

(1989) 10 GUJ CK 0012
In the Gujarat High Court

Case No : Letters Patent Appeal No's. 324, 326 and 341 of 1988

Mehsana District Central Co-operative Bank Ltd., Mehsana and Others APPELLANT

Vs

Merda Seva Shakari Mandli Ltd., Merda and Others, etc. RESPONDENT

Date of Decision : 20-10-1989

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 73, 74

Citation : AIR 1990 Guj 176 : (1990) 1 GLR 423

Hon'ble Judges : T.U. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Advocate : K.G. Vakharia, for the Appellant; Govt. Pleader, P.M. Raval and P.K. Jani, for the Respondent

Judgement

Ravani, J.—Directors of certain specified co-operative societies are occupying the chairs even beyond the term for which they have secured mandate. Should the orders of the court and provisions of law be interpreted in such a way that majority of them can continue to hold the office for at least one year more; if not two? Should the court substitute the mandate of the electorate by its order? These are some of the questions, which need to be examined and answered.

2. By filing Special Civil Application No. 787/88, respondent No. 1, original petitioner in Special Civil Application prayed that the elections of the directors of the Mehsana District Central Co-operative Bank Limited, respondent No. 2 in the petition be not held simultaneously, but the same be held by rotation at the interval of one year on the basis of the constituencies represented by respective directors whose term have expired first. By filing, Special Civil Application No. 3351 of 1988, the petitioner in that petition also made similar prayer in respect of the election of the Board of Directors of Mehsana District Co-operative Purchase and Sales Union, Ltd. Both these petitions came up for hearing together with other two petitions being Spl.C.A.No.2560/1987 and 1371 of 1988, which pertained to the election of Board of Directors of Baroda District Co-

operative Milk Producer Union Limited.

3. It was contended by the petitioners that in view of the previous litigation in respect of the amended provisions of Gujarat Co-operative Societies Act, 1961 and particularly section 74 of the Act and in view of certain orders passed by the Supreme Court in the pending proceedings before it, the election of Board of Directors can be held only by rotation and not simultaneously. In other words, it is contended that election for 1/ 3 number of Board of Directors can be held at the interval of each year and that is the way in which the election should proceed. The respondents appeared in the petition and contended that if the relevant provisions of the statute and the orders of the Supreme Court are correctly interpreted, the election should be held for the entire Board of Directors simultaneously and there, is no room for holding that the election be held by rotation and prolong the election process for a period of three years. The learned single Judge after referring to the relevant provisions of the statute, bye-laws and orders passed by the Supreme Court, came to the conclusion that the election of the entire Board of Directors was "required to be held simultaneously and the learned single Judge rejected all the petitions, as per his judgment and order dated September 8, 1988. Against, the aforesaid judgment and order in two petitions Letters Patent Appeals have been filed i.e. in respect of Special C.A. No 787/ 88 and in respect of Spl.C.A.No.3351/88. It appears that petitioners in other two petitions, Spl.C.A.No.2560/87 and Spl.C.A.No.3171 of 1988, pertaining to election of Baroda District Co-op. Milk Producers Union have not filed L.P.A.

4. After the aforesaid judgment, was delivered one more petition being Spl.C.A. No.6276 of 1988 was filed by Panchmahal District Co-operative Bank Ltd. substantially praying for the same or the similar type of relief in respect of the election of the Board of Directors of the Bank. That petition has been rejected by an order dated September 16, 1988 by this court (Coram: G.T. Nanavati, J.) stating that in view of the decision in Special Civil Application No. 2560 of 1987 and other allied matters the petition is required to be rejected summarily. Against that decision Letters Patent Appeal No. 341 of 1988 is filed. This is how all these three Letters Patent Appeals are before us. At the request of and with the consent of all the learned advocates appearing for the parties, all these three L.P.As. are being heard together and are being disposed of by this common judgment and order.

5. In-order to understand the controversy between the parties the factual position with regard to the situation of Board of Directors in respect of each of the Co-operative Societies may be looked at:-

1. Mehsana District Central Co-operative Bank Ltd.

There are in all 15 directors in the Board of Directors of the Society. Four of them have been elected in the year 1979. Their tenure of office would have come to an end in the year 1982 and again in 1985. Five, of them have been elected in the year. 1981 and their tenure would have come to an end in the year 1984 and

again in 1987. Another five have been elected in the year 1983 and their tenure would have come to an end in the year 1986. One of them has been co-opted, for the period, which would have come to an end in the year 1982 and again in 1985.

2. Mehsana District Co-operative Purchase and Sales Union Ltd.

There are in all 17 Directors, Six of whom have been elected in the year 1981 and their term would have come to an end in the year 1984; five of them were elected in the year 1982 and their term would have expired in the year 1985. Rest of the six have been elected in the year 1983 and their term would have come to an end in the year 1986.

3. The Panchmahals District Co-operative Bank Ltd.

There are 16 directors. Four of them have been elected in the year 1982-83 and their term has, expired in 1985. Eight of them have been elected in the year 1983-1984 and their tenure has come to an end in the year 1986. Rests of the four have been elected in the year 1984-85 and their term of office has expired in the year 1987.

Thus in all the three societies, all the directors have completed their term of office. They are occupying the position today not on account of the mandate of their electorate but it is on account of the stalemate created mainly due to court proceedings.

6. Pursuant to the order of the Supreme Court, the Deputy Registrar of the High Court is required to hold the election in respect of the specified societies. Specified societies mean, the societies mentioned in Section 74-C of the amended Act. As directed by the Supreme Court the elections were to be held as per the unamended provisions of the Act, bye-laws and rules. On this point there is no dispute between the parties.

7. The factual background in brief be stated : The State of Gujarat amended the Gujarat Co-operative Societies Act, 1961 by amendment Act 1981 and 1982. The constitutional validity of the amended provisions of the Act and particularly that of proviso to S. 74 and Sections 74A 74B and 74C was challenged. The court held that the proviso to Section 74, by which the provision with regard to election of the Managing Committee of specified Co-operative Societies falling in Section 74C(1) is concerned was ultra vires Article 19(1)(g) of the Constitution, placing unreasonable restrictions. The court also held that certain provisions of Section 74A are ultra vires Article 19(1)(g) of the Constitution. The aforesaid decision is rendered in the case of Amreli Dist. Co-opl Sale & Purchase Union v. State which is reported, in (1984) 25(2) GLR 1244. Against the judgment and order passed by this Court, the Cooperative Societies as well as the State Government preferred appeals before the Supreme Court, The Supreme Court has granted special leave to appeal and the appeals are pending. The Supreme Court passed interim orders dated November 13, 1984, December 5, 1984 and

January 17, 1985 in the aforesaid matters. It may be noted that " by the aforesaid orders of the Supreme Court, the Supreme Court has not stayed the operation of the provisions of Section 74C(2) of the Act. It is also not in dispute that as per the directions of the Supreme Court, Deputy- Registrar of the High Court is required to hold the election of the specified Societies in accordance, with the unamended provisions of the Act and the byelaws and rules. The provisions of Section 74C(2) inter alia provides that when the election of all the members of the committee of any society is held at the same time, the members elected on the committee at such general election shall hold the office for a period of three years from the date on which the first meeting is held, and they shall continue to be in office until immediately before the first meeting of the members of the new committee is held.

8. The Deputy Registrar of the High Court, who was required to hold the election as per the directions given, by the Supreme Court, could not hold the election very probably due to inadequacy of staff and machinery at his disposal. Therefore, the election which ought to have been held in respect of 1/3 members of the Managing Committee/ Board of Directors at the end of every year could not be held and the entire period of three years term for which the Board of Directors is constituted has expired. Had the election been held every year in respect of 1/ 3 of the members of Board of Directors, the entire board would have stood reconstituted on the expiry of the term of three years. But as the elections Were not held, the Directors elected earlier and who ought to have vacated the office some time in the year 1982-83, 1983-84 and 1984-85 have continued to be in office till today. This is evident from the details mentioned here in above in para 5 of the judgment. Since the election of the Board of Directors of the specified societies was required to be held as per the direction of the Supreme Court by the Deputy Registrar of the High Court, he thought that the entire term of the Board of Directors had elapsed, and therefore the election of the entire Board of Directors be held. It appears that the petitioners came to know about this position. Even before the election, programme was declared, the appellants-petitioners rushed to this court and prayed that the election be held by rotation for 1/3 of the members of the Board of Directors at the end of every year and not simultaneously.

9. The learned single Judge who heard the petitions, rejected the petitions by a detailed reasoned judgment and order dated Sept. 8, 1988. The learned, single Judge came to the conclusion that since the election in respect of 1/ 3 members of the Board of Directors could not be held at the end of every year and since the term of the members of the Board of Directors had expired, it was just, proper and reasonable that the election of the entire Board of Directors be held simultaneously. He also held that to avoid any difficulty after the election is over it may be decided by lot or by any other agreed method as to who would retire at the end of first year, second year and third year. He has further observed that this should be decided in advance to avoid any difficulty in future.

10. The learned counsel for the appellants submits that the election can be held only as provided for in the bye-laws. In his submission the bye-laws do not provide for simultaneous election for the entire Board of Directors, therefore, the election should be held for 1/3 of the members of Board of Directors only every year. The contention could have been accepted had the normal situation prevailed. In ordinary course, at the end of every year 1/ 3 members of the Board of Directors would have retired and the election would have been held. Thus by rotation every year 1/3 members of the Board of Directors may, retire and newly elected members may come in. But the difficulty has arisen on account of the fact that normal situation has not prevailed. It is immaterial that the abnormal situation has not been brought about by the petitioners. The fact remains that abnormal situation has arisen on account of certain problems having arisen in implementing the orders of the Supreme Court. Therefore, the question is, even when such abnormal situation has arisen should the persons who have run out their terms be permitted to hold Board of Directors and the election be held by rotation only? Let us examine the question

11. The Gujarat Co-operative Societies Act, 1961 provides for formation of the cooperative societies and the managements thereof in accordance with the provisions of the Act. Section 4 of the Act lays down that the object of the formation of the society is the promotion of the economic interests or general welfare of its members or of the public "in accordance with the cooperative principles. Section 73 of the Act provides that the final authority of the Society shall vest in the general body of members in general meeting. Section 74 deals with the powers and function of the committee. The managing committee is to be constituted in accordance with the provisions of the Act, rules and bye-laws and it shall exercise such powers and perform such duties as may be conferred or imposed on it by the Act, the rules and the bye-laws. The term of the members of the Board of Directors or that of Managing committee is fixed in respect of bye-laws. The bye-laws provided that the term of the Board of Directors or Managing Committee is of three years. Bye law 28B(4) inter alia provides that from amongst 18 members of the Board of Directors, 1/ 3 of them shall retire every year. Who shall retire every year is not specified. Bye law No. 18.3 provides that if the members of the Board of Directors do not retire voluntarily, at the end of first year and second year, the same shall be decided by lot. Byelaws do not provide for simultaneous election of all the members of the Board of Directors.

12. As indicated here in above, an abnormal situation has arisen. Therefore, the question is: Should the provisions of the Act and the bye-laws be interpreted in such a way that "It may lead to further absurdity and allow the members of the Board of Directors to remain in office even beyond the expiry of the term for which they had obtained mandate of the electorate and for which they were originally elected? If the interpretation canvassed by the learned counsel for the appellants is accepted, the 2/3 members of the Board of Directors will be holding the office under the protection of the orders of the court beyond the term for

which they have been elected. Thus they would occupy the position of power for which they have not secured mandate from the members of the general body in which the final authority of the society vests as provided u/s 73 of the Act. The source of power or the authority by which the members of the Board of Directors could occupy the office have the rod in the mandate given by the members of the co-operative society. At the expiry of their term this mandate will also come to an end. But, can the mandate be substituted by the order of the court? Should the court place an interpretation by which the court would be electing the Board of Directors at least to the extent of 2/3 of the members of the Board? Such an interpretation runs counter to the basic canons of democracy. It may be noted that this could "not be done even by the members of the co-operative society because they can give mandate maximum for a period of three years. Thus that which could not be done even by the members of the Co-operative society in whom the ultimate power resides would be sought to be done by utilising the machinery of the court. This would be against both the basic principles of democracy and the provisions of the Act and. bye-laws. Therefore, such an interpretation has got to be avoided.

13. The legislature cannot be expected to take care of all the situations, "normal as well as abnormal. Certain events may take place which may lead to abnormalities. To meet with such situations, one of the basic rules of Interpretation of Statutes is required to be invoked, i.e. the harmonious construction of the provisions of the Act and the Rules. If the interpretation canvassed by the learned counsel-for the appellants is accepted, it would run counter to the provisions of the Act and the bye-laws in as much as at least 2/ 3 members of the Board of Directors would occupy the office of the Directors beyond the term for which they are elected. This would be against the-underlying object and spirit of the provisions of Section 73 of the Act which provides that the final authority of the society vests in the general body of members in general meeting. This can be avoided by visualising a situation in which the Board of Directors or members of the Managing Committee is to be constituted for the first time. In such a situation all the members of the Board of Directors or members. of the Managing Committee would come in power simultaneously. Once the entire Board of Directors is constituted in this, manner, the provision with regard to the retirement by rotation every year can be, introduced and implemented. This is how the apparent conflict has got to be resolved. If this method is adopted it would be in consonance with the underlying principles of the provisions of Section 73 of the Act and it would also be in conformity with the provisions of the bye-laws and the basic canons of governing any democratic institution.

14. Further, the provisions of the Act, by laws and the rules are required to be interpreted so as to be in conformity with the basic co-operative principles. The International Co-operative Alliance has recognised the following six co-operative principles:

(i) Voluntary and open membership

(ii) Democratic control

(iii) Limited interest on capital

(iv) Equitable division of surplus

(v) Co-operative Education

(vi) Co-operation among co-operatives. (See Indian Co-operative Laws vis-a-vis Co-operative Principles by P. E. Weeraman, R. C. Dwivedi and P. Sheshadri, 1973) In the same book at page 11, as regards the democratic control it is observed as follows:-

"Co-operative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies shall enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration shall be conducted on a democratic basis in a suitable form."

The aforesaid principles clearly indicate that the societies are to be managed on the basis of the democratic principles and democratic principles surely do not mean that a person be permitted to cling to the office beyond the period for which he has been elected. Thus the interpretation of the byelaws placed by us is not only in conformity with the provisions of the Act and the byelaws but it is also in conformity with the basic canons of democratic control as well as the co-operative principles.

15. The learned counsel for the appellants submitted that if the election is to be held simultaneously for all the members of the, Board of Directors, it would be against the direction given by, the Supreme Court. The contention cannot be accepted. The direction given by the Supreme Court is clear. The election of the managing committee of specified society is to be held by Deputy Registrar of High Court and it is to be held in accordance with the unamended provisions of the Act, rules and bye-laws. This directions of the Supreme Court are also required to be interpreted reasonably and in the context of the facts situation, they are to be carried out. The fact situation is that, the term for which the members of the Board of Directors were elected is over long back. In some cases the directors should have vacated the office some time in the year 1982 or 1983 or 1984. These persons are still continuing in office. They cannot be permitted to hold the office by placing absurd interpretation on the provisions of the bye-laws and the wording of the directions given by the Supreme Court.

16. We are broadly in agreement with the reasons given and conclusion arrived at by the learned single Judge. We do not see any reason to interfere with the judgment delivered by the learned single Judge. There is no substance in any of the points raised by the learned counsel for the appellants. Hence all the three

L.P.As. are dismissed.

17. At this stage, the learned counsel for the appellants requests that the ad interim relief granted in C.A. No. 1685 of 1988 be continued for some time so as to enable the appellants to approach the superior forum as it may be available to them. The request cannot be granted. It is an admitted position that even the election programme has not been declared in respect of any of the societies. The declaration of election programme and holding of the election thereafter would certainly take some time. Therefore if some time elapses without any interim directions from this court, no prejudice will be caused to the appellants-petitioners. Hence request to extend the interim relief is refused.

18. Order accordingly.