

(1997) 03 GUJ CK 0028
In the Gujarat High Court

Chhaganlal Arjanbhai Thakkar

APPELLANT

Vs

Dy. Collector and Others

RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Co-operative Societies Act, 1961 — Section 11, 12, 145, 22(c), 30(a)

Citation : (1998) 1 GLR 475

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Judgement

S.D. Pandit, J.—Rule. I have heard all the parties on merits at length and therefore, I proceed to decide this matter finally.

2. Shree Bhachau Seva Sahakari Mandali Ltd., Bhachau, Kachchh has filed the present petition to quash and set aside the order passed by the respondent No. 1 on 3-8-1996 in Application No. VP/S/M/Elect/96 by which the respondent Nos. 4 to 18 are admitted as voters in the provisional voters" list prepared by respondent No. 2.

3. The petitioner is a registered co-operative society registered under the Gujarat Co-operative Societies Act and the petitioner is a member of Kachchh District Central Co-operative Bank Ltd., Bhuj. The election of Board of Directors for the year 1996 of the said Kachchh District Central Co-operative Bank Ltd. was to take place and for that purpose provisional list of voters was prepared by the Chairman of District Panchayat, Kachchh-Bhuj. In the said list names of the present respondent Nos. 4 to 18 are included. The inclusion of the present respondent Nos. 4 to 18 in the voters" list was challenged by contending that on 31-3-1996, the respondent Nos. 4 to 18 were not holding the registration as Co-operative Societies. They had provisional registration and in view of the provision of Section 9 of the Gujarat Co-operative Societies Act, they could not be included in the voters" list. It was also contended that they could not be also included in the list of voters for group No. 6 as they were not of agriculture credit group

societies. The objections raised for the inclusion of respondent Nos. 4 to 18 in the voters' list has been negated by the respondent No. 2 by his order dated 3-8-1996 and hence present petition is filed.

4. The claim of the petitioner is resisted by respondent Nos. 4 to 18 by filing affidavit-in-reply by respondent No. 4. It is contended that there is no infringement of any fundamental rights of the present petitioner and hence present petition is not maintainable. It is further contended that respondent Nos. 4 to 18 were admitted as members of the respondent No. 3 bank and respondent Nos. 4 to 18 had also obtained agricultural loan from the respondent No. 3 bank. When they were admitted as members by the respondent No. 3, their names ought to have been included in the voters' list as per the rules and regulations and consequently no illegality was committed in including their names in the voters' list. It is further contended that the question regarding validity of their membership could be decided by the authorities provided by the Gujarat Co-operative Societies Act and that question cannot be gone into in such a proceedings. It is further contended that the petitioner has got alternative and efficacious remedy u/s 145 of the Gujarat Co-operative Societies Act by filing an election petition. Respondent No. 1 has rightly included the respondent Nos. 4 to 18 in group No. 6 in the voters' list and that the order is quite legal and valid. It is further contended that the petitioner is not entitled to get relief and therefore, the petition should be dismissed with costs.

5. The petitioner-society Shree Bhachau Seva Sahakari Mandali Ltd., is a specified Co-operative Society under the Gujarat Co-operative Societies Act, 1961. They are disputing the inclusion of respondent Nos. 4 to 18 in the voters' list on two grounds : one is that in view of the provisions of Rule 4 of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982, their names could not be included in the voters' list and second ground is that the respondent Nos. 4 to 18 could not be included in the voters' list of group No. 6 but they must fall in group No. 12. In order to appreciate said contentions, the provisions of Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 will have to be considered. I, therefore, proceed to consider the same.

6. Rule 4 of the said Rules of 1982 is governing the matter in question and subrule (1) of Rule 4 is the crucial provisions for considering the claim of the petitioner. Said Rule 4(1) is running as under:

A provisional list of voters shall be prepared in Gujarat by every society for the year in which general elections is due to be held. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency-wise as laid down in the bye-laws.

It is an admitted fact that the respondent Nos. 4 to 18 had applied for being

registered as the member of the respondent No. 3 society, viz., Kachchh District Central Cooperative Bank Ltd., on 29-3-1996. But they were given provisional registration on that date of 29-3-1996. No doubt there is no dispute of the fact that they were given permanent registration in the month of June, 1996. The disputed voters" list was published by the District Registrar of Co-operative Societies for respondent No. 3 on 3-7-1996. As per the admitted fact till 31-3-1996 the respondent Nos. 4 to 18 had not received the regular registration as members of the respondent No. 3 society but they were given only provisional registration. Provisions of Section 9(3) of the Gujarat Co-operative Societies Act, 1961 are material and they are running as under:

A provisionally registered society shall not be deemed to be a society registered under this Act.

Now, if the above provisions of Section 9(3) are considered then it would be quite clear that a society which gets provisional registration cannot be a registered society under the Act. When the respondent Nos. 4 to 18 have got their registration admittedly sometime in the second half of June 1996, they were not registered societies on 31-3-1996. Consequently, their names could not be entered in the provisional voters" list as per the provisions to Rule 4(1) of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 which are quoted above.

7. The learned Advocate for the respondent Nos. 4 to 18 vehemently urged before me that the respondent No. 3 bank had accepted the respondent Nos. 4 to 18 as its members on 29-3-1996 and some of them were even given the loan by respondent No. 3 before 31-3-1996. Therefore, in the circumstances they were entitled to be included as voters in the voters" list. Under the bye-laws of respondent No. 3 as well as the provisions of Gujarat Co-operative Societies Act it is open for the respondent No. 3 to accept the societies as its members who were given the provisional registration and to give them facilities including giving of loan as members of respondent No. 3. But merely because the respondent No. 3 treated the respondent Nos. 4 to 18 as its members will not give right to respondent Nos. 4 to 18 to be included in the voters" list. The provision of Rule 4(1) of the Rules of 1982 makes it quite clear that only the registered society which has been registered before 31 st March of that year would be entitled to be included in the voters" list. Therefore, in view of the said provision it is necessary to show that on 31-3-1996 the respondent Nos. 4 to 18 were the registered co-operative societies. But admittedly they were not so registered before 31-3-1996 and consequently their inclusion in the voters" list is contrary to the specific provision of the election rules. Therefore, the objection raised by the present petitioner for inclusion of their names in the voters" list was just and proper.

8. The learned Advocate for the respondent Nos. 4 to 18 Mr. B. Section Patel vehemently urged before me that once they got the registration, said registration must be presumed to be valid and legal and that registration then relates back date on which they were given provisional registration. In support of that

submission he relied upon the provisions of Sub-section (5) of Section 9 of the Gujarat Co-operative Societies Act, which runs as under:

A certificate of registration issued under Sub-section (4) shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration has been cancelled.

Sub-section (4) of Section 9 is running as under:

On the registration of a society, the Registrar, shall issue to it a certificate of registration signed by him.

Now, if the above provisions of sub-sees. (4) and (5) are considered then it would be clear that Sub-section (5) has created a presumptive value for the certificate of registration issued under Co-operative Societies Act and it also lays down that unless it is proved that the registration has been cancelled, once the registration is given, it will be valid and legal. But neither Sub-section (4) nor Sub-section (5) of Section 9 lays down that once registration is issued it will relate back to the date, the provisional registration was issued. Therefore, in the circumstances, I am unable to accept the said contention of Mr. B. Section Patel.

9. It is further urged before me by Mr. B. Section Patel, learned Advocate for respondent Nos. 4 to 18 that in view of the provision of Section 11 read with Section 22(c) of the Gujarat Co-operative Societies Act, 1961 the question as to whether there is a registration of co-operative society or the admission of a person as a member of the society under the said Act, shall be decided by the Registrar and therefore, present proceeding is not tenable in law. But here the petitioner is not challenging or disputing either the registration or giving of membership for respondent Nos. 4 to 18. The challenge here is only to the inclusion of respondent Nos. 4 to 18 in the voters' list and that challenge could be gone into by the High Court in exercising of its extraordinary powers under Article 226 of the Constitution of India. Therefore, in the circumstances, said contention of the learned Advocate for respondent Nos. 4 to 18 could not be accepted.

10. Thus, in view of the admitted facts I hold that the inclusion of respondent Nos. 4 to 18 in the voters' list is illegal and invalid as they were not registered cooperative societies on 31-3-1996 and therefore, the order passed by the respondent No. 2 in negating the contention regarding their inclusion in the voters' list will have to be quashed and set aside.

11. Rule 2(b) of the Gujarat Specified Co-operative Elections to Committees Rules, 1982 gives definition of constituency as:

Constituency" means an electoral division, if any, as specified in the bye-laws of the specified Society.

The bye-laws of respondent No. 3 in Chapter VIII make provisions for the Board of Directors. Bye-law No. 30 is relevant and the relevant portion concerning the

present petition is running as under:

30.(1)(a) Nine Directors representing Taluka-wise Agricultural Credit, Multi-purpose and Service Co-operative Societies as mentioned below:

(1) One Director from such affiliated societies falling under the revenue area of Bhuj Taluka.

(2) One Director from such affiliated societies falling under the revenue area of Mandvi Taluka.

(3) One Director from such affiliated societies falling under revenue area of Rapar Taluka.

(4) One Director from such affiliated societies falling under the revenue area of Abdasa Taluka.

(5) One Director from such affiliated societies falling under the revenue area of Lakhpat Taluka.

(6) One Director from such affiliated societies falling under the revenue area of Bhachau Taluka.

(7) One Director from such affiliated societies falling under the revenue area of Anjar Taluka.

(8) One Director from such affiliated societies falling under the revenue area of Mundra Taluka.

(9) One Director from such affiliated societies falling under the revenue area of Nakhtrana Taluka.

(b) One Director representing non-agricultural credit and industrial society.

(c) One Director representing marketing and processing societies and also purchase and sale union.

(d) One Director representing societies other than those mentioned in clauses (a), (b), (c)

(e) One Director representing members other than co-operatives.

(f) One Nominee of the State Co-operative Bank.

(g) One Director to be nominated by the Registrar, (h) Managing Director, if appointed (Ex-officio)

From the above bye-laws it will be quite clear that group No. 1 to 9 is providing for the election of 9 Directors representing Taluka Agricultural Multi-purpose Services Co-operative Societies mentioned in Para 31(a). Thus, 9 groups of voters are provided in Section 30(a). Then 10th is provided by 30(b). Then 11th is provided by 30(c) director representing from industrial credit society. The 11th constituency is for electing one director representing marketing and processing

societies and also purchase and sale union. 12th constituency is for selecting one Director representing societies other than which are mentioned in clauses (a), (b), (c).

12. Section 12 of the Gujarat Co-operative Societies Act, 1961 empowers the Registrar to classify all the societies in manner as he thinks fit and the classification effected by him would be final. In view of the said provision of Section 12, the Registrar of Co-operative Societies has made classification. First category of classification is of societies of agriculture object and credit. Classification No. 8 is constituency of Agricultural Object Societies. Gopalak Society as well as Gopalak Agriculture Cooperative Society are included in this group No. 8. In group No. 1 Agricultural Object Credit Co-operative Societies, Vividh Karyakari Societies Ltd., Services Co-operative Society and different karyakari Societies of large object and all societies pertaining to credit are also included. Respondent Nos. 4 to 18 could not be said to be societies of agriculture object with credit facility. They could not be termed to be credit societies. Therefore, in the circumstances respondent Nos. 4 to 18 could not be said to be representing Taluka-wise Agriculture Credit Multi-purpose Services Cooperative Societies as mentioned in the bye-laws of respondent No. 3. They would fall in group No. 12 as they are not societies mentioned in column 30(l)(a) to 30(1)(c). Therefore, the decision given by respondent No. 2 to include respondent Nos. 4 to 18 in group No. 6 was not correct and proper.

13. No doubt respondent No. 2 has observed in his order that in view of the order of the Registrar dated 19-4-1979 to include Gopalak Milk Co-operative Societies in the agriculture object credit, he did not take into consideration the classification No. 1 made by the Registrar by exercising powers u/s 12 mentioned in group No. 1 as societies of agriculture object and credit. The words used in Gujarati language are "Kheti Vishak Sarfi Kharid Mandalio." Respondent Nos. 4 to 18 will not fall in the said category. Group No. 6 is falling in the category of Agriculture Credit Multi-purpose and Service Co-operative Societies. Therefore, inclusion of respondent Nos. 4 to 18 in the voters" list in group No. 6 is quite illegal and invalid. Thus, respondent No. 2 was not justified in negating the objections raised for the inclusion of respondent Nos. 4 to 18 in the voters" list and again putting them in group No. 6.1, therefore, hold that present writ petition will have to be allowed and the order passed by respondent No. 2 on 3-8-1996 will have to be quashed and it must be further declared that respondent Nos. 4 to 18 could not be included in the voters" list which has been published on 3-7-1996 by the District Registrar of Co-operative Societies vide his letter No. 01/512/96 and it is further declared that respondent Nos. 4 to 18 could be included in group No. 12, i.e., constituency No. 12 and they could not be included in group No. 6-constituency No. 6.

Thus, I allow the present petition and quash and set aside the order passed by respondent No. 2 on 3-8-1996 and I also declare that the inclusion of respondent Nos. 4 to 18 in the voters" list published by District Registrar, Kachchh-Bhuj on

3-7-1996 is illegal and invalid and it is also declared that they could not be included in group No. 6. This petition is, therefore, allowed. Rule is made absolute. No order as to costs.