

**(2022) 04 GUJ CK 0043**

**In the Gujarat High Court**

**Case No : R/Special Civil Application No. 17728 Of 2021**

Khorajiya Sharifaben Mamad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision : 12-04-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227, 329(B)  
Gujarat Agriculture Produce Markets Rules, 1965 — Rule 4, 6, 7(2), 28  
Gujarat Cooperative Society Rules, 1965 — Rule 32  
Gujarat Cooperative Market Committee Rules, 1965 — Rule 4  
Agriculture Produce Marketing (Regulation) Act, 2017 — Section 11(1)(i)  
Co-Operative Societies Act, 1912 — Section 155

**Citation : (2022) 04 GUJ CK 0043**

**Hon'ble Judges : Vaibhavi D. Nanavati, J**

**Bench : Single Bench**

**Advocate : Bharat T Rao, Ishan Joshi, Jay B Trivedi, BS Patel**

**Final Decision : ?Dismissed**

## Judgement

Vaibhavi D. Nanavati, J

1. The present writ application has been filed under Article 226 of the Constitution of India, seeking the following reliefs:-

“(A) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the order dated 15.11.2021 passed by Authorised Officer ordering to delete the names of the writ-applicants from the voter's list of agriculturists constituency for the election of APMC, Vankaner for the reasons stated in the Memo of petition and in the interest of justice;

(B) Pending admission, hearing and final disposal of the above Special Civil Application to stay the execution, implementation and operation of the order dated 15.11.2021 passed by the Authorised Officer ordering to delete the names of the writ-applicants from the voter's list of agriculturists constituency for the

election of APMC, Vankaner and further be pleased to direct the Authorised Officer to continue the names of writ-applicants in the voter's list for agriculturists constituency for the reasons stated in the memo of petition and in the interest of justice;

(C) To grant ad interim relief in terms of Para 23(B) hereinabove;

(D) The Hon'ble Court may kindly be pleased to grant any other appropriate relief as the nature circumstances of the case may require;

(E) To award the cost of this petition."

2. The brief facts giving rise to the present writ application, which read thus:-

2.1 The writ-applicants are agriculturists of village Tithva, Taluka Vankaner, District Morbi. The writ-applicants are members of the Tithva Seva Sahkari Mandli Ltd. The writ-applicants are elected members of the Tithva Seva Sahkari Mandli Ltd. The election of the AMPC, Vankaner came to be declared by the Director, APMC on 13.10.2021 under Rule-4 of Gujarat Agriculture Produce Markets Rules, 1965. The election program of the said election came to be declared by APMC on 13.10.2021. The APMC, Vankaner has prepared the voter's list and the same was forwarded to the Authorised Officer and on receipt of voter's list from APMC, Vankaner, primary voter's list published on 29.10.2021. As per Rule 7(2) of the APMC Rules, the names of the writ-applicants were included in the primary voter's list in the agriculturist constituency as members of the Managing Committee of Tithva Seva Sahkari Mandli Ltd. the respondent nos.4 and 5 have raised objection on 01.11.2021 against inclusion of names of the writ-applicants in the voter's list and the Authorised Officer issued notice dated 01.11.2021 calling upon the writ-applicants to remain present for hearing and submit their explanation. The writ-applicants submitted their reply to the said notice on 08.11.2021. The writ-applicants contended that they were never removed as members of the Managing Committee of the society i.e. Tithva Seva Sahkari Mandli Ltd. in its meeting dated 25.09.2020 decided not to remove the writ-applicants as members of the Managing Committee for not remaining present for three consecutive meetings. It is further stated that the society held that the writ-applicants have not incurred disqualification under byelaw no.40(3).

2.2 Though the writ-applicants filed their reply and remained present for hearing before the Authorised Officer, by the impugned order dated 15.11.2021, deleted their names from the voter's list of agriculturist constituency for the election of APMC, Vankaner. It is further stated that thereafter, the District Registrar, Morbi, passed an order dated 15.11.2021 removing the name of the writ-applicants from Managing Committee of Tithva Seva Sahkari Mandli Ltd. The said order was received by the writ-applicants on 24.11.2021.

3. Heard Mr.B.T.Rao, the learned advocate appearing for the writ-applicants.

4. Mr.B.T.Rao, the learned advocate submitted that the order dated 15.11.2021 deleting the names of the writ- applicants passed by the Authorised Officer from

the voter's list of agriculturist constituency for election of APMC, Vankaner is against the provision of Section 11(1)(i) of the APMC Act. Mr.Rao submitted that the Authorised Officer while dealing with the objection raised by Shri Irfan Mamad Ami Gandharva in respect of 18 names of five societies, whose names were included in the voter's list where the objector had produced documentary evidence about defaulter. In that case, the Authorised Officer observed that under Section 11(1)(i) of APMC Act there is no provision that defaulter member cannot vote at the election of APMC and rejected the objections. The Authorised Officer in the case of the writ-applicants held that the writ-applicants incurred disqualification on account of being absent in three consecutive meetings and hence directed to delete names of the writ-applicants though Section 11(1)(i) of the APMC Act does not provide to delete the names on such ground.

5. In view of above, Mr.Rao, the learned advocate submitted that the order passed by the Authorised Officer is inconsistent and erroneous. Mr.Rao submitted that the order passed by the Authorised Officer only can undertake to inquire in case the writ-applicants have travelled beyond the provision of APMC Act. Mr.Rao submitted that as per byelaw No.36, the meeting of the Managing Committee should be called at least once every two months and the Authorised Officer failed to appreciate the fact that the Tithva Seva Sahakari Mandli Ltd. i.e respondent no.5, herein was called three meetings in less than 1 month and under the said Act, before calling the meeting by the Managing Committee, minimum notice of three days is required to be given. The Authorised Officer failed to appreciate that such notice as stated above was not given and therefore the meeting dated 09.07.2020, 11.07.2020 and 31.07.2020 were called against the provisions of law. Mr.Rao, the learned advocate relied on the judgment of Supreme Court reported in (2004) 9 SSC 204, substantiating above referred submissions.

6. Mr.Rao, the learned advocate lastly submitted that the impugned order dated 15.11.2021 passed by the Authorised Officer is passed without authority of law and has deleted names of the writ-applicants from the voter's list is against the provision of law and under such circumstances, the writ-applicants are constrained to approach this Court under Article 226 of the Constitution of India and that the writ-applicants cannot avail statutory remedy of filing appeal under Rule 28 of APMC Rules. Mr.Patel further submitted that the writ-applicants have committed fraud for inclusion of their names by not disclosing the election of the society in which almost all directors have been elected and the writ-applicants ceased to be the directors as per the provision of Rule 6 of the produce market Rules, 1965. Lastly, Mr.Rao submitted that the order passed by the Authorised Officer on 15.11.2021 be quashed and set aside.

7. Heard the learned advocate Mr.B.S.Patel appearing for the Authorised Officer. Mr.Patel, the learned Senior Counsel raised preliminary objection with regard to maintainability of the writ application. Mr.Patel, the learned Senior Counsel relied on ratio laid down by the Full Bench of this Court in the case of Daheda Group Seva Sahakari Mandli Limited vs. R.D.Rohit, Authorised Officer and Cooperative

Officer (Marketing), reported in (2006) 1 GCD 211.

8. Mr. Patel, the learned advocate referring above referred decision submitted that though there is alternative remedy available to the writ applicants, this Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. In the present case, the names of the writ-applicants were deleted from the voter's list cannot be said to be extraordinary case. The writ-applicants be relegated to statutory alternate remedy under Rule 28 of APMC Election Rules.

9. Learned advocate Mr.Patel submitted that the District Registrar, Morbi, has passed the order dated 17.11.2021 removing the writ-applicants from Managing Committee through Tithva Seva Sahkari Mandli Ltd., under the Rule 32 of the Gujarat Cooperative Society Rules, 1965. The writ-applicants herein challenged the order passed by the District Registrar removing the names of the writ-applicants from the committee by order dated 17.11.2021. In the present writ application, the Authorised Officer is duty bound to abide by the order passed by the Deputy Registrar, Morbi.

10. Mr.Patel, the learned advocate lastly submitted that the order passed by the District Registrar under Rule 32 of the Cooperative Rules, 1965, is challengeable order under Section 155 of the Cooperative Societies Act, when an efficacious remedy is available to the writ-applicants, therefore this Court may not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. Mr.Patel, the learned Senior Counsel lastly submitted that the writ-applicants be relegate to statutory alternative remedy under Rule 28 of Rules, 1965 and dismiss the writ application.

11. Heard the learned advocate Mr.Jay Trivedi appearing for the respondent no.4. Mr.Trivedi, the learned advocate adopted the submissions advanced by the learned Senior Counsel Mr.B.S.Patel.

12. Mr.Trivedi, the learned advocate submitted that however, the writ-applicants are members of the respondent no.5 society, which are governed by the provision of the Act, Rules, byelaws 40(3) of the respondent no.5 Society and submitted that any member, who remained absent in the three consecutive meetings, to remove as a member of the society. Mr.Trivedi, the learned advocate submitted the writ-applicants remained absent on the meeting called by the Secretary of the society through agenda notice dated 07.07.2020, 11.07.2020 and 31.07.2020. Mr.Trivedi further submitted that the said agenda never challenged by the writ-applicants and the writ-applicants failed to rights to question the validity of the agenda notice. Mr.Trivedi, the learned advocate lastly submitted that this Court may not reconsider the facts and findings of the case and relegate the writ-applicants to challenge the order passed by the respondent authority before the appropriate forum.

13. Heard Mr.B.T.Rao for the writ-applicants, learned Senior Counsel Mr.B.S.Patel and Learned AGP Mr.Ishan Joshi for the respondent no.3 and Mr.Jay Trivedi for

the respondent no.4 objector.

#### ANALYSIS:-

14. The writ-applicants are agriculturist of village Tithva, Taluka Vankaner, District Morbi and members of the Tithva Seva Sahkari Mandli Ltd. The writ-applicants are elected members of the Managing Committee of the Tithva Seva Sahkari Mandli Ltd. and election of APMC Vankaner came to be declared by the Director, APMC on 13.10.2021 under Rule 4 of the Gujarat Cooperative Market Committee Rules, 1965. Pursuant to the objection raised by the respondent no.4, by the order dated 15.11.2021, names of the writ-applicants came to be deleted from the voter's list from election of APMC, Vankaner by the impugned order dated 15. 11.2021. Being aggrieved by the said order, the writ-applicants approached this Court by filing the present writ application. The Coordinate Bench by the order dated

6. 12.2021, issued notice making it returnable on 14.12.2021. By the order dated 28.12.2021, the Coordinate Bench of this Court permitted the writ-applicants to cast their votes in the election to the Vankaner, Agricultural Produce Market Committee scheduled on 11.01.2022 and whereas the votes cast by the writ-applicants shall be kept in a sealed cover which would be subject to further orders that may be passed by this Court in that regard. The operative part of the said order dated 28.12.2021, reads thus:-

"5. Having heard learned advocates for the parties, prima facie, it appears to this Court is that though the petitioners stood disqualified by the virtue of order dated 17.11.2021 passed by the District Registrar, Co-operative Society, Morbi and whereas till the said order is interfered with by this Court or any competent authority, while the petitioners may not get any right to vote in the ensuing election, at the same time, due to a clear mistake or excessive jurisdiction exercised by the Authorised Officer respondent no.3 herein the petitioner would be entitled to pray for interference of this Court. Again in the prima facie opinion of this Court it is only because the impugned order passed by the Authorised Officer preceded the order passed by the District Registrar that the petitioners get a right to pray for interference, in a converse scenario if the order of the Authorised Officer has been passed after the District Registrar had passed order in question, in prima facie opinino of these petitioners may not have any right to seek for interference at this stage."

Mr.Rao, the learned advocate appearing for the writ-applicants submitted that non-interference by this Court, at this stage, under Article 226 of the Constitution of India would render the writ-applicants remedyless.

#### Position of Law:-

15. The law as regards judicial review in the matters pertaining to election is well settled.

(a) The Full Bench of this Court in the case of Daheda Group Seva Sahakari

Mandli Limited vs. R. D. Rohit, Authorised Officer and Cooperative Officer (Marketing), reported in 2006 (1) GCD 211 held that the inclusion or exclusion of name in the voters' list cannot be termed as extraordinary circumstances warranting interference by this Court under Article 226 of the Constitution of India. Paragraphs 31, 32 and 33 reads thus :-

"31. On the question of maintainability of petition under Article 226 of the Constitution of India, in our opinion, the law is well settled. Mr Patel, invited our attention to the decision reported in 1988 GLH 430. There the Division Bench, after quoting the judgment of a Full Bench in the case of Ahmedabad Cotton Mfg. Ltd. v. Union of India and Ors. (18 GLR 714) where the principles have been clearly enumerated and held that extraordinary jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India is very wide, the Court should be slow in exercising the said jurisdiction where alternative efficacious remedy under the Act is available but however, if the impugned order is an ultra vires order or is nullity as being ex-facie without jurisdiction. the question of exhausting alternative remedy would hardly arise.

31.1. In the case of Mehsana Dist. Coop. Sales and Purchase Union v. State of Gujarat (1988 (2) GLR 1060), after following the decision rendered by the Apex Court in the case reported in the case of Gujarat University v. N U Rajguru, (1988 (1) GLR 308), the Court have noted the observations made by the Hon'ble Apex Court as under:-

"there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing alternative remedies".

In the case of Manda Jaganath v. K S Rathnam, reported in AIR 2004 SC 3600, the Apex Court has held after considering the provisions of Article 329(B) of the Constitution of India that "there are special situations wherein writ jurisdiction can be exercised but, special situation means error having the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration."

In the case of Election Commission of India v. Ashok Kumar, reported in 2000(8) SCC page 216, the Apex Court held that the order issued by the Election Commission is open to judicial review on the ground of malafide or arbitrary exercise of powers.

32. We have gone through the aforesaid decisions closely. There cannot be any dispute with regard to the principles laid down therein. The sum and substance of those decisions apply to a situation where this Court would like to entertain a petition on the foundation that the order is ultra vires and/ or without jurisdiction and/or is violating principles of natural justice. Thus, in an exceptional case, this Court can exercise the power of judicial review, which is a basic structure of the situation in such cases more particularly, in the election process. One thing is clear that this Court ordinarily would not like to exercise its power under Article 226 of the Constitution when the process of election has been set in motion even

though there may be some alleged illegality or breach of rules while preparing the electoral roll.

32.1. The Supreme Court, in the case of Shri Sant Sadguru Janardan Swamy (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Ors. v. State of Maharashtra and Ors (2001) 8 SCC 509, while dealing with the Maharashtra Cooperative Societies Act, held that in the process of election of the Managing Committee of a specified society where 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. It was held that the proper remedy is by way of election petition before the Election Tribunal.

33. 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 vires 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."

(b) The ratio laid down by the Division Bench of this Court in the case of Bhesavahi Group Vividh Karyakari Seva Sahakari Mandali Ltd., vs. State of Gujarat and Others, reported in 2017(2) GLR 902, paragraphs 13 to 16 read thus :-

"13. It is also pleaded by learned Senior Advocate Mr. Mihir Joshi that remedy under Rule 28 of the Rules is only before Director, and the order impugned in the Special Civil Application is passed by the authorised officer of the Director who is performing functions as election officer, as such, the same is not an effective alternative remedy. Merely because the impugned order is passed by the authorised officer, that by itself is no ground to hold that remedy before the Director is not an effective alternative remedy. When a dispute is raised by placing material on record, it is always open for the Director to pass appropriate orders either by confirming or by amending the results of election or setting aside the election. In view of such powers which are expressly conferred under Rule 28 of the Rules, even such submission that under the Rules the Director is working under the government and the impugned order passed by the authorised

officer of the Director also cannot be a ground to accept the contention that remedy under Rule 28 of the Rules is not effective alternative remedy.

14. It is also pleaded by learned Sr. Advocate Mr. Mihir Joshi that the learned single Judge has also recorded a finding that the appellant is not primary agricultural credit cooperative society, but it was not a ground for exclusion of the names of the members of the managing committee of the appellant society and the learned single Judge thereby dismissed the Special Civil Application. It is clear from Section 11(1)(i) of the Act that members of the managing committee of only primary agricultural credit cooperative societies doing credit business in the market area alone are eligible to vote. The learned single Judge has recorded such finding. But from the reasons stated in the order impugned in the Special Civil Application as we are of the view that the order impugned in the Special Civil Application itself can be the subject-matter of election petition, such finding of the learned single Judge will have no consequence at all. 14A. For the aforesaid reasons, we are of the view that this appeal is devoid of merits and the same is accordingly dismissed.

15. However, we leave it open to the appellant that if the appellant-petitioner is aggrieved by the result of election, it can approach the competent authority by raising an election dispute as contemplated under Rule 28 of the Rules. If such petition is filed, it shall be considered by the competent authority independently and uninfluenced by the findings recorded either by the learned single Judge or by this Court in this appeal.

16. Since the main appeal is dismissed, the Civil Application does not survive and the same stands disposed of.”

16. In view of the ratio as laid down by this Court as well as Hon’ble Supreme Court the writ-applicant cannot be said to be remedy-less as submitted by Mr. Rao. The writ- applicant can avail statutory remedy of filing a Election Petition after the election is concluded under Rule 28 of the Rules, 1965. Rule 28 of the Rules 1965 reads thus :-

“28. Determination of validity of election .- (1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election, apply in writing-

(a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer, and

(b) to the State Government if the election has been conducted by the Director as an Election Officer and

(2) On receipt of an application under sub-rule (1), the Director, or the State Government, as the case may be, shall, after giving an opportunity to the applicant to be heard and after making such inquiry as he or it as the case may

be, deems fit, pass an order confirming or amending the declared result of election or setting the election aside and such order shall be final. If the Director or the State Government as the case may be sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such member.”

17. This court is not inclined to interfere under the Article 226 of the Constitution of India with regard to the decision taken by the respondent no.3 cancelling the names of the writ-applicants from the voter's list for agriculturist constituency APMC, Vankaner. The impugned order dated 15.11.2021 passed by the respondent no.3 Authorised Officer does not call for interference since the same does not result into extraordinary circumstances seeking interference by this court. The fact of deletion of the names of the writ-applicants from voter's list can be assessed in the election petition under Rule 28 of the rules. It is clarified that this Court has otherwise not accessed present writ application on merits and therefore reliance placed by the writ-applicants on order / judgment is not dealt with. If the writ-applicants were to institute the election petition, the competent authority is directed to consider the same in accordance with law without being influenced by any observations made by this Court while deciding the present writ application.

18. In view of above, this Court is not inclined to exercise its extraordinary jurisdiction under the Constitution of India and no extraordinary circumstances warrant interference by this Court.

19. The present writ application fails. With the above observations and the same stands dismissed. Since the writ petition is dismissed, interim relief granted by the order dated 28. 12.2021 stands vacated.