
(1973) 11 GUJ CK 0004
In the Gujarat High Court

Lilaben Ambadas Chandorker

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-11-1973

Acts Referred:

Bombay Primary Education Act, 1947 — Section 25, 25, 6(1), 6(2)

Citation : (1975) 16 GLR 190

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The petitioner has been a member of the Primary Education Committee of Baroda Municipal Corporation since 1968. On 22nd October 1973 she was elected as the Chairman of that Committee. Pursuant to her election she entered upon her office and started discharging her duties. On 3rd November 1973 a telegram was received from the Government of Gujarat which stated that pursuant to an inquiry into her election as the Chairman which was instituted, she should not function as the Chairman. Thereafter a formal order dated 2nd November 1973 was received which stated that a member of the Primary Education Committee had represented that her election was not lawful and that an inquiry should be made into it. The Government, therefore, ordered that all proceedings pursuant to her election should be stopped pending further orders.

2. It is this order which is challenged by the petitioner in this petition.

3. The only contention which Miss Shah, appearing for the petitioner, has raised before me is that the State Government has no jurisdiction to hold an inquiry into an election dispute relating to the chairmanship of the Primary Education Committee. The dispute relating to the chairmanship of the Primary Education Committee is essentially a dispute between the successful candidate on one hand and the unsuccessful candidate or candidates on the other hand. It, therefore, creates a *Us* between them. To decide *Us* between the contesting candidates under such circumstances is to perform a judicial function. Unless judicial power to hold an inquiry into this kind of dispute has been conferred upon the State

Government, the State Government cannot hold any inquiry in exercise of its executive power. The dispute, raised before the State Government, is not a dispute of an administrative character. It does not pertain to the area where its executive power operates. It is a purely judicial matter and it can be decided by that authority upon whom such judicial power has been conferred or by a Court of law having plenary jurisdiction to inquire into such a matter.

4. Mr. Jani, appearing for the State of Gujarat, has invited my attention to Section 25 of the Bombay Primary Education Act, 1947. Sub-section (1) thereof is relevant for the present purpose. It provides as follows:

The State Government may, from time to time, cause enquiry to be made by any of its officers in regard to any authorized municipality or school board on matters connected with primary education concerning them or any matter with respect to which the sanction, approval, consent or order of the State Government is required by or under this Act.

The jurisdiction of the State Government under Sub-section (1) extends to matters which are connected with primary education as well as to matters in respect of which the sanction, approval, consent or order of the State Government is required by or under the said Act. Election of the Chairman of a Primary Education Committee is not, in my opinion, a matter connected with primary education as such. It is a matter which touches only the constitution of the Committee. What touches the constitution of the Committee cannot necessarily be a matter connected with primary education. The election of the Chairman of a Primary Education Committee is, in any case, not a matter which is connected with primary education as such. I am unable, therefore, to uphold the argument raised by Mr. Jani that under Sub-section (1) of Section 55 the State Government has jurisdiction to inquire into a dispute of this kind.

5. He has then invited my attention to Rule 12 of the Bombay Primary Education Rules made u/s 63 of the said Act. Rule 12 provides as under:

The Chairman or the Vice-Chairman shall be elected in the manner prescribed in Schedule D:

Provided that an officer of the State Government appointed as a member of the School Board shall not be elected as Chairman or Vice-Chairman.

Rule 12 only lays down the manner of electing a Chairman or Vice-Chairman. It does not confer upon the State Government judicial power to inquire into a dispute relating to the election of a Chairman. Schedule D to which reference has been made in Rule 12 lays down Rules for the election of a Chairman or a Vice Chairman of a School Board. It prescribes the form for the purpose as well. In addition to the form there are ten Rules-Rules 1, 1A and Rules 2 to 9. Rule 8 in Schedule "D" upon which Mr. Jani has placed reliance provides as follows:

The President of the meeting shall then collect all the voting papers including the blank ones returned by any member and all other papers relating to the election

of the Chairman or Vice-Chairman, make a list of them and hand them over to the Administrative Officer of the School Board, who shall keep them in his custody for a period of at least six months from the date of the election and shall make them available for inspection by the member of the School Board or by any servant of the State Government duly authorised in this behalf.

6. Mr. Jani has relied upon the expression "shall make them available for inspection by any servant of the State Government duly authorised in this behalf" and argued that the State Government has jurisdiction under Rule 8 in Schedule "D" to inquire into an election dispute of this kind. It is extremely difficult for me to accede to this argument advanced by Mr. Jani. Rule 8 in Schedule "D" merely authorises the State Government to inspect the voting papers through its authorised servant. The right conferred upon the State Government to inspect the voting papers through an authorised servant which is purely an executive or administrative act cannot be so construed as to confer upon the State Government judicial power to inquire into an election dispute in relation to the chairmanship of the Primary Education Committee. It may be noted that the right to inspect voting papers has not only been conferred by Rule 8 in Schedule "D" upon the State Government but also upon the members of the School Board. If the State Government has judicial power under Rule 8 in Schedule "D" to inquire into an election dispute of this type, the members of the School Board must also have a similar power. Can it be assumed, therefore, that under Rule 8 in Schedule "D" the members of the School Board as well as the State Government have been given concurrent jurisdiction to judicially inquire into a dispute relating to the ejection of a chairman of a Primary Education Committee? The argument advanced by Mr. Jani is too far-fetched and can never be accepted. It may be noted in this context that Sub-sections (1) and (2) of Section 6 of the said Act provide for the machinery to adjudicate upon or inquire into the election of a member of a school board. The jurisdiction in that behalf has been conferred upon the District Judge. The said Act contains no such provision for adjudicating upon or inquiring into an election dispute relating to the chairmanship of the Committee. In my opinion, therefore, the State Government has no jurisdiction to entertain the present dispute. It could not have, therefore, issued the impugned order and disabled the petitioner from discharging her duties as Chairman of the Primary Education Committee. The impugned order is, therefore, liable to be quashed and set aside.

7. In the result, I allow the petition, quash and set aside the impugned order made by the State Government on 2nd November 1973. Rule is made absolute with costs.