

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5682 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRATAPSIKH V VAISH & ORS.

Versus

R.K NIRMAR & ORS.

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Appearance:

MR GR UDHWANI for Petitioners

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/12/96

ORAL JUDGMENT

Heard learned counsel for the petitioners.

2. I have gone through the findings recorded by the Tribunal on points No.2 and 3. The justification given for the foreign tour by the petitioners was that these expenses have resulted into growth and development of society's activities. Further explanation has been given that expenses on such tours have resulted into growth of

society and thereby new activities have been identified and introduced yielding good results. Next justification has been given that in other societies such tour programmes were undertaken and expenses thereof have been allowed. It has further been contended that the three nations tour, i.e. Island Philippines, Republic of China, Hongkong, Malaysia, etc. was taken to meet the farmers' society there and visiting members have motivated a lot and has resulted in dealership at Kodinar-Veraval in Petrol, Diesel, Kerosene and Crude. New activities introduced by the Sangh includes opening of cloth store, stores of selling utensils of steel, copper, aluminium etc. and tyres and tubes for Tractors, fertilizers, seeds, insecticides, etc. and thereby employing 17 additional hands. This Court has adjourned this matter from time to time to give an opportunity to the counsel for the petitioner to show and establish that any benefit has been resulted to the society as a result of foreign tour which has been undertaken by its members at the expenses of society, but the learned counsel for the petitioner is unable to give out anything in this respect. He only contended that the judgment of the lower authorities suffers from infirmities and he also contended that the case does not fall in the four corners of Section 93 of the Gujarat Cooperative Societies Act, 1961, as those expenses have been approved in the general meeting of the society. The Tribunal has recorded findings of the fact that some of the societies are even functioning far more better. So far as additional items which have been introduced by the society under the umbrella of motivation derived by its members during their foreign tour is concerned, the Tribunal has observed that such items are very much being in existence in many other cooperative societies of the State. Not only that, the Tribunal has further considered the matter from another point of view. If this fact is taken into consideration then for the purpose of deriving motivation there was no justification for one as to go to the extent of visiting countries like Philippines, Bangkok, Taiwan etc. and it was considered to be prima facie in contravention of the relevant provisions of the Act. The Tribunal has also undertaken exercise to know from the counsel who was appearing for the petitioner but when asked for no concrete reply with regard to the immediate, impressive, active long lasting results in the form of streamlining of the society in the administration of society, after the said tours, has been given. The nations which were visited by the members of the society are not for cost and labour efficiency and therefore obviously these members must not have exposed themselves to new technology resulting into cost and labour

efficiency. The Tribunal has rightly observed that nothing has been highlighted anywhere in the submissions made on behalf of the petitioners or the Sangh how, because of these tours, cost and labour efficiency has been improved in the society. The expenses of the nature incurred on such tours cannot be said to be reasonable and justified without there being any effective results. I do not find any substance in the contention of the learned counsel for the petitioner that merely because these expenses have been sanctioned by the managing committee as well as the general body of the society, the same are immune to any scrutiny by the auditors as well as by the Registrar of the cooperative societies as well as judicial review by this Court. It is a case where individual members have performed foreign tours. The Tribunal has rightly held that the society before sanctioning the expenses of the nature incurred in the present case by the members should have considered whether such expenses would result into benefit to the society or not. The society before sanctioning such expenses should have balanced it with the growth and development. An ordinary prudent man has to first of all think twice before the expenses of the nature as incurred in the present case are allowed to be liability to the society. But the authorities have considered the matter liberally and from all possible angles and did not find any justification in these expenses. This Court, sitting under Article 227 of the Constitution of India, will not interfere with all the orders passed by the Tribunals unless the petitioner is able to show that the order has resulted in causing serious prejudice. Here is a case apparently where the petitioners have toured foreign countries at the cost of society. The society would have gained much more than what they projected to be gained in case this amount incurred in foreign tours would have been spend in its activities which were already undertaken. The petitioners' counsel raised one of the contentions during the course of arguments that the chargesheet was not given as required under Section 93 of the Act 1961, but he admitted that the show cause notice was given and he has given reply to the show cause notice. The show cause notice was not produced by the petitioners on record, but from reading of the impugned orders, I am satisfied that the petitioners were sufficiently given the charges which they were required to reply. The substance and not the form has to be considered. The show cause notice was given to call upon from the petitioner, the explanation on the charges which were there against them. Moreover, the learned counsel for the petitioners has failed to give out how any prejudice has been caused to the petitioners merely

because of non observation of form. The matter would have been different in case some prejudice would have been caused. The object of the chargesheet is to let the concerned person to know what are the charges against him and calling of explanation. This object and purpose is fulfilled in substance in case the show cause notice, if it contained all the necessary charges, then the name and nomenclature is not very much material. The petitioners knew very well what charges were there and they have participated in the inquiry as well as when the challenged the same before the appellate authority, all these contentions have been raised. The other contention that the auditor was not examined is hardly of any substance. Moreover, in case the petitioners considered the auditor to be a necessary party to be examined then they could have produced him in the defence. The learned counsel for the petitioners is unable to show how for non examination of auditor, the inquiry held against them vitiates or how prejudice has been caused. The provisos to Section 93 of the Act 1961 are sufficiently wide and merely because these expenses were sanctioned by the Managing Committee and the general body, the accountability of the petitioners is not wiped of. It is money of the society and it cannot be permitted to be misused or cannot be permitted to be used for the pleasure tour of the members. The case of the petitioners certainly fall under Section 93 of the Act 1961. Otherwise also this Court will not, on this technical ground, permit the money of the society to be misused or misutilised, moreso when the learned counsel for the petitioners does not dispute that these expenses are certainly subject to judicial review of this Court. No further appeal or revision has been provided against the judgment of the Tribunal in the subject matter of Section 93 of the Act 1961, and the object behind it is to give finality to the decisions of the Tribunal. This Court, sitting under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. The exercise of powers by this Court under Article 227 of the Constitution of India must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless High Court interferes. Sitting under Article 227 of the Constitution of India, this Court may decline to interfere in the order of the Tribunals where there being no failure of justice to the party.

3. A reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the cases of

A.M. Allison & Anr. v. B.L. Sen & Ors., reported in AIR 1957 SC 227 and Balvantrai Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., Ahmedabad v. M.N. Nagrashna & Ors., reported in AIR 1960 SC 407. In above cases there was a case where though the contention regarding lack of jurisdiction of the Tribunal found favour, but there being no failure of justice, the Court held that, "the High Court has the power to refuse the writ if it is satisfied that there was no failure of justice, and in appeals which are directed against the orders of the High Court in applications under Art.226 the Supreme Court can refuse to interfere unless it is satisfied that the justice of the case required it. But where it is not so it will not interfere" The society's money should be permitted to be used and utilised to fulfil object the purpose of the society and not for tours.

4. In the result, this Special Civil Application fails and the same is dismissed with costs of Rs.2,000/-. The learned counsel for the petitioners has no objection in case the direction for depositing this amount of costs by the petitioners with the Bar Council of Gujarat at Ahmedabad in the account of Advocates' Welfare Fund is given. Order accordingly. The petitioners are directed to deposit Rs.2,000/- by way of costs of this petition in the office of the Bar Council of Gujarat at Ahmedabad under the head, "Advocates' Welfare Fund", within a period of three months from the date of receipt of certified copy of this order. They are further directed to produce before this Court, receipt of deposit of the aforesaid amount. A copy of this order may be sent to the Secretary, Bar Council of Gujarat, Ahmedabad, and in case this order is not complied by the petitioners, it shall be open to the Secretary, Bar Council of Gujarat, Ahmedabad, to take appropriate action available. Interim relief granted by this Court stands vacated. Rule discharged.

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(sunil)