
(1985) 11 GUJ CK 0010
In the Gujarat High Court

Narendra G. Bhatt and Another

APPELLANT

Vs

P.N. Roychaudhary and Others

RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Gujarat Gram and Nagar Panchayats Election Rules, 1962 — Rule 4, 43, 43
Gujarat Panchayats Act, 1961 — Section 21

Citation : (1986) 2 GLR 763

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—(His Lordship after stating the facts of the case, further observed.)

2. The petitioners are voters of Vyara Nagar Panchayat (hereinafter referred to as "Panchayat"). Petitioner No. 2 is also a sitting member of the Panchayat. The term of the Panchayat expires on December 31, 1985. The competent authority issued a Notification dated 2-11-1985 (Annexure "B") declaring election programme for election of the members of the Panchayat. The petitioners challenge the legality and validity of the issuance of the said Notification Annexure "B", inter alia, on the ground that reconstitution of wards and allotment of reserved seats for scheduled caste, scheduled tribe and for women is not in accordance with the established principles laid down by this High Court and not in conformity with the provisions of Rule 43 of the Gujarat Gram and Nagar Panchayat Election Rules, 1962 (hereinafter referred to as "1962-Rules"). The petitioners also contend that the provisions of Gujarat Panchayat Preparation and Maintenance of Part II of List of Voters Rules, 1978 (hereinafter referred to as "1978-Rules") and particularly the provisions of Rule 10 onwards of the aforesaid Rules regarding publication of list of voters in draft and inviting objections regarding inclusion and exclusion of voters in the list and other formalities have not been gone into.

3. Counsel for the petitioners has not pressed the first two grounds regarding

reconstitution of wards and allotment of reserved seats. Therefore, it is not necessary to consider the merits or demerits of these two grounds.

4. It is an undisputed position that as per the relevant provisions of the Gujarat Panchayats Act ("the Act", for short) and the Rules, the persons above the age of 18 are eligible to vote at the Panchayat election. Therefore, for the purpose of holding the election to the Panchayat, a list of voters containing the names of persons between the age group of 18 to 21 will also be required to be prepared and maintained. For this purpose, 1978-Rules have been framed and brought into force. These Rules clearly provide that a draft list of voters is required to be published and objections are required to be invited and dealt with in the manner prescribed. Final voters' list is required to be published 10 days before the date of filing of the nomination papers as per the provisions of Rule 25 of 1978-Rules. In above view of the matter, the voters' list for the purpose of election to a Panchayat would be in two parts. Part I would contain the names of voters whose names appear in the voters' list prepared and maintained under the provisions of Central Law for the time being in force. This voters' list is to be adopted as voters' list for the purpose of election to Panchayat as per the provisions of Section 21 of the Act. This would be termed as voters' list Part I. The voters' list Part II would contain the names of persons between the age group of 18 to 21.

5. It is an admitted position that the voters' list in draft has not been published as required by Rule 10 of the 1978-Rules. It is contended by the counsel for the respondents that as per the provisions of Rule 4 of 1962-Rules, preliminary publication of voters' list was required to be made. But Rule 4 of 1962-Rules has been deleted as per Notification dated October 28, 1980 and therefore, publication of voters' list Part II as required by Rule 10 to Rule 25 of the 1978-Rules is not necessary at all. In the submission of the counsel for the respondents, final publication of the voters' list Part II would be sufficient. The aforesaid contention cannot be accepted. The provisions of Rule 4 of 1962-Rules dispensed with the preliminary publication of voters' list probably because as per the provisions of Section 21 of the Act, Part I of the voters' list will contain the names of all the voters included in the electoral roll of the Assembly Election under the provisions of the Central Law for the time being in force. Therefore, normally a person would be presumed to know with regard to the state of affairs in Part I of the voters' list. Part I would include the names of persons eligible to vote and who are above the age of 21. It may be noted that as per the provisions of Central Law in force from time to time, while preparing the voters' list, draft voters' list is required to be published and objections are also being invited against the inclusion, exclusion and/or omission of the names of persons who are eligible to vote. A separate and elaborate machinery is provided for under the provisions of the Representation of the People Act, 1950 and the Rules framed thereunder. Almost similar provisions have been made in the 1978-Rules. As per the provisions of these Rules, Part II of the voters' list is required to be prepared and maintained. It is not controverted by the other side that the provisions of 1978-Rules regarding the preparation of voters' list Part II, draft

publication thereof, inviting objections and then deciding the same, etc. have not been complied with at all. Straightaway the final voters" list Part II has been published. This is clearly contrary to law.

6. In above view of the matter, it can be said that the election is sought to be held without their being legally valid voters" list Part II in existence. This cannot be permitted to be done. If election is allowed to be held in such a manner, then it would be in flagrant violation of the Act and Rules and it would be an exercise in futility.

A similar question arose in Special Civil Application No. 5164 of 1985 decided on October 17, 1985. In that matter my learned Brother N.H. Bhatt J. has taken the same view and has held to the effect that preparation and publication of electoral roll is a vital step preliminary to the holding of the election and that having not been done, the entire notification regarding election stands vitiated, particularly in view of the fact circumstances of the case, I am in respectful agreement with the view taken by my learned Brother in the aforesaid decision.

7. In the result, the petition is partly allowed. The election notification dated November 2, 1985 produced at Annexure "E" to the petition is quashed and set aside. It is hoped that the authorities concerned will take immediate action for preparation and publication of voters" list Part II in accordance with the provisions of the Act and the 1978-Rules. In view of the fact that the term of the Panchayat expires on December 31, 1985, it would be desirable if the preparation of voters" list Part II as required by 1978-Rules is completed with least possible delay and the election is held as soon as practicable. Rule made absolute accordingly with no order as to costs.