

(1989) 01 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 3119 of 1979

Vikrambhai Dhirajibhai Patel

APPELLANT

Vs

A.S. Jog and Another

RESPONDENT

Date of Decision : 11-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Co-operative Societies Act, 1961 — Section 2(13) , 23(3)
Gujarat Co-operative Societies Rules, 1965 — Rule 5

Citation : AIR 1989 Guj 233 : (1989) 1 GLR 690

Hon'ble Judges : P.M. Chauhan, J

Bench : Single Bench

Advocate : K.C. Vakharia, for the Appellant;

Judgement

1. Petitioner challenged the order dated October 19, 1979 by the District Registrar Co-operative Societies, Mehsana, directing to remove the petitioner from the membership of Khorsam Khedut Seva Sahakari Mandali Ltd., Khorsam, Tal. Chanasma, District Mehsana, in exercise of his power under sub-sec. (2) of S. 23, Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the Act), as according to the District Registrar the petitioner had made false declaration that he was permanent resident of Khorsam village and was entitled to be the member of the said Society and that he was also the member of the Co-operative Society at Chanasma which is permanent place of residence of the petitioner. The challenge to the order is mainly on the ground that the petitioner had not made any declaration much less false declaration and that the District Registrar had no jurisdiction to remove the petitioner from the membership of the Co-operative Society and only the society can exercise such power. The order is also challenged on the ground of mala fide and on the ground of violation of principle's of natural justice.,

2. For the appreciation of the contentions of the petitioner, the facts are required to be stated in short. Petitioner at the relevant time was the member of the

Legislatively Assembly and was elected from Chanasma constituency. According to the petitioner he had agricultural lands at village Rutpur but he sold away the lands and hired premises at Khorsam village and was residing at Khorsam village. Petitioner submitted an application for membership of Khorsam Khedut Seva Sahakari Mandali Ltd. on June 13, 1979 and on that very day resolution was passed and he was admitted as member of the said cooperative society. Resolution was also passed by the general body of the said Co-operative Society on the same day appointing the petitioner to represent the said society in Mehsana -District Co-operative Bank Ltd It transpires that Prabhudan Bechardas Patel resident of Chanasma, by application dated June 29, 1979 brought to the notice of the District Registrar that the petitioner was at the relevant time resident of Chanasma town and was the member of the Seva Sahakari Mandli of that town and had become member of Khorsam Khedut Seva Sahakari Mandali Ltd. by making false representation. The District Registrar then inquired into the matter and by order dated July 2, 1979 directed the Khorsam Khedut Seva Sahakari Mandli not to implement the said resolution, but, subsequently cancelled that order on July 9, 1979. The District Registrar then served show cause notice dated July 19, 1979 and called upon the petitioner to submit reply to the show cause notice up to July 25, 1979. The petitioner by application dated July 25, 1979 requested for time to submit the reply but the District Registrar rejected it and therefore, the petitioner filed Special Civil Application No. 2204/79 in this Court. This Court issued notice and at the hearing statement was made by the learned Advocate appearing for the respondents and it was agreed to grant time up to August 17, 1979. The petitioner then submitted reply on August 16, 1979. After considering the contentions raised in the reply the District Registrar, in exercise of the power under sub-section (2) of S. 23 of the Act directed the removal of the petitioner from the membership of the Khorsam. Khedut Seva Sahakari Mandali. Petitioner has challenged that order.

3. The Gujarat Co-operative Societies Act, 1961 provides for the qualifications of the members of the Co-operative Society and the removal of, the member of the society, in case the member who is not qualified, is admitted to such membership. As provided in sub-section (13) of S. 2 of the Act, the person duly admitted to the membership of the society after its registration is member of such society. The qualification of the eligibility criteria for becoming the member of the Co-operative Society is provided in S. 22 of the Act and a person competent to contract is eligible for becoming the member of the Cooperative Society. The terms and qualifications for admission to the membership of the Co-operative Society can be prescribed under bye-laws of the Society, as provided in R. 5 of the Gujarat Cooperative Societies Rules, 1965 (hereinafter referred to as the Rules). On payment of the fees and fulfilling the conditions provided in the bye-laws and subscribing the share, the exercise his right as a Member of the Co-operative Society. Rule 12 of the Rules specifically provides that no Seva Sahakari Mandali or Consumers" Society shall without sufficient cause refuse admission to membership to any person duly qualified therefore under the

provisions of the Act and the bye-laws. According to the petitioner, he is qualified to be the member of the Khorsam Khedut Seva Sahakari Mandali Ltd. and is rightly admitted to the membership of the said society and the membership of the Society is not restricted to the residents of Khorsam village or no bar is provided for becoming the member to two or more such co-operative societies.

4. The District Registrar in the show cause notice as well as in the order has objected to the continuance of the membership of the petitioner of the said society as the petitioner at the relevant time was the resident of Chanasma town and was the member of Cooperative Nagrik Bank, Chanasma and had become member of such co-operative society at Rutpur village by making false statement, but subsequently the membership was cancelled by the said Society as he could not produce the evidence before the Society to the effect that he was permanent resident of the said village. The main objection of District Registrar to the continuance of the membership of the petitioner of the Khorsam Khedut Seva Sahakari Mandali Ltd. is that the petitioner had made false declaration that he was permanent resident of village Khorsam at the relevant time, while in fact he was not the permanent resident of that village and could not produce any evidence before the Registrar for establishing that he was permanent resident of that village. The District Registrar, Co-operative Societies can direct removal from the membership only if the member has incurred the disqualification under sub-section (1) of S. 23 of the Act. Sub-section (1) of S. 23 provides that if the membership is acquired by making false declaration, the member even though admitted to the membership, becomes disqualified to continue as member of the Society and such member can be removed from membership of the society by the Registrar after such member is given opportunity of being heard. It is, therefore, necessary first of all to hold that the petitioner was not qualified to be the member of the Khorsam Khedut Seva Sahakari Mandali and that the declaration made by him is false. According to the petitioner he had not made any such declaration and, therefore, the question of false declaration did not arise. The petitioner, however submitted application for the membership of the Society, copy of which is produced on the record. In that application dated June 13, 1979 for the membership, the petitioner requested for the membership and did not state any other fact. It is not stated in it that he was at the relevant time permanent resident of Khorsam village and was qualified under the provisions of the Act and the bye-laws to be the member of Khorsam Khedut Seva Sahakari Mandali. No declaration is produced by the respondents and it is also not stated by the respondents that any such declaration containing false declaration was filed by the petitioner. It is unfortunate that in spite of giving sufficient opportunity to the respondents and specifically informing Asst. Government Pleader, the Government Pleader or any of the Assistant Government Pleaders or Khorsam Khedut Seva Sahakari Mandali did not care to remain present at the hearing of this petition. Even they did not care to file affidavit on behalf of the respondent 1. The petitioner in the Affidavit specifically deposed that he has not filed any declaration or "kabulatnama" for becoming the member of Khorsam

Khedut Seva Sahakari Mandali and as he did not file any such declaration, the question of holding that the contents of the declaration were false, did not arise and consequently the District Registrar had no reason to exercise the power under subsection (2) of S. 23 of the Act. This statement has remained uncontroverted and, therefore, required to be accepted. It, therefore, be held on the facts that except submitting the application the declaration was not filed by the petitioner making any false statement.

5. As I did not get any assistance by the Government Pleader or Sahakari Mandali, I called upon the learned Advocate for the petitioner to produce the copy of the bye-laws. However, he showed his inability to produce such copy as according to him, the petitioner did not possess such copy. English version of the relevant bye-laws Nos. 5 and 7 is produced in the record and for the purpose of this petition and for want of Gujarat the version of the bye-laws, the said English translation is required to be relied upon. As provided in bye-law No. 5, any person who is residing in village Khorsam or is residing in the villages of.... and who does not take liquor.....is entitled to be the member of such Co-operative Society. The other qualifications are not required to be enumerated. Bye-law 5(a), Note (3) provides for furnishing a kabulatnama along with the application to the effect that the person desiring to be the member possesses all the qualifications for becoming a member and undertakes to abide by the bye-laws and in case of kabulatnama being proved incorrect, then in that case, the Society may exercise the power under sub-section (1) of S. 23 of the Act for the discontinuance of the membership of such member and the Society may exercise such power suo motu or on intimation from the District Registrar. It is, therefore apparent that the declaration is required to be filed along with the application. The petitioner has stated specifically on affidavit that he has not filed any declaration and that he was admitted to the membership of the Society Without any such declaration. That specific averment of the petitioner has remained uncontroverted. It must be held that no declaration was filed with the application much less declaration containing false averments. The District Registrar Cooperative Societies, directed the removal of the petitioner from the membership of the Khorsam Khedut Seva Sahakari Mandali mainly on the ground that the petitioner had made false declaration to the effect that the petitioner was the permanent resident of Khorsam village, but it appears that the respondent 2 - District Registrar, proceeded on assumption rather on the facts on the record. In the application no such fact was ever stated by the petitioner and no declaration was filed by him along with the application. The very basis for the removal of the petitioner from the membership was, therefore, missing and on that ground the order by the respondent 2 - District Registrar is required to be set aside.

6. As discussed above, the District Registrar has passed order in exercise of power under sub-section (2) of S. 23 of the Act on the allegation that the petitioner had made false declaration that he was permanent resident of Khorsam village. Under the Bye-laws permanent residence was not necessary

qualification and, therefore, such declaration was not required to be made and, therefore, the respondent 2 Khorsam Khedut Seva Sahakari Mandali Ltd. would not have proceeded on admitting the petitioner to the membership of the said Society on the basis of such declaration. The disqualification to continue as member of the Society under sub-s. (1) of S. 23 and the occasion to exercise the power of removal under sub-section (2) of S. 23 arises only in case the member has acquired the membership of the Society on his making a declaration as required by the Bye-laws of the Society or otherwise and such declaration if found to be false, In view of the -bye-laws produced on record it was not necessary that the declaration was required to be made that the petitioner was the permanent resident of village Khorsam. No such declaration was necessary as bye-laws did not provide for permanent residence of Khorsam village, as necessary qualification for the membership of the said society. For that reason also the power of removal cannot be exercised under sub-section (2) of S. 23 of the Act by the District Registrar, Societies.

7. In view of the above, the contentions of the petitioner about violation of principles of natural justice and mala fide are not required to be decided. However, I would like to observe that the show cause notice was served to the petitioner and he was called upon to show cause and was also given sufficient opportunity of being heard, but the petitioner after securing adjournment specifically stated that he did not want personal hearing. Hence there is no question of violation of principles of natural justice. The Registrar Co-operative Societies has proceeded on the interpretation of the bye-laws and the respective provision of S. 23 of the Act, and merely because previously action was taken against the District Co-operative Bank, it cannot be said that the District Registrar was actuated by mala fide and the order is passed only because of the political pressure or on account of personal mala fide of the District Registrar. Both these contentions, therefore, deserve to be rejected.

8. In the result, this petition is allowed. The impugned order dated October 19, 1979 removing the petitioner from the membership of Khorsam Khedut Seva Sahakari Mandali Ltd., is quashed and set aside. Rule is made absolute accordingly, with no order as to costs.

9. Petition allowed.