
(1985) 08 GUJ CK 0018
In the Gujarat High Court

Chatrasinh Mansinh Mahida

APPELLANT

Vs

Indravadan Ratilal Patel and Others

RESPONDENT

Date of Decision : 16-08-1985

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 24(2)

Citation : (1986) 1 GLR 297

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—Should the court pass an ex-parte ad-interim order staying process of election of a Panchayat and thereby countermand the mandate of the people? Would this be in consonance with the basic principles of democracy. These questions are at the centre of controversy required to be resolved in this petition.

2. The respondents Nos. 1 and 2 filed a suit being Regular Civil Suit No. 861 of 1985 in the Court of Civil Judge (SD), Vadodara, and prayed that the Notification (Annexure "A") dated June 5, 1985 issued by the Deputy Collector and Returning Officer of the Election of Tarsali Gram Panchayat be declared illegal and void and the proceedings taken by the respondents-original defendants be also declared illegal and void and they be restrained from holding the election and be directed to convert the Gram Panchayat into Nagar Panchayat and be further directed to declare the Gram Panchayat as Nagar Panchayat. The aforesaid suit was filed on June 13, 1985. On the same day the respondent-plaintiff submitted an application Exh. 5 praying that the respondents be restrained from proceeding further with the election pursuant to the Notification dated June 5, 1985. The trial court directed the respondents to maintain status quo till further orders and made the notice returnable on June 18, 1985.

3. The aforesaid order passed by the trial court is challenged in this petition. It is an undisputed position that on June 18, 1985, of on any day thereafter till today, further proceedings before the trial court have not taken place.

This is so because almost all the staff members in District Court and subordinate courts of Vadodara district are on strike and therefore the normal functioning courts is not possible. The employees are on strike on account of the agitation against "roster" system in the State Government services.

4. It is also an undisputed fact that the election process as far as the election of Tarsali Gram Panchayat is concerned, has started with the publication dated June 5, 1985. The nominations were to be filled in on June 13, 1985. On this very day the suit has been filed. It may be noted that the Notification declaring the programme of election was issued on June 5, 1985. It can be said that from that day onwards, the process of election has started. On the date of the filing of the suit, i.e. on June 13, 1985, nomination papers were to be accepted. In the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the Supreme Court, after referring to the relevant provisions of the Constitution and the Representation of the People Act, 1951 and Halsburys Laws of England, has stated in para 7 of the judgment:

The discussion in this passage makes it clear that the word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

It is true that the Supreme Court has laid down the aforesaid principle in the context of the provisions of the Constitution and the Representation of the People Act, 1951. But, these very principles have got to be applied to the elections to the local authorities also. This would be clear from para 16 of the Supreme Court judgment in the aforesaid case of N.P. Ponnuswami which is reproduced hereinbelow:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted,

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election" and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would, have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.

5. In the instant case, it is an undisputed position that the term of the Panchayat had already expired. After the expiry of the term of the Panchayat, it was extended by one year. Thereafter, the election Notification has been issued.

Under the provisions of the Gujarat Panchayats Act, the legislature has provided that even in the local authorities, the elected representatives of the people should sit in the position of power only up to specified period. This is in consonance with the basic democratic principles. In democracy no one can sit in the position of power for an indefinite period. At the expiry of the specified period, the person who sits in the position of power is required to seek a fresh mandate from the people. In the instant case, the mandate of the people was that the elected representatives may sit in the position of power up to a specified period which cannot be extended except as provided under the Act. This period was extended for a period of one year and thereafter it could not have been extended or at any rate, the authorities concerned did not think it fit to extend the same. By declaring the programme of election, the authorities concerned were acting in consonance with the basic democratic principle that one who wields power and sits in the position of power should not be permitted to hold office, beyond the specified period and he must be asked to seek fresh mandate from the people. In the case of *Chauhan Hussainbhai Alibhai v. State of Gujarat* reported in 1984 GLH 523, I have observed as follows:

Even if election cannot be held for technical reasons or for any other valid reasons, the persons in position of power have no legitimate democratic right to continue in office. Such persons cannot be heard to say that there are illegalities in the election which is to take place or which has already commenced and direct the authorities to restrain from holding election. To uphold such contention, even *prima facie* and allow them to continue in office would only mean that persons who have no legal or moral right to hold and sit in the elective office, be permitted to sit in position of power. By any standard this course will be non-democratic, if not undemocratic.

In view of the aforesaid basic principles applicable to all democratic forms of government and institutions, even on first principles it should be held that whenever the election process starts, the courts should not come in the way and stay the election process. To do so would amount to frustrating the mandate of the people. Such an action would not be in consonance with the basic principles of democracy. It may be noted that the institution of court has been created to maintain and uphold the democracy and not to thwart or obstruct the democratic process.

6. It may further be noted that right to vote or right to stand as a candidate for election is not a common law right, but is a creature of statute, or a right conferred by a special law and must be submitted to the limitations imposed by it (See *Ponnuswamy's case* (*supra*) at page 64, para 18). If the provisions of the Gujarat Panchayats Act and other relevant provisions governing the election of Panchayat are examined from this point of view, it would be clear that the right to vote and contest in the election of Panchayat has been conferred upon citizens under the provisions of the Gujarat Panchayats Act. Similarly, a special machinery has been created under the provisions of the Gujarat Panchayats Act

itself for challenging the legality and validity of the election. u/s 24(2) of the Panchayats Act, it has also been provided that the decision of the Judge holding enquiry into the legality and validity of the election "shall be conclusive". In view of the aforesaid provisions and in view of the principle laid down by the Supreme Court in the context of election law in general, and in view of the aforesaid basic principles applicable to all the democratic forms of Governments and institutions, it has got to be held that by necessary implication, the jurisdiction of the civil court is excluded from entertaining the disputes regarding election once the election process has started. Such disputes can be raised before the Tribunal created under the Panchayats Act because the right in respect of the election is created under the statute and the remedy is also provided under the Statute.

7. The trial court ought to have seen that even if prima facie strong case may appear to have been made out by the plaintiff, the suit being not maintainable it ought not to have granted the interim relief as prayed for. It should have been realised that the grant of interim relief or even ad interim relief in such cases would amount to passing the final decree. When the status quo is ordered, the authorities cannot proceed further with the election. The candidates who might have prepared themselves, to fill in the nomination cannot file their nomination papers and the entire election process would come to a stand-still-The result would be that by granting ad interim relief, the election as notified cannot be held and as a matter of fact could not be held. Ordinarily this will be the ultimate object of the plaintiff in filing such a suit. Many a time it is argued that refusal of ad interim relief would amount to dismissing the suit. It may be so, but the other side of the picture is also required to be looked at. A suit cannot be finally decreed at the stage of passing ad-interim order only. Even if there may be a strong prima facie case, it can never be said that the plaintiff be granted final decree by issuing ad interim order without affording an opportunity of being heard to the defendant. In such cases, the persons to be affected are not only the election authorities, but a large number of people whose democratic rights are likely to be interfered with. By the very nature of things, they would not be before the court. Therefore, it becomes the paramount duty of the court to see that their democratic rights are not interfered with at the instance of some persons who are interested in sticking to the position of power. Be it noted that such suits are ordinarily filed by or at the instance of persons who are in position of power, or who are interested in seeing to it that the persons in position of power continue to be there.

8. In the instant case, the trial court by granting ad interim relief stayed the further steps to be taken pursuant to the Notification dated June 5, 1985, meaning thereby, the intending candidates could not fill in their nomination papers, the election could not be held on the dates specified in the Notification. Thus the grant of ad interim relief meant the allowing of the suit itself. Assuming for a moment that the trial court had jurisdiction to entertain such suits, even then the trial court ought not to have granted the ad interim relief by which the suit was being substantially allowed without giving any opportunity of being

heard to, the opponents.

9. As contended by the counsel for the respondents Nos. 1 and 2 that the petitioner has no locus standi to file this petition, because the petitioner was not a party to the suit in the trial court and his application for being joined as party has been rejected by the trial court. The contention cannot be accepted. Any person who has interest in the proper functioning of the local authority can move this Court and draw the attention of this Court regarding the illegal orders passed by the trial court. This Court can even exercise its suo motu powers under Article 227 of the Constitution and call for the matters and decide the same on merits see Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, , para 13. Therefore, the technical contention raised on behalf of the respondents Nos. 1 and 2 that the petitioner has no locus standi to file this petition has got to be rejected.

10. It is next contended that the petitioner has alternative remedy and therefore, the petition should not be entertained. This contention has also no merit. After all, the bar of entertaining a matter on the ground of alternative remedy is a rule of convenience. It does not create any absolute bar of jurisdiction to be exercised by the High Court. Ordinarily, as a matter of convenience, the superior court would not exercise its jurisdiction when there is an alternative and efficacious remedy. But this rule of convenience cannot be set up against the courts for not exercising its power where the exercise of such power is called for.

11. In this respect reference may be made to the decision of the Supreme Court in the case of U.P. State v. Mohd. Nooh reported in AIR 1958 SC 86. At page 94 of the judgment, the Supreme Court has clearly held that in case errors, irregularities or illegalities touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision, then the same can be dealt with by High Court in is no rule with regard to certiorari as there is with mandamus, that it wexercise of its certiorari jurisdiction. The Supreme Court has held that there ill lie only where there is no other equally effective remedy. It is well settled, provided the requisite grounds exist that certiorari will lie although a right of appeal has been conferred by statute. The Supreme Court has further stated that this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience) and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. The aforesaid principle has again been reiterated by the Supreme Court in the case of Ram and Shyam Company Vs. State of Haryana and Others, . In the instant case, as stayed hereinabove, the trial court has prima facie acted without in jurisdiction and has entertained a suit which is not maintainable. Moreover, it has granted ad interim relief which is not in consonance with the basic democratic principles and which affects the democratic rights of innumerable citizens and yet

such an order is passed without giving an opportunity of being heard to any of them or even to the defendants who were parties. By granting such ad interim relief the trial court has virtually allowed the suit. The order passed by the trial court is ex facie illegal and hence it has become necessary for this Court to exercise its powers under Article 227 of the Constitution.

12. Moreover, in the instant case, it cannot be said that there is an alternative and efficacious remedy. If the petitioner is directed to go before the learned trial court Judge and request him for hearing of Exh. 5 application, that itself would take months. Further, in the present day situation when the lower courts are not working due to strike by employees, this may not become possible at all. Thereafter, the appeal before the District Court may take pretty long time. Then revision or petition under Article 227 of the Constitution before this High Court would take further time. In this view of the matter, it cannot be said that the petitioner has alternative and efficacious remedy. If the petition is rejected on this ground, the respondent-plaintiff would be able to perpetuate the status quo and elections will not be held though the term of the Panchayat has expired before one year. This would not only be unjust and improper, but it would also be undemocratic.

13. Counsel for the respondents Nos. 1 and 2 states that there were very good grounds for challenging the legality and validity of the election Notification and the election process itself. It is not necessary to discuss these grounds and discuss their merits or demerits because, once the election process starts, the civil court has no jurisdiction whatsoever to entertain the suits and decide the same on merits. The act which confers right to vote provides for adequate machinery to challenge the legality and validity of the election. The validity of the election can be challenged only in the manner provided under the statute and in no other manner.

14. In above view of the matter, the petition is allowed. The order passed by the trial court below application Exh. 5 dated June 13, 1985 in Regular Civil Suit No. 861 of 1985 is quashed and set aside. Rule made absolute accordingly with no order as to costs.