

Vipulbhai Mansingbhai Chaudhary vs State Of Gujarat & Anr on 17 April, 2017

Equivalent citations: AIR 2017 SUPREME COURT 2340, AIR 2017 SC (CIVIL) 1810, (2017) 4 SCALE 637, (2017) 4 MAD LJ 597, 2017 (13) SCC 51, 2017 (178) AIC (SOC) 20 (SC), 2017 (3) KCCR SN 320 (SC)

Bench: Abhay Manohar Sapre, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO.14678 OF 2015

VIPULBHAI MANSINGBHAI CHAUDHARY ... APPELLANT

Versus

STATE OF GUJARAT & ANROTHER ... RESPONDENTS

WITH

WRIT PETITION(C) No.824/2015
CIVIL APPEAL NO.13784/2015
CIVIL APPEAL NO.1881/2016

J U D G M E N T

Chelameswar, J.

C.A NO.14678/2015, C.A. No.1881/2016 & C.A.No.13784/2015

1. There are three appeals before us - two[1] of them filed by one Vipulbhai Mansingbhai Chaudhary, ('Chaudhary' hereafter) and the third filed by the State of Gujarat & Others[2].

2. The matter arises under the Gujarat Co-operative Societies Act, 1961 (for short 'THE ACT'). The Mehsana District Co-operative Milk Producers Union Ltd. (hereafter 'UNION') is a Society within the meaning of the expression under Section 2(19)[3] of THE ACT. Chaudhary was elected as its Chairman for a period of three years commencing from 2.5.2011 to 1.5.2014. However, he continued to hold the office beyond the period of three years by virtue of the operation of Section 74C(2) - as it then existed:

“Section 74C(2). When the election of all the members of the committee of any such societies held at the same time, the members elected on the committee at such general election shall hold office for a period of three years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.”

3. During the continuance of Chaudhary in the office, a show-cause notice was issued on 12.1.2015 (hereafter “Show-Cause Notice-I”) by the Registrar[4] of the Co-operative Societies (hereafter “the Registrar”) purporting to be one issued under Section 76B(1) & (2) of THE ACT calling upon Chaudhary to show cause why he should not be removed from the office for various reasons mentioned therein.[5] Chaudhary challenged the said show-cause notice by way of a writ petition. It was dismissed by the Gujarat High Court as pre-mature. The dismissal was confirmed by a Division Bench in a Letters Patent Appeal. Aggrieved, Chaudhary carried the matter to this Court by way of SLP (Civil) No.4668/2015 which was filed on 12.2.2015.

4. During the pendency of SLP (Civil) No. 4668 of 2015, the Registrar passed a final order on 10.3.2015[6] by which Chaudhary was removed from the office and also disqualified for a period of three years from holding “any office in any Sahakari Mandal to participate in any election for a period of three years”.

5. This Court by an order dated 20.3.2015 disposed of SLP(C) No. 4668/2015 directing that status quo regarding the order of the Registrar dated 10.3.2015 be maintained till 30.3.2015 to enable Chaudhary to approach the appropriate forum challenging the correctness of the Registrar’s order dated 10.3.2015.

6. Chaudhary filed a statutory revision before the State Government. The Government by its order dated 8.5.2015 confirmed the Registrar’s order dated 10.3.2015.

7. Aggrieved by the same, Chaudhary filed a Writ Petition No.9618/2015. A learned judge of the High Court by his judgment dated 29.9.2015 upheld the action of the Registrar insofar as it pertained to the removal of Chaudhary from the office but set aside the order insofar as it pertained to the disqualification of Chaudhary for a future period of three years. It was held that proceedings under Section 76B(2) for disqualifying Chaudhary could have been initiated only after an order under Section 76B(1) is passed. Since the Registrar acted on the basis of a composite notice (Show-Cause Notice-I), the action of the Registrar under Section 76B(2) could not be sustained.

8. Aggrieved by that part of the judgment in Writ Petition No.9618/2015 insofar as it went against him, Chaudhary preferred Letters Patent Appeal (LPA) No.1302 of 2015. The said LPA was dismissed on 19.10.2015. Chaudhary approached this Court by way of Special Leave Petition (C) No.33630/2015 [now C.A.No.14678 of 2015].

9. In view of the fact that the High Court had set aside the order of the Registrar disqualifying Chaudhary for a period of three years, the Registrar issued a fresh show-cause notice dated 3.10.2015 (hereafter ‘Show- Cause Notice-II’) calling upon Chaudhary to explain as to why he should

not be disqualified for a future period in exercise of the powers under Section 76B(2) of THE ACT.

10. The said show-cause notice was challenged by Chaudhary again by way of another Writ Petition (SCA No. 17826 of 2015) unsuccessfully.[7] Chaudhary carried the matter in Letters Patent Appeal (LPA No.1343/2015)[8].

11. Eventually, the LPA No.1343/2015 of Chaudhary was allowed by the High Court on 2.11.2015. The Show-Cause Notice-II was quashed holding:

“16. If the impugned order of the learned single Judge is examined in light of the observations made by us hereinabove, it can be said that the learned single Judge has committed error in interpreting the provisions of section 76B(1) and 76B(2) of the Act and the consequential order for dismissal of the petitioner calls for interference.

17. As observed by us, if the second separate show cause notice is not contemplated as per section 76B(2) of the Act, and both the consequences should arise in only one proceeding under proceedings of 76B of the Act, then the fact remains that the order for disqualification was quashed by this court without there being any express liberty reserved for continuation with the proceedings for disqualification under section 76B(2) of the Act. Therefore, in light of the aforesaid observations and discussions, it can be said that the impugned action of issuance of separate show cause notice for disqualification under section 76B(2) of the Act is without jurisdiction and beyond the scope of section 76B of the Act.

and therefore concluded:

20. In view of the above, the impugned notice dated 3.10.2015 (Annexure-

F) is quashed being beyond the scope and ambit of section 76B of the Act. The order of the learned single Judge is set aside. The appeal is allowed accordingly. Considering the facts and circumstances, no order as to costs.”

12. It can be seen from the above that the High Court held that the Show- Cause Notice-II is untenable for the reason that when the High Court had set aside the Show-Cause Notice-I, it did not record that the Registrar is permitted to issue a fresh show-cause notice proposing action under Section 76B(2).

13. Before recording such a conclusion, the High Court rejected two submission made on behalf of the Registrar:

(i) that in view of the fact that the earlier order of the Registrar disqualifying Chaudhary was quashed on the ground of breach of principles of natural justice, it would still be open to the Registrar to issue show cause notice under Section 76B(2) of THE ACT.[9]

(ii) Chaudhary is estopped from arguing that the notice under Section 76B(2) is illegal because in Writ Petition No.9618 of 2015, Chaudhary contended that a composite notice under Section 76B(1) and (2) proposing to remove Chaudhary from office and disqualifying him for a further period from contesting any election to the Society was illegal.

14. The reasons of the High Court for rejecting the above two submissions of the Registrar are recorded at para 18.1 and 19 respectively as follows:

“18.1 As such, the facts of all the aforesaid cases cannot be equated with the facts and circumstances of the present case as narrated hereinabove. Further, in view of the interpretation as made by us hereinabove, if only one proceeding is contemplated under section 76B of the Act for two consequences of removal and disqualification, and those proceedings have ended in SCA No. 9618 of 2015 and LPA No. 1302 of 2015, it would not be open to the authority to initiate second proceedings on the same facts, more particularly when no express liberty was so reserved and even otherwise also it could not be reserved in view of the interpretation made by us hereinabove. Hence, when initiation of the second proceedings by issuance of the show cause notice is beyond the scope of section 76B of the Act, the said decisions would be of no help to Mr. Jani, learned AAG.”

19. Mr. Jani, learned AAG did attempted to contend that the appellant in the earlier round of litigation of SCA 9618 of 2015 had contended that separate show cause notice under Section 76B(2) of the Act was required to be issued and not the composite notice under section 76B(1) & (2) and he further contended that learned single judge having accepted the said aspect, it would not be open to the petitioner to play hot and cold at the same time, and now to contend that a composite notice was required, more particularly when the learned single Judge has accepted the said contention and the said order has been not interfered with in the LPA.”

15. In the meanwhile on 23.10.2015, a notification fixing the dates for the election to the Managing Committee of the UNION for the tenure commencing from 2015 to 2020 was issued. Chaudhary filed his nomination. He was declared elected uncontested on 18.11.2015.

16. Aggrieved by the judgment in LPA No.1343 of 2015 dated 2.11.2015 by which the second show-cause notice was quashed by the High Court, State of Gujarat and others filed SLP(C) No. 32004 of 2015 (Civil Appeal No.13784 of 2015).

17. By an order dated 23.11.2015 of this Court, Chaudhary was permitted to reply to the second show-cause notice[10] and he did infact file a reply. Thereupon the Registrar passed an order dated 16.12.2015 disqualifying Chaudhary for a period of six (6) years. “Therefore, I, Nalin Upadhyay (IAS), Registrar of Cooperative Societies, Gujarat State, Gandhinagar, in exercise of powers conferred upon me under section 76(B)(2) of the Gujarat Cooperative Societies Act, 1961, declare Mr. Vipulbhai Mansingbhai Chaudhary, the then Chairman, the Mehsana District Cooperative Milk

Producers Union Ltd., Mehsana, as disqualified to participate in any election or to hold any post in the Mehsana District Cooperative Milk Producers Union Ltd., Mehsana and also any other cooperative organization in the State, for a period of 6 (six) years from the date of this order.”

18. Aggrieved by the same, Chaudhary filed Writ Petition (SCA No.177 of 2016). By the judgment dated 18.01.2016, the same was partly allowed by a learned Single Judge:

“26. For the reasons stated above, the impugned order dated 16.12.2015 is quashed only to the extent it imposes period of disqualification beyond 3 years. Disqualification of the petitioner under section 76B(2) of the Act for a period of 3 years is not disturbed. The petitioner, thus will have to suffer disqualification under section 76B(2) of the Act for a period of 3 years from the date of the impugned order. To the extent disqualification is imposed beyond 3 years, the petition succeeds. The petition thus finally stands disposed of accordingly.”

19. Challenging the said judgment insofar as it went against him, Chaudhary carried the matter in LPA No.55 of 2016. A division bench of the High Court by its judgment dated 28.01.2016 declined to interfere with the Single Judge’s order.

“17. In view of the aforesaid observations and discussion, we find that no further case is made out for interference to the view taken by the learned Single Judge in the impugned order. Hence, the appeal is disposed off accordingly with no order as to costs.” Hence, SLP (C) No.3980/2016, now Civil Appeal No.1881 of 2016.

20. Following submissions are made on behalf of Chaudhary:

(i) The order of the Registrar dated 10.03.2015 had been set-aside in part [insofar as it pertained to action under Section 76B(2)] by the High Court in Writ Petition No.9618 of 2015. The same was allowed by the Registrar to become final without any further challenge. Therefore, Show-

Cause Notice-II could not have been issued in the absence of the grant of any leave by the High Court to issue a fresh show-cause notice under Section 76B(2).

(ii) If Show-Cause Notice-II is illegal, all further action flowing from show-cause notice-II are void ab initio.

(iii) Assuming for the sake of argument that the Registrar is entitled to issue show-cause notice-II and take consequential action, the process of disqualifying Chaudhary invoking power under Section 76B(2) is unsustainable, because each one of the acts or omissions which formed the basis for action against Chaudhary was either taken by or ratified by the governing body (“committee”) of the society. Therefore, action if at all required ought to be taken against the entire governing body of the society under Section 81 but not against individual members thereof under Section 76B.

(iv) Alternatively, it is submitted that even if resort to the power under Section 76B is permissible, show-cause notice-II narrates the same set of facts and gives the same reasons for action both under sub-sections (1) and (2) to Section 76B. Such a course of action is not permissible under law as the considerations relevant under Section 76B(1) for removing an office bearer of the society from the office and considerations which call for disqualifying an office bearer under Section 76B(2) either from holding any office or contesting an election to the office must necessarily be different.

(v) Even if action under Section 76B(2) is tenable, the decision of the Registrar to disqualify Chaudhary for six years is wholly unsustainable because it is not mandatory under sub-section (2) to disqualify a person for complete six years in every case.

(vi) The order under Section 76B(2) must disclose the reasons which prompted the Registrar to impose a disqualification for the maximum permissible period of six years. The order is absolutely silent in this regard thereby rendering the order wholly arbitrary.

21. The State of Gujarat and the Registrar submitted:

(i) The Division Bench of the High Court grossly erred in recording the conclusion that show-cause notice-II is illegal on the ground that it was issued without obtaining the leave of the High Court when it had partially set-aside (in Writ Petition No.9618 of 2015) the order dated 10.03.2015.

(ii) Except for the ipsi dixit of the High Court that the Registrar is required to obtain leave of the Court before issuing show-cause notice-II, neither any principle of law nor any provision of law which forms the legal basis for such a proposition is referred to in the impugned judgment.

(iii) In the alternative, it is argued that Chaudhary is estopped from advancing such an argument in view of the fact he had challenged the order of the Registrar dated 10.03.2015 insofar as it pertained to Section 76B(2) on the ground that such a notice could not have been issued in exercise of the power under Section 76B(2) without first recording a conclusion under Section 76B(1) that he was required to be removed from the office.

(iv) The findings recorded by the Registrar after an elaborate inquiry, that various charges against Chaudhary are proved, are findings of fact.

Those findings disclose that the various actions/omissions held proved against Chaudhary are prejudicial to the interest of the society. Therefore, they rightly formed the basis for both the actions i.e. removal of Chaudhary from the office as well as the decision to disqualify Chaudhary under Section 76B(2).

(v) Assuming for the sake of argument that the various actions/omissions which formed the basis for action against Chaudhary are either with prior approval or subsequent ratification of the

Committee of the UNION - justifying action under Section 81 of THE ACT, law does not prohibit action against individual members of the Committee. On the other hand, Section 76B clearly provides for such a possibility.

22. A brief survey of the two provisions of THE ACT is necessary to examine the various questions involved in these appeals.

23. Section 76B provides for (i) removal of “any officer”; and (ii) disqualification of such a removed officer to hold or contest election to any office either of that Society or any other Society for a certain period.

“76B. Removal of officer – (i) If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.

(2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding six years from the date of the order and such officer shall stand disqualified accordingly.”

24. Section 81 authorises (i) the supersession of the Committee of a Society; and (ii) appointment of a substitute committee or an administrator to manage the affairs of the society and various things incidental thereto. Section 81 insofar as it is relevant for our purpose reads as follows:-

“Section 81(1) If in respect of a committee of a society having the Registrar as its member, the State Government and in respect of a committee of a Society which does not have the Registrar as its member, the Registrar, is of the opinion that;

the committee persistently makes default; or the committee is negligent in the performance of its duties imposed on it by or under this Act or the rules made thereunder or the bye-laws; or the committee has committed any act prejudicial to the interest of the society or its members;

the State Government or, as the case may be, the Registrar, after giving the committee an opportunity of being heard, within fifteen days from the date of issue of notice, by an order in writing, supersede the Committee and appoint– a Committee, consisting of one or more members of the society, not being the members of the committee superseded under this sub-section, or an Administrator from amongst the officers of the Cooperation Department of the State Government – to manage the

affairs of the society for a period not exceeding one year as may be specified in the order, which period may, at the discretion of the State Government or the Registrar, as the case may be, be extended from time to time, so, however, the term of the Committee or the Administrator shall be, the remaining term of the committee in whose place he is appointed or two years in aggregate, whichever is less.”

25. The expressions “committee”, “officer” and “society” are defined expressions under Section 2(5), 2(14) and 2(19) of THE ACT:

“Section 2(5) “committee” means the Managing Committee or the governing body of a society to which the direction and control of the management of the affairs of a society is entrusted to;

Section 2(14) “officer” means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society;

Section 2(19) “society” means a co-operative society registered, or deemed to be registered, under this Act;” Further analysis of Sections 76B and 81 would be undertaken in the judgment at the appropriate place.

26. It was in exercise of the power under Section 76B. Action was initiated against Chaudhary initially by issuing Show-Cause Notice–I which culminated in a final order dated 10.3.2015 by which Chaudhary was removed from the office of the Chairman of the UNION and also disqualified for a period of three years from holding any office or to participate in any election “in any sahakari mandal”.[11]

27. The conclusions recorded by the Registrar, in the order of dated 10.3.2015 removing Chaudhary from office, remained undisturbed by the High Court, in Special Civil Application No.9618/2015. The High Court recorded (See paras 11 to 15 of the judgment) that of the various charges leveled against Chaudhary, i.e. Charges Nos.2, 3, 6, 9, 10 and 11 had been held proved by the Registrar. The High Court further held that such findings could not be determined in exercise of the jurisdiction under Article 226 of the Constitution of India.

“16. The Court finds that in the nature of charges proved, the view taken by respondent No.2 and affirmed by the Revisional Authority is not to be disturbed in exercise of the powers under Article 226 of the Constitution of India in absence of any complaint as regards decision making process. It is not disputed that fair and sufficient opportunities were given to the petitioner and therefore, no complaint could be made as regards decision making process to arrive at a decision by respondent No.2 to remove the petitioner in exercise of powers under Section 76B(1) of the Act.” The said view of the learned Single Judge was endorsed by the Division Bench in Letters Patent Appeal No.1302/2015. The Division Bench in its judgment dated 19.10.2015 held as follows:

“3. Mr. Thakore, learned senior counsel appearing for the appellant, during the course of the hearing has taken us to the impugned order passed by the authority for removal, which was subject matter of the petition before the learned Single Judge. There are findings recorded by the authority pertaining to persistent default in performance of the duty by the appellant. Those findings have been examined by the learned Single Judge to the extent of scope of judicial review in a petition under Article 226 of the Constitution. It is hardly required to be stated that while undertaking the exercise of judicial review under Article 226 of the Constitution in a matter of removal of an office bearer of the society under the Act, the Court would examine as to whether the opinion arrived at for removal is supported by objective material or not. Sufficiency of the material may not be re-assessed by the Court nor this Court would reappreciate the material and record a different finding as that of the appellate court. After having expressed the view for the scope of judicial review, when we have considered the contents of the impugned order passed by the learned Single Judge, it appears that no error has been committed by the learned Single Judge in affirming or not interfering with the order passed by the authority under Section 76B(1) of the Act for removal of the appellant as Chairman of the Milk Producers Union.”

28. Civil Appeal No.14678 of 2015 [Arising out of SLP(C) No. 33630 of 2015] challenging the correctness of the above-mentioned judgment of the High Court is one of the three appeals before us.[12] Therefore, it is a submission of Chaudhary that we are required to examine the correctness of the conclusion recorded by the Registrar that the charges 2, 3, 6, 9, 10 and 11 are framed against Chaudhary.

In substance, the argument is that this Court should act as the appellate Court to determine the correctness of the conclusion drawn on the basis of the evidence before the Registrar. An exercise which ought not to be normally undertaken even by the High Courts in the jurisdiction under Article 226 of the Constitution of India nor by this Court on further appeal by leave under Article 136 of the Constitution.

29. The High Court rightly declined to interfere with those findings. We see no error in the decision of the High Court in this regard.

We decline to undertake the exercise of examining the correctness of the conclusions recorded by the Registrar.

30. The order dated 10.3.2015 insofar as it pertained to the future disqualification of Chaudhary was set aside in Writ Petition No. 9618 of 2015.

It was argued on behalf of Chaudhary that issuance of a combined notice proposing action both under sub-sections (1) and (2) of Section 76B is illegal. Action under sub-section (2) of Section 76B could be initiated only after conclusion of the action under Section 76B(1).[13] In terms of submission of Chaudhary, the learned Single Judge formed the points for determination at para

20.[14] On the construction of Section 76B, the learned Single Judge held as follows:

“21. ... There is no concept of issuing notice in advance. If such notice in advance is issued for the proposed action to follow the event to happen, it could be said that the action proposed is prejudged, predetermined and as a result of bias attitude. In fact, reading the language of sub- sections (1) and (2) of Section 76B of the Act independently, one would find that the legislature intended to pass two different and distinct orders at two different stages. In both the sub-sections, the words “by order” are used. Therefore, removal of an officer is contemplated by order to be passed at first in point of time and then by separate order, the Registrar may direct that the officer “so removed” shall be disqualified to hold or to contest election for any office in his own society or in any other society for a period which may be fixed by the Registrar within the ceiling limit and for such order to be separately passed, principles of natural justice, as stated above, are to be followed.” The learned Single Judge, therefore, concluded that a combined notice under sub-sections (1) and (2) of Section 76B is untenable.[15]

31. The High Court also examined the question (on the assumption that even if a combined notice is not objectionable) whether a combined notice issued to Chaudhary complied with the principles of natural justice and concluded that Chaudhary was “not asked to show-cause as to why he should not be disqualified”.[16]

32. The State of Gujarat and the Registrar accepted the said judgment and let it become final.

33. Hence, the submission of Chaudhary both before the High Court and this Court that Show-Cause Notice-II could not have been issued without obtaining the leave of the High Court. Such a submission found favour with the High Court in the judgment in LPA No. 1343 of 2015 when it was called upon to determine the legality of Show-Cause Notice-II.

34. The High Court did not assign any reason for such a conclusion nor any provision of law or precedent which warrants such a conclusion is referred to. We find it difficult to sustain the conclusion.

35. Any statutory power could “be exercised from time to time as occasion requires”. Such a principle is recognised by Section 14[17] of the General Clauses Act, 1897 and Section 14[18] of the Gujarat General Clauses Act. Power conferred on Courts to adjudicate the rights and obligations of the parties is an exception to the principle. The doctrines of res- judicata[19] and double jeopardy[20] prohibit the repeated invocation of the jurisdiction of the Civil Courts or repeated attempts to prosecute a person on the same set of facts constituting an offence. Whether power conferred by a statute on a body other than a judicial body (i) could be exercised repeatedly? or (ii) are there any legal limitations thereon? and

(iii) if there are limitations thereon what are they? are questions which require further examination. But for the purpose of this case these questions need not be examined. It is already held by this

Court that where an order passed in exercise of a power conferred by a statute is set aside on the ground that such an order was passed in breach of the principles of natural justice, the power could once again be exercised by complying with the principles of natural justice.

36. A Division Bench of the Andhra Pradesh High Court in Thimmasamudram Tobacco Co. v. Assistant Collector of Central Excise, Nellore Division, Nellore, AIR 1961 AP 324, held that:

“... in a case where the flaw in the order appealed against consists of in the non-observance of certain procedure or in not giving effect to the maxim ‘audi alteram partem’, it is open to the officer concerned to start the procedure once again with a view to follow the rules of procedure and the principles of natural justice.” The said principle laid down by the Andhra Pradesh High Court was approved by this Court in Superintendent (Tech.I) Central Excise I.D.D. Jabalpur & Others v. Pratap Rai, (1978) 3 SCC 113[21].

37. In spite of the fact that the abovementioned judgment of this Court was cited, the Division Bench of the High Court in L.P.A. No.1343 of 2015 quashed the show-cause notice-II dated 03.10.2015 on the ground:

“ ... Further, in view of the interpretation as made by us hereinabove, if only one proceeding is contemplated under section 76B of the Act for two consequences of removal and disqualification, and those proceedings have ended in SCA No. 9618 of 2015 and LPA No. 1302 of 2015, it would not be open to the authority to initiate second proceedings on the same facts, more particularly when no express liberty was so reserved and even otherwise also it could not be reserved in view of the interpretation made by us hereinabove ...”.

The said conclusion is clearly untenable and is required to be set-aside and the first submission of Chaudhary is liable to be rejected. As a consequence, the second submission also falls to ground.

38. We shall now deal with the third submission of Chaudhary. The submission in substance is that the acts and omissions which formed the basis of allegations leading to action against Chaudhary under Section 76B are not the individual acts of Chaudhary but the collective acts or omissions of the Committee of the UNION. Therefore, action if at all required must be taken under Section 81 against the entire Committee but not only against Chaudhary. In absence of any action against the Committee, action against Chaudhary is illegal and unsustainable.

39. The text of both the Sections 76B and 81 is already taken note of. Section 81 authorises the supersession of the Committee of a Society. Section 76B authorises action against individual officers of a Society. In either case, action is required to be taken upon the formation of the opinion by the Registrar[22] that (i) there is a persistent default; or

(ii) negligence in the performance of duties; or (iii) commission of an act which is prejudicial to the interest of the Society or its members.

40. Committee of a cooperative society by definition[23] is a body to which “the direction and control of the management of the affairs of a Society is entrusted to” - though under Section 73 of THE ACT, the final authority of every Society shall vest in the general body of members. Section 74[24] declares that the management of every society shall vest in a committee constituted in accordance with THE ACT etc. The Section also declares that the committee shall “exercise such powers and perform such duties” (hereafter collectively - DUTIES) as may be conferred or imposed on it by THE ACT or the subordinate legislation made thereunder. Performance of DUTIES normally obligates a committee to take or desist from taking certain courses of actions. Failure of committee to perform its DUTIES attracts various legal consequences specified under THE ACT. One of the consequences is specified under Section 81.

41. Committee is nothing but a collective name for the conglomeration of the individual officers of the society. An “officer” by definition[25] is either a person elected or appointed under THE ACT, or the subordinate legislation made thereunder to give directions in regard to the business of such society.

42. Committees are inanimate bodies. They function through human agency i.e. the individual members of the Committee. When it is said that a committee failed to perform its DUTIES under THE ACT, it is essentially the failure of the officers of the society collectively.

Failure of the Committee to perform its DUTIES necessarily implies failure on the part of the majority (if not the entire body) of the members of the Committee to perform DUTIES which they are obliged to perform under THE ACT in their capacity as the members of the Committee.

Acts or omissions of individual members which are not consistent with the DUTIES of the Committee or individual members entail various legal consequences specified under THE ACT both to the individual members and the Committee.

Individual members of the Committee owe DUTIES some of which are required to be performed individually[26] and others in concert with the other members of the Committee.

43. Committee by definition owes a duty to give directions in regard to the business of the society. That DUTY of the Committee in substance is the DUTY owed by the individual members of the Committee collectively. The legality of the directions given depends upon the nature of the various DUTIES to be performed by the Committee. Failure to give directions may also constitute an illegal omission (failure to perform a DUTY) in a given case.

In a given case, if a decision taken by the committee is so patently prejudicial to the interest of the society calling for action under Section 81, there is a collective failure of the individual members of the committee to perform their respective duty to give right directions in regard to the business of the society. Registrar is authorised to supersede the committee and appoint an administrator. If

such course of action is proposed by the Registrar, it will not be open to an individual member of the committee to argue that he was not a party to such an objectionable conduct of the committee because either he abstained from the decision making process or disagreed with the objectionable course of action taken by the other (majority) members of the committee and therefore, there is no individual culpability on his part. Section 81 of THE ACT authorises collective action against all the members of the committee. The collective failure of the committee in performing its duty is such that warrants supersession of the committee. All individual officers lose their offices irrespective of their contribution to the culpable action of the committee. Even in such cases of the failure of the committee to perform a DUTY owed by it, it may not be necessary to supersede the entire committee (in a given case) if it can be ascertained that the failure occurred due to culpable act or omission of an individual member of the committee and other members though acquiesced, did not have any culpable motives.

In a given case an act or omission of the committee may also constitute a failure of the performance of duty on part of each individual member of the committee, who contributed to such failure of duty. Law can provide for action to be taken against each of the members of the committee. In such a case whether it is compulsory to take action against all the members who contributed to the culpable action is a matter which depends upon the scheme and tenor of the law.

Sections 76B and 81 provide for such a courses of action. The Registrar is conferred with a discretionary power to take action against officers/members of the Committee individual or against the Committee collectively.

It is essentially for the Registrar to make an assessment whether on the facts and circumstances of each case either action is to be taken against the committee or an individual officer or both. The decision of the Registrar taken in exercise of such discretionary power would not be amenable to challenge on the ground that the Registrar failed to take action under both Sections 76B and 81 unless the individual member against whom action is proposed pleads and proves mala fide. Individual members cannot complain that since the Registrar is not proposing action collectively against the committee, he could not initiate action against individual members of the Committee.

44. In substance, THE ACT envisages joint and several action against the officers in their capacity as members of the committee. While Section 81 is designed to deal with the dereliction of the duties by the committee as a body, Section 76B deals with the dereliction of duties of the individual members of the committee. The Registrar is invested by THE ACT with the discretion to choose the proper course of action depending upon the situation. The argument of Chaudhary is not that the Registrar abused his discretion. The submission is that it is not permissible for the Registrar to resort to action only under Section 76B. We reject the submission.

45. We shall now examine the fourth submission of Chaudhary that the reliance upon the same set of facts in both Show-Cause Notices-I and II would render the Show-Cause Notice-II and the action consequent thereupon illegal.

At the outset, we must state that we have examined the tenor of both the show-cause notices and we proceed on the basis that the tenor of both of them is substantially the same if not identical.

46. Section 76B(1) contemplates removal of an officer of a society if the Registrar is satisfied that such an officer is guilty of any one of the misconducts specified under the section. Sub-section (2) further authorises the Registrar to disqualify such an officer either to contest or to hold any office in that society from which the officer is removed and also in any other society for a period to be specified by the Registrar subject to a statutory outer limit.

From the language of sub-section (2), it appears to us that the Registrar is not obliged to disqualify every officer against whom an order of removal under Section 76B(1) is passed. Going by the text of sub-section (2) which says that the “Registrar may ...direct that the officer so removed shall be disqualified.....”, the power to disqualify is discretionary.

The basic requirement of sub-section (2) is that the power thereunder could be exercised only against an officer of a society who has already been removed from office. Therefore, the factual basis on which the action under sub-section (1) and sub-section (2) of Section 76B is to be taken is bound to be the same though the reasons and logic on the basis of which action under either of the sub-sections is to be taken could be different. Depending upon the intensity and gravity of the misconduct in a given case, mere action [under Section 76B(1)] of removal from office might suffice and meet the ends of justice. Whereas in some cases action under both the sub- sections might be called for. But in no case action only under Section 76B(2) is permissible without taking action under Section 76B(1). It is also possible that in a given case, facts may not only justify but also oblige the Registrar to pass not only an order of removal under sub-section (1) but also an order of disqualification under sub-section (2) depending upon the nature of the misconduct and the legal obligation flouted by the officer.

It all depends upon the facts and circumstances of each and every case and the scheme of the law relevant to such facts. The variables are too many.

47. On the facts of the present case, Chaudhary is found liable to be removed from office on various charges which according to the Registrar tantamount to (i) negligence on the part of Chaudhary in performance of his duties under THE ACT or the subordinate legislation therein, and (ii) indulgence in acts which are prejudicial to the UNION.

Such conclusions are based on an inquiry where evidence was gathered. The order of the Registrar dated 10.3.2010 by which Chaudhary was removed from office of the Chairman of the Society was approved by the State Government (Revisionary Authority under THE ACT). Chaudhary unsuccessfully questioned the same in Writ Petition No. 9618 of 2015. The further challenge of Chaudhary was rejected in LPA No. 1302 of 2015.[27]

48. For the purpose of passing the order of disqualification under Section 76B(2) against Chaudhary, the Registrar rightly proceeded on the basis that there is an earlier order of the Registrar dated 10.3.2013 where charges against Chaudhary had been held proved and the High

Court declined to interfere with those findings. He, therefore, opined that he is entitled to proceed to take action under Section 76B(2) on the basis of the same conclusions which rendered Chaudhary liable for removal from office under Section 76B(1). In the process, both in the show-cause notice-II and the order dated 16.12.2015, the Registrar once again repeated all the allegations which formed the basis for the order under Section 76B(1).

In our opinion, it was not really necessary. It would have sufficed if the Registrar mentioned the fact that Chaudhary was removed from the office of Chairman of the Society in exercise of the power under Section 76B(1) - the mention of such a fact is also not mandatory. It is only a condition precedent for initiating action under Section 76B(2). The requirements of valid notice under Section 76B(2), in our opinion, are that the notice should indicate broadly the reasons which prompt the Registrar to initiate action and the period for which the person, against whom the action is initiated, is proposed to be disqualified. However, the mentioning of the past history though avoidable does not in any way vitiate the show-cause notice or the final order if they are otherwise in accordance with law.

49. In our opinion, there is no legal infirmity either in the logic adopted by the Registrar or the action taken by him under Section 76B(2) on the ground that the Registrar relied upon the same set of facts and the conclusions drawn thereupon for taking action both under Section 76B(1) and Section 76B(2).

In Show-Cause Notice-II, it is indicated that Chaudhary is proposed to be disqualified under Section 76B(2) on the ground he “committed serious type of administrative and financial irregularities as a consequence thereof, the Sangh[28] has suffered financial loss on large scale” – a statement made on the basis of the previous history of the litigation. It further indicated in the Show-Cause Notice that the Society of which Chaudhary was the Chairman is the largest UNION of the State with 4.5 lakhs milk producers who are members of 1097 milk producers cooperative societies[29], therefore, there is a need to disqualify Chaudhary from holding or contesting for any post in any society.

The mention of the facts That on account of the misconduct of Chaudhary, the UNION suffered financial loss on a large scale;

That the UNION consists of various smaller societies each of which has a large number of milk suppliers; and That the Registrar’s proposed to disqualify Chaudhary for maximum period of six years, in our opinion, makes the Show-Cause Notice-II sufficiently compliant with the requirement of Section 76B(2).

50. The final order disqualifying Chaudhary was passed after due compliance with the principles of natural justice. If the Registrar came to the conclusion that Chaudhary should not be permitted to contest any election or hold any office in any society functioning under THE ACT, the same, in our view, can’t be found fault with. Because Chaudhary has already been found guilty of conduct which resulted in a large scale financial irregularities in the conduct of the business of the society and also financial loss to the society. The activity of the UNION is spread over in three districts. The UNION

consists of a large number of primary societies. Disqualifying Chaudhary only from the holding post in the UNION is to give him a chance to meddle with the affairs of the societies which are members of the UNION.

51. The only other question remaining to be examined is whether the period of disqualification of six years is consistent with law.

Section 76B(2) as of today provides for disqualification of an officer for a period not exceeding six years. Originally the Section provided for disqualification only for four years. But the “four years” period was substituted by “six years” period by the Gujarat Co-operative Societies (Amendment) Act, 2015 (Act No.12 of 2015).

52. All the acts and omissions which formed the basis for action against Chaudhary pertained to the period anterior^[30] to the Act No.12 of 2015. Under Section 7 of the Gujarat General Clauses Act, it is provided that where an enactment is repealed by a subsequent enactment, the repeal does not normally affect any investigation or legal proceedings in respect of any right, privilege, obligations, liability, penalty, forfeiture or punishment and any legal proceeding initiated during the currency of the repealed enactment could be continued as if the repealing Act has not been passed.

Repeal could be either of the entire enactment or a part of it. Substitution of parts of an enactment is nothing but pro tanto to repeal those parts.

Normally when an enactment is repealed, any action initiated under that enactment dealing its currency should lapse. Because the authority of law for action initiated under an enactment ceases to exist on its repeal rendering the continuation of action without authority of law. To meet such a contingency, the General Clauses Act made a provision under Section

7. It seeks to preserve various rights and obligations acquired or incurred under repealed enactments. It also provides for various other things incidental to preservation of such rights and obligations^[31].

53. As a logical corollary to the above proposition, no right or liability can be created by a repealing enactment, which is inconsistent with the rights and obligations conferred under the repealed Act unless the repealing enactment makes an express declaration to that effect or adopts some other technique known to law to achieve that purpose. Giving retrospective effect to the repealing enactment is one of the techniques by which the legislature seeks to achieve that purpose.

54. There is nothing in Act No.12 of 2015 which warrants an interpretation that the legislature intended to create a disqualification which would run for a maximum period of six years with retrospective effect. The learned Additional Solicitor General Shri Mehta fairly accepted it. In the circumstances, the disqualification of six years upon Chaudhary is not tenable and at best Chaudhary could be disqualified for a maximum period of four years.

55. It is next argued on behalf of Chaudhary that the order dated 12.10.2015 does not disclose reasons which prompted the Registrar to impose the maximum penalty and, therefore, that order is vitiated. We do not wish to examine the submission for the reason the judgment under appeal thought it fit that disqualification of Chaudhary for a period of three years would meet the ends of justice. We are of the opinion that having regard to the acts and omissions of Chaudhary forming the basis of disqualification cannot be said to be unreasonable.

56. In the result, appeals of Chaudhary fail and appeal of the State is disposed of in terms of the above.

Writ Petition (Civil) No.824 of 2015 filed by Chaudhary is dismissed as not pressed.

In the facts and circumstances of the case, there will be no order as to costs.

.....J. (J. CHELAMESWAR)J. (ABHAY MANOHAR
SAPRE) New Delhi April 17, 2017

[1] Civil Appeal Nos.14678 of 2015 and 1881 of 2016

[2] Civil Appeal No.13784/2015.

[3] Section 2(19). "Society" means a co-operative society registered, or deemed to be registered, under this Act;"

[4] Section 2(17) – "Registrar" means a person appointed to be the

Registrar of Co-operative Societies under this Act; and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar;

[5] Though the notice purported to have been issued invoking both sub- sections (1) and (2) of Section 76B, there is no whisper in the said notice regarding the proposal to disqualify Chaudhary for a further period. [6]Thus, taking into consideration the facts as a whole, because of the irregularities committed by him, the Union has suffered great financial damage and serious damage has been caused to the Mehsana Jilla Dudh Utpadak Sangh as well as the lacs of members providing milk in the milk societies connected with it and interests of the Pashu Palaks. In such circumstances, I consider it proper to remove him from the post and also for the aforesaid reasons, think it proper to held him disqualified to have any office in any Sahakari Mandal or to participate in any election for a period of three years.

[7] The writ petition was dismissed by a judgment dated 27.10.2015. [8] It must be stated for the sake of the completion of the narration of the fact that during the pendency of the said LPA, the State made an oral application before the Division Bench to adjourn the matter to enable the Registrar to seek certain clarifications from the Single Judge. Permission was granted. However, the Single Judge declined to give any clarification.

[9] In support of that submission, the Registrar relied upon a large number of decisions.

Para 18 of the Judgment dated 02.11.2015 of the High Court of Gujarat in LPA No.1343 of 2015:

“Mr. Jani, relied upon the decisions of the Apex Court in M/s. Guduthur Bros. Vs. The Income-tax Officer, Special Circle, Bangalore, reported at AIR 1960 SC 1326, in Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others vs. Pratap Rai reported at [(1978) 3 SCC 113], in Anand Narain Shukla vs. State of Madhya Pradesh reported at (1980) 1 SCC 252, in M.V. Janardhan Reddy vs. Vijaya Bank and Others reported at [(2008) 7 SCC 738] and in Commissioner of Sales Tax and others vs. M/s. Subhash and Company reported at AIR 2003 SC 1628 ... ” [10] This Court while granting leave in SLP (C) No.33630 of 2015 [arising out of the LPA No.1302 of 2015 arising out of WP No. 9618 of 2015] filed by Chaudhary ordered-

“It has been submitted by the learned senior counsel appearing for the respondent (Chaudhary) that the reply to the second show cause notice is being filed today. In these circumstances, we direct that if any order adverse to the respondent is passed by the Registrar, Cooperative Societies, State of Gujarat, the same shall not be implemented for a period of four weeks from the date of communication of the order to the respondent.” By another order dated 26.02.2016, this Court while granting leave in SLP (C) No.3980 of 2016 filed by Chaudhary ordered:

“Leave granted.

List this appeal in the month of August, 2016 for hearing. No interim relief.

Tag with SLP (C) No.33630 of 2015 and connected matters.” [11] See F/N 5 In view of the subsequent development, it is not necessary for us to examine the meaning of the expression “sahakari mandal”.

[12] In our opinion, LPA No.1302/2015 ought to have been dismissed on the simple ground that the said appeal had become infructuous. Because admittedly the tenure of Chaudhary as Chairman of the Society expired on 01.05.2014. Therefore, SLP (Civil) No.33630/2015 was a futile exercise.

We only wonder as to how leave came to granted in the said SLP.

[13] “Para 19. ... the contentions raised on behalf of the petitioner are that there was no notice in the eye of law for proposed action of disqualification and that it would be only after order for removal is passed, the action under Section 76B(2) of the Act could be taken and therefore, issuance of the combined notice under Section 76B(1) and (2) of the Act was not permissible. ...” [14] “Para 20. ... Therefore, in the context of the provision of Section 76B of the Act, the Court needs to examined whether before the order of removal could be made, action for disqualification under sub-section (2) could be initiated and whether separate order is required for disqualification under sub-section (2) after serving the order of removal to the petitioner and whether mere reference to Section 76B(2) in

the show cause notice for removal could be said to be notice for proposed action of disqualification under sub-section (2).” [15] “Para 26. ... Therefore, if separate order is to be made only after the order of removal is passed, there is no question of issuing any notice proposing disqualification with notice for removal. The Court, therefore, finds that action taken for disqualification of the petitioner runs counter to the provisions of sub-section (2) of Section 76B of the Act.” [16] Para 27. ...whether there was in fact a notice in the eye of law for proposed action of disqualification. The show cause notice at Annexure-A is titled as ‘Show Cause Notice under Section 76(B)(1)(2) of the Act’. However, in the language of the notice at Annexure-A, the petitioner was asked only to show cause why he should not be removed from the office of Chairman, and while asking the petitioner to show cause against the proposed action of removal, sub-section (2) is mentioned with sub-section (1) of Section 76B of the Act. The petitioner is thus not asked to show cause as to why he should not be disqualified after his removal from the office of Chairman.” [17] Section 14. Powers conferred to be exercisable from time to time.- (1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasions requires.

(2). This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

[18] Section 14. Powers conferred on any Government to be exercisable from time to time.- Where, by any Bombay Act or Gujarat Act made after the commencement of this Act, power is conferred on any Government then that power may be exercised from time to time as occasion requires. [19] Embodied in Section 11 of the Code of Civil Procedure, 1908. [20] Contained in Article 20(2) of the Constitution of India and Section 300 of the Code of Criminal Procedure, 1973.

Constitution of India Article 20. Protection in respect of conviction for offences.— (2) No person shall be prosecuted and punished for the same offence more than once The Code of Criminal Procedure, 1973 Section 300. Person once convicted or acquitted not to be tried for same offence.- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

[21] Superintendent (Tech.I) Central Excise I.D.D. Jabalpur & Others v. Pratap Rai, (1978) 3 SCC 113 “Para 6. In the case of Thimmasamudram Tobacco Co. v. Assistant Collector of Central Excise, Nellore Division, Nellore [AIR 1961 AP 324] while construing the provisions of the Central Excise and Salt Act which was almost on identical terms as the Customs Act, a Division Bench of the Andhra Pradesh High Court observed as follows (AIR p. 325, para 11):

“Assuming that Section 35 of the Central Excise Act does not clothe the appellate authority with power to remand the matter to the officer whose order is appealed against, nothing stands in the way of the Assistant Collector initiating the proceedings afresh, when his order was quashed not on merits but on technical

grounds i.e. for not following either the procedure or the dictates of natural justice. In a case where the flaw in the order appealed against consists of in the non-observance of certain procedure or in not giving effect to the maxim ‘audi alteram partem’, it is open to the officer concerned to start the procedure once again with a view to follow the rules of procedure and the principles of natural justice.” We find ourselves in complete agreement with the view taken by the Andhra Pradesh High Court and the observations made by Reddy, C.J. who spoke for the Court.” [22] Or the Government in certain cases the details of which may not be necessary for the present purpose.

[23] See Section 2(5) in para 25 (supra) [24] Section 74. Committee, its powers and functions.—(1) The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed on it respectively by this Act, the rules and the bye-laws. [25] See Section 2(14) in para 25 (supra) [26] An officer is obliged to attend the meetings of the Committee and participate in the decision making process. Failure to attend and participate in such meetings may attract legal consequences – if so prescribed by THE ACT or subordinate legislation made thereunder.

[27] The details of which are discussed by us in Paragraphs 27 and 28 supra.

[28] Society

[29] The Mehsana Jilla Sahakari Dudh Utpadak Sangh Limited is the

largest Union of the State with which, larger interest of about more than 4.50 lacs milk producers and 1097 milk producers cooperative societies is connected. In such circumstances, it is appearing proper that you are not only removed from the office bearer in the cooperative movement but to see that you may not participate in such activity and the damage is not caused to the cooperative establishment because of your such activity, it is necessary to keep you away from assuming the office in any cooperative establishment by participating in the election maximum for a period of six years.

[30] Show-Cause Notice-I is dated 12.1.2015 and the Act No.12 of 2015 came into force on 7th April 2015.

[31] Section 7 of The Gujarat General Clauses Act, 1904:

“Section 7. Effect of repeal.- Where this Act, or any Bombay Act or Gujarat Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect;
or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.”
