
(2011) 04 GUJ CK 0055
In the Gujarat High Court
Case No : Civil Application No. 4360 of 2011

Maganbhai Amthabhai Chaudhry	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Co-operative Societies Act, 1961 — Section 144X, 74C

Citation : (2011) 04 GUJ CK 0055

Hon'ble Judges : R.M. Chhaya, J;D.H. Waghela, J

Bench : Division Bench

Advocate : B.B. Naik and P.S. Champaneri, for the Appellant; Monali Bhatt, Asstt Government Pleader for Respondents 1, 2 and 3, V.C. Vaghela, for Respondent 4, B.S. Patel and Mehul Sharad Shah, for Respondent 7, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—The petition raises very important and serious issues arising from electoral process in the co-operative sector. The Petitioner is aggrieved by order dated 30.03.2011 of the Election Officer (Additional Collector, Mehsana) appointed for holding election of Managing Committee of Mehsana District Milk Producers Cooperative Union Ltd, whereby name of the Petitioner was removed and name of Respondent No. 7 was inducted in the voters' list as representative of Megha Aliasana Milk Producers Co-operative Society.

2. It is the case of the Petitioner that Megha Aliasana Milk Producers Co-operative Society ("Society" for short) is a primary level milk producers society attached to Mehsana District Milk Producers Co-operative Union Ltd. (for short, "Sangh"), which is a specified co-operative society in terms of Section 74-C of the Gujarat Cooperative Societies Act, 1961 (for short, "the Act"). The Petitioner was a member of the Executive Committee of the Society which consisted of total 15 members. Pursuant to the advertisement dated 15.01.2011 of the Sangh, the Society was invited to nominate its representative by sending a

resolution of its Managing Committee to that effect; and four copies of such resolution with seal and signature of President and Secretary of the Society were required to be sent to the Sangh so as to be received by it on or before 24.01.2011. Therefore, a meeting of the Executive Committee of the Society was held on 20.01.2011 and the Petitioner was elected and appointed as representative by a resolution of that date; and the resolution was forwarded in the prescribed manner for inclusion of his name in the voters' list of the Sangh. Thereafter, the then Chairman of the Society, Respondent No. 6, purported to have passed another resolution nominating Respondent No. 7 to represent the Society, which was the genesis of the dispute. It is alleged on oath by the Petitioner that the second resolution dated 22.01.2011 was passed with the help of only two other members of the Executive Committee, "taking advantage and disadvantage of political influence as leader of Bharatiya Janta Party, the party in power in the State of Gujarat." Therefore, majority members of the Society decided to take action of moving "no-confidence motion" against the Chairman and the motion was passed by resolution dated 27.01.2011 of which a copy was also forwarded to the District Registrar.

2.1 District Registrar, Co-operative Societies, Mehsana, Respondent No. 2 herein, issued notice on 01.02.2011 to members of the Executive Committee of the Society to show cause as to why they should not be removed u/s 76-B of the Act. After that notice being replied, District Registrar removed all the members of the Executive Committee by order dated 29.03.2011, in exercise of his power u/s 76-B of the Act. And a Custodian was appointed to take over charge of the Society on 30.03.2011. On the other hand, the Chairman, Respondent No. 6, raised objection before the Election Officer (Respondent No. 3) to include in the voters' list name of Respondent No. 7 in place of the Petitioner. Respondent No. 7 also made an application on 25.03.2011 to include his name in the voters' list. Thus, the dispute regarding inclusion of name either of the Petitioner or of Respondent No. 7 came to be decided by impugned order dated 30.03.2011, while the election programme for Managing Committee of the Sangh was already declared and the period for filing of nominations was between 06.04.2011 to 11.04.2011. It was at that stage that the Petitioner approached this Court on 04.04.2011, when a caveat was also filed by Respondent No. 7.

3. With the above backdrop of sequence of events, it was contended by learned senior advocate Mr. Bharat Naik, appearing for the Petitioner, that correct facts placed before the Authorized Officer in the Society's written reply dated 29.03.2011, which was signed by 12 members of the Executive Committee and Secretary of the Society, were ignored and a partisan view based on extraneous material was taken in the impugned order. It was submitted that the District Registrar as well as the Election Officer apparently played a partisan role to favour Respondent No. 6, whose political influence as local leader of the ruling party is not specifically denied. It was, on that basis, submitted that the democratic principle underlying decision by majority could not be allowed to be undermined and rule of law must be asserted particularly during the process of

election so as to protect right of the citizens to elect their representative. In other words, a representative cannot be thrust upon a society or its members by manipulation or political influence, according to the submission.

4. As against the above case of the Petitioner, the contesting Respondents have relied upon preliminary legal objections based on jurisdiction of this Court, availability of alternative remedy and disputed questions of fact. Respondent No. 7 has stated on oath that resolution dated 20.01.2011 of the Society, naming the Petitioner as representative, was in fact passed on 17.01.2011 after a supervisor of the Sangh and the Petitioner had forcibly taken away record of the society and such fabricated resolution was not signed by the President. That the Secretary of the Society had informed on 19.01.2011 the District Registrar about the record being forcibly taken away and a complaint in that regard was also made to Police Inspector, Visnagar, by the Secretary. Pursuant to that, one Co-operative Officer had visited the Society at the instance of the District Registrar and statements of the Secretary as well as the then Chairman were recorded by him. It is further stated on oath that official meeting of the Executive Committee of the Society was convened on 22.01.2011 but, in absence of the original agenda book and the resolution book, the resolution was incorporated in an additional book. That resolution was sent to the Sangh on 24.01.2011 intimating that Respondent No. 7 was elected as representative of the Society. On the other hand, the Co-operative Officer under the District Registrar had made a detailed report on 24.01.2011 pointing out that the original resolution book and the agenda book were with the Petitioner, and hence proceedings u/s 76-B were required to be initiated against the Petitioner. Thereafter, the District Registrar, by letter dated 01.02.2011, directed the Chairman and the Managing Director of the Sangh to initiate appropriate proceedings against the persons who had abetted the illegal acts of forcible removal of the record of the Society and passing of the resolution dated 20.01.2011. It is averred that, by now, final voters' list has already been published on 31.03.2011 and election is scheduled to be held on 30.04.2011; and action u/s 76-B of the Act of the Registrar has nothing to do with the voters' list, as the voters' list is required to be prepared on the basis of membership of the Committee of the Society as on 31.03.2010, as per bye-laws of the Sangh.

4.1 By filing his own affidavit, Respondent No. 6, the ex-Chairman of the Society, has also raised legal objections and stated on oath, inter alia, that:

5... Myself and other directors were worried and it was decided to call the meeting for sending the names of the representative in the ensuing election of Respondent No. 4-Union. Unfortunately, the Secretary was in a helpless condition as the agenda book as well as resolution book was lying in the Respondent No. 4-Union, so all the members had been informed orally and the meeting had been convened on 22.01.2011. The Secretary had informed the managing committee regarding writing down the resolution by him and for that reason, the first resolution which had been written by the Secretary in the office of Respondent No. 4-Union was pertaining to the approval of earlier meeting, had been

approved and the second resolution had been cancelled. This had been done as we were not conversant with all procedural aspects but the members of the managing committee who were present in the meeting dated 22.01.2011, many of them had informed in the meeting itself that they had been called in the Respondent No. 4-Union and their signatures had been obtained.... It is most important to be considered that in the election of Respondent No. 4-Union, the Petitioner cannot be permitted to demolish the democratic structure of Respondent No. 5 Society. The members who had passed the resolution on 22.01.2011 were worried regarding attitude of the Petitioner in getting his name approved. The Petitioner has indulged into horse-trading activities but, I state that all the nine (9) members of the managing committee who were present in the meeting dated 22.01.2011, had put their signatures in my presence....

6. I state that if the petition is accepted, it would amount to, in my humble opinion, encouraging muscle power, manipulation in the election process, which is fatal to the democratic institute.

7. ... I state that the resolution passed by Respondent No. 5 Society dated 22.01.2011 has not been set aside by any competent court till today and any order passed in the present petition would amount to interrupting the election process which, according to my legal advice, is not permissible under the law.

... It is unheard in the cooperative movement that a specified society has taken the custody of the resolution book as well as agenda book and all the members seriously felt that it cannot be tolerated and urgently a meeting had been convened without waiting for the meeting period and it was very consensus of majority of the members. It is pertinent to be considered that 9 members had put their signatures, in that event, any order passed in favour of the Petitioner, would damage the democratic structure of the Respondent No. 5 society.

5. By filing an affidavit of the General Manager of Respondent No. 4 Sangh, it is stated that the Sangh had received resolution dated 20.01.2011 nominating the Petitioner as representative of the Society, and the Election Officer had published preliminary voters" list on 18.3.2011, which included the name of the Petitioner. As against the objection raised by Respondent No. 6, the Sangh had filed its reply dated 29.3.2011 stating that the Sangh had received only copy of the resolution dated 20.01.2011. The Sangh had verified the resolution dated 20.01.2011 which is passed and recorded in its original audited minutes book and as such true and correct record was forwarded by it to the Election Officer. It is also stated that the Sangh had no nexus with the internal dispute of the Society and the allegations against any of the officers of the Sangh were incorrect. Thus, the Sangh has substantially supported the case of the Petitioner and denied the allegations made against it, but ultimately urged that the petition is required to be dismissed.

6. While the factual controversy raised by the parties brings into focus the fact of the first resolution dated 20.01.2011 bearing twelve signatures of the members

and the second resolution dated 22.01.2011 bearing nine signatures of the members (none of the signatures being disputed), it needs to be noted that five of the nine signatories to the resolution dated 22.01.2011 have executed affidavits on 02.04.2011 to support the Petitioner and state that the Chairman had left the meeting held on 20.01.2011 in a huff and had obtained their signatures on the second resolution dated 22.01.2011 by misleading them. Therefore, ten members of the Committee had proposed the vote of no confidence and passed no confidence motion against the Chairman, Respondent No. 6. By filing additional affidavit on 13.4.2011, the Petitioner has reiterated that the resolution nominating him as representative was duly passed on 20.01.2011 after issuing an agenda notice; and thereafter no meeting was convened by issuing any other agenda notice. He has also annexed with his affidavit, affidavits of six other members of the Committee stating the facts on the same lines, as stated in the five affidavits mentioned earlier.

7. Analyzing the facts brought on record as above, few important factors stand out as remarkable and undisputable. Firstly, the overwhelming number of members of the Executive Committee of the Society have repeatedly stated on oath that the Petitioner was nominated to be its representative for inclusion in the voters' list of the Sangh, by resolution dated 20.01.2011, and the second resolution dated 22.01.2011 nominating Respondent No. 7 was not passed at a duly held meeting. The Respondent's case that the Petitioner and an officer of the Sangh took away record of the Society and wrote down resolutions therein is sought to be propped up by the Respondent by referring to the letter, complaint and statement of the Secretary of the Society. Photocopies of the letter addressed to the District Registrar and dated 19.01.2011, the complaint to the Police Inspector and the statement dated 21.01.2011 - all signed by the Secretary - are produced by the Respondent. Perusing them, it was seen that the date in the letter to the District Registrar is in different handwriting and the column for date in the complaint to the Police Inspector is left blank on all the pages of the complaint written under the letterhead of the Society; the date of 19.01.2011 is superadded at the bottom. And his statement dated 21.01.2011 is in tune with the statements of Respondent Nos. 6 and 7 dated 21.01.2011. The Secretary has, in short, signed the first as well as the second resolution and the complaint as well as all the subsequent resolutions and even the objections filed by the Petitioner before the Election Officer. Therefore, signatures of the Secretary could not lend credibility or authenticity to any document. The other remarkable fact is that the District Registrar has very promptly initiated his proceedings and sent in his record and opinion to the Collector urgently on 01.02.2011. The District Registrar has also sent in his opinion and legal remarks to the Election Officer by letter dated 29.03.2011, which has been heavily relied upon by the Election Officer in his impugned order dated 30.03.2011. These facts lead to the conclusion that the Petitioner has all throughout been supported by an overwhelming majority of members of the Managing Committee of the Society, the second resolution dated 22.1.2011 is not duly passed or supported

by majority and the District Registrar has taken prompt and decisive interest in propping up the case of Respondent Nos. 6 and 7 by going to the extent of removing all the members of the Executive Committee by exercising his extraordinary powers.

8. With the above backdrop of facts and the conclusions based thereon, the impugned order substituting in the voters' list the name of the Petitioner by the name of Respondent No. 7 clearly appears to be perverse, biased and influenced by extraneous material. In spite of the representation dated 29.3.2011 of the Society which was signed by 12 members of its Committee as well as the Secretary and the affidavits in support thereof, the Election Officer has, in the impugned order, relied mainly on the fact that the first resolution was not signed by the Chairman and the second resolution was so signed. Heavily relying upon the representation of the District Registrar, the Election Officer has jumped to the conclusion that, although neither of the resolutions of the Society were cancelled, the later resolution in favour of Respondent No. 7 was required to be relied upon because it was delivered in time to the Sangh, and the District Registrar was confirming that Respondent No. 6 continued to be the Chairman of the Society. It is expressly observed in concluding part of the impugned order that in view of the written opinion of the District Registrar, there was no alternative but to enter into the voters' list the name of Respondent No. 7. And, surprisingly, such conclusion is drawn in the name of upholding democratic values and strengthening democracy in the co-operative sector.

9. In the peculiar facts and circumstances leading to the conclusions as discussed hereinabove, the Respondents have resorted to legal objections against maintainability of the petition and relied upon availability of alternative remedy provided by legal provisions, of which the relevant parts are reproduced as under:

THE GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961 Section 145-U Disputes relating to election to be submitted to the Tribunal:

(1) Notwithstanding anything contained in Section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the Tribunal.

(2) Such reference may be made by an aggrieved party by presenting an election petition to the Tribunal:

Provided that no such petition shall be made till after the final result of the election is declared and where any such petition is made it shall not be admitted by the Tribunal unless it is made within two months from the date of such declaration:

Provided further that, the Tribunal may admit any petition after the expiry of that period, if the Petitioner satisfies the Tribunal that he had sufficient cause for not preferring the petition within the said period.

(3) In exercising the functions conferred on it by or under this Chapter, the Tribunal shall have the same powers as are vested in a Court in respect of:

- (a) proofs of facts by affidavit;
- (b) summoning and enforcing the attendance of any person and examining him on oath;
- (c) compelling discovery or the production of documents, and (d) issuing commissions for the examination of witnesses.

In the case of any such affidavit, an officer appointed by the Tribunal in this behalf may administer the oath to the deponent.

(4) Subject to any regulation made by the Tribunal in this behalf, any such petition shall be heard and disposed of by the Tribunal as expeditiously as possible. An order made by the Tribunal on such petition shall be final and conclusive and shall not be called in question in any Court.

S.145-Y Power to make rules for purposes of this Chapter.

Without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections (including preparation of the list of voters).

THE GUJARAT SPECIFIED CO-OPERATIVE SOCIETIES ELECTIONS TO COMMITTEES RULES, 1982

R.2 Definitions:- In these rules, unless the context otherwise requires(

ia) "Society" means a society specified under Sub-section (1) of Section 74-C.

R.4 Provisional list of voters-

(1) A provisional list of voters shall be prepared in Gujarat by every society for the year in which general election is due to be held. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year in which such election is due, shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency wise as laid down in the bye-laws.

(2)

(3)

(4)

(5)

R.5 Particulars to be included in provisional list of voters:

(1)

(2) Where a society is a member of a specified society, the specified society shall call for the name of the delegate duly authorised to vote at an election on behalf

of the affiliated society, so as to reach it within ten days next after the date of drawing up the accounts. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society, the affiliated society shall enclose a copy of the resolution of the society or its committee under which the delegate is so authorised. The specified society shall include in the list of voters the names of all such delegates as have been communicated to it before the date fixed for publication of the provisional list. In addition to the names of the delegates, the list shall contain the names of the affiliated societies, their registration numbers and addresses and the names of constituencies, if any, to which they belong. A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegates upto the sixth day before the date appointed by the Collector under Rule 16 of said rules for making nominations.

R.6 Claims and objections to provisional list of voters-

(1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of the name or address or other particulars in the list may be brought to the notice of the Collector by any member of the society concerned who is a voter or any delegate authorised to vote on behalf of such society.

(2) Every person making a claim or raising an objection shall do so by a separate petition, which shall be presented to the Collector during office hours within seven days from the date on which the provisional list of voters is displayed on the notice board under Sub-rule (2) or (5) of Rule 4, as the case may be.

(3) Every claim or objection shall be prepared in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(4) The Collector shall, after considering each claim or objection, give his decision thereon in writing to the person concerned within ten days from the date of receipt of the claim or objection under Sub-rule (2) and take steps to correct the provisional list whenever necessary. The list as finalized by the Collector after deciding all claims and objections shall be the final list of voters.

R.74 Election petitions -No election shall be called in question, except by an election petition presented to the Government in accordance with the provisions of Section 145-U and these rules.

R.75 Presentation of election petition-

(1) An election petition calling in question any election may be presented by any candidate or any voter within two months from the date of declaration of the result of the election.

(2)

R.82 Grounds for declaring election to be void-If the Government is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under these rules; or

(b) that any corrupt practice has been committed by a returned candidate or his Election Agent or by any other person with the consent of a returned candidate or his Election Agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his Election Agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Act or any rules made thereunder, the Government shall declare the election of the returned candidate to be void.

10. Besides the above statutory provisions canvassed by the Respondent as appropriate alternative remedy, the observations of the Apex Court in *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, , were also relied to submit that preparation of electoral roll for election of managing committee of specified society was an intermediate stage in the process of election and 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; and there being alternative remedy, writ petition deserves to be dismissed.

11. As against the above legal objections, the Petitioner relied upon three-Judge bench decision of the Apex Court in *Election Commission of India Through Secretary Vs. Ashok Kumar and Others*, and particularly the conclusions summarized in para 32 thereof, with the submission that the present petition could in no way interrupt, obstruct or protract the process of election but instead intervention was necessary in furtherance of proper election proceeding. Later decision of the Apex Court in *Pundlik Vs. State of Maharashtra and Others*, , in which *Shri Sant Sadguru Janardan Swami (supra)* is referred, was relied upon for the following proposition in particular:

9. We are unable to uphold the contention. In *Sant Sadguru Janardan Swami*, this Court had an occasion to consider the relevant provisions of the Act and the Rules.

Referring to Section 144-X of the Act, the Court observed that preparation of list

of voters is one of the stages of election. It is true that according to this Court, normally the High Court would not interfere in exercise of powers under Article 226 of the Constitution at the stage of preparation of list of voters but such action must be in accordance with law.

12. Bare perusal of the statutory provisions reproduced hereinabove would clearly show that the Petitioner's name having been deleted from the voters' list, an election petition may not be maintainable at his instance and he was already deprived of his right to file his nomination for contesting election for the Managing Committee of the Sangh. The Sangh had already violated the time-limits set by the rules for preparation of final voters' list and somehow the preparation of voters' list and further process for election of members of the Committee of the Sangh were timed and arranged back to back. Thus, although the impugned order was perverse and illegal, the Petitioner would have no legal remedy worth the name. Under such extraordinary and exceptional circumstances, denial of recourse to the Petitioner under Article 226 of the Constitution would amount to denying justice and indirectly putting seal of approval on effective implementation of an illegal order. Unfortunately, in the facts of this case, the District Registrar has played a pivotal role in advancing the cause of a leader and a nominee of the Society even though they did not have the support of the members of the Managing Committee of the Society; and the Election Officer has invited and relied upon the remarks of his partisan opinion in making the impugned order deleting from the voters' list the name of the Petitioner. Therefore, the following order is already made on 15.4.2011 in the interest of justice and the above reasons are recorded later, within a week:

Since the order dated 30.03.2011 of the Election Officer, Respondent No. 3 herein, is challenged in the petition and the Petitioner's name was removed from the voters' list by that order, after the petition being partly heard, it was admitted on 11.04.2011 and the Respondent concerned were directed to accept nomination of the Petitioner, if it were presented in proper order. The interim direction was issued in view of the submissions at the bar that the Petitioner was sought to be unlawfully ousted from the democratic process of election and the last date for filing of the nomination was 11.04.2011. Accordingly, the nomination papers of the Petitioner are stated to have been accepted subject to final result of the petition.

Thereafter, the petition was heard for final disposal on 13.04.2011 and the hearing has spilled over to today. Learned Counsel for all the parties are heard in extenso and a detailed judgment is required to be delivered. However, according to the election programme, the last date for preparing and publishing the list of accepted nominees is today i.e. 15.04.2011 at 13.00 hours. Therefore, in short, no time is left for dictating an elaborate judgment discussing the contentions of learned Counsel. Under the circumstances, the following order is made for its immediate effect and implementation.

The petition is partly allowed, the impugned order dated 30.03.2011 of

Respondent No. 3 is set aside and name of the Petitioner is ordered to be placed at serial No. 842 in the final voters' list in place of the name of Respondent No. 7. Consequently, the nomination of Respondent No. 7 shall not be considered to be valid and the election process shall be carried on accordingly. Detailed reasons for this order shall be recorded later on in the petition. Direct service today.