

(2011) 09 GUJ CK 0104

In the Gujarat High Court

Case No : Special Civil Application No. 9774 of 2011

Manilal Karshanbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Gujarat Agricultural Produce Markets Act, 1963 — Section 11, 27

Citation : (2012) 1 GLR 638

Hon'ble Judges : V.M. Sahai, J;K. S. Jhaveri, J

Bench : Division Bench

Advocate : Ashish H. Shah and Manish S. Shah, for the Appellant; J.K. Shah, Asst. Govt. Pleader for Respondent Nos. 1, 2 and 3, D.G. Chauhan, for Respondent Nos. 4 and 5 and J.V. Japee, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this petition, the Petitioner has challenged the order passed by the Authorized Officer-Respondent No. 3 dated 22.7.2011, whereby the Authorized Officer appointed by Respondent No. 1 has rejected the objections raised by the Petitioner.

2 The facts of the case are that the Respondent No. 1 Director, Agriculture Produce and Rural Finance has declared election programme for the market committee of Himmatnagar Agriculture Produce Market Committee. The notification came to be issued on 20.6.2011, where the following programme was declared.

Details of programme Date

Declaration of election 20.6.2011

Direction by Authorized officer to prepare voters" list 20.6.2011

Date of forwarding voters" list to Authorized Officer 28.6.2011

Preliminary publication of voters" list 4.7.2011

Last date of submitting applications for additions/ alterations and objections in preliminary voters" list. 18.7.2011

Re-publication of preliminary list prepared after receiving additions/alterations and objections against preliminary voters" list along with notice. 22.7.2011

Last date of submitting objections against re-published preliminary voters" list. 28.7.2011

Final publication of voters" list 2.8.2011

Date of submitting nomination forms 2.9.2011

Preliminary publication of nomination forms 2.9.2011

Scrutiny of nomination forms 3.9.2011

Date of withdrawal of nomination forms 6.9.2011

Final publication of list of candidates 6.9.2011

Date of election 15.9.2011

Date of counting votes 16.9.2011

Date of declaration of result of election -Immediately after counting of votes.

3. The Petitioner raised objection that members of certain society namely, Kankol Gam Seva Sahakari Mandli Ltd. has co-opted four members contrary to by-laws and their names are included only for the purpose of election.

4. Learned Counsel appearing for the Petitioner contended that those four members are included after the notification is issued by the Director, Agriculture Produce and Rural Finance and the same are contrary to Rule 7 of Gujarat Agriculture Produce Market Rules, 1965 (for short "Rules"). Learned Counsel has further contended that the order of rejection was without hearing him and the same is contrary to the decision rendered by this Court. He further contended that the voters" list which is prepared is contrary to the provisions of Rules.

5. Learned Assistant Government Pleader has relied on the Division Bench decision of this Court in Kalubhai Ranabhai Akbari v. State of Gujarat and Ors. 2007 (3)G.L.H. 57 and more particularly in paragraphs 18 and 35 it has been held as under:

18. In our view, therefore, the relevant date for determining the eligibility of a person for inclusion in the voters" list would be the date by which the Authorized Officer is to be communicated the names as indicated in Sub-rule (1) of Rule 7, that is to say before that date -

(i) a co-operative society registered under the Co-operative Societies Act for dispensing agricultural credit must have been registered as a cooperative society

and must also have commenced the activity of dispensing agricultural credit.

(ii) a trader who has been granted license by the APM Cto carry on business as a trader in the market area must have commenced business as a trader.

(iii) a co-operative marketing society registered as such under the Co-operative Societies Act and having obtained a general license from APMC must also have commenced its business of marketing.

18A. The only exception to the above general rule is to be found in Rule 6 which reads as under:

6. Persons qualified to vote.-A person whose name is entered in a list of voters shall be qualified to vote at an election to which the list of voters relates, unless he has ceased to hold the capacity in which his name was entered in such list.

35. To sum up then, our conclusions are as under:

I. "The relevant date" for determining the eligibility of a person for inclusion in the voters" list for elections to APMC is the date on which the Authorized Officer is to be communicated the names as indicated in Sub-rule (1) of Rule 7 of the APMC Rules, 1965, that is to say, before that date -

(i) a co-operative society must have been registered under the Cooperative Societies Act as a cooperative society for dispensing agricultural credit and must also have commenced the activity of dispensing agricultural credit.

(ii) a trader who has been granted license by the APMC to carry on business as a trader in the market area must have commenced business as a trader.

(iii) a co-operative marketing society registered as such under the Co-operative Societies Act and having obtained a general license from APMC must also have commenced its business of marketing.

II. The only exception to the above general rule is to be found in Rule 6. Hence, if a person, whose name was entered in the list of voters, has ceased to hold the capacity in which his name was entered in such list, such person shall not be qualified to vote at the election to which the list of voters relates.

III. To be eligible for inclusion in the list of voters for elections to APMC,

(i) A co-operative society must have obtained registration under the Co-operative Societies Act for dispensing agricultural credit before the date on which the Director has fixed the date of elections to APMC (i.e. the date of declaration of elections).

(ii) A person must have obtained from APMC a general license for trader before the date of declaration of elections.

(iii) A co-operative marketing society must have obtained its registration under the Co-operative Societies Act and a general license from APMC before the date

of declaration of elections.

IV. Challenge to the legality and validity of registration of a society under the Co-operative Societies Act can only be entertained by the forum under Sections 153 and 155 of the Gujarat Co-operative Societies Act, 1961, and not by the Election Tribunal constituted under Rule 28 of the APMC Rules, 1965.

V. Challenge to the legality and validity of a license issued by APMC can only be entertained by the concerned forum u/s 27 of the Gujarat APMC Act, 1963.

VI. The question whether a co-operative society commenced the activity of dispensing agricultural credit before the relevant date, whether a trader possessing general license from APMC commenced the business of trading before the relevant date or whether a co-operative marketing society possessing general license from APMC commenced its business of marketing before the relevant date are questions of fact which the Authorized Officer has jurisdiction to decide under Rules 7(2) and 8 of the APMC Rules, 1965 and the Election Tribunal under Rule 28 also has the jurisdiction to examine these questions.

Therefore, qualifying date is 28.6.2011. The same is clarified by the notification forwarded by the circular by the Deputy Director, Agriculture Produce and Rural Finance, whereby he has called upon the market committee and to other society to send the names as on 20.6.2011.

6. Learned Assistant Government Pleader has also relied upon Rule 10 and submitted that the election is scheduled to be held on 15.9.2011. In view of Rule 10, it will not be appropriate to interfere at this stage, otherwise it will amount to interference. Learned Assistant Government Pleader has also submitted that Rule 10 observations are made by this Court in 1998 (1) GLH 95.

Though this order is being passed, today, the matter was adjourned earlier on 2.12.97 at the instance of the Respondents and they had also made a statement at that time that this order is to be treated to have been passed on 2.12.97. The date of casting votes is 12.11.1998 and there is a period of more than 30 days between today and the date of casting of votes. Therefore, if the Respondent No. 3 issues a fresh voters' list as per the order of this Court, it could not be said that there would be any interference in the election programme because out of the said voters' list could not adversely affect either filing of nomination papers on 29.12.97 or casting of votes on 12.1.1998.

7. We have heard Mr. Shah, learned Counsel appearing for the Petitioner and Mr. J.K. Shah, and learned Assistant Government Pleader appearing for the Respondents.

8. The first decision of the Authorized Officer in excluding the name is in consonance with the provisions of Rule 7 and in consonance with Section 11 of APMC Act. The person who are reflected on 20.6.2011 are included in the voters' list. It will not be appropriate to disturb it. If at all the Petitioner is aggrieved by inclusion of any name, he has to approach the authority under Gujarat Co-

operative Societies Act, 1961. The Authorized Officer has no jurisdiction to interfere while deciding voters' list under Gujarat Co-operative Societies' Act. In view of Section 10, it will not be appropriate to interfere since the date of election is 15.9.2011. Even otherwise also, we find that the order of the Authorized Officer is just and proper. No interference is required. The petition is accordingly dismissed. Notice is discharged.