
(1999) 04 GUJ CK 0084
In the Gujarat High Court

Jadeja Vikramsinh Ravubha and Others	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1993 — Section 63
Gujarat Taluka Panchayats and District Panchayats President and Vice President
Election Rules, 1994 — Rule 12

Citation : (1999) 3 GLR 2415

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. KESHOTE, J.—In this Special Civil Application a short but important question of law has arisen for consideration of this Court.

2. To appreciate this question of law as raised by the learned Counsel for the petitioner in this Special Civil Application, I consider it to be necessary to briefly state the facts of the case.

3. In the month of June-July, 1998, the election of the members of the Lodhika Taluka Panchayat, Dist. Rajkot (hereinafter referred to as "Taluka Panchayat") was held. The petitioners are the elected members of the Taluka Panchayat. On 13-7-1998 the first meeting of the newly constituted Taluka Panchayat was held in which one Shri Rathod was elected as its President. Under the Order dated 19-6-1998 of the respondent No. 2-Mr. Rathod was Ordered to be removed as a President of the Taluka Panchayat. He preferred an appeal before the Development Commissioner against the Order aforesaid, which came to be rejected on 16-12-1998. Vide Order dated 23-12-1998 the respondent No. 2 Ordered that the meeting of the Taluka Panchayat be convened on January 21, 1999 for holding the election of the President of the Taluka Panchayat. The respondent No. 4 is the Vice-President of the Taluka Panchayat. He was also as per the petitioners case appointed as Presiding Officer to preside over the meeting of the Taluka Panchayat to be convened on January 21, 1999. It is the

case of the petitioners that they submitted an application in writing to Taluka Development Officer concerned, inquiring therein as to the right of the vote of Vice-President when he presides over the meeting of the Taluka Panchayat to be convened for the purpose of electing the President thereof. The petitioners as per their case were informed by the concerned officer that the respondent No. 4 has right to cast two votes in case of equality of votes.

4. It is the grievance of the petitioners that their application was not decided and no written communication has been given to them. The petitioners in this Special Civil Application prayed for declaring the Rule 12 of the Gujarat Taluka and Dist. Panchayats President and Vice-President Election Rules, 1994 (hereinafter referred to as to the "Rules") as ultra vires, inconsistent and repugnant to the provisions of Section 75 read with Section 63 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act, 1993"). Next, it is prayed to declare that the respondent No. 4 has no power or authority to preside over the meeting where the election of the President is required to be held. In the alternate the prayer has been made to declare that the respondent No. 4 has no right to cast the vote.

5. The learned Counsel for the petitioner contended that Rule 12 of Act, 1994 is repugnant and inconsistent with the provisions of the Section 75 read with Section 63 of the Act, 1993. It has next been contended that the person, who is presiding over the meeting of the Taluka Panchayat in which the election of the President thereof has to be held, has no right to cast the vote. Merely because the Vice-President is appointed as an officer to conduct this election he will not have any right to cast the vote. Lastly, it is contended that the object, purpose and underlying scheme of the relevant provisions of both of the Act, 1993 and the Rules is to hold the election of the President and Vice-President of the Taluka Panchayat, and to see that an independent person may preside over the meeting in which the election for these two offices are to be held. To achieve this object and purpose, the Vice-President should not have otherwise directed to sold the election.

6. The learned Counsel for the State of Gujarat contended that in case the contention of the petitioner is accepted, then it will amount to deprivation of a valuable right which the Vice-President has, as being the member of Taluka Panchayat to cast his vote in the election scheduled for electing the President. This valuable right clearly follows from the Act, 1993 and the Rules framed thereunder and merely because he has been entrusted with the work of holding of the election of the President of Taluka Panchayat, his this valuable right to vote cannot be snatched away. It is next contended that Rule 12 of the Rules is not ultra vires and repugnant to Section 75 read with Section 63 of the Act. The Counsels, who are appearing for other respondents have supported the contentions raised by the learned Counsel for the State of Gujarat.

7. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

8. To appreciate the point raised for consideration and decision of this Court, I consider it to be appropriate to have a glance on the relevant provisions of the Act, 1993 and the Rules. Part 2 of the Act, 1993 relates to the Taluka Panchayat. Section 63 of the Act, 1993 makes a provision for first meeting of Panchayat and election of President and Vice-President. It lays down that on the constitution of a Taluka Panchayat or on its reconstitution u/s 13 or under any other provisions of this Act there shall be called the first meeting thereof for the election of its President and Vice-President from amongst its elected members. The meeting shall be held on such date within four weeks from the date on which the names of the members elected at the general election are published u/s 15 as may be fixed by the competent authority. It is further provided that where no date is fixed within the aforesaid period of four weeks, the competent authority shall report the fact to the State Government or an officer or authority, authorised by the State Government and the meeting shall be held on such day as the State Government or the said officer or authority as the case may be, may specify. The first meeting shall be presided over by such officer as the competent authority may by Order appoint in that behalf. Such officer shall have such powers and follows such procedure as may be prescribed but shall not have the right to vote (emphasize provided). This provision further makes it clear that in this first meeting of the Panchayat no business other than the election of the President and Vice-President shall be transacted. Then comes another important portion of the provision of this section where it is provided that in case in the election of the President or Vice-President, if there is an equality of votes, the result of the election shall be decided by lot drawn in the presence of the presiding officer as he may determine.

9. Section 75 of the Act provides for filling up of the vacancies. Any vacancy in the office of a President, Vice-President or a member of a Panchayat of which notice has been given to competent authority in the prescribed manner shall be filled in, by the election of President or Vice-President or a member who shall hold office so long only as the President, Vice-President or member in whose place he has been elected would have held office if the vacancy had not occurred. There is a proviso to this section which provides that if the vacancy of a member occurs within four months preceding the day on which the duration of the Panchayat expires u/s 13, it shall not be filled. The meeting for election of a President or Vice-President under this provision shall be convened by the competent authority on such date as it may be fixed and the election shall be held in the same manner in which the election of a President or Vice-President is held u/s 63 and the provisions of that section shall, so far as may be, apply in respect of such election.

10. The competent authority has been defined under Clause (4) of Section 2 of the Act, 1993 means such Government officer, Panchayat or authority as the State Government may, by notification in the Official Gazette, appoint to perform the functions of a competent authority under such provisions of this Act and in respect of such Panchayats as may be specified in the said notification.

Explanation to this Clause (4) of Section 2 of the Act, 1993 provides that for the purpose of this Clause, a Government Officer includes a Government Officer posted under a Panchayat under Sections 136 and 161 or 232.

11. Section 274 of the Act, 1993 empowers the State Government to make Rules for carrying out the purpose of the Act. In particular and without prejudice to the generality of the powers under the Act, such Rules may be made:

(a)?

(b) to provide for all matters expressly required or allowed by this Act to be prescribed by the Rules, and?.

12. The learned Counsel for the petitioner does not dispute that the Rules have been framed by the State Government in exercise of this powers u/s 274 of the Act, 1993.

13. Rule 12 of the Gujarat Taluka and District Panchayats President Election Rules, 1994 makes a provision for casual vacancies caused in the office of a President or Vice-President of a Taluka Panchayat. This Rule lays down that the provisions of the Rules, shall mutatis mutandis apply to the election of a President or Vice-President to be held at a meeting to be called u/s 75 or, as the case may be, Section 89. There are three provisos to this Rule. First proviso provides that in the case of election of President, Vice-President shall be the Presiding Officer and where the Vice-President is absent, an officer nominated by the competent authority in this behalf shall be the Presiding Officer. Second proviso provides that in case of election of Vice-President, the President shall be Presiding Officer and when the President is absent an officer nominated by the competent authority in this behalf shall be the Presiding Officer and third proviso says that in case of absence of both the President and Vice-President, an officer nominated by the competent authority in this behalf shall be the Presiding Officer. The Rules, 1994 lays down procedure to be followed in the election of the President and Vice-President of the Gujarat Taluka Panchayat.

14. Section 63 of the Act, 1993 relates to the first meeting of the Panchayat and election of President and Vice-President. After constitution of the Panchayat this is the meeting to be held for election of President and Vice-President thereof and that is the reason it is given the name as first meeting. In the first meeting as there is no President or Vice-President of Panchayat naturally somebody must be there to preside over it and to act. This meeting as per Sub-section (4) of Section 63 of the Act, 1993 has to be called by the competent authority. As this meeting has been called by the competent authority and there is no President and Vice-President of the Panchayat naturally the Act, 1994 has taken care of this existing position and situation there in the Panchayat and makes a specific provision that this meeting shall be presided over by such officer as the competent authority may by Order appoint in that behalf.

15. This officer is not the elected member of the Panchayat. His only function if

we go by the underline scheme of the Section 63 of the Act, 1993 is to preside over the first meeting of the Panchayat in which the only business to be transacted is to hold election for the office of the President and Vice-President. This provision is for specific transaction and business in the first meeting fixed for the election of President and Vice-President of the Taluka Panchayat. After the first meeting held u/s 63 of the Act, 1993, there is all the possibility of causing of the casual vacancy of President and Vice-President or both and to fill this vacancy naturally, the election has to be held. But as it is the case of the election of the President and Vice-President of the Panchayat, the necessary provision as contained in Section 75 has been made by the legislature in the Act, 1993 to meet out this situation. Sub-section (2) of Section 75 of the Act, 1993 provides. for convening the meeting for the election of President or Vice-President of the Panchayat by the competent authority and further the election to be held in the same manner in which the election of the President and Vice-President is held u/s 63 of the Act, 1993. Reading of this provision gives out that it is taken care of the fact that in this election it is not necessary that strictly the provisions as contained in Section 63 of the Act, 1993 are to be applied. What the legislature intends that the provisions as contained in Section 63 of the Act, 1993 so far as may be, apply in respect of such election. It is the case where to fill up the casual vacancy of the President or the Vice-President, by election the President or the Vice-President as the case may be, is available to preside over this meeting. This is an election to fill up a casual vacancy of President or Vice-President and in the Rules, Rule 12 has been framed to make a provision who shall preside over the meeting which is convened for holding the election to fill up the casual vacancy of the President or Vice-President, as the case may be. The President as well as the Vice-President are the members of the Taluka Panchayat meaning thereby in their this capacity they have right to cast their vote in the election to be held for election of President or Vice-President, as the case may be, of the Panchayat. The Rule is framed to give out to what extent the exception is to be given to the provisions of Section 63 of the Act, 1993, which are to be followed in the meeting for filling up the casual vacancy of the President or Vice-President of the Taluka Panchayat. This exception to the provisions as contained in Section 63 of the Act, 1993 has clearly been provided u/s 75 of this Act, 1993 and to clarify that exception this has been provided in Rule 12, Rule 12 provides that the provisions of these Rules shall mutatis mutandis apply to the election of President or Vice-President to be held at a meeting to be called u/s 75. Now as per Section 63 as there the first meeting of the Panchayat is to be called for the election of its President and Vice-President it is provided that it has to be presided over by an officer nominated by competent authority but, u/s 75 of the Act, 1993 a casual vacancy has to be filled, up of the President or Vice-President of the Panchayat and in this case the President or Vice-President as the case may be of the Panchayat is available to preside over the meeting to be convened for the purpose. Accordingly, this exception that in the case of the election of the President or Vice-President, President shall preside over this meeting and in the case of the election of the President, the Vice-

President will preside over the meeting. This Rule 12 of the Rules covers contingencies where in the case of election of the President the Vice-President is absent or in the case of the election of the Vice-President, the President is absent then, in that case the competent authority is competent to nominate an officer to preside over this meeting, who has to preside over the said meeting.

16. Section 63 of the Act, 1993 is not to be made strictly applicable to in the case of filling up of casual vacancy of President or Vice-President of the Panchayat. The legislature itself has provided that an exception can be made to the procedure to be followed in the first meeting of the Panchayat for election of the President and Vice-President thereof as provided u/s 63 of the Act, 1993 in the case of filling up the casual vacancy of the President or Vice-President thereof u/s 75. This is clearly borne out from a conjoint reading of Sections 63 and 75 of the Act, 1993. Rule 12 is a provision framed to give out the necessary exceptions to the provisions as contained in Section 63 of the Act, 1993 in the case of election of the President or Vice-President of the Panchayat u/s 75 of this Act. Section 63 of the Act, 1993 makes a specific provision that the officer appointed by the competent authority to preside over the first meeting of the Panchayat convened for the election of its President and Vice-President from amongst its elected members shall not have the right to vote. Rule 12 of the Rules carved out the necessary exception to Section 63 and in fact a permissible exception as it is borne out from Section 75 of the Act, 1993 and in the meeting convened for the election to fill in the casual vacancy of the President or the Vice-President of the Panchayat as the case may be the elected office-bearer if available is to preside over the same. To this extent no exception can be made and it is also not challenged by the petitioner. Then the question arises whether the President or the Vice-President in this case has right to cast the vote or not in the meeting?

17. It is not in dispute that the President or Vice-President being the member of the Panchayat has right to cast their vote in the election of the office-bearer of the Panchayat that is in case of the election of the President, the Vice-President will cast vote and in the election of Vice-President, the President will cast the vote. This is their indefeasible legal right. Now, merely because either of them has to preside over a meeting convened for filling up of casual vacancy of President or Vice-President, as the case may be, in case the contention of the learned Counsel for the petitioner is accepted he will be deprived of his right to cast the vote in the election. Rule 12 of the Rules read with Section 75 of the Act, 1993 provides that in the case of the election of President to fill in the casual vacancy the Vice-President shall be the presiding officer in the meeting convened for this purpose. In the case of the election of the Vice-President as per this Rule, President will be the presiding officer. Rule 12 of the Rules read with Section 75 of the Act, 1993 dispensed with the requirement of the nomination of an officer to preside over the meeting of the Panchayat for the election to fill in the casual vacancy of the President or Vice-President, as the case may be by the competent authority. What the learned Counsel for the petitioner has made attempt to

equate the officer nominated by the competent authority to preside over the fresh meeting of the Panchayat convened for the election of the President and Vice-President with the President or Vice-President, as the case may be, who has to preside over a meeting convened u/s 75 of the Act, 1993 for filling up the casual vacancy of the President or Vice-President as the case may be. The intention of the legislature is to be seen and further it is to be kept in mind that the President or Vice-President as the case may be, who has to preside over the meeting of the Panchayat convened for filling up of the casual vacancy of the President or Vice-President as the case may be has right to cast their valuable vote. In the first meeting held by Panchayat u/s 63 of the Act, 1993 all the elected members are to exercise their right of vote to elect the President and Vice-President of the Panchayat. It is not the contention of the learned Counsel for the petitioner nor I find any provision that merely because an elected member has been elected as the President or the Vice-President of the Panchayat and by virtue of their election to the office aforesaid, he is not eligible to cast the vote in case where the necessity arises for filling up of the casual vacancy of either of this office aforesaid. Section 63 of the Act, 1993 is clear that the President or Vice-President of the Taluka Panchayat is to be elected from amongst its elected members. So in the first meeting all these elected members have right to cast their vote for election of the President or Vice-President. In case this contention of the learned Counsel for the petitioner is accepted then, though the President and Vice-President otherwise has right to cast the vote in the election held u/s 75 of the Act, 1993 for the office of the President or the Vice-President, as the case may be, he will deprive of this right merely because either of them, has to preside over this meeting. The President or Vice-President, who are elected members of the Taluka Panchayat cannot be put at par with an officer, who has been appointed by competent authority to preside over the first meeting of the Taluka Panchayat convened for the election of its President or Vice-President from amongst its elected members. Rule 12 is not ultra vires, inconsistent and repugnant to the provisions of Section 75 read with Section 63 of the Act, 1993. It is intra vires to the provisions of Section 75 read with Section 63 of the Act, 1993. It is also in consonance with the basic concept of the democracy and autonomy of this constitutional body. In the first meeting it is understandable that an officer has been appointed by the competent authority to hold the election of the President or Vice-President of the Panchayat as it would not have been considered to be in the larger interest of the democracy to appoint any of the elected members to be presiding officer of such meeting to have the independent and impartial election for the office of the President or Vice-President of the Taluka Panchayat. It is understandable, plausible and in consonance with the democracy, the freedom of the right to cast vote to elect the person of his choice, to keep the elected members away from presiding over the first meeting convened u/s 63 of the Act, 1993 for the election of President and Vice-President of the Taluka Panchayat. But in the case of the election to fill up the casual vacancy of President or Vice-President u/s 75 of the Act, 1993, certainly that course is not required to be adopted as either of them is available

to preside over this meeting and as he is also the member of the Panchayat has right to cast his vote also. In this case, the appointment of the presiding officer would not have been otherwise necessary. The interpretation, which is sought to be given to Rule 12 of the Rules and the challenge to this Rule on the grounds as mentioned by the petitioner in this Special Civil Application is accepted, then, it will amount to deprivation of a valuable right to the President or Vice-President, as the case may be of the Taluka Panchayat to cast the vote. In case where there is no equality of the votes, there may not be any difficulty but where there is equality of the vote, then certainly such presiding officer is being the elected member of the Taluka Panchayat and in that capacity of his, he has a right to cast the vote. As per Section 63 of the Act, 1993 he has all the right to cast the vote and it is not obligatory or requirement of law that in that situation the presiding officer has to go by Sub-section (7) of Section 63 of the Act, 1993. However, he cannot exercise nor it has borne out from the Act, 1993 or the Rules that he can cast two votes. In the case where even after casting his vote, there is equality of the votes then, certainly he will have no right nor he can be permitted to vote second vote. In that contingency the provision of Sub-section (7) of Section 63 of the Act, 1993 has to be followed. But Rule 12 cannot be read in the manner and way in which it sought to be read by the learned Counsel for the petitioner. Rule 12 of the Rules if is read and taken to be what it is contended by the learned Counsel for the petitioner, then it will result in deprivation of a valuable right of vote to the elected member of the Taluka Panchayat, namely, President or Vice-President as the case may be merely because under the Act, 1993 and Rule 12 of the Rules they have to preside over the meeting of the Taluka Panchayat convened for filling up the casual vacancy of President or Vice-President thereof. Section 75 of the Act, 1993 and Rule 12 of the Rules are capable of such construction as would retain them the constitutional limits.

18. In the conferred functions and working of a constitutional authority as far as possible the intervention of the outside officer or authority may be the officers of the State Government should be avoided as far as possible. This constitutional authorities should be allowed to function independently without there being any interference from the outside. The elected members and the office-bearers of the Panchayat are the persons who are responsible for its smooth functioning working and to carry out its object and purpose as aforesaid under the Constitution. They should have free and final hand and the master of their affairs and functions and work of the Panchayat. So far as the first meeting of the Panchayat called u/s 63 of the Act, 1993 is concerned, it is understandable that as by that time the elected members of the Panchayat have not elected the President and Vice-President of the Panchayat and this meeting is called for holding the election of its these 2 officers, as said earlier there may be justification in presiding over of such meeting by an officer nominated by the competent authority. The election u/s 75 of the Act, 1993 is to be held for filling up the casual vacancies caused in office either of the President or Vice-President of the Panchayat. In a case where casual vacancy both of the President and Vice-

President caused in the Panchayat there may not be any difficulty to hold the election for filling up these 2 offices of Panchayat strictly in accordance with the procedure as laid down u/s 63 of the Act, 1993. But in the case where the office of either of the President or Vice-President casually fall vacant, at this stage one of the elected office-bearers of the Panchayat is available and in normal course and in consonance with the democratic set-up of the institution he has to preside over meeting. The Rule 12 of the Rules, Section 63 and Section 75 of the Act, 1993 cannot be interpreted, understood and given effect to only in the background as if only the vacancy of the President or the Vice-President casually fell vacant. The Rule or the section and both are to be interpreted, understood and given effect to after taking into consideration overall contingencies which may from time to time arise during continuation of the period of the Panchayat. The legislature also, which is apparent from the provisions of the Section 75 of the Act, 1993 was conscious of all these facts and contingencies and in this section it has with some purpose used the words "so far as may be" applied in respect of such election. Such election u/s 75 of the Act, 1993 means for the office of the President or the Vice-President as the case may be of the Panchayat. It is a settled principle of the interpretation of the statute that the legislature while enacting a law will not put in it any superficial or meaningless words. Whatever the words have been put in the section of an Act by the legislature have to be read in context for which the same has been put. In case the interpretation which is sought to be given and which what the learned Counsel for the petitioner wants, the Court has to read in Section 75 of the Act, 1993 and more precisely in Sub-section (2) thereof as if the word "so far as may be" are not there. This provision cannot be read in this way and the manner as what really the learned Counsel for the petitioner desired to be read by this Court. Rule 12 of the Rules has been framed to explain and clarify what the Section 75 contemplates in the case of the election to fill up the casual vacancy in the office of the President or Vice-President of Panchayat. This Rule explains to what extent the provisions of Section 63 of the Act 1993 are to be excluded in the case where the election has to be held for filling up the casual vacancy in the office of the President or the Vice-President of the Panchayat as the case may be. The grievance of the petitioner that the President and Vice-President of the Panchayat cannot act as presiding officer of the meeting to be convened for filling up of the casual vacancy of the President or the Vice-President as the case may be of the Panchayat u/s 75 of the Act, 1993 cannot be accepted. This contention is contrary to the basic conception of the autonomy and independent functioning of a constitutional authority or the institution.

19. The matter can be looked into from a different aspect also. There cannot be any quarrel with the right of the elected member to cast the vote in an election held u/s 75 of the Act, 1993 for filling up the casual vacancy of President or the Vice-President of the Panchayat. In the Act, 1993 or the Rules framed there under it is nowhere provided nor it could have been provided that merely because an elected member has been elected as President or the Vice-President

as the case may be of the Panchayat shall be ceased to be elected member of the Panchayat. Meaning thereby that in case where the casual vacancy has caused either of the office of the President or the Vice-President, as the case may be, he shall not be entitled or competent or eligible to cast his vote as he has to preside over this meeting. In a meeting convened for filling up the casual vacancy of the either of the offices u/s 75 of the Act, 1993, this is a legal right of the elected member to cast his vote, which clearly borne out from the Section 63 of the Act, 1993. That right has not been taken away u/s 75 of the Act, 1993. If Section 75 of the Act, 1993 is to be read and understood as what the learned Counsel for the petitioner has tried to convince before this Court, then certainly this provision to that extent will be contrary to the basic principles of the democratic set-up of institution as well as it will be invalid or unconstitutional.

20. The reading of the statute as what it is contended by the learned Counsel for the petitioner is taken it will render it unworkable or it will take away the right to vote, which is conferred upon the elected member of the institution. Not only this, it will result in making hostile discrimination as well as render it to be unconstitutional. No discrimination can be made amongst the elected members, i.e., who are continued only as the member and those who have been elected either President or the Vice-President of the Panchayat. Taking into consideration the totality of the facts of this petition is wholly misconceived.

21. The resultant position of the aforesaid discussion is as under:

(1) That in case where a meeting of the Panchayat has to be called for holding election to fill in the casual vacancy of the President or Vice-President as the case may be u/s 75 of the Act, 1993, the President or the Vice-President of the Panchayat as the case may be is competent to preside over this meeting.

(2) The President or the Vice-President, as the case may be as being the elected member of the Panchayat has right to cast the vote in the election to be held for filling up the casual vacancy in the office of the President or Vice-President as the case may be.

(3) In the case of the equality of the votes, the President or the Vice-President as the case may be, who is presiding over the meeting convened u/s 75 of the Act, 1993 shall not be entitled to cast second vote. In that contingency, the procedure as laid down in the Sub-section (7) of the Section 63 of the Act, 1993 has to be followed and adhered to. By way of the clarification it is made clear that the President or the Vice-President as the case may be of the Panchayat, who is presiding over the meeting convened u/s 75 of the Act, 1993 for filling up the casual vacancy in the office of the President or the Vice-President of the Panchayat shall have right to cast only one vote and not two. In the result, this petition fails and the same is dismissed. Notice discharged.