thus, the removal order u/s 76B(1) must precede the order of disqualification u/s 76B(2). In the present case, admittedly, there is no removal order in the file. Consequently the disqualification order must be treated to be entirely without jurisdiction and ultra vires the scheme of the act and de hors the provision of section 76B(2).

11. Only on this short ground, this petition will have to be allowed. It is made clear that I express no opinion on the merits of the controversy between the parties or on the merits of the charge leveled against the petitioner. Only on the aforesaid technical ground, this petition is allowed. Rule is made absolute. Orders at annexures A and B are quashed and set aside. Consequently, there will remain no questions of the petitioner being held disqualified from being elected to Navdeep Co-operative Bank or any other co-operative society for a period of four years as earlier directed by the second respondent by the impugned order. There will be no order as to cost. As the petition is allowed and the impugned orders are set aside, ad interim relief granted by this court earlier in the present petition will automatically stand vacated.