

(2011) 05 GUJ CK 0055

In the Gujarat High Court

Case No : Special Civil Application No. 6011 of 2011

Kacharabhai Jivabhai Vala and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Election Petitions Rules — Rule 28
Gujarat Co-operative Societies Act, 1961 — Section 145U

Citation : (2011) 05 GUJ CK 0055

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : P.C. Kavina, A.J. Yagnik and Saurabh G. Amin, for Petitioners 1 - 19, for the Appellant; P.K. Jani, Government Pleader, Rashesh Rindani, for Respondents Nos. 1 to 5, Mihir Joshi and Dipen A. Desai, for Respondents Nos. 6, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard the learned Counsel for the parties. This petition has been filed by the Petitioners praying the following reliefs:

(A) to declare the election programme announced by the Respondent Deputy Collector and Election Officer on 18.4.2011 on the basis of order dated 15.4.2011 as illegal and unconstitutional and be further pleased to direct Respondents to reschedule the entire election process for the election of Board of Directors of Respondent No. 6 Society;

(B) to direct the Respondents to hold election of Board of Directors of Respondent No. 6 society taking the voters list of 31.3.2009 as base and prepare final voters list accordingly in accordance with law;

(C) to direct the Respondents to hold election of the Board of Directors of Respondent No. 6 society preparing final voters list ignoring the amendment brought about in the bye-laws of Respondent No. 6 society being bye-law No.

24(A) and (B) and approved by the Respondent Director, Sugar by order dated 02.02.2010;

(D) to direct the Respondents to allow Petitioners and other identically situated member shareholders also to contest election of the Board of Directors of Respondent No. 6 society ignoring the amendment brought about in the bye-laws of Respondent No. 6 society being bye-law No. 24(A) and (B) and approved by the Respondent Director, Sugar by order dated 02.02.2010;

(E) to direct the Respondents to change the Election Officer;

(F) to direct the Respondents to delete the minors and non-agriculturists from the final voters list after due verification and hold election for the Board of Directors of Respondent No. 6 society thereafter in accordance with law;

(G) during the pendency and/or final disposal of the present petition be pleased to stay the election of Board of Directors of Respondent No. 6 society scheduled on 08.05.2011;

(H) during the pendency and/or final disposal of the present petition be pleased to direct the Respondents to hold election of the Board of Directors of Respondent No. 6 society preparing final voters list ignoring the amendment brought about in the bye-laws of Respondent No. 6 society being bye-law No. 24(A) and (B) and approved by the Respondent Director, Sugar by order dated 02.02.2010;

(I) during the pendency and/or final disposal of the present petition be pleased to direct the Respondents to delete the minors and non-agriculturists from the final voters list after due verification and hold election for the Board of Directors of Respondent No. 6 society thereafter in accordance with law;

(J) to pass such other and further order/s in the interest of justice be granted.

2. Learned Counsel for the Respondents have raised preliminary objection that election of the Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. (for short, "the Society") is scheduled to be held on 8.5.2011 as per the election programme. Since the election process has started this Court, under Article 226 of the Constitution of India, should not interfere with the process of election at this stage. Learned Counsel for the Petitioners have urged that this Court can look into the facts of the case and can decide the matter and if it comes to the conclusion that there is any gross illegality, this Court may interfere with the election process. We are not inclined to interfere at this stage with the process of election in view of the fact that election is fixed on 8.5.2011 and the Petitioners have a remedy to file election petition u/s 145U of the Gujarat Cooperative Societies Act, 1961.

3. A full Bench of this Court in Daheda Group Sewa Sahakari Mandli Ltd. v. R.D. Rohit, Autho. and Co-operative Officer (Marketing) 2006 (1) GCD 211 (Guj). FB has held that where the remedy to file election petition is available and election

petition could be filed by the Petitioner whose name has been improperly deleted from the voters" list can also file election petition. Further the Full Bench in para 33 of the judgment held as under:

In view of the above discussion, we answer the Reference as under:

(i) A person whose name is not included in the voters" list can avail benefit of provisions of Rule 28 of the Rules by filing Election Petition.

(ii) As the authority under Rule 28 has wide power to cancel, confirm and amend the election and to direct to hold fresh election in case the election is set aside, remedy under Rule 28 is an efficacious remedy.

(iii) Even though a petition under Article 226 of the Constitution of India is maintainable though alternative remedy is available, the powers are to be exercised in case of extraordinary or special circumstances such as where the order is ultra virus or nullity and/or ex facie without jurisdiction. The exclusion or inclusion of names in the voters" list cannot be termed as extraordinary circumstances warranting interference by this Court under Article 226 of the Constitution of India and such questions are to be decided in an Election Petition under Rule 28 of the Rules.

4. In view of the aforesaid reasons, we dismiss the petition on the ground of alternative remedy with liberty of the Petitioners to file election petition, if they are so advised.