IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 487 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 7321 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 487 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

==========

STATE OF GUJARAT
Versus
THE VISNAGAR TALUKA CO-OPERATIVE PURCHASE AND SELLS UNION LTD.

==========

Appearance:
MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER ASSISTED BY MS AISHWARYA GUPTA, AGP for the Appellant(s) No. 1,2,3,4,5,6,7,8
MR PRAKASH JANI, SENIOR ADVOCATE WITH MR SHIVANG P JANI(8285) for the Respondent(s) No. 1,2
MR DIPEN DESAI, ADVOCATE for the Intervenor.

==========

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 05/11/2020
CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. This Letters Patent Appeal under Clause 15 of the Letters Patent Act has been preferred by the State of Gujarat and its officers assailing in part the judgment and order dated 05.08.2020 passed by the learned Single Judge in Special Civil Application No.7321 of 2020 to the extent that it holds the conduct of the State Government worthy for imposition of costs of Rs.1,00,000/-. In effect the challenge is against the costs of Rs.1,00,000/- imposed by the learned Single Judge vide the judgment in question as also the reasons / findings resulting into costs being imposed.

2. Although the challenge to the judgment of the learned Single Judge is very limited as recorded above, before proceeding further it would be appropriate to give a brief account of the facts giving rise to the two matters before the learned Single Judge, the judgment of the learned Single Judge and the filing of the appeal.

3. The Visnagar Taluka Co-operative Purchase and Sells Union Limited preferred Special Civil Application

No.7461 of 2020 with a prayer to quash and set aside the order dated 29.01.2020 for reaudit passed by the Joint Registrar (Cooperative) under Section 84(5) of the Gujarat Cooperative Societies Act, 1961 (for short "the 1961 Act") and also the order passed by the Registrar (respondent No.2) under Section 155 of the 1961 Act confirming the order of the Joint Registrar dated 29.01.2020 while exercising the revisional powers. Lastly, a prayer was made to quash and set aside the re-audit report of the authorized Auditor dated 19.06.2020.

4. The same petitioner as in Special Civil Application No.7461 of 2020 preferred Special Civil Application No.7321 of 2020 praying for quashing the order passed by the District Registrar dated 22.05.2020 under Section 83(1) of the 1961 Act whereby he authorized Shri K.P.Limbachia to apply before the District Magistrate, Mehsana to seize and take into possession the records of the petitioner society for the purposes of reaudit. It may be noted that the order dated 22.05.2020 is an order consequential to

the orders dated 29.01.2020 and 14.05.2020 which were under challenge in Special Civil Application No.7461 of 2020. The matter was hotly contested between the parties. Both the matters were clubbed and heard together. The learned Single Judge by a very detailed judgment summarized the conclusions in paragraph 43 of the judgment. The same is reproduced below :

"43. This in all answers the submissions made by the learned counsels for the respective parties summarizing my conclusion, it is held that, it cannot be said that;

(a) the order dated 29.1.2020 read with the order of the revisional authority dated 14.5.2020 are orders which are bad in law on the account of being unreasoned and/or in violation of principles of natural justice because such orders are passed in the exercise of the administrative functions of the authorities. It is not a quasi judicial exercise of the powers therefore, neither an opportunity of hearing ought to have been given nor reasons in detail be set out.

(b) the authorities have thought it to fit exercise the powers u/s. 81 rather than exercise the same u/ s.85 is also a matter of discretion vested with the authorities concerned and I do not find fault with them.

(c) With regard to the consistent earning of audit class Aand, therefore, the order be unwarranted

u/s. 84(5) of the Act, what has been done by the authorities is a re-audit of accounts on an application which the authorities found justified. Audit Class `C' has been awarded to the petitioner. It may not amount to serious civil consequence downgrading the petitioner as canvassed by the learned advocate for the petitioner because the right to vote as provided u/s.27(C) still vests with the petitioner and, therefore, it cannot be said to be an order bad in law.

(d) *On the question of the appointment of Shri K.D. Turi as a Special Auditor and his powers, I have answered the question in favour of the Government in view of the notification dated 21.5.2020 and held that the appointment was ratified and, therefore the respondent No.5 was duly authorized to carry out the special audit.*

(e) *On the question of hot haste, from the material on record, what is evident is that though the re-audit was on an aspect of four years, merely because the decision was taken in hot haste would not by itself make the decision vulnerable. This issue has been dealt by this Court earlier in SCA No. 20711/2019 in the case of* ***Dashrathbhai Jethabhai Patel (Supra)*** *while considering the decision of Supreme Court and the submission of Mr.Jani then of the decision making process in hot haste. While relying on a decision of the Supreme Court in the case of* ***K.Nagraj and others v. State of Andhra Pradesh reported 1985(1) SCC 523)****, this Court held as under:*

"22. As held in the case of N. Nagaraj (supra), merely because decision is taken on haste would not make it bad. So also held by the Supreme Court in the case of S.P.Gururaja (supra). Relevant para 13 of the said judgment i.e. N.Nagaraj and paras 34 & 35 in S.P.Gururaja,

respectively read as under :

> *"13. As regards Shri Venugopal's argument at (b) above, the fact that the decision to reduce the age of retirement from 58 to 55 was taken by the State Government within one month of the assumption of office by it, cannot justify the conclusion that the decision is arbitrary because it is unscientific in the sense that it is not backed by due investigation or by compilation of relevant data on the subject. Were this so, every decision taken by a new Government soon after assumption of office shall have to be regarded as arbitrary. The reasonableness of a decision, in any jurisdiction, does not depend upon the time which it takes. A delayed decision of the executive can also be bad as offending against the provisions of the Constitution and it can be no defence to the charge of unconstitutionality that the decision was taken after the lapse of a long time. Conversely, decisions which are taken promptly cannot be assumed to be bad because they are taken promptly. Every decision has to be examined on its own merits in order to determined whether it is arbitrary or unreasonable. Besides, we have to consider the validity of a law regulating the age of retirement. It is untenable to contend that a law is bad because it is passed immediately on the assumption of office by a new Government. It must also be borne in mind that the question as to what should be the proper age of retirement is not a novel or unprecedented question which the State Legislature had to consider. There is a wealth of material on that subject and many a Pay Commission has dealt with it*

comprehensively. The State Government had the relevant facts as also the reports of the various Central and State Pay Commissions before it, on the basis of which it had to take a reasonable decision. The aid and assistance of a well-trained bureaucracy which, notoriously, plays an important part not only in the implementation of policies but in their making, was also available to the Government. Therefore, the speed with which the decision was taken cannot, without more, invalidate it on the ground of arbitrariness."

"34. Undue haste also is a matter which by itself would not have been a ground for exercise of the power of judicial review unless it is held to be mala fide. What is necessary in such matters is not the time taken for allotment but the manner in which the action had been taken. The Court, it is trite, is not concerned with the merit of the decision but the decision-making process. In the absence of any finding that any legal malice was committed, the impugned allotment of land could not have been interfered with. What was only necessary to be seen was as to whether there had been fair play in action.

35. The question as to whether any undue haste has been shown in taking an administrative decision is essentially a question of fact. The State had developed a policy of single-window system with a view to get rid of red tapism generally prevailing in the bureaucracy. A decision which has been taken after due deliberations and upon due application of mind cannot be held to be suffering from malice in law on the ground that there had been undue haste on the part of the State and the Board."

5. Further, based on the above findings, the learned Single Judge did not find any good reason not to interfere with the orders dated 29.01.2020 and 14.05.2020 for carrying out the re-audit and accordingly dismissed Special Civil Application No.7461 of 2020. However, the learned Single Judge was of the view that the order dated 22.05.2020 which was passed by the District Registrar exercising the powers under Section 83(1) of the 1961 Act for taking the records into custody with the help of the district administration to be not in order and accordingly allowed Special Civil Application No.7321 of 2020. The learned Single Judge also was of the view that the manner in which the record was taken into custody by the authorities was not proper and accordingly imposed a cost of Rs.1,00,000/- to be paid by the respondents.

6. To be accurate, we reproduce the operative portion of the judgment of the learned Single Judge as contained in paragraphs 44 to 47:

"44. In view of the above, I find no reason to

interfere with the orders passed by the respondents in exercise of powers u/s. 84(5) of the Act carrying out re-audit in the case of the petitioner. Accordingly, SCA No.7461/2020 is dismissed.

45. Since a common order is passed in both the matters, I reiterate again that SCA No.7321/2020 is allowed with cost of Rs.1,00,000/- to be paid by the respondents and SCA No.7461/2020 is dismissed. Rule is made absolute accordingly so far as SCA No.7321/2020 is concerned while rule is discharged so far as SCA No.7461/2020 is concerned.

46. In view of the orders passed in main matters, Civil Application does not survive and the same stands disposed of accordingly.

47. The Registry is requested to communicate this CAV Judgment through E-mail and / or Fax."

7. We have heard Ms. Manisha Lavkumar, learned Government Pleader assisted by Ms. Aishwarya Gupta, learned AGP for the State appellant, Shri Prakash Jani, learned Senior Counsel assisted by Shri Shivang Jani, learned counsel for the respondent No.2 and Shri Dipen Desai, learned counsel for the intervenor.

8. We are at a loss to understand the conduct of the parties in approaching the Division Bench by way of appeal. There is no appeal by the society (writ petitioner) challenging the order of the learned Single Judge dismissing the Special Civil Application No.7461

of 2020 wherein the petitioners had challenged the order to conduct a re-audit passed under Section 84(5) of the 1961 Act. The State and the officers of the department who are the appellants before us have not challenged the judgment of the learned Single Judge allowing the Special Civil Application No.7321 of 2020 and quashing their action under Section 83(1) to seize the records and the order dated 22.05.2020 passed by the District Registrar being quashed but the State has chosen only to file the appeal to the limited extent of setting aside the finding of the learned Single Judge regarding the conduct of the State Government in seizing the records and imposition of costs of Rs.1,00,000/-. Thus, the State is only aggrieved by the adverse observations made by the learned Single Judge as also the costs of Rs.1,00,000/- and not its order being quashed and set aside to take custody of the records with the help of the local district administration.

9. Ms. Manisha Lavkumar Shah, learned Government Pleader urged with great emphasis that the records

which were taken into possession exercising powers under Section 83(1) was exercised after repeated due efforts to obtain the records having failed. The Auditor had on more than one occasion requested the society to hand over the records once the order dated 29.01.2020 was passed. The society and its office bearers in particular the Secretary declined to hand over the records or rather they did not cooperate in handing over the records and every time when the request was made, some lame and frivolous excuse was taken to avoid handing over of the records.

10. A list of dates titled as chronology of events was circulated. No objection to the contents of the same was pointed out by Mr. Jani, learned Senior Counsel appearing for the respondents. We have been taken through the same and in particular to the relevant dates on which the requests were made. The list of dates also mentions the reason why the records were not handed over, which reason according to the learned Government Pleader were most frivolous and had no connection with the handing over of the

records.

11. From the list of dates, we find that initially four times requests were made for handing over the records on 05.02.2020, 11.02.2020, 14.02.2020 and 20.02.2020, but for some reason or the other, the officers were returned and the records were not provided. In the meantime, the society filed a revision assailing the order dated 29.01.2020 before the State Government i.e. the Joint Secretary. The respondent society further preferred Special Civil Application No.4764 of 2020 before this Court on 18.02.2020 assailing the correctness of the order dated 29.01.2020. The said petition was disposed of on 20.02.2020 with a direction to the Joint Secretary (Appeals) to decide the revision at the earliest and the date already fixed as 02.03.2020 was advanced to 27.02.2020.

12. The respondent society again came to the High Court by way of Special Civil Application No.5786 of 2020 challenging the order dated 02.03.2020 passed by the Joint Secretary (Appeals) in the revision of the

respondent society allowing impleadment of six to seven individuals who had earlier made the complaint resulting into the order dated 29.01.2020 was passed. This Court vide order dated 05.03.2020 dismissed the Special Civil Application No.5786 of 2020. The society preferred an appeal before the Division Bench registered as Letters Patent Appeal No.239 of 2020. The said appeal was also dismissed by order dated 13.03.2020. Further the respondent society approached the Supreme Court by way of Special Leave Petition bearing Diary No.11065 of 2020 assailing the order dated 13.03.2020 passed by the Division Bench. The said Special Leave Petition was also dismissed by the Supreme Court vide order dated 06.05.2020.

13. The revision pending before the Joint Secretary (Appeals) was dismissed by order dated 14.05.2020. It was only thereafter that the auditor again went to the office of the respondent society requesting that the records be handed over for re-audit. The society did not hand over the papers again for some reason. It

was only thereafter that the District Registrar passed an order dated 22.05.2020 under Section 83(1) of the 1961 Act. The Executive Magistrate on 26.05.2020, upon an application made by the authorized officer, passed an order authorizing the officer to seize the records and thus the records are seized on the said date.

14. At this stage, the society preferred two petitions. On 28.05.2020, a petition was filed challenging the orders dated 29.01.2020 and 14.05.2020. Thereafter on 03.06.2020 another petition was filed by the society challenging the order dated 22.05.2020. However, for reasons which are not relevant, the earlier petition was given a higher number than the petition filed later in point of time that is how the two Special Civil Applications were registered as Special Civil Application No.7461 of 2020 and 7321 of 2020. In the meantime, the re-audit was carried out. In fact, on 06.06.2020, the society had on its own submitted additional documents for the purpose of re-audit. The re-audit was completed on 08.06.2020.

15. Under such circumstances, Ms. Manisha Lavkumar Shah, learned Government Pleader submitted that the conduct of the State respondent was throughout fair and reasonable. There was nothing on the part of the State authorities which could be said to have violated the law or could in any manner have overreached the orders of the Court. The State authorities strictly followed the legal process. In fact, they had kept their hands off for three months on the basis of a statement said to have been made before the learned Single Judge by the Government Pleader and did not proceed further till the revision was finally decided. The alleged statement of the Government Pleader which is said to have been made on 20.02.2020 was fully honoured by the officers of the department. Whatever request was made to the society to hand over the records was only upto 20.02.2020 and not untill May, 2020. It was only after the revision was dismissed on 14.05.2020 that the auditor again proceeded further to request for making the records available. She thus submitted that any adverse inference drawn by the learned Single

Judge regarding exercise of powers under Section 83(1) or the proceedings of the auditor to take the recourse with the help of District Administration was completely unwarranted in the facts of the case rather the exercise was well in accordance with law.

16. A further submission made by the learned Government Pleader is to the effect that the re-audit was completed on 08.06.2020. The learned Single Judge vide order under challenge had upheld the order under Section 84(5) directing for re-audit to be valid and had accordingly dismissed the Special Civil Application No.7461 of 2020. Once the said petition had been dismissed, there was no occasion or justification for allowing the Special Civil Application No.7321 of 2020 which was only related to procedural aspect of getting possession of the records which the society had been avoiding since February, 2020.

17. In such circumstances, Ms. Manisha Lavkumar Shah, learned Government Pleader submitted that the observations made by the learned Single Judge against the conduct of the State authorities in taking

custody of the records and further imposing costs of Rs.1,00,000/- deserves to be set aside.

18. On the other hand, Shri Prakash Jani, learned Senior Counsel appearing for the respondent society submitted that the appeal deserves to be dismissed and the learned Single Judge had been lenient in only awarding costs of Rs.1,00,000/- on the findings recorded by it regarding the conduct of the officers. He further submitted that the submissions advanced by the learned Government Pleader have no merit. According to Shri Jani, the State authorities proceeded in great haste after 14.05.2020 when the revision was dismissed and in less than two weeks had succeeded in getting an order from the Executive Magistrate regarding police help to take forcible custody of the records.

19. However, Shri Jani does not dispute the chronology of events as submitted by the learned Government Pleader.

20. Having considered the submissions advanced by the learned counsels for the parties, we are of the view that the learned Single Judge made the observations adverse to the State and imposed the costs as apparently the learned Single Judge found the action of the State to be in great haste. In our view, may be the State acted in haste but looking to the chronology of events what we found is that the society had been deliberately and mischievously avoiding to hand over the records for re-audit and only wanted to carry on repeated litigations before this Court and right upto the Supreme Court on technical issues. The society did its best to resist handing over of the records, therefore, the State was not left with any other option but to take recourse under Section 83(1) of the 1961 Act. We may also note here that once the learned Single Judge had upheld the order directing for re-audit under Section 84(5) of the 1961 Act, the custody of the records of the society was essential and re-audit could not be done without the records. Therefore, taking possession of the records once the society was tinkering and trying

to avoid handing over the records, the action of the government could not be either in haste or *malafide*. The officer of the Cooperative Department or the Auditor had only taken recourse to law.

21. We are accordingly of the view that the appeal deserves to be allowed. The observations made by the learned Single Judge regarding the conduct of the State officers and the imposition of costs of Rs.1,00,000/- is set aside. Rest of the judgment and order of the learned Single Judge would remain intact. The Civil Application also stands disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA / GAURAV THAKER