
(1983) 12 GUJ CK 0003
In the Gujarat High Court

Gunvantrai Manibhai Desai

APPELLANT

Vs

B. Narsinhmm and Others

RESPONDENT

Date of Decision : 15-12-1983

Acts Referred:

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

Citation : (1984) 1 GLR 603

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This old writ petition, though fixed for final hearing earlier along with the Letters Patent Appeal No. 203 of 1980, unfortunately could not be taken up earlier though the said appeal was disposed of long ago. The petition has been filed by one citizen, claiming to be a voter on the voters' list to elect agriculturists, prepared for the purpose of constitution of the Agriculture Produce Market Committee, Valsad. He was holding at the relevant time the Office of the Vice-President of the said Committee. He filed the petition at the time when the elections for the constitution of the New Committee u/s 11 of the Gujarat Agricultural Produce Market Act, 1963, hereinafter referred to as "the Act" for brevity's sake, were in the offing. Section 11(1) of the said Act provides that the market committee consists of various types of members listed in Clauses (i) to (v), but in this petition we are concerned with eight agriculturists to be elected by members of the Managing Committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area. The petitioner stated that as per the election programme, the nomination forms were to be filed on 2-1-81, the scrutiny was fixed to be on 4-1-81 and the election was to take place on 15-1-81. The petitioner's grievance was that the list of agriculturists, constituency was vitiated in so far as the milk producing society so-called, situated in the market area and the fisheries society were wrongly taken to be the societies entitled to give the names of their members of Managing Committees. The petitioner's grievance was, that in the tentative voters' list, the names of the members of the Milk Purchasing Co-operative

societies and Fisheries Co-operative societies were shown and that despite his objection to the inclusion of those names by his application dated 14-11-80, Annexure-C, the said names continued in the final voters' list. According to him, these intruders names were wrongly inserted and, therefore, there was going to be no proper election of eight agriculturists from the agricultural constituency so-called. He had, therefore, filed this petition well in time before the election that is on 24-12-80 and had sought for a writ of mandamus restraining the Respondent No. 1, the Director under the Act and the Authorised Officer for the purposes of the election from holding the elections on the basis of the voters' list at Annexure-D and also prayed for quashing the said list at Annexure-D.

2. Much water, as observed by me at the outset, has flown beneath the bridge and as per the judgment of the Division Bench of this High Court in the Letters Patent Appeal No. 55 of 1980 decided on 12-10- 82 by M.P. Thakkar C.J., as he then was, and R.C. Mankad J., a new voters' list will have to be prepared taking into account the changes which might have taken place since then. However, in order to see that such unpleasant history does not get repeated at the time of preparation of the new voters' lists, certain positions of law are required to be clarified.

3. The first question is whether the Fisheries societies, which ostensibly appear to be engaged in producing fish for variety of purposes, can be said to be co-operative societies dispensing agricultural credit in the market area. The term "agricultural credit" is not specifically defined for the purposes of the Act, but "agricultural produce" and an "agriculturist" are defined and from those definitions, we can certainly and inevitably draw an inference what an agricultural credit is. "Agricultural Produce" means all produce of agriculture, horticulture and animal husbandry specified in the Schedule. If any product is a product of agriculture, horticulture or animal husbandry, but if it is not specified in the Schedule, that is to be ignored for the purposes of the Act. I, with the assistance of the learned Advocates, went through that Schedule, but found that fish are not there, though eggs, poultry, cattle, sheep, goat, wool, butter, ghee, milk, etc. are there. So the fisheries societies, if they are not engaged in the produce or growth of any of the items listed in the schedule appended to the Act, cannot be included as societies dispensing agricultural credit in the market area. When the competent authority now takes on hand the preparation of the list of members of the managing committees of various societies, he shall take this patent fact into account before he decides one way or the other. I would say that name may not be decisive, but if the by-laws and actual functioning show that a particular society is engaged in producing any of those products specified in the Schedule appended to the Act, the said society can be said to be a society of agriculturists and if further it is found that that society is advancing credit in order to procure that advancement of agricultural produce or agriculture, then and then alone, but not otherwise, the members of the managing committee of such a society shall be entitled to be included in the list of such voters for the purpose of Section 11(1)(i) of the Act.

4. This brings me to the Milk Producing Societies so-called. Milk is certainly a product of Animal Husbandry. Not only by common sense we say so, but the Schedule under caption IX styled as Animal Husbandry Products refers to milk specifically at item No. (9). So is milk certainly an agricultural produce. If those so-called milk producing societies dispense agricultural credit in the market area meaning thereby that - they are created for the purpose of production or growth of agricultural produce, the members of the managing committee of such societies will certainly be entitled to be included in the voters' lists. If such societies dispense such agricultural credit and that too in the market area, the members of the managing committees of such societies at the relevant time will be entitled to be voters to elect eight agriculturists. However, here there is one snag, which is to be specifically dealt with in the context of the facts of the present case. Section 11(1)(i) specifically mentions that those co-operative societies dispensing agricultural credit in the market area, if they are cooperative marketing societies, they shall again go out of that Clause (i) and they will be required to be put under Clause (iii) of Section 11(1) in the sense that they are co-operative marketing societies. A co-operative marketing society is defined in Section 2(5) of the Act to mean a society engaged in the business of buying or selling of agricultural produce or of processing of agricultural produce and holding a licence. So, if the Milk Producing Society, though dealing in production and, on growth of milk, simultaneously is engaged in the business of buying or selling of agricultural produce or of processing of agricultural produce and also is holding a licence for that purpose, obviously under the provisions of this Act, it will be deemed to be co-operative marketing society and, therefore, it will not have a right of representation for the purpose of electing eight agriculturists. While examining the eligibility or otherwise of the members of the managing committees of these milk producing societies, the officer, on whom lies the burden to prepare the voters' list, has to take this also into account, namely, whether these milk producing societies additionally are engaged in the business of buying and selling of agricultural produce and whether they hold a licence for the purpose or not. If either of these two conditions is absent, they will be only falling under Clause (i) of Section 11(1), but if both the conditions are satisfied, they are co-operative marketing societies and would have no representation in the voters' list prepared for electing eight agriculturists to man the Market Committee of a particular market yard. It was the allegation of this petitioner, and he tried to support it by producing the memorandum also, that this respondent No. 3-society and other milk producing societies in the market area were also engaged in buying and selling of agricultural produce. The petitioner has not stated that they are holding a licence also for the purpose, but when the new list is required to be prepared, it will be the duty of the Officer to have his eye on these two provisions of law and he shall decide whether this milk producing society falls under the co-operative marketing society label or not. If it does not fall under Clause (v) of Section 2, this society must fall under Clause 11(1)(iii) of the Act. These are questions of fact to be decided on individual facts.

4.1. In this connection one ingenious argument put forward on behalf of the Director requires to be noted for being rejected, but this exercise is necessary because the Director and the Government are labouring under misconception of law on this question. Co-operative societies are registered under the provisions of the Gujarat Co-operative Societies Act, 1962. Section 12 of the said Act gives power to the Registrar to classify all societies in such manner and into such classes as he thinks fit and such classification of a society under any head of classification by the Registrar is declared by the Legislature to be final. It is within the competence of the Legislature to make this provision and none has got power to challenge it. This power is given to the Registrar, who is a creature of this Act, for the purposes of the Act, whatever they are. The Government had issued allegedly two circulars dated 7-9-65 and 29-9-65 authorising the Registrar of the Co-operative Societies to give classification to the societies as agricultural societies or market societies for the purpose of Section 11 of the Agricultural Produce Markets Act, and Mr. Shah stated that in exercise of that power conferred on him by the Government under administrative circulars, the Registrar had notified milk producing societies and service cooperative societies (which includes fisheries society also as agricultural societies and Mr. Shah stated that because of this decision, which is final as per Section 12 of the Gujarat Co-operative Societies Act, this question cannot be gone into. Firstly, the Registrar of Co-operative Societies, who is created as an authority under that Act and for the purposes of that Act, cannot have any powers to decide anything regarding another Act, and presumptively for the purposes of the Agricultural Produce Markets Act where the hierarchy of Officers is totally distinct. There the highest officer in the overall charge of the State Government is the Director of Agricultural Marketing and Rural Finance. It is to be noted that when the Agricultural Produce Markets Act gives the clear definition of what an Agriculture is and, therefore, what an agricultural co-operative society is and also gives what a co-operative marketing society is for the purposes of this Act, the definition given in this Act alone is to be looked to and any arbitrary classification made by the Registrar of Cooperative Societies, may be under the misconceived resolutions of the Government, cannot have any effect whatsoever. Simply because in the Agricultural Produce Markets Act, societies are referred to as societies registered under the Co-operative Societies Act, the provisions of the Gujarat Co-operative Societies Act are not enbloc attracted, nor can those provisions be read as a part and parcel of, and supplementary to the provisions of the Agricultural Produce Markets Act. It is really unfortunate that the State Government, despite having a number of legally trained persons to advise it, has fumbled and misunderstood such a patent proposition of law and has arrogated to the Registrar the power to decide the fate of the market committees to be constituted under the provisions of the Agricultural Produce Markets Act as per the Legislature's wish and intent clearly disclosed by the provisions of the Act. In the matter of law and law-making, the Legislature is supreme and not the Government.

5. In aboveview of the matter, the petition is required to be allowed "By quashing the voters" list at Annexure-D and it is directed that the respondent Nos. 1 & 2 shall immediately arrange to prepare a new voters" list and have the election process executed as early as possible so that all such fortuitous people, whose term has long back expired and whose credentials are lost, do not stick to those offices. Rule is thus made absolute with no order as to costs.