

CASE NO.:
Appeal (civil) 1210 of 2007

PETITIONER:
Anilbhai M. Patel & Ors

RESPONDENT:
Suryapur Bank Agent D.B.H. Samiti & Ors

DATE OF JUDGMENT: 08/03/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (C) No. 17465 of 2004]
WITH
CIVIL APPEAL NOS. 1211/2007 @ S.L.P.(C)Nos. 18362-18363 of 2004
CIVIL APPEAL NOS. 1212/2007 @ S.L.P.(C)Nos. 19602-19603 of 2004

S.B. SINHA, J.

Leave granted.

These appeals involving identical questions of law and fact and arising out of the same judgment, were taken up for hearing together and are being disposed of by this common judgment.

Appellants herein are Directors of a Cooperative Bank known as the City Cooperative Bank Ltd. A loan was sanctioned by the said Cooperative Bank to Suryapur Cooperative Bank as also one Pragati Alco-Chem Pvt. Ltd. in the year 2002. The Registrar's Board of Nominees, Surat passed awards for recovery of the amount advanced to the loanees.

The Bank, as also its Managing Directors, filed a writ petition wherein rule nisi was issued. An interim relief was also granted. One Suryapur Bank Agent Dainik Bachat Hitvardhak Samiti, respondent No. 1, without approaching the Registrar, for ventilating its grievances in regard to the purported mismanagement of the affairs of the said Bank, filed a writ petition before the High Court of Gujarat at Ahmedabad. Admittedly, no prayer was made therein for appointment of an Administrator. A learned Single Judge of the said Court, however, purported to be keeping in view the fact that the Reserve Bank of India had undertaken a statutory inspection, a report in respect whereof was filed in the Court, directed appointment of an Administrator in place of the elected body stating :-

"\0059.2) By ad-interim order, it is directed that respondent No. 2 shall appoint Administrator in place of elected body of respondent No. 3 Bank within a period of one week from today and respondent No. 2 shall appoint a person as Administrator, who is well conversant with the banking business and if required, respondent No. 2 may also consult RBI in this regard.

9.3) Until the Administrator is appointed, respondent No. 2 is directed to ensure that the charge from the elected body is taken over by the District Registrar, Surat as In-charge Administrator tomorrow at the opening time of the Bank i.e between 10.30 to 11 O'Clock in the morning.

9.4) It is further directed that respondent No. 2 shall inquire regarding the aforesaid illegal actions and misapplication of the funds which is prima facie considered

by the Court, for the purpose of taking Civil as well as Criminal action against the office-bearers of respondent No. 3 Bank. Such inquiry shall be completed within a period of fifteen days from the date of receipt of the order of this Court and if, as an outcome of the said inquiry, it is found by respondent No. 2 that the office-bearers of respondent No. 3 Bank, while in office, have committed offences or have misapplied the funds or have committed illegality, necessary action shall be taken within a period of fifteen days thereafter and the report shall be submitted to this Court within two weeks after taking action.

9.5) The respondent No. 3 by further order, is restrained from allowing functioning of its office-bearers from tomorrow i.e. 12.8.2004 onwards..."

We may at the outset notice that the Registrar of Cooperative Societies in its affidavit filed before the High Court, stated:-

"9. With reference to paragraph (7) of the petition, it is submitted that the respondent No. 1 after conducting the inspection of the respondent No. 4, Suryapur Cooperative Bank Ltd., Surat with respect to its financial position as on 30.6.2002 and the liquidity problem faced by the bank in September, 2002, issued direction under Section 35(A) of Banking Regulation Act, 1949\005

10. With reference to paragraph (8) to (32) of the petition, it is submitted that respondent No. 2 has received the inspection reports relating to the City Cooperative Banks Ltd., Surat through RBI on 4.4.2003 and other letters dated 8.7.2003, 18.7.2003, 4.9.2003, 17.9.2003, 28.10.2003, 19.11.2003 and 13.12.2003. Respondent No. 2 had initiated proper actions on the basis of the D.R.C.S. Surat report dated 11.11.2003 regarding the managerial aspects of the Bank. Thereafter, the official of the bank were called for necessary explanation on Dt. 24.11.2003 and 5.12.2003 respectively in respect of the point raised in the matter. Thereafter, the City Cooperative Bank filed SCA No. 17116/03 before the Hon'ble Court on 10.12.2003, whereby respondents were restrained to take civil or criminal action against the officials of the Bank. The Hon'ble Court is pleased to dispose of the matter on 29.7.04. Hence, the Registrar will take appropriated action against the official of the City Cooperative Bank for the violation of Sections 45 and 71 of the Act, now as per the audit report and inquiry to be conducted under Section 86 of the Act\005"

The RBI, however, in its counter affidavit stated :-

"10. With reference to paragraph 5 of the petition, it is submitted that the Reserve Bank does not audit the cooperative banks. The auditing of the cooperative bank falls within the domain of Registrar of Cooperative Societies under Gujarat Cooperative Societies Act. However, Reserve Bank conducts inspection of the cooperative banks under Section 35 of Banking Regulation Act, 1949 (AACS)."

It is alleged that some directions have been issued by it under Section 35A of the Bank Regulation Act, 1959. It also refers to the inspections conducted by it, in regard to its financial position of the co-

operative society on 31.12.2002. It was furthermore averred :-

"16. With reference to paragraphs 11 to 18 of the petition, it is submitted that several petitions have been filed by the borrowers against the City Cooperative Bank and Suryapur Cooperative Bank challenging attachment of their property and alleging fraud by the members of the board which are subjudice before this Hon'ble Court. In compliance with the inspection report of the Reserve Bank, the respondent No. 4 vide its letter dated 31.5.2003 reported that the money was given to banks including Suryapur Coop. Bank against security of bankers' cheque and the bank was not lending any more for such purpose. The explanation of the Respondent No. 4 was considered to be unsatisfactory. The respondent No. 4 was called upon by letter dated 27.6.2003 to explain in detailed to RCS the circumstances leading to grant of such loan. The reply given by the respondent No. 4 vide its letter dated 8.7.2003 was not acceptable and was again asked vide letter 25.7.2003 to explain to the Registrar the position. Reserve Bank vide letter dated 4.4.2003, 1/8.7.2003, 4.9.2003, 17.9.2003, 28.10.2003, 19.11.2003 and 13.12.2004 required the Registrar to take necessary action and inform us the action taken by him. The Reserve Bank has not received any response from the Registrar Cooperative Societies."

An intra court appeal preferred thereagainst was also dismissed by reason of the impugned judgment by a Division Bench of the said Court, opining that although no specific prayer was made in the writ petition for appointment of an Administrator but such a relief could be granted as a general relief viz. "passing such and other further relief as may be deemed just and proper by the Court", was prayed for. The Division Bench without going into the merit of the matter held that the remedy of the appellants was to approach the learned Single Judge by way of proper application for recalling or modifying or vacating the interim order and on the said finding the appeal was dismissed.

Mr. Soli J. Sorabjee, the learned senior counsel appearing on behalf of the appellants submitted that ;

- 1) No prayer for appointment of Administrator having been made, no such interim order could have been passed.
- 2) The High Court should not have exercised the statutory functions of the Registrar as in terms of Section 81 of the Gujarat Cooperative Societies Act, 1961, he is the only appropriate authority empowered to supersede the Committee.
- 3) No copy of the report of the RBI having been furnished to the appellants, reliance thereupon by the learned Single Judge was wholly illegal.

The writ petitioners-respondents, despite service of notice, have not appeared before us.

Mr. R.N. Trivedi, learned senior counsel appearing on behalf of the RBI, however, would submit that the appellants herein committed severe financial irregularities, and in that view of the matter and furthermore in view of the fact that the term of the appellants herein, as Directors of the said Bank is over, the question of their being reinstated in their elected office(s) does not arise.

Gujarat Cooperative Societies Act, 1961 (The said Act) was enacted to consolidate and amend the law relating to Cooperative Societies in the State of Gujarat. It is a self contained Code. Registrar under the said Act is a statutory authority. Indisputably, it has power to supersede an elected body to manage the affairs of a Cooperative Society

in terms of Section 81 of the said Act, Sub-section (3) whereof reads as under :-

"(3) If at any time during any period or extended period referred to in sub-section (1), it appears to the Registrar that it is no longer necessary to continue to carry on the affairs of the society as aforesaid, he may, by an order published in the Official Gazette, direct that the management shall terminate; and on such order being made, the management of the society shall be handed over to a new committee duly constituted."

Section 86 of the Act provides for an inquiry by the Registrar in regard to the constitution, working and financial conditions of a Society. The procedure for holding such an inquiry has been laid down in the said Act. Section 115A empowers the Reserve Bank of India, to take action for winding up, reconstruction, supersession of the Committee in the following terms :-

"3. If so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made by the Registrar for supersession of the committee and the appointment of an administrator in place thereof for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee of such bank."

It is not in dispute that the writ petitioners had not approached the Registrar for inquiring into the alleged mismanagement of the affairs of the Bank and/or members of the Committee. They did not say so even before the High Court. Mr Trivedi submitted that the RBI had drawn the attention of the Registrar by its letters in regard to financial irregularities of the disputes of the society but the said letters are not before us. It is, thus, not clear that as to whether the RBI had called upon the Registrar to inquire into the affairs of the Bank or cause such an inquiry to be made by a competent authority. It is true that an inspection had been made by the authorities of the RBI but it is not clear as to whether copy of its report have been served upon the Cooperative Bank and/its Directors or not. Although before us, a contention has been raised that a copy of the report had been served but from a perusal of the impugned judgment of the learned Single Judge, it appears, that in the writ proceedings RBI refused to serve the copy of its report upon the Bank on the specious plea that the same was a confidential document. Section 35(1-A) of the Banking Regulation Act provides for furnishing of such a copy of a report upon the party concerned in the following terms:-

"35 (1-A) (a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time, may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and

(b) a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny."

Indisputably, no prayer was made in the writ petition for appointment of an Administrator. Ordinarily, a Court would allow a

statutory functionary to perform its statutory function. We have noticed hereinbefore that the Registrar of the Cooperative Societies in no uncertain terms had stated before the High Court that it could not earlier initiate any inquiry in the matter as a stay order was operating and as the said order of stay was vacated, an inquiry would be instituted by it.

The learned Single Judge did not apply his mind in regard to the said statements of the Registrar. He relied upon the purported inspection report of the RBI, treating the same to be sacrosanct. Even the necessary ingredients for passing an interim order were not taken into consideration.

A Cooperative Society should ordinarily be allowed to function through its elected representatives. This although does not mean that the members of the Committee have a right to mismanage the affairs of the Cooperative Society but there cannot be any doubt whatsoever that allegations in relation to the mismanagement and commission/omission of illegalities, or irregularities or other acts of omission and commission, the remedies as contemplated under the statute should ordinarily be resorted to. This Court held so in *Union of India & Anr. v. S.B. Vohra & Ors.* [(2004) 2 SCC 150], stating :

"22. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law & be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question is required to be determined in each case having the aforementioned principle in mind. However, it may not be possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions."

This Court yet again in *State of UP vs. Section Officer Brotherhood & Anr.* [(2004) 8 SCC 286] held :-

"30. Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution. The court in exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds which could be expended on building hospitals, roads and the like, or overseas aid, or compensating victims of crime."

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32. It is not possible to lay down the standard exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In other words, exercise of its discretion by the court will also depend upon the law which governs the field, namely, whether it is a fundamental law or an ordinary law.

33. It is, however, trite that ordinarily the court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usher the said jurisdiction itself."

Recently this Court in *Muni Suvrat Swami Jain S.M.P. Sangh v. Arun Nathuram Gaikwad* [AIR 2007 SC 38] held :-

"52\005The grievance of the appellant herein has been that without issuing a notice under Section 351 of the Act and without giving an opportunity to the appellant of being heard the structure of the temple could not be ordered to be demolished by the High Court. The power under Section 351 of the Act, in our opinion, has to be exercised only by the Municipal Commissioner and it is left to the Municipal Commissioner under the provisions of Section 351(2) either to order or not to order the demolition of the alleged unauthorized temple\005"

We furthermore are of the view that when such serious questions were raised before a Division Bench of the High Court, the same should not have been considered in a casual or cavalier fashion. The Division Bench did not hold that an appeal was not maintainable and, thus, it was obligatory on its part to address itself to the merit of the matter.

The learned Single Judge passed the order after hearing counsel for the appellants. It was, therefore, of no use directing them to go back to the learned Single Judge by filing an application for vacating the interim order of injunction impugned before it. In all fairness, the Division Bench should have considered the matter itself particularly when the effect of such an order was grave inasmuch as appellants were displaced from their posts of Directors of the Cooperative Bank to which they were otherwise entitled to. We, however, by saying so, do not intend to mean that the Court can never issue such a direction in a rare and exceptional case which the public authority should have passed vide Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. v. K.S. Jagannathan & Anr. [(1986) 2 SCC 679] and other decisions following the same, but the High Court while passing such orders must consider each case on its own merit.

Ordinarily, the statutory functionaries alone can perform their statutory functions and the court cannot arrogate to itself the functions of the statutory authority vide G. Veerappa Pillai v. Raman Ltd. [AIR 1952 SC 192], State of U.P. v. Raja Ram Jaiswal [(1985) 3 SCC 31], U.P. State Road Transport Corporation and Another v. Mohd. Ismail and Others [(1991) 3 SCC 239], S.B. Vohra (supra), Arun Nathuram Gaikward (supra) etc. Only in case of inaction on their part and in rare and exceptional cases, the Court can exercise its jurisdiction in such cases. This is not a case where the Registrar of the Cooperative Societies refused or neglected to take any action. It could not do so in view of an interim order passed against it. The interest of the Bank could have been safeguarded by passing other orders; even the Registrar should have permitted to look into the matter and pass an appropriate order. The manner in which the impugned order had been passed by the learned Single Judge betrays fairness. It not only directed appointment of an Administrator but he was asked to take over the affairs of the Cooperative Bank on the same day.

The question, however, which remains to be considered is, as to whether in view of the fact that the terms of the appellants are over, what relief this Court should grant. Before, however, we issue necessary directions in this behalf upon the said question, we may notice that a Division Bench of this Court in Mehsana District Central Bank Ltd. & Ors. v. State of Gujarat & Ors. [(2004) 2 SCC 463] observed as under :-
"14. Briefly stated the facts are :

A complaint was filed by the respondents herein to the effect that the Central cooperative bank is governed by the provisions contained in the Gujarat Cooperative Societies Act, 1961 and the Rules framed thereunder. It is further alleged that Mehsana District Central Cooperative Bank had violated the provisions contained in Section 71 of the Gujarat Cooperative Societies Act by investing large sums in undertakings other than those enumerated

in Sections 71(a) to (f). Consequently, Mehsana District Central Cooperative Bank had lost substantial amount. Though the matter had been brought to the notice of the State Government, the Registrar of Cooperative Societies and the District Registrar, no action had been initiated against Mehsana District Central Cooperative Bank and the members of the Board of Directors. A prayer was also made for issuance of a writ of mandamus directing the authorities under the Gujarat Cooperative Societies Act to initiate necessary proceedings against the respondents/appellants herein for having committed breach of the provisions contained in Section 71 of the Act. It was further alleged that Mehsana District Central Cooperative Bank had invested a sum of Rs 95 crores in four different establishments which do not fall within the ambit of institutions enumerated in Sections 71(a) to (f) of the Act without the approval of the State Government or the appropriate authority.

In the above facts and circumstances of this case, we are therefore of the opinion that interest of justice would be subserved if these appeals are disposed of with the following directions:-

1. The Administrator would continue to hold office as an officer of the Court.
2. The Administrator must, however, get the election of the Committee Members held, as expeditiously as possible, and preferably within a period of three months from the date of communication of this order.
3. The inquiry initiated by the Registrar pursuant to the order of the learned Single Judge shall continue as if the same had been initiated by the Registrar on his own motion and not on the basis of the order passed by the High Court.
4. The RBI would be entitled to take such action (s) as it may deem fit and proper under the provisions of Section 115 A of the Act or under any other Statute and as may be permissible in law if it so desires, including one under the Deposit Insurance Act.

These appeals are accordingly disposed of with the aforementioned directions. However, in the facts and circumstances of the case, there shall be no order as to costs.