

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10155 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE C.L. SONI

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | No |
| 5 | Whether it is to be circulated to the civil judge ? | No |

KAMLABEN BHIKHABHAI BOGHANI

Versus

STATE OF GUJARAT & 2

Appearance:

MR SHIVANG J SHUKLA, ADVOCATE for the Petitioner

MR PRAKASH JANI, GOVERNMENT PLEADER with MR NEERAJ ASHAR,
ASSISTANT GOVERNMENT PLEADER for Respondent No.1

CORAM: **HONOURABLE MR.JUSTICE C.L. SONI**

Date : 10/07/2013

ORAL JUDGMENT

1. **RULE.** Mr. Prakash Jani, learned Government Pleader with Mr. Neeraj Ashar, learned Assistant Government Pleader, waives service of rule for respondent No.1- State.

2. Considering the facts of the case and with consent of the

learned advocates for the parties, the matter is taken up for final hearing.

3. The petitioner who is a shareholder of respondent No.3 Bank has come out with this petition making a grievance against continuing the administrator appointed for respondent No.3 though such appointment has lived its life and sought direction against the respondents to declare and hold election of the Board of Directors (Managing Committee) of respondent No.3 Bank.

4. It is the case of the petitioner that an administrator was appointed by order dated 15.11.2011 by Registrar, Co-operative Societies, Gujarat State at Annexure-B by removing the Board of Directors under Section 115(A)(3) of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act') for a period of one year. It is further case of the petitioner that by virtue of the Gujarat Act No.17/2013 to further amend the Act, the administrator could not be permitted to continue for more than a period of one year and the respondents are under obligation to immediately hold election of the Board of Directors for respondent No.3.

5. Notice was issued in this matter on 25.6.2013, making it returnable on 2.7.2013. On 2.7.2013, learned Assistant Government Pleader Mr. Neeraj Ashar pointed out that though election is required to be held in the Co-operative Societies by the authority to be notified and as per the Rules to be prescribed under the amended provisions of Section 74-CC of the Act, however in absence of such authority and Rules, it is not possible to hold election for respondent No.3.

6. Learned advocate Mr. Shivang Shukla appearing for the petitioner, therefore, submitted that though the Act is amended providing for holding of election by notified authority and as per the Rules to be framed by the State Government, still in absence of any

mechanism for holding election for Board of Directors of respondent No.3, the administrator has continued to function beyond his term, which is against the mandate of the legislature. Mr. Shukla submitted that on account of vacuum created providing for mechanism for holding election under the amended Act in many societies in the State of Gujarat, either old elected bodies who might have lived their lives or the administrators wherever they are appointed will continue to function and in a given case, they might take undue advantage of continuation of their term.

7. This Court has, in the present sitting, come across 2 or 3 cases where the societies have come with apprehension of appointment of administrator on account of their inability to hold election because of amending Act. Finding that such situation might arise in many co-operative societies in the State of Gujarat, the Court called upon learned Government Pleader Mr. Prakash Jani and sought to know from him as to what steps the Government was taking to immediately provide for mechanism to hold elections of the managing committee/ Board of Directors in various co-operative societies/ co-operative banks.

8. Learned Government Pleader Mr. Prakash Jani appearing with learned Assistant Government Pleader Mr. Neeraj Ashar shared the anxiety of the Court and rendered good assistance to the Court for immediate solution to come out of the above-referred situation by providing for suitable steps to be taken by the State Government and the concerned authorities till the Government finally comes out with mechanism to hold elections in such societies as required by the provisions of Section 74CC of the Act.

9. Learned Government Pleader Mr. Jani while agreeing with the submissions made by learned advocate for the Petitioner that the

administrator cannot continue beyond his term and on expiry of his term, the elected body ought to have been in charge of respondent No.3 Bank submitted that as on today, the Government has not notified the authority responsible to conduct election and not prescribed any rules providing mechanism for holding election. Learned Government Pleader, however, submitted that since the amending Act mandates that the election of the committee and of the office bearers of the society, other than the specified societies, is to be conducted by the authority to be notified by the State Government and as per the Rules to be prescribed, the Government is serious about taking immediate steps for such purpose and will ensure to take steps in this regard as early as possible. Mr. Jani, however, submitted that till any such authority is notified and the Rules are prescribed, it is for the concerned affected member of the society or society itself to take appropriate remedy before appropriate Court. Mr. Jani, however, did not leave the matter as it is and pointed out that till mechanism for holding election in the co-operative societies, as required by the amending Act, is provided by the State Government, the Court might think of providing interim measures to be applicable to all the societies till the State Government provides for mechanism for holding election as per the amending Act. Mr. Jani has drawn the attention of the Court to one of the orders passed by the Court dated 8.3.2013 in Special Civil Application No.5000 of 2012 in respect of a society which was a co-operative bank, where this Court directed the concerned authorities to hold elections under supervision of concerned authority. Mr. Jani however, submitted that this was only in respect of one of the societies but many other societies would face the problem of holding elections on their own as per their earlier norms/ bye-laws and therefore, he submitted that considering the present situation prevailing as regards holding of elections in various societies in view of the amendment in the Act,

this Court might issue suitable directions.

10. Having considered the above submissions, what appears to the Court is that after Gujarat Act No.17 of 2013 inserting Section 74CC in the Act, stalemate like situation is created on account of the State Government having not notified the authority, responsible to conduct the elections, and not providing the mechanism for holding elections in the co-operative societies. Section 74CC inserted by amending Act reads as under:-

- “74CC. (1) The election of the Committee and of the office bearers of the societies other than the specified societies as referred to in section 74C shall be conducted by such authority as the State Government may, by notification in the *Official Gazette*, notify.
- (2) The authority appointed under sub-section (1) shall hold the election as per the rules as may be prescribed.
- (3) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing Committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee.”

11. Learned Advocate for the petitioner has drawn attention of the Court to the oral order dated 9.4.2013 passed in Special Civil Application No. 2737 of 2013 to point out that the State Government having not come out with any mechanism to hold elections after amendment in the Act, the Court therein after recording declaration made by the learned Government Pleader in the earlier petition, issued directions permitting the State to pursue the matter for bringing about the amendment in the Act in conformity with the constitutional amendment and ordered to defer the appointment of custodian or administrator and permitting the Managing Committee to continue to look after the day to day affairs by further providing that such committee shall not take major policy decision without prior approval of the District Registrar concerned. Declaration made by the learned Government Pleader in the earlier case reads as under:

“5. Today, learned Government Pleader has declared as under:

- (i) The State Government has already prepared an amendment in the Gujarat Cooperative Societies Act, so as to bring it in conformity with the constitutional amendment and the Bill is prepared and is to be introduced in the Assembly within a short span. However, he submits that it may take some time for completing the formality.
 - (ii) Until the amendment is brought about and comes into force and the elections are held as per the new Act after amendment, no Administrator or Custodian shall be appointed. However, it was submitted that the Managing Committee of the Society may continue, but may not take major policy decision. If they have to take major policy decision, prior approval of the District Registrar concerned may be obtained.
6. In our view, the aforesaid declaration appears to be reasonable and it would take care of the interest of the petitioners also, since managing committee of the petitioners would continue to hold the office until new election is held. At the same time, as statutory period of three years is over and it is on account of the hiatus created because of the amendment to be made in the Gujarat Cooperative Societies Act, they are to continue to hold the office, they could be termed as caretaker. Therefore, it would be proper to put an embargo upon the Managing Committee not to take any policy decision unless prior approval of the District Registrar concerned is obtained.”

12. There is no manner of doubt that by virtue of the above provisions of Section 74CC of the Act, the election of the committee and of office bearers of all societies except the specified societies as referred to in Section 74C is mandatorily to be conducted as required

by the provisions of the said Section. The societies, therefore, might find it difficult to take upon themselves to hold elections as was being done by them as per their norms/ bye-laws for such purpose before insertion of Section 74CC in the Act. Thus, a stalemate is created and effect thereof would result into demand for continuation of existing elected bodies in the societies whose term either have expired or may expire in near future or in the alternative might result into appointment of an administrator for such societies in absence of fresh elected body. In both such contingencies, the members of the societies may not be satisfied and in a given case, it might result into continuing the existing elected body facing charge of irregularities in the management of the society.

13. Though this Court could have issued similar direction passed in Special Civil Application No.5000 of 2012, but the same would have been again limited to the petitioner only. The Court when asked learned Government Pleader Mr. Jani about the time factor for notifying the authority to conduct the election and for providing mechanism to hold the election under the amended Act, learned Government Pleader though stated that the Government is serious about this, but, it was not possible for him to give exact time schedule. Therefore, as recorded above, though learned Government Pleader shared anxiety with the Court to deal with such situation which might arise in many societies when the term of the Committee might get over in the near future, then left it to the Court to deal with the situation.

14. Having considered the above, the Court finds it necessary to exercise its power under Article 226 of the Constitution of India for giving some directions to provide for interim measures for the purpose of holding elections of the committee and the office bearers in the co-operative societies in the State of Gujarat on the basis of their bye-laws but with the help and under the supervision of the responsible officer to be nominated by the respective District

Registrars under whose jurisdiction, the societies exist. The Court is of the view that such interim measures would be helpful to the members of the societies to have their elected representatives in the committee on expiry of the term of the existing elected body instead of administrator in place of elected body. Such interim measures thus will remove the present stalemate created on account of insertion of Section 74CC in the Act and will ensure that at least, till the State Government notifies the authority responsible to conduct elections and provide mechanism to hold elections, the members of the societies may not require to bear undesired committee or the office bearers whose terms have expired and for that purpose, even appointment of the administrator.

15. So far as the present petition is concerned, since the term of administrator has already expired long back, the administrator under supervision of District Registrar could be directed to immediately hold election as per the bye-laws of respondent No.3 Bank by further providing that the body to be elected in such election shall continue only till fresh election is conducted as required by the concerned authority to be nominated by the State Government under Section 74CC of the Act.

16. In the background of the above, following directions are issued:-

- (1) The Respondent No.1– the State Government is directed to issue orders to all the District Registrars of Cooperative Societies, except the specified societies, in the State of Gujarat providing for following as interim measures:-
 - (a) Wherever in any cooperative society in any District the term of a managing committee either expires or has expired, there shall not be appointment of Administrator simply on account of existing committee not being able to hold elections as per the amended Act.

- (b) If, in any society, the term of the existing committee is about to be over or is already over, such society shall be permitted to hold election of the Managing Committee, the office bearers or the Board of Directors as the case may be as per its by-laws. Such election shall be if so required under the supervision of the responsible officer to be deputed by the concerned District Registrar within whose jurisdiction the society exist. The term of the elected body of the society in such election shall be till the period provided in the by-laws.
- (c) The State Government shall give wide publicity about such interim measures to be followed by District Registrars and the societies of each district.
- (d) Whenever in any such society, the term of the administrator is over, the election as per the present interim measures shall be immediately held and the elected body shall be handed over the charge of the Managing Committee by the concerned Administrator.

17. So far as the present petition is concerned, since the term of Administrator has expired, respondent No.1 is directed to immediately instruct the concerned District Registrar in whose jurisdiction respondent No.3 Bank is situated to conduct election of the managing committee of respondent No.3 as per its bye-laws by deputing responsible officer.

18. Respondent No.1 is directed to issue necessary orders to all the District Registrars as directed above within two weeks from the date of receipt of copy of this order.

19. Registry shall forthwith provide copy of this order to the learned Government Pleader for its onward communication to the State Government. Registry shall also forthwith send copy of this order to the District Registrar under whose jurisdiction the respondent No.3 bank falls for the purpose of conducting election of respondent No.3 under the supervision of responsible officer as directed above.

20. It is made clear that this order shall not enure for the benefit of those Managing Committees, Office bearers or the Board of Directors as the case may be against whom action under section 81(1)(i) (ii) (iii) of the Act is taken or is contemplated.

21. With the above observations and directions, the petition is disposed of. Rule is made absolute accordingly.

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Sd/-
(C.L. SONI, J.)

