

(2005) 04 GUJ CK 0003
In the Gujarat High Court

Case No : Special Civil Application No. 1327 of 2005 and Civil Application No. 693 of 2005

Shree Aamra Dudh Utpathak Sahakari Mandali Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 04 GUJ CK 0003

Hon'ble Judges : R.S. Garg, J;R.R. Tripathi, J

Bench : Division Bench

Advocate : Baiju Joshi in Special Civil application No. 1327 of 2005, for the Appellant; Archana Raval, AGP for Respondent Nos. 1-3 and Tushar Mehta, for Respondent Nos. 4-6 in Special Civil Application No. 1327 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The present is a writ application under Article 226 of the Constitution of India, wherein, the petitioner Shree Aamra Dudh Utpadak Sahakari Mandali Limited has prayed for the following reliefs:-

"[a] That a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the order/interim order of liquidation dated 3.9.2003 passed by the respondent No. 3 (Annexure:C), final order of liquidation dated 19.1.2004 passed by the respondent No. 3 (Annexure:G) and the order dated 2.1.2004 passed by the respondent No. 2 in Appeal No. 127 of 2003.

[b] To stay and suspend the execution, implementation, operation and enforcement of the interim order of liquidation dated 3.9.2003, final order of liquidation dated 19.1.2004 and the order dated 2.1.2004 (passed in Appeal No. 127 of 2003).

[c] To direct the respondent No. 3 not to restrain the petitioner-society from

participating at the ensuing election of the Agricultural Produce Market Committee, Jamnagar, for the year 2005, on the ground that the order of liquidation has been passed against the petitioner-society."

When the matter came up before the learned Single Judge, he issued certain orders, but later on, the matter has been referred to the Division Bench as the reliefs prayed for by the petitioner are touching the elections of the cooperative society.

2. On 28.3.2005, after hearing the parties, we observed that the elections were not required to be stayed and interim order earlier granted was required to be modified with a direction that the election schedule may go on, but the votes cast by the members of the petitioner-society may be kept in a sealed cover and until further orders from this Court, the result shall not be declared. We also required the District Registrar, Cooperative Societies, Jamnagar to file an affidavit clearly stating that after receiving a show cause notice or the written statement from the applicant-society, any opportunity of personal hearing was afforded or not.

3. In accordance with our directions, the respondent No. 3 - the District Registrar M.S. Lokhande has filed his affidavit. The same is taken on record.

4. The District Registrar has submitted that Aamra Dudh Utpadak Sahakari Mandali Limited was connected with Jamnagar Dairy. Business of the petitioner-Mandali was associated with Jamnagar Dairy, which was closed down in 1996 and the activity of the petitioner-Mandali was restricted only to some of the members. He has stated that as the object for which the Mandali was organized did not survive and as the Mandali was not running, a show cause notice was issued to the petitioner-Mandali as to why procedure of liquidation against the petitioner-Society should not be followed. He has submitted that a notice was issued on 2.8.2003, in response to which, the petitioner-Society had chosen to file written arguments and had also filed its reply in the form of the show cause. It is his case that an interim order dated 3.9.2003 was passed to take the petitioner-Society into liquidation and the petitioner-Society was again asked to appear for hearing on 18.9.2003 or file the written statement within 30 days. According to him, after the interim liquidation order was passed, the petitioner-Society filed the reply on 17.9.2003 and also filed an appeal No. 127 of 2003 before the Additional Registrar, Cooperative Societies, Gujarat. The appeal was rejected on 2.1.2004 and immediately after the rejection of the appeal filed against the interim order, the respondent No. 3 passed final order on 19.1.2004 and took up the petitioner-Society into liquidation. Being aggrieved and dissatisfied with the final order of liquidation, the petitioner-Society filed the Revision Appeal No. 11 of 2004 before the Deputy Secretary on 29.1.2004 and the order of status-quo was made by the revisional authority on 16.2.2004. According to him, though interim order has not been continued further in the same proceedings, but the respondents are maintaining the status-quo as it was on the date of the first interim order. From these facts, it would clearly appear

that the final order relating to liquidation had already been impugned before the Competent Authority in the revision.

5. The first relief claimed in this writ application is that the interim order of taking the body into liquidation and the final order of liquidation and the order passed in appeal be quashed. We must immediately record that as the petitioner has gone in the alternative remedy of revision, it would not be necessary for this Court to interfere in the matter at this stage. So far as the other relief relating to inclusion of their name or of permission to them to take part in the elections is concerned, it is not disputed before us that the names of the members of the Executive Committee/Managing Committee of the society have not been included in the voters' list. Though we allowed the members of the Managing Committee of the petitioner-Society to cast their vote and restrained the respondent No. 3 from declaring the results, but taking into consideration the totality of the circumstances, we are of the considered opinion that such interim relief is not required to be given to the petitioner, specially when its revision against the final dissolution is pending consideration before the State.

6. It is also to be noted that no useful purpose would be served by not declaring the results. Against wrong inclusion, non-inclusion and wrong deletion of the names of a particular set of the persons, the law is very clear that such aggrieved person or party or the authority or Society should raise his grievance in a duly constituted election petition. If we allow the respondent No. 3 to declare the results and also give the fullest opportunity to the petitioner to challenge the outcome of the elections in a duly constituted election petition, then no harm is going to be caused to the petitioner-Society nor they would be prejudiced in any manner.

7. Taking into consideration the totality of the circumstances and the facts floating on the surface of the records, we refuse to interfere in the matter at this stage and at the same time, while vacating the interim order earlier granted, direct the respondent No. 3 to declare the results without including the votes cast by the members of the Managing Committee of the petitioner. The petitioner, however, would be at liberty to approach the State Government that in the circumstances of the matter, the revision filed by it be disposed of at the earliest. We hereby direct the revisional authority to dispose of the revision application within a period of six weeks from the date of the submission of the application along with a copy of this order. So far as the filing of the election petition is concerned, for that, we need not give any detailed order as for the same the law would take its own course and the petitioner would be entitled to file an election petition in accordance with law. The writ application is disposed of. Rule is discharged. In view of the disposal of the writ application, the Civil Application is rejected.