

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.05.2017

+ **O.M.P.(I) 1/2017**

MUKUND L. ABHYANKAR

..... Petitioner

Versus

**CHIEF EXECUTIVE OFFICER, NATIONAL
FEDERATION OF URBAN CO-OP. BANK AND
CREDIT SOCIETIES LTD. AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Saurabh Kirpal, Mr. Ninad Laud, Mr.
Dilip Annasaheb Taur & Mr. Karan
Mathur.

For the Respondents : Mr S. Rajappa and Dr Puran Chand.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

- “a. Stay the email notice dated 07.02.2017 [*sic*] addressed by the Chief Executive of the NAFCUB, Respondent No.1 herein to the Petitioner until the commencement of arbitral proceedings;
- b. Restrain the Respondent Nos 1 & 2 from conducting the No Confidence Motion proposed for 27.02.2017 until the commencement of arbitral proceedings;”

2. The petitioner was elected as the President of the National Federation of Urban Co-operative Bank and Credit Societies Ltd. (hereafter 'NFSL') and has filed the present petition, *inter alia*, for restraining the respondents from moving a no confidence motion to remove the petitioner from the post of President of NFSL.

3. NFSL is an apex body of Urban Cooperative Banks and Credit Societies Ltd. in the country and is registered under the Multi-State Co-operative Societies Act, 2002 (MSCS Act). The petitioner is a Director of the Cosmos Co-operative Bank Ltd. and in that capacity was elected as the President of NFSL on 06.02.2014. He was removed from the post of President by a no confidence motion allegedly moved on 25.02.2016 in the 147th meeting of the Board of Directors of NFSL. The said meeting as well as the subsequent meeting formed the subject matter of disputes between the parties which were referred to the sole arbitrator, appointed by the Central Registrar of Co-operative Societies.

4. The sole arbitrator delivered an award on 29.09.2016 accepting the petitioner's challenge to the 147th meeting and 148th meeting held on 20.03.2016. The execution petition for enforcement of the said award was filed by the petitioner and is pending before this Court. Notice in the said petition (Ex. P. 5/2017) was issued on 07.02.2017. In the meanwhile, the Chief Executive Officer of NFSL (respondent no.1) issued an email dated 08.02.2017 circulating a notice along with an agenda note for holding the 151st board meeting on 27.02.2017. The main item of the said meeting was to table and discuss the motion of no confidence against the petitioner as the President of NFSL. In other words, the said meeting was to be convened to consider the removal of the petitioner as the President of

NFSL. The petitioner caused a legal notice to be sent pursuant to the aforesaid email *inter alia* claiming that there was no provision for removal of the President of NFSL prior to completion of his tenure.

5. This is also the principal ground urged on behalf of the petitioner for interim reliefs claimed in the present petition.

6. The present petition was listed for the first time on 23.02.2017. On that date, the notice was issued and accepted by the learned counsel for the respondents, who sought time to file a reply. This request was acceded to. Although this court did not interdict the conduct of the meeting scheduled to be held on 27.02.2017, it was expressly directed that any business conducted at the meeting scheduled on 27.02.2017 would be subject to further orders that may be passed in this petition.

7. The only question that this court has been called upon to address at this stage is whether the Board of Directors of NFSL would have the power to remove the petitioner as the President of NFSL prior to completion of his tenure. This would also be the principal dispute before the arbitral tribunal and thus, it was pointed out to the counsel that any view expressed by this court on the controversy in question could also be construed as determinative of the principal dispute. Notwithstanding the aforesaid, the learned counsel invited this court to rule on the issue involved.

8. Admittedly, there is no statutory provision either in the Byelaws of NFSL (hereafter 'the Byelaws') or in the MSCS Act which provides for removal of the President. The tenure of the President is coterminous with the tenure of the Board of Directors. It is, thus, the case of the petitioner

that in absence of any statutory provision or express provision in the Byelaws of NFSL, the President of the society (NFSL) cannot be removed. This is disputed by the respondents, who apparently have the support of the majority of the Board of Directors. They claim that since the petitioner was elected by the Board of Directors, the said Board would also have the power to remove the President. According to the respondents, NFSL is a democratic institution and the power to remove an office bearer is implicit with the electoral body that has the power to appoint the President.

9. Mr Saurabh Kirpal, learned counsel appearing for the petitioner referred to the decision of the Full Bench of the Kerala High Court in ***S. Lakshmanan , President, Thiruvilwamal Weavers Co-operative Society v. V. Velliankeri Member of Board of Directors, Thiruvilwamala Weavers Co-operative Society Ltd and Ors.***: 2002 SCC OnLine Ker 53; the decision of the Bombay High Court in ***Hindurao Balwant Patil and Anr. v. Krishnarao Pashuram Patil and Ors.***: AIR 1982 Bom 216, and the decision of the Punjab and Haryana High Court in ***Jagdev Singh v. The Registrar, Co-operative Societies, Haryana and Ors.***: AIR 1991 P & H 149 in support of his contention that in absence of any express power to remove the president of a Co-operative Society, no such power could be inferred. He also referred to the decision of this court in ***Anil Agarwal & Ors. v. Institute of Chartered Accountants & Ors.***: (2000)ILR 1 Delhi 340 and the decision of the Supreme Court in ***Mohan Lal Tripathi v. District Magistrate, Rai Bareilly and Ors.***: (1992) 4 SCC 80. He contended, on the strength of these decisions, that the right to remove the elected representatives is a statutory right and the concepts of common law and equity remain strangers to election law. He argued that in the absence

of any statutory provision, the concepts of common law or equity could not be pressed into service for passing a no confidence motion.

10. Mr Kirpal also sought to distinguish the decision of the Supreme Court in **Vipulbhai M. Chaudhary v. Gujarat Co-operative Milk Marketing Federation Limited and Ors.**: (2015) 8 SCC 1. In that case, the Supreme Court had noted the decisions in the case of **S. Lakshmanan** (*supra*), **Hindurao Balwant Patil** (*supra*) and **Jagdev Singh** (*supra*) and held the said decisions to be inapplicable by virtue of the Ninety Seventh Amendment to the Constitution of India. He contended that it was not brought to the notice of the Supreme Court that the provisions of the Ninety Seventh Amendment to the Constitution were struck down by the High Court of Gujarat in **Rajendra N. Shah v. Union of India and Anr.**: 2013 SCC Online Guj. 2242 and although a Special Leave Petition had been preferred, the Supreme Court had not stayed the decision of the Gujarat High Court. He submitted that in the circumstances, the basic premises on which the decisions in the case of **S. Lakshmanan** (*supra*) and **Jagdev Singh** (*supra*) were held to be inapplicable, were nonexistent and, therefore, continued to be good law. He contended that the decision in the case of **Vipulbhai** (*supra*), rendered on the basis of Ninety Seventh Amendment to the Constitution, which was struck down, would not be applicable.

11. Mr Rajappa, learned counsel appearing for the respondents countered the submissions made by Mr Kirpal. He relied on the decision of the Gujarat High Court in the case of **Nandlal Bavanjibhai Posiya and Ors. v. Director of Agriculture Marketing and Rural Finance Gandhinagar and Anr.**: AIR 2002 Guj. 348 wherein the Gujarat High

Court had held that even in absence of the express provisions for passing a no confidence motion against the Chairman/Vice Chairman of a Agricultural Produce Market Committee, such motion could be validly passed for removing the office bearers from their posts. He also relied on the decision of a Division Bench of this Court in **Bar Council of Delhi v. Bar Council of India**: AIR 1975 Delhi 200; the decision of Punjab and Haryana High Court in **Haji Anwar Ahmed Khan v. The Punjab Wakf Board and Ors.**: AIR 1980 PH 306; and the decision of the Full Bench of the Kerala High Court in **WA No. 580/2015, decided on 25.07.2016** in support of his contention.

12. I have heard the learned counsel for the parties.

13. Admittedly, there is no provision in the MSCS Act or the Byelaws which provides for the removal of a president.

14. By virtue of Byelaw 6F of the Byelaws, every member, who is otherwise eligible, would have the right to vote in the general body meetings and would have the right to attend and take active part in the proceedings of the committee of which he/she is a member. Every member also has a right to participate in the election and contest for any post as per the provisions of the MSCS Act. Byelaw 9 of the Byelaws *inter alia* provides that the General Body of NFSL shall consist of one delegate from each member society.

15. Byelaw 10 of the Byelaws expressly provides that the affairs of NFSL would be managed by the Board consisting of directors constituted in accordance with Byelaw 10. It further provides that the Directors shall be elected at the Annual General Body Meeting for a period of five years

and the election procedure would be in accordance with Section 45 of the MSCS Act.

16. Byelaw 11 of the Byelaws provides for the powers and functions of the Board of Directors and is set out below:-

"11. Powers and functions of the Board of Directors

The powers and functions of the Board of Directors shall be:

- (a) To admit members;
- (b) To elect a president and two vice-presidents from amongst the members of the Board. The terms of the president & the vice-presidents shall be coterminous with that of the Board;
- (c) To interpret the organizational objectives and set up specific goals to be achieved towards these objectives;
- (d) To appoint Chief Executive and such other employees of the Federation as may be prescribed;
- (k) To delegate powers to the Executive Committee / sub-committees / President and Chief Executive subject to the provisions of the Act and Rules;
- (m) To take actions on all administrative and other institutions at national and international levels;"

17. Byelaw 13 provides for removal of the elected members by the General Body. Byelaw 15 provides for an Executive Committee and is set out below:

"15. Executive Committee

There shall be one Executive Committee consisting of one President, two vice-presidents and four members of

Board of Directors.

Four members shall form a quorum.”

18. Byelaw 16 provides for powers of the Executive Committee and functions as may be delegated by the Board of Directors. The Executive Committee also has the power to delegate any of its powers to the President, Vice President and Chief Executive of NSFL.

19. Byelaw 17 relates to the President and reads as under:-

“17. President

The President of the Federation shall be elected by the Board of Directors.

The President shall have the following powers:

- (i) To preside over the meetings of the Annual General Meeting, Special General Meeting, Board and Executive Committee and other Committees or sub-committees of which he is members.
- (ii) To approve and sanction expenditure on any of the items approved in the budget and such other expenditure as approved and sanctions by the Board / Executive Committee as the case may be.
- (iii) To exercise all powers delegated to him by the Board / Executive Committee and to delegate any of them to the Chief Executive.”

20. Before considering the question whether the Board of Directors has the power to remove the President by passing a no confidence motion, it is essential to examine the relevant byelaws.

21. A plain reading of the aforesaid Byelaws indicates that the President is to be elected by the Board of Directors amongst its members. The term

of the President is also expressly provided to be coterminous with that of the Board. The powers of the President are essentially to preside over the Annual General Meetings, Special General Meetings, Board Meetings and meetings of Executive Committee and other committees / sub-committees of which he is a member. He also has the power to approve and sanction expenditure on any of the items approved in the budget. More importantly, the President has the power to exercise all powers that are delegated to him by the Board or the Executive Committee.

22. As noted above, the President is also a member of the Executive Committee which is charged with the powers to decide the manner in which the funds of NFSL are invested; to prepare annual budget, to approve expenditures up to financial limits delegated by the Board; to nominate representation of NFSL to national and international events concerning co-operatives.

23. Thus, apart from the limited functions as expressly provided under the Byelaws, the President is entrusted with the functions and powers as delegated by the Board of Directors. Given the structure of the Byelaws, the role played by the President in absence of any confidence by the Board of Directors would, at best, be truncated; surely, the Board will not delegate any powers for him to exercise.

24. Having stated the above - and considering that neither the MSCS Act nor the Byelaws contain any express provision for removal of the President prematurely - the question whether the Board would have the power to pass a no confidence motion for removal of the President must be answered by addressing the question whether there is any implicit or

inherent power in the Board (or the electoral which elects its office bearers) to recall their elected appointees.

25. In the case of **S. Lakshmanan** (*supra*), the Full Bench of the Kerala High Court considered the question whether the President elected by the Managing Committee of a Co-operative society registered under the Kerala Co-operative Societies Act, 1969 could be removed by the Managing Committee by passing a no confidence motion. The Court held that the Managing Committee was a body elected by following the procedure as prescribed under the Kerala Co-operative Societies Act, 1969 and Rules framed therein and was guaranteed the tenure as prescribed under the byelaws. The Court further held that the Committee could be removed by the procedure as prescribed under the Kerala Co-operative Societies Act, 1969 before the end of its tenure by passing of a no confidence motion by the general body, which would result in removal of the Managing Committee as a whole and not of any particular individual. After referring to several decisions, the Full Bench held as under:-

"In the absence of a specific provision in the Kerala Co-operative Societies Act, 1969, the Rules framed thereunder and the Bye-laws of a Co-operative Society, the Managing Committee has no right to move or consider a motion for loss of confidence in the President, Vice-President or Treasurer or any other office-bearer of the Managing Committee elected in accordance with Rule 43 of the Rules".

26. The Division Bench of the Bombay High Court in **Hindurao Balwant Patil** (*supra*) arrived at a similar conclusion and held that the right of holding a post of the Chairman, Vice-Chairman and Office Bearers of the Local Co-operative was created by the statute and was subject to the

conditions laid down therein. In absence of any statutory provisions, the members of the Board were held to be prohibited from exercising any power for removal of the Chairman or the Vice Chairman. The relevant extract of the said decision reads as under:-

"18. In this context, it cannot be forgotten that the Chairman or the Vice- Chairman, though elected by the members of the Board, become office- bearers of the society as a whole after their election. They have a right to continue in office for five years which term is co-extensive with the term of the committee or the Board of Directors. The enactment itself provides for the removal of the members under certain circumstances only. When law has made specific provision in this behalf, it will not be open to adopt some other procedure to achieve the same object. By importing the doctrine of implied and inherent power or right to recall, the members of the board cannot be permitted to do indirectly what they are not permitted to do directly under any of the provisions of the Act, rules or the bye-laws. Power to recall is not inherent in the electorate. Therefore, in the absence of such a power it was not open to the members of the Board of Directors to remove the Chairman or the Vice Chairman by passing a mere resolution of vote of no-confidence. In the result, therefore, the resolution of no-confidence passed against the petitioners is set aside, it being ultra vires of the powers of the members of the Board. As a necessary consequence of this, the Chairman and Vice-Chairman are entitled to continue in office for the unexpired period of their tenure, obviously subject to the other provisions of the Act, rules and the bye-laws."

27. The decision in the case of ***Hindurao Balwant Patil*** (*supra*) was also followed by the Full Bench of the Punjab and Haryana High Court in ***Jagdev Singh*** (*supra*).

28. This Court in *Anil Aggarwal* (*supra*) rejected the writ petitions filed against the decision of the Institute of Chartered Accountants of India rejecting the request of the petitioners therein to pass a no confidence motion against the Chairman of the North India, Regional Council of the Institute of Chartered Accountants of India. This Court referred to the various decisions including the decisions in the case of *Hindurao Balwant Patil* (*supra*) and *Jagdev Singh* (*supra*) and held that in absence of a clear statutory power, the inherent and implied powers cannot be inferred to remove the office-bearers of the regional council.

29. The question as to whether a body which elects its representative would have the power to remove the office-bearers by passing a no confidence motion, in absence of any specific power, has been a subject matter of much debate before various courts and the courts have taken conflicting views.

30. A Full Bench of Gujarat High Court in *Nandlal Bavanjibhai Posiya* (*supra*) held that the Chairman/Vice Chairman of the Agricultural Produce Market Committee under the Gujarat Agricultural Produce Markets Act, 1963 could be removed by a motion of no confidence. In arriving at this conclusion, the court relied upon the provisions of Section 16 of the Bombay General Clauses Act, 1904. The court also interpreted the Rules, which provided for filling up of casual vacancy caused by the incumbent ceasing to hold office for any reason; the court reasoned that this would also encompass such incumbent ceasing to hold office by reason of being removed by way of a no confidence motion. The Gujarat High Court differed from the view of the Division Bench of the Bombay High Court in

Hindurao Balwant Patil (*supra*) and the decision of the Punjab and Haryana High Court in **Jagdev Singh** (*supra*).

31. This Court in **Bar Council of Delhi** (*supra*) considered a similar controversy in the context of the office of the chairman of a State Bar Council and observed that the common law relating to a holder of an office is that the body which has the authority to elect its chairman has the inherent and implied power to remove the chairman. This court relied on the provisions of the General Clauses Act, 1897 for reaching its conclusion that the chairman of the State Bar Council could be removed. A similar view was expressed by the Punjab and Haryana High Court in **Haji Anwar Ahmed** (*supra*) wherein the court held as under:-

"..... In view of the principles of common law stated above, until and unless there is a provision in the statute barring the removal of the Chairman by a vote of no confidence it has to be held that the members who had the power to elect the Chairman have the power to remove the Chairman by a majority of votes. This principle is also enshrined in the provisions of S. 21 of the General Clauses Act, 1897. A body of persons which has the power to elect its Chairman, has the power to remove him until and unless there is any bar signified in the provisions of the statute itself."

32. Insofar as the decision of this court in **Bar Council of Delhi** (*supra*) is concerned, the same is no longer good law. This Court had relied upon Section 16 of the General Clauses Act, 1897 in support of its conclusion, which was expressly rejected by the Supreme Court in **Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and Ors.: (2011) 9 SCC 573**, wherein the Supreme Court had held as under:-

"We are not able to accept the view taken by the High Court of Delhi in *Bar Council of Delhi* [(AIR) 1975 Del 200] in saying that solely with the aid of the General Clauses Act, the power to elect would deem to include power to remove by a motion of no-confidence."

33. In view of the above observation of the Supreme Court, the decision of this court in *Bar Council of Delhi* (*supra*) would no longer be applicable as the fundamental premise on which the decision rested was expressly rejected by the Supreme Court. The decision of the Punjab and Haryana High Court in *Haji Anwar Ahmed* (*supra*) also loses its persuasive value for the same reason; it too had relied upon Section 21 of the General Clauses Act, 1897 in support of its reasoning. The Gujarat High Court also drew support from its interpretation of Section 16 of the Bombay General Clauses Act, 1904 while drawing its conclusion and, thus, its persuasive value is also significantly diluted.

34. Before proceeding further, it would also be necessary to refer to the decision of the Supreme Court in *Mohan Lal Tripathi* (*supra*) wherein the Supreme Court had expressly observed as under:-

"2. Democracy is a concept, a political philosophy an ideal practised by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But electing representatives to govern is neither a 'fundamental right' nor a 'common law right' but a special right created by the statutes, or a 'political right' or 'privilege' and not a 'natural', 'absolute' or 'vested right'. 'Concepts familiar to common law and equity must remain stranger to Election Law unless statutorily embodied. Right to remove an elected representative, too, must stem out of the statute as 'in the absence of a constitutional

restriction it is within the power of a legislature to enact a law for the recall of officers'. Its existence or validity can be decided on the provision of the Act and not, as a matter of policy."

35. The Supreme Court in the case of *Jyoti Basu and Ors. v. Debi Ghosal and Ors.*: (1982) 1 SCC 691 held as under:-

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the

People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?"

36. In view of the aforesaid discussion, the fundamental principle that emerges is that election to a post is a matter of Statute and Byelaws and in absence of any statutory provision, rule or byelaw, there would be no inherent power to remove an elected person prior to him/her completing the tenure by passing a no confidence motion. Common law principles are not applicable in election law and unless there is a specific provision for recall of a person elected to a office, his tenure cannot be truncated. There is little scope for applying equitable principles or notions of democratic functioning for inferring with an implied power of recall.

37. Having stated the above, the next question to be examined is whether the decision of the Supreme Court in ***Vipulbhai M. Chaudhary*** (*supra*) can be considered as a binding precedent considering that the said decision was rendered in the context of the Ninety Seventh Constitutional Amendment which had been struck down by the Gujarat High Court in the case of ***Rajendra N. Shah v. Union of India and Anr.*** (*supra*).

38. In ***Vipulbhai's*** case, the appellant, Vipulbhai M. Chaudhary, was removed from the office of chairperson of Gujarat Co-operative Milk

Marketing Federation Limited by a no confidence motion. He challenged the same by filing a writ petition before the Gujarat High Court. The Hon'ble Single Judge following the Full Bench decision of the Gujarat High Court in *Nandlal Bavanjibhai Posiya* (*supra*), the decision of the Division Bench in *Motibhai R. Chaudhary v. Registrar of Co-operative Societies (under Gujarat Cooperative Societies Act, 1961): 2005 (1) GLH 270* as well as the decision of a Single Judge of the Gujarat High Court in *Narmadaben Parmar v. Taluka Development Officer, Kheralu.: 1998 (1) GLR 225* (under the Gujarat Panchayats Act, 1993) held that even in absence of any provision in the statute, a no confidence motion could be brought against elected office bearers. The Division Bench of the Gujarat High Court upheld the decision of the Single Judge by the order dated 10.01.2014 (passed in LPA No. 6/2014). The said decision was carried in appeal before the Supreme Court. At the outset, it is relevant to mention that although the Supreme Court dismissed the appeal, the court expressly clarified (in paragraph 53 of the said decision) that it had agreed with the view of the Gujarat High Court but for different reasons. Thus, the reasons that persuaded the Gujarat High Court to hold that a no confidence motion could be passed to remove the office bearer even in absence of any statutory provision, were not the reasons that persuaded the Supreme Court to accept the conclusion. A plain reading of the decision of the Supreme Court indicates that the court extensively referred to Part IX B of the Constitution of India, which was introduced by the Constitution (Ninety-seventh Amendment) Act, 2011 to emphasize that the democratic functioning of cooperative societies had been accorded a constitutional status. The court referred to its earlier decisions in *Bhanumati and Ors. v. State of Uttar Pradesh: (2010) 12 SCC 1*; *Pratap Chandra Mehta v. State*

Bar Council of Madhya Pradesh and Ors. (supra); and *Usha Bharti v. State of Uttar Pradesh and Ors.: (2014) 7 SCC 663* wherein the principles governing democratic institutions had been discussed and the courts had upheld the rights of the representative bodies to remove office bearers in whom the electoral body had lost their confidence. After referring to the aforesaid cases, the Supreme Court also observed that in all the aforesaid cases referred, the respective acts contained the provision regarding no confidence. The court then proceeded to address the question as to what would be the situation where no provision had been made in the statute for removing an elected office bearer. The Supreme Court reasoned that once the cooperative society had been conferred a constitutional status under the Ninety Seventh Constitutional Amendment, it was necessary for the legislative bodies to ensure that the statutes were amended in conformity with the constitutional mandate. The court eloquently emphasized that "*where the Constitution has conceived a particular structure of certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution*".

39. On the aforesaid reasoning, the Supreme Court sustained the removal of the appellant. It is, thus, seen that the fountainhead of the Supreme Court's reasoning to accept that an office bearer of a cooperative societies could be removed even in absence of a statute was the enactment of the Ninety Seventh Constitutional Amendment. The Supreme Court also observed that various other decisions including the decision of *S.*

Lakshmanan (*supra*) dealt with “*pre-Ninety Seventh Amendment Status of the cooperative societies*”. And, the amendment had brought about “*radical changes in the concept of cooperative societies*”.

40. It is also relevant to note that the Supreme Court distinguished its earlier decision in the case of **Jyoti Basu and Others v. Debi Ghosal and Others** (*supra*) - wherein the Supreme Court had held that a right to elect is neither a fundamental right nor a common right but is a pure and simple a statutory right - by holding that the issue involved in the case in hand was “*not what the statute does say but what a statute must say*”.

41. It is, thus, plainly clear from the decision in the case of **Vipulbhai** (*supra*) that even though the court sustained the decision to remove him as the chairperson of the society, it was of the view that right to remove an office bearer was a statutory right (necessarily required to be conferred by a statute) but nonetheless in absence of an express provision in a statute, the courts would supplant the gaps given the constitutional mandate of the Ninety Seventh Amendment.

42. The contra views expressed by the High Court of Andhra Pradesh, Bombay, Kerala, Punjab and Haryana (prior to the Ninety Seventh Amendment) were declared to be “*no more good law in view of the Ninety Seventh Amendment to the Constitution of India*”.

43. Concededly, Ninety Seventh Amendment has been struck down by the Gujarat High Court and this was not brought to the notice of the Supreme Court. Clearly without the Ninety Seventh Amendment, the fundamental basis of the decision in **Vipulbhai's** case stands fully eroded.

Further, given that the Supreme Court had not affirmed the reasoning of the Gujarat High Court (the decision, which was in appeal), the question of accepting the said reasoning also does not arise.

44. In the aforesaid circumstances, the present petition is allowed and it is directed that the *status quo* as to the position of the petitioner as on the date of filing the present petition, would be maintained till the conclusion of the arbitral proceedings.

45. As mentioned earlier, it was pointed out during the course of the proceedings that a ruling in the present petition may be determinative of the disputes between the parties. However, given that the parties are bound to resolve the disputes by arbitration, it is clarified that the arbitral tribunal (as and when constituted) shall consider the disputes uninfluenced by any observations made by this Court in these proceedings.

46. The petition is disposed of.

MAY 25, 2017
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VIBHU BAKHRU, J