

(1987) 04 GUJ CK 0003
In the Gujarat High Court

Ambashanker Gaurishanker Pandya and Another	APPELLANT
Vs	
D.G. Valavadia and Another	RESPONDENT

Date of Decision : 12-04-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats (Amendment) Act, 1962 — Section 63(1), 63(2), 63(2)
Gujarat Taluka and District Panchayat (President and Vice President) Election Rules, 1962 — Rule 4

Citation : (1982) 2 GLR 441

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—A short question arises for consideration of this Court in the present petition under Article 226 of the Constitution of India. It centers round the consideration of the provisions of Section 63(2) of the Gujarat Panchayats Act, 1962, hereinafter referred to as the "Panchayat Act".

2. In order to appreciate the grievance of the petitioners voiced in the present petition, a few relevant facts may be stated.

3. One Mahasukhbhai Bhatt was elected as President of Talaja Taluka Panchayat somewhere in January 1981 and his term as President was for a period of 5 years. Thus he could have gone on acting as President of the Talaja Taluka Panchayat upto the beginning of 1986. But unfortunately for him he was involved in a criminal case and, therefore, he was suspended from the office of the President of the Talaja Taluka Panchayat during the pendency of the criminal case in accordance with the provisions of Section 63(1) of the Panchayat Act. Moment he got suspended the procedure laid down by Section 63(2) was required to be followed by the election authority. The said sub-section which is relevant for our present purpose is reproduced as under:

63(2). Where any President or vice-President has been suspended under Sub-section (1) another member shall, subject to the condition to which the election

of the President or, as the case may be, Vice-President so suspended was subject, be elected to perform all the duties and exercise all the powers of a President or a vice-President during the period for which such suspension continues.

4. Respondent No. 1 issued a notice at Annexure "A" to the petition under Rule 4 of the Gujarat Taluka and District Panchayat (President and Vice President) Election Rules, 1962, hereinafter referred to as the Rules, whereby he gave intimation of the meeting to be held for the purpose of holding election to the post of President on 2nd March, 1982 at 4 O'clock in evening at the Mamlatdar's offices. The said notice also pointed out that nominations forms were to be received in the office of the Secretary, Taluka Panchayat on 1st March 1982 between 11 in the morning and 2 O'clock in the afternoon and the scrutiny of the nomination forms was to be made at 2 O'clock on the same day. The said notice dated 18-2-1982 was made the subject matter of controversy in special civil application No. 905 of 1982 which was filed by the said Shri Mahasukhbhai Bhatt, who was the erstwhile President of Talaja Taluka Panchayat and who was suspended from the office of the President u/s 63(1) of the Panchayats Act, as stated above. That petition was moved on 28-2-1982 before me. The petition was rejected by me subject to the clarification that the proposed election of new President of Taluka Panchayat as per notice at Ex. "C" to that petition shall be for the limited period during which the duly elected President i.e. the petitioner of that petition remained in suspension as provided by Section 63(2) of the Panchayats Act. The statement made by Mr. Anil Dave learned Advocate for the respondents was also noted to the effect that he agreed to the legal position and stated that the person elected shall be for the aforesaid limited period. It was therefore clarified by me that notice (Ex. C to that petition) Annexure "A" in the present petition was to be read in the light of Section 63(2) of the Act meaning thereby that it was for the election of member to perform the functions of the President in place of the erstwhile President and the election was to be by way of a stop gap arrangement till the ori. President Shri Mahasukhbhai Bhatt remained in suspension. It appears that thereafter a Civil Suit was filed by the petitioner of Spl. C.A. 905/82 in the Court of the learned Civil Judge, Talaja praying for stay of the operation of the said very notice at Annexure "A" which was challenged before this Court in the aforesaid petition and he obtained interim stay from the Talaja court with the result that the elections which were to be held on 2nd March, 1982 got held up and the meeting could not be held on that day for the purpose of electing a new President during the suspension of the President-plaintiff original President Mahasukhbhai. It appears that thereafter respondent No. 1 herein who was defendant No. 1 in the Civil Suit stated before the trial court that the election will be held for the limited period during which the suspension of Shri Mahasukhbhai continued and, therefore, the court at Talaja vacated the interim relief. These proceedings naturally took some time and after the injunction was vacated the first respondent issued a clarification dated 1st April, 1982 at Annexure "E" to the present petition by which it has been pointed

out that the meeting which is to be held for the election of the President will be for the purpose of electing a new President during the suspension period of the said Shri Mahasukhbhai as required by Section 63(2) and subject to that clarification a meeting was proposed for holding the election which had got adjourned because of unavoidable circumstance and which was now to be held at 11 O'clock in the morning of 12th April, 1982. The present petitioners have challenged the original notice issued under Rule 4 of the election Rules at Annexure "A" and the clarifactory notice at annexure "B" by filing this petition.

5. The aforesaid resume of facts clearly shows that the present petition represents a second attempt before this Court to challenge the very notice at Annexure "A", the first being special civil application No. 905 of 1982 which was rejected. Mr. Vakharia is technically right that present petitioners were not parties to the earlier petition, but the Ex-President Shri Mahasukhbhai was the petitioner. Hence the order passed on 28-2-1982 would not be res-judicata. But the aforesaid resume of facts would leave no room for doubt that the present petition represents an attempt to present old wine in a new bottle. The attack is again centered round Annexure "A" which is issued under Rule 4. Mr. Vakharia's contention is that the petitioner No. 1 has filed his nomination form pursuant to the notice at Annexure "A". He did so under the impression that an election for the appointment of a New President was being held. He never know that the new election was to be held as a stop gap arrangement u/s 63(2) of the Panchayats Act. If he would have known that earlier, possibly he might not have contested the election. It is difficult to appreciate this contention of Mr. Vakharia. So far as petitioner No. 1 is concerned, if be is not interested in contesting the election by way of a stop gap arrangement and if he feels below his dignity to contest such an election, it would be open to him to withdraw his nomination from and to inform his voters that he is no longer in the field. Mr. Vakharia submitted that without fixing a fresh date for the withdrawal of the nomination form, it would not be possible for the petitioner No. 1 to do so as Annexures "A" and "B" would stand in this way.

6. R.D. Vyas, the learned Advocate appearing for respondent No. 2 on the other hand contended that he will have no objection if the petitioner No. 1 withdraws from contest and he is permitted to withdraw his nomination form even on the date of the adjourned meeting to be held as per Annexure "B". Even otherwise, if petitioner No. 1 does not want to contest the stop gap election to the post of President, he can easily inform all the voters accordingly. It has to be noted that the election to the post of President of Talaja Panchayat is to be held from amongst the members of the Talaja Panchayat. It is not a general election from all the residents of a gram. There is, therefore no insurmountable difficulty in the way of the petitioner No. 1 in informing a limited number of voters before the date of actual election that he is not in contest. The aforesaid grievance of Mr. Vakharia for petitioner No. 1 therefore loses all its efficacy.

7. Mr. Vakharia's next contention is that petitioner No. 2 did not file his

nomination form as per Annexure "A" for contesting the elections of President on long term basis, but if he would have known that the election was by way of a stop gap arrangement, he would have contested the election and, therefore, continuance of Annexure "A" has prejudiced petitioner No. 2. Even this argument appears to be one out of frustration. So far as petitioner No. 2 is concerned, it was open to him to contest the election of President if he wanted. The very fact that he did not file his nomination form shows that he had no intention to contest the election of President. Be it noted that the election is not from the general public or the residents of the village. The election is confined to the members of the Taluka Panchayat, Each of the members would naturally know that the originally elected President was under suspension and in his absence fresh election for electing a new President was to be held. That situation would obviously be known to all of them, inspite of that, if the concerned member did not think it fit to file his nomination form, he cannot successfully turn round and say that he would have contested the election if he would have known that the proposed election was a stop gap arrangement. Therefore, there is obviously no prejudice so far as petitioner No. 2 is concerned. It is difficult to appreciate how petitioner No. 2 would have thought it fit to get elected as President by way of a stop gap arrangement if he was not interested in being elected as a regular President on the assumption that there was a clear vacancy.

8. Mr. Vakharia then contended that Rule 4 of the Election rules would apply to regular election of President of Taluka Panchayat as per the requirement of Section 55(1)(3). Mr. Vakharia submitted that the present election is not for electing a regular President in the first meeting of the reconstituted Taluka Panchayat, but it is merely for providing a stop gap arrangement. To that extent, Mr. Vakharia is right. Even u/s 63(2) it has been laid down that the election of a member is to be held to perform all the duties and exercise all the powers of a President or a Vice President during the period for which suspension of regular President or Vice President continues, subject to the conditions to which the election of the President or, as the case may be. Vice President so suspended was subject. It is obvious that the conditions to which the election of the president was subject, would include not only the term during which the president would have acted pursuant to the election but it would also include the entire machinery for electing such President as laid down by the rules. Section 63(2) does not merely provide for the applicability of the conditions of the tenure of the office of the President to the stop gap election held under that section but, it also imports the entire machinery for electing the regular President as the phrase "subject to condition to which election of President was subject" being comprehensive would include the procedural provisions and requirements for electing a regular President also. It cannot be said that the procedural requirements were not part of the conditions of election". Mr. Vakharia is right in his submission that so far as Section 65(1) is concerned, it would be applicable to cases of clear vacancies. Such vacancies are contemplated by Sections 57,58, 60 and 61. Suspension of a regular President, therefore, may not be treated as a

causing a clear vacancy for attracting the applicability of Section 65. But Section 63(2) stands on its own and provides that the present election of a member to perform all powers of a suspended president is to be subject to the conditions of the election of the President himself and which would in turn import the procedure for electing a regular President and consequently it was open to the respondent No. 1 to follow the procedure of Rule 4 even for holding such an election of a member to perform all the duties and functions and to exercise the power of the suspended president. It is obvious that Annexure "A" will have to be read in the light of Annexure "B" which is the clarification issued by the first respondent pursuant to the statement made by respondent No. 1 before the civil court on the basis of which the injunction was lifted by the Talaja Court. As seen earlier, meeting for holding election of President pursuant to notice Ex. A could not take place on 2nd March 1982 on account of interim relief granted by Talaja Court. Once that injunction was lifted, the stage got set for holding the election from amongst the members of the Talaja Taluka Panchayat for the purpose of choosing a person to perform all the duties of the suspended President. The said election will have to be done subject in the conditions for holding an election of a regular president. Hence, there is no hiatus or procedural lacuna as apprehended by the petitioners. Mr. Vakharia's contention is that moment the clarification is issued as per Annexure "B", the first respondent is required to issue fresh notice in place of Annexure "A" laying down a new time table for inviting nominations forms and permitting withdrawal of the same and the date of election. It is not possible to agree with the said contention as Annexure "A" will have to be read subject to the clarification Annexure "B". The adjourned meeting which could not be convened earlier because of interim relief granted by Talaja court will have to be convened now. It is obvious that if during an election process, further stages thereof are intercepted by any interim relief issued by a court, moment such interim relief is vacated, further steps in the election process will have to be resumed from the stage they were intercepted and it is not as if the clock is to be put back and the entire election process is to be started de novo from its inception. The aforesaid legal position is borne out from the decision of this Court (P.D. Desai J.) in special civil application no. 860 of 1981 decided on 10/16th April, 1981 in the case of Sanjay Laxmanbhai Rajyaguru v. State of Gujarat and Ors. 18 G.L.T. 3 50. It must, therefore, be held that it was open to the first respondent to convene the adjourned meeting for holding election of a member of the Taluka Panchayat to perform the functions and duties of the suspended regular President as per Section 63(2) and to restart the process from the very stage where it was interrupted because of the interim relief granted by the Talaja Court, it was not necessary for the first respondent to start the entire process de novo and to call for further nomination for that purpose. It must be stated that because of the ad-interim relief granted by me in this petition, the date of the adjournment meeting being 12th April 1982 (i.e. today) has also got intercepted. It will, therefore, now be necessary for the first respondent to issue a fresh intimation refixing the date of the adjourned meeting for the purpose of holding election from amongst the members of the Talaja Taluka Panchayat for electing a

person to perform all the duties and the powers of the President as required by Section 63(2). It will not be necessary for him to call for fresh nominations from different members for that purpose.

As the contentions raised by Mr. Vakharia in support of his petition are found to be devoid of any merit, the petition will have to be summarily dismissed. Notice issued by me pending admission shall stand discharged and the interim relief shall stand vacated. There shall be no order as to costs.

9. The respondent No. 1 is directed to convene the adjourned meeting at his earliest convenience.