

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4339 of 1999

and

SPECIAL CIVIL APPLICATION No 4180 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  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? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

-----  
NARENDRAKUMAR GIRDHARLAL PARMAR

Versus

STATE OF GUJARAT  
-----

Appearance:

1. Special Civil Application No. 4339 of 1999  
MR BM MANGUKIYA for Petitioner No. 1  
NOTICE SERVED BY DS for Respondent No. 1-2  
DS AFF.NOT FILED (R) for Respondent No. 3  
MR SHIRISH JOSHI for Respondent No. 4
  2. Special Civil Application No. 4180 of 1999  
MR SUDHA GANGWAR for Petitioner No. 1  
MR PK JANI for Respondents
- 

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI  
Date of decision: 30/11/2004

ORAL JUDGEMENT

1. The petitioners have by way of this petition challenged the legality and validity of the action of the respondents in not implementing the directions issued by the State Government to reserve the post of the Scheduled Tribes and Scheduled Castes.

2. Heard the learned advocates for the respective parties. It appears that the issue involved in these petitions is squarely covered by the decision of this Court in Special Civil Application No.8361/2003 dated 21st July, 2004 and more particularly, in view of para 13 to 18 thereof, which reads as under :-

13. There is no dispute on the point that when the notification dated 5-4-1982 was issued Section 74B, as it existed, was on the statute book as referred to hereinabove. Even if the notification is considered, the same is issued in exercise of the powers conferred by Sub-section (1) of Section 74B of Gujarat Co-operative Societies Act, 1961 and the said exercise of the power is on 5-4-1982. Therefore, when after 26-4-1982, Section 74B is substituted by Gujarat Act No. 23 of 1982, the exercise of the power by the State Government of issuing the notification on 5-4-1982 is no more continued to remain in force and, therefore, when Section 74B as then was in existence did not continue to remain on statute book, in normal circumstances unless it is expressly saved by any provisions of law, the notification dated 5-4-1982 would automatically lapse. It is not brought to the notice of the Court that such notification was saved by Gujarat Act No. 23 of 1982. Under these circumstances, it may not be necessary for this Court to examine the aspects for challenge to the notification dated 5-4-1982 on the ground as to whether such notification would apply to the petitioners or on the ground that whether such notification is legally valid or deserves to be quashed and set aside or not.

14. Even if Section 74B then in existence is

considered with Section 74B which is on the statute book, it appears that the State Government has power by general or special order to provide for reservation of two seats, one for the persons belonging to the Scheduled Castes or Scheduled Tribes or both Scheduled Castes and Scheduled Tribes, but as per Section 74B of the Act now on statute book before exercise of such power, it is necessary for the State Government to consider the population of Scheduled Castes and Scheduled Tribes in the area of operation of the Society. Similarly as per the provisions of Section 74B, the State Government has power to issue general or special order for reservation of one seat for small and marginal farmers. It appears that the District Registrar in all the impugned communication, by total non-application of mind, and only on the basis of the government notification/order dated 5-4-1982, has directed for compliance of the same to the concerned petitioner societies. As such, on reasonable construction for such exercise of power under Section 74B of the Act, it can be said that the intention of the legislature is to give power to the State Government to make reservations in the Managing Committee of the Society for Scheduled Castes and Scheduled Tribes or for small and marginal farmers. It may be that while exercising the power, the State Government may be guided by its on policy, but in a case where the general or special order is to be issued for such purpose, it would be necessary for the State Government to consider the population of Scheduled Castes and Scheduled Tribes in the area of operation of the Society concerned. Such exercise of power in all cases cannot be construed for each society separately, but it can be for such Societies having similar character. For example, after considering population of Scheduled Castes and Scheduled Tribes in any

Taluka, the State Government may provide for giving representation or making reservations for seats in the Managing Committee of a Society having working area of Taluka and thereafter may also provide for reservations for whole Taluka. It may be that while considering the said aspect, the State Government may also consider the actual representation of small and marginal farmers in a Co-operative Society where such reservation is to be made. It will be for the State Government to consider the details and to exercise the power under Section 74B. If a special order is issued by the State Government for a specific Coop. Society, then in that case, the aforesaid exercise of power at the level of the State Government may be required for that specific society. However, in a case where general orders are issued and when such orders are to be implemented in a particular Coop. Society, it may be for the officer concerned, may be District Registrar or any other competent Authority to examine the other remaining relevant aspects and then to give effect to the orders which are passed by the State Government in general for the Societies having similar character namely Taluka, District, State level etc., or similar area of operation.

15. As such if aforesaid is considered for examining the legality of the Government order dated 5-4-1998, it appears that the same are not considered. Moreover, if the impugned communications issued by the District Registrar are considered, it is apparent that none of the aspects is examined even by him which were required to be considered and the District Registrar concerned has addressed the communications to the concerned petitioner Societies without even gathering information as to whether there is representation of small and marginal farmers in the Managing Committee or not and, therefore, the communications issued by the District Registrar are without proper application of mind and hence the

same would be rendered violative of Article 14 of the Constitution of India.

16. As regards the contentions of the learned counsel appearing for the petitioners that there is no question of representation of small and marginal farmers in a preliminary level Coop. Bank, I am of the view that it may not be necessary for this Court to examine the said aspect at this stage. If any person is to be given representation as the member of Managing Committee, such person should be having the capacity as the member of that Society. If the byelaws of the Bank provides for membership of farmers, then the question may also arise for giving representation. If the byelaws do not provide, the Government may provide for necessary amendment in the byelaws unless it is prohibited by the policy of the Government for any banking business. As such it will be for the Government to consider the said aspects and to take appropriate decision, but it cannot be accepted that in no primary level Coop. Bank there will be any person holding membership, who is small or marginal farmer.

17. Even otherwise also the exercise of the power on the part of the authority in an omnibus manner cannot be permitted in the eye of law. The reference may be made to the decision of this Court case of "Agricultural Produce Market Committee, Borsad & Ors. v. State of Gujarat & Ors.", reported in 2003 (1) GCD 134. It will be for the State Government or the authority as the case may be, in view of the observations made hereinabove to examine and to give appropriate and suitable directions for giving representation and also for giving effect to the order, if any, passed by the State Government in exercise of the power under Section 74B of the Act.

18. In view of the aforesaid discussion, the notification dated 5-4-1982 issued by the State Government in purported exercise of

the power under Section 74B (as then existed) cannot be enforced against the petitioner Society concerned. The impugned communications issued for the District Registrar, on the basis of the said notification dated 5-4-1982 of the State Government consequently are also quashed and set aside. However, it will be open for the State Government to issue a general or special order in exercise of the power under Section 74B of the Act (now on statute book) after taking into consideration the observations made by this Court hereinabove, and to take further action in accordance with law.

3. On the facts of the case, the above directions are squarely applicable to the case of the petitioners. Therefore, the present petitions are disposed of in terms of those directions. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/