

(2024) 12 GUJ CK 0038

In the Gujarat High Court

Case No : Letters Patent Appeal No. 944 of 2023, Special Civil Application No. 11194 of 2022, Civil Application (For Stay) No. 1 of 2023

The Jetpur Group Vividh Karyakari Seva Sahkari Mandli Ltd. **APPELLANT**
Versus

Vs

Satpal Dharamdas Patel & Ors **RESPONDENT**

Date of Decision : 17-12-2024

Acts Referred:

Gujarat Co-Operative Societies Act, 1961 — Section 23, 96, 96(b), 145U

Citation : (2024) 12 GUJ CK 0038

Hon'ble Judges : Unita Agarwal, J;Pranav Trivedi, J

Bench : Division Bench

Advocate : Baiju Joshi, B S Patel Sr. Adv, Chirag B Patel, V C Vaghela

Final Decision : Partly Allowed

Judgement

Sunita Agarwal, J

1. The instant appeal arising out of Special Civil Application No. 11194 of 2022 is directed against the common judgement and order dated 10.07.2023 which was passed by the writ Court in the above petition with Special Civil Application No. 11197 of 2022.

2. We may note, at the outset, that the judgement and order dated 10.07.2023 in Special Civil Application No. 11197 of 2022 was subjected to challenge by the respondent in Letters Patent Appeal No. 1134 of 2023, which has been dismissed vide judgement and order dated 21.12.2023.

3. On the presentation of the instant appeal, the first issue raised by the learned counsel for the respondent is about the entertainability of the instant appeal, in view of the aforesaid decision in the Letters Patent Appeal No. no.1134 of 2023 which arose out of the connected matter, namely Special Civil Application No. 11197 of 2022. The learned counsel for the respondents herein, i.e., the original petitioners, would submit that this Letters Patent Appeal is also to meet the

same fate.

4. Mr. Baiju Joshi, learned counsel for the appellant has taken us through the record of the writ petition, namely Special Civil Application No. 11194 of 2022, to place the stand of the respondent No.1, namely the appellant herein in its affidavit before the learned Single Judge and the relevant facts of the matter to submit that the judgement and order dated 10.07.2023 passed by the learned Single Judge, in dismissing of the Lavad Suit No.134 of 2022 filed by the appellant herein on the ground of maintainability under Section 96 of the Gujarat Co-Operative Societies Act, 1961 (in short as the Act' 1961"), cannot be sustained.

5. The submission is that, insofar as, the challenge to the interim order dated 18.06.2022 passed by the Board of Nominees restraining the petitioners to vote from Chhotaudepur constituency in the election of the respondent No.2, namely the Gujarat State Co-operative Marketing Society Limited (the federal society), the appellant herein is not raising any dispute, inasmuch as, the learned Single Judge was justified in holding that when the election process was on, the Board of Nominees was not justified in passing the interim order, which amounted to overreaching the election process. The submission is that the said observations of the learned Single Judge that appropriate proceedings for challenging the election is before the Election Tribunal in view of Section 145U of the Act' 1961, is also not subject to the challenge in the present appeal.

6. The challenge in the instant appeal is confined to the observations made by the learned Single Judge that the Lavad Suit preferred by appellant herein is to be dismissed as the Board of Nominees has no jurisdiction to try such suit. The submission is that though the challenge to the election or the participation of the petitioners in the election of the federal society may not be sustained, but the issues raised by the appellant in the Lavad Suit No.134 of 2022 was beyond the election.

7. The plaint of the Lavad Suit No.134 of 2022 was placed before us to demonstrate that the appellant/applicant has filed the suit raising a question with regard to the constitution and management of the federal society, namely the respondent No.2, being a member of the said society.

8. It is placed before us that the appellant society namely the respondent No.1 in the original petition, namely Jetpur Group Vividh Karyakari Seva Sahakari Mandli Limited has raised the issue before the learned Single Judge that the writ petition Special Civil Application No. 11194 of 2022 has been filed by suppression of material facts. The respondent No.1, namely Satpal Dharamdas Patel herein is the Chairman of all 16 societies, impleaded as petitioner Nos.2 to 17 in the writ petition. The affidavit dated 24.06.2022 filed by the appellant in the writ petition as respondent No.1 has been placed before us to demonstrate that a categorical stand has been taken therein that 16 societies have been formed in a manner that they have one common person as Chairman as also one common person as

its Secretary. All these Societies have been registered on the same day in the same area of Taluka: Bodeli, District: Chhotaudepur and the initial registration of these societies and their induction as members of the federal society is in collusion with the federal society. The submission is that this categorical stand of the respondent No.1 herein could not be disputed by the original petitioners in the affidavit-in-rejoinder filed by them dated 04.07.2022, in reply to the categorical statement of the respondent No.1 in its affidavit before the writ petition.

9. We may note that the only submission made in the affidavit-in-rejoinder filed by the original petitioners in reply to the affidavit filed by the respondent No.1 is that the suit under Section 96 of the Act' 1961 is beyond the scope of jurisdiction of the Board of Nominees under Section 96 and is required to be rejected on this ground alone. Insofar as, the dispute with regard to the enrollment of 16 petitioner societies, only this much is stated that the petitioners have been enrolled as members in the year 2021 and for almost two years, the respondent No.1/appellant herein has not challenged the admission of the petitioners as members. The suit has been filed a day before voting for the election of the federal society, in a mala fide manner and the Board of Nominees has erred in granting interim relief which is final in nature that too without hearing the writ petitioners.

10. We may further note that in the affidavit filed by respondent no.2, namely the federal society/federation, only issue was raised with regard to the maintainability of the Lavad Suit pertaining to voters list and the election process.

11. From the pleadings on record and the judgement and order of the learned Single Judge dated 10.07.2023, it is more than evident that the issue therein revolved around the filing of the Lavad Suit a day prior to the date of the election and the learned Single Judge has allowed the writ petition noticing that the appropriate remedy to challenge the election is Section 145U of the Act' 1996 and held that the Board of Nominees was not justified in passing the interim order. While concluding in Paragraph Nos.14 and 15 that the interim order passed by the Board of Nominees is an effort to overreach the election process by restraining the original petitioners from voting, the learned Single Judge has dismissed the Lavad Suit on the ground that the Board of Nominees has no jurisdiction to try such suit.

12. As noted hereinbefore, the appellant/original respondent No.1 is not challenging the said proposition, on the basis of which the writ petition was allowed. However, it is submitted that the learned Single Judge has erred in dismissing the Lavad Suit itself without noticing the specific contention of the plaintiff, the appellant herein, that the dispute is pertaining to induction of the petitioners (No.2 to 17) as members of Federation. The specific stand of the respondent No.1/appellant herein that the original petitioner No.1 is Chairman of 16 Societies (petitioners No.2 to 17), which have been registered on the same day at the same place, has been overlooked. The submission is that the dispute

regarding the constitution of the petitioner society (16 in number) is a dispute touching the constitution and management of the society, the petitioner society as well as the federal society/federation/ original respondent No.2. The said dispute is well within the jurisdiction of the Board of Nominees being within the scope of Section 96 of the Act' 1961.

13. The submission of the learned counsel for the appellant could not be successfully refuted by the learned counsel for the respondent/ original petitioners. Only this much was argued by Mr. V. C. Vaghela, learned counsel for the respondent no.1 herein that once the Letters Patent Appeal No.1134 of 2023 challenging the common judgement and order dated 10.07.2023 passed in the connected writ petition No.11197 of 2022 has already been dismissed by this Court. It may not be permissible for this Court, therefore, to form a contrary/ different view.

14. Dealing with the said submission, we may record from the judgement and order dated 21.12.2023 that the issues raised in the said appeal by the appellant therein, namely plaintiff of Lavad Suit No.133 of 2022 under Section 96 of the Act' 1961, were distinct from the issues raised by the appellant herein in Lavad Suit No.134 of 2022, though it is an admitted fact that both the suits were filed on one day prior to the date of election challenging the rights of the respondents therein/original petitioners to participate in the election as a voter.

15. As noted by us in Paragraph No.'12' of the judgement and order dated 21.12.2023, the issues raised therein were that the respondent Nos.1 to 13 societies therein have submitted forged and fabricated documents in support of their claims for membership and that they were not eligible to become member under the bye-law No.11(A) of the federation/respondent No.16 therein. Noticing that the Lavad Suit was filed one day before ensuing election to the Board of the Federation/ respondent no.16 on 19.06.2022, the Division Bench dismissed the Letters Patent Appeal No.1134 of 2023 affirming the findings of the learned Single Judge by holding that the Board of Nominees had no jurisdiction to entertain and try such a suit, which aimed at stalling the election process.

16. From a further perusal of Paragraph No.'17' of the judgement and order dated 21.12.2023, we may also note that the dispute raised by the appellant therein is regarding disqualification of respondents nos.1 to 13 societies, pertaining to their enrollment as members of the federation by misleading it and suppressing the true facts.

17. The issue raised was that false declaration made by the respondent Nos.1 to 13 societies resulted in grant of membership to them and the contention was that they were disqualified for being enrolled as member as also to continue as member in contravention of the bye-laws of the societies. In light of the said issue, while noticing that the dispute pertaining to membership of the societies and their removal from membership on certain circumstances fall within the scope of Section 23 of the Act' 1996, substantial relief for removal of the

respondents No.1 to 13 therein would not be maintainable under the provisions of Section 96 of the Act' 1961.

18. However, the present case stands on a different footing, inasmuch as, the core issue herein is that the petitioner society, namely (original petitioners No.2 to 16) are forged entities since their inception. The original petitioner No.1 as Chairman of 16 societies got registered all 16 societies on the same day in the same area of Taluka: Bodeli, District: Chhotaudepur, in collusion with the original respondent No.2.

19. This issue goes to the very root of the constitution of the petitioners societies and their membership with the federal society. This issue raised in the original petition out of which the present appeal has arisen, is a dispute touching the constitution and management of the member society as well as federal society and has been raised by a person (original respondent No.1), who falls within the meaning of 'parties' as per Section 96(b) being a member of the federal society itself.

20. The present is not a case of seeking removal of the petitioner society from membership of the federal society on account of disqualification to continue as a member of the society, rather the allegations are of forgery committed by the petitioners societies in connivance with the federal society to become its members.

21. Under Section 96 of the Act' 1961, we find that any dispute touching the constitution and management of the society including the federal society raised by a member of the society would fall within the meaning of 'disputes' under Section 96 of the Act' 1961 and would be well within the jurisdiction of the Board of Nominees to adjudicate. We, thus, find that the present appeal cannot be dismissed on the analogy of the judgement and order dated 21.12.2023 passed by the Division Bench in dismissing the Letters Patent Appeal No.1134 of 2023 arising out of Special Civil Application No. 11197 of 2022, inasmuch as, the issues raised therein were distinct from the issues noted in the present case, raised in Lavad Suit No.134 of 2022.

22. As noted hereinbefore, insofar as the dispute pertaining to election of the federal society is concerned and the right of the petitioners' society to vote, the same has already been set at rest and is not the subject matter of challenge before us. The only issue for consideration before us is about the jurisdiction of the Board of Nominees to examine the dispute raised by the plaintiff in Lavad Suit No.134 of 2022 about the constitution of the petitioner society (16 in number) and the resultant constitution of the federal society, namely the Gujarat State Co-Operative Marketing Society Limited.

23. On this limited issue, while modifying the judgement and order dated 10.07.2023 passed by the learned Single Judge in dismissing the Lavad Suit No.134 of 2022, on the ground of maintainability, we relegate the matter to the Board of Nominees to adjudicate on the question of constitution of 16 societies/

original petitioner Nos.2 to 17 in Special Civil Application No. 11194 of 2022 and the original petitioner No.1 being Chairman of all 16 societies. It is clarified that the issue pertaining to election of the federal society held on 19.06.2022 will not be open for examination, inasmuch as, the election dispute can be raised by invoking the provisions of Section 145U of the Act' 1961.

24. All rights and contentions of the parties pertaining to the dispute relating to the constitution of the societies have been kept open to be adjudicated before the Board of Nominees.

25. With the above, the instant Letters Patent Appeal is partly allowed. The judgement and order dated 10.07.2023 passed by the learned Single Judge stands modified to the above extent. The Board of Nominees is directed to decide the Lavad Suit No.134 of 2022 keeping in mind the above observations, confining the controversy raised by the plaintiff, without touching upon the question of election of the federal society held on 19.06.2022. The said suit shall be decided, as expeditiously as possible, after giving due notice and opportunity to all concerned. Consequently, the connected Civil Application also stands disposed of.