

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 8462 of 2024**

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SHREE CHOTILA MILK PRODUCERS COOPERATIVE SOCIETY LTD. &
ANR.
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR BHARAT T RAO(697) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1
MR VC VAGHELA(1720) for the Respondent(s) No. 5
MS POOJA ASHAR, AGP for the Respondent(s) No.3,4

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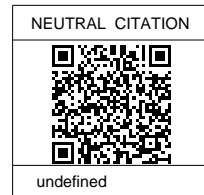
CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 21/06/2024

ORAL ORDER

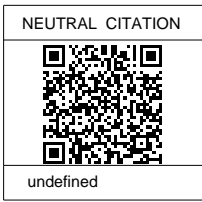
1. Heard Mr. Bharat T. Rao, the learned advocate appearing for the petitioners, Ms. Pooja Ashar, the learned AGP appearing for the respondents No.3 and 4 and Mr. V. C. Vaghela, the learned advocate appearing for the respondent No.5.

2. The petitioners herein are members of the respondent No.5 Society which is a Cooperative Societies registered under the provisions of the Gujarat Cooperative Societies Act, 1961



(hereinafter referred to as “the Act, 1961). The District level cooperative milk producers' union having plant at Wadhwan G.I.D.C. and is also having chilling centre at Patadi and collecting milk from its area of operation through B.M.C. The petitioner herein are milk producer Cooperative Societies registered under the Act, 1961 and engaged in the business of collecting milk from the members and thereafter the milk is being transported to the respondent no.5 through vehicle deployed by respondent no.5 daily regularly in the morning and evening. The administration and management of the petitioner society is being looked after by the Managing Committee of the respective societies.

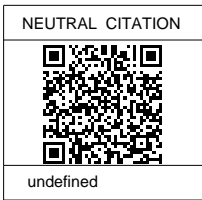
3. By way of present petition it is the case of the petitioner herein that the amendment to the bye-law No.17.1.1(3) dated 16.8.2019 (page-33) Annexure-B by the respondent No.5 has been made to facilitate the present Board of Directors of the respondent No.5 that, one seat elected uncontested from this category because the respondent no.5 is



not giving NOC or permitting to allow to register new society of S.C./S.T. milk producers for the reasons best known to the respondent.

4. It is the case of the petitioner that the reservation for S.C./S.T. seat has to be by rotation and it is to be rotated alphabetically Taluka wise whether there is S.C./S.T. in a particular Taluka or not. If there is no society of S.C./S.T. in a particular Taluka, then the seat may remain vacant. But by amending bye-laws, restriction cannot be put against the provisions of Sec.74(1B) of the Act.

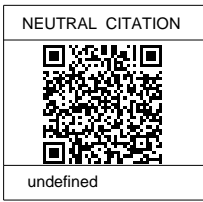
5. It is the case of the petitioner that the term of the present Managing Committee of respondent no.5 is expiring on 1.8.2024 and, therefore, now election is due. On account of election of Loksabha, the election has been postponed by the Govt. of Gujarat by Notification No.GHKH/42/2024/GCS/10/2020/115/CHH dated 18.3.2024 and intimation to that effect has been given by the respondent no,4 to the Vice Chairman



of respondent no.5 that the proposal sent by respondent no.5 to hold election will be sent to Collector after 15.6.2024.

6. It is the case of the petitioner that the respondent no.5 has forwarded proposal to the respondent no.4 for holding election of the Board of Directors of respondent no.5 for the term 2024 25 to 2028-29. The said proposal is already lying with the office of the respondent no.4 but the respondent no.4 has refused to provide the copy thereof despite request made by the petitioner to provide the same vide letter dated 25.5.2024.

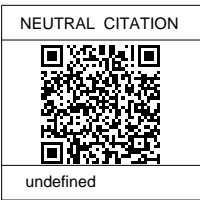
7. It is the case of the petitioner that on 23.4.2024, 10 primary milk producers cooperative societies affiliated with the respondent no.5 have made representation to the respondent no.4 inviting attention of the bye-law no. 17.1.1 of respondent no.5 and requested that reservation for one S.C/S.T. seat should be Taluka wise and it should be rotated alphabetically. The request was made that the rotation has not been made



and it is clarified that it should be rotated Talukawise alphabetically and this specific mention should be there in the proposal. The said communication is dated 23.4.2024. The said communication was replied by the respondent No.4 by communication dated 14.5.2024 wherein it is stated that the power is vested with the Deputy Collector who is holding election of the respondent no.5. Pursuant thereto, the petitioner also addressed communication to the District Registrar on 14.5.2024 and to the Collector on 20.5.2024 and reiterated the aforesaid request.

8. It is the case of the petitioner that since in earlier term the seat was in Limbdi Taluka, now is the turn of Wadhwan Taluka and the same may be incorporated in the Notification. In light of the aforesaid facts, present petition is filed invoking Article 226 of the Constitution of India and has prayed for the following reliefs :-

“(A) To admit and allow this petition.



(B) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent nos.3 & 4 to provide for reservation of one seat for S.C./S.T. by alphabetical rotation in Wadhwan Taluka while publishing notification for the election of Board of Directors of respondent no.5 for the term 2024-29 for the reasons stated in the Memo of Petition and in the interest of justice.

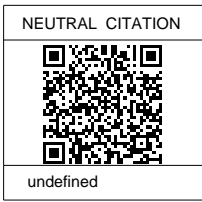
(C) Pending admission, hearing and final disposal of the above Special Civil Application to restrain the respondent nos.3 & 4 from publishing notification for the election of the Board of Directors of respondent no.5 for the term 2024-29 without providing for reservation of one seat for S.C./S.T. by alphabetical rotation in Wadhwan Taluka for the reasons stated in the Memo of Petition and in the interest of justice.

(D) To grant ad-interim relief in terms of Para 39(C).

(E) The Hon'ble Court may kindly be pleased to grant any other appropriate relief as the nature circumstances of the case may require.

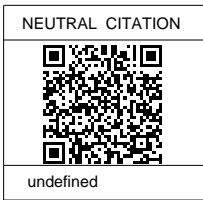
(F) To award the cost of this petition.”

9. Mr. Bharat T. Rao, the learned advocate appearing for the petitioners placing reliance on the aforesaid facts submitted



that the amended Rule 7.1.1(3) provides for one seat to be reserved for S.C./S.T. and the same should be rotated taluka-wise. It is submitted that the bye-law No.17.1.1 amended on 14.10.2013, more particularly Sub-rule (3) providing “one representative of the Scheduled Caste and Scheduled Tribe from Milk Producing Society of the Federation (This seat shall rotate one by one in Talukas)” was just and proper. It was submitted that the aforesaid amendment under Section 13(2) of the Act in the bye-law which came into effect in the year 2019 is contrary to the Act. It was submitted that the amendment to the bye-law No.17.1.1(3) has been made to facilitate the present Board of Directors of the respondent No.5 to get certain one seat elected uncontested from this category because the respondent No.5 is not giving NOC or permitting to register new society of S.C./S.T. Milk Producer for the reasons best known to them.

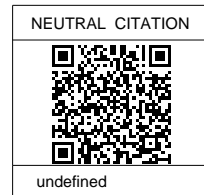
9.1 Mr. Rao, the learned advocate submitted that reservation of S.C./S.T. seat has to be by rotation and it has to be rotated



alphabetically taluka-wise whether it is S.C./S.T. in a particular taluka or not. If there is no society of S.C./S.T. in the taluka then the seat may remain vacant. By amending the bye-laws restriction cannot be put against the provisions of Section 74(1) (b) of the Act.

9.2 It was submitted that in view of the aforesaid the respondents No.3 and 4 be directed to provide reservation of one seat for S.C./S.T. by alphabetical rotation in Vadhwan taluka while publishing notification of election of Board of Directors of the respondent No.5 for term 2024-29 for the aforesaid reasons. It is submitted that while issuing the said notification the recommendation made by the respondent No.5 be accordingly modified.

10. Ms. Pooja Ashar, the learned AGP appearing for the respondents No.3 and 4 at the outset submitted that the petitioner has no locus to file the present petition. It is submitted that the petitioner No.1 is not a member of the

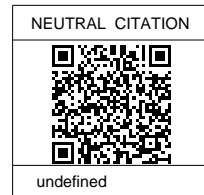


S.C./S.T. community, similarly the petitioner No.2 is also not a member of the S.C./S.T. community. The grievance of the petitioner is with regard to shifting the seat reserved for S.C./S.T. community from Limdi to Vadhwan constituency.

10.1 It is submitted that in light of the aforesaid, no fundamental right of the petitioner stands abridged by the action of the respondent No.5. It is submitted that the respondent No.5 amended the bye-laws No.17.1.1(3) on 18.6.2019. The petitioner herein participated in the said meeting and accorded approval for the amendment. It is now not open for the petitioner to challenge the said amendment dated 18.6.2019.

10.2 It is also submitted that the petitioner has efficacious statutory remedy to challenge the said amendment under Section 153 of the Act if the petitioner is aggrieved by the said action of the respondent No.5 in amending the bye-laws.

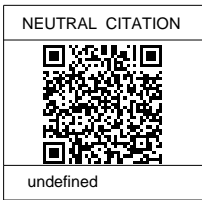
10.3 It is also submitted that the present petition is



premature in light of the fact that if the proposal is sent by the respondent No.5 for issuance of the notification with respect to the ensuing election of the Executive Committee of Members of the respondent No.5.

10.4 It is submitted that the respondent – State has not issued any notification pursuant to the said proposal and in view thereof in absence of any notification issued by the respondents No.3 and 4 the prayers as prayed for are required to be rejected on the aforesaid ground alone.

10.5 It is submitted that the prayers as prayed for in the petition seeking mandatory relief to direct the respondents No.3 and 4 to provide reservation for one seat of S.C./S.T. by alphabetical rotation to Vadhwan taluka by publishing notification for election of Board of Directors for the respondent No.3 for the term 2024-29 in view thereof is the prayer which is required to be rejected. The petitioner cannot seek mandatory direction qua the respondents No.3 and 4. The

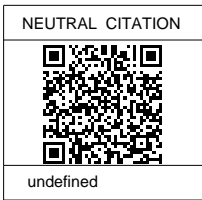


respondents No.3 and 4 shall issue the notification in accordance with the amended bye-laws in accordance with law.

11. V. C. Vaghela, the learned advocate appearing for the respondent No.5 at the outset submitted that the petitioner herein has objected to the filing of the affidavit by the deponent and in view thereof has filed an additional affidavit duly affirmed by the General Manager of the Society.

11.1 Mr. Vaghela, the learned advocate placing reliance on the affidavit-in-sur-rejoinder submitted that the deponent has delegated the power to the Senior Officer by Office Order dated 8.6.2024. The aforesaid exercise has been undertaken in consonance with Section 2(14) of the Act, 1961.

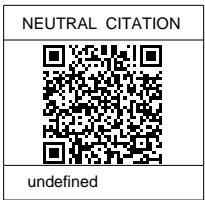
11.2 It is submitted that de-limitation of the constituency is to be prepared by the Chief Officer and in the facts of the present case also the de-limitation has been carried out by the Managing Director of the Union.



11.3 It is submitted that it is only in the present case that the Senior Officer has been delegated the power to file reply and defend the union and to remain present in the Court. The said reply is also filed under the supervision of the deponent of the sur-rejoinder.

11.4 Mr. Vaghela, the the learned advocate submitted that the amendment in the bye-laws is in consonance with Section 74(1)(b) of the Act. It is submitted that the respondent No.5 has made a proposal to the respondent No.3 to reserve Limdi taluka for S.C./S.T. category, however the petitioner can raise such contention before the Election Officer as provided under Rule 82 of the Rules, 1982 after an election is concluded.

11.5 It is submitted that if the petitioner were aggrieved by the amended bye-laws, remedy lies by challenging the same under Section 153 of the Act or even Revision Application under Section 155 of the Act. The petitioners are trying to overreach the said statutory remedy provided under the Act.

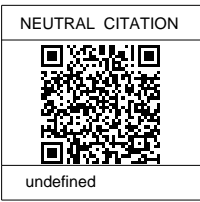


11.6 Placing reliance on the aforesaid submissions, it is submitted that the present petition be dismissed as being premature. The petitioners having not challenged the bye-laws though the same having been amended as back as in the year 2019, the present petition having been filed at the fag end when the proposal for ensuing election is forwarded by the respondent No.5 to the respondents No.3 and 4.

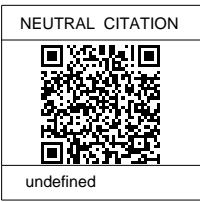
12. Heard the learned advocates appearing for the respective parties.

12.1 The petitioners herein are members of the respondent No.5 - Surendranagar Jilla Sahakari Dudh Utpadak Sangh Ltd. The petitioner is also Vice Chairman of the respondent No.5.

12.2 The bye-law No.17.1.1(3) of the Society have been amended by the respondent No.5 under Section 13 of the Act read with Rule 6 of the Cooperative Societies Rules, 1965 on



16.8.2019 (page-33). There are only two societies registered with Scheduled Caste Community in the entire area of the respondent No.5. In view thereof, the seats for reserved category were remaining vacant and, therefore, the bye-law came to be amended to provide representation of the S.C./S.T. community to bring the same in conformity with the Act. Therefore, as required under Section 13 read with Section 6 of the Act, the annual general meeting was convened on 18.6.2019. The Agenda was issued. The annual general meeting was held and Resolution No.8 was passed in the annual general meeting wherein the petitioner No.1 - Shri Alpeshbhai Bhagvanbhai Samand was present and though having participated in the meeting, did not object to the said resolution. The name of the petitioner No.1 appears at Serial No.286. The petitioner No.2 did not remain present in the meeting and did not oppose the amendment in the bye-laws. On said resolution having passed unanimously, the proposal was prepared and forwarded to the District Registrar. The District Registrar forwarded the same to the State Registrar and



the State Registrar vide order dated 29.6.2019 approved the amendment of bye-law No.17.1.1(3) dated 16.8.2019 of the bye-laws.

12.3 The petitioners No.1 and 2 are qualified to contest ensuing election and do not belong to S.C./S.T. community. In view thereof, the petitioners cannot be said to be persons aggrieved with regard to the rotation of the seat reserved for S.C./S.T. from Limdi to Vadhwan constituency.

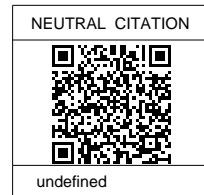
13.1 In light of the aforesaid, it is apposite to refer to Section 74(1)(b) of the Act which reads thus :-

“Section 74(1B) in The Gujarat Co-Operative Societies Act, 1961

(1B) (i) There shall be reserved one seat for the Scheduled Castes or the Scheduled Tribes and two seats for Women in the managing committee of every society consisting of individuals as members and having members from such class or category of persons.

(ii) One seat may be reserved for the persons who are small farmers and marginal farmers.

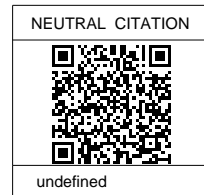
Explanation. - The expressions "marginal farmer" and "small farmer" shall have the meanings respectively assigned to them in clauses (g) and (p) of section 2 of the Gujarat Rural Debtors Relief Act, 1976 (President's Act No. 35 of 1976);”



Section 74(1)(b)(i) provides one seat be reserved for the Scheduled Castes or the Scheduled Tribes and two seats for Women in the managing committee of every society consisting of individuals as members and having members from such class or category of persons. The impugned amendment in the bye-law also provides for reservation of one seat for S.C./S.T. by rotation.

Amended bye-law provides for rotation of seats in the constituency which has a qualified person to contest the election and if there is no other qualified person to contest the election from any other constituency then the seat would remain vacant.

13.2 In light of the aforesaid, the bye-law stands amended in accordance with law. If the petitioners were aggrieved by the amendment in the said said bye-law, the petitioners could have challenged the same by filing an Appeal under Section 153 of the Cooperative Societies Act or a Revision. Since the petitioner was present in the meeting and consented the amendment in bye-law, the petitioners herein are now



estopped from raising the grievance. Further the respondent No.5 has made a proposal to the respondent No.3 for holding the election which is pending before the respondent No.3.

13.3 It is apposite to refer to Sections 153 and 155 of the Act which read thus :-

“Section 153 in The Gujarat Co-Operative Societies Act, 1961

153. Appeals.

(1)An appeal against an order or decision under Sections 4, 9, 11, 13, 17, 19, 36, 81 and 160 shall lie,-

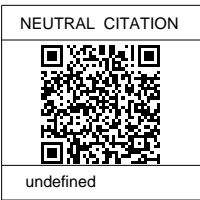
(a) if made or sanctioned or approved by the Registrar, or an Additional or Joint Registrar on whom powers of the Registrar are conferred, to the State Government.

(b) if made or sanctioned by any person other than the Registrar, or an Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2)An appeal against an order of a liquidator under Section 110 shall lie-(a)to the State Government if the order was made with the sanction or approval of the Registrar, and

(b)to the Registrar in any other case.

(3) An appeal against an order or decision under Sections 82, 90, 93 and any order passed by the Registrar for paying compensation to a society, and any other order for which an appeal to the Tribunal has been provided under this Act, shall lie to the Tribunal.



(4) An appeal under sub-section (1), (2) or (3) shall be filed within two months of the date of the communication of the order or decision.

(5) The procedure to be followed in presenting and disposing of appeals under this section or under any other provisions of this Act shall be such as may be prescribed.

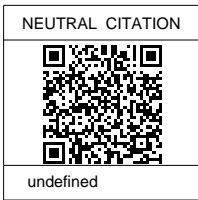
(6) As provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act; and every such order, decision or award shall be final, and where any appeal has been provided for, any order passed on appeal shall be final and no further appeal shall lie against it.

Section 155 in The Gujarat Co-Operative Societies Act, 1961.

155. Power of State Government and Registrar to call for proceedings of subordinate officers and to pass orders thereon.

- The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them, except those referred to in sub-section (9) of Section 150, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government, or the Registrar, that any decision or order or proceedings so-called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard pass such order thereon as it or he may deem just.”

13.4 It is also apposite to refer to Rule 83 of the Rules which



reads thus :-

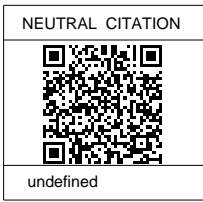
“83. Grounds for which a candidate other than the returned candidate may be declared to have been elected.- If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the [Tribunal] is of opinion

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained a majority of the valid votes;

the [Tribunal] shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

14. The preliminary objection taken by Mr. Rao, the learned advocate appearing for the petitioners that the reply filed by the respondent No.5 not be taken on record, does not appeal to this Court in view of the fact that the affidavit-in-reply duly produced at page-55 filed on 12.6.2024 is affirmed by the Senior Officer of the respondent No.5 having been authorized to file the said reply under Section 2 sub-clause (14) of the Act. A further reply is also filed and placed on record by the



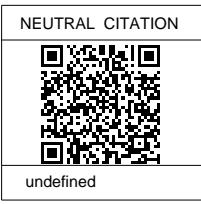
respondent No.5 dated 15.5.2024 duly affirmed by the Managing Director of the respondent No.5 which is taken on record. Both the replies are taken on record.

15. In light of the aforesaid, no notification having been issued, the present petition is pre-mature. It is always open for the petitioners to take appropriate steps in accordance with law once the notification is issued by the respondents No.3 and 4, if the petitioners herein are aggrieved by issuance of the said notification.

16. In light of the aforesaid, no interference is called for to exercise extraordinary jurisdiction under Article 226 of the Constitution and the present petition fails and stands disposed of.

(VAIBHAVI D. NANAVATI,J)

At the time when this order is pronounced, Mr. Rao, the learned advocate appearing for the petitioners submits that Notification dated 19.6.2024 for election to the Managing



Committee of the Surendranagar Jilla Sahakari Dudh Utpadak Sangh Ltd., Vadhwan is duly issued/published by the respondent – State.

In light of the aforesaid, it is open for the petitioners herein to take appropriate steps in accordance with law, if the petitioners are aggrieved by issuance of the said Notification.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)