

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10206 of 1995

with

SPECIAL CIVIL APPLICATION NO. 6373 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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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?

KAIRA DISTRICT CO OP MILK PRODUCERS' UNION LTD

Versus

STATE OF GUJARAT

Appearance:

Special Civil Appln No. 10206 of 95

Mr. K. G. Vakharia, Senior Counsel with Mr. Sirish Joshi,
Advocate for the petitioner.

Mr. S.N. Shelat, Addl. Advocate General with Mr. D.N.
Patel, Assistant Government Pleader for respondents Nos. 1,
2, 3 and 7

Mr. V.H. Patel, Advocate for respondent Nos. 4 to 6

Mr. S.B. Vakil, Advocate for the respondent No.8

Mr. M.D.Pandya, Senior Counsel for the respondent No.9

Special Civil Application No. 6373 of 95

Mr. B.S. Patel, Advocate for the petitioner.

Mr. S.N. Shelat, Additional Advocate General with Miss Harsha

Devani, Asstt. Government Pleader for respondent Nos. 1, 2 and 3.

Mr. B.D. Karia, Advocate for respondent Nos. 4, 5 and 6

Mr. S.B. Vakil, Advocate for respondent No.7

Mr. M.D.Pandya, Senior Counsel for respondent No.8

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/02/96

ORAL JUDGEMENT

These two petitions raise common questions and at the instance of all the learned Counsel they have been heard and decided together.

2. The petitioners of these two petitions are Co-operative Societies, who have voiced a common grievance that the respondent Government has exceeded its authority in making nominations of three representatives on each of the Management Committees (i.e. the Boards of Directors) of these Societies under the provisions of Section 80(1) of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act"). The matters have been argued on the basis of the record of Special Civil Application No.10206 of 1995 which contains the complete record and the Counsel for the parties in the other petition have referred to and relied upon this petition and have requested that the affidavits filed and the papers produced in Special Civil Application No. 10206 of 1995 should be read in the other petition also. The Counsel appearing in Special Civil Application No. 10206 of 1995 for various parties have led the arguments which have been adopted by the Counsel appearing in the other petition.

3. The controversy centers around the question as to whether the State Government continues to remain a surety on the basis of the guarantee bond which it had executed on 9th April, 1984 in respect of loans which were provided for by the creditor Indian Dairy Corporation (for short "IDC") whose successor is National Dairy Development Board (for short "NDDB") in favour of member Societies of Gujarat Co-operative Milk Marketing Federation Limited, Anand (hereinafter referred to as "GCMFL"), which are compendiously described as Cluster-I. If the State Government is held to be continuing as a surety, then the action of the State Government based on the provisions of Section 80(1) of the said Act, of appointing

three representatives on each of the Committees of these two Societies would stand justified and if it is held that the State Government is no more a guarantor for repayment of loan as envisaged under Section 80(1) of the Act, then it's action of appointing nominees on the Management Committees of these Societies under that provision would be bad.

4. Both the petitioner Societies are admittedly the members of the Gujarat Co-operative Milk Marketing Federation Limited, which is impleaded as respondent No.9 in Special Civil Application No. 10206 of 1995. The facts on record disclose that after negotiations, the Government passed Resolutions sanctioning to give a guarantee bond in favour of the Indian Dairy Corporation, the predecessor of NDDDB. The initial resolution was passed by the State Government on 31.3.1982, but all the terms and conditions contained therein came to be substituted by the resolution dated 5.1.1984. These two resolutions disclose that the Government had decided to implement the Operation Food II Programme in the State under their earlier resolution dated 11.7.1978 and a question regarding giving of Government guarantee to the Indian Dairy Corporation for the repayment of the loan amount that may be received from it by the GCMMFL from time to time for Clusters I and II had arisen and in that context the Government sanctioned the guarantee to be executed in favour of the Indian Dairy Corporation for the repayment of such loans. It was stipulated that the GCMMFL would take necessary steps to enter into tripartite agreements with the recipients of the loans in order to enable them to pay interest on the loan and to repay the principal. The amount of loan was secured by a pari passu charge alongwith the IDC on the unencumbered assets of the GCMMFL and Gujarat Dairy Development Corporation ("GDDC" for short) or their successors and District Unions under Clusters I and II. Under Clause (viii) of the Resolution of 1984, it was provided that in case of default by the GCMMFL and/or GDDC or it's successor or recipient Unions in respect of the repayment of the loan, or payment of interest, such amount as may have been paid by the Government to the lending institution under the guarantee will be treated as the sum due from the GCMMFL and/or GDDC or it's successors or it's recipient Unions to the Government. Under Clause (xi) which came to be amended by the corrigendum issued by the Government on 18.3.1987, the Government had a right to nominate three Government nominees under Section 80(1) of the said Act on the Board of Directors of the GCMMFL as well as on the Board of Directors of the concerned District Co-operative Milk Producers' Union Limited, which were receiving financial assistance through the GCMMFL under Operation Flood II Programme. It appears that by a stroke of pen, under resolution dated 14th April, 1995, the Government had cancelled nominations of persons under Section 80(1) and under

Section 80(2) of the Act, as shown in the accompanying statement. Therefore, as per the said clause (xi) which is based on the provisions of Section 80(1) of the said Act, the Government claims a right to nominate three persons on the petitioners who are member Unions of the GCMML and who had received loans under the Operation Flood II Programme. Pursuant to the Government resolutions, a guarantee bond came to be executed by the Government of Gujarat in favour of the IDC on 9th April, 1984 in which there is a reference to the fact that the IDC had agreed to give financial assistance for the implementation of the Operation Flood II Project in the State of Gujarat and that the GCMML was to implement directly and through, its member Co-operative institutions the Operation Flood II Project in the State of Gujarat. It is also recorded that the State Government had authorised the GCMML to receive financial assistance from the Corporation out of which 29,47,55,300/- were to be treated as loan as per the loan agreement dated August 11, 1982. The GCMML was authorised to transfer a part of the loan to its member Co-operative institutions after executing a supplementary loan agreement. The State Government had agreed as a surety to give guarantee of the amount of refund payable by the borrower to the Corporation as per the agreements between them. The surety guaranteed the compliance of the terms and conditions contained in the loan agreement between the Corporation and the borrower and due repayment of the principal of the loan and payment of interest thereon or any instalment or instalments thereof granted by the Corporation, as provided under clause (3) of the guarantee bond. It was stipulated that the surety consented to the Corporation making any variance that it may think fit in the terms and conditions and agreed that such variance would not affect its liability under the guarantee provided. However, such variance was to be made with the express or implied consent of the borrower. It was also stipulated in clause (viii) that the guarantee given by the surety was one single and indivisible for the loan that may be disbursed by the Corporation upto a maximum of Rs. 29,47,55,300/-.

5. It appears that the GCMML resolved in the year 1992 to request the NDDB (successor to IDC) to accept the guarantee of the GCMML in respect of the financial assistance which was given to the Federation and 12 member Union of the Federations and to vacate the Government guarantee already provided to the IDC for the loan component of Operation Food II assistance to the extent that loans were received by these 12 member Unions which constituted Cluster-I. This fact is reflected from letter dated 22.7.1992 addressed to the NDDB by the GCMML. In context of this request, the NDDB responded by its letter dated 16th September, 1992 conveying its decision to accept GCMML's guarantee to repay the loan component of Cluster I

and to vacate the guarantee furnished by the Government in respect of the said loan component of Cluster I under Operation Flood II Programme. Thereafter, on 15.3.1994 the NDDDB wrote a letter to the State Government stating that they had made alternate arrangement for securing the loan component of the financial assistance under Operation Flood II and III given/to be given to the GCMMFL and it's 12 member Unions and that it would therefore, not be necessary for the Government to stand the guarantee and the NDDDB had decided to reduce the Government guarantee to the extent of the financial assistance made available to the GCMMFL projects under Operation Flood II. It was also communicated that the NDDDB had decided to retain the guarantee only to the extent of Rs. 1579.69 lacs being the total loan component of the Operation Flood II and II for the projects under the purview of of GDDC (i.e. Cluster II), and, accordingly the Government was requested to agree and confirm the variations suggested in that letter.

6. The loan agreement dated 11th August, 1982 which has been referred to in the guarantee bond was an agreement between the Corporation i.e. the creditor and the GCMMFL in respect of the loans to the maximum extent of Rs. 19,97,59,000/-, which were to be taken for the project for Cluster I which consisted of the members of the GCMMFL including the petitioners. There was another loan agreement also executed on 11th August, 1982 between the Corporation i.e. the creditor and the GCMMFL, which was in respect of loans taken for the project for Cluster II with which we are, admittedly, not concerned. Cluster II consisted of Gujarat Dairy Development Corporation and four District Unions of Bhavnagar, Junagadh, Surendranagar and Kutch. The dispute in the present petition relates to the guarantee given by the State Government in context of the member Unions of GCMMFL falling in Cluster I including the petitioners.

7. The State Government in respect of the petitioner Kheda District Milk Producers' Union Limited (Special C.A No. 10206 of 95) issued the impugned order on 9.11.1995 appointing three representatives named therein on the Board of Directors of that petitioner Society under Section 80(1) of the said Act.

8. In Special Civil Application No. 6373 of 1995, the petitioner Society which is also a member of the GCMMFL, challenges the order dated 27.7.1995 made by the State Government under Section 80(1) of the Act nominating three persons named therein on the Board of Directors of that Society.

9. The learned Senior Counsel appearing for the petitioner in Special Civil Application No. 10206 of 1995 contended that there was no contract of guarantee executed by the State Government qua the petitioner Union and therefore, there was no occasion empowering the State Government to nominate its representatives on the Board of Directors of the petitioner Union. He submitted that nowhere in the guarantee bond there was any reference to the guarantee being given on behalf of the petitioner Union and the guarantee bond was intended to secure repayment of loan which was given to the GCMML by the creditor and not for repayment of loan by the member Union to the GCMML. He submitted that there was no privity of contract between the petitioner Union and the State Government and the State Government cannot claim any right to nominate representatives on the Board of Directors of the petitioner. He submitted that the liability of the State Government under the guarantee bond did not depend upon the failure of the petitioner Union to pay the loan transferred to it by the GCMML. In support of his contention, he relied upon the decisions of the Supreme Court in the cases of State of Maharashtra Vs. Dr.M.N.Kaul - AIR 1967 S.C 1634; Punjab National Bank Ltd. Vs. Sri Bikram Cotton Mills Ltd., - AIR 1970 S.C.C 1973 and Asstt. Excise Commissioner and ors. Vs. Issac Peter and ors. - (1994) 4 S.C.C 104.

His next contention was that even if it is assumed that the guarantee bond executed by the State Government was also in respect of defaults committed by the member Union in repaying the loan which was transferred to them, the evidence discloses that so far as the petitioner and other member Unions falling in Cluster I are concerned, the guarantee was released by the creditor NDDDB and the State Government was no longer liable as a surety in respect of the loans which were advanced to the member Unions falling in Cluster I which included both these petitioners. It was contended that a stipulation which was for the benefit of a party can always be waived by that party and reliance in support of that contention was placed on the decision in Makati Nanchand Kakaldas and ors. Vs. Champaklal Chhotalal Kapadia, reported in XIX G.L.R 945.

The third contention was that the nomination of the respondent No.4 was invalid because he had worked as Assistant General Manager of the petitioner Union and resigned only on 31.12.1994. It was therefore, submitted that he was disqualified by virtue of bye-laws 17.2.2 of the petitioner Union. Reliance was placed in support of this contention on the ratio of the decision of this Court in the case of Bhogilal Jethalal Patel Vs. Yusufbhai Ramanbhai Gajiwala & ors., reported in XVI G.L.R 215. As regards respondents Nos. 5 and 6 who are the two other nominees, it was submitted that

they were not having sufficient experience to be put on the Board of Directors.

It was lastly contended that the petitioner Union can go ahead with the meeting of the Board for electing the Chairman of the Board of Directors under Section 145Z(2) of the Act even if the Collector who is required to preside over the meeting does not attend the same. It was submitted that under the said provision, the Collector was not required to convene the meeting but he was required only to preside over it and the meeting was required to be held as per the bye-laws of the Society under which a Managing Director can convene a meeting of the Board of Directors. Apprehension was voiced on behalf of the petitioner that by prolonging the election of the Chairman of the Board, a situation may be brought about where it can be said that the new Board of Directors has not functioned within six months and thereupon a Custodian may come to be appointed under Section 74D of the said Act on the ground that the new Committee of management though elected was not functioning for a period of six months.

10. The learned Counsel appearing for the petitioner Baroda District Co-operative Milk Producers' Union Limited (Special Civil Application No. 6373/95) while adopting the contentions canvassed in the main petition, supplemented the arguments by a further contention that the impugned order nominating three representatives on the Board of Directors of that Society was malafide as it was made with a view to convert a minority into a majority. He however had no particulars to indicate how the members were divided. Reliance was placed in support of this contention on the decision of this Court in Amreli District Co-operative Sale & Purchase Union Ltd. & ors. Vs. State of Gujarat, reported in XXV (2) G.L.R 1244.

11. The learned Counsel who appeared for the respondent No.8 - NDDDB supported the petitioners' contention and contended that the respondent State Government was released of its liability under the guarantee bond to the extent of the loan component which was intended for the Cluster I, which consisted of the member Unions of the GCMMFL including these two petitioner Unions. He submitted that a surety can be released in part and therefore, the State Government was no longer liable as a surety in support of the loans which were given to these two petitioners and other member Unions of GCMMFL, which were in Cluster I. He made a statement on behalf of the NDDDB that the State Government will not be held liable as a surety in respect of the loans which were advanced to these two petitioners and other members of GCMMFL who fell in Cluster I in view of the NDDDB having already released the

guarantee to the extent of the loan component of Cluster I. The learned Advocate appearing for the respondent No.9 GCMMFL adopted the contentions of the learned Counsel appearing for the petitioners and the NDDB.

12. The learned Additional Advocate General appearing for the State Government contended that the repayment of loan even by the member Unions to the GCMMFL was guaranteed by the State Government having regard to the documentary evidence on record. It was submitted that the guarantee bond cannot be read in isolation and since it referred to the loan agreements which indicated that the loans were to be given to the member Unions of the GCMMFL and that the GCMMFL was only a conduit pipe through which the loans were received by its members, the Government was in fact a surety in respect of the loans which were disbursed to the member Unions and since those loans were outstanding, the State Government was entitled to nominate its representatives on the Board of Directors of such member Unions, including these two petitioners, by virtue of the provisions of Section 80(1) of the Act. He also submitted that the Government Resolutions dated 31.3.1982 and 5.1.1984 which are required to be read alongwith the guarantee bond also indicated that the Government was liable as a surety even for the default of the recipient Unions. He pointed out that by letter dated 15.7.1983 the GCMMFL had requested the State Government to refer its member Unions in the Government Resolution and had forwarded details of loans which were to be given to these Union members. It was therefore, submitted that it was understood by all concerned that the State Government was to stand as a surety even in respect of the defaults of the recipient Unions. Reliance was placed in support of his submissions on the decisions reported in the case of Punjab National Bank Ltd. Vs. Sri Bikram Cotton Mills Ltd., - AIR 1970 S.C 1973; Fushakkal Kuttappu Vs. C. Bhargavi and ors. - AIR 1977 S.C. 105 and State of U.P and ors. Vs. Renusagar Power Co. & ors. - AIR 1988 S.C 1737. He further submitted that there was no unconditional release of the guarantee by the creditor and the decision of the creditor as reflected in its letter dated 15.3.1994 for reducing the liability of the State Government under the guarantee bond was dependent on the Government's accepting the variations proposed in that letter. It was submitted that as per clause (viii) of the guarantee bond, the guarantee was one single and indivisible and therefore, it was not open to the creditor to unilaterally bifurcate it. It was submitted that since the State Government had not communicated confirmation or agreement to the proposal contained in the letter dated 15.3.1994, it continued to remain liable under the guarantee bond for the entire amount, thereby, entitling it to make nominations on the Board of Directors of the petitioners under Section 80(1) of the Act. Reliance was placed by him in

support of his submissions on paragraph 4408 of Chitty on Contracts 25th Edition at page 1196. On the third aspect regarding the nominees' eligibility, it was submitted that as regards the respondent No.4 since the objection of the petitioner (Special Civil Application No. 10206/95) was that he had in the recent past served as an employee of the petitioner Union, the State Government was prepared to withdraw that nomination. As regards the nomination of respondents Nos. 4 and 5 of that petition are concerned, he submitted that it was for the Government to nominate persons who, according to the Government, will safe-guard its interest and there was no serious objection against the nominations of these two respondents from any quarters. On the last contention of the petitioners, the learned Additional Advocate General submitted that the authority having power to preside over the meeting can always postpone it. He submitted that Section 145Z deals with a situation where election is to be held and the meeting for the purpose is required to be presided over by an independent person namely - the Collector or a person authorised by him for electing a Chairman. He submitted that Section 145Z would displace any conflicting bye-law. It was submitted that calling of a meeting by the Managing Director of the petitioner Union was only a ministerial act and whether to hold the meeting or not on a given date can always be decided by the person who is entitled to preside over the meeting. It was submitted that no move for appointment of a Custodian was in contemplation of the State Government.

13. Section 80(1) of the said Act which empowers the Government to appoint its nominees will be attracted where the State Government has (a) subscribed to the share capital of a Society, directly or through another Society, or (b) guaranteed the repayment of principal of and payment of interest on, debentures issued or loans raised by a Society. The State Government has a right to nominate three representatives on the Committee of such Society in the manner as may be determined by it from time to time, notwithstanding anything contained in the bye-laws of the Society. The members nominated by the Government hold their office during the pleasure of the State Government or for the period that may be specified in the order of appointment. On assuming office, such nominees have all rights, duties, responsibilities and liabilities as if they were members of the Committee duly elected. It is clear from this provision that the State Government can nominate three representatives on the Board of Directors is to be exercised in respect of the Society for which it has guaranteed the repayment of loan amount and interest or the amount of debentures and interest. In the present case, the question of the Government having

subscribed to share capital of the Society does not arise. This right of the Government to appoint three nominees over-rides anything to the contrary that may be contained in the bye-laws of such Society. The first question that requires to be determined is whether the State Government had stood as a surety only in respect of repayment which was to be made by the GCMML to the creditor i.e. IDC (now it's successor NDDDB) or whether it had also stood a surety in respect of the repayment of loans by the sub-loanees i.e. the petitioners and other member Unions of GCMML. The effort made on behalf of the petitioners was to persuade the Court to hold that from the guarantee bond which was executed by the State Government on 9th April, 1984, it should be held that the guarantee was given only in respect of the repayments which were to be made by the borrower i.e. GCMML and therefore, the State Government could not invoke the provisions of Section 80(1) for nominating its representatives on Board of Directors of the member Unions of GCMML who had their independent legal entity. As provided in Section 126 of the Indian Contract Act, a contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. A guarantee may be either oral or written. If the transaction reflecting guarantee is contained only in one document, then obviously the intention of the parties is to be gathered from that document itself. However, where the transaction between the parties is contained in more than one document which are contemporaneously executed, all such relevant documents should be read and interpreted together to find out as to what is the real nature of transaction. The principle is well established that if the transaction is contained in more than one document between the same parties, they must be read and interpreted together and they have the same legal effect for all purposes as if they are one document. This principle was propounded in Manks Whitely 1912 1 Ch. 735 at p. 754 by Lord Justice Moulten in the following terms:-

"Where several deeds form part of one transaction and are contemporaneously executed, they have the same effect for all purposes such are relevant to this case as if they were one deed. Each is executed on the faith of all the others being executed also and is intended to speak only as a part of the one transaction, and if one is seeking to make equities apply to the parties, they must be equities arising out of the transaction as a whole"

This principle was affirmed by the Supreme Court in S. Chattanatha Karayalar Vs. The Central Bank of India Limited and ors. reported in AIR 1965 S.C 1856. Therefore, one cannot ignore the contemporaneous documents and refer only to

the guarantee bond executed by the State Government. Even this guarantee bond clearly refers to the surety having authorised the GCMMFL to receive financial assistance as per terms and conditions specified in the loan agreement dated 11th August, 1982. Further more, the borrower is authorised to transfer a part of the loan and grant to its member Co-operative institutions after execution of a supplementary loan agreement a draft of which was annexed with the guarantee bond. Therefore, the loan agreement dated 11th August, 1982 and the supplementary grant agreement executed by the member Unions of the GCMMFL form integral part of the transaction and must be referred to for ascertaining whether the State Government in fact stood a surety for repayment of loans by the sub-loanees i.e. the petitioners and other member Unions of the GCMMFL. The loan agreement which is referred to in the guarantee bond was executed on 11th August, 1982 between the GCMMFL and the creditor i.e. IDC and it discloses that the creditor had agreed to lend to the GCMMFL a sum to the maximum extent of Rs. 19,97,59,000/- for the project for Cluster I as per the annexure which formed part of the agreement. Under Article IV of that Loan Agreement, entitled Security for the Loan, there was a clear mention that the loan (which is defined in Clause 1(c) to mean loan to the borrower provided for in clause 3.1 of the agreement) shall be secured by a guarantee from the Government of Gujarat in the form annexed to that agreement. The conditions precedent to disbursement of the loan as reflected from Article VI of the main loan agreement inter-alia was that the borrower shall have created a security in favour of the Corporation as stipulated in Article IV of this agreement viz. a guarantee from the Government of Gujarat. Under clause 13.3 of the main loan agreement, there was a clear reference to sub-loans by the borrower. It was provided therein that with the prior approval of the Corporation, the borrower may entrust the execution of a part of the project to another co-operative institution, who must be a member of the borrower and relend part of the proceeds of the loan under the said main loan agreement not exceeding the amount ear-marked for such part of the project to such co-operative institutions referred to as the sub-loanee, under supplementary loan agreement. It was stipulated that under such supplementary loan agreement, the sub-loanee would be liable to all the duties and obligations of the borrower as well as the terms and conditions contained in the said main agreement. The supplementary loan agreement which was referred to in clause 13.3 of the main loan agreement is also referred to in the guarantee bond which was executed by the State Government with which a draft of supplementary loan agreement was annexed. The supplementary loan agreement which was contemplated between the parties was in fact executed by the member Unions of GCMMFL including the petitioners. A copy of the supplementary loan agreement dated

7th September, 1983 which was executed between GCMML and the petitioner Kheda District Co-operative Milk Producers Union Limited, which is described as sub-loanee, clearly records with reference to the main loan agreement dated 11.8.1982 that the terms and conditions of the main loan agreement entered into between the creditor i.e. IDC and the borrower i.e. GCMML will be treated as the terms and conditions of this supplementary loan agreement and the parties will be governed by the rights and obligations contained in the main loan agreement. It was in terms stipulated that all the acts, deeds and things to be carried out by the borrower i.e. GCMML and the obligations to be fulfilled by the borrower in terms of the main loan agreement shall also be carried out and fulfilled by the borrower and the sub-loanee jointly and severally. The Government resolution sanctioning the Bank guarantee which was passed on 5th January, 1984 in the background of these two agreements, sanction a Government guarantee with specific reference to the GCMML taking necessary steps to enter into tripartite agreement with the recipient of the loan in order to enable it to pay interest on the loan and to repay principal of the loan. It was stipulated that the amount of loan will be a pari passu charge alongwith the creditor IDC on the general revenue/assets of the institution and GDDC or it's successors and District Unions for the purpose of recovery by the Government in the event of failure on its part to repay the loan and/or pay interest on the loan. The amount of loan was to be secured by a pari passu charge of the unencumbered assets of the GCMML and the District Unions under Cluster I and II. It was stipulated in Clause (viii) of the Resolution that in the case of default by the GCMML or its recipient Unions in respect of repayment of the loan and/or payment of the interest, such amount as may have been paid by the Government to the lending institution under the guarantee will be treated as sum due from the GCMML or its recipient Unions to the Government which could be recovered as arrears of land Revenue. In Clause (xi) as amended by the Corrigendum dated 18th March, 1987 it was provided that the Government shall have a right to nominate three representatives under Section 80(1) on the Board of Directors of GCMML as well as on the Board of Directors of the concerned District Co-operative Milk Producers' Unions which are receiving financial assistance through GCMML under Operation Flood II. As noted below the corrigendum dated 18.3.1987, copies thereof were sent to all the Co-operative Milk Producers' Union. The aforesaid documents namely the main loan agreement, the supplementary loan agreement, the Government resolutions sanctioning the guarantee and the guarantee bond itself are required to be read together and their contents clearly indicate that the State Government had stood a surety even in respect of defaults in repayment of loan that may be committed by the

member Unions of GCMMFL, which were the sub-loanees. Therefore, the State Government had a right to make nominations under Section 80(1) of the said Act not only on the Board of Directors of GCMMFL, but also on the Board of Directors of the recipient Unions in respect of which the State Government had guaranteed repayment of loan on their default. The expression "such Society" in Section 80(1) would also, in the context of the present case, include the sub-loanee Unions repayment by whom was also guaranteed by the State Government. However, any member Union not receiving the loan under the arrangement would not be a Society in respect of whom the State Government can be said to have guaranteed repayment of loan. It would follow therefore, that if a recipient Union has already repaid the loan, then also in respect of such Union it cannot be said that the State Government continues to guarantee repayment of loan which already was repaid. Therefore, even in cases where the sub-loanee member Unions of GCMMFL like the petitioners have repaid the entire loan amount, the State Government cannot be said to be continuing as a guarantor in respect of such member Unions and therefore, no appointment of nominees can be made by the State Government on their Board of Directors on the ground that some other recipient Union which is an independent legal entity had not repaid its loan to the GCMMFL or the creditor. The power under Section 80(1) can be invoked in respect of a Society only so long the State Government continues to have the financial interest as contemplated therein in respect of such member Union.

14. This takes us to the next important question as to whether the State Government was released by the Creditor i.e. the NDDDB in respect of the guarantee which was given by it for loans provided to the recipient Unions through the GCMMFL. As noted above, the totality of the contemporaneous documents shows that the State of Gujarat had stood as a surety to the IDC (now NDDDB) in respect of any default in repayment of loans given to the member Unions of GCMMFL. Therefore, even in case of default by such members, the liability was clearly undertaken by the State Government in view of the main loan agreement and the supplementary loan agreement referred to in the guarantee bond. The recipient Unions by mortgating their goods to the Government had impliedly consented to the contract of guarantee. Moreover, the loans were meant for these members of the GCMMFL and they cannot feign ignorance about the arrangement which was made between the parties for the loan and the guarantee for repayment thereof. If the liability of the State Government as guarantor continues, then in that event the State Government would obviously be entitled to nominate representatives under Section 80(1) on the Board of Directors of these petitioners, since admittedly, they have not repaid all their loans. Their case however, is that the

State Government was released of its obligations under the guarantee bond as regards the loan amount which was given to them and other members of the GCMMFL falling in Cluster I. The dispute is as to whether there was any unequivocal release under the communication sent by the NDDB on 15th March, 1994 to the State Government or it was just a proposal mooted by the NDDB, which depended on the confirmation by the State Government. The stand of the State Government is that it had not confirmed the proposal and that the wordings of the communication showed that the proposed release depended upon the Government's agreeing to the variations suggested in that letter. The letter dated 15.3.1994 was a communication addressed by the National Dairy Development Board to the State Government in context of the Government guarantee for the loan component under Operation Flood II and III programmes. It refers to the Government resolution dated 5.1.1984 under which it had sanctioned the guarantee for Rs. 29,47,55,300/- and to the guarantee deed executed pursuant thereto by the State Government. The total financial assistance by way of loan for Cluster II within the purview of GDDC under the Operation Flood II and Operation Flood III Programmes has been worked out at Rs. 15,79,69,000/-. It is then clearly stated that the NDDB had made an alternate arrangement for securing the loan component of the financial assistance under Operation Flood II and III given/to be given to the GCMMFL and its twelve member Unions (i.e. Cluster I) and that therefore, it was not necessary for the Government to stand the guarantee as informed by the GCMMFL. It is recorded that the NDDB i.e. the Creditor had decided to reduce the Government guarantee to the extent of financial assistance made available to the GCMMFL projects under Operation Flood II programme. It was then stated that for Operation Flood III programme, assistance to the GDDC and its projects i.e. under Cluster II, the Government was required to furnish guarantee and that the NDDB had decided to treat the guarantee deed dated 9th April, 1994 as a security for Operation Flood III assistance also in respect of GDDC promoted projects. It was stated that thus, the said guarantee shall stand as a security for the loan components made available to GDDC and its projects under Operation Flood II and Operation Flood III programmes to the tune of Rs. 15, 79, 69, 000/- plus charges, interest etc. The State Government was informed that in view of the above decisions of the NDDB, it had decided to retain the guarantee to the extent of Rs. 15,79,69,000/- being the total loan component of Operation Flood II and III for the projects under the purview of GDDC and accordingly, the Government may agree and confirm the variations suggested in the letter namely :-

- (a) That the loan component for the financial assistance both under Operation Flood II and III programmes is included in the guarantee deed dated 0.4.1984;

- (b) The words "Operation Flood II" as appearing in the guarantee deed shall be read as "Operation Flood II and III";
- (c) The amount in the guarantee bond is reduced to Rs. 15,79,69,000/- plus charges, interest etc. as per the financial assistance made available to GDDC under Operation Flood II and III;
- (d) The GDDC shall be directly responsible for the repayment of the loan component of the financial assistance together with interest and other charges received under Operation Flood II and III programmes as far as GDDC projects are concerned.

The other terms and conditions of the guarantee deed referred hereinabove shall remain unaltered to the extent the same are not inconsistent with the contents, context and spirit of this letter."

In view of these variations which were suggested in the letter, it was contended that until the State Government agreed to such variations, the terms of the guarantee bond already executed would continue to operate, rendering the State Government liable even in respect of the loan component of financial assistance which was given to the recipient member Unions of GCMMFL in Cluster I in respect of the Operation Flood Programme II entitling the State Government to make nominations under Section 80(1) on the Board of Directors of such recipient Unions. It was contended that the guarantee given by the State Government was one single and indivisible for the entire loan amount that may be disbursed upto a maximum of 29,47,55,300/- and therefore, it was not open to the creditor to bifurcate the loan components of the project for Cluster I and the project for Cluster II. The stipulation that guarantee was one single and indivisible contained in Clause 2(viii) of the guarantee bond was an assurance given by the surety to the creditor. Such an assurance cannot prevent the creditor from releasing the surety either wholly or in part. The contents of this clause did not entitle the State Government to continue as a surety for a part of the loan amount for the purpose of making nominations. The fact that the State Government was required to stand surety in respect of the loan amount for Cluster I and also in respect of the loan amount of Cluster II is independently reflected from the two main loan agreements referred to in the guarantee bond, which were executed on 11th August, 1982 in respect of loans which were to be given for Cluster I and Cluster II. As noted above, in the main loan agreement dated 11th August, 1982

pertaining to Cluster I, the word "loan" was defined so as to mean loan to the borrower provided for in clause 3.1 of that agreement to the maximum extent of Rs 19.97,59,000/-. It was in this context that Article IV of that main loan agreement stipulated that the said loan amount for Cluster I shall be secured by a guarantee from the Government of Gujarat in the form annexed to that loan agreement. In the same way, from the loan agreement dated 11th August, 1982 which was entered into for Cluster II in which the word "loan" was defined so as to mean the amount to the maximum extent of Rs. 9,49,96,300/which were meant for the project for Cluster II under which GDDC and it's member units fell, were also to be secured by a guarantee from the Government of Gujarat in the form annexed to that agreement as provided in Article IV thereof. Thus, the State of Gujarat was aware while giving the guarantee bond that it was giving a guarantee bond in respect of the loan component of Rs. 19,97,59,000/- meant for Cluster I (with which we are concerned in the present case), under which the petitioners and other recipient Unions who were members of the GCMMF fall. It is in the context of this arrangement that communication sent by the NDDB on 15.3.94 to the State Government should be viewed. The said communication in terms records that the NDDB had decided to reduce the Government guarantee to the extent of financial assistance made available to the GCMMFL projects under Operation Flood II. There cannot be any clear expression of release of liability of a guarantor in respect of surety's liability for Cluster I. The fact that variations were suggested in context of the project pertaining to Cluster II under which GDDC falls will not reduce the efficacy of the release of the guarantee which was unequivocally made in respect of loan assistance which was given to the GCMMFL for its recipient Unions under Operation Flood II. So far as the liability under guarantee bond of the State Government in respect of Operation Flood Programme II loan assistance given to GCMMFL and its recipient Unions was concerned, there was no question of any variation in the contract requiring consent of the State Government involved. It was a pure and simple case of release of the guarantee to that extent. To what other extent the State Government can held liable as a guarantor in respect of Cluster II project for GDDC under the said guarantee bond, the question does not arise for consideration in these matters and the aspect as to whether the State Government can be held liable to the extent of 15,79,69,000/for the loan assistance given to the projects under the purview of GDDC falling in Cluster II under Operation Flood II and III Programmes, the matter stands on a different footing and any possible dispute which may arise in that regard need not cloud the fact that the State Government has been unequivocally released by the creditor NDDB by the said communication dated 15.3.1994 in respect of the loan assistance, which was given to GCMMFL for

its recipient Unions including the petitioners under the Operation Flood II programme. As provided by Section 63 of the Indian Contract Act, 1872, every promisee may dispense with or remit, wholly or, in part, the performance of the promise made to him. Obviously therefore, a creditor in whose favour the guarantee is given by the surety can wholly or in part dispense with or remit the performance of the promise made by the surety to him under the guarantee bond. The language of Section 63 does not refer to any consent of the promisor as being necessary for the release from his obligations nor is any consideration necessary for such release. It is the unilateral act of the promisee discharging at his will the obligation of the promisor and there need not be a new agreement for that purpose. Therefore, even though the State Government did not communicate its assent to the release which was announced by the NDDDB in respect of the loan assistance given to the recipient members of GCMMFL under Cluster I, it stood released of its obligations under the guarantee bond to the extent the guarantee was given for the loan agreement in respect of Cluster I. In other words, the State Government stood released to the extent of Rs. 19,97,59,000/- being the maximum limit which was intended for loans for Cluster I as per the loan agreement dated 11th August, 1982 for which security in the nature of a guarantee of the State Government was obtained as per Article IV thereof. Though by virtue of indivisible nature of the guarantee for the total amount of Rs. 29,47,55,300/- the State Government itself could not have bifurcated the amount, that did not take away the creditors' privilege of releasing the surety partly to the extent of the loan component intended for Cluster I. In view of this position, the State Government could not have made any appointment on the Board of Directors of the recipient Unions including the petitioners under Section 80(1) after it was released of the liability as a surety for Cluster I. It has been stated on behalf of the NDDDB at the bar that the NDDDB has, after that communication never treated the State Government liable as a surety under the said guarantee bond in respect of the loan component which was intended for Cluster I i.e. for GCMMFL and its recipient member Unions. It was also stated that the alternate arrangement which is referred to in the said letter dated 15.3.1994 of partial release, was in fact made and the security of GCMMFL was accepted by the NDDDB in respect of the loan advances to its member Unions. It was stated that promissory notes were executed in favour of the creditor as per the alternate arrangement and mortgages were made. Even apart from these oral announcement at the bar, the material on record clearly indicates that the State Government was partially released of its liability as a guarantor in respect of the recipient members of the GCMMFL.

14. Since the State Government cannot make any appointment on the Board of Directors of these petitioner Unions, the question of the eligibility of the nominees does not survive.

15. That brings us to the last contention of the petitioners that the members of the Committee i.e. the Board of Directors can, after a meeting is convened for the purpose, elect a Chairman of the Board even in absence of the Collector or his authorised person who fails to turn up for presiding over such meeting. The grievance was that even though the Managing Director had convened the meeting on 13.9.1995, it had to be adjourned to 22.11.1995 because the Collector did not turn up to preside over the meeting as was expected of him under Section 145Z of the Act. Even on the adjourned date, he did not turn up. It is apprehended that the Collector by remaining absent may bring about a situation where the Chairman of the Board of Directors is not elected and if a period of six months passes, it may then be said that the Committee of management though elected was not functioning, in which event, a custodian may come to be appointed under Section 74D of the Act. The stand of the State Government was that no meeting can be held unless the Collector presides over the meeting for the purpose of electing the Chairman of the Board of Directors under Section 145Z of the Gujarat Co-operative Societies Act, 1961. The provisions of Section 145Z of the said Act, read as under:-

"145Z. (1) This section shall apply only to election of officers by members of committees of societies belonging to the categories specified in Section 74C.

(2)After the election of the members of the committee, or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its bye-laws, but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf."

It will be noted from sub-section (2) of Section 145Z that any meeting of the committee convened for the purpose of the election of the officer or officers of the Society is required to be presided over by the Collector or an officer nominated by him in that regard. The election of the officers of the Society is required to be held as provided in its bye-laws. The provision is not confined only to the election of a Chairman. It will be seen that it would operate when the meeting of the members of Committee is convened after its election, for the purpose of electing the officers of the Society and also whenever election of such officer is due thereafter. The function of the Collector is only to preside

over such meeting and it is in the nature of his statutory duty. If he is not able to remain present and preside, there is a provision for meeting with such contingency enabling him to nominate an officer to go and preside over such meeting. The Collector or his authorised officer required to preside over the meeting is not concerned with the outcome of the election which is to be held in accordance with the bye-laws of the Society. Any cause which can justify his absence should be such as would be relevant to his being unable to come or his being unable to send an authorised person to preside over the meeting. The Collector cannot for extraneous reasons which have no bearing on the fact of his being able to remain present, refuse to attend the meeting. Doing so would amount to breach of a statutory duty imposed on him to preside over the meeting. It is however, clear that the officer or officers of the Society cannot be elected in a meeting of the members of the Committee which is not presided over by the Collector. That however, need not paralyse the functioning of the members of the Committee as has been apprehended by the petitioners. Under Section 74C(3) of the Act the Committee of management is elected by the General Body of members of the Society. It's tenure is determined from the date on which its first meeting is held, as provided by sub-section (2) of Section 74C. The constitution of the Committee of management does not depend on existence of an officer elected under Section 145Z. It therefore, cannot be said that the committee of management is not constituted until it's Chairman is elected. The elected members of the Committee of management can hold their first meeting which can be convened by a notice to be issued by the Managing Director. Convening of the first meeting of the Board of Directors does not depend on existence of Chairman. There is no statutory embargo on the Committee of management (unlike the provisions of Section 51(6) of the Gujarat Panchayats Act, 1993 which provide that at the first meeting of the Village Panchayat, no business other than the election of the Upa-Sarpanch shall be transacted), not to transact any business in absence of an officer of any Society elected in a meeting which is required to be presided over by the Collector or his authorised officer under Section 145Z. As provided by Section 74, the management of every Society shall vest in a managing Committee constituted in accordance with the Rules, Act and the Bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed on it. Therefore, a managing committee which has been duly constituted can function even in absence of an officer including the Chairman of the Board of Directors who may be required to be elected according to the bye-laws in a meeting which is to be presided over by Collector under Section 145Z of the Act. Therefore, a meeting of the Board of Directors could have been convened to transact other business though at such meeting the election of an officer including the Chairman

of the Board of Directors could not have been the agenda in absence of the Collector presiding over the meeting. Bye-law 16.5 of the Bye-laws of the petitioner Kheda District Co-operative Milk Producers' Union Limited provides for the first meeting of the Board of Directors after the Annual General Meeting which is required to be called within one month of the Annual General Meeting and in that meeting all the members of the Board are required to elect the Chairman and Vice-Chairman. There is no embargo even in the bye-laws against transacting other business in that meeting. The provision contained in Bye-law 16.7 provides that Chairman and in his absence Vice Chairman shall preside over the meeting in the Board and in the absence of both of them, the Directors present at the meeting shall elect one of them as the Chairman of the meeting. Therefore, in a meeting of the Committee of management i.e. Board of Directors which is convened, eventhough the subject of electing a Chairman of Board of Directors cannot be taken up in absence of the Collector, the work in regard to other matters can be proceeded with by electing a Chairman of the meeting. Electing such Chairman of the meeting would not amount to electing Chairman of the Board of Directors. When the management of the Society is entrusted to the Committee of management i.e. Board of Directors, it cannot be paralysed by the fact that the officers are not getting elected due to absence of the Collector to attend the meeting called under Section 145Z of the Act. The Board can start functioning as per the bye-laws even in absence of the Officers elected, though ordinarily, the Board of Directors would find it more convenient to immediately elect its officers. The petitioners need not apprehend that the managing Committees will be treated as non-functioning merely from the fact that the Chairman of the Board of Directors is not elected, for they can still convene meetings and transact other business by electing a Chairman of the meeting. This course will prevent stalemate in the functioning of the managing Committee of a Society which is entrusted with statutory functions. The course of the Board of Directors being able to function in respect of all other matters even when the Chairman of the Board of Directors is not elected is open, since there is no embargo on the Board of Directors preventing it to transact any other business at the first meeting. Since the new Committee of management can function even in absence of officers, so that it can discharge its statutory functions, the question of its being branded as a Committee not functioning merely on the ground that Chairman of the Board of Directors is not elected will not arise, if it discharges other functions for the management of the Society.

16. Under the above circumstances, the impugned orders made by the State Government in these petitions nominating its representatives on the Board of Directors of these two

petitioners under Section 80(1) of the said Act are hereby set aside. The respondent concerned Collector is hereby directed to act as per the provisions of Section 145Z (2) for presiding over the meetings of the Board of Directors of the petitioner Unions which may be convened for the purpose of electing the Chairman and other officers of the Society under Section 145Z of the said Act. Rule is made absolute accordingly with no order as to costs in each of these matters.
