

**(2001) 08 GUJ CK 0072**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 5452 of 2001

Mehsana District Central Co-operative Bank Limited and  
Another

**APPELLANT**

**Vs**

Election Officer of the Mehsana District Central Co-op. Bank  
Ltd. and Others

**RESPONDENT**

**Date of Decision :** 03-08-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2002) 1 GLR 774

**Hon'ble Judges :** K.M. Mehta, J

**Bench :** Single Bench

**Advocate :** K.G. Vakharia and Tushar Mehta, for the Appellant; P.M. Thakkar, S.N. Shelat, General, A.D. Oza, G.P., H.C. Patel, A.G.P., S.P. Hasurkar and K.S. Jhaveri, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

K.M. Mehta, J.—The Mehsana District Central Co-operative Bank Limited and others-petitioners have filed this petition challenging (originally) the order dated 5-7-2001 passed by the Election Officer of the said bank having its office at Mehsana-respondent No. 1 which relates to elections of the Board of Directors of the first petitioner-Bank. The said order has been passed in pursuance of the objections raised by respondent Nos. 8 to 11, namely. Dr. C. J. Chavda, Patel Shankerbhai Bhikhabhai, Chaudhary Mahadevbhai Veljibhai, Patel Babulal Raichanddas against the provisional voters" list. The said order has been challenged on various grounds including the same is contrary to provisions of Co-operative Societies Act and Rules and violative of Articles 14 and 19 of the Constitution of India. The petitioners have by amendment also challenged Notification dated 7-7-2001 issued under Rule 16 also on similar grounds.

2. The facts giving rise to this petition are as under :

2.1 The first petitioner is a District Central Co-operative Bank registered under

the provisions of the Gujarat Co-operative Societies Act, 1961 (Act No. X of 1962) (hereinafter referred to as the "Co-operative Societies Act"). The second petitioner is a national and citizen of India and he is an elected Member of Parliament from Mehsana and also an elected Chairman of the first petitioner-Bank.

2.2 The present petition relates to constituency known as Multi-purpose and Service Co-operative Societies (which is divided into three divisions) and wherefrom 10 Directors are required to be elected. It has also been stated in the petition that the first respondent had issued a Notification dated 16-6-2001 which was published in daily Gujarat Samachar (North Gujarat Edition) dated 18-5-2001 whereby the first respondent had invited objections against the provisional voters" list to be filed on or before 25-6-2001. A copy of the Notification has been attached with the petition at Annexure-B. The said Notification shows the programme regarding the voters" list. As per the aforesaid programme, the provisional voters" list was to be published on 18-6-2001. Objections against the aforesaid provisional voters" list were to be filed on or before 25-6-2001. The decision regarding the objections against the provisional voters" list to be decided on or before 6-7-2001 and the publication of the final voters" list was on 7-7-2001 at 11-00 a.m. In pursuance of the aforesaid Notification, respondent Nos. 8 to 11 had filed their objections which are also annexed with the petition at Annexure-C. Respondent No. 8 had given two applications raising two different objections. The objections raised by respondent Nos. 9, 10 and 11 were also identical. The petitioner-Bank had written replies to the aforesaid objections pointing out that the aforesaid objections were not within the purview of Rule 6 of the Gujarat Specified Co-operative Societies Elections to Committee Rules, 1982 (hereinafter referred to as the "Election Rules") and even otherwise on merits the aforesaid objections were not tenable.

2.3 The Election Officer of The Mehsana District Central Co-operative Bank Ltd.-respondent No. 1 by its communication dated 5-7-2001 was pleased to accept the objections in this behalf. The Election Officer has stated that as per bye-laws 32(1), election is to be held for 10 Directors and there are 10 different talukas as per Rule 16 of the Election Rules. The Notification will be accordingly issued talukawise and the voter will have to vote qua taluka. The present petition was filed on 16-7-2001 challenging order dated 5-7-2001. This Court passed order on 18-7-2001 and in Para 4 the Court had passed the following order :-

"In view of the same, notice returnable on 23-7-2001. meanwhile interim stay of communication dated 5-7-2001 till 24-7-2001. Respondent No. 1 will not finalise nomination on the basis of communication dated 5-7-2001."

2.4 However, during the pendency of the petition the first petitioner-Bank received Notification dated 7-7-2001 as per the Election Rules along with a letter dated 16-7-2001. A copy of the said communication dated 16-7-2001 as well as Notification has also been annexed at Annexure-I to this petition. The petitioner-Bank sent reply on 16-7-2001 to the aforesaid letter and the Notification. The

said communication is also annexed at Annexure-J to this petition. Thereafter, the Notification has been published in daily "Sandesh" dated 17-7-2001 (North Gujarat Edition). The said Notification published in the newspaper is annexed at Annexure-K to this petition. The petitioners also stated that Notification dated 7-7-2001 was also sent along with letter dated 16-7-2001 which also appears that the Notification has not been issued on 7-7-2001 but the same has been issued subsequently. It is also contended that this Notification is also back-dated to deprive the petitioners of fair opportunity and reasonable time to challenge the said order before the appropriate authority. It is also not in accordance with the prescribed Form No. 1 under Rule 16 of the Election Rules. The petitioners by way of amendment have also challenged the said Notification on various grounds.

2.5 It has also been stated that the first petitioner is not acting impartially and fairly in conducting the election and he is acting under the political pressure of the State Government and more particularly the respondent Nos. 6 and 7 who are bent upon depriving the second petitioner and the group of their control of the management of the first petitioner-Bank. Similarly, the Notifications at Annexure-I and Annexure-K dated 17-7-2001 are also challenged on the ground that the same are illegal and bad in law.

3. Mr. K. G. Vakharia, learned Senior Counsel, ably assisted by Tushar Mehta appeared on behalf of the petitioners. He has invited my attention to various provisions of the Gujarat Co-operative Societies Act. He submitted that this Act, though called Gujarat Co-operative Societies Act, 1961, the present Amending Act and Rules regarding election of the directors to be held by the State Government only came into existence since the year 1982. Section 2(2) of the Co-operative Societies Act provides definition of bye-laws which means "bye-laws" registered under this Act and include registered amendments of such bye-laws. Section 2(3) defines "Central Bank" which means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies. Section 2(7) defines "Co-operative bank" which means a society registered under this Act and doing the business of banking, Section 2(13) defines "member" means a person joining in an application for the registration of a co-operative society which is subsequently registered or a person duly admitted to membership of a society after registration Section 2(14) defines "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws Section 2(17) of definition provides for "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act. Section 2(18) of the definition provides for "Rules" which means rules made under this Act. He has also referred to Section 74C which provides provisions for conduct of elections committees and officers of certain societies and term of office of members of such committees. The petitioner-Bank falls within the definition of Section 74C of the Act. Section 74C of the Act reads thus :

"74C (1) : The election of members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to

the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter :

(i) Apex societies mentioned in the Schedule and such other apex societies as the State Government may, by general or special order, published in the Official Gazette, from time to time, specify in this behalf, having regard to financial position and share capital of such societies;

(ii) all District Central Co-operative Banks;

(iii) all Primary Land Development Banks;

(iv) (a) all District Co-operative Sale and Purchase Organisations;

(b) all Taluka Co-operative Sale and Purchase Organisations; (v) all Co-operative Sugar Factories; (vi) all Co-operative Spinning Mills (vi-a) all district Co-operative Milk Unions (vi-b) all taluka Co-operative Processing Societies; (vii) any other society or class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time specify" in this behalf, regard being had to the financial position and share capital of such institutions.

(2) When the election of all the members of the committee of any such societies held at the same time, the members elected on the committee at such general election shall hold office for a period of (three years) from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

(3) Notwithstanding anything in the bye-laws of any such society, the committee on Management shall be elected by a general body of members of the society and all other committees authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of Management, and all such committees shall be sub-committees of the committee, of Management, and shall be subordinate to it."

3.1 Chapter XI-A provides for Election of Committees and Officers of Certain Societies. Section 145A provides for application that all Sections of this Chapter except Section 145Z shall apply to elections to committees of societies belonging to categories specified in Section 74C. Section 145B provides for definitions. In this Chapter, unless the context otherwise requires (a) "Collector" means the Collector having jurisdiction over area in which the registered office of the society concerned is situated and includes the Additional Collector and also any officer not below the rank of Deputy Collector appointed by the State Government to exercise the powers and perform the duties of the Collector under this Chapter (b) "election" means election of a member or members of the committee of a specified society; (c) "specified society" means a society belonging to any of the categories specified in Section 74C. Section 145C provides time when election to be held. Section 145D provides conduct of elections. Section 145E provides cost of conducting elections. Section 145U provides disputes relating to elections to

be submitted to the Tribunal. Section 145X provides relief that may be claimed by the petitioner. Section 145Y provides powers to make rules for purposes of this Chapter. Section 145Z provides special provision for election of officers of specified societies which means that this Section shall apply only to election of officers by members of committees of societies belonging to the categories specified in Section 74C. Section 168 provides power to make rules.

3.2 He has also referred to Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 (hereinafter referred to as "the Election Rules"). These rules have been enacted in exercise of powers conferred by Section 168 read with Sub-Section (2) of Section 145G, Sub-Section (4) of Section 145U and Section 145Y of the Gujarat Co-operative Societies Act, 1961 and of all other powers enabling it in this behalf, the Government of Gujarat framed the aforesaid rules. He also referred to the definition of the Election Rules, namely. Rule 2(b) regarding "constituency" which means an electoral division, if any, as specified in the bye-laws of the specified society. Rule 5 of the Election Rules provides particulars to be included in provisional list of voters. The said Rule 5 reads as under :

"(1) The provisional list of voters, in the case of individual share holders, shall contain the name, father's/husband's name, surname (if any) of every person entitled to be registered as a voter, with such other particulars as may be necessary to identify him.

(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 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 tike 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 the said Rules for making nominations."

3.3 Rule 6 of the Election Rules provides claims and objections to provisional list of voters. The said Rule reads as under :

"Rule 6(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 wherever necessary. The list as finalised by the Collector after deciding all claims and objections shall be the final list of voters."

3.4 Rule 7 of the Election Rules provides final list of voters. Rule 9 of the Election Rules provides appointment of Returning Officers. Rule 11 provides general duty of Returning Officer which reads as under :

"It shall be the general duty of Returning Officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided in the Act, the Rules and bye-laws made thereunder."

3.5 Rule 12 provides polling stations. Rule 13 provides appointment of Presiding Officers and Polling Officers. Rule 14 provides general duty of Presiding Officer and Polling Officer. Rule 16 provides appointment of dates, etc. for various stages of an election. Rule 17 provides manner of publication of order under Rule 16. Rule 18 provides nomination of candidates. Rule 26 provides preparation of list of contesting candidates.

3.5(a) The learned Counsel for the petitioners has also referred to Form-I which has been issued under Rule 16. He has referred to Schedule of Form-I. According to him in Schedule there are four columns : (1) name of constituency, (2) last date, time and place for obtaining nominations, (3) tate (sic) date, time and place for making nominations, (4) date of publication of the list of nominations received.

3.6 He has also referred to The Mehsana District Central Co-operative Bank Ltd., Mehsana Bye-laws (hereinafter referred to as Co-operative Bank Bye-laws). Bye-law 32 of the Co-operative Bank Bye-laws provides constitution of Board of Directors. The English translation of bye-law No. 32 reads as under :

"The Management of the bank is vested in the committee, which will be known as Board of Directors, of 17 members as mentioned below including the Chairman and Vice-Chairman elected and appointed under the provisions of bye-law No. 33(1).

Registrar or his Nominee 01 From amongst the delegates of Multi-Purpose and Service Co-operatives 10 From amongst the delegates of Industrial Co-operative Societies 01 From amongst the Societies other than Multi-Purpose and Service

Co-operative Societies and Industrial Co-op. Societies (popularly known as other societies) 01 From amongst the delegates of the individual members 03

The Directors as mentioned above will be elected by the General Body and the election will be subject to the Rules framed by the Board of Directors and approved by the Registrar.

The delegates of Multi-Purpose and Service Co-operative Societies will be of following talukas : (1) Kalol (2) Kadi (3) Chanasma (4) Sami-Harij (Joint) (5) Vijapur (6) Visnagar (7) Kheralu (8) Mehsana (9) Siddhpur and (10) Patan. (for every Division as mentioned above there shall be one delegate.

Total : 10"

Sub-bye-law No. (10) of bye-law No. 32 provides prescription of Rules or Election Rules in connection with election of the Directors. Under the said bye-laws, the bank framed Sub-rules namely Mehsana District Central Bank Rules. Election Rule 4 provides list of voters. Sub-rule 5 provides how the list of voters to be prepared. Rule 5 also contains explanation. Rule 6 provides, nomination and scrutiny and elections. Election Rule 6(12) provides name and method of election.

Submissions of learned Counsel for the Petitioners :

3.7 Learned Counsel for the petitioner submitted that on the conjoint reading of the provisions of the Co-operative Societies Act, Rules and Bye-laws which I have referred, shows that the list will be divisionwise wherein the Multi-Purpose and Service Co-operative Societies of the talukas falling in respective Divisions will be included. However, while preparing divisionwise voters" list within the division, voters belonging to different talukas of their division will be shown in the separate list within that division. The voters in the divisional constituency cast number of votes according to seat allotted to the division. However, while declaring the result it is mandatory to declare one of the contesting candidates belonging to the voters" list in taluka declared elected. The provisional voters" list was prepared by the first petitioner-Bank on the aforesaid basis, viz. three provisional voters" list for the aforesaid three divisions. In the aforesaid three divisions, the first respondent has finalised the voters" list on 7-7-2001 wherein also voters" list was prepared division-wise showing separate list of voters taluka-wise within the division-wise.

3.8 He further submitted that the aforesaid provisions of the bye-laws and election rules are construed in the aforesaid manner by all concerned election authorities while holding the election of Board of Directors of first petitioner-Bank since 1982. He further submitted that prior to 1982 the power to the obligation of conducting the election was with the first petitioner-bank itself. He further submitted that the Collector who has delegated the said powers to the Deputy Collector, the first respondent herein, to conduct the election of the Board of Directors of the first petitioner-Bank. The aforesaid amended provisions of the Act were challenged by way of filing writ petition wherefrom appeal arose before

the Hon''ble Supreme Court. By the order of the Hon''ble Supreme Court for a certain number of years, the power to conduct the election was, exercised by the Deputy Registrar of the Gujarat High Court in place of the Deputy Collector. It is submitted that both the Deputy Collector or the Deputy Registrar of the Gujarat High Court had exercised powers of conducting the election by construing the provisions of the Act, Rules, Bye-laws and the elections rule of the first petitioner society in the aforesaid manner and not in the manner in which the first respondent has decided by order Annexure-A.

3.9 He submitted that the order dated 5-7-2001 passed by the first respondent is in breach of the provisions of the Act, Rules and the Bye-laws and the election rules of the first petitioner-Bank. He submitted the order passed by the first respondent is without competence, arbitrary, irrational and violative of Articles 14 and 19 of the Constitution of India.

3.10 He further submitted the order passed by the first respondent is without authority, jurisdiction or competence to delimit the constituency and under any case, he has no authority, competence or jurisdiction to direct delimitation of constituency so as to allot one seat for one taluka and direct that the voters will have a right to one vote qua one seat for one taluka.

3.11 He further submitted that the order passed by the respondent is mala fide and appears to have been passed with an ulterior motive so as to achieve the political goal of respondent Nos. 6 and 7 to snatch away the control of the Management of the first petitioner-Bank by the second petitioner and his group since about 25 years.

3.12 He has also referred to Special Civil Application No. 3980 of 2001 which is also filed by the petitioner. It has been produced on page No. 92 and he has also referred to Paragraph Nos. 3, 4, 5, 6, 7 and 8 which are on pages 114 to 125 of the main petition.

3.13 Regarding the power of the Court, he has referred to the judgement of the Hon''ble Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, . It appears that the aforesaid judgment of the Hon''ble Supreme Court arose out of interim order passed by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India during the currency of the process of election, whereby the High Court has stayed the Notification issued by the Election Commission of India containing direction as to the manner of counting votes and has made directions on its own on the subject, has been put in issue by the Election Commission of India filing these appeals by Special Leave under Article 136 of the Constitution. In that context, as regard decision of the Supreme Court, he has referred to Paras 15, 16 and 32 of the said judgment which read thus :-

"Para 15 - The constitutional status of the High Courts and the nature of the jurisdiction exercised by them came up for consideration of this Court in M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar



House, Swatontapeth, Vasco-De-Gama, Goa, . It was held that the High Courts in India are superior Courts of record. They have original and appellate jurisdiction. They have inherent and supplementary powers. Unless expressly or impliedly barred and subject to the appellate or discretionary jurisdiction of Supreme Court, the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers. The following statement of law from Halsbury's Laws of England (4th Edn., Vol. JO, Para 713) w"as quoted with approval :

"Prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular Court."

Para 16 - This Court observed that the jurisdiction of Courts is carved out of sovereign power of the State. People of free India are sovereign and the exercise of judicial power is articulated in the provisions of the Constitution to be exercised by Courts under the Constitution and the laws thereunder. It cannot be confined to the provisions of imperial statutes of a by-gone age. Access to Court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where Statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience.

Para 32 - For convenience sake, we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of Notification of election till the date of declaration of result) is to be called in question and which question may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well- settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election

proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt and retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say, that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

3.14 In this case, as per the election programme especially, 32 of the bye-laws 10 directors are to be elected from 3 different divisions. According to the learned Counsel for the petitioners first division is Kalol, second division is Vijapur and the third division is Mehsana. According to him Kalol division consists of four talukas namely, Kalol, Kadi, Chanasma and Sami-Harij. Mehsana division consists of three talukas, namely, Mehsana, Siddhpur and Patan and Vijapur division consists of three talukas, namely, Vijapur, Visnagar and Kheralu. He submitted that for example Kalol division consists of four talukas four different seats with number of votes :

#### KALOL DIVISION :

1. Taluka Kalol - No. of Votes 34 2. Taluka Kadi - No. of Votes 62 3. Taluka Chanasma - 65 4. Harij-Sami taluka 74 --- Total votes : 235

3.15 According to him as per the constituency division-wise it will comprise of all 235 votes and the person has right to cast four votes. He submitted that this division-wise constituency is multi-member constituency while taluka-wise constituency is single member constituency. In the election process, the basic rule is one man, one vote. He submitted that as against the aforesaid interpretation enforced upto now, if the order dated 5-7-2001 at Annexure-A as held by respondent No. 1 is implemented and enforced the voters' list will consist of number of votes in each taluka. To illustrate in Kalol taluka there will be only 34 voters, in Kadi taluka there will be only 62 voters, in Chanasma taluka there will be only 65 voters and in Harij- Sami taluka there will be only 74 voters. The voters in each taluka will cast only one vote. Talukawise constituency is single member constituency. By the aforesaid order, the nature of constituency is changed from multi-member constituency to single member constituency. In a

divisional constituency, voters exercise three votes - four votes according to number of seats allotted to divisional constituency. However, nomination forms are filled in talukawise, but all the voters in the constituency will vote for all the candidates who have filled nomination forms talukawise. He submitted that this is the effect of basic principle of election law and in support of the same, he has cited the decision of the Division Bench of this Court in the case of Rameshchandm Ramanbhai Patel and Anr. v. Collector, reported in 1979 GLR 191. He referred to paragraph No. 22 on page 207 which reads thus :

"These two decisions of our Court show beyond doubt that the one man one vote rule is attracted to the elective process in our country as well and that it has its play in election of local Government bodies. The decisions also show that any deviation from the said rule must be justified on a rational grounds, even if it is assumed that the rule is not founded on an abstract mathematical or algebraic formula. Our Constitution itself permits such a deviation in the case of representation to weaker Sections. Harji's case (supra) illustrates as to what would constitute a justifiable cause for deviation from such rule. As to what extent a departure from the said rule could be permitted must in the ultimate analysis depend upon the facts and circumstances of each case."

He has also referred to Paragraph No. 29 of the said decision on page 210 which reads thus :

"As regards statutory provisions, the Articles of the Constitution and the statutory provisions in the enactments in part materia referred to earlier, also clearly link-up the one man - one vote rule with the inhabitant population. These provisions do not lay any emphasis on the voter population as against the inhabitant population."

3.16 He has also referred to the allegations of mala fide for which he has referred to previous petition and also to the present petition and certain circumstances to show that respondent No. 1 is acting not on his own independently, but at the dictates of political power particularly respondent Nos. 6 and 7. To substantiate his allegation of mala fides, he has referred to the following decisions :-

1. State of Punjab Vs. Ramjilal and Others, in which it is stated that to establish mala fide, it is not necessary to name in petition particular officer or officers responsible for that official act.

2. N.K. Singh Vs. Union of India and others, in which it is stated that interference has to be drawn by reading the record in between the lines and by taking into account attendant circumstances.

3. Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others,

3.17 Out of the above judgements, he has heavily relied on the judgment of the Hon"ble Supreme Court in the case of Indian Express particularly Paras 113, 114, 118 and 119, 120, 125 and 135 on page 924. In this case, the writ petitions

alleging mala fides, pleading of parties and requisites are stated. The principle regarding exercise of power in good faith and misuse in bad faith distinction is made and stated.

3.18 He has also referred to V. S. Rama Devi and S. K. Mendiratta's Election Laws, Practice and Procedure, relevant Paragraph on page 618 is given as under :

"At that time, there were a few multi member constituencies also for parliamentary and assembly elections. A voter in a multi member constituency had as many votes as there were seats to be filled up, but his votes were distributive and not cumulative. In order to prevent cumulative voting in two member constituencies, the Election Commission arranged for the printing of two ballot papers, each bearing the same serial number, but one of them with an added suffix "A" to distinguish it from the other, for use in such constituencies. For elections in three member constituencies (which numbered two only), the Commission arranged for the printing of three ballot papers, each bearing the same serial number but with suffixes "A", "B" and "C" respectively. Each voter in a multi member constituency received two or three ballot papers, as the case may be, all bearing the same serial number but distinguishable by the suffix or suffixes. The voter was expected to cast each such ballot paper into a different box. At the time of counting of votes in these multi-member constituencies, the counting staff was required first to arrange all the ballot papers found in ballot box serially. After doing so, every case of cumulative voting was detected; only one of the ballot papers with the same serial number found in the same ballot box was accepted and counted for that candidate and the rest were rejected."

3.19 The learned Counsel for the petitioner submitted that the procedure which he has stated was existing right from the year 1982 till today, and therefore, the same procedure ought to have been followed by respondent No. 1 in this behalf and any deviation from the same procedure by respondent No. 1 is illegal and contrary to rules.

Submissions of Mr. S. N. Shelat, learned Advocate General, on behalf of the Government :

4. Mr. Suresh N. Shelat, learned Advocate General appeared on behalf of the State. He has relied on provisions of the Act, Co-operative Societies Rules, Bye-laws of the bank and also Rules of the bank in this behalf.

4.1 He has also referred to Rule 5 of the Co-operative Societies Rules. He further submitted that Rule 6 of the Co-operative Societies Rules which provides that 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. According to him the word "other particulars" has to be in Rule 5(2) which provides various aspects in this behalf. According to him, respondent No. 1 has strictly acted as per provisions of Rules 5 and 6 of the Co-operative Societies

Rules read with bye-laws and Rule 32 of the Bank Rules. He has also referred to Section 145U and Z of the Act also.

4.1 (a) As per his contention bye-law No. 32 provides election of the Board of Directors. Out of various societies and various representatives, the bank has to elect 10 people. He submitted that bye-law No. 32(10) itself provides that out of various co-operative societies representatives were as per taluka. He submitted that the entire area consists of 10 talukas, namely, Kalol, Kadi, Chanasma, Harij-Sami, Visnagar, Vijapur, Kheralu, Mehsana, Patan and Siddhpur. He submitted that when there are 10 representatives have to be elected and when there are 10 talukas then as per Rule 32(10) each director will have to be elected from each taluka. It is no doubt true that Kalol division consists of 4 talukas, Mehsana division consists of 3 talukas and Vijapur division consists of 3 talukas. However, according to him, in all there are 10 talukas and as there are 10 Directors to be elected then as per the bye-laws 32 each director will have to be elected from one taluka. So according to him in Kalol taluka there are 34 voters who are selecting one director from the said Kalol Taluka. In Kadi taluka there are 62 voters who are selecting one director amongst 62 people. As regards Chanasma taluka there are 65 voters who will also select one director from amongst 65 people. Harij-Sami taluka has 74 voters who will select one director amongst 74 people. He submitted that the order of respondent No. 1 is in consonance with the provisions of the Act, Rule and Bye-laws 32 and Election Rules. He has also referred to Rule 11 which provides power to the Returning Officer. He has also referred to the definition of Collector contained in Section 145B(a) of the Act.

4.2 In support of the above submissions, learned Advocate General, has invited my attention to the affidavit-in-reply filed on behalf of respondent No. 1. The said affidavit is filed by Shri Pankaj Mangharam Kotak dated 22-7-2001. In the said affidavit, it has been stated that Notification pertaining to voters' list for the election of members of Managing Committee of Mehsana District Central Co-op. Bank was published on 16-6-2001 and objections were invited with respect to the said voters' list. The time-limit for lodging such objections before the Election Officer was on or before 25-6-2001. Respondent No. 1 has received the objections from many persons regarding the said voters' list and after scrutinizing the same in detail, respondent No. 1 has taken decision with respect to such objections on 5-7-2001 after issuing notice and giving opportunity of hearing to the affected parties. It has been stated that more time has been consumed in taking decision because it was to be taken after considering the provisions minutely and hence by the time the office took decision, Bank's working hours were already over on 6-7-2001. Hence, the same was intimated to the said Bank vide letter dated 6-7-2001 by post. It was further stated that there are provisions for Constitution of Managing Committee in Bye-law 32 of bye-laws of Mehsana Dist. Central Co-op. Bank Ltd. As per the said provisions, 10 Directors may be elected from representatives from different Cooperative Societies representatives. The representatives of different Co-operative Societies from talukas (divisions) as mentioned below ; (1) Kalol (2) Kadi (3) Chanasma

(4) Sami-Harij (5) Vijapur (6) Visnagar (7) Kheralu (8) Mehsana (9) Siddhpur (10) Patan.

4.3 He submitted that there is one representative from each taluka (division). Similarly, there are provisions for election of directors of Mehsana District Central Co-op. Bank. In Rule 5 of the said Rules for maintaining voters' list as talukas(divisions)-wise, there is no provision as to that voter can cast more than one vote. There is no provision for casting three or four votes for respective candidates by voters of respective divisions. On the contrary, the same will be in violation of Rule 6(12).

4.4 As regards Rule 6, it was stated that there is a provision to draw the attention of the Collector if there is any mistake as to description of name or addresses or of any other particulars in voters' list. It is further stated that Rule 11 provides for General duties of Election Officers. As per the said provisions, it is the duty of the election officer to undertake effectively all necessary functions for complying with provisions of the Rules and bye-laws and it shall be the part of general duty of the election officers. It is further submitted that the decision that has been taken pertaining to the objections as to the Notification is within the competency and jurisdiction of the deponent.

4.5 It is further submitted that as per provisions of Rule 6(12) the representatives of Multi-Purpose Co-operative Societies can cast their vote in the election of the Directors, only for the representatives of such Multi Purpose Co-operative Societies of their respective talukas (divisions). However, as per the provisions of Rule 32 division means taluka. Therefore, in those circumstances, clarification made by the deponent vide letter dated 5-7-2001 is just and proper in view of the fact that there is no provision for casting more than one vote by the voter.

4.6 It was further submitted that the clarification which was made by the deponent is after considering all relevant provisions of Co-operative Societies Act and Rules framed thereunder and other relevant bye-laws referred.

4.7 It was further submitted that after the publication of the said list as per the provisions of Rule 16 of the Election Rules, 1982, dates of different stages were decided, and thereafter, notification was prepared on 7-7-2001. One Shanker Dhanesinh preferred a Special Civil Application No. 4972 of 2001 before this Court and on 6-7-2001 an oral order was passed by this Court and the order was served on the office of the deponent on 7-7-2001. The deponent requested the guidance from the Registrars of Co-op. Societies, Gujarat State through fax message. On 9-7-2001 again guidance was sought as a reminder. On 13-7-2001 the Registrar of the Co-operative Societies directed the deponent to publish stage-wise election programme. Thereafter, on 16-7-2001 election programme was published. The Manager of the petitioner-bank was intimated about the same on the same date, and therefore, it is submitted that there is no mala fide intention in publishing election programme on 16-7-2001 after it was prepared

on 7-7-2001. It was further submitted that Notification in Form No. 1 was published for inviting nomination on 16-7-2001 is in accordance with provisions of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982. He therefore finally submitted that respondent No. 1 has strictly acted as per the rules and provisions of the Act and Rules and Bye-laws referred therein. He has denied that he has worked under any political pressure or interference. The steps taken by the office of respondent No. 1 are in accordance with rules and bye-laws. The clarification which was made by respondent No. 1 is nothing but cogent interpretation of the Rules and bye-laws and while doing so respondent No. 1 acted on his own wisdom without any outside interference as contended by the petitioner.

4.8 He has relied also on the judgment of the Supreme Court in the case of Election Commission of India v. Ashok Kwnar (supra). He stated that in fact the judgment cited by the learned Counsel for the petitioners in some way helps the respondents also. He indicated that in this case, as stated above, the matter arose out of interim order passed by the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India during the currency of the process of election whereby the High Court has stayed the Notification issued by the Election Commission of India containing direction as to the manner of counting votes. He has referred to certain paragraphs of the said judgement. He has referred to Para 20 of the judgment where the Hon"ble Supreme Court has referred to the case of the Constitution Bench in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . He has also referred to Para 21 of the said judgment. According to him the judgment of the Hon"ble Supreme Court is that the intervention of the Court shall not interrupt, delay or postpone the ongoing election proceedings. He has also referred to Para 23 of the said judgment where the Court referred to the decision of the Hon"ble Supreme Court in the case of Election Commission of India Vs. State of Haryana, . In para 23 of the judgment on page 229 the Hon"ble Supreme Court has held thus :

"Para 23 - .... held that even according to Hassan case the Court has the power to issue an interim order which has the effect of postponing an election, but it must be exercised sparingly (with reluctance) particularly when the result of the order would be to postpone the installation of a democratically elected popular Government."

He has also referred to Paragraph 28 of the judgment which reads thus :

"Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individual arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of

overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes."

4.9 He has also referred to Paragraph 32 of the judgment and ultimately stated that the Hon"ble Supreme Court has allowed the appeal and set aside the judgment of the High Court where the High Court has granted stay in the election dispute. He submitted that it shows that the judgment of the Hon"ble Supreme Court is that the High Court should not exercise its jurisdiction under Article 226 of the Constitution when election process is going on.

4.10 He has also relied on the judgment of the Apex Court in the case of Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, . He has relied on Paragraph Nos. 4 and 5 of the said judgment which read thus :

"Para 4 - It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (sic High) Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection Para 3 in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, . This Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, u/s 70(2)(C) of the Karnataka Co-operative Societies Act, 1959, any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law.

Para 5 - This was, therefore, not a fit case for intervention under Article 226. Hence, the impugned judgment is set aside and the order of the learned single Judge is restored."

4.11 He has also relied on the unreported judgment of a Division Bench of this Court in the case Sisodara Fruits and Vegetable Growers Co-operative Society v. Hamirsinh Chhatrasinh, Chief Promoter, in L.P.A. No. 365 of 2001 decided on 4-5-2001. In that case the Division Bench of this Court has relied on the decision of this Court in the case of Akbarbhai Rahimbhai Momin v. State of Gujarat and Ors., reported in 2000 (2) GLH 172 and various other judgments on this footing in paras 8 and 9 of the judgment. Relying upon these judgments he submitted that if this Court interferes with the order of the first respondent that will affect the entire election process and the Hon"ble Supreme Court has warned that the High Court should not exercise jurisdiction which thwarts or stops or postpone or dilutes the election process in this behalf. The learned Advocate General, submitted that the aforesaid order supports the basic principle of democracy of which a person can vote a representative of his taluka to whom he is aware. This principle is in consonance with the grass-root of democracy and there is nothing wrong in the interpretation put by respondent No. 1 in this behalf. He submitted that provisions of the Act, Co-operative Societies Rules, Rules of the bank and



Bye-laws are perfectly legal and valid and the order of respondent No. 1 is in consonance with the same, it is also in consonance with one person-one vote. He further submitted that though the petitioners have alleged mala fides, respondent Nos. 6 and 7 Shri Nitin Patel and Dr. A. K. Patel have filed their affidavits denying the said contention of mala fides, and therefore, this Court may not consider the allegations of mala fide of the petitioner in this behalf.

Submission of Shri P. M, Thakkar, Sr. Counsel, on behalf of some Respondents :

5. Mr. P. M. Thakkar, learned Senior Counsel ably assisted by Mr. K. S. Zaveri also appeared for respondent Nos. 8 to 11. He has also tried to support Mr. S. N. Shelat, learned Advocate General in this behalf. He has also highlighted certain provisions of the Co-operative Societies Act, Rules, Bye-laws and Rules of the bank. He submitted that the word "taluka" or word "vibhag" (division), they may be different, however, in the context in which the same are used in Rule 32, the Court must construe that word "taluka" has the same meaning as "vibhag" (division). He submitted that there are 10 talukas and 10 directors are to be elected, naturally, one director is to be elected from one taluka. If any other meaning may be given to "vibhag" that will not be in consonance with the provisions of Bye-law 32.

5.1 He has also relied on various orders of the Division Bench of this Court in L.P.A. Nos. 1033, 1030, 1029, 1028 of 1999, decided by this Court (Coram : C. K. Thakker, Actg.C.J. and K. M. Mehta, J.). He submitted that all these judgements also show that the High Court may not exercise jurisdiction under Article 226 of the Constitution when election process is going on in this behalf. He submitted that in all these decisions the learned single Judge did not interfere with the election process and the writ petitions were dismissed and the Division Bench has confirmed the said order.

Conclusion :

6. I have considered the rival submissions in this behalf, namely, the contentions of the learned Senior Counsel for the petitioners, contentions of learned Advocate General Shri S. N. Shelat, and also contention of learned Senior Counsel Mr. P. M. Thakkar. I have also considered the provisions of the Co-operative Rules, Rules of the Bank, and Bye-laws. I have also considered various judgments of the Hon'ble Supreme Court and High Court which have been referred to by the learned Counsel.

6.1 In my view the order passed by respondent No. 1 is perfectly justified, as per the provisions of Rules 5 and 6 as there are 10 Directors are to be elected and there are 10 talukas. The election officer is perfectly justified in deciding the fact that voters' list will be as per the talukas so that all the persons who are voters of the said talukas will have a right to cast their vote amongst the said candidates. In my view, the order of respondent No. 1 is in consonance with the Act, Rules, Bye-laws and bank rules. The learned Counsel for the petitioners could not point out any error apparent on the face of the record or any

jurisdictional error committed by respondent No. 1 in this behalf.

6.2 In my view, it may be true that the procedure as contended by the teamed Advocate for the petitioner continued right from the year 1982. However, the procedure which has been followed by respondent No. 1 in the aforesaid communication dated 5-7-2001 is in consonance with the existing provisions of the Co-operative Societies, Act, Rules, Bye-laws and Co-operative Bank Rules. Therefore, in my view, there is no infirmity or illegality in the said decision arrived at by respondent No. 1.

6.2(a) In view of my aforesaid conclusion, the Notification issued at Annexure-I stating the programme of election is legal and valid. It has also been contended that the said Notification is not as per the format prescribed under the Co-operative Societies Rules. The procedure prescribed under the format is merely procedure prescribed under the Act, but if the Notification is issued not containing only one format on that ground the Notification cannot be held to be illegal or bad in law. The substance of the format has to be seen in this behalf. The reasons which I have indicated for upholding the order of respondent No. 1, the same will apply to the Notification also.

6.3 In my view, under Article 226/227 of the Constitution of India, particularly in election matters, this Court has a very limited jurisdiction and in view of the same, I am of the view that if the order of the respondent No. 1 is interfered at this stage, it will unnecessarily thwart the whole election process and it will be contrary to various judgments of the Supreme Court. In my view, I do not find any substance in the contention raised by the learned senior Counsel appearing for the petitioners and the petition requires to be rejected and the same is rejected. Interim relief which has been granted is vacated. However, due to pendency of the petition, if the election process is delayed, namely, regarding acceptance of nomination forms etc. respondent No. 1 is directed to see that election is accordingly held changing suitable dates in this behalf.

6.4 In view of the fact that I have taken the view on the merits of the matter, I have not decided the said matter on the ground of mala fides as well as on the ground of maintainability of the petition.

6.5 Before I part with the judgment, I may refer to the observations in the book of 50 years of Supreme Court in subject of Election Law one learned author Shri K. C. Sunny regarding election process as under :

"Constitutional democracy elections provide an opportunity to ascertain the popular will regarding the governance of the country. The legal provisions prescribe detailed rules regarding the system of election, delimitation of constituencies, structures, powers and function of the authority charged with the duty to conduct elections, qualifications and disqualifications of electors and candidates, manner of preparation of the electoral rolls, procedure for the conduct of election and declaration of results and the forum and procedure for remedying election related grievances.

The success of democracy depends on the due conduct of elections so as to ensure the reflection of the true popular will."

After the pronouncement of the judgment, Mr. K. G. Vakharia, learned Senior Counsel for the petitioners, has prayed for extension of interim relief which was already granted earlier by my order dated 18-7-2001 for one week. The order dated 18-7-2001 reads as follows :

"In view of the same, notice returnable on 23-7-2001, meanwhile interim stay of communication dated 5-7-2001 till 24-7-2001. Respondent No. 1 will not finalise nomination on the basis of communication dated 5-7-2001."

In view of the aforesaid order, interim relief which was granted earlier is continued till 9-8-2001.