

(1998) 01 GUJ CK 0044
In the Gujarat High Court

Mehsana District Co-operative Purchase and Sales Union Ltd. APPELLANT
Vs

Dhadhusan Beej Utpadak, Rupantar Ane Vechan Karnari RESPONDENT
Sahkari Mandali Ltd. and Others

Date of Decision : 29-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 329, 329(b)
Gujarat Agricultural Produce Markets Act, 1963 — Section 11, 11(1)(ii), 11(1)(iii),
2(ii), 6
Representation of the People Act, 1950 — Section 21

Citation : (1998) 2 GLR 1479

Hon'ble Judges : K.G. Balakrishnan, J; Arunkumar Kantilal Trivedi, J

Bench : Division Bench

Judgement

K.G. Balakrishnan, J.—All these appeals arise from a common judgment whereby the learned single Judge allowed all the Special Civil Applications. The matters relate to election of the Mehsana Agricultural Produce Market Committee (hereinafter referred to as "the Market Committee"). The petitioners, in Special Civil Application No. 8523 of 1997, are traders, who are carrying on their business in the market area of the Market Committee. The petitioners in Special Civil Application No. 8534 of 1997 and Special Civil Application No. 8536 of 1997 are Co-operative Societies registered under the Co-operative Societies Act and they are functioning within the area of the Market Committee. The Constitution of the Market Committee is as per Section 11 of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Market Act"). u/s 11(1)(ii), four members are to be elected from amongst themselves by the traders holding general licences and u/s 11(1)(iii), two representatives of the co-operative marketing societies situated in the market area and holding general licences, are to be elected from amongst the members of such societies by the members of the managing committees of such societies. The petitioners in these Special Civil Applications allege that though they were included in the preliminary voters' list and in the revised draft list, their names were omitted from the final voters' list and this according to these petitioners, amounts to violation of Rule 8 of the

Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as "the Market Rules"). They had also contended that the removal of their names from the final voters' list was opposed to principles of natural justice and therefore, void. In Special Civil Application No. 8536 of 1997, it was alleged that the names of respondent Nos. 5 & 6 therein were wrongly included, as their names were included neither in the preliminary voters' list nor in the revised draft list. These petitioners sought direction to include their names in the voters' list and the learned single Judge was pleased to allow the prayer.

2. The appellants in the appeals, have seriously assailed the judgment of the learned single Judge on various grounds. They contended that the petitioners in the Special Civil Applications have got an effective alternative remedy under Rule 28 of Market Rules and as they have got alternative remedy, the learned single Judge was not justified in granting the relief sought for and they were not entitled to invoke the writ jurisdiction of This Court under Article 226 of the Constitution of India. The appellants also contend that the deletion of names of the petitioners from the final voters' list was in accordance with the Rules and there was no failure of natural justice. According to the appellants' Counsel, the learned single Judge should not have arrested the process of election when there was an alternative remedy for the petitioners.

3. We heard the learned Addl. Advocate General Shri S.N. Shelat for the Govt, and learned Advocate Shri B.S. Patel and learned Sr. Advocate Mr. K.G. Vakharia with learned Advocate Mr. Tushar Mehta for the appellants and Mr. Kalpesh Zaveri, learned Advocate for the respondents.

4. Reference was made to various authorities. The Gujarat Agricultural Produce Markets Act, 1963 was enacted for establishment of markets for agricultural produce in the State of Gujarat. Section 9 provides for establishment of Markets Committee for a market area declared as such u/s 6 of the Markets Act. The Market Committee envisaged by the Act must consist of elected representatives of three constituencies as provided u/s 11 of the Markets Act. Rules 7 and 8 provide for the preparation of voters' list for general election. One of the main contentions raised in these appeals is, whether deletion of names of the petitioners in the Special Civil Applications from the final voters' list was justified or not or whether it was, in accordance with the Rules. According to Shri Zaveri, the deletion of the names of the petitioners from the final voters' list was against Rule 8(1A), whereas the appellants contended that the officer authorised has got power to delete the names from the final voters' list.

5. The Scheme of the preparation of the voters' list is provided under Rule 8. The authorised officer, who is appointed for conduct of the general election of the Market Committee, has to publish the voters' list prepared under Rule 5, by affixing a copy thereof at the office of the Market Committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks

that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may, within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters. In the instant case, such preliminary voters' list was published on 24-10-1997. The petitioners, in these Special Civil Applications, did not file any objection nor any other person filed any petition regarding the inclusion of their names in the preliminary voters' list. After the publication of preliminary voters' list, the authorised officer published the revised draft list, as provided under Rule 8(1A) on 12-11-1997. In the revised draft list also, the petitioners' names were included. The interpretation of Rule 8(1A) assumes some importance. It is as follows:

After receiving applications, if any, under sub-rule (1) a revised draft list of voters shall be published by the authorised officer by affixing a copy thereof on the notice board of Agricultural Produce Market Committee and at some conspicuous place in the principal market yard of the market area, along with a notice stating that any person who wishes to raise any objection against any new name entered in this list, may apply within seven days from the date of publication of this notice to the authorised officer for an amendment in the revised draft list of voters.

From Rule 8(1 A), it is clear that, after the publication of the revised draft list, the authorised officer shall publish a notice stating that any person who wishes to raise any objection against any new name entered in the list, may apply within seven days from the date of publication of the notice to the authorised officer for an amendment in the revised draft list of voters. From Rule 8(1A), it is a clear that, objection could be raised by any person only regarding the entry of any new name in the revised draft list. If the names were already in the preliminary list as well as in the revised draft list, no person can raise any objection regarding that. If any new name was entered in the revised draft list, objection could be raised and the authorised officer has to decide whether such entry or entries shall be deleted or not. Therefore, it is clear that the authorised officer illegally omitted the names of the petitioners from the final voters' list and it is contrary to Rule 8(1A).

6. Moreover, the authorised officer has not given any notice to these petitioners in the Special Civil Applications regarding deletion of their names from the final voters' list. A learned single Judge of This Court in *Desai Dharamsinhbbhai Taljabhai and Ors. v. Babulal Jethalal Patel and Ors.* reported in 1989(2) G.L.R. 1195, held that principles of natural justice should be followed by the authorised officer, while considering the objections submitted under Rule 8(1) of the Market Rules. The authorised officer has violated the principles of natural justice and therefore, deletion of the names of the petitioners from the final voters' list is an ultra vires act and the learned single Judge was justified in holding so.

7. The next question that arises for consideration is whether the learned single Judge was justified in granting the prayers sought for by the petitioners in the

Special Civil Applications, as the matters related to election. It is a well settled, principle that as a matter of public importance, election should be concluded as early as possible, according to the time schedule and all controversial matters as well as all disputes arising out of the election should be postponed till the elections are over, so as to avoid any hindrance to the election proceedings. The learned Counsel for the appellants made reference to various decisions laid down by the Supreme Court, wherein the Court refused to interfere with the process of election, as it is a matter to be adjudicated after the election. At the outset, we may observe that, almost all the decisions of the Supreme Court, referred to by the appellants, relate to elections conducted under the Representation of the People Act. The elections conducted under the Representation of the People Act, cannot be compared with the election of a Co-operative Society. In the matter of election of the Members of Parliament and State Legislatures, the electoral rolls are prepared under the provisions of the Representation of the People Act, 1950. The elections are held under the provisions of the Representation of the People Act, 1951. So, there are separate statutes covering the preparation of the electoral roll and the holding of the general election. Moreover, Article 329(b) of the Constitution of India specifically provides that notwithstanding anything contained in the Constitution no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner, as may be provided for by or under any law made by the appropriate legislature. Therefore, many of the decisions cited by the appellants' Counsels, cannot be considered as relevant for the purpose of these cases.

8. In the case of *Laxmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.* reported in AIR 1985 S.C. 1233, the petitioners sought for a writ of mandamus and certiorari directing that instructions issued by the Election Commission should not be implemented by the Chief Officer, unless the revision of electoral rolls was completed. The Supreme Court held that the revision of electoral roll is a continuous process which has to go on elections or no elections and various provisions contained in Section 21 of the Representation of the People Act indicate that if an electoral roll is not revised, its validity and continued operation remains unaffected. In that view of the matter, the Court held that the elections cannot be postponed for reason that certain claims and objections still remained to be disposed of.

9. In *Election Commission of India Vs. Shivaji and Others*, . the petitioners sought for stay of the election process on the ground that the Jilla Parishad of Osmanabad and the Jilla Parishad of Latur District which were within the constituency had not been constituted and therefore, the members of the said Jilla Parishads, who were entitled to take part in the said elections had been deprived of their right to participate in the said election. The Supreme Court held that in view of Article 329(b), the dispute regarding the election have to be settled in accordance with the provisions contained in Part VI of the Representation of the People Act. It was held that Article 329 takes away the

power of the High Court to entertain a petition questioning an election on whatever grounds. It was held that the High Court has no jurisdiction to interfere with the process of election at that stage.

10. Reference was also made to 1986 G.L.H. 430 Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandli Ltd., Patan v. Pali Shak Bhaji and Fal Ful Adi Ugarnaraoni Kharid Vechan Sahkari Mandli Ltd., Mehsana, wherein it was held that the preparation of electoral roll in respect of the election to the Market Committee is an integral part of the election process. As regards any dispute relating to preparation of electoral roll, it shall be settled only in accordance with the provisions contained in the statute.

11. Similar view was taken in Mehsana District Co-Operative Sales and Purchase Union Ltd. and Another Vs. State of Gujarat and Others, . In that decision, it was held that the preparation of voters' list is a part or step towards election process and Rule 28 empowers the competent authority to decide about the validity or invalidity of an election. Therefore, it was held that under normal circumstance, jurisdiction under An. 226 may not be exercised to arrest the election process.

12. Right to elect is neither a fundamental right nor a common law right. Right, if any, of the petitioners to be an voter, is purely a statutory right governed by the Markets Act. Therefore, there is no right to elect or right to be elected or any right to dispute an election outside the Statute. As they are statutory rights, they have to resort to statutory provisions for enforcement of rights under normal circumstances. In the instant case, the appellants have contended that the petitioners in the Special Civil Applications have got a statutory right under Rule 28 of the Markets Rules to dispute an election. Therefore, it is argued that they have got an alternative remedy and the Court shall not interfere with the election process under Article 226 of the Constitution of India. We have already stated hereinabove that the decision of the authorised officer to delete the names of the petitioners from the final voters' list is an illegal act opposed to the provisions of Rule 8(1 A). It is also vitiated by the violation of principles of natural justice. The question to be decided is whether under such circumstance, the petitioners are to be told, at the threshold, that they have no right to approach the High Court under Article 226 of the Constitution. Normally, the prerogative order of mandamus is not to be granted where the law provides some other alternative remedy. At one time, this Rule was very strictly applied by the English Courts in conformity with the doctrine that mandamus was a supplementary remedy. In English Courts, this remedy of mandamus has largely lost the character of a residual remedy and it has become a regular remedy for enforcing the statutory duties of public authorities. There is no rule requiring what is sometimes called the exhaustion of administrative remedies. It is rather a rule of prudence. One aspect of the rule of law is that illegal administrative action can be challenged in the Court as soon as it is taken or threatened. There is, therefore, no need to first pursue any administrative procedure, or appeal in order to see whether the action will in the end be taken or not. The Author H.W.R. Wade in Administrative

Law, Fifth Edition at page 592 has stated the following:

The discretion to withhold remedies against unlawful action may make inroads upon the rule of law and must, therefore, be exercised with the greatest care. In any normal case, the remedy accompanies the right. But the fact that a person aggrieved is entitled to *certiorari ex debito justitiae* does not alter the fact that the Court has power to exercise its discretion against him, as it may in the case of any discretionary remedy. This means that he may have to submit to some unlawful administrative act which is *ex hypothesi ultra vires*. For, as has been observed earlier, a void act is in effect a valid act if the Court will not grant relief against it.

(Emphasis supplied)

13. in *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, , the Supreme Court held that "further, it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy".

14. In a decision of a Full Bench consisting of 5 Judges in *Ahmedabad Cotton Mfg. Co. v. Union of India* reported in 1977 G.L.R. 714 (F.B.), This Court considering a similar question and relying on the observations in *Union of India (UOI) Vs. Tarachand Gupta and Bros*, observed as under:

Therefore, in such cases where the challenge is on the ground that the order is an *ultra vires* order, the question of exhausting alternative remedy could hardly arise as the petitioner could straightaway seek remedy of judicial review. These settled principles would be all the more applicable after this Constitutional fetter whether the emphasis is now on full redress of injuries for which specified purpose only this extraordinary remedy is created so that in such substantial injuries consisting of non-compliance with other Constitutional or statutory provisions or illegalities which go to the root so as to result in failure of justice when committed by authorities and Tribunals acting under those provisions, it would be a poor consolation to a citizen to be told in cases of such purported orders to avail of such remedy which he is not bound to exhaust and which would not be efficacious at all but a futile remedy in case the order is confirmed as it would still remain a nullity. Such exceptional cases where the Act is made a complete Code so that the authority is conferred a wide jurisdiction by making all activities not collateral, even such purported orders would not be nullities and they would be subject to direct challenge under the normal remedy under the Act and that is why there would be no scope of challenge by collateral attack in a Civil Court or in writ jurisdiction without exhausting the wide obligatory normal remedy provided under the Act.

15. The Counsel for the respondents Mr. Zaveri pointed out that the appellants

had no other alternative remedy under Rule 28, as contended by the appellants. This contention has some force. The main thrust of the argument of the appellants' Counsel is that the petitioners, whose names were deleted from the final voters' list, can file an election petition under Rule 28 of the Markets Rules. We also noticed that in two Division Bench decisions, it was held that under such circumstances, the aggrieved person can file election petition under Rule 28. We do not think that in view of the specific wording of the Rule, the petitioner will be able to challenge the deletion of their names from the voters' list. It may be noted that there is no provision under the Market Act or under the Market Rules to file an appeal against the decision of the authorised officer deleting the name from the final voters' list. The relevant portion of Rule 28(1) reads as follows:

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

It is clear from the above provision in Rule 28, that a person qualified to vote alone can maintain a petition under Rule 28. It is pertinent to note that under Rule 6, it is specifically stated as to who are the persons qualified to vote. Rule 6 reads as follows:

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.

As per Rule 6, a person, who can file an election petition is a person, who must be either qualified to be elected or to vote. A person, whose name is not entered in the electoral roll, is not a person qualified to vote. It is true that it has been held by This Court in *Zandala Seva Sahakari Mandali Ltd. and Others Vs. B. Narsinhaman and Others*, that under Rule 11(1), an agriculturist, who answers the requirement of Section 2(ii) can contest for one of the eight seats of the agriculturists from the agriculturists' constituency and for getting elected therefrom to the Market Committee and that it is not necessary for such an agriculturist to be a member of the managing committee of the concerned co-operative society. Such an agriculturist is a person qualified to be elected and he can file a petition under Rule 28. But as regards a voter, if his name is deleted by the authorised officer, he will no longer be a qualified voter as provided under Rule 6 and therefore, he may not be in a position to file a petition under Rule 28.

16. In the , *Rameshbhai Dalsangbhai and Others etc. Vs. The Director, Agriculture Market and Rural Finance Office and Others*, Judge of This Court held that a person who is not a voter can also maintain a petition under Rule 28. He further in para 16 of the judgment that a person who claims to be a voter is also to be construed as a person qualified to vote. It was held that words "claiming to be" are to be supplied to Rule 28(1), so as to make a person who claims to vote

also is entitled to file a petition under Rule 28. We are of the opinion that the view taken by the learned single Judge is not correct. The Courts are not expected to supply words to the Statute so as to give a different meaning. If the interpretation of a section leads to an apparent conflict with other provisions, the Court can adopt an interpretation so as to avoid conflict. The Court can iron out the creases, but cannot alter the material. Moreover, the definition of words "qualified to vote" as given in Rule 6 is to be applied. When any of the provisions of the Statute is interpreted and when the Legislature gives a dictionary meaning for the Statute, the words given in the Statute can only be interpreted in accordance with the meaning given in such a dictionary. Any other view taken by the Court cannot be accepted as a proper interpretation. Going by the provisions of Rule 28(1) read with Rule 6, it is doubtful, whether an application could be maintained by a person whose name is not entered in the electoral roll.

16.1. Therefore, it is clear that the alternative remedy suggested by the appellants in these cases is illusory and ambiguous. The authorised officer has illegally deleted the names of the petitioners from the final voters' list. They were not given an opportunity to explain as to why their names shall not be deleted. Such an illegal act was challenged by the petitioners in the Special Civil Applications. No alternative remedy was available to them under the Statute. When no remedy is provided and the act challenged itself was illegal and void, the Court shall not be hesitant to exercise the extraordinary power vested in it under Article 226 of the Constitution of India. However, we make it clear that in the matter of election, Court shall exercise this discretion with great caution and circumspection and the election process already initiated by the authorities shall not be altered so lightly to the disadvantage of so many other persons. In the present case, the election could be conducted as scheduled and the learned single Judge was justified in granting the reliefs sought for by the respondents herein.

17. Under the above circumstances, we find no merit in any of the Letters Patent Appeals. We confirm the findings of the learned single Judge. The election was conducted, as scheduled, by the authority and by virtue of an interim order passed by us on 23rd December 1997, the petitioners in the Special Civil Applications and respondent Nos. 5 & 6 in Special Civil Application No. 8536 of 1997 were allowed to exercise their franchise and directed that the result of the election shall not be declared. In view of the decision in the Letters Patent Appeals, the votes, if any cast by the petitioners in the Special Civil Applications be treated as validly cast and the votes, if any cast by respondent Nos. 5 & 6 in Special Civil Application No. 8536 of 1997 are to be treated as invalid and the authorities are free to declare the results of the election. The Letters Patent Appeals are dismissed with no order as to costs. No order on Civil Applications.

Pronounced in the open Court on the 29th day of January 1998.