

SUPREME COURT OF INDIA

Rajkot Distt Cooperative Bank Ltd.

Vs.

State of Gujarat

C.A.No.10392 of 2014

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

19.11.2014

JUDGMENT

V.GOPALA GOWDA, J.

1. The applications for impleadment filed in the SLP(C) Nos. 29726 of 2013, 29727 of 2013 and 29728 of 2013 are allowed. Leave granted in all the special leave petitions.
2. The appellants before this Court have filed these appeals questioning the correctness of the impugned orders dated 15.11.2011, 30.1.2012 (passed by the Division Bench) and common impugned order dated 04.07.2013 (passed by the full Bench) of the High Court of Gujarat at Ahmedabad.
3. Since all the appeals are identical in nature, we would refer to the facts of the case arising out of Civil Appeal @ SLP(C) NO. 26017 of 2013 for the sake of convenience and brevity and for examining the rival legal contentions urged in these appeals.
4. The State of Gujarat enacted and put on the statute book, Gujarat Cooperative Societies Act of 1961 (in short "the Act") in order to consolidate and amend the laws relating to the cooperative societies in the State of Gujarat. Thereafter, the Act was amended by the Act of 1982. Initially, as per the Act of 1961, the Managing Committee of the Co- operative Society was to be constituted in accordance with the Act, Rules and bye-laws. By the Act of 1982, the proviso was inserted by way of an

amendment to the effect that so far as the committee of a society falling in the category of Section 74C(1) of the Act is concerned, the rotation for retirement, if provided by the bye-laws of a particular number of members of the Managing Committee shall cease to remain in force.

5. Further, as per the Act of 1982, Section 74C together with the other provisions of the amending Act was brought on the statute book, which provided that the election of the members of the Managing Committee/Board and the office bearers on the committees of such specified societies shall be conducted in the manner laid down by or under Chapter XI-A of the Act, which was also simultaneously inserted by way of amendment Act of 1982, for conducting elections to the committees and office bearers of certain societies which are so specified under Section 74C(1) of the Act. As per the scheme of the said chapter, the election of such specified societies is required to be held on such date or dates as the Collector may fix under his control. Prior to the amendment, the election of the managing committee was to be conducted by the society itself as per its registered bye-laws. So far as the societies included as specified societies under Section 74C(1) of the Act are concerned, a separate mode of conducting election was provided and the power of conducting such election was given to the Collector notwithstanding anything contained in the bye-laws of such societies. The said aspect was made clear under the provisions of Section 74(C) (2) and (3) of the Act which were inserted by way of amending Act of 1982. Chapter XI-A of the Act provides for separate mode for deciding the election dispute by Election Tribunal. Section 145(U) of the Act provided the State Government with rule making power and to regulate all or any of the other matters relating to the various stages of elections including preparation of the list of voters.

6. In exercise of the powers conferred upon the State Government under Section 168 read with Sections 145(A), 145(U) and 145(Y), the State Government of Gujarat framed the Gujarat Specified Co-operative Societies Election to Committee Rules of 1982 (in short "the Rules"). These Rules provide for various stages of election from the preparation of the voters list till the result is declared and further consequential steps to be taken in the process. In the year 1987, Rules 3-A and 3-B were inserted in the Rules of 1982 by the Rule Making Authority which provided for delimitation of the constituencies in the respective society/societies, for the purpose of conducting election of the Managing Committee Members and a separate procedure was provided for election of members reserved in sub- section (1) of Section 74B of the Act.

7. The constitutional validity of the amended provisions of the Act of 1982 was challenged before the High Court in the case of Amreli District Co-operative Sale and Purchase Union Ltd. v. State of Gujarat[1]. The Division Bench of the High Court declared Sections 17(A), 24, 51(2), 69 and also the proviso to Section 74 as ultra vires the Constitution. However, the provisions of Sections 74A, 74B, 74C, 74D, 76A, 76B, 80(A) and 80(2) were upheld. The said matters were carried before this Court, but subsequently came to be withdrawn. Therefore, the decision of the Gujarat High Court in the aforesaid case became final and has been operating since.

8. Subsequently, certain provisions were deleted but Section 74C and other provisions in relation to the conduct of election, including Chapter XI A and the Rules, remained in the statute book. Therefore, legal position remained as per the original Act even after the Amendment Act of 1982. The election of the Managing Committee members of a society other than the specified societies was required to be held as per the bye laws of such societies. Whereas, so far as the specified societies covered by Section 74C(1) of the Act are concerned, the election was required to be held as per Chapter XI A read with the Rules of 1982.

9. A legal question for interpretation to Rule 3-A (8) and also the validity of bye-laws clause No. 35(1)(A) of Sabarkantha Milk Producers Union Ltd. arose before the High Court in the case of Antakampa Milk Producers Co-operative Society Limited v. Sabarkantha Milk Producers Union Ltd.[2]. The learned Single Judge of the High Court in the said case held that Section 74C sub Section (3) of the Act, has an overriding effect on any other bye-laws of such society. It was also found that as per Rule 3-A (8), the number of constituencies have to be equal to the total number of seats excluding two reserved seats as provided under Section 74B of the Act. The learned Single Judge in the said case found that the bye law No. 35(1)(A), provided seats for more than one person for each constituency and therefore, the bye laws were not in conformity with Rule 3-A (8) of the Rules and found that the bye-laws can operate to the extent of 7 representatives to be elected from 7 separate constituencies of a Specified Cooperative Society and therefore, the High Court has held the Rule 3-A(8) of the Rules as valid to that extent only.

10. In the meanwhile, the Division Bench of the Gujarat High Court in the case of Shri Sadwadar Seva Sahkari Mandali Ltd. & Ors. v. State of Gujarat[3], went into the case

once again with regard to the holding of the election to the Managing Committee of the Bank in accordance with Rule 3-A (8) of the Rules. The Division Bench found that when Rule 3-A (8) and Rule 43 are examined in juxtaposition, it has held that the object and intendment of the said Rules and the field of the operation of the said two provisions are different inasmuch as the former deals with "constituencies" bifurcated on the "territorial/zone basis". The Division Bench did consider the view taken by the learned Single Judge of Gujarat High Court in the case of Antakampa Milk Producers Co-operative Society Limited (supra) and found that in the said case, the constituencies were bifurcated zone or territory wise.

11. Again the question for consideration of the provisions of Rule 3-A (8) read with Section 74C of the Act arose in the case of Khanodar Milk Producers Co-operative Societies Ltd. and Others v. State of Gujarat[4]. The second Division Bench of the High Court found that the bye law providing more than one representative to be elected in more than one constituency would be in contravention of Rule 3-A (8) and it is held that, in the case of Sadvadar Sahkari (supra), the members of the society were comprised of various classes of societies, whereas in the case of Antakampa Milk Producers Cooperative Society Ltd., the members constituted homogeneous group and not heterogeneous group. Therefore, adopting the decision of the case Antakampa Milk Producers Cooperative Society Ltd., the Division Bench set aside the bye laws clause No. 35 (1) of the said Society which provides for voting right for more than one seat in one constituency.

12. Further, the constitutional validity of Rule 3-A (8) of the Rules was again challenged before the High Court of Gujarat, in the case of Banaskantha District Cooperative Milk Producers Union Ltd. v. State of Gujarat[5], wherein the Division Bench of the High Court held that if any of the Rules are lawfully framed under the provisions of the Act and restrictions were imposed in relation to the subject matter of any of the clauses of the registered bye laws of the Society, such restrictions must be adhered to by it and any such clause in the bye-laws which is in violation of the restriction imposed by the Rules should be deleted. It was further held that the State Government while framing the impugned provisions of the Rules has not deviated from the principles mentioned under Section 74C (3) of the Act, but it has only created a position by making provisions of the election of members from the General Body. The Division Bench of the High Court held that Rule 3-A (8) of the Rules is neither in conflict with any of the provisions of the Act nor was it held to be bad in

law for want of Authority of the delegated legislation. Therefore, Rule 3-A(8) of the Rules was held to be legal and valid by the High Court by giving its reasons.

13. Similar questions regarding the legality and validity of Rule 3-A(8) of the Rules arose when the present group of appeals were listed before the High Court. The Division Bench of the High Court formulated the following legal issues and referred the same to the full Bench: Whether Rule 3-A of the Rules introduced by the amendment dated 10.08.1987 could be applied to the societies bye-laws which provide for a single constituency?

Whether the scheme of the Rules permit the specified societies having a single constituency, more than one seat for one constituency and whether members of such society can legally be permitted to vote for more than one seat?

Whether Collector has jurisdiction to make an order for delimitation of the constituencies, in absence of any proceeding undertaken in accordance with Section 14 of the Act?

Whether delimitation of the constituencies under Rule 3-A of the Rules can only be territory-wise and/or whether delimitation of the constituencies can be based upon objects and activities of the member societies or classes of individual members?

After hearing the learned counsel for both sides, the full Bench of the High Court answered the legal questions against the appellant-societies by passing the impugned judgment and orders which are challenged in these appeals before this Court urging various legal grounds.

14. We have heard the learned counsel on both the sides. It is contended by the learned Senior Counsel for the appellants that the findings and reasons recorded in the impugned judgment while answering the questions of law on the points referred to the Full Bench are not only erroneous but also suffers from error in law. Reliance was placed by them upon the judgment of this Court in the case of Ziley Singh v. Registrar Cane Cooperative Societies Lucknow[6]. It is contended that the Rule 3-A (8) of the Rules is contrary to the bye-laws of the appellant-Societies and the statutory provisions of the Act. The Act provides for amendments of the bye laws without

allowing the societies to get their bye laws amended as per the procedure laid under the provisions of the Act and without laying down certain guidelines in the Rules for the amendment of the relevant clauses of the registered bye-laws of the appellant-Societies. Rule 3-A (8) takes away the vested rights conferred upon the members of the society. The conferment of power upon the Collector for carving out delimitations of a Specified Co-operative Society/Societies is contrary to the provisions of the Act and Rules and asking the Chief Executive Officer to prepare the draft constituencies by dividing the area of societies into constituencies would amount to taking away the right of its members to exercise their vote in favour of all the candidates who contest from the constituencies. Therefore, the interpretation given to Section 3-A (8) of the Rules and upholding the constitutional validity in conferring such power upon the Collector to demark the constituencies of appellant societies infringes the rights of the members of the societies. Hence, it is contended that the impugned judgment is liable to be set aside.

15. The State Government has filed its counter affidavit justifying the impugned judgment contending that the findings and reasons recorded by the full Bench of the Gujarat High Court by answering the questions referred to it are in accordance with law and the same are on proper interpretation of the relevant Rules 3-A (8) and (9) and Rule 43 of the Rules which are in conformity with Chapter XI-A of the Act.

16. On a careful examination of Rule 3-A (8) of the Rules by us, it is made clear that the said provision is aimed at geographical i.e. territory or zone wise bifurcation or division. A salient feature of the Rule 3-A is the delimitation of the constituencies which includes all specified cooperative societies. Once the area of operation of any society is more than one village, Sub rule (8) would come into play and the requirement of the number of constituencies would be equal to the total number of seats, excluding two seats reserved for the categories as provided under section 74 B of the Act.

17. Further, the language of sub rule (9) of Rule 3-A, makes it clear that the Rule Making Authority has graced the Collector with the power to delimit the constituency/constituencies prior to the publication of the voters list. The delimitation of the constituency/constituencies should be prior to the preparation of the voters' list and/or in any case simultaneous with the preparation of voters' list but the voters list has to be as per the delimitation of the constituencies. The same is the case when the

delimitation of the constituency is required to be made by the Collector prior to the publication of the list of voters.

18. Thus, when sub-rule (8) is read along with sub-rule (9) of Rule 3-A, where the society has the area of operation exceeding one village, even if the bye laws provide for single constituency, the seats provided by the bye laws has to be equal to the number of constituency/constituencies and therefore, for each seat, a separate constituency would be required to be delimited and if not so delimited by the society, of its own, it would be required for the Collector to exercise his power under sub rule (9) of Rule 3-A of the Rules for the delimitation of the constituency in accordance with the mandate of sub rule (8) of Rule 3-A and thereafter, the process for publication of the voters' list is to be given effect to.

19. The power conferred with the Collector for the delimitation of the constituency under sub rule (9) is independent and separate and only applicable in the case when the election of the members of any Management Committee of specified society is scheduled to be held. Further, as specified in the sub rule (9) of Rule 3-A, such powers are to be exercised by the Collector, notwithstanding anything contained in the bye laws of such society. The Collector has to exercise the power for delimitation of the constituencies prior to the publication of the list of voters. Further, as rightly stated by the High Court in the impugned judgment that when a specific power is conferred in a specific contingency to a different authority, such power has to be read in addition to the general power for the amendment in the bye-laws. Thus, the bye laws of any society have to be in conformity with the provisions of the Act and the Rules.

20. It is obligatory on the part of any specified society to bring about the amendment in its registered bye-laws in conformity with the provisions of the Rules and more particularly Rule 3-A (8) and (9). But if the society/societies have not amended their bye laws, the same has to be in conformity with the said Rules by getting suitably amended; the effect of the Rule would not stand nullified or inoperable. For this purpose sub rule (9) gives the power to the Collector to delimit the constituency/constituencies of a society. Thus, once the area of operation of any society exceeds more than one village as per sub rule (8), the number of constituencies is required to be bifurcated by the Collector in exercise of his power, so as to make it equal to the total number of seats to see that effective representation is given to the members of the society for giving fair representation to its members to elect their true

representatives to participate in the affairs of the Society as part of the Managing Committee Members, as the society must be represented by its elected representatives in a democratic process to effectively represent in the Managing Committee which is an indispensable parameter for the democratic institutions to achieve the laudable object of Co-operative movement in the country, which is the constitutional philosophy as enshrined in Chapter XI A of the Constitution, which has been inserted by way of constitutional amendment.

21. Thus, the bye laws of any specified society under the provisions of the Co-operative Societies Act cannot be permitted to prevail over the statutory Rule 3-A (8) & (9) of the Rules. The moment the area of operation of any specified society exceeds one village, sub rule (8) would come into play, irrespective of the fact that whether members of such society constitute homogenous group or heterogeneous group.

22. Further, the elections to either the Managing Committee or Board must be held democratically by giving representation to all its members, as stated in the preamble of our Constitution, which is held to be the basic feature of the Constitution by the constitutional Bench of this Court in the cases of *Kesavananda Bharati Sripadagalvaru v. State of Kerala*[7] and *Kuldip Nayar v. Union of India*[8]. Under Article 13 (2) of the Constitution of India, Rules are also regarded as laws. However, the Rules and laws framed by the State Legislatures and the appropriate government cannot run parallel with the principles of the Constitution and the statutory objects of the Co-operative Societies Act cannot be disregard as it would defeat the purpose of Section 243ZK of the Constitution of India (Ninety-Seventh Amendment) Act 2011, inserted as per the 97th Constitutional Amendment, which provides for election of the members of the Managing Committee or Board. If the rules provide that not more than 7 representatives can be elected from a specified Co-operative Society to the Board or Management Committee, then it is the duty of the societies to adhere to it and not exceed the specified number. Thus, the bye laws of a Co-operative Society, in order to achieve the constitutional object, must be brought at par with the laws and statutory provisions of the Societies Act. They cannot override the provisions of State or Central laws. In *Kuldip Nayar's* case (supra), this Court after referring to various Constitutional Bench judgments and other judgments of this Court for the purpose of interpretation made by this Court in relation to phrases used in the Preamble of the Constitution of India such as "sovereign democratic republic" and "Parliamentary democracy" as the basic feature of the Constitution of India, held as under:-

"101. In the same case (Indira Nehru Gandhi case, reported in 1975 Supp SCC 1), Chandrachud, J. in para 691 of his separate judgment ruled as under: (SCC pp. 261-62) "Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution, and (2) it must not offend against the provisions of Articles 13(1) and (2) of the Constitution. 'Basic structure', by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. 'The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features'-this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."

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142. Article 80(4) prescribes the manner of voting and election of the representatives of States for the Council of States in the following terms: "80. (4) The representatives of each State in the Council of States shall be elected by the elected Members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote."

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336. In the words of Jaganmohan Reddy, J.(Kesavananda Bharati case reported in (1973) 4 SCC 225) in his separate judgment, the "elements of the basic structure are indicated in the Preamble and translated in the various provisions of the Constitution" and the "edifice of our Constitution is built upon and stands on several props" which, if removed would result in the Constitution collapsing and which include the principles of "sovereign democratic republic" and "parliamentary democracy", a polity which is "based on a representative system in which people holding opposing view to one another can be candidates and invite the electorate to vote for them" (SCC p. 638, para 1159).

341. Some of the important holdings were set down in para 92 of the aforementioned (Mohinder Singh Gill v. Chief Election Commr. reported in (1978) 1 SCC 405) judgment "for convenience" and to "synopsise the formulations". The holdings included the following: (SCC p. 452) [pic]"92. (2)(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order viz. elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication."

343. The case Kihoto Hollohan v. Zachillhu (reported in (1992 Supp (2) SCC 651) also resulted in similar views being reiterated by this Court in the following words: (SCC p. 741, para 179)

"179. Democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority."

(emphasis laid by this Court) In Rameshwar Prasad (VI) v. Union of India[9], this Court has held as under:-

"229. Lord Greene said in 1948 in the famous Wednesbury case (reported in (1948) 1 KB 223) 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.....

257. Therefore, the well-recognised position in law is that purity in the electoral process and the conduct of the elected representatives cannot be isolated from the constitutional requirements. "Democracy" and "free and fair election" are inseparable twins. There is almost an inseverable umbilical cord joining them. In a democracy the little man-voter has overwhelming [pic]importance and cannot be hijacked from the course of free and fair elections.....".

(emphasis laid by this Court) In Mohinder Singh Gill v. Chief Election Commr.[10], this Court has held as under:-

"2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless, words:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

23. Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of this proxy. Although the full flower of participative Government rarely blossoms, the minimum credential of popular Government is appeal to the people after every term for a

renewal of confidence. So we have adult franchise and general elections as constitutional compulsions. "The right of election is the very essence of the constitution" (Junius). It needs little argument to hold that the heart of the Parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more.

46. It is an interesting sidelight that in America it has been held to be but fundamental fairness that the right to an administrative hearing is given. Natural justice is being given access to the United Nations. It is notable that Mathew, J. observed in *Indira Gandhi* (p. 513, see p. 128, para 303)(reported in 1975 Supp SCC 1):

"If the amending body really exercised judicial power, that power was exercised in violation of the principles of natural justice of *audi alteram partem*. Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance....."

(emphasis laid by this Court) In view of the law laid down by this Court in the aforesaid cases, we have to hold that the sub rules (8) & (9) of Rule 3-A are applicable to the appellant society/Societies as the area of operation is more than one village and therefore the orders passed by the Collector for the delimitation of the constituency/constituencies cannot be said to be illegal. Further, we hold that there will be no proper representation of the voters to their respective specified societies for electing representatives of their area which would materially affect the result of the election and the impugned provisions and Rules are legally justifiable.

For the reasons stated supra, no relief can be granted in favour of the appellant-societies by setting aside the election notification and the prayer for setting aside the impugned judgement and orders. Hence, they deserve to be dismissed. The respondents are directed to hold the election to the specified societies as per sub rule (8) and (9) of Rule 3-A of the Rules as are applicable to them under the Gujarat Co-operative Societies Act after the delimitation of the constituency/constituencies of such societies are made by the Collector as stated under sub-rule (9) of Rule 3- A of the Rules.

23. For the reasons stated supra, we do not find any reasons whatsoever to interfere with the impugned judgment and orders of the High Court. It is needless to make observation that the State government and its officers could not give effect to the provisions of the Co-operative Societies Act and Rules for some time on account of which some of the societies have challenged the impugned provisions and Rules before the High Court, even after litigation was concluded by the Division Bench at one stage, the State and its officers have not implemented the impugned provisions and Rules without any valid reasons. The members of the specified societies in the State have a right to elect their true representatives to represent them as Managing Committee or Board members of the District Co-operative Societies and other allied societies after de-limitation of the constituency/ constituencies and therefore, we direct them to see that the impugned provisions and Rules must be implemented forthwith without further delay and submit compliance report within 8 weeks from the date of report of the copy of this order.

24. The appeals are dismissed. No Costs.

[1] (1984) 2 GLR 1244

[2] (2004)1 GLR 310

[3] (2010) 3 GLR 2154

[4] (2012)1 GLH 245

[5] (2012) 2 GLR 1522

[6] (1972) 1 SCC 719

[7] (1973) 4 SCC 225

[8] (2006)7 SCC 1

[9] (2006) 2 SCC 1

[10] (1978) 1 SCC 405