

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 22602 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
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 or any order made thereunder ?	No

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VANRAJSINH HARCHANJI THAKOR & ORS.

Versus

DISTRICT REGISTRAR

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Appearance:

MR DIPEN DESAI(2481) for the Petitioner(s) No. 1,2,3,4,5,6,7,8,9

MS. DHARITRI PANCHOLI, AGP for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

**Date : 05/04/2024**

**ORAL JUDGMENT**

Leave to add the State of Gujarat as party respondent.

1. Being aggrieved and dissatisfied with the impugned action of the respondent No.1, the petitioners have preferred the present petition seeking the following prayers:-

*“ (A) This Hon'ble Court be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or directions quashing and setting aside the order dated 23.08.2017 passed by the respondent-District Registrar, Co-operative Societies, Mehsana at Annexure-A to the petition.*

*(B) Pending admission, hearing and final disposal of the petition, this Hon'ble Court be pleased to stay the execution, operation and implementation of the impugned tender order dated 23.08.2017 passed by the respondent-District Registrar, Co-operative Societies, Mehsana at Annexure-A to the petition.*

*(C) This Hon'ble Court may be pleased to grant such other and further relief/s as deemed just and proper by this Hon'ble Court in the interest justice.*

2. The facts giving rise to present petition are that the State Employees Co-operative Credit and Thrift Society Limited (hereinafter referred to as "**the society**" for short) is a Co-operative Society registered under the Gujarat Co-operative Societies Act, 1961 and the members of the said societies are employees of Gujarat State Road Transport Corporation. The petitioner Nos. 1 to 5 were erstwhile members of the managing committee of the society, whereas, the petitioner Nos.6 to 9 are members of managing committee of the society which got elected on 21.08.2016.

2.1 Since the term of the managing committee of the society expired, the then executive body of the society in its meeting held on

03.08.2016 vide Resolution No.5 resolved to conduct elections of members of managing committee of the society for the term of four years for the period from 2016-17 to 2020-21. It was also decided that the voters list as on 03.08.2016 be sent for publication in every unit and the executive body also decided to appoint the Election Officer and Assistant Election Officer.

2.2 One employee Shri Pareshkumar Abhesinh Thakor approached the learned Board of Nominees, Mehsana by filing Lavad Suit No.154 of 2016, wherein the said employee challenged the election rules of the society and also challenged the election process of the society. By way of injunction application, the said Pareshkumar Abhesinh Thakor sought stay of elections declared by the society. In the said suit, learned Board of Nominees vide order dated 10.08.2016 passed interim order to the effect that the society shall not proceed further with the process of election without publication of the preliminary voters list.

2.3 Therefore, the learned Board of Nominees did not restrain the society from proceeding further with the election, however, only restrained the society to the effect that without publication of the preliminary voters list, elections shall not be continued. The society, however, had published preliminary voters list on 03.08.2016 and name of the said plaintiff Pareshkumar Abhesinh Thakore also appeared in the preliminary voters list. The order of the learned Board of Nominees was served upon the society on 16.08.2016, by

that time, however, election process was already in motion and as per the election program, election was to be completed on 20.08.2016.

2.4 The society therefore, filed its detailed reply before the learned Board of Nominees, pointing out that the voters list was published properly and thereafter, 73 persons had filed nomination forms and three forms were declared invalid and 70 persons were included in the final voters list of contesting candidates. However, out of that 42 persons withdrew their nomination forms and lastly 25 contested the election. Last date on which the contesting candidates' list was published was 12.08.2016 and voting was held on 20.08.2016. Thereby, total 10 candidates were declared elected after counting of votes, whereas, three candidates were declared elected uncontested. The petitioner nos. 6 to 9 herein are some of aforesaid 10 candidates who have been declared elected pursuant to elections held as stated hereinabove. Thereby, the society requested the learned Board of Nominees that since now the election is held as scheduled, Lavad Suit may kindly be rejected.

2.5 The aforesaid Lavad Suit along with the interim injunction application are still pending consideration of the learned Board of Nominees. However, the interim injunction is not operating as on date as the interim order has not been extended. That, the newly elected body referred to hereinbefore, thereafter, took over the affairs of the society. However, the said Pareshkumar Abhesinh

Thakor filed Contempt Petition before this Hon'ble Court being Misc. Civil Application No.2395 of 2016 alleging violation and non-compliance of the interim order passed by the learned Board of Nominees dated 10.08.2016 in which the notice has been issued by this Hon'ble Court and the society has filed reply to the effect that no contempt is committed by anybody of the order passed by the learned Board of Nominees.

2.6 However, to the shock and surprise of the petitioners, the respondent- District Registrar, Co-operative Societies, issued notice vide order dated 08.09.2016 and appointed Shri S.R. Raval as Assistant District Registrar (Housing) as custodian in the society in purported exercise of powers under Section 74D of the Gujarat Co-operative Societies Act. That, the order under Section 74D is passed on the flimsy ground that the election process is conducted in violation of the interim order of the learned Board of Nominees and therefore, appointed custodian in the society by removing the petitioners who were elected members of the committee. The said order was absolutely illegal and dehors the provisions of law inasmuch as the Section 74D would only apply if election is not held or if election is held, the newly elected body has not been able to start functioning for a period of three months. In the present case, there is no dispute that election is held however, what is alleged is that the election is held in contravention of the order of the learned Board of Nominees. Though, the said ground is also wrong,

however, even if for the time being it is assumed that the election is held in violation of the interim order of the learned Board of Nominees, the same is not the ground for appointment of custodian under Section 74D. Section 74D contemplates custodian only in two of contingencies as stated above and holding of election in violation of interim order does not come within the purview of Section 74D. Therefore, the society represented to the District Registrar vide its order dated 19.09.2016 and pointed out the correct facts and requested for cancelling the order of appointment of custodian.

2.7. However, the District Registrar did not pay any heed to representative of the petitioners otherwise the District Registrar was acting under political dictates and was acting under extraneous influence to pass the order of appointment of custodian. Therefore, the society preferred Revision Application before the Additional Registrar (Appeals) challenging the order of appointment of custodian by way of Revision Application No.292 of 2016 under Section 155 of the Act. The learned Additional Registrar vide order dated 05.10.2016 was pleased to grant interim injunction against the order of appointment of custodian finding prima-facie case in favour of the society. However, on the next date i.e. on 24.10.2016, the Additional Registrar(Appeals) vacated the ad-interim order on flimsy ground that the election of the society has been held in violation of the order of the learned Board of Nominees and therefore, the appointment of custodian appears to be just and proper. The aforesaid order came to be challenged before this

Hon'ble Court by the society by way of Special Civil Application No.19986 of 2016. In the said petition, this Hon'ble Court has been pleased to issue notice and the matter is pending consideration of this Hon'ble Court. The aforesaid petition is still pending consideration of this Hon'ble Court, however, during the pendency of the aforesaid petition, the term of appointment of custodian who was originally appointed for a period of six months expired and therefore, fresh order was passed on 01.03.2017 extending the term of custodian for a further period of six months.

2.8 The said order has also been challenged by the society by way of amendment in the aforesaid petition being Special Civil Application No. 19986 of 2016. 2.20 That, even the six months extended time has expired and now by way of order dated 12.09.2017, the respondent-District Registrar has extended the term of custodian for a further period of three months which is the impugned order in this petition. The said order is clearly in violation of Section 74D which contemplates that the custodian shall be appointed for a maximum period of one year. There is no powers to extend the term of custodian beyond the period of one year and therefore, the custodian is clearly de hors the Section 74D. The petitioners have challenged the aforesaid order of custodian before the Additional Registrar (Appeals) by way Revision Application No.130 of 2017, wherein notice has be issued. However, the Additional Registrar is proceeding further with the appeal and by that time, the term of three months would expire. The petitioners

declare that they would withdraw Revision Application No.130 of 2017 from the Additional Registrar with a liberty to raise all contentions before this Hon'ble Court.

2.9. Therefore, the newly elected body which includes some of the petitioners, have preferred substantive petition challenging the order dated 12.09.2017 extending the term of custodian which is to come up for hearing in the near future. That however, the present petition is preferred challenging completely arbitrary, illegal and void order dated 23.08.2017. It is required to be stated that the District Registrar, Co-operative Societies, Mehsana issued show-cause notice dated 17.05.2017 to the petitioners herein in purported exercise of powers under Section 76B of the Act to show cause as to why appropriate action should not be taken against the petitioners under Section 76B. The said show-cause notice itself is not permissible because as far as the petitioner Nos.1 to 5 are concerned, they are no longer officers of the society in question. Section 76B of Gujarat Co-operative Society Act, 1961 (for short "the Act") which reads as under:-

**SECTION 76B: Removal of officer-**

(1) 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."

2.10. Therefore, in order to invoke Section 76B(1) of the Act, it would be imperative that the concerned officer against whom notice is issued is an officer of the society and is sought to be removed. Section 76B(2) of the Act provides that any officer so removed can be disqualified. Therefore, in order to invoke Section 76B(1) of the Act, noticee must be an officer of the society at the time when proceedings are initiated. In the present case, as far as petitioner Nos. 1 to 5 are concerned, all the petitioners were no longer members of managing committee of the society and therefore, were not officers of the society. Therefore, they could not have been removed in exercise of powers under Section 76B(1) of the Act. As far as petitioner Nos.6 to 9 are concerned by appointment of custodian, the respondent herein itself has removed them and appointed the custodian in place of the members of managing committee. By order of appointment of custodian itself, respondent Nos.6 to 9 are no longer members of managing committee. Therefore, none of the petitioners herein i.e. none of the noticees were members of managing committee when the proceedings under Section 76B of the Act were initiated.

2.11 Even the ground on which notice was issued clearly impermissible. The main grounds are with regards to payment of advocate fees with regard to various litigations filed by the society. The same can never amount to misappropriation of funds of the society or cannot be an activity prejudicial to the interest of the society. Therefore, the petitioners filed reply to the show- cause notice and pointed out all relevant facts to the respondent-District Registrar.

2.12 The respondent- District Registrar however, in absolute violation of statutory provisions and in absolute arbitrary and malafide manner passed the impugned order dated 23.08.2017 disqualifying the petitioners for a period of four years.

2.13. The respondent herein having found that none of the petitioners continue to be the members of the managing committee, could not pass order under Section 76B(1) of the Act, however, passed the order under Section 76B(2) of the Act of disqualification of the petitioners for a period of four years. The said order is clearly without authority of law and ultravires. In the provisions of law the order under Section 76B(2) can be passed only if an order under Section 76B(1) is passed. Without an order under Section 76B(1), an order under Section 76B(2) cannot be passed. The language of Section 76B(2) of the Act clearly provides that the officer who is removed can be disqualified. Therefore, only that officer who is

removed under Section 76B(1) of the Act can be disqualified under Section 76B(2) of the Act. In the present case, there is no order under Section 76B(1) in spite of which an order Section 76B(2) for disqualification is passed. The same is clearly impermissible and without authority of law and therefore, the order is clearly void ab-initio.

2.14. The petitioners though have preferred Revision Application against the aforesaid order dated 23.08.2017 before the learned Additional Registrar (Appeals) being Revision Application No.131 of 2017, however, the petitioners have decided to withdraw the said revision application with a view to approach this Hon'ble Court as the impugned order of the District Registrar is clearly without jurisdiction and void ab-initio. The petitioners declare that the said revision application would be withdrawn immediately before the present petition is taken up for hearing.

2.15 That, the respondent-District Registrar has passed the impugned order with malafide intentions. The District Registrar was aware that the order of appointment of custodian would not be continued for longer period as the statute itself mandates that the order of appointment of custodian can be for maximum period of one year. Therefore, since the District Registrar was aware that sooner or later the charge of the society will have to be given to the managing committee and since the District Registrar did not want the petitioners to manage the affairs of the society, the impugned

order is passed disqualifying the petitioners. The same is clearly for ulterior motive and extraneous consideration and therefore, also the same deserves to be set aside. Therefore, the petitioners have no other alternative, but to approach this Hon'ble Court by way of preferring the present petition.

**:-SUBMISSIONS ON BEHALF OF THE PETITIONERS :-**

3. Mr. Dipen Desai, learned Counsel appearing for the petitioners has submitted that the petitioners by way of filing the present petition challenged the impugned order mainly on the ground that the respondent No.1 who has without exercising the power under Section 76B(1) of the Act directly passed the order under Section 76B(2) of the Act and therefore, the impugned order passed by the authority is null and void.

3.1 Mr. Desai, learned Counsel for the petitioners has submitted that without calling upon the petitioners for the alleged breach of the provision of Section 76B(1) of the Act, directly issued a show cause notice dated 17.5.2017 calling upon the petitioners for breach of Section 76B(1)(2) of the Act for which, the respondent ought to have appreciated such fact and therefore, impugned notice issued by the authority itself is erroneous and unjust and same deserves to be quashed. Based upon the said show cause notice, the impugned order is passed by the authority is also bad in law. Though, the petitioners have filed detailed reply of the said show cause notice and agitated all the grounds in the reply and it was not considered in

its true and proper spirit by the authority. Thus, the authority has committed serious error of law. In support of his submissions, learned Counsel for the petitioners has referred and relied upon the following decisions of this Hon'ble Court:-

1. Kantilal Chandulal Shah Vs. C.J.Jose and Another reported in 1987 (I) GLH 563.
2. K.T.Amin Ex.Director Vs. State of Gujarat reported in 2014 (0) AIJEL-HC-233966.
3. Vipulbhai Mansingbhai Chaudhary Vs. State of Gujarat & Another reported in JT 2017 (6) SC 422.

3.2 Learned Counsel for the petitioners has urged before this Court that in light of the settled principle of law the impugned order passed by the respondent No.1 deserves to be quashed and set aside.

3.3 Mr. Desai, learned Counsel for the petitioners has further submitted that after removing them from the office after disqualification, two elections were held by the authority for the members of the society and therefore, now at this juncture, if the State is exercising its jurisdiction vested under Section 76B(1) of the Act is nothing but, an eye wash and now, after almost seven years, this Court cannot give any direction or permission to issue fresh notice to the respondents authorities.

**:- SUBMISSIONS ON BEHALF OF THE RESPONDENTS:-**

4. As against the same, though the respondents have not filed the affidavit-in-reply but orally objected the present petition by stating that since the issue which is raised before this Hon'ble Court so that the powers exercised by the authority under Section 76B(2) of the Act without jurisdiction, that has not been raised before the authority by way of filing their written submissions, in response to the show cause notice issued by the authority and also on a ground that there is statutory alternative efficacious remedy available to the petitioners, therefore, the petition may not be entertained and the petitioners may be directed to approach the authority by way of preferring the appropriate proceedings before the authority. With these two contentions, learned Assistant Government Pleader has objected the present petition.

5. I have heard the learned Counsels appearing for the respective parties . It is relevant to note herein that while issuing the notice dated 18.12.2017 and after hearing the learned Counsel, the Hon'ble Court observed that :-

“3. Section 76B of the Act reads as under:-

*“76B(1). If, in the opinion of 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 been 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 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.”*

*4. On the basis of the aforesaid provision, it was submitted that unless the officer is removed, he could not be subjected to disqualification under the aforesaid provision. Sub-section(1) of section 76B contemplates removal whereas subsection(2) of section 76B stipulates and confers powers to disqualify the officer who is removed, which is a penal action of higher degree. Learned advocate further pressed into service the decision in the case of Kantilal Chandulal Shah vs. G. J. Jose and Another [1987 (1) GLH 563] to contend that no order of disqualification could be passed unless the order of removal is passed first. It was submitted that since there is no removal of the petitioners, the order of disqualification cannot stand in eye of law.”*

and after considering the contention of the petitioners, the Hon'ble Court was pleased to issue a Notice for Final Disposal therefore, with the consent of the parties, present petition is taken up for final hearing.

Rule. Ms.Dharitri Pancholi, learned Assistant Government Pleader waives service of notice of rule for the respondents.

#### **:- ANALYSIS:-**

6 Whether the respondent No.1 have an authority in passing the

order while exercising the jurisdiction under Section 76B(2) of the Act without issuing the notice and without passing any order for breach and violation of Section 76B(1) of the Act directly ? Whether the authority has acceded its jurisdiction or not ? Whether the order passed by the respondent No.1 is in-consonance with the settled legal principle or not ? I answer as under:-

6.1. Since the authority has issued a show cause notice on 17<sup>th</sup> May, 2017 wherein, it is specifically mentioned that he is issuing a notice for breach of provision of Section 76B(1)(2) of the Act. It is also relevant to note herein that the petitioners have replied the said notice, admittedly has not agitated in his reply with regard to the contentions which is raised before this Hon'ble Court. But, since this legal contentions can be raised before this Court directly since the order impugned under challenged is without jurisdiction and is null and void, then the order can be directly challenged before this Court. There are settled principle of law and the judgement enunciated by this Hon'ble Court way back in the year 1987, this Court has considered the issue that without issuance of any notice with regard to the breach of the provision of Section 76B(1) of the Act, the authority can not exercise the jurisdiction vested him by issuing a notice under Section 76B(2) of the Act directly. For this, it is beneficial to refer the judgement of this Hon'ble Court in case of **Kantilal Chandulal Shah Vs. C.J.Jose and Another (Supra)** wherein, it has observed as under:-

*“6. In order to support his contention, Mr.Vakharia invited my*



attention to the provision of [section 49,61](#) and [73](#) of the Gujarat Panchayats Act, 1961, and submitted that the same Legislature which has enacted both these Acts has clearly made a difference in case of the exigency of the situation in which the authority acting under the [Gujarat Panchayats Act](#) may deal with suitably and may disqualify any person from holding any elected pst even after he resigns from the existing post. However, so far as [section 76B\(2\)](#) of the the Act are concerned, the State Legislature has exhibited quite a different dintention. The State Legislature never contemplated that any order of disqualification can be passed against any officer of the society by the competent authority exercising powers under the Act unless that authority first decides to remove the concerned officer and passes a proper under section 76B(1). I asked Mr. Trivedi for the respondents to point out whether the second respondent has passed any order of removal of the petitioner from the board of director of the Navdeep Co-operative Bank. He fairly stated that there is no such order passed by the second respondent but he submitted that that was so because the petitioner has already walked out from the membership of the bank on September 12, 1986, which was accepted by the board of directors on September 13, 1986. He further submitted that there did not appear to be sufficient evidence on record to indicate that this resignation was genuine. In my view, the contention of Mr. Trivedi cannot be accepted for the simple reason that a mere look at the last para of the judgment of the second respondent shows that he has impliedly accepted the fact that the petitioner had already resigned as a director and having accepted that fact, he has naturally concentrated on the order which he had to pass viz, disqualification of the petitioner from being elected to the board of directors of Navdeep Co-operative Bank or any other co-operative society for a period of four years. it is pertinent to reproduce at this stage the English version on the relevant aspect as found in the order of the second relevant aspect as found in the order of the second respondent:

"Only because resignation has been given as a director of the bank, it is not possible to accept the contention that notice under section 76B(2) should be canceled and as it is found that you are responsible for many irregularities as mentioned in the notice, it is necessary to disqualify you under section 76B from being

*elected to the board of management of the said or any other co-operative society, for period of four years."*

*The aforesaid reasoning adopted by the second respondent clearly indicates that he was conscious of the fact that the petitioner had already resigned as a director of the said bank. That is the reason why he did not pass any order removing the petitioner from the membership as it would have amounted to saying the slain. He, therefore, proceeded to pass only the order of disqualification for a period of four year form being elected to the membership of any committee of such society. This is clearly an order under section 76B(2). It must, therefore, be held that the second respondent has not passed any order under section 76B(1) removing the petitioner from the membership of the board of directors of Navdeep Co-operative Bank and straightway has passed the order of disqualification under section 76B(2). If section 76B(2) was worded on the same lines as [section 49\(2\)](#) of the Gujarat Panchayats Act, the situation might have been different. It would be profitable to reproduce [section 49\(1\),\(2\)](#) of the [Gujarat Panchayats Act](#) which also deals with the same type of removal of elected officers of gram panchayats, and under that circumstances they can be disqualified from holding such posts in further:*

*"49. (1) The competent authority may remove from office any member of a Panchayats or the sarpanch, the up-sarpanch, the chairman, or, as the case may be, the vice-chairman, thereof after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it necessary, if such members sarpanch, up-sarpanch, chairman or vice-chairman, as the case may be, has been guilty of misconduct in the discharge of his duties or of of any disgraceful conduct or abuse his powers or makes persistent default in the performance of his duties and functions this Act or has become incapable of performing his duties under this Act. The sarpanch upasarpanch, chairman or, as the case may be, the vice-chairman, so removed may, at the discretion of the competent authority, also be removed from the membership of the panchayat.*

*(2) The competent authority may, after following the procedure laid down in sub-section (1), disqualify for a period not exceeding four years, any person, who has resigned his office as a member, sarpanch upasarpanch, chairman or vice-chairman or otherwise ceased to hold any such office and has been guilty of misconduct specified in sub-section (1) or has been incapable performing his duties:*

*Provided that an action shall be taken within six months from the date on which the person resigns or ceases to hold any such office."*

*Section 61 and 73 of the Gujarat Panchayats Act are also identical in nature. They deal with removal of officers of taluk and district panchayats.*

7. A mere look at [section 49\(2\)](#) of the Gujarat Panchayats Act and reading it in juxtaposition with section 76B(2) of present Act, leaves no room for doubt that the Legislature, in its wisdom, while enacting section 76B(2), did not contemplate a situation in which the competent authority can order disqualification of an officer of the society who is not first removed by him for alleged misconduct. In short, no order of disqualification under section 76B(2) can be passed by the competent authority without there being in the field, as a condition precedent, a valid order of removal of the concerned officer from the membership of the managing committee of the society. May be, this is a case of omission on the part of the Legislature which be willful or otherwise. But as far as the provision stand on the statute book, there cannot be any escape from the conclusion that no order of disqualification under section 76B(2) can be passed against an officer of the society unless, in the first instance, there is a valid order in the field under section 76B(1) ordering his removal from the concerned office occupied by him in the managing committee of the society. Mr. Vakharia's contention, therefore, has to be accepted.

8. Mr. Trivedi then submitted that if the authorities have come to the conclusion that the called resignation of the petitioner was

*not genuine, it would amount to their impliedly passing the order of removal. In this connection, he invited my attention to the revisional order passed by the first respondent wherein, in the penultimate page of the order, at second para thereof, the following observations are made by the revisional authority:*

*"It was urged that the present appellant had tendered his resignation from the board of directors on September 12, 1986. In support of this, a copy of the agenda dated September 9, 1986, where at serial No.3, mention is made of the item regarding resignation members and transfers. From the records of the District Registrar, it is clear as to when and whether the present appellant has tendered his resignation and the same was accepted by the board of directors as enjoined by bye law 29(2)(1). In any case, not was produced to that effect."*

*It is true that the revisional authority found that there was not clear evidence about the petitioner from the board of directors of Navdeep Co-operative Bank. However, this is neither here nor there. It is the first authority, viz, the second respondent who has to hold that the so called resignation was a make-believe or was a camouflage and that the petitioner has continued to occupy the post of a director and, therefore, he was required to remove the petitioner first before passing any disqualification order against him. That exercise was never undertaken by the second respondent. Instead, as seen earlier, assuming that the resignation was valid, he did not pass any removal order but straight away proceeded to pass a disqualification order. Under these circumstances, the observation of revisional authority in the aforesaid para cannot be of any avail to the respondents. Ultimately the revisional authority has confirmed the order of the second respondent by dismissing the revision-cum-appeal. Therefore, the operative order which holds the field against the petitioner is the order passed by the second respondent directing him to be disqualified and for a period of four years from holding any elected post in the concerned bank. Now, that order squarely falls under section 76B(2) for the Act. As there is no order passed by the second respondent removing the petitioner from the directorship of the bank under [section 76B\(1\)](#) of the Act, it must be held that the very condition precedent which must exist for passing*

*a disqualification order under section 76B(2) is not available in the present case. It must be kept in view that section 78B(2) in terms provides that the Registrar may, by order, direct that the officer so removed shall be disqualified. Thus, the removal order under section 76B(1) must precede the order of disqualification under section 76B(2). In the present case, admittedly, there is no removal order in the filed. Consequently the disqualification order must be treated to be entirely without jurisdiction and ultra vires the scheme of the act and de hors the provision of section 76B(2).*

*Only on this short ground, this petition will have to be allowed. it is made clear that I express no opinion on the merits of the controversy between the parties or on the merits of the charge leveled against the petitioner. Only on the aforesaid technical ground, this petition is allowed. Rule is made absolute. Orders at annexures A and B are quashed and set aside. Consequently, there will remain no questions of the petitioner being held disqualified from being elected to Navdeep Co-operative Bank or any other co-operative society for a period of four years as earlier directed by the second respondent by the impugned order. There will be no order as to cost. As the petition is allowed and the impugned orders are set aside, ad interim relief granted by this court earlier in the present petition will automatically stand vacated.*

7. In case of **K.T.Amin Ex.Director Vs. State of Gujarat (Supra)** again this Court has an occasion to deal with the similar contention, wherein, this Court has observed in paragraph Nos. 7 and 8 which reads as under:-

*“7. On a careful total reading of Section 76-B of the Gujarat Cooperative Societies Act, 1961, it becomes clear that the two subsections thereof are interconnected. Sub-section (1) deals with removal of an individual officer and provides that the Registrar may remove an officer from the post he holds, when such officer is found to have made persistent default or is negligent in performance of duties, after giving opportunity of being heard to him. The sub-section further provides that the Registrar may thereafter direct the society to elect or appoint another person on*

*the post which fell vacant because of removal. Sub-section (2) empowers the Registrar to pass an order to the effect that officer removed under sub-section (1) shall be disqualified to hold or to contest election for any office in the society from which he is removed or in any other society for four years. Sub-section (2) uses the words “so removed”. It implies and means only the officer removed under sub-section (1). Therefore, the order contemplated under sub-section (2) of disqualifying an officer is one in respect of that officer who was removed under sub-section (1). When there is no removal of officer under sub-section(1) or such removal was not to take place for the reason of expiry of term and like, powers under sub-section(2) could not be invoked. For passing the disqualification order, sub-section (2) cannot and does not operate in segregation to sub-section (1).*

*7.1 In other words, the penal action contemplated under subsection (2) is subsequent to the proceedings and the consequent removal effected under sub-section (1). An officer not removed under sub-section (1) cannot be disqualified under sub-section (2) of Section 76-B. Sub-section (2) is a penal action after action is taken under sub-section (1). By no stretch of reasoning, sub-section zPage 10 of 13 Downloaded on : Sat Apr 06 17:43:43 (2) can be construed to have an operation independent in itself. What it provides is disqualification of officer removed in accordance with procedure laid down in sub-section (1). Therefore, the contention that sub-section (2) of Section 76-B is independent and could have been applied independent of sub-section (1) was not tenable.*

*7.2 In the present case, Registrar closed the proceedings initiated under sub-section (1) on the ground that respondent Nos. 5 to 7 and 9 who were holding post of Directors, had completed their term of office. Since the said Directors/Officers were no more holding the office, question of their removal was not to arise. It could not be said in the circumstances that proceedings under subsection (1) were rightly closed and the show cause notice was treated as infructuous.*

*7.3 Learned advocate for the petitioner was vehement in contending that notwithstanding the non-continuance of action under sub-section (1), Registrar ought to have exercised the*

powers under sub-section (2) by ordering disqualification of the said respondents. But, the very reading of sub-sections (1) and (2), as explained above, stands to negate the contention. The Registrar cannot pass an order of disqualifying an officer who was not removed under sub-section (1) or could not be removed because of expiry of term of his office.

8. Wherever the legislation wants that penal action initiated against any person in office should continue even after the term of officer expires or he retires from the post or relinquishes the office, the legislation provides that effect expressly. In section 57 of the Gujarat Panchayat Act, 1993, this kind of provision exists. It deals with removal from office of sarpanch or up-sarpunch upon inquiry held against him by the competent authority finding them guilty for charges of misconduct in discharge of his duties or on in disgraceful conduct or abuse of powers for making persistent default in performance of the duties. Sub-section (2) provides that the competent authority may disqualify a member sarpanch or upsarpanch who has resigned from his office. The proviso to sub-section (2) says that action under sub-section(2) shall be taken within six months from the date on which the person resigns or ceases to hold any such post.

8.1 Such express provisions permitting taking of a penal action in respect of inquiry or proceedings being started against any person or officer, even after such person or officer ceases to hold the post, he was holding or after expiry of term or upon his retirement, as the case may be, is not found under the Gujarat Co-Operative Societies Act, 1961. The action which contemplated under sub-section(1) of section 76-B of the Gujarat Co-Operative Societies Act, gets terminated automatically on the expiry of the term of the officer against whom the inquiry was initiated and the action of removal from office was contemplated. Such officer when ceases to hold the post, could not be subjected to order of removal. Consequently, no action of disqualification under sub-section(2) can lie against him.

8.2 The cases may arise where it may be desirable that action initiated against any Officer or Director or Member Co-operative Society facing inquiry in respect of acts of irregularities committed by him or any other act of misconduct or misdemeanor, is not left



*meaningless and such Officer or Member or Director facing charges, does not walk scot-free only on account of expiry of his term of office. It is then for the legislature to incorporate appropriate provisions in its wisdom in the Gujarat Co-Operative Societies Act, 1961.*

8. In case of **Vipulbhai Mansingbhai Chaudhary** (Supra), wherein, this Court has observed as under:-

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.

46.1 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.

46.2 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.*

*46.3 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.*

9. So, I am of the opinion that the impugned order dated 23.8.2017 passed by the respondent No.1 deserves to be quashed and set aside. Since the petitioners have alternative efficacious remedy available on that ground now, almost after seven years, the petitioners can not be remitted back to approach the authority and file an appropriate proceedings before the authority. Since the impugned order itself is without jurisdiction. Therefore, this Court considered the facts of the present case that instead of relegating the petitioners back to the authority, the petition can be decided by this Court while exercising the power under Articles 226 and 227 of the Constitution of India, when there is settled principle of law that unless and until the respondents authorities exercise the powers under Section 76B(1) of the Act cannot pass any order under Section 76B(2) of the Act. Thus, this Court is of the opinion that the impugned order dated 23.8.2017 passed by the authority is bad in law and the same deserves to be quashed and set aside.

Present petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

sd/-

**(HEMANT M. PRACHCHHAK,J)**

BEENA SHAH