

(1981) 02 GUJ CK 0015
In the Gujarat High Court
Case No : Spl. Civil Application No. 95 of 1981

Kalidas Karsanbhai Chavda	Vs	APPELLANT
Vadodara Jilla Panchayat Elections		RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats (Amendment) Act, 1962 — Section 323
Gujarat Taluka and District Panchayats Election Rules, 1975 — Rule 12, 15

Citation : AIR 1981 Guj 195 : (1981) 22 GLR 1050

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Advocate : H.M. Mehta and H.J. Nanavati, for the Appellant; K.J. Vaidya, Asstt. Govt. Pleader for Purnanaad and Co and J.G. Shah, for the Respondent

Judgement

1. The Petitioner Kalidas Karsandas Chavda residing at village Anguthan. Taluka Dabhoi, district Vadodara was aggrieved by the order passed by

respondent No. 1 the Returning Officer who rejected his nomination paper for the election, to be held of the concerned Panchayat. For the

election in question the nomination papers were to be filled in by the contesting candidates by January 5, 1981 and the scrutiny of the nomination

papers was to take place on January 6. 1981.

2. It is the grievance of the petitioner that his nomination paper was rejected on the ground of omission to mention the name of the scheduled caste

to which he belongs. It may be noted at this stage that at the relevant time there were only two contesting candidates and as the nomination paper

of the Petitioner was rejected on the ground of omission to mention the name of the scheduled caste respondent No. 2 Shri Nathabhai Mavjibhai

Parmar was declared elected as an uncontested candidate.

3. It is under these circumstances that the Petitioner was aggrieved "by the impugned order or action taken by the Returning" Officer and has filed

the present petition under Article 226 of the Constitution. In essence and substance the Returning Officer applied the provisions of Section 33(2)

of the Representation of the People Act. 1951 and followed the reported decision of the Supreme Court in Shri V.V. Giri Vs. Dippala Suri Dora

and Others, .

4. At the time of the hearing of the present petition Mr. Mehta the learned advocate for the petitioner strongly urged before me that in the instant

case there is no provision in the Gujarat Panchayats Act. 1961 which provides a statutory obligation on the contesting candidate to mention the

name of the scheduled caste in the nomination paper which he fills in. He also urged before me, that even the plain reading of the rules framed

under the aforesaid Act clearly indicates that no such obligation is imposed on the contesting candidate to mention , in the nomination paper the

name of the scheduled caste to which he belongs. It may be noted at this stage that it was an admitted fact in course of the entire hearing of the

petition before me that the petitioner belongs to the scheduled caste and on that point there was no opposition before me.

5. Rule 12 of the Gujarat Taluka and District Panchayat Election Rules, 1975 (hereinafter referred to as ""the Rules"") Provides as follows:-

12. Presentation of nomination papers and requirements for a valid nomination,

(1) Nomination paper in Form-5 shall be supplied by the Returning Officer to any person asking the same.

(2) On or before the date appointed for making nomination under clause (a) of sub-rule (2) of Rule 9 each candidate shall either in person or by his

proposer, between the hours of eleven O'clock in the fore-noon and three O'clock in the afternoon deliver to the Returning Officer at the place

specified in this behalf in the notice issued under Rule 10 a nomination paper completed in the form specified in sub-rule (1) and aimed by the

candidate and by a voter of the electoral division as proposer.

Provided that no nomination paper shall be delivered to the Returning Officer on a day which is Public holiday :

Provided further that no paper purporting to be a nomination paper of a candidate which is:-

(a) to (C)

(3) On the presentation of a nomination paper the Returning Officer shall satisfy himself that the name and numbers in the list of voters of the

candidates and his proposer as entered in the nomination paper are the same as those entered in the list of voters and if not invite the attention of

the candidate or proposer as the case may be to this defect :

Provided that the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be

corrected in order to bring them in conformity with the corresponding entries.....

6. Rule 15 of the aforesaid Rule provides as under:-

15. Scrutiny of nomination papers-

(1) On the date fixed for the scrutiny of nominations under clause (b) of sub-rule (2) of Rule 9 the candidates their election agents, one proposer of

each candidate and one other person duly authorised in writing by each candidate but no other person may attend at such time and place as the

Returning Officer may appoint and the Returning Officer shall give them all reasonable facilities for examine the nomination papers of all candidates

which have been delivered other than those which have been rejected by the Returning Officer under the provision to sub-rule (2) or under sub-rule

(6) of Rule 12.

(2) The Returning Officer shall then examine the nomination Papers and shall decide all objections which may be made to any nomination and may

either on such objection or on his own motion after such summary inquiry if any as he thinks necessary reject any nomination paper on any of the

following grounds.

(a) that on the date fixed for scrutiny of nominations the candidate is either not qualified or disqualified for being chosen to fill the seat under the

Act, or

(b) that the proposer is disqualified from subscribing a nomination paper: or

(c) that there has been a failure to comply with any of the provisions of these rules: or

(d) that the candidate or the proposer is not identical with the person whose electoral number is given in the nomination paper as number of such

candidate or proposer as the case may be: or

(e) that the signature of the candidate or any proposer on the nomination paper is not genuine or has been obtained by fraud.

(3)

(4) The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character

7. In view of the aforesaid provisions contained in the Rules, Mr. Mehta strongly urged before me, that in the instant case there was a technical

defect in the nomination form. The petitioner did not mention the name of the scheduled caste to which he belongs and at the same time the

Returning Officer had not drawn attention of the petitioner to the said. Had the Returning Officer drawn the attention at the petitioner to such a

technical defect, he would not have lost his vital right of contesting the election than in question Mr. Mehta also emphasised the fact that Rule 15 (2) of

the Rules in terms provides that the Returning Officer should have directed the necessary summary inquiry by drawing the attention of the petitioner

that he had failed to mention the name of the scheduled caste to which he belongs and as the Returning Officer did not direct any such enquiry on

that count as mandatory provided there was no justification at all for the Returning Officer to reject the nomination paper. Mr. Mehta also urged

that the mere non-mention of the scheduled caste to which the petitioner belongs is obviously and patently a technical error or a defect and the

same is not of a substantial character, Mr. Mehta also urged that even after the Returning Officer noticed the aforesaid technical defect, it was not

at all necessary for him to reject the nomination paper. He urged that as a matter of fact no summary inquiry was held by the Returning Officer as

contemplated by Rule 15 (2) of the Rules and as the Returning Officer failed to discharge a vital statutory function the Returning Officer was not

justified in rejecting the nomination paper.

8. Mr. Mehta invited my attention to the reported decision of this Court in *Kanchanbhai v. Maneklal* (1965) 6 Guj LR 200: (AIR IN6 Guj 19). In

the said case this Court had taken the view that where the question as to the existence of an alternative remedy was a highly debatable one, it

would not be right to refuse relief to the Petitioner if they were otherwise entitled to the same-

9. Mr. Mehta placed reliance on the said decision in order to substantiate his point, that this was a fit case where the petitioner has filed the petition

under Article 226 of the Constitution in this Court. He also urged that in a democratic set-up the right to contest the election is an extremely

valuable right and if the Returning Officer has failed to discharge his statutory function as provided in Rule 15 (2) of the Rules this court must

necessarily grant the adequate relief to the petitioner, particularly when the existence of the alternative remedy was a highly debatable one (vide:

Patel Kanchanbhai Mangalbhai and Another Vs. Maneklal Maganlal Gandhi and Others, .

10. There is lot of substance and force in the submission made by Mr. Mehta. This is a clear case where the Returning Officer had not discharged

his function as contemplated by Rule 15 (2). When the Returning Officer examined the nomination papers he should have noticed the aforesaid

technical defect as the nomination paper. Particularly in view of the objection from respondent No. 2 that the petitioner had not mentioned the

name of the scheduled caste to which he belongs in the nomination paper. When such a pointed attention was drawn, of the Returning Officer by

the contesting candidate was it not the duty of the Returning Officer to make the summary inquiry? Was it not the duty and the statutory function of

the Returning Officer to draw the attention of the petitioner that the petitioner had not mentioned in the nomination Paper that he belongs to a

particular scheduled caste ? In any event in my view having regard to the fact and circumstances of the case the aforesaid technical error was, not

of a substantial character. He merely omitted to mention the name of the scheduled caste to which he belongs and such a technical error in the best

interest and furtherance of the democratic set up at all levels in our country should not defeat the right of the Petitioner to contest the election. As

stated above, the right to contest the election is an extremely valuable right, and such a right cannot be denied to any citizen particularly when the

Returning Officer failed to discharge his statutory functions as provided in Rule 15 (2) of the Rules. It may be emphasised at this stage that there

were only two contesting candidates for the election in question it may be equally emphasised that the contesting candidate knew very well the

caste to which the Petitioner belongs. It may be equally emphasised that either the Act or the rules framed thereunder do not provide by way of a

statutory obligation on the Petitioner to mention the name of the scheduled caste to which he belongs. Under the circumstances, I am inclined to

take the view that as the petitioner committed an unfortunate error amounting to a technical defect not of a substantial character the Returning

Officer was not at all justified in rejecting the nomination paper of the petitioner particularly when he did not direct any summary inquiry as

mentioned in Rule 15 (2) of the Rules.

11. But Mr. J. G. Shah the learned advocate for respondent No. 2 very vehemently resisted the submissions; made by Mr. Mehta and in

substance. Mr. Shah urged the following points for my consideration :-

(1) The right to contest the election in the present case is conferred by a statute and if that right is denied by the Returning Officer, it would be open

to the petitioner to proceed in accordance with Section 24 of the Act which provides for the determination of validity of election by making a

necessary application to the Civil Judge as provided in the Section. In substance in this behalf the submission of Mr. Shah was that as the Act

provides for an alternative remedy to challenge the legality of the election, it would not be proper for me to exercise my discretion and powers

under Article 226 of the Constitution and to permit the Petitioner to ventilate his grievance in this Court.

(2) That the Petitioner failed to point out any clear or substantial error in law so as to justify any interference with the impugned order passed by the

Returning Officer.

12. Incidentally it may be mentioned that Form 5 as mentioned in Rule 12 of the Rules contains first a form in which nomination paper is to be filled in

and the same form also mentions the particulars required to be filled in by the Petitioner or the concerned candidate. The said form also contains

the type of the declaration to be made by the member of the scheduled caste or scheduled tribe candidate. In substance in this behalf Mr. Shah's

submission before me was that as there was failure to make the declaration as provided in Form 5 the petitioner committed an error of a substantial

nature by not complying with the requirements of the said Form 5 which is having statutory force, and hence the Returning Officer was justified in

treating the said error or a defect of a substantial character.

13. With respect it is not possible for me to agree or accept any of the

submissions made by Mr. Shah.

14. As observed in Kanchanbhai's case AIR(1956) Guj 19) (supra) at page 215 of Guj LR) (at p. 28 of AIR) the question as to the existence of

the alternative remedy was a highly debatable one and that being so this Court did take the view in the aforesaid case that reliefs should be granted

to the petitioners if they are otherwise entitled to the same.

15. Moreover I am convinced beyond any doubt, that in the instant case the petitioner who had a valuable right to contest the election was denied

the right to contest the election on account of the aforesaid technical defect, which is not of a substantial character. As mentioned above I am

convinced beyond any doubt that in the instant case an objection was raised by the contesting respondent on the ground of the petitioner not

having mentioned the name of the scheduled caste to which he belongs. It was at this stage that it was the function and obligation of the Returning Officer

to make necessary summary inquiry as provided in Rule 15 (2) of the Rules. The Returning Officer did not direct any summary inquiry as

contemplated under the rules. When the contesting candidate in terms drew the attention of the petitioner was it not the duty of the Returning

Officer to make the necessary inquiry and to bring to the notice of the petitioner that he had committed a mistake in not complying with the

requirements of Form 5 in as much as he failed to make declaration that he belongs to a particular scheduled caste Thus in absence of any

summary inquiry as statutorily provided in the rules should the petitioner lose his valuable right to contest the election in a democratic setup? In the

facts and circumstances of the case can it be said that it was absolutely necessary for him to reject the nomination paper ? In a case like this

rejection of a nomination paper will not be in furtherance of the democratic set up established in our country at all levels but will be patently and

manifestly prejudicial to the same. As indicated above either the Act or the rules do not contemplate any statutory obligation on the petitioner to

mention the name of the scheduled caste to which he belongs in spite of the fact that such a Provision is specifically made in the Representation of

the People Act, 1951. This shows conscious and deliberate departure on the part of the legislature not to make such provisions under the Gujarat

Panchayats Act or the Rules framed thereunder. In view of what has been stated

above. I am convinced beyond any doubt that this is a fit case where the petitioner was justified in rushing up to this High Court under Article 226 of the Constitution. particularly when his right to contest the election is denied under the circumstances mentioned above. The defect which was pointed out by the contesting respondent is obviously of a technical nature and cannot be branded as a defect of a substantial nature. As mentioned above the Returning Officer was also guilty of not discharging his statutory function inasmuch as he did not direct any summary inquiry by drawing the attention of the Petitioner as to why he did not mention the name of the scheduled caste to which he belongs. In this view of the matter it is impossible for me to countenance the submission of Mr. Shah that this is a case where there is no error in law. The error in law committed by the Returning Officer is manifestly and apparently on the face of the record which has resulted in the denial, of the right of the petitioner to contest the election. As emphasised above this is a case where in a democratic set up the extremely valuable right of the petitioner is denied and if that right is denied on such a flimsy ground this court must necessarily interfere under Article 226 of the Constitution as held by this Court in *Patel Kanchanbhai Mangalbhai and Another Vs. Maneklal Maganlal Gandhi and Others*, . I am convinced that this court must give necessary relief to the Petitioner.

16. Mr. Shah cited before me some cases of the Supreme Court *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*, ; *C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, : *Nanhoo Mal and Others Vs. Hira Mal and Others*, and *K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others*, , but as none of the cases concerns directly with the point at issue and hence. I need not burden my judgment by referring to the said cases in detail for the disposal of the present petition as the same would result into unnecessary waste of public time.

17. In view of the aforesaid, discussion I must necessarily set aside the impugned order passed by the Returning Officer who has not given any satisfactory explanation or any explanation in regard to the non-action on his Part for the conduct of a summary inquiry as provided in the Rules. His affidavit though filed in this court has not satisfied me at all.

18. In the result the Petition succeeds and the rule is made absolute. I hereby declare that respondent No. 2 is not a validly declared successful

candidate for the election in question. I also direct that there shall be an election and it will be over to the Petitioner and respondent No. 2 to

contest the election afresh. Accordingly the rule is made absolute but as bitterness may not prevail in a small village, in regard to the election matter.

I make no order as to costs. Interim relief granted to respondent No. 2 in regard to this order till Monday 9th February. 1981 the Period during

which respondent No. 2 can file appropriate, Proceedings if aggrieved by the order passed by me. If respondent No. 2 fails to obtain any order

regarding the relief which he has asked for till Monday 9th Feb. 1981 then automatically it will not be over to respondent No. 2 to function as an

elected member of the concerned Panchayat. Miss Shah has also made a statement at the bar that till February 9. 1981 respondent No. 2 will not

act in any manner as a member of the concerned Panchayat on the basis of the undertaking given by Miss D. T. Shah.

19. Petition allowed.