

Balasinor Nagrik Cooperative Bank Ltd. vs Babubhai Shankerlal Pandya And Ors. on 10 February, 1987

Equivalent citations: AIR1987SC849, (1987)2GLR715, JT1987(1)SC462, 1987(1)SCALE348, (1987)1SCC606, 1987(1)UJ379(SC), AIR 1987 SUPREME COURT 849, (1987) COOPLJ 283 (1987) BANKJ 364, (1987) BANKJ 364

Bench: A.P. Sen, V. Balakrishnan Eradi

JUDGMENT

1. The short point involved in this appeal by special leave is whether the failure of the Registrar to communicate his disapproval of a resolution passed by a society expelling a member under Sub-section (1) of Section 36 of the Gujarat Cooperative Societies Act, 1961 within the period of three months as specified therein, entails in the consequence of rendering the Registrar functus officio.

2. By a resolution passed at its general meeting held on September 30, 1982, the Balasinor Nagrik Cooperative Bank Limited, the appellant herein, expelled respondent No. 1 Babubhai Shankerlal Pandya from the primary membership of the society under Sub-section (1) of Section 36 of the Act. On October 6, 1982 the society forwarded a copy of the resolution to the District Registrar as enjoined by the first proviso to Section 36(1). There was no response from the Registrar for a period of three months, in consequence whereof the society on January 24, 1983 addressed a letter to the District Registrar conveying its view that due to his failure to communicate his disapproval within the period specified, the resolution had become effective. Thereupon the Registrar by his letter dated July 15, 1983 expressed his disagreement with the construction placed by the society on his powers and directed the parties to appear before him on July 25, 1983. On that date the society appeared under protest. On September 19, 1983 the District Registrar passed the impugned order according his disapproval to the resolution passed by the society under Sub-section (1) of Section 36 of the Act.

3. Aggrieved, the society preferred an appeal to the Joint Registrar. The appeal was decided by the Additional Registrar who by his order dated December 19, 1983 upheld the order passed by the District Registrar. The society filed a revision before the State Government but the State Government by its order dated March 31, 1984 declined to interfere. The society then filed a petition before the High Court under Articles 226 and 227 of the Constitution challenging the impugned order of the District Registrar as upheld by the Additional Registrar and the State Government. A learned Single Judge by his judgment and order dated November 29, 1984 dismissed the writ petition. The society preferred a Letters Patent Appeal against the judgment of the learned Single Judge but a Division Bench by its order dated February 20, 1985 dismissed the appeal on the ground that no appeal lay against an order of a learned Single Judge on a petition under Art 227.

4. The decision of the appeal must turn on a construction of Sub-section (1) of Section 36 of the Act read with the two provisos thereto, which is in these terms :

36. Expulsion of members-(1) A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society :

Provided that, no resolution shall be valid, unless the member , concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is submitted to the Registrar for his approval and approved by him :

Provided further, that the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective.

It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section. Keeping that in view, we have no doubt in our mind as to the purport and effect of Sub-section (1) of Section 36 of the Act which deals with the power of expulsion Of a member for acts which are detrimental to the proper working of the society. It also provides for the manner of the exercise of such power. The exercise of the power of expulsion of a member for his acts which are detrimental to the interests of the society conferred by Sub-section (1) of Section 36 is made subject to the fulfilment of the conditions prerequisite, namely, it has to be by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for that purpose. There is no doubt or difficulty as to the precise function of the two provisos appended to Sub-section (1) of Section 36 of the Act. The power of expulsion of a member by a society under Sub-section (1) of Section 36 is made subject to a defeasance clause engrafted in the first proviso. It interdicts that (1) no such resolution for expulsion of a member passed under Sub-section (1) of Section 36 of the Act shall be valid unless the member concerned is given an opportunity of representing his case to the general body and (2) unless it is submitted to the Registrar for his approval and approved by him. Condition No. 2 keeps the resolution for expulsion of a member in abeyance.

5. Just as the first proviso construed in the context of the substantive provision contained in Sub-section (1) of Section 36 of the Act is meant to accept or qualify the power of expulsion of a member conferred in the main enacting part and presumed to be necessary, the second proviso is in the nature of a fetter on the power of the Registrar to accord his approval or disapproval. Such approval or disapproval in terms of the second proviso has to be communicated to the society within a period of three months from the date of submission of the resolution passed under Sub-section (1) of Section 36 of the Act for his approval. On a combined reading of the two provisos, the legal consequence that ensues is this. After the society communicates a resolution for the expulsion of a

member for acts detrimental to the working of the society passed in the manner required by Sub-section (1) of Section 36 to the Registrar for his approval under the first proviso, there is a duty cast on the Registrar to exercise his power of according approval or disapproval within a period of three months from the date of such submission, as provided by the second proviso. According to its plain terms, the second proviso places a limitation on the powers of the Registrar. It appears to us that the obvious intention of the Legislature was that once the period of three months stipulated expires, the Registrar becomes functus officio and his power to accord approval or disapproval to the resolution passed by the society for expulsion of a member under Sub-section(1) of Section 36 of the Act lapses. The District Registrar therefore had no jurisdiction to set aside the resolution passed by the appellant-society under Sub-section (1) of Section 36 for the expulsion of respondent No. 1 from the primary membership of the society after the expiry of a period of three months from October 6, 1983 i.e. the date of submission of the resolution. The construction placed by the learned Single Judge on Sub-section (1) of Section 36 of the Act read with the two provisos thereto is patently erroneous and cannot be sustained.

6. The result therefore is that the appeal succeeds and is allowed. The judgment and order passed by the High Court dismissing the Writ Petition is set aside. The Writ Petition filed by the appellant is allowed and the impugned order passed by the District Registrar as upheld by the Additional Registrar and the State Government is quashed. We wish to make it clear that nothing in the judgment shall be construed as an opinion touching the validity or otherwise of the resolution passed by the appellant-society under Sub-section (1) of Section 36 of the Gujarat Cooperative Societies Act, 1961. We leave the question to be determined by the appropriate statutory authority, namely, by raising a dispute before the Registrar, Cooperative Societies under 'Sub-section (1) of Section 36 of the Act, if permissible. No costs.