

**(2021) 01 GUJ CK 0021**  
**In the Gujarat High Court**

**Case No :** R/Letters Patent Appeal No. 101 Of 2021 In R/Special Civil Application No. 632 Of 2021, Civil Application (For Stay) No. 1 Of 2021

Chandanji Talaji Thakor & 2 Other(s) APPELLANT

Vs

State Of Gujarat & 2 Other(s) RESPONDENT

**Date of Decision :** 22-01-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Maharashtra Specified Co-Operative Societies Elections To Committees Rules, 1971 — Rule 3(j), 34(8)  
Hemchandracharya North Gujarat University Act, 1986 — Section 5, 15, 16, 19, 19(1) (vii), 76, 77, 144T  
Gujarat University Act, 1949 — Section 58  
Bhavnagar University Act, 1978 — Section 14, 67  
Maharaja Sayajirao University Of Baroda Act, 1949 — Section 58, 58(2), 58(2)(a), 58(2)(b), 60

**Citation :** (2021) 01 GUJ CK 0021

**Hon'ble Judges :** N.V.Anjaria, J;A. S. Supehia, J

**Bench :** Division Bench

**Advocate :** Hriday Buch, Rohan Shah, Devang Vyas, Siddharth H Dave, Prakash Jani, Archit P Jani

**Final Decision :** Dismissed

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## Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Hriday Buch for the appellants, learned senior advocate Mr.Prakash Jani with learned advocate Mr.Archit Jani for

respondent No.3, learned advocate Mr.Devang Vyas assisted by learned advocate Mr.Siddharth Dave for respondent No.2 University and learned

Assistant Government Pleader Mr.Rohan Shah for r1 â?" State, at length.

2. The challenge in this Letters Patent Appeal is addressed to judgment and order dated 18th January, 2021 passed by learned Single Judge in Special

Civil Application No.632 of 2021, whereby the said petition came to be dismissed for the reasons recorded in the judgment. In the Special Civil

Application, jurisdiction under Article 226 of the Constitution was invoked by the petitioners seeking issuance of writ to set aside Notification dated

04th January, 2021 of the respondent No.2 " Hemchandracharya North Gujarat University. By the said Notification, the election programme for

election of two members in the council of the University from the University Court, also known as Senate, was declared. It was further prayed to

direct the University to hold such elections only after vacant seats of the members to the court are filled up.

3. The elections to the two members notified as per the impugned notification is in view of the provision of Section 19(1)(vii) of the

Hemchandracharya North Gujarat University Act, 1986. The Section provides that Executive Council shall be the executive authority of the university

and shall consist of the members specified in Clause (i) to Clause (ix). Clause (vii) provides about two persons to be elected by the court from

amongst its members who are not teachers or members of the teaching staff of the university, affiliated colleges, recognised institutions and approved

institutions and students. Section 15 under Chapter IV of the Act mentioned the authorities of the university. The 'court' is one of the authorities of the

court mentioned in the said Section. Under Section 16, it is stated that the 'court' shall consist two classes. Class I ex officio members and class II

ordinary members elected as specified in the provision of Section 16. Section 76 of the Act says that the proceedings shall not be invalidated by

vacancies. It provides that no act or proceeding of any authority or other body of the University shall be invalidated merely by reason of any vacancy

in its membership. Another is Section 77 which is in relation to the disputes as to constitution of University Authority or body.

4. The main premise and the contention on which the grievance and the prayer in the petition are rested are that the 'court' of the University which

would be the electoral body, has vacancies almost to the extent of one-fourth of the total. It was to be highlighted by learned advocate for the

appellants that out of the total strength of 100 members in the 'court', 23 seats are vacant. These 23 seats, it was submitted, include the registered

graduates of all faculties of the University, members to be nominated by the Panchayat and the Municipality etc. It was submitted that furthermore,

there was dispute about the nomination of 17 students as well as Deans. With reference to such aspects pleaded it was submitted that the vacancies in the 'court' would result into deprivation of participation in the election. It was submitted that the membership of the court has been kept cosmetic to suit the convenience by the authorities. It was further submitted that in such a situation the principle of votes by proportional representation, which is to be the method for electing would be adversely affected.

4.1 Learned advocate for the appellants further submitted that despite the fact position that 23 seats in the 'court' are vacant, the University proceeded to publish the election programme for election of two members to the Executive Council. Describing the election notification as an hurriedly taken step, it was submitted that the term of the Council is due to get over on 31st March, 2021 only. It was in furtherance submitted that thus there was a sufficient time to fill up the vacancies in the court to include the member voters. Learned advocate for the appellants took the Court through various provisions in the Hemchandracharya North Gujarat University Act, 1986 to submit that the present elections may be stayed and the fresh elections may be directed.

4.2 In response, learned advocate for respondent No.2 University raised contentions on the basis of the affidavit-in-reply dated 12th January, 2021 filed by the In-charge Registrar. His preliminary contention was that the appellants have got alternative remedy under Section 77 of the North Gujarat University Act, 1986. He inter alia also submitted that the appellants-petitioners were aware about the vacant seats since long, however chose to raise such grievance only at the eleventh hour when the elections were announced. Various other contentions were also raised and it was submitted that since the election process has started, learned Single Judge has rightly not interfered with the process to decline to the appellants to grant any relief. Learned advocate for the respondent No.2 also referred to the provision of Section 76 of the Hemchandracharya North Gujarat University Act, 1986 which provides that no act or proceeding of any authority or other body of the University shall be invalidated merely by reason of any vacancy in its membership.

4.3 On behalf of the respondent No.2 University, also pressed into service was the decision of the Division Bench of this Court in Narhari H. Amin v.

Gujarat University [2013(1) GLR 430] to submit that the ratio laid down therein provides answer to the contention of the appellants. It was submitted

that the Court therein held in the context of provisions of the Gujarat University Act, 1949 that dates of elections of members of Senate cannot have in

co- relation to the elections of Executive Council; that the plea on that ground to postpone the elections to the Executive Council was negatived; that

the contention was also rejected that in absence of such voters who are yet to be elected to the Senate, election of Executive Council would in any

way be illegal or vitiated.

4.3.1 Learned advocate for respondent No.2 relied on paragraph No.9 of the decision in Narhari H. Amin (supra) to submit that the same may be

applied on merits to dismiss the present Letters Patent Appeal, reading as under.

â??9. It is quite clear from bare perusal of section 19 of the Act that the Executive Council, which is an important 'Authority' under section

15, has to consist of total 27 ex-officio elected and nominated members and the term of the office of the elected and nominated members is

restricted to three years without any provision for any hiatus in the existence of the whole body of persons which constitute the Executive

Council. Therefore, it is both mandatory and obligatory to hold the election of members in time and any discretion or power enjoyed by the

Vice Chancellor or Pro-Vice Chancellor under Statute 138 for fixing the date of election cannot legally be so exercised as to defer the

election indefinitely or on extraneous consideration. Due to different terms of office of the members of the Executive Council and the

University Court (Senate) the dates of election of the members of Senate cannot have any co-relation and, in fact, no legal provision or

precedent could be cited to support the argument that unless and until election to the Senate, for a small number of its members, could be

held, election to the Executive Council must be postponed or that in absence of such voters who are yet to be elected to the Senate, the

election of Executive Council would in any way be illegal or vitiated. â?¡ â?¡ â?¡ It being an implied statutory duty of the University to hold

election of the Executive Council, to reconstitute that body as soon as may be on expiry of the term of office of the elected and nominated

members, it is necessary and in the interest of autonomy of the University and

for democratic and responsible functioning of its executive authority that the election is held at the earliest ? ? ? ? ?

4.4 On behalf of the private respondent No.3, learned senior counsel relied on affidavit-in-reply filed by him, and in his submissions reflected on the locus standi of the three appellants. He submitted that the first petitioner who happens to be the member of the legislative assembly, had filed his nomination form to contest the election, which was subsequently withdrawn by him. It was submitted that his status as voter is not affected and therefore, he has no serious grievance to ventilate. As regards petitioner No.2, it was submitted that he is doctor engaged in teaching in the government medical college, therefore he being a teacher stands disqualified to become member of Senate. About third petitioner, it was stated that she is graduate but not registered. It was therefore submitted that the petition could not be maintainable at the instance of any of the appellants and further that in any view, no fundamental right of any of the appellants is violated. He therefore submitted that on this ground alone the petition is required to be dismissed.

4.4.1 Learned senior counsel next contended that since the election notification is issued and the election process has started, the Court may not granted any relief. What was pressed into service was decision in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Shahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 SCC 509], wherein in the context of the Maharashtra Co-operative Societies Act, 1960 and the Elections to Committee Rules, 1971 thereunder it was held that breach of or non-compliance with mandatory provisions of Rules during preparation of electoral roll can be challenged in the election petition under Section 144-T. It was held that where the election process had commenced, the High Court rightly declined to entertain the writ petition of the appellants seeking setting aside of the elections.

4.5 Learned advocate for the appellants in his rejoinder submits seriously sought to distinguish the decision in Narhari H. Amin (supra). He submitted that in the present case, vacancies are in large number to the extent of one-fourth in the membership of Senate which would certainly vitiate the election. He also tried to submit that under the Gujarat University Act, 1949, from amongst members of the court, 13 are to be selected whereas under

the provisions of the North Gujarat University Act, only two are to be the elected members. As regards the relevance on Section 76, it was submitted

on behalf of learned advocate for the appellants that same would not come into play as it is in the nature of exception. It was submitted that the

provision relates to the act or proceeding by the university and will not have any application in respect of the legality or otherwise of the election.

5. While we have permitted respective learned advocates to raise their contentions on merits, we are not inclined to delve into the same for their

merits, much less to consider them, as we could immediately notice Section 77 of the North Gujarat University Act, which provision relates to the

dispute as to constitution of University Authority or body.

5.1 Section 77 is as under.

â??77. Where any question arises as to---

(1) the interpretation of any provision of this Act, or of any Statute, Ordinance, Regulation or Rule, or

(2) whether a person has been duly elected or appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or

other body of the University,

(a) if may be referred to the State Government if it relates to a matter specified in clause (1), and

(b) it shall be referred to the State Government if---

(i) it relates to a matter specified in clause

(2), or

(ii) if twenty members of the Court so require, irrespective of whether it relates to a matter specified in clause (1) or clause (2);

and the State Government shall after making such inquiry as it deems fit (including giving an opportunity of being heard where necessary)

decide the question and its decision shall be final.â??

5.2 *Pari materia* to above provision, stands Section 58 in the Gujarat University Act, 1949. The Supreme Court in *Gujarat University v. Shri N.U.*

*Rajguru* [AIR 1988 SC 666] held that challenge to election of certain members to 'court' of Gujarat University by way of writ petition was not

maintainable in view of mandatory provision of Section 58 providing for reference of dispute relating to election to any authority of university, to the

State Government. In *Shri N.U. Rajguru (supra)* the teachers of the colleges affiliated to Gujarat University challenged the election of certain

members to the court of the university by way of writ petition. High Court set aside the election and directed holding of fresh election. It was held that

the writ petition could not have been entertained in view of mandatory provision of Section 58 of the Act.

5.2.1 What was held by the Apex Court in paragraph No.5 of the judgment would apply in the present case to bring into play the provision of Section

77 of the Act.

Under S. 58 of the Gujarat University Act if a dispute arises with regard to the constitution of any of the authorities of the University, it

should be referred to the State Government for determining the same. It firstly provides that where any question arises as to the

interpretation of any provision of the Act, or of any Statute, Ordinance, Regulation or Rules, it may be referred to the State Government.

Secondly, it lays down that if a question arises whether a person had entitled to be or ceases to be entitled to be, been duly elected or

appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or other body of the University, it shall be

referred to the State Government. S. 58(2)(a) provides that the dispute relating to interpretation of any provision of the Act or Statute,

Ordinance, Regulation or Rules may be referred to the Government while claimant. (b) or sub-sec. (2) of S. 58 contains a mandatory

provision that if the dispute relates to the question whether a person has been duly elected or appointed to any authority of the University

such a dispute shall be referred to the State Government. There is no option or discretion. If such a dispute arises, it has to be referred to

the State Government for determining the same. If 20 members of the Court raise a dispute relating to a matter specified in claimant. (I) or

claimant. (II) of S. 58 it shall be referred to the State Government for its decision and such decision shall be final. By enacting S. 58, the

legislature has constituted a forum for the determination of the disputes in respect of matters specified therein. Since the Court is an

authority of the University as declared by S. 15 of the Act, S. 58 provides an effective remedy for challenging the election of a member to

the court of the University. Any person aggrieved by the election of any manner to the Court has right to challenge the same before the

State Government by raising a dispute in accordance with S. 58.â?? (para 5)

5.2.2 It was held that the High Court committed an error in entertaining the writ petition and in interfering with the election, observing further thus.

â??It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a

machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum

provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is

neither a fundamental or common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke

the jurisdiction of the High Court under Art. 226 of the Constitution by-passing the machinery designated by the Act for determination of

the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may

be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies.â?? (Para 6)

5.3 Like Section 58 in the Gujarat University Act and Section 77 in the North Gujarat University Act, similar provision being Section 59 exists in the

Sardar Patel University Act. The Division Bench of this Court in Bipinchandra Purshottamdas Patel v. Sardar Patel University being Special Civil

Application No.18564 of 2011 decided on 03rd February, 2012 followed the principles.

5.4 The decision in Shri N.U. Rajguru (supra) came to be followed by the Division Bench of this Court in Rajesh Mahendrabhai Joshi v. Bhavnagar

University [2004(4) GLR 3042]. Similar Section 67 of the Bhavnagar University Act, 1978 was under consideration before the Court. The Court

stated,

Â â??It could very well be visualized that the legislature in its wisdom has evolved a separate mechanism for the resolution and

determination of the dispute in respect of the matters specified therein. Since the â??Courtâ? is authority of the University, as declared by

the provisions of Sec. 14, of the Bhavnagar University At, Section 67 provides an



effective remedy for challenging the election of a member

to the Court of the University. In the present case, the claim of the petitioners is that he is entitled to be member of Court of the Bhavnagar

University, as he has been elected and secured majority votes. This fact therefore, shall not fall within the ambit of the Provision of Sec. 67

of the Bhavnagar University Act. Any person aggrieved by the election of any manner to the Court has right to challenge the same before

the State Government by raising a dispute in accordance with law. Provisions of Section 67 which provides the effective, expeditious

remedy.â?? (Para 13)

5.4.1 In *Rajesh Mahendrabhai Joshi (supra)*, it was the contention advanced by the said petitioner that the petitioner was entitled to become member

of 'court' of Bhavnagar University as he had been elected and secured majority of votes and that the said fact and aspect would not fall within the

provision of Section 67. The Court negated the contention to hold as above. It was further observed,

Â â??Instead of raising the dispute, by way of reference, before the State Government as contemplated by the provisions of Section 67 of

the Act, the petitioner raised the challenge before this court under Article 226 of the Constitution. In our opinion, the petitioner ought to

have raised the dispute for being resolved before the appropriate forum, which is the State Government, in view of clear provisions of

Sec.67 of the Bhavnagar University Act. He has, therefore, to pursue his remedy before the appropriate forum provided by the Statute.

While considering an election dispute, it may be kept in mind that right to vote, contest or dispute relating to election is a statutory right

regulated by the statutory provisions and dispute relating to election is not a fundamental right. Obviously, therefore, Court at loath to

permit the party having statutory rights being infringed and having mechanism in its redressal to invoke extraordinary, plenary equitable,

discretionary writ jurisdiction under Article 226 of the Constitution, bypassing the statutory mechanism, provided for meeting with such

situations and contingencies for the effective and speedy resolution of such dispute of election matters. Therefore, we are of the clear

opinion that ordinarily, statutory mechanism provided for evolvement of

statutory rights must be followed before the authority described

therein or special forum or mechanism provided for. (Para 14)

5.5 In *Prataprao Shankarrao Bhoite v. Vice Chancellor* being Special Civil Application No.1251 of 2017 decided on 07th February, 2017, the

controversy inter alia was that statute in the Maharaja Sayajirao University Act permit persons to become voters and cast vote in the senate election

by donating a sum of Rs.01.00 lakh, thereby becoming eligible to be included in the donors' category of voters, who in turn would elect amongst

themselves two representatives as the members of the senate. The controversy was that, the petitioners complained that respondent Nos.5 to 35 were

wrongly included in the list of donors and it was prayed to declare the recognition of the said respondents as eligible voters to be illegal and to strike-

off their names from the electoral roll. While dismissing the petition, this Court noticed Section 60 of the Maharaja Sayajirao University Act and

holding that the election related dispute was required to be referred to, as provided in Section 60, to the State Government. Said Section 60 is also pari

materia to the other Sections in the different University Acts referred to above. The decision in *Shri N.U. Rajguru* (supra) was also relied on in

*Prataprao Shankarrao Bhoite* (supra). The decision of the Single Judge dismissing the petition, when carried in Letters Patent Appeal No.215 of 2017,

came to be confirmed by the Division Bench.

6. In view of the above clear law enunciated by the Apex Court in the context of controversy of similar nature and applying the pari material

provisions, the ratio would squarely apply to the facts of the present case. At this stage, a contention on behalf of the appellants, though toothless, may

be dealt with namely that if the preparation of the electoral roll is illegal, then it would not be the election dispute under Section 77 of the Act. As could

be easily gathered from the language of the Section, it provides that where any question arises as to whether a person has been duly elected or

appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or any other body of the university, such question would fall

within the provision and shall have to be referred to and dealt with by the State Government. For any election, preparation of the electoral roll consist

of eligible voters is a basic exercise.

6.1 The preparation of electoral roll or the voters' list of the eligible persons who

would be the persons entitled to vote and contest, is an integral part of the election and the election process. The allegations that list of voters is improper or defective or is irregularly prepared or is illegal or that the names of certain persons who may be the eligible voters are missing from the list or that some names are to be included or deleted, are indeed something to be necessarily conceptualised in the election and the election process. The word "election", as it is well settled, connotes the entire election process. It postulates and encapsulates the entire range of steps in the process starting from the list of voters which may be in existence or which may be prepared till the declaration of the result of the election. The dispute in this regard is therefore an election dispute or dispute relating to the election. The dispute raised in the present petition therefore is one to necessarily fall within the purview of Section 77 of the Act and the remedy provided therein.

6.2 Learned advocate for the appellants still harped on the decision of the Supreme Court in the case of Bar Council of Delhi v. Surjeet Singh [(1980)

4 SCC 211] to submit that the Supreme Court therein expressed in favour of exercise of jurisdiction under Article 226 of the Constitution

notwithstanding the alternative remedy to challenge the election being available. When the said decision is closely looked at, it clearly transpires, more

particularly from observations in paragraph No.18, that in that case, the election tribunal was found to be incompetent to declare the Proviso to Rule

3(j) of the Delhi Bar Council Rules as ultra vires and it was observed that alternative remedy provided in Rule 34(8) was no remedy at all. Such is not

at all the situation in the present controversy. As we have held hereinabove, the dispute and the nature of dispute raised in the present petition

partakes the character of election dispute, which stands covered to be dealt with properly under Section 77 of the North Gujarat University Act.

7. Right from the decisions in N. Ponnuswami v. Returning Officer [AIR 1952 SC 64] and in series of decisions post-Ponnuswami, the Supreme Court

has reiterated the statement of law that once the election process is underway, the High Court would be very slow in exercising jurisdiction to

interfere with, interject or interpose with the elections. In more recent decision in Shaji K. Joseph v. V. Viswanath [(2016) 4 SCC 429], the principles

were underlined in the following words.

â??Whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the

process of election is interfered with by the courts, possibly no election would be completed without the court's order. Very often, for

frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or

cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated.

Therefore, all disputes with regard to election should be dealt with only after completion of the election. In the present case, the High Court

was not right in interfering with the process of election especially when the process of election had started upon publication of the election

programme and more particularly when an alternative statutory remedy was available to Respondent 1 by way of referring the dispute to the

Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations.â?? (Para 15)

7.1 It is fundamental that the elections are a democratic process and further having regard to the very nature of election disputes, unless there are

overriding aspect or circumstance, the writ remedy would not be a proper remedy to interpose in the election process or to set aside the election

process. The election disputes have to be addressed in accordance with the remedy which may be provided in the relevant statute governing the

election. Election disputes have to wait for their adjudication till the elections are over. While in usual parlance, the remedy to address the election

disputes is termed as an alternative remedy, when it comes to challenge and grievance of disputes during and in the midst of the election and election

process, such remedy has to turn out to, in all ordinary cases, be the only remedy, as the writ court would desist itself from exercising its jurisdiction.

8. Various other decisions which relate to the similar principles, though cited before us but not referred to hereinabove so as to not burden this order,

have been duly considered and discussed by Learned Single Judge in supplying his own reasoning to dismiss the petition. We are in agreement and

hereby endorse to the view taken by learned Single Judge. Additionally and more particularly for the reasons and discussion supplied in the present

order, we are of the confirm view that the prayer in the Special Civil Application was not liable to be granted in exercise of writ jurisdiction. The

remedy of the appellants has to be under Section 77 of the Act.

9. We leave it open to the appellants to approach the competent authority under Section 77 of the Hemchandracharya North Gujarat University Act,

1986 to raise their grievance after the elections are over, if they so opt. In order that such remedy which may be properly availed by the appellants as

above, we have not gone into nor have opined anything on the merits of the case of the either side. Reference to the rival contentions on merits by us

in the present order including the contention about the locus standi of the appellants, shall not be treated as adversion to or expression on merits.

10. We thus hold that Special Civil Application No.632 of 2021 was properly dismissed by learned Single Judge. This Letters Patent Appeal

thereagainst lacks merit. The same is hereby dismissed.

#### ORDER IN CIVIL APPLICATION

In view of dismissal of main Letters Patent Appeal, no orders are required to be passed in the present Civil Application. The same is hereby

dismissed.