

Shri Pati Dudh Utpadak Sahkari Mandali ... vs District Registrar Of Co-Operative ... on 17 October, 2019

Author: Biren Vaishnav

Bench: Biren Vaishnav

C/SCA/18379/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18379 of 2019

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SHRI PATI DUDH UTPADAK SAHKARI MANDALI LTD.

Versus

DISTRICT REGISTRAR OF CO-OPERATIVE SOCIETIES

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Appearance:

MS. KRUTI M SHAH(2428) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 17/10/2019

ORAL ORDER

1. In this petition, under Article 226 of the Constitution of India, order under challenge is dated 7.10.2019 passed by the District Registrar appointing custodian in exercise of powers under Section 74D(1) of the Gujarat Cooperative Societies Act, 1961 (for short 'the Act').

2. Prima facie, reading of the order indicates that the election of the managing committee for the petitioner society was held on 29.9.2019. From the perusal of the paper-book together with the agenda and the resolution, it appears that the private respondents, who were the complainant before the District Registrar had participated in the meeting.

The only grievance that is culled out from the complaint is that whether the election was held in accordance with law. Essentially, therefore, it was an election dispute.

3. Reading of Section 74(D) of the Act would indicate that only in case of two eventualities i.e. (i) Where a new committee for the management is not elected before the expiry of the term and (ii) in case the members of the committee though have been elected are not functioning, are the only grounds under which powers under Section 74(D) can be exercised.

4. Ms.Kruti M. Shah, learned advocate for the petitioner has placed a reliance on a decision of this Court rendered in Special Civil Application No.16496 of 2016 dated 27.1.2017 in which considering the provisions of Section 74(D) of the Act, the Court has held as under:

"5. Whether the District Registrar acted within the area of his powers under Section 74D(1) of the Act, whether he could derive jurisdiction to exercise powers on the grounds he exercised the same while acting under Section 74D(1) of the Act and whether therefore the impugned order suffers from vice of jurisdictional error, are the fundamental questions.

5.1 At the outset, provision of Section 74D(1) of the Gujarat Cooperative Societies Act, 1961 may be looked at which is extracted herein.

"74D.-Appointment of Custodian in certain circumstances.-(1) Where in respect of any society including a society existing immediately before the commencement of the Gujarat Co-operative Societies (Amendment) Act, 2015 (Guj.12 of 2015), a new committee of management is, for any reason whatsoever, not elected before the expiry of the term of office of members of a committee of management of such society or having been elected not functioning within a period of three months (not being a committee referred to in section 80A), except for the reason of order of the competent court due to which such election could not be held or the managing committee could not start functioning, the registrar shall by an order in writing, appoint a person or a committee of persons to be the Custodian of the society for a period of one year or until a new committee of management is elected or, as the case may be, starts functioning."

5.2 Section 74D(1), on its bare reading, clearly reflects on its ambit and amplitude. The powers thereunder are exercisable for the grounds mentioned therein. An attentive reading would show that two grounds are enumerated, the first is that where a new committee of the management is, for any reason whatsoever, not elected before the expiry of the term of office of the members of the committee. The second ground is the members of the committee though having been elected, not functioning within the period of three months. Section further mentions that the aforesaid ground would not apply where because of order of the competent court the election could not have been held or the Managing Committee could not start to function. The powers of the Registrar to appoint Custodian would have to be validly rested on the said grounds only, to state at the cost of repetition, where new committee of management was not elected before the expiry of the term or the committee elected could not commence functioning within the period indicated.

6. Neither of the aforesaid two eventualities exist in the present case. It is not that elections are not held, nor it is the situation obtained that the elected committee of the management did not start functioning within three months. The ground on which the impugned order is passed by the Registrar is that the elections of the Managing committee were held in breach of certain provisions as the woman seats were not reserved. The say of the petitioner is that the election programme was again notified, two reserved seats were provided pursuant to the instructions of the Registrar, however nobody came forward to seek nomination on the reserved seats. Be as it may. In ultimate

analysis and for all purposes, the dispute that occurred between the parties was an election related dispute. It is indeed an election dispute whether election was held without providing reservation of seats or was allegedly marred by certain irregularities and illegalities. A dispute in the nature of election dispute cannot be a ground for exercise of powers under Section 74D(1) of the Act.

6.1 Any other ground than provided for under the Section rided by the Registrar seeking to act under Section 74D(1) would amount to exercise of powers without jurisdiction. There cannot be a derivation of powers to appoint a Custodian to the society besides and beyond the grounds mentioned in the provision. When a power is conferred on a statutory authority to be exercised on the grounds mentioned in the provision itself, acting to exercise powers on a different or foreign ground would tantamount to usurpation of powers. Usurpation of power transcends beyond illegality to become an act without jurisdiction.

6.2 An election dispute cannot be said to have been covered in the compass of the provision. The concern that the elections to the new Managing Committee were held in breach of the provisions of the law or bye-laws is not the same as elections not held. It is not a situation same as 'a new committee of management not elected' which is the ground mentioned in the Section. Whether elections of the petitioner's Managing Committee were held in accordance with the provisions of law and bye-laws was essentially and in its all ingredients could be said to be an election dispute. The cure in law for such alleged irregularity or illegality in election is not the exercise of powers to appoint Custodian. If any illegality or irregularity is committed in holding elections, the remedy may be to get the elections set aside by resorting to appropriate proceedings. It could be successfully contended by the petitioners that Section 94 of the Act would come into picture, under which the remedy was available.

6.3 If the election dispute is to be made a ground for exercise of powers under Section 74D(1) of the Act and for appointing Custodian to the cooperative society, adversion to and application of the said provision on that basis would become prone to political use and consequently misuse of powers. Nor the election dispute is a purport of powers under Section 74D(1) by any stretch of logic. Any statutory authority purporting to act under a provision of law to exercise powers which are not available to him under the provision or do not flow therefrom or acting to exercise the powers on the consideration de hors the express grounds mentioned in the provision, is in the nature of colourable exercise of powers. Such exercise is just not a wrongful exercise of powers but partakes a situation where the action could be said to be tainted with malice in law."

The judgment dated 27.1.2017 passed in Special Civil Application No.16496 of 2016 is confirmed by the Division Bench in Letters Patent Appeal No.204 of 2017 by order dated 22.11.2017.

5. Reading of order of the District Registrar, therefore, indicates that as held by this Court in the decision of Vashkui Dudh Utpadak Sahakari Mandali Limited (Supra), the ingredients of Section 74(D) are not attracted.

6. Ms.Jyoti Bhatt, learned AGP has made statement on instruction of Mr.K.A. Patel, District Registrar, Tapi that Bank Account of the petitioner Society has been made inoperative and the

custodian has already taken over the charge.

7. Issue NOTICE to the respondents, returnable on 18.11.2019.

8. In the meantime, there will be ad-interim relief in terms of paragraph No.8(C) till then.

Direct service is permitted.

(BIREN VAISHNAV, J) *** VATSAL