

(2014) 10 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 13761 of 2014

Gadhvi Sureshkumar Madansinh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Co-operative Societies Act, 1961 — Section 74C(1)

Citation : (2014) 10 GUJ CK 0017

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : P.S. Champaneri, Advocate for the Appellant; Dhawan Jayswal, Asstt. Government Pleader, Advocate for the Respondent

Judgement

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Mukesh R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs:

"20(A) This Hon''ble Court will be pleased to issue a writ of mandamus or certiorari and/or any other appropriate writ order or direction in the nature of mandamus and/or certiorari, and to quash and set aside the decision of the respondent No. 3-Election Officer in discarding the name of the petitioner from the final list of voters, as illegal, null and void;

(B) This Hon''ble Court will be pleased to issue a writ of mandamus or certiorari and/or any other appropriate writ order or direction in the nature of mandamus and/or certiorari, and to quash and set aside the decision of the Election Officer-respondent No. 3 herein dated 22.09.2014;

(C) This Hon''ble Court will be pleased to issue a writ of mandamus or certiorari and/or any other appropriate writ order or direction in the nature of mandamus and/or certiorari, commanding the respondent Nos. 2, 3 and 4 to include the name of the petitioner in the final list of voters of the electorate division No. 4 of

Constituency A of the respondent No. 4 Bank;

That the petitioner has prayed for the following interim reliefs.

(D) This Hon"ble Court will be pleased to issue interim direction commanding the respondents to permit the petitioner to exercise his right as voter in the ensuing election of the respondent No. 4-Bank pursuant to the election programme dated 18.09.2014;

(E) This Hon"ble Court will be pleased to restrain the respondent No. 6 from exercising his right as voter and to participate in the ensuing election of Board of Directors of the respondent No. 4 Bank in any manner till and pending hearing and final disposal of this petition;

OR IN THE ALTERNATIVE

(E) This Hon"ble Court will be pleased to issue an appropriate writ, order or direction, interim or final, permitting the petitioner to exercise his right as voter in the ensuing election of the Board of Directors of the respondent No. 4 Bank from Division No. 8 of Constituency A of the respondent No. 4 Bank, till and pending hearing and final disposal of this petition;

2. It is the case on behalf of the petitioner that petitioner was an elected Director of respondent No. 4 Bank which is a Specified Cooperative Society under the provisions of section 74C(1) of the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as "Act"]. That upon expiry of the term of the executive committee of the respondent No. 4 Bank, the procedure for preparation of the list of voters commenced. That the respondent No. 3 Election Officer published the election programme commencing from 23.09.2014 to 20.10.2014 [Annexure "E"]. It appears that name of the petitioner was sent to the Election Officer-Prant Officer by the respondent No. 5, to include his name in the voters" list as delegate of respondent No. 5 Society. Accordingly, the name of the petitioner was included in the provisional voters" list as delegate of the respondent No. 5 society on the basis of the requisite resolution passed by the respondent No. 5 society, appointing the petitioner as its representative/delegate to participate in the ensuing election of the Board of Directors of the respondent No. 4 Bank. That the provisional voters" list came to be published on 30.07.2014. It appears that even the name of the respondent No. 6 herein was also included in the provisional voters" list at Sr. No. 3 as representative/delegate of one Vandhol Gram Seva Sahakari Mandali Ltd. It appears that thereafter the respondent No. 5 passed another resolution and changed its delegate and a resolution came to be passed to forward the name of the respondent No. 6 as its delegate and accordingly the Prant Officer while preparing and publishing the final voters" list has included the name of the respondent No. 6 in the voters" list as delegate of respondent No. 5 cooperative society, in place of the petitioner.

Being aggrieved and dissatisfied with the inclusion of the name of the respondent No. 6 in the final voters" list as delegate/representative of the respondent No. 5

cooperative society in place of petitioner, the petitioner has straightway preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

At this stage it is required to be noted that as per the election programme published, even the last date for filing the nomination is 29.09.2014, the petitioner has preferred the present Special Civil Application at the last moment i.e. on 26.09.2014 and at the request of learned advocate appearing on behalf of the petitioner, matter was adjourned to 29.09.2014 and it is heard today.

3. Shri P.S. Champaneri, learned advocate appearing on behalf of the petitioner has vehemently submitted that the action of the Prant Officer-Election Officer in excluding the name of the petitioner from the final voters" list and to include the name of respondent No. 6 in the final voters" list as delegate/representative of respondent No. 5 society is absolutely illegal, most arbitrary and contrary to the statutory provisions-Gujarat Specified Cooperative Societies (Elections to Committees) Rule, 1982 [hereinafter referred to as "Rules"].

3.1 It is further submitted by Shri Champaneri, learned advocate appearing on behalf of the petitioner that as such there is a total non-compliance of the Rules 5 to 7 of the Rules. It is submitted even as per sub-Rule (2) of Rule 5 of the Rules, the respondent No. 5 could have changed the name of its delegates upto the 6th day before the date appointed by the Collector under Rule 16 of the said Rules for making the nominations. It is further submitted by Shri Champaneri, learned advocate appearing on behalf of the petitioner that once the name of the petitioner was included in the provisional voters" list as delegate of the respondent No. 5 society, before excluding the name of the petitioner from the final voters" list, the petitioner was required to be heard. It is submitted that in the present case the name of the petitioner has been excluded from the final voters" list without giving any opportunity of being heard to the petitioner. It is submitted by Shri Champaneri, learned advocate appearing on behalf of the petitioner that according to the petitioner as such there is no resolution passed by the respondent No. 5 society to change its delegate and to nominate respondent No. 6 as its delegate in place of the petitioner. In support of his above submissions, Shri Champaneri, learned advocate appearing on behalf of the petitioner has heavily relied upon the affidavit of one Shri Udavat Ramsinh Bhamarsinh of the respondent No. 5 society. It is submitted that therefore and in such a situation if the opportunity of being heard would have been given to the petitioner, the petitioner would have pointed out to the Collector/Prant Officer the correct facts. It is further submitted by Shri Champaneri, learned advocate appearing on behalf of the petitioner that as such it was duty of the Collector/Prant Officer to verify the correctness or otherwise of the resolution of respondent No. 5 society changing its delegate. It is submitted that therefore the Collector/Prant Officer has failed to perform its duty.

3.2 It is further submitted by Shri Champaneri, learned advocate appearing on behalf of the petitioner that even otherwise so far as respondent No. 6 is

concerned, his name is excluded in the final voters" list at two places i.e. at Sr. No. 3 as delegate of one Vandhol Group Seva Sahakari Mandali Ltd. and also as delegate/representative of respondent No. 5 society. It is submitted that therefore even otherwise to include the name of respondent No. 6 in the final voters" list as delegate of respondent No. 5 society in place of petitioner is absolutely illegal and as such malafide which deserves to be quashed and set aside.

3.3 Shri P.S. Champaneri, learned advocate appearing on behalf of the petitioner has vehemently submitted that as such fraud has been committed by all concerned including the respondent Nos. 2 to 6 in flagrant contravention and violation of provisions of Rule 5 of the Rules. It is submitted that as such it is the right of the society to change its representative, however, that right has to be exercised in accordance with the established procedure. It is submitted that no such established procedure namely to issue agenda to call and convene meeting and to have discussion and debate to have the decision has been followed by the respondent while excluding the name of the petitioner from the final voters" list of the respondent No. 4 Bank.

Making above submissions and relying upon the decision of the Bombay High Court in the case of Wamanrao Satpute Vs. Collector, Nagpur and others, , it is requested to allow the present Special Civil Application and grant the reliefs as prayed for.

4.0 Heard Shri P.S. Champaneri, learned advocate appearing on behalf of the petitioner at length.

At the outset it is required to be noted that by way of this petition under Article 226 of the Constitution of India, petitioner has as such challenged the exclusion of his name from the voters" list of the respondent No. 5 Bank as delegate/representative of respondent No. 5 society and in place to include the name of the respondent No. 6 as delegate/representative of respondent No. 5 society. It is required to be noted that as such before approaching this Court, petitioner has not approached the appropriate authority/Election Officer/Prant Officer challenging the exclusion of the name of respondent No. 6 in the final voters" list as delegate of respondent No. 5 society and straightway the present Special Civil Application under Article 226 of the Constitution of India has been preferred.

4.1 It is required to be noted and it is an admitted position that the name of the petitioner was included in the provisional voters" list as delegate/representative of the respondent No. 5 society. It is not disputed and it cannot be disputed that the petitioner has no other independent right available to include his name in the voters" list. It is the prerogative of the respondent No. 5 society to send the name of its representative/delegate, however subject to passing the resolution. Therefore, it is the respondent No. 5 who can send its delegate/representative to be the voter in the election of the respondent No. 4 Bank. Therefore, it is for the respondent No. 5 even to change its nominee/delegate/representative, however

subject to provisions of Rule 5 of the Rules. It appears that after the name of the petitioner was sent to the Election Officer for inclusion of his name in the provisional voters' list as his delegate, another resolution has been passed by which the respondent No. 5 has changed its delegate and in place of the petitioner, respondent No. 6 is nominated as its delegate/representative within the stipulated time provided under Rule 5 and consequently the name of respondent No. 6 is included in the final voters' list as delegate of respondent No. 5 society. At that stage the petitioner is not required to be given an opportunity of being heard as contended on behalf of the petitioner. As observed hereinabove, the name of the petitioner was included in the provisional voters' list as delegate of respondent No. 5 society and as such petitioner has no other independent right to be included in the voters' list, that too as delegate of respondent No. 5 society. Under the circumstances, as such there is no breach of any of the statutory provisions/Rules as contended on behalf of the petitioner.

4.2 It is also required to be noted at this stage that neither the petitioner has approached the Prant Officer/Election Officer/Collector making a grievance voiced in the present petition nor has challenged any resolution and/or action of the respondent No. 5 society in changing its nominee/delegate/representative. Under the circumstances, it cannot be said that the Prant Officer/Collector has failed to perform its duty.

4.3 Now, the contention on behalf of the petitioner that it was a duty cast upon the Collector/Prant Officer to perform the resolution and/or the correctness of the resolution is concerned, it is required to be noted that after the name of the respondent No. 6 was included in the final voters' list as delegate of the respondent No. 5 society on the basis of the resolution of the respondent No. 5 society to the Prant Officer/Collector, nobody has approached the Collector/Prant Officer including the petitioner doubting the correctness and/or otherwise the resolution of the respondent No. 5 society changing its delegate and nominating respondent No. 6 as its delegate/representative in place of petitioner. Under the circumstances, as such Collector/Prant Officer had no occasion to consider the aforesaid. Under the circumstances and in the aforesaid facts, it cannot be said that the Collector/Prant Officer has failed to perform his duty.

4.4 Now, so far as the reliance placed upon the decision of the Bombay High Court in the case of Wamanrao Satpute (Supra) is concerned, on facts the said decision shall not be of any assistance to the petitioner. In the case before the Bombay High Court, the name of the delegate was included in the final list of voters and thereafter someone brings in controversy, his status of delegate of its member society and that the Bombay High Court has observed and held that such a delegate who have locus standi for challenging the decision affecting his status as delegate. In the case before the Bombay High Court the controversy was whether a delegate whose name was included in the final voters' list, which was subsequently deleted by issuing the supplementary voters' list, would have any locus standi to challenge such a decision or not and/or whether such a

petition at his instance was maintainable or not. In the present case as per the statutory provisions more particularly Rule 5 of the Rules and in his place the name of respondent No. 6 is included in the final voters" list of respondent No. 5 society. Under the circumstances, on facts, the aforesaid decision shall not be applicable to the facts of the case on hand.

5.0 In view of the above and for the reasons stated above, there is no substance in the present petition which deserves to be dismissed and is, accordingly, dismissed.