

(2003) 06 GUJ CK 0038

In the Gujarat High Court

Case No : Special Civil Application No. 6321 of 2003 with Civil Application No. 3394 of 2003

Ivnagar Seva Sahkari Mandali Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

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

Gujarat Agricultural Produce Markets Rules, 1965 — Rule 28, 8, 8(1)(A)

Citation : (2003) 2 GLR 1600

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Anshin H. Desai, in Special Civil application No. 6321 of 2003 and B.M. Mangukia, in Civil application No. 3394 of 2003, for the Appellant; Nagesh Sood, A.G.P. for Respondent Nos. 1 and 2 in Special Civil Application No. 6321 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—This Special Civil Application is filed challenging the order dated 2-5-2003 passed by the Authorised Officer and Co-operative Officer (Marketing) and District Registrar, Co-operative Societies, Junagadh, the respondent No. 2—herein excluding the name of the petitioner-Society from the Voters List. The petitioner has also prayed for a mandatory direction to direct the respondent authorities to include the names of the members of the Co-operative Society in the Voters List as has been done by notice dated 22-4-2003.

2. It is the case of the petitioner-Co-operative Society that the petitioner-Society had applied for reconstruction vide application dated 6-3-2003, however no action was taken by the respondent No. 2 pursuant to the said application. It is further submitted that vide agenda dated 28th March, 2003 issued by the Liquidator, certain items were to be considered in the meeting to be held on 27-3-2003 wherein the Chairman was to be appointed and one of the items was

regarding reconstruction of the Society. It is further stated that by another communication dated 28th March, 2003 the attention was drawn to the fact that great inconvenience was being caused to the farmers and agriculturists of the village Ivnagar because of the liquidation of the petitioner-Co-operative Society, and therefore, the same was required to be reconstructed. It was further submitted that earlier also similar application was moved and yet no decision was taken by the respondent authorities. It is further stated that on 21-3-2003, election programme was declared by the respondent No. 2 under Rule 7(1) of the Gujarat Agriculture Produce Market Rules, 1965 for general elections of the Junagadh Agricultural Produce Market Committee. After declaration of election programme, the Junagadh District Panchayat recommended the reconstruction of the petitioner-Co-operative Society, vide its communication dated 28-3-2003 and the order of reconstruction was also passed on 7-4-2003. Accordingly, the respondent No. 2 has passed an order on 22-4-2003 considering the petitioner's application dated 17-4-2003 and included the name of the petitioner-Co-operative Society in the Voters List of agriculturists on the basis of the order of reconstruction of the petitioner-Co-operative Society.

3. It is further stated that one Mr. Bhikhabhai Chanabhai Gajera who is at present Chairman of the Junagadh Agriculture Produce Market Committee and who is also the applicant in Civil Application No. 3394 of 2003 objected to the inclusion of the name of the petitioner-Co-operative Society and its members vide objection dated 22-4-2003. The main ground for objection was that as there was a cut-off date being 21-3-2003, and on that date the petitioner-Co-operative Society was not existing, the names of the members of the petitioner-Co-operative Society should not have been included and the same should be deleted forthwith. It is alleged in the petition that the respondent No. 2 has not issued any notice calling for the explanation from the petitioner and straightaway deleted the names of members of the petitioner-Co-operative Society from the Voters List, by passing an order on 2-5-2003 which is under challenge in this petition. It is further alleged that on 3-5-2003 final Voters List was published wherein the names of the members of the petitioner-Co-operative Society were not included, and hence, the petitioner was left with no other alternative but to file the present petition before this Court challenging the aforesaid action of the respondent authorities.

4. This Court had issued the notice on 6-5-2003 making it returnable on 9-5-2003. The matter was thereafter adjourned from time to time. In the meantime, the said Bhikhabhai Chanabhai Gajera has filed Civil Application No. 3394 of 2003 on 15-5-2003 seeking permission to be impleaded as party-respondent in the main petition. This petition as well as the Civil Application are heard together on 3-6-2003.

5. Heard Mr. Harin Raval with Mr. Anshin H. Desai, the learned Advocates appearing for the petitioner and Mr. B. M. Mangukia, learned Advocate appearing for the applicant in Civil Application No. 3394 of 2003 and Mr. Nagesh Sood,

learned Assistant Government Pleader appearing for the respondent Nos. 1 and 2. Mr. Raval has submitted that the order passed by the principles of natural justice as he has deleted the names of the members of the petitioner-Co-operative Society from the Voters List without granting an opportunity of hearing. He has further submitted that the respondent No. 2 has acted at the behest of the sitting Chairman Bhikhabhai Chanabhai Gajera and while deciding the said objections and deleting names of the members of the petitioner-Society from the Voters List, the respondent No. 2 has not looked into the provisions of the Gujarat Co-operative Societies Act more particularly Section 19 read with Rule 10 of the Rules. He has further submitted that Section 11(1) of the Gujarat Agricultural Produce Markets Act, 1963, speaks about the constitution of the Market Committee and Section 11(1)(i) speaks about 8 agriculturists to be elected by the members of the Managing Committee of the Co-operative Societies dispensing agricultural credit of the market areas. He has further submitted that the names of the members of the petitioner-Co-operative Society were included in the Voters List and the names were even published in the List and once the names of the members of the petitioner-Co-operative Society were included in the preliminary Voters List, the name cannot be deleted without granting an opportunity of hearing to the petitioner Co-operative Society and its members, He has, therefore, submitted that the order passed is without issuing any opportunity of being heard, and hence, the said order is required to be quashed and set aside on this very ground. Mr. Raval has further submitted that the order passed by the respondent No. 2 is contrary to the judicial pronouncements of this Court as well as of the Hon"ble Supreme Court. He relied on the decision of this Court in the case of Mehsana District Co-operative Purchase and Sales Union Ltd. Vs. Dhadhusan Beej Utpadak, Rupantar Ane Vechan Karnari Sahkari Mandali Ltd. and Others, , wherein while confirming the decision of the learned single Judge, the Division Bench has held that an opportunity of hearing has to be given to the affected party and also laid down the law that the Authorised Officer has no jurisdiction to delete the names after the revised draft List under Sub-rule (1)(A) of Rule 8 of the Gujarat Agricultural Produce Markets Rules, 1965, is prepared and it was further held that such deletion was without jurisdiction.

6. Mr. Raval has further relied on the decision of this Court in the case of Prahladbhai Shivram Patel and Ors. v. Director of Agriculture Marketing and Rural Finance and Ors. 1998 (1) GLH 95 wherein after considering several decisions this Court had interpreted Rule 28 of the said Rules and held that when the names of the concerned Voters" are deleted by the Authorised Officer, he would no longer be a qualified voter as per Rule 6 of the Rules, and therefore, he would not be in a position to maintain and file a petition under Rule 28. Even in the case of Mehsana District Co-operative Purchase and Sales Union Ltd. (supra), this Court has held that there is no alternative remedy suggested in the facts of the case is illusory and ambiguous, and therefore, it was held that the petition under Article 226 of the Constitution of India is an appropriate remedy when the

names of the persons whose names are already included under Rule 8(1)(A) of the Rules and have, later on, been deleted.

7. Mr. Raval has further relied on the decision of this Court in the case of Rameshbhai Dalsangbhai and Others etc. Vs. The Director, Agriculture Market and Rural Finance Office and Others, , wherein it is held as under :

"The principle is clear that the final finality of the time-schedule of each stage of election programme is so important that the Courts have always enforced the said principles rigorously and it is in recognition of this principle that while the Courts have consistently refused to arrest the election programme at any stage, at the same time whenever this Court has intervened under Article 226 on the ground that the decision of the Election Officer is found to be ex facie illegal or without jurisdiction, the Court has always taken care to see that the relief is granted without arresting the election process and well in time."

On the basis of this decision, Mr. Raval has submitted that in the case of Kadi Vibhag Gopalak Vividh Karyakari Sahakari Mandli Ltd. v. State of Gujarat, in Special Civil Application No. 6936 of 2002, while admitting the petition, the Division Bench of this Court has granted following directions in its order dated 9-8-2002.

"(1) That the delegates of the petitioners-Societies are permitted to participate in the ensuing election of the Members of the Managing Committee of the respondent No. 4 Society i.e. cast their votes in the ensuing election of Members of Managing Committee of respondent No. 4 scheduled to be held on 11-8-2002;

(2) The votes cast by delegates of petitioners-Societies shall be kept in a separate sealed envelope and the said envelope shall not be opened without the prior permission of this Court;

(3) The result of the aforesaid election to be held on 11-8-2002 shall be declared as per the election programme;

(4) The result of the election so declared shall be modified, subject to the result of this writ petition, and if necessary, the result may be modified in light of the votes that may be cast by delegates of the petitioners Societies in the election to be held on 11-8-2002."

He has, therefore, submitted that similar directions may be given in the present petition also.

8. Mr. Raval has further submitted that the election petition before the Election Tribunal cannot be maintained because of the deletion of the petitioner's name as the petitioner is neither a voter nor a candidate, and hence, the petitioner had no right to maintain the election petition wherein the impugned order can be challenged.

9. Mr. Raval has further alleged mala fide in this wise that the objections raised by the sitting Chairman, namely Shri Bhikhabhai have been considered by the

respondent No. 2 under political pressure and without application of mind,

10. Mr. B. M. Mangukia, learned Advocate appearing for the applicant in Civil Application No. 3394 of 2003 seeking impleadment in the main petition submits that the applicant has objected the inclusion of the names of the members of the Executive Committee of the petitioner-Society and in fact had preferred writ petition against the proposed inclusion before this Court. However, the said writ petition was dismissed by the Division Bench of this Court, vide its order dated 28-4-2003 holding that the election process has already begun and the final List of Voters was to be published by 3-5-2003. Thus, it would not be possible for this Court to entertain this petition at this stage by issuing notice to the respondents. Mr. Mangukia has further submitted that on the eve of election, certain actions were to be taken so as to enhance the List of Voters by interested political persons. He has further submitted that the Head of Co-operative Cell of the party-in-power is interested to see that the List of Voters is inflated by addition of persons who owe allegiance to the party in power. He has further submitted that the application submitted on 6-3-2003 was taken up for consideration on 28-3-2003 and the petitioner Society was revived on 7th April, 2003. Hence, there is no dispute about the fact that the revival order was passed on 7th April, 2003 and the application was given for inclusion of the names of the Voters" on April 17, 2003. As per the provisions contained in the Act, an Annual General Meeting of the Society can be convened after the notice of 15 days, whereas there was no time-gap of 15 days from the date of the order of revival, and hence, there was no election of the members of the Executive Committees. When these facts were pointed out to the respondent authorities by way of raising objection, the name was rightly deleted and challenged made to the said decision does not seem to be genuine or bona fide and the petition, therefore, is required to be dismissed at the threshold.

11. Mr. B.M. Mangukia, in support of his submissions, has relied on the decision of this Court in the case of Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandali Ltd., Mehsana v. Pali Shak Bhaji and Fal Ful Adi Ugarnaraoni Kharid Vechan Sahakari Mandali Ltd., Mehsana 1986 GLH 430, wherein it is held as under :

".....In that view of the Scheme of the Act, we are of the opinion that the preparation of electoral roll is an integral part of the process of election. If that is so, the question as to whether the roll should be modified at the instance of persons claiming to be Voters" or at the instance of persons objecting to the inclusion of the names of some persons in the Voters List is a matter relating to election, and having regard to the fact that it is a right conferred under the Act for which a special remedy has been provided, the Court should not exercise the jurisdiction in the matter, since there is a provisional finality in the matters pertaining to Various stages of election, and therefore, having regard to the recognised principle in the matter of public importance that election should be

concluded as early as possible according to the time-schedule and all controversial matters as well as disputes arising out of the election including the right to vote or stand as a candidate should be postponed till after the elections are over so as to avoid impediment or hindrance in the election process, does not arise."

12. Mr. Mangukia has further relied on another Division Bench judgment of this Court in the case of Mehsana District Co-Operative Sales and Purchase Union Ltd. and Another Vs. State of Gujarat and Others, , wherein the above reason was reaffirmed, and petitions were not entertained.

13. My attention is further drawn to the decision of the Hon''ble Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, . In Para 32 of the said judgment, the Hon''ble Supreme Court discussed the whole issue relating to the election as under :

"(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b), but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a

subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

14. My attention is further drawn to the another decision of the Hon"ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , wherein it is held as under :

"The preparation of provisional List of Voters, filing of objection against the provisional List of Voters, consideration of the objection by the Collector and finalising the List of Voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified Societies are a complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional Voters List, decision of the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the Scheme of the Act and the Rules, the preparation of Voters List must be held to be part of the election process for constituting the Managing Committee of a specified society."

15. Mr. Mangukia has further relied on the decision of this Court in the case of Akbarbhai Rahimbhai Momin v. State of Gujarat and Ors. 2000 (2) GLH 172, wherein it is held that "A grievance regarding validity of the Voters List can be made u/s 28 of the said Rules which provides the machinery for determination of an election dispute which touches the validity of an election only after the result of the election is declared. This is not an extraordinary or exceptional case that can justify interference under Article 226 of the Constitution of India by this Court. In fact, the law on this aspect in the particular context of preparation of a Voters List under this very Rule is since long settled by two Division Bench decisions of this Court in Patan P. F & S.S.M. Ltd. (1986 GLH 430) and Mehsana District Co-Operative Sales and Purchase Union Ltd. and Another Vs. State of Gujarat and Others, and is in no way diluted by the subsequent decision rendered in Mehsana District Co-operative Purchase and Sales Union Ltd. Vs. Dhadhusan Beej Utpadak, Rupantar Ane Vechan Karnari Sahkari Mandali Ltd. and Others, .

16. Mr. Sood, learned A.G.P. appearing for respondent Nos. 1 and 2 has also supported the order passed by the respondent No. 2 and further drawn my attention to the Division Bench decision of this Court in L.P.A. No. 365 of 2001 dated 4-5-2001 where in the same fact situation while dealing with the question of granting interim relief, the Court discussed the entire case-law on the subject and held that there was absolutely no warrant in issuing direction to the Authorised Officer to insert the names of the members of the Managing Committee of the respondent Nos. 1 to 4 in the final Voters List. The Division Bench has stayed the order of the learned single Judge giving certain directions

during the pendency of the petition.

17. The petitioner has raised the issue regarding non-granting of an opportunity before excluding the names of the members of the petitioner-Society from the Voters List and to that extent, the order being violative of principles of natural justice, deserves to be quashed and set aside. For this purpose, the decision of this Court in the case of Prahladbhai Shivmm Patel and Ors. (supra) was pressed into service. However, the fact remains that the petitioner-Co-operative Society was neither in existence on 21-3-2003 when the election programme was declared nor it was also in existence on 28-3-2003 by which date all requisite details were to be furnished to the Authorised Officer and it was made clear that names received after that date would not be included in the provisional Voters List. The petitioner-Society was revived on 7-4-2003. Without verifying the facts, the Authorised Officer has included the names of the members of the petitioner-Society in agricultural division of the revised Voters List published on 22-4-2003. When an objection was raised, the Authorised Officer realised his own mistake and corrected it in the final List by deleting the names of the members of the petitioner-Society from the final List. The objection was received on 22-4-2003 and names were deleted on 2-5-2003. The Authorised Officer has waited for more than the requisite period of seven days. The petitioner's members' names were wrongly included in the revised Voters List and no efforts were made by the petitioner to know as to whether its members' names were there in the final Voters List or whether any objection was received. The petitioner, therefore, could not be permitted to raise this plea of violation of principles of natural justice once the final Voters List is published. Even otherwise, the Hon'ble Supreme Court has held in the case of Shri Sam Sadguru Janardan Swami 's case (supra) that the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. Such an attempt would certainly amount to retarding, interrupting, protracting or stalling of the election proceedings and this Court restrains itself from showing any indulgence in a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end, as observed by the Hon'ble Supreme Court in the case of Election Commission of India v. Ashok Kumar (supra).

18. In view of the settled legal position and in view of the peculiar facts and circumstances of this case, the Court is not inclined to interfere in the order passed by the respondent No. 2. In the result, the petition fails. Notice discharged with no order as to costs.

19. In view of the order passed in the main petition, there is no order on Civil Application which is moved by the applicant for joining parties. The Civil Application is accordingly dismissed.