

(2016) 04 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 8714 of 2015 With Special Civil Application No. 16960 of 2015 With Civil Application No. 11406 of 2015. In Special Civil Application No. 8714 of 2015

Meragbhai Kanabhai Chavda

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Citation : (2016) 3 GLR 1940

Hon'ble Judges : Mr. C.L. Soni, J.

Bench : Single Bench

Advocate : Mr. Bharat T. Rao, Advocate, for the Appellant; Mr. Prakash Jani, Addl Advocate General With Mr. Ronak Raval, Asstt. Govt Pleader, Mr. Rutul P Desai, Advocate, Notice Served By D.S, Mr. Chirag B. Patel, Advocate, Mr. Dhaval D. Vyas, Advocate, for the Resp

Final Decision : Disposed Off

Judgement

Mr. C.L. Soni, J.(Oral)—Considering the nature of challenge made in the first petition and the prayers made in the second petition, the petitions were taken up for final hearing and disposal at the notice stage with consent of learned advocates for the parties.

2. In the first petition, initial challenge made is against the order dated 12.5.2015 passed by the State Government - Respondent No.1 appointing respondent No.5 as Government Nominee in the Managing Committee of respondent No.4 Bank in exercise of the powers under section 80(3) of the Gujarat Co-operative Societies Act, 1961 ("the Act"). The petition was then amended so as to challenge the order dated 31.3.2015 passed by the State Government to sanction Rs.9,00,000.00 for subscription to the share capital of respondent No.4 Bank for the year 2014-15 and to pay the said amount to respondent No.4 Bank through the Gujarat State Cooperative Bank Ltd. The Respondent No.4 Bank is the specified society as per section 74(C) of the Act and

is part of the Co-Operative Credit Structure as defined under Section 2(7-A) of the Act.

3. As per the facts stated in the petition, the term of the Board of Directors of respondent No.4 Bank expired on 2.7.2013. Special Civil Application No. 12264 of 2013 was filed seeking direction to hold election of the Board of Directors and not to appoint the custodian till the election was held. The Court, in the said petition, passed order dated 8.8.2013 directing the State Government to hold election as early as possible and not to appoint the Custodian-Administrator till the election was held. The election of the Board of Directors was then held on 22.2.2015 and the result of election was declared on 29.4.2015. The petitioners are some of the elected Directors in such election. However, before the result was declared, the Government vide order dated 31.3.2015, took decision to subscribe to the share capital of respondent No.4 bank.

4. The second petition is filed by the Cooperative Societies which claim to be members of respondent No.4 bank for direction to the Registrar, Cooperative Societies, Gujarat State to appoint custodian in respondent No.4 bank.

5. Learned Advocate Mr. Rao appearing for the petitioners in the first petition submitted that decision to subscribe share capital by the State Government is with mala fide intention and with ulterior motive to reduce the majority of the petitioners into minority for the purpose of election of the Chairman. Mr. Rao submitted that the State has not given any prior intimation to the Bank of its intention to subscribe to its share capital and it is not permissible to subscribe the share capital by just depositing the amount in the bank account of respondent No.4 bank maintained with the State Co-operative Bank Ltd. Mr. Rao submitted that since there is no subscription to the share capital in the eye of law, the State is not authorised to nominate its representative in the committee of respondent no.4 bank. Mr. Rao submitted that the decision to subscribe share capital is under Section 51 which comes under Chapter V of the Act relating to the State aid and, therefore, unless the society requires financial aid or the State finds that the society is in need of financial aid, the State is not permitted to subscribe by way of aid, that too, without hearing the society. Mr. Rao submitted that if the society is financially well placed and doing profit, the State is not authorised to subscribe any amount under section 51 of the Act. Mr. Rao submitted that un-disputably, respondent No.4 bank has earned the profit of around Rs.65,00,000.00 for the Financial Year 2014-15 and the State aid was not required. Mr. Rao submitted that minority four Directors of opposite group called for subscription by Circular resolution to achieve political mileage at the time of election. Mr. Rao submitted that such resolution by 4 directors is not ratified by the General Board which passed resolution to send back the amount deposited in the account of respondent No.4 bank to Government and such amount having been sent back to the State Government, the nominee appointed by the State Government under the impugned order dated 12.5.2015 cannot continue.

6. Learned Additional Advocate General Mr. Jani submitted that section 51 of the

Act authorizes the State to subscribe to the share capital of the society with limited liability and, therefore, no consent of the society is required. Mr. Jani submitted that the subscription under Section 51 of the Act is not dependent on society's request or consent. Mr. Jani submitted that simply because the Government has considered proposal sent by the society through the Registrar, its decision to subscribe the share capital of respondent No.4 under Section 51 of the Act cannot be faulted as the Government has exercised its discretion under Section 51 independently. Mr. Jani submitted that the petitioners who are individual members of respondent No.4 bank have no right to challenge the decision of the State Government to subscribe to the share capital of respondent No.4 as their rights would merge with respondent No.4 bank. Mr. Jani submitted that the bye-laws of respondent No.4 bank permits subscription to the share capital by the State and, therefore, neither the society nor members of the society can challenge discretion exercised by the State under Section 51 of the Act. Mr. Jani submitted that once powers under Section 51 of the Act are available to subscribe share capital directly, such subscription could be made by depositing the amount in the bank account of the respondent society which is done in the present case. Mr. Jani submitted that the State always provides for separate subscription funds which are being used to subscribe to the share capital of different societies and in the present case, sum of Rs.9 lacs subscribed by the State is from such funds and, therefore, it cannot be said that the subscription made by the State is no subscription in the eye of law. Mr. Jani submitted that there are no para-matters or rules for deciding the extent of subscription for appointing nominee under Section 80(3) of the Act. Mr. Jani submitted that when the State desires to have its nominee on the board of the society, it can subscribe to the share capital of such society irrespective of the financial position of the society. Mr. Jani submitted that by such subscription under Section 51 of the Act, the State desires partnership with the society to ensure growth of cooperative movements. Mr. Jani submitted that since the elected body has not assumed charge, there is no question of return of the subscription amount to the State. Mr. Jani submitted that the allegation that the Government nominee is appointed to convert majority into minority for election of the chairman is ill founded as when the order dated 31.3.2015 was made to subscribe to the share capital of respondent No.4 bank, the election of the Directors was not held and, therefore, there was no question of making order for subscription to share capital to tilt the balance for the election of Chairman. Mr. Jani submitted that when the State is competent to subscribe to the share capital under Section 51 of the Act, no challenge to the order appointing nominee under Section 80(3) of the Act could be made.

7. Learned advocate Mr. B.S. Patel appearing for respondent No.5, while adopting the argument of learned Addl. A.G. Mr. Jani, submitted that the proviso to section 51(1) of the Act was inserted simultaneously with sub section (3) in Section 80 of the Act by amendment and it is not meant to reduce share capital to zero and the intention of the Legislature is clear that when the State subscribes to the

share capital of the society, it will be under obligation to appoint its nominee to serve public purpose. Mr. Patel submitted that there was no agenda in General Board meeting to return the amount subscribed by the State and even if such decision is taken by the general board, same cannot override the provisions of Section 51 of the Act. Mr. Rutul Desai for respondent No.4 Bank submitted that the decision to subscribe share capital was before the result of election was declared and now when the result is declared, the affairs of the Bank should be managed by the elected body.

8. Learned Advocates Mr. Dipen Desai and Mr. Dhaval Vyas appearing for respondent No.6 in the first petition and for the petitioners in the second petition submitted that it is not correct to say that the order under section 80(3) of the Act nominating the Government representative in the committee of respondent No.4 bank was made to tilt the majority to minority. They submitted that when the order for subscription was made on 31.3.2015, the result of the election of Directors was not declared and it was not known who would get majority seats of the Directors. They submitted that the election of the Chairman takes place only after the election of the members of the Managing Committee is over and, therefore, it is misconceived to say that the order for subscription was made with political agenda to convert majority into minority. They submitted that the old body has continued unauthorisedly and has taken policy decision though prevented from taking such decision by interim order of this Court. They submitted that since the election of the Directors of respondent No.4 has already taken place long before and since the petitioners in the first petition are responsible for not allowing the election of the Chairman and taking policy decision affecting the interests of the members and of respondent No.4 bank, this Court may first consider to issue direction to appoint the custodian and then to hold the election for the Chairman of respondent No.4 bank so that the old body may not continue to function pre-judicially to the interests of the respondent No.4 bank.

9. The Court having heard the learned advocates for the parties, finds from the provisions of the Act that the State can subscribe to the share capital of the society either directly or indirectly as provided under Chapter-V of the Act. In the present case, the State has passed order dated 31.3.2015 sanctioning Rs.9,00,000.00 for the year 2014- 15 to subscribe to the share capital of the respondent No.4 bank to be paid through the State Co-operative Bank Limited and as per the communication of even date, copy whereof is placed at Annexure R-4, the respondent No.4 bank was informed by the State Cooperative Bank that the share subscription amount of Rs.9,00,000.00 was deposited in its current account. Thus, the State has exercised powers under Section 51 of the Act to subscribe to the share capital of respondent No.4 bank. Section 51 of the Act which comes under Chapter V for State Aid to the Societies for direct partnership of the State Government reads as under:

"51. Direct partnership of State Government in societies.- (1) The State

Government may subscribe directly to the share capital of a society with limited liability.

Provided that in the case of societies in the co-operative credit structure, the State Government shall not subscribe for more than twenty-five per cent of the total share capital and the State Government or the society shall have the option to reduce the share capital contributed by the State Government.

(2)The share capital subscribed by the State Government under sub-section (1) may be returned to the State Government by a society in such circumstances as may be prescribed by the State Government."

10. As per section 80(3) of the Act, the State can nominate one representative in the committee of the State Cooperative Bank or the Central Cooperative Bank where the State Government has subscribed to the share capital of such cooperative bank. The State has exercised this power and appointed one nominee-respondent No.5 in the committee of respondent No.4 bank by order dated 12.5.2015.

11. In the first petition, the Court vide order dated 18.5.2015, directed the Government not to convene meeting for the purpose of election of the Chairman.

12. As per section 145-Z of the Act, the Chairman of a specified society is to be elected by elected members of the managing committee in the meeting to be presided over by the Collector or an officer nominated by him. Since such meeting has not taken place by virtue of the above referred order, it is stated that the old body has continued to function wherein some of the petitioners were also the members. As per Section 80(1) of the Act, the State can appoint three representatives in other societies where the State has subscribed to their share capital. As per Section 80(2) of the Act, the State can also nominate its representative on the committee of a society having regard to the public interest involved in the operation of such society as if the State Government has subscribed to the share capital of the society.

13. The question is, if a society does not require State aid, whether the State can unilaterally subscribe to the share capital of such society under section 51 of the Act just because it desires to appoint its nominee under Section 80(3) of the Act?

14. Mr. Jani would contend that it is pure discretion of the State and if the State desires to appoint its nominee in the committee of a society, it can exercise its discretion to subscribe to the share capital of such society under Section 51(1) of the Act irrespective of the need of the society for financial assistance from the State Government. Mr. Jani sought to draw analogy from Section 6 of the Land Acquisition Act, 1894 (Repealed Act) so as to emphasise that for the public purpose, discretion available to the State could well be exercised independently. The Court, however, finds that the legislature does not appear to have intended for appointment of State representative by subscription of share capital under Section 51 where society does not require subscription as State aid to it. As

stated by Mr. Jani, every year, the State provides for funds for subscription to the societies. However, such funds could be used to subscribe to the share capital of those societies which are in need of financial help from the State. As stated in the order dated 31.3.2015, amount of Rs.1,38,00,000.00 was sanctioned by the State Government for such purpose for the year 2014-15 out of which, an amount of Rs.1,29,00,000.00 was sanctioned to the Junagadh District Central Cooperative Bank Limited and the remaining amount of Rs.9,00,000.00 was sanctioned as subscription for respondent No.4 for the year 2014-15. Such amount came to be deposited in the bank account of respondent No. 4 bank maintained with the State Co-operative Bank Ltd. As stated by Mr. Jani, there are no parameters to decide the extent of subscription amount to be paid as State aid to the societies under Section 51 of the Act. Mr. Jani therefore, submitted that when the State desires to appoint its nominee in the committee of a society to have partnership with such society, the State can pay any amount by way of subscription as State aid. Such contention cannot be accepted as the State cannot use the provisions of section 51 of the Act irrespective of the need of the State aid by such society and by depositing smallest amount with the society which will be of no help to the society which otherwise makes profit. Section 51 of the Act speaks about subscriptions by the State Government directly to the share capital of the society whereas section 52 of the Act speaks about indirect partnership of the State in the society through the other society for the purchase directly or indirectly, of shares in other societies with limited liability by providing money under the appropriation made by law. The intention behind enacting section 51 appears to be that if a society is in need of financial help, the State Government can directly provide for financial aid from the available funds by way of subscription and to have check on affairs of such society, it can appoint its nominee under Section 80(3) of the Act. Therefore, unlike purchasing of shares in society through and in the name of other society as per Section 52 of the Act, the State can straightway provide for financial help to the society by subscribing to the share capital of the society. But, unless such financial aid is necessitated by the society, State is not to exercise the powers under Section 51 and such powers are not meant to be exercised just because the State wants to appoint its nominee in the committee of the society.

15. It is not in dispute that the respondent No.4 has made profit of around Rs.65 lacs during the year 2014-15. It is also not the case of the State that the order dated 31.3.2015 was passed to subscribe share capital to respondent No.4 bank as it was in need of financial aid from the State Government. Section 51 with sub section (2) as inserted therein by amending Act,1982 was under scrutiny of this court with other provisions of the Act and challenge to the amending Act was examined in the case of Amreli District Co-operative Sale & Purchase Union Ltd. & Others v. State of Gujarat reported in 1984 (2) GLR 1244. Sub Section (2) of Section 51 then existed read as under:

"Share capital subscribed by the State Government under sub section (1) shall not be returned to the State Government by any society except with the clear

sanction of the Government.."

16. The Court while examining the validity of sub-section (2), held and observed in para 69 as under:

69. Section 51 of the principal Act is a part of Chapter V dealing with State aid to societies. Section 51, as it originally stood in the principal Act, provided for direct partnership of State Government with societies. Section 52 provides for indirect partnership of the State Government with societies. By original Section 51, the State Government may subscribe directly to the share capital of a society with limited liability. Section 52 enables the State Government by making an appropriation under law to provide moneys to a society for the purchase directly or indirectly of shares in other societies with limited liability and such society to which moneys are so provided for the aforesaid purpose is described as "Apex society." It is in Section 51 that the impugned Act, 1982 made an amendment by numbering the original section as 51(1) and by inserting a new provision as Sub-section (2) in the said section. The newly inserted Sub-section (2) provides as under:

(2) The share capital subscribed by the State Government under Sub-section (1) shall not be returned to the State Government by a society except with the previous sanction of the Government.

The grievance of the petitioners is that though the marginal note of the section prescribes the provision as "direct partnership of State Government in societies", it is in effect and substance the financial assistance given by the State Government since it is a part of the Chapter captioned, "State Aid to Societies". Though, the State purchases shares of the society, the real nature of the arrangement is of partnership and, therefore, even if the societies are in a position to repay the State loan which is invested in the purchase of shares, the State Government, by the newly inserted provision, wants to put an embargo on that right of the society which it enjoys under its Bye-laws. In submission of the Learned Counsel for the petitioners, no financial assistance can be foisted on any person much less a co-operative society which can always repay the loan which has been once advanced by way of assistance. Even if the assistance is provided by purchasing the shares of the society, these shares must be treated as redeemable shares which the society can always redeem by paying the share capital to the State Government. The Learned Counsel for the petitioners, therefore, urged that there is no public interest which dictated the embargo on such a right much less it can be said to be reasonable restriction on the light. On behalf of the State Government, it has been contended that there is no absolute prohibition on the return of the capital. It is only the previous sanction which is required before it could be returned. In the common reply affidavit filed on behalf of the State Government, in paragraph 9 the justification for the provision is made in the following terms:

9. In order to strengthen financially the society coming into existence the State

Government under Section 80(1) of the principal Act nominates not more than 3 representatives on the committee of such society. It is observed that in order to avoid State representation in the Committee, the societies tend to return subscription of the State Government even by borrowing the amount with high interest. Thus at the cost of financial soundness, societies resorted to return the share capital of the Government. It is with a view to ensure that a society does not return the share capital contributed by the Government merely to avoid Government nominees on its committee that this provision is enacted. It may be further added that the Government support to the co-operative is not confined to the contribution to the share capital only, but flows in the form of other indirect benefits such as preferential treatment accorded to the co-operatives, exemptions from the corporate tax to a certain extent and concessional finances from the various financial institutions; these are a few of the various support measures extended by the Government. I say further, that the membership of a co-operative society ceases only by acquiring any disqualifications due to death, resignation or transfer of shares and the society cannot terminate the membership of any member unilaterally without following the procedure prescribed in the bye-laws and provisions of Section 36 of the Act even in case of a member responsible for any action detrimental to the interests of the society. I say that by contributing sizeable amounts of share capital the Government acquires membership of a society, and, therefore, it should have the statutory protection of preserving its membership, and enjoy the rights of membership. I, therefore, deny that it is a fundamental right of a co-operative society to return the share capital contributed by the Government..."

17. Now by the Gujarat Cooperative Societies Amendment Act, 2015 brought in force on 10.4.2015, the legislature has brought new subsection (2) in Section 51 providing for return of the share capital to the State Government in such circumstances as may be prescribed by the State Government. It is stated before the Court that no such circumstances are prescribed. Be that as it may, from what is observed by the Hon'ble Division Bench in the case of Amreli District Coop. Bank Ltd. (supra) and from the language of sub section (2), now inserted, it becomes clear that the society if financially capable may not be forced to accept and retain the amount by subscription in exercise of powers under Section 51 of the Act. If the society is financially capable to return the share capital to the State Government or does not require any financial assistance from the State, the State is not enjoined upon to exercise powers to subscribe to the share capital. When State is authorised under Section 80(2) to appoint the representative on the committee of the society having regard to the public interest involved in the operation of the society, the State Government will not indirectly exercise such powers by resorting to Section 80(3) of the Act with the help of Section 51 of the Act. Therefore, irrespective of the allegations as regards exercise of powers under Sections 51 and 80(3) of the Act mala fide and with political agenda, the court finds that such exercise of powers in the facts of the case was not called for. Mr. Jani however relied on the judgment in the case of M.

Pentiah and others v. Muddala Veeramallappa and others reported in AIR 1961 SC 1107 so as to contend that interpretation in-consistence with express provision cannot be made. However, it is not a case where power inconsistent with expressly given in Section 51 is being read but the legislature intention in Section 51 under Chapter V of State aid to societies is being gathered. Though there is express provision to subscribe directly to the share capital of the society with limited liability, such powers are intended to be exercised for the State aid to the society only when the society needs such State aid. Mr. Jani then relied on the observation made by the Hon"ble Supreme Court in para 229 of the decision in case of Rameshwar Prasad and others (VI) v. Union of India and Another reported in (2006)2 SCC 1 which reads as under:

"229. Lord Greene said in 1948 in the favour Wednesbury case that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service (called CCSU case) summarised the principles of judicial review of administrative action as based upon one or the other of the following viz. Illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

18. In fact, the question about judicial review is not to be examined in abstract but is to be gone into in the facts of the case. If a particular action is found to be contrary to the intention of the legislature which could be said to be contrary to law, judicial review is always available to strike such decision.

19. Mr. Jani however would rely on the decision of Patna High Court in the case of Sheetal Prasad Gupta and others etc. v. State of Bihar and others reported in AIR 1990 Patna 64 especially para 25 which reads as under:

"25. Point No. (iii) : - The submission is that since Section 13(A) of the Ordinance empowers the State Government to subscribe directly to the share capital of the registered society or to assist indirectly in the formation and augmentation of the share capital of the registered society, it constituted an infringement of Article 19(1)(c) of the Constitution. This submission is on the supposition that it strikes at the powers of the members of the Association to keep out persons with whom they do not want to associate. Article 19(1)(c) of the Constitution confers upon every citizen the right to form association. The provisions of the amending Ordinances do not strike at the root of individuals to form association. In fact, the right of the members of the cooperative society to form association has not been touched at all. The petitioners will continue to be the members of the co-operative society at all times. The co-operative societies have not been dissolved nor have the amending Ordinances conferred and power on the State Government or the Legislature to dissolve any co-operative

societies. The challenge to Section 13A is based on ground that Section 13 strikes at the power of the members of the association to keep out persons with whom they do not want to associate. Whatever may be the ambit of power under Section 41(6) of the Act, the co-operative societies will continue to exist in all their glory. The petitioners cannot object with any amount of justification if more funds flow into the cooperative societies either as loan or as share capital. The right to association, therefore, has not been affected at all nor there is any apprehension that the right to association is likely to be whittled down. The supposition however, that the power of the members of a cooperative society to keep out persons with whom they do not want to associate is included in the right to form association is fallacious. The rights of members flow from the statute, namely, the Bihar and Orissa Cooperative Societies Act. What can be conferred by a statute can also be taken away by statute. It is only the constitutional right which cannot be taken away by statute but there can be no restriction on the power of the legislature to strike down any statutory right. In my view, therefore, the provisions of Section 13(A) are not violative of Article 19(1)(c) of the Constitution.

Learned counsel for the petitioners contended that the infringement of Article 19(1)(c) of the Constitution was not reasonable and was thus not saved by Article 19(6) of the Constitution. This submission has only got to be stated to be rejected. I have already discussed earlier that there is a public purpose behind the amendment. The amendments are in public interest. They are meant to stem the rot in the co-operative movement which are eating at their vitals. The amendments are, therefore, obviously reasonable. The State Government as the guardian of the people's interest to save public funds must have the right to save the capital or the finance in the co-operative society. It cannot, therefore, be said that the power to nominate Chairman/Managing Director of the Society or the power to subscribe directly or indirectly to the share capital is not reasonable. They are simply protected by Article 19(6) of the Constitution."

20. From the said decision, it appears that the Hon"ble Patna High Court examined the legislative competence for insertion of various provisions by 1989 Ordinances including Section 13A in Bihar and Orissa Coop. Societies Act. Section 13A(2)(a) of the said Ordinance provides that the State Government may, with a view to make growth of a registered society in general or of any class of registered society, subscribe directly to the share capital of registered society. The Patna High Court has held that such provisions of the Amending Ordinances did not strike to the right of individual to form association as the right of the members of cooperative society to form association has not been touched at all. It needs to be mentioned that Section 13A bears the marginal title Promotion of Cooperation Movement by Govt. In the present case, placement of Section 51 in Chapter-V of the Act is unlike Section 13A of the said Ordinance and the question being examined in the present case is about exercise of powers under Section 51 of the Act by the impugned order dated 31.3.2015 in the context of the legislative intention. Therefore, the judgment of the Hon"ble Patna High Court

shall have no application to the facts of the present case.

21. Mr. Jani would then rely on the decision of the Hon^{ble} Supreme Court in the case of *Tinsukhia Electric Supply Co. Ltd. v. State of Assam and others* reported in AIR 1990 SC 123 and lay emphasis on the observations made in para 49 which reads as under:

"49. The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "*ut res majis valeat quam periat*". It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial-review by testing the law for arbitrariness or unreasonableness under Article 14; but what a Court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. In *Manchester Ship Canal Co. v. Manchester Racecourse Co.*, [1904] 2 Ch. 352 Farwell J. said:

"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty." (See page 360 and 361)

In *Fawcett Properties v. Buckingham Country Council*, [1960] 3 All ER 503 Lord Denning approving the dictum of Farwell, J. said:

"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the Statute to bear rather than reject it as a nullity." (Vide page 516)

It is, therefore, the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. In *Whitney v. Inland Revenue Commissioner*, [1926] AC 37 Lord Dunedin said:

"A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." (vide page 52)

22. It is true that the provisions of the statute may be so construed to make it effective and operative. Applying such principles, while construing Section 51 of the Act, the Court finds that the provisions of Section 51 are not intended to be used as handle for appointment of nominee in the committee of the society. If such is permitted, Section 51 can easily be used for any oblique purpose or to serve political agenda, which will render the provision of Section 51 ineffectiveness and fail to achieve the real purpose behind it. It is required to note that wherever and whenever the State finds that public interest is involved in operation of any society, it can appoint its nominee under Section 80(2) of the

Act but when no such powers can be exercised in absence of element of public interest, State cannot resort to Section 51 just to satisfy its desire to appoint its nominee in the name of serving public purpose. Section 52(2) when provides for return of share capital indicates intention of legislature that the society can repay the share capital contributed by the State Government when there is no need to continue with the share capital or to subscribe to its share capital, and therefore, appointment of nominee under Section 80(3) of the Act by using Section 51 where no financial aid is required by the society would not stand scrutiny of law and when such appointment would tilt the balance for election, it is nothing but colourable exercise of powers.

23. Mr. Jani, however, submitted that the petitioners as individual members cannot challenge the impugned orders. However, in the facts of the case, it is not possible to agree with the submission. The petitioners are elected Directors of respondent No.4 in recent election held. They have come with a case that their group has secured majority in such election and nomination of the Government representative under Section 84(3) of the Act is with an intention to tilt the balance for the election of Chairman. It is in view of such allegation, the Court finds that when appointment of Government nominee would affect the right of the petitioners to elect the Chairman, it cannot be said that the petitioners have no right or no locus to challenge the impugned orders.

24. In the case on hand, it is pointed out in para 2 of the petition that in the election of members of the committee, eight members from panel formed by the petitioners have been elected and six members have been elected from the opposite group. It is also stated that there are two directors to be on the board of respondent No.4 bank by virtue of its bye laws and appointment of nominee under Section 80(3) of the Act will tilt balance for the election of the chairman.

25. It is required to note that though before the election, the order dated 31.3.2015 deciding to subscribe share capital of Rs.9,00,000.00 in respondent No.4 bank was passed, however, Govt. chose to appoint its nominee under Section 80(3) only after the result of election was declared which as alleged would turn majority into minority for the purpose of election of the chairman. Therefore, it appears that the petitioners have rightly alleged mala fide against the Government in the matter of passing order under Section 80(3) of the Act to nominate its one representative on the board of directors of respondent No.4 as such would impinge upon autonomy of respondent No.4 to be managed by the majority elected members.

26. In above such view of the matter, perusing judgment dated 1.9.2008 rendered in Special Civil Application No.9702 of 2008 relied on by learned advocate Mr. Desai is, the court finds that the same will have no application to the facts of the present case.

27. Having considered the provisions of Section 51 and Section 80(3) of the Act in the context of the facts of the present case, the Court finds that the exercise

of powers thereunder does not appear to be in furtherance of the object of the Act and appear to be in clear excess of the powers vested under the said provisions. The impugned orders are therefore, required to be quashed and set aside. Having come to such conclusion, no direction as sought for in Special Civil Application No.16960 of 2015 could be issued but, the direction is required to be issued to immediately call for meeting of elected members of the Managing Committee (elected Directors) of respondent No.4 to hold election of Chairman as required by Section 145Z of the Act.

28. For the reasons stated above, order dated 31.3.2015 for subscription of share capital of Rs.9,00,000/- to respondent No.4 Bank under Section 51 of the Act and order dated 12.5.2015 passed by respondent No.1 appointing respondent No.5 as nominee of the State Government in the Committee of respondent No.4 Bank in exercise of powers under Section 80(3) of the Act are quashed and set aside. The concerned authority of the State, viz. the Collector, is directed to immediately call the meeting of elected Directors of the respondent No.4 Bank for the purpose of holding election of Chairman as required under Section 145Z(2) of the Act.

29. Second petition, being Special Civil Application No.16960 of 2015 is rejected. Notice is discharged.

30. Both the petitions are disposed of at the notice stage.

31. At this stage, learned Additional Advocate General Mr. Prakash Jani appearing with learned Assistant Government Pleader Mr. Ronak Raval requests to stay and suspend the present order for two weeks. In facts and circumstances of the case, the request is rejected.

32. Since the petitions are disposed of, Civil Application No.11406 of 2015 shall not survive. Hence, disposed of accordingly.