
(1979) 10 GUJ CK 0006
In the Gujarat High Court

Chelabhai Nathabhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-10-1979

Acts Referred:

Gujarat Agricultural Produce Markets Act, 1963 — Section 11(1)(iii), 48

Citation : (1979) 2 GLR 452

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—This petition is filed by a citizen and national of India under Article 226 of the Constitution for a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction for quashing and setting aside the impugned orders at Annexures "A" and "B" and to direct respondents Nos. 1 to 4 to hold election on the basis of the voters' lists already prepared by the Authorised Officer under the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as "the Rules"). The petitioner also prayed for a direction that respondents Nos. 1 to 4 should hold election from constituency of co-operative societies holding general licences, Unjha to Unjha Agricultural Produce Market Committee, Unjha from the stage at which the election was postponed on October 25, 1978 and October 26, 1978 i.e. and to take poll on the basis of the election process announced in pursuance of the election programme dated August 4, 1978. The petitioner has also prayed for other consequential reliefs.

2. A few relevant facts giving rise to the present petition may be stated in brief.

3. The market committee had to be constituted having elected two representatives of the Co-operative marketing societies situated in the market area and holding general licences of such societies u/s 11(1)(iii) of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act").

4. The Authorised Officer had prepared the tentative or the provisional list of

voters under the rules and the same was published on August 30, 1978, and objections were also invited in regard to the said tentative list of voters on or before September 13, 1978.

5. Thereafter, the election programme was declared, and the nomination papers were to be filled on October 16, 1978, whereas the date of scrutiny of the nomination papers was to take place on October 17, 1978. The date for the withdrawal of the nomination papers was October 20, 1978, and the date of poll was October 28, 1978.

6. As provided in Section 11(1)(iii) of the Act, two representatives were to be elected from the representatives of the Co-operative marketing society situate in the market area and holding general licences. The petitioner, respondent No. 5, respondent No. 6 and respondent No. 7 were the candidates for the said election. On October 12, 1978, respondent No. 5 made an application to the State Government u/s 48 of the Act, and in substance, the grievance of respondent No. 5 was that the voters' list was not prepared in accordance with law inasmuch as four societies were unlawfully registered, and hence, the members of the Managing Committee of the said four societies should not have been included in the voters' list.

7. The petitioners and some of his supporters heard about the aforesaid respondent No. 5's application to the State u/s 48, and hence, the petitioner went to the office of the Deputy Secretary-respondent No. 2 at Gandhinagar, and tried to contact the Deputy Secretary, but the Deputy Secretary did not grant any interview to the petitioner. On that day, the petitioner gave an application to the Deputy Secretary through his advocate Shri S.M. Thakkar and intimated to the Deputy Secretary, that no interim relief should be granted to respondent No. 5 without hearing him. On that very day, that is on October 17, 1978 one of the clerks of the office of the Deputy Secretary informed the petitioner that the matter was to take place on October 23, 1978 and the petitioner was asked to attend the office on October 23, 1978. On October 23, 1978 when the petitioner went to the office of the Deputy Secretary, the petitioner learned that the petition was adjourned to November 21, 1978. On October 23, 1978 the petitioner did attend the office of the Deputy Secretary but to no useful purpose.

8. It is the grievance of the petitioner, that in spite of the fact, that the petitioner had made an application to the Deputy Secretary requesting him that no interim relief should be granted in favour of respondent No. 5 without hearing him the respondent No. 5 passed an order on October 25, 1978 directing that the election should not take place on October 28, 1978 or till the disposal of respondent No. 5's application before him. On October 26, 1978, the orders were passed by the Director staying the election. On that very day, the petitioner contacted the Election Officer and got the copy of the order whereby the election was ordered to be stayed.

9. It is under these circumstances that the petitioner has filed the present

petition under Article 226 of the Constitution.

10. Mr. Vakharia, the learned advocate for the petitioner has raise the following contentions before me at the time of the hearing of the petition.

(1) That the election officer is not subordinate to the Director, and that he is independent of the Director and he has nothing to do with the Director of the State.

(2) That the position of the election officer is just as a position of the Authorised Officer as provided in the Rules.

(3) That on a plain reading of Section 48 of the Act, Election Officer cannot be included within the meaning of the word "Director" as used in Section 48 of the Act.

11. Shortly stated on the aforesaid grounds, it was the submission of Mr. Vakharia that it was not open to the Deputy Secretary not the Deputy Secretary has the jurisdiction or the authority of law to pass the interim stay order staying the holding of election on October 28, 1978.

12. Now in order to appreciate the submission made by Mr. Vakharia, I will refer to Section 48 of the Act which provides as follows:

The State Government at any time call for the examine the proceedings of the Director or of any market committee for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by the Director or the market committee. In any case in which it appears to the State government that any decision or order or proceedings so called for should be modified, annulled or reversed, the state Government pass such orders thereon as it thinks fit.

On a plain reading of Section 48 of the Act, it is clear to my mind that at any time, it is open to the State Government to call for and examine the proceedings of the Director or of any market committee for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by the director or the market committee. In any case in which it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may pass such order passed by the Director or the market committee.

13. Now the rules indicate that the position of an Election Officer is that of the Director under the rules, or the Director can act as an Election Officer and a Director. Under the circumstances, in my view, it will be open to the State Government to exercise its powers to call for proceedings of market committee as well as the orders passed by the Director and the State Government may pass such orders as the State may think fit. In view of what has been stated above, Sub-rule 4 of Rule 2 may be set out. Sub-rule (4) of Rule 2 of the Rules provides as follows:

"Election Officer" means an officer authorised by the Director to perform the

functions of an Election Officer under these rules and where no officer is so authorised the Director;

Thus it is clear from Sub-section (4) of Rule 2 of the Rules that the Election Officer means the Director also if the Director does not authorise any officer to perform the functions of the Election Officer under the Rules.

14. Rule 4 of the Rules provides that it is the duty of the Director to fix a date of the election and publish such order by fixing a copy thereof in the office of the market committee and at a conspicuous place in the principal market yard in the market area. Now supposing no officer is authorised to perform the functions of the Election Officer or even if such an officer is authorised, it will be the duty of the Director to fix the date for the election. Under the circumstances, sub-rule (4) of Rule 2 read with Rule 4 of the Rules clearly indicates that the Election Officer means the Director, if no other officer is authorised by the Director to perform the functions of the Election Officer.

15. Rule 10 provides for fixing stages of election. It says that the election shall be held between such hours on such dates and at such place as may be fixed by the Director. The very rule provides for the Director to publish notice in Gujarati stating the various particulars as mentioned in Sub rule (2) of Rule 10. It may be significantly emphasised that Rule 11 contemplates that the candidate for the election has to deliver to an Election Officer a nomination paper in Form I. Thus reading the relevant rules, it is clear to my mind that the Election Officer means the Director if the Director has not authorised any officer to perform the functions of the Election Officer under the rules. In view of what has been stated above, it is not possible for me to take the view that the Election Officer is not the Director as in my opinion Sub-rule (4) of Rule 2 clearly indicates that the Election Officer means the Director also in cases where the Director does not authorise any officer to perform the functions of the Election Officer. Thus bearing in mind the meaning of the words "Election Officer" as statutorily defined, in Sub-rule (4) of Rule 2, I am convinced that when the Legislature has used the word "Director" in Section 48 of the Act, Section 48 takes in its sweep all cases of proceedings either of the Director or of the Election Officer which can be examined by the State Government u/s 48 of the Act. In this view of the matter, it is not possible for me to agree or accept the submission of Mr. Vakharia that the Election Officer is an independent officer, or that u/s 48 of the Act, an Election Officer cannot be included to mean a director. In this view of the matter there is no substance or merit in the submission of Mr. Vakharia that it was not open to respondent No. 5 to approach the State Government u/s 48 of the Act for the purpose of calling for to examine the proceedings the Election Officer-The Director particularly when the election was to take place on October 28, 1978.

16. That brings to the consideration of second point strenuously urged by Mr. Vakharia. Mr. Vakharia's submission was that, in the instant case, respondent No. 5 had filed an application u/s 48 of the Act on October 12, 1975, and in substance, the grievance of respondent No. 5 before the Deputy Secretary was

that the names of the Managing Committees of four societies should not have been included in the final voters' list prepared by the Authorised Officer on September 16, 1978. Mr. Vakharia urged that when the petitioner knew about the said application, the petitioner went to Gandhinagar and tried to contact the Deputy Secretary-respondent No. 2, but respondent No. 2 did not grant to the petitioner any interview. Under the circumstances on that very day, the petitioner gave an application through his advocate Shri S.M. Thakkar, that no interim relief should be granted to respondent No. 5 for the stay of the election which was to take place on October 28, 1978 without hearing the petitioner.

17. On that day that is to say on October 17, 1978 one of the clerks of respondent No. 2. The Deputy Secretary intimated the petitioner that the hearing of the matter would take place on October 23, 1978, and hence, the petitioner was asked to remain present in the office of the Deputy Secretary on October 23, 1978. But when the petitioner attended the office of Deputy Secretary on October 23, 1978, the Section Officer told him that the matter was adjourned to November 21, 1978. It may be stated, however that on October 23, 1978 the petitioner brought to the notice of the Deputy Secretary that the copies of the relevant documents were not furnished to hem and that the petitioner was not knowing the nature of the complaint against the petitioner.

18. Mr. Vakharia urged that to the utter surprise of the petitioner, interim relief by way of the stay of the election was granted to respondent No. 5 on October 25, 1978 without hearing the petitioner, and ultimately on October 26, 1978 the petitioner knew from the Election Officer that the election would not lake place on October 28, 1978 virtue of the aforesaid interim relief granted by the Deputy Secretary-respondent No. 5.

19. Shortly stated on the aforesaid premises, Mr. Vakharia urged before me, that the Deputy Secretary was not at all justified in passing the impugned interim relief in favour of respondent No. 5 particularly when the petitioner was making all possible efforts of getting an opportunity of making his submissions to the Deputy Secretary on the question of the grant of the interim relief in favour of respondent No. 5. Mr. Vakharia urged that the Deputy Secretary was dealing with an election matter, and he, having realised the seriousness of the matter should have at least heard the petitioner, particularly when the petitioner also with his advocate made an effort to contact him on October 17, 1978 but the Deputy Secretary did not grant the interview to the petitioner. A wrong date was given by the clerk from the office of the Deputy Secretary that the matter was adjourned to November 21, 1978, and to the utter surprise of the petitioner, the Deputy Secretary significantly without hearing the petitioner, granted interim relief to respondent No. 5 staying the election. On these facts, Mr. Vakharia's submission was that the action of the Deputy Secretary patently and glaringly suffers from the vice of the mala fide as in no circumstances the Deputy Secretary should have identified himself with the cause of respondent No. 5 and should not have passed the order of interim relief.

20. In spite of the fact, that on the aforesaid point, the relevant averments are effectively incorporated in the petition in regard to the aforesaid grievance of the petitioner, no affidavit-in-reply is filed by the Deputy Secretary. It is true that the Deputy Secretary should not have filed the affidavit-in-reply on the merits of the matter, but certainly, he should have filed an affidavit in this Court stating in this Court that either he heard the petitioner or he did not hear the petitioner or that no opportunity was given to the petitioner under peculiar circumstances. Under the circumstances, absence of any affidavit-in-reply from the Deputy Secretary on the aforesaid specified and limited point leads me to one inevitable conclusion, that in the instant case, the Deputy Secretary was not at all justified in passing the interim relief in favour of respondent No. 5 when the petitioner was making hue and cry in the very office of the Deputy Secretary that he should be heard. In this behalf, I do not want to express any final opinion on this point in so far the present case is concerned, but I must say that on a future occasion, in all election matters whenever a party interested in the election makes an effort of being heard even before the grant of the interim relief, the quasi judicial authority must see that a party who is likely to be adversely affected by the interim relief should be given an opportunity of being heard, so that the action of the quasi judicial authority may not be prima facie attacked on the ground of mala fides or suffering from the vice of identifying itself with cause of one of the candidates contesting the election.

21. In view of my decision on the first point raised by Mr. Vakharia, and as I am convinced, that in the instant case, it is open to the State Government u/s 48 of the Act to call for the examine the proceedings of the Director and/or Election Officer under circumstances mentioned above, the petition must necessarily fail, and the rule is discharged; but having regard to the facts and circumstances of the case I make no order as to costs.

While dismissing the petition, I direct the State Government to hear respondent No. 5, the petitioner and all parties interested on all the points which may be canvassed before him by the interested parties, and particularly the point raised by the petitioner, that it would be not open to the State Government to revise the voters' list prepared by the Authorised Officer, though it will be open to the State Government to consider as to whether the proceedings of any Market Committee were in accordance with law or not as provided in Section 48 of the Act. The State is directed to dispose of the application filed by the petitioner within a period of 15 days after the receipt of the writ from this Court to this office, and thereafter, the concerned election may be held as expeditiously as possible in accordance with law. Rule is discharged with no order as to costs.