

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1699 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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BHAJNA SEVA SAHKARI MANDALI LTD (PROPOSED)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1699 of 2001
MR TUSHAR MEHTA for MR KETAN D SHAH for Petitioner No. 1-2
..... for Respondent No. 1-4
MR HARIN P RAVAL for Respondent No. 5
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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 31/07/2002

ORAL JUDGEMENT

1. This Court on 24-7-2002 had issued notice for final disposal. Mr.Tushar Mehta, learned Counsel appearing on behalf of the petitioners states that the respondents are served by direct service.

2. Heard Mr.Tushar Mehta learned Counsel for the petitioners, Mr.H.P.Raval, learned Counsel for respondent No.5, and Ms.Devani, learned AGP for respondents No.1, 2, and 3.

3. The contention raised on behalf of the petitioners is that it has come on record and even rather both the Appellate Authority as well as the Revisional Authority have found that after the order dated 30-10-1998 in Appeal No.101/1998, the opportunity of hearing was required to be given to respondent No.5 and thereafter the fresh order is required to be passed. However, both the Appellate Authority as well as the Revisional Authority, while quashing the order of granting registration have not left the question open for the purpose of remand.

4. It has been submitted that normally when the order is quashed on account of procedural lapse, the consequential order for giving opportunity of hearing to the party concerned is passed, which has not happened in the present case. There is no dispute on the point that the order dated 30-10-1998 passed by the Additional Registrar in Appeal No.101/1998 is not complied with. The order came to be passed on 30-10-1998 and the registration has been granted on 24-12-1998. When the registration came to be granted the order dated 30-10-1998 was already in existence. In spite of the same, the Authority while granting registration has not considered the said aspect. As a matter of fact, the Appellate Authority and the Revisional Authority in terms have found that the order dated 30-10-1998 in Appeal No.101/1998 is not complied with. As a consequence thereof, the position shall be that the order of granting registration has been passed in breach of the order passed by the Appellate Authority dt. 30-10-1998 and, therefore, while quashing the order of the registering Authority, the Additional Registrar (Appeals), while passing the order in Appeal No.174/1994 ought to have further directed that the matter shall be reconsidered in light of the observation made in the order dated 29-9-1999 and also as directed in the order dated 30-10-1998 in Appeal No.101/1998. The said aspect is also lost sight of by the State Government while exercising the revisional jurisdiction against the order in appeal. In my view, both the Authorities have failed to exercise jurisdiction to that extent and, therefore, the order of the lower Authority will have to be modified accordingly.

5. In view of the above, while maintaining the order

dated 29th September, 1999 as well as the order dated 4th August, 2000, it is directed that the Competent Authority, after taking into consideration the observations made in the order dated 30-10-1998 in Appeal No.101/1998 and also the observations made in the order dated 29-9-1999 in Appeal No.174/1998 and the order dated 4-8-2000 in Revision Application No.119/2000 shall consider the question of registration after giving opportunity of hearing to respondent No.5, within a period of three months from the date of receipt of the order of this Court. The petition shall stand allowed to the aforesaid extent. No cost.

31-7-2002 (Jayant Patel, J.)

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