

(1970) 09 GUJ CK 0006

In the Gujarat High Court

Case No : Spl. Civil Application No. 1015 of 1970

Chehrabhai Kalubhai

APPELLANT

Vs

Govindbhai Hirabhai and Another

RESPONDENT

Date of Decision : 15-09-1970

Acts Referred:

Election Rules, 1962 — Rule 9(1)

Gujarat Panchayats Act, 1961 — Section 44(6)

Citation : AIR 1971 Guj 227 : (1971) 12 GLR 757

Hon'ble Judges : B.J. Divan, J

Bench : Single Bench

Advocate : M.R. Barot, for the Appellant; N.H. Bhatt, A.V. Trivedi and B.J. Shelat, Asstt. Govt. Pleader, N.M. Dave, of Purnanand and Co., for the Respondent

Judgement

1. This Special Civil Application arises under the following circumstances: -

2. The elections of Village Panchayat of Endala village were held on March 15, 1970 (erroneously mentioned as March 18, 1970 in para 2 of the petition). In accordance with the provisions of S.44 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the Act), the first meeting of the newly elected Panchayat was to be held on April 8, 1970, for the purpose of electing the Sarpanch and Upa-Sarpanch for Endala Village Panchayat. Notices for that meeting were not properly served to the members of the Panchayat and hence the meeting was proposed to be held on April 15, 1970 at 3 p.m. Notices were issued accordingly and one Chauhan, Agriculture Officer, Taluka Panchayat, Patan, was appointed as the Presiding Officer for that meeting. The petitioner filed his nomination for the post of Sarpanch on April 14, 1970. Under Rule 6 of the Gujarat Gram and Nagar Panchayats (Sarpanch, Upa-Sarpanch, Chairman and Vice Chairman) Election Rules, 1962, (hereinafter referred to as the Rules) made by the Government of Gujarat in exercise of the powers conferred upon it by S. 323 of the Act, nomination papers have to be filed not less than two hours before the time fixed for the meeting for the election of a Sarpanch and they

have to be filed before the Presiding Officer and the nomination forms are to be in the prescribed form. It is the case of the petitioner, and that fact is not in dispute before me, that the Presiding Officer was required to attend the Court of the Civil Judge, Jr. Dn., Patan at Patan on April 15, 1970. The Presiding Officer attended that Court and it has been found by the second respondent herein, the Taluka Development Officer, in the proceedings properly initiated before him, that the Presiding Officer left Patan Town at about 12-10 P.M. It is the contention of the petitioner that looking to the distance to be travelled between Patan and Endala village and looking to the condition of the road, the Presiding Officer could not have reached Endala before 1 P.M. on April 15, 1970. The nomination paper of the first respondent herein was filed at Endala before the Presiding Officer on April 15, 1970, after the Presiding Officer reached that village and the first respondent was also a candidate for the election for the post of Sarpanch. The election for the post of Sarpanch was duly held and it was declared that respondent No. 1 who got four votes was elected as the Sarpanch and the other candidate was declared to have lost in that election. The petitioner thereafter preferred an appeal or an application to the Taluka Development Officer, the competent authority under S. 44 (6) of the Act challenging the validity of the election of respondent No.1 as the Sarpanch of Endala Village Panchayat. In those proceedings the petitioner prayed, firstly, that the election of respondent No. 1 as the Sarpanch of Endala Village should be set aside and his second prayer was that the petitioner himself should be declared elected as the Sarpanch of Endala Village Panchayat. The second respondent herein heard the evidence which was led before him and on appreciation of the evidence, he came to the conclusion that the Presiding Officer could not have reached Endala Village before 1 P.M. on April 15, 1970 and, therefore, the nomination paper of the first respondent could not have been filed before 1 P.M. on April 15, 1970. The second respondent came to the conclusion that the time of 12-40 P.M. mentioned as the time at which the nomination paper of the first respondent was received by the Presiding Officer was not correct and it could not have been received by the Presiding Officer before 1 P.M. Under these circumstances, the appeal or application under S. 44 (6) was allowed and the election of the Sarpanch was cancelled and set aside.

3. As regards the prayer of the present petitioner for declaring the petitioner himself to have been elected to the post of Sarpanch, the second respondent came to the conclusion that the Presiding Officer could not have reached Endala Village in time and hence the nomination paper of the first respondent could not be filed in time as contemplated by Rule 6 of the Rules and respondent No. 1 was not in anyway responsible for the delay in filing the nomination paper. He, therefore, held that the prayer of the petitioner that the petitioner should be declared to have been elected as the Sarpanch could not be granted. The present petition has been filed by the petitioner under Article 226 of the Constitution challenging this decision of the Taluka Development Officer, the second respondent herein.

4. Mr. Barot, on behalf of the petitioner, is right that under Rule 6 of the Rules, the nomination paper must be filed not less than two hours before the time fixed for the meeting of an election of a Sarpanch. It has been held by a Division Bench of this High Court consisting of Bhagwati C.J. and D.A. Desai J. in Spl. Civil Appln. Nos. 164 of 1968 and 168 of 1968 D/- 29-3-1968 = 10 Guj LR 1 that the provisions of Rule 6 are mandatory. In view of that decision of the Division Bench it is clear that non-compliance with the mandatory provisions would result in the nomination paper of Govindbhai, the present first respondent, being invalid because it was not filed before 1 P.M. on April 15, 1970 before the Presiding Officer. That finding of the second respondent on appreciation of the evidence is correct and no fault can be found with that finding of the second respondent, the competent authority. Mr. Barot, however, relies upon Rule 9 (1) of the Rules, which is in these terms: -

"9 (1) If only one candidate has been validly nominated for the office of Sarpanch or Chairman, he shall be declared to have been elected as Sarpanch or Chairman as the case may be."

Mr. Barot contended that inasmuch as the competent authority, the second respondent herein, held that the nomination paper of the first respondent herein was invalid as it was filed in contravention of Rule 6, the petitioner was the only candidate who had been validly nominated for the office of Sarpanch and, therefore, it was obligatory on the second respondent to declare the present petitioner as duly elected as Sarpanch; and Mr. Barot's main grievance is regarding the refusal of the second respondent to declare the petitioner as duly elected Sarpanch of the Village Panchayat of Endala.

5. In my opinion, the stage contemplated by Rule 9 (1), is a stage prior to the holding of the election, because it is for the Presiding Officer of the first meeting where the election of the Sarpanch is held to decide whether there is only one candidate validly nominated. If that stage is passed and the election as contemplated by the remaining sub-rules of Rule 9 is held, then there is no question of only one candidate having been validly nominated for the office of Sarpanch. It was in proceedings u/s 44 (6) of the Act, where there was a dispute as to the validity of an election held under S. 44 of the Act that the competent authority after appreciation of the evidence came to the conclusion that the first respondent was not validly nominated. Therefore, the question was directly before the second respondent as to whether the election should be cancelled or whether the election only of the first respondent should be cancelled as he was not validly nominated. In considering that aspect of the matter, the second respondent was entitled to take into consideration the question whether the first respondent was prevented from filing his nomination paper in time and getting approval of the Presiding Officer in time by reason of circumstances beyond the control of the Presiding Officer. To my mind, Rule 9 (1) has no application once an election is held and if it is found at the stage of the decision on the dispute under S. 44 (6) that the nomination of one of the candidates was not valid, fresh

election can certainly be directed to be gone through by the election officer. The entire dispute regarding the validity of the election to the post of Sarpanch was before the second respondent and it was certainly within the powers of the second respondent to refuse to declare the petitioner as duly elected. Under these circumstances, the first contention of Mr. Barot must fail.

6. Mr. Barot's second contention was that the Taluka Development Officer, the second respondent herein, has mentioned in the impugned order of August 1, 1970, that new election for the post of Sarpanch should be held and arrangement should be made for holding fresh election immediately. Mr. Barot contended that once the first meeting contemplated by Section 44 of the Act has taken place, it is not within the powers of the Taluka Development Officer to convene a fresh meeting for the purpose of holding election for the post of Sarpanch. Mr. Barot pointed out that u/s 44 (2), the first meeting, which u/s 44 (4) can only transact the business of election of Sarpanch and Upa-Sarpanch, is required to be held within four weeks from the date on which the names of members elected at the general election are published under S. 18 or on such date as may be fixed by the competent authority; provided that where no day is fixed within the aforesaid period of four weeks, the competent authority shall report the fact to the State Government or an officer or authority authorised by the State Government and the meeting shall be held on such day as the State Government or the said officer or authority as the case may be, may specify. Mr. Barot contended that once the period of four weeks mentioned in Section 44(2) expired, it was not within the competence of the Taluka Development Officer, the competent authority, to call a fresh meeting for the purpose of holding election. This argument of Mr. Barot cannot be sustained. The meeting was duly convened within the period of four weeks. It was properly held and it is only because the nomination of the first respondent was not filed in compliance with Rule 6 that the election of the first respondent as the Sarpanch has been set aside. Once the election has been set aside, directions must be given as a consequential order for holding fresh elections to the post of Sarpanch. Under these circumstances, it cannot be said that the consequential direction given by the second respondent after setting aside the election of the Sarpanch was without competence. It was within his competence u/s 44 (6) while deciding the validity of the election of the Sarpanch to direct that fresh election should be held for the post of Sarpanch and that is precisely what he has done. Under these circumstances this contention of Mr. Barot must also fail.

7. These two were the only contentions of Mr. Barot and both of them fail. This Special Civil Application therefore, fails and is dismissed. Rule is discharged. There will be no order as to costs.

8. Petition dismissed.