

(1987) 12 GUJ CK 0011
In the Gujarat High Court

Mehsana District Co-Operative Sales and Purchase Union Ltd. APPELLANT
and Another

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 21-12-1987

Acts Referred:

Army Act, 1950 — Section 130
Constitution of India, 1950 — Article 226
Gujarat Agricultural Produce Markets Act, 1963 — Section 10, 11, 9
Gujarat Agricultural Produce Markets Rules, 1965 — Rule 28, 4, 5, 6, 7
Gujarat University Act, 1949 — Section 58

Citation : (1988) 2 GLR 1060

Hon'ble Judges : D.H. Shukla, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—These two petitions raise common questions. The latter petition is a more comprehensive one as it covers all the three

constituencies unlike the first petition which covers only the Cooperative Marketing Societies Constituency. The facts in both the petitions being

identical, it would suffice if we briefly state the facts of the second petition which were relied upon by Counsel at the hearing of these two petitions.

2. The Gujarat Agricultural Produce Markets Act, 1963 (Gujarat Act No. XX of 1964), hereinafter called "the Act", was enacted inter alia for the

establishment of markets for agricultural produce in the State of Gujarat. Section 9 provides for the establishment of a market committee for every

market area declared as such u/s 6 of the Act. By virtue of Section 10, every market committee is a body corporate. Section 11 provides for the

constitution of the market committee. It lays down that every market committee shall consist of the following members:

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing

societies) dispensing agricultural credit in the market area;

(ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences;

(iii) two representatives of the co-operative marketing societies situate in the market area and holding general licences, to be elected from amongst

the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such

societies;

(iv) one member to be nominated by the local authority (other than the market committee) within whose jurisdiction the principal market yard is

situated from amongst its councillors or, as the case may be, members who do not hold any general licence; and

(v) two members to be nominated by the State Government.

3. Thus the market committee envisaged by this provision must consist of elected representatives of the first three constituencies and members

nominated by the local authority and the State Government. Section 59 insofar as it is relevant for our purpose reads as under:

59. (1) The State Government may, by notification in the Official Gazette make Rules, either generally or specially for any market area or market

areas for the purposes of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such Rules may provide for or regulate.

(i) the preparation and revision of list of voters for the purpose of any election u/s 11, determination of disputes arising in such election and

payment of expenditure in connection with or incidental to such election;

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By this provision the State Government has been empowered to make rules providing for (i) the preparation and revision of list of voters for the

purpose of election u/s 11; (ii) determination of disputes arising in such election; and (iii) payment of expenditure in connection with or incidental to

such election. In exercise of power conferred by Section 59 of the Act, the Government of Gujarat framed the Rules called The Gujarat

Agricultural Produce Markets Rules, 1965. Part HI of the said Rules entitled "Election of Market Committee" are relevant for our purpose. Rule 4

empowers the Director to fix a date for a general election to a market committee or a bye-election u/s 15 of the Act. Under Rule 5 three separate

lists of voters are required to be prepared for the purposes of election u/s 11 of the Act. These lists must comprise (i) a list of members of

managing committees of Co-operative Societies dispensing agricultural credit in the market area; (ii) a list of traders holding general licences in the

market area; and (iii) a list of members of managing committees of Co-operative Marketing Societies situated in the market area. According to

Rule 6 a person whose name is entered in a list of voters is 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. Rules 7 and 8 provide for the preparation of voters' list for general election. These

two Rules may be set out at this stage:

7. Preparation of list of voters for general election: (1) Whenever general election to a market committee is to be held:

(1) every Co-operative Society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing

committee together with the place of residence of each member;

(ii) the market committee shall communicate the full names of the traders holding general licences in the market area together with the place of

residence of each trader; and

(iii) every Co-operative Marketing Society shall communicate the full names of the members of its managing committee together with the place of

residence of each such member.

to the authorised officer before such date as the Director may by order fix in that behalf:

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election

(2) The Authorised Officer shall within seven days from the date fixed under Sub-rule (1), cause to be prepared the lists of voters as required by

Rule 5 on the basis of the information received under Sub-rule (1) and if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial

number of each voter.

8. Provisional and final publication of lists of voters: (1) As soon as a list of voters is prepared under Rule 5, it shall be published by the Authorised

Officer 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 alongwith 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.

(2) If any application is received under Sub-rule (1), the Authorised Officer shall decide the same and shall cause to be prepared and published the

final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The

final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election.

(3) Copies of the final list of voters prepared under this Rule shall be kept open for public inspection at the office of the Authorised Officer and at

the office of the market committee.

4. Rule 9 refers to list of voters for bye-election with which we are not concerned. Rule 10 lays down that an election shall be held between such

hours and on such dates and at such place or places as may be fixed by the Director. The Director is required to publish a notice not less than 40

days before the date so fixed stating (a) the number of persons to be elected by the respective electorate; (b) the date on which, the place at which

and hours between which nomination papers shall be presented to the Election Officer, such date not being earlier than 14 days from the date of

the publication of the notice; (c) the date on which, the place at which and hours between which the nomination papers shall be scrutinised; (d) the

date on which, the place or places at which and the hours between which the votes shall be taken; and (e) the date on which, the place at which

and the hours between which the votes shall be counted. Rules 11 to 16 deal with the filing of nomination papers, the verification of nominations,

the scrutiny of nominations and the disposal of objections and rejection of nominations. Rule 17 provides for withdrawal of candidature. Rules 18

and onwards provide for the holding of elections and Rule 27 enjoins upon the Director to publish the names of elected and nominated members of

the market committee as soon as conveniently may be after their election and nomination. Then comes Rule 28 which, being relevant for our

purpose, may be reproduced. It reads as under:

28. 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:

(a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer and

(b) to the State Government if the election has been conducted by the Director as an Election Officer.

(2) On receipt of an application under Sub-rule (1), the Director, or the State Government, as the case may be, shall, after giving an opportunity to

the applicant to be heard and after making such inquiry as be or it, as the case may be, deems fit, pass an order confirming or amending the

declared result of election or setting the election aside and such order shall be final. If the Director or the State Government as the case may be

sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such

member.

This in brief is the scheme of the Act and the Rules relevant to the holding of election u/s 11 of the Act.

5. The election programme for the general election of the Agricultural Market Product Committee, Mehsana, was published by the Director fixing

the stages of election on 3rd October, 1987. The date of polling has been fixed as 6th January, 1988. The date for communicating the names as

required by Rule 7 for the preparation of three separate lists of voters under Rule 5 was fixed as 14th October, 1987. The date for publication of

the preliminary lists of voters was fixed as 21st October, 1987. The last date for submitting objections for additions and alterations in the

preliminary lists was fixed as 4th November, 1987. Thus far there is no difficulty. The election programme then fixes a date for re-publication of the

preliminary lists of voters prepared after considering the objections and suggestions and further fixed 21st November, 1987 as the date for

submitting suggestions/objections against the republished preliminary lists of voters. Counsel for the petitioners vehemently argued that the stage for

re-publication of the preliminary lists and inviting of objections thereto is not contemplated by the Rules. The date of publication of the final list of

voters is shown to be 25th November, 1987.

6. The petitioners contend that on or before 14th October, 1987 there were 57 Co-operative Societies dispensing agricultural credit in the market

area in question and they had communicated the full names of the members of their committees totalling 493 to the Authorised Officer charged with

the duty of preparing the voters' lists. After the publication of the preliminary lists, three Societies pointed out that the names of the members of

their managing committees also should be included in the voters' lists. Accordingly 34 names were added to the list re-published on 7th

November, 1987 raising the total number to 527 voters. Since suggestions/objections were invited to these re-published preliminary lists, it

appears that when the final list was published on 25th November, 1987, 51 names which were included in both the preliminary lists came to be

deleted. Thus the total number of voters shrunk to 476 only in the final lists. The petitioners contend that neither the petitioners nor the concerned

Co-operative Societies nor the members of the Managing Committees of the said Societies whose names came to be deleted were apprised of the

objections, if any, received against the inclusion of their names in the voters' lists. Similarly, the petitioners contend that 673 names of traders

holding general licences in the market area were communicated to the Authorised Officer and their names were included in the preliminary lists

published on 21st October, 1987 as well as in the re-published lists of 7th November, 1987. However, in the final list published on 25th

November, 1987 there were only 326 names disclosing a deletion of 347 names. The petitioners contend that these 347 persons were not given

any opportunity of contesting the objections, if any, before their names came to be deleted from the final list published on 25th November, 1987.

As far as the third constituency is concerned, 97 names were communicated to the Authorised Officer for inclusion in the voters' lists. All these 97

names were mentioned in the preliminary list published on 21st October, 1987. After the publication of the said preliminary list, certain Co-

operative Marketing Societies applied for inclusion of names of their members in the final list. In the re-published preliminary list of voters, 104

names inclusive of the 97 names mentioned in the preliminary list were shown. However, when the final list was published on 25th November,

1987, the names of 21 persons were deleted. The petitioners contend that neither these 21 persons nor the concerned Societies were apprised of

the objections, if any, against the inclusion of their names before their names came to be deleted from the final list. This, they contend, is clearly

contrary to the Rules which do not provide for the stage of re-publication of a preliminary list of voters. They, therefore, contend that the second

preliminary list ought to be treated as the final list for the purposes of holding of elections u/s 11 of the Act and the so-called final list of 25th

November, 1987 should be scrapped or ignored. The petitioners further contend that in any view of the matter the final list being inconsistent with

Rules 7 and 8 must be held as null and void and the election proposed to be held on the basis of the said final list must be arrested at this stage as

the same would have no efficacy in law. They further contend that since the names of the voters of all the three constituencies were deleted without

affording them an opportunity of showing cause against objections, if any, received against them, the deletion of their names must be regarded as

violative of Article 14 of the Constitution being in flagrant violation of the principles of natural justice. According to the petitioners the duty to afford

an opportunity to show cause must be read in Rule 8 of the Rules, for otherwise, the Rule will be rendered unconstitutional as offending Article 14

of the Constitution. In paragraph 8 of the petition it is lastly averred that the deletion of the names of the voters from the three lists was clearly

violative of Articles 14 and 19 of the Constitution. The petitioners have also contended that the action of the Authorised Officer was mala fide as

he acted in the manner he did at the behest of Shri Amarsinh Waghela, State Minister for Co-operation, who was bent on ousting Shri Natverlal

Patel, Chairman of Mehsana Agricultural Product Market Committee and Shri Atmaram Patel, who were his ardent political rivals. They contend

that in order to achieve his objective of manoeuvring the voters' lists, Shri Amarsinh Wagnela replaced one Shri Yogi who would have been the Authorised Officer by Shri Gohel sometime in August 1987 who acted as the Authorised Officer and was responsible for the mischief of deleting the names of voters from the second preliminary lists, to serve the political needs of Shri Amarsinh Waghela. These, in brief, are the averments on the basis whereof the petitioners pray that Rules 4 to 8 of the Rules be declared ultra vires Arts 14 and 19 of the Constitution; the final list of voters prepared on 25th November, 1987 be quashed by a writ of mandamus or any other appropriate writ and the respondents, their agents and servants be restrained from holding elections on the basis of the said final lists.

7. In both the petitions notices were issued to the respondents. In response to the said notice the learned Advocate General appeared on behalf of the respondents and raised a preliminary objection to the maintainability of these two petitions. He contended that the petitioners have an efficacious remedy under Rule 28 of the Rules to challenge the validity of the election if they are right in their contention that the final voter's list was not published in accordance with Rules 7 and 8 of the Rules. In support of his objection he invited our attention to two decisions of this Court, the first in the case of Patau Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandli Ltd. v. Pali Shak Bhaji and Fal Ful Adi Ugarnaraoni Kharid Vechan Sahakari Mandli Ltd., Mehsana and Ors. 1986 GLH 430 and the second rendered on 20th February 1987 in Special Civil Application No. 389 of 1987 (C.S. Thakkar v. J.K. Vasavada) by a Division Bench comprising P.R. Gokulakrishnan, C.J. & G.T. Nanavati, J.

Mr. Vakharia countered this submission by inviting our attention to the decision of Surti, J., (as he then was) in the case of Patel Bhagwanbhai Narottamdas and Others Vs. Authorised Officer, of the District Registrar of Co. Op. Societies and Others, wherein the learned Judge arrested the election by directing the Authorised Officer to prepare a final list of voters after excluding the names of respondents Nos. 3 to 70 therefrom. Mr.

Vakharia also argued that the stage of preparation of the voter's list cannot be said to be forming part of the election process and therefore, it is open to the petitioners to challenge the validity of the final list of voters under Article 226 of the Constitution. In support of this contention strong

reliance was placed on the decision of the Supreme Court in *Indrajit Barua and Others Vs. Election Commission of India and Others*, wherein

relying on the observations of Chandrachud, C.J., in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman* AIR 1985 SC 1233, the Court observed:

"We are not prepared to take the view that preparation of electoral rolls is also a process of election". Lastly, according to Mr. Vakharia, since the

final list of voters is also challenged on the ground of malice, the contention needs to be examined by this Court as it will render the final list a nullity

if established and proved. In support of this contention reliance was placed was recent decision of the Supreme Court in *Ranjit Thakur Vs. Union*

of India (UOI) and Others, wherein the Court came to the conclusion that if one of the members constituting the Tribunal is biased against the

delinquent, the judgment which is the product of bias cannot be said to be impartial and would, therefore, be a nullity as the entire trial would be

coram non-judice. Taking clue from these observations Mr. Vakharia submitted that if the petitioners can establish and prove their allegation that

the final list was the product of malice, the same would be rendered a nullity and consequently the election based on such final list would also be

void. According to him these special circumstances which did not exist in the two decisions of this Court relied on by the learned Advocate

General would justify the exercise of jurisdiction under Article 226 of the Constitution even at the interim stage. We have bestowed our careful and

anxious attention to the submissions made by Mr. Vakharia but we are afraid we cannot agree with his line of reasoning.

8. The question in these two petitions is, whether the High Court in exercise of jurisdiction under Article 226 of the Constitution would be justified

in arresting the election programme which has been set in motion by the issuance of an order under Rules 4 and 10 of the Rules on the plea of

omission of certain names from the lists of voters finalized by the Authorised Officer under Rule 8 in view of the special forum and remedy

provided by Rule 28 of the Rules? While considering the scheme of the Act and the Rules, it is noticed that three separate lists of voters had to be

prepared for the three concerned constituencies for the purpose of holding elections for the constitution of a market Committee u/s 11 of the Act.

The procedure for the preparation of the three lists of voters is outlined in Rules 7 and 8 of the Rules. On a combined reading of Rules 5, 7 and 8

with Section 11 of the Act it becomes clear that the lists of voters has to be prepared for the constitution of a market committee u/s 11 of the Act.

Section 59 (2)(i) whereunder these Rules are made also speaks about the preparation and revision of list of voters for the purpose of any election

u/s 11 of the Act. It is, therefore, manifest that the list of voters has to be prepared as a first step in the direction of holding of elections for the

constitution of a market committee u/s 11 of the Act. The Rules made as stated by Section 59(2)(i) provide for the determination of disputes

arising in such election. Rule 28 provides the machinery for the determination of an election dispute which touches the validity of the election

According to the said Rule if the validity is questioned after the declaration of the result, it has to be decided by the special forum created by the

said Rule. That forum has the power to confirm or amend the declared result or set aside the election. Prima facie, therefore the preparation of the

lists of voters is a step in the direction of holding of elections so far as the scheme of the Rules is concerned. In the first case relied on by the

learned Advocate General the questions which arose for consideration in the group of Letters Patent Appeals were formulated in paragraphs 18 to

20 of the judgment. The Court having answered the first question in the negative, it was not required to consider the second question. In those

cases what was claimed by respective petitioners was either the right to be included in the voters lists or for that matter right to vote or right to

object to the inclusion of names of some persons as voters who were not qualified to be voters. The common question which the Division Bench

considered in the said group of appeals can be formulated thus:

Whether this Court has jurisdiction and/or can interfere in exercise of such jurisdiction under Article 226 of the Constitution of India and

consequently arrest the programme of election which has been declared in connection with the election of the market committee in question since

(i) the right of being voters conferred on eligible persons; (ii) objection to the inclusion of the names of voters; or (iii) the right to vote conferred

under the Rules on all qualified persons can be enforced by the special remedy of election petition under Rule 28 of the Rules?

9. The Division Bench answered this contention in the negative and consequently refused to arrest the election programme which was already set in

motion. It must be remembered that the right to be included in the voters' list is conferred by statute and must, therefore, be exercised under the

statute and not de hors the said statute since the petitioners have no right in equity or at common law. The right being a statutory right must be

exercised within the framework of the statute and if the statute provides for an efficacious remedy for the enforcement of the right, the High Court

would be justified in refusing to exercise jurisdiction under Article 226 of the Constitution. The Division Bench after referring to a line of decisions

of the Supreme Court and the decision of the Full Bench of this Court in *Ahmedabad Cotton Manufacturing Ltd. v. Union of India* 1977 GLR 704

wherein the principles emerging from the various decisions were summed up, observed in paragraph 26 as under:

The Division Bench has recognised it on principle as well as in authority that where a right or a liability is created by a statute which gives a special

remedy for enforcing it, only the remedy provided by that statute must be availed of unless the impugned order is ultra vires or is a nullity as being

ex-facie without jurisdiction, and in matters of election dispute, the Court should refuse to exercise the jurisdiction under Article 226 of the

Constitution when the statute conferring right to vote or stand at the election prescribes a statutory remedy embracing the disputes pertaining to all

aspects of the entire process of election.

After referring to the scheme of the Act and the Rules this Court observed as under:

In that view of the scheme of the Act. we are of the opinion that the preparation of electoral roll is an integral part of the process of election. If that

is so, the question as to whether the roll should be modified at the instance of persons claiming to be voters or at the instance of persons objecting

to the inclusion of the names of some persons in the voters list is a matter relating to election, and having regard to the fact that it is a right conferred

under the Act for which a special remedy has been provided, the Court should not exercise the jurisdiction in the matter since there is a provisional

finality in the matters pertaining to various stages of election and therefore, having regard to the recognised principle in the matter of public

importance that election should be concluded as early as possible according to the time schedule and all controversial matters as well as disputes

arising out of the election including the right to vote or stand as a candidate should be postponed till after the elections are over so as to avoid

impediment or hindrance in the election process, does not arise.

10. Taking the above view this Court refused to exercise jurisdiction and refrained from expressing any opinion on the construction of a Rule since

it thought that that was a matter to be decided by the competent election authorities. Mr. Vakharia strongly contested the view of this Court that

preparation of electoral roll is an integral part of the process of election and argued that as it runs counter to the decision of the Supreme Court in

Indrajit Barua's case (supra) it must be held to be implied overruled. We are not impressed by this submission. It is no doubt true that in Indrajit

Barua's case the Supreme Court clearly stated that it was not prepared to take the view that preparation of election rolls is also a process of

election notwithstanding the earlier decision in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and drew support for

its view from the observations of Chandrachud, C.J., in Lakshmi Charon Sen's case (supra). It must, however, be remembered that the said

decisions turned on the construction of Article 329(b) of the Constitution read with the provisions of Representation of the People Act, 1950, and

the Representation of the People Act, 1951. It must be realised that the preparation of electoral roll is a matter covered by the 1950 Act, Sections

21 to 23, and has nothing to do with the provisions of the Representation of the People Act, 1951, whereunder the elections are held. The 1951

Act on the other hand deals with the question of holding elections on the basis of the electoral rolls prepared under the 1950 Act. The scope of the

two Acts is clearly defined and the rights conferred by the said two statutes have to be exercised within the framework of the said statutes. After

the stage of preparation of the electoral roll is completed, the 1951 Act takes over the holding of elections on the basis of the said electoral rolls

and it is for this reason that the Court has to consider the stage at which the process of election can be said to have commenced. The observation

of the Supreme Court that the preparation of electoral rolls is a stage prior to the commencement of the election process has, therefore, to be

understood in the light of the schemes of the 1950 and 1951 Acts. The schemes of the two statutes being totally different as pointed out above, it

would not be proper to read the observations of the Supreme Court as of general import having application to the elections to be held under all

statutes. The Court has to consider the scheme of each statute with a view to deciding the stage for the commencement of the process of election.

We are, therefore, not prepared to hold that the above observation made by the Division Bench in Patan Proper Fal and Shak Bhaji Kharid

Vechan Sahakari Mandli's case (supra) is no longer good law.

11. The reliance placed on the decision of the learned single Judge in the case of Patel Bhagwanbhai Narottamdas (supra), is clearly misplaced. It

is indeed true that in that case the learned single Judge arrested the election process by quashing the final list of voters but it was not argued before

the learned Judge that an efficacious remedy was provided by Rule 28 of the Rules and hence jurisdiction under Article 226 of the Constitution

ought not to be exercised. Therefore, that decision is not as authority for the proposition that notwithstanding the machinery provided by the special

Act and the Rules made thereunder for deciding election disputes, the High Court would be entitled to exercise jurisdiction under Article 226 of the

Constitution if the final list of voters is questioned. We are, therefore, of the opinion that the said decision has no relevance.

12. In a subsequent case, (C.S. Thakkar v. J.K. Vasavada and Anr.) Special Civil Application No. 389 of 1987 decided on 20th February 1987,

a Division Bench of this Court while interpreting the provisions of the Act and the Rules, particularly Rules 7, 8 and 28, relied on the earlier

decision referred to above and came to the conclusion that it would not be proper to arrest the election process since the petitioners could avail of

the remedy provided by Rule 28 of the Rules. Dealing with the question of vires of Rules 6 and 7 of the Rules, the Division Bench observed as

under:"

The next argument advanced by Mr. Vakharia is that Rules 6 and 7 are violative of Article 14 of the Constitution. Mr. Vakharia has not given any

good reasons for striking down these Rules 6 and 7 as violative of Article 14 of the Constitution. Prima facie, the procedure contemplated under

Rule 7 and the provision as regards the persons qualified to vote mentioned in Rule 6 is fair and reasonable and we do not think that it is necessary

to give any definite finding as regards the validity of these Rules 6 and 7 for the

purpose of disposing the present Special Civil Application.

13. The learned Advocate General argued that these observations are a clear answer to the contention urged in regard to the vires of Rules 7 and

8 of the Rules in the present two petitions. On the other hand, Mr. Vakharia submitted that the Court had merely made a "prima facie" observation

and it clearly refused to record "any definite finding" as regards the validity of the said Rules. He therefore, submitted that the above observations

do not conclude the point at issue and this Court must proceed on the premise that the question is wide open. We will assume that the submission

made by Mr. Vakharia is well founded. It may be pointed out that even though in the relief Clause it is contended that Rules 4 to 8 of the Rules are

ultra vires Articles 14 and 19 of the Constitution, the submission was confined to the vires of Rules 7 and 8 only. If we turn to the averments in the

petition in this behalf we find that the objection is to the preparation of a second preliminary list dated 7th November, 1987 and inviting of

objections thereto on or before 21st November, 1987 for finalisation of the list. The list was finalised on 25th November, 1987. The contention of

the petitioners is that Rules 7 and 8 do not contemplate the preparation and re-publication of a second preliminary list before the finalisation of the

voters" list and, therefore, the final list is not in conformity with the requirements of the said two Rules. In other words, the plea is that the action of

the Authorised Officer in preparing and publishing a second preliminary list of voters is clearly inconsistent with the requirements of Rules 7 and 8

of the Rules. If Mr. Vakharia is right in this contention the final list of voters may be quashed or the election held on the basis thereof may be set

aside by the forum created under Rule 28 of the Rules. In that case the publication of the second preliminary list and consequently the finalisation of

the voters" list on the basis thereof may be declared ultra vires the Rules; but that cannot make the Rules ultra vires Article 14 of the Constitution, if

otherwise they are not so. It is not the contention of Mr. Vakharia that Rules 7 and 8 as they stand on the statute book are ultra vires either

Articles 14 or 19 of the Constitution but what Mr. Vakharia argues is that if the action of the Authorised Officer in preparing the second

preliminary list and inviting objections thereon is held to be consistent with the requirements of the said two Rules, then the Rules may be rendered

ultra vires the Constitution. This is a hypothetical submission made by Mr. Vakharia which depends on what interpretation is put by the forum

created under Rule 28 of the Rules while considering the submission that re-publication of a second preliminary list and inviting of objections

thereon is inconsistent with Rules 7 and 8 of the Rules. This Court will not examine the validity of the concerned Rules on such hypothetical

considerations. We are therefore, of the opinion that we would not be justified in arresting the election process on this ground either.

14. Before we consider the submission of Mr. Vakharia based on the allegations of malice, we would like to refer to a recent decision of the

Supreme Court in the case of Gujarat University v. N.U. Rajguru Civil Appeal No. 2321 of 1984, decided by a Division Bench consisting of E.S.

Venkataramiah and K.N. Singh, JJ., on 10th November, 1987 [reported in Judgments To-day 1987 (4) SC 307: (1988 (1) GLR 308 (SC)]. In

that case the dispute was regarding election of teachers to the Court of Gujarat University. The question was, whether notwithstanding the

machinery provided by Section 58 of the Gujarat University Act, 1949, for resolving disputes in regard to the constitution of any of the authorities

of the University, it is permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution bypassing the said machinery.

Dealing with the said question the Court observed as under:

It is well-settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum

for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While

considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law

right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article

226 of the Constitution bypassing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by

the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may

exist to justify by passing the alternative remedies.

Mr. Vakharia submitted that these observations clearly show that in extraordinary

and exceptional cases the Court would be justified in invoking the jurisdiction under Article 226 of the Constitution. That is indeed true but we do not consider this to be one such case for invoking the extraordinary jurisdiction of this Court.

15. That takes us to the last submission of Mr. Vakharia based on the plea of mala fides referred to earlier. It is indeed true that allegations are

made in the petitions against Shri Amarsinh Waghela, State Minister for Cooperation, which touch the validity of the voters' list. If the voters' list is

prepared on extraneous considerations and not consistently with the requirements of the relevant Rules, the forum created under Rule 28 of the

Rules would be justified in looking into the same. In all cases where bona fides are doubted, the Court may not exercise its extraordinary

jurisdiction. In the case of Ranjit Thakur (supra), the Supreme Court labelled the decision of the Court a nullity not because the decision was mala

fide made at the behest of some person in power but because it was found that the constitution of the Court was itself objectionable. In that case

one of the members of the Court was an officer who was biased against the delinquent as the delinquent had made representations against him

complaining of ill-treatment by him. Section 130 of the Indian Army Act cast a duty to inquire of the accused if he had any objection against any

member of the Court. If the accused raises an objection, his objection as well as the reply of the officer objected to has to be considered by the

remaining officers constituting the Court and a decision taken thereon. In that case this requirement was totally overlooked and the accused was

tried by a Court one of the members whereof was biased. It is a fundamental principle of justice that the officer selected to judge the conduct of

the accused must have an open mind and must not be biased as that would interfere with his duty and affect his impartiality. Even if there is

reasonable ground for believing that the officer may not act impartially because of bias, he must be disqualified from judging the conduct of the

accused. If there is a reasonable likelihood of bias it is expected of that officer to excuse himself as a member of the Court, failure to do so would

render the verdict a nullity since the trial would be coram non-judice. It is in this sense that the Supreme Court labelled the decision a nullity but

such are not the facts of our case and hence this decision is of no avail to the

petitioners.

16. For the above reasons we are of the opinion that as held by two decisions of this Court referred to earlier, we would not be justified in entertaining these petitions. We, therefore summarily reject them.