

(2005) 04 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 1691 of 2005

Narottam Narandas Patel

APPELLANT

Vs

A.B. Gor or his successor in Office

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 145A, 145B, 168, 168(1), 168(2)
Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 — Rule 18, 18(1), 19(1), 23, 23(2)

Citation : (2005) 25 GLH 379 : (2005) 2 GLR 1583

Hon'ble Judges : R.S. Garg, J; R.R. Tripathi, J

Bench : Division Bench

Advocate : B.S. Patel and Ranjan B. Patel, for Petitioner Nos. 1-8, for the Appellant; V.M. Pancholi, AGP for Respondent No. 1, P.K. Jani for Respondent No. 2 and Kiran D. Pandey, for the Respondent

Judgement

R.S. Garg, J.—The petitioners in all 8 in number, who are members of Visalvasna Seva Sahkari Mandali Ltd., (the affiliated society of the respondent no.3), are before this Court with a grievance that the respondent no.1 at the behest of some others had rejected their nomination papers when the present petitioners in their capacity as representatives of their own society wanted to contest the elections of the respondent no. 3 - Patan Taluka Sahkari Kharid Vechan Sangh Ltd. It is to be seen that the Election Officer rejected the nominations of the present petitioners observing that on a juxtapose reading of Rule 23(2) and Rule 18 (1), so also Rule 19(1) and the Election Byelaw 8(5) of the respondent no.3, the nominations were liable to be rejected.

2. Submissions of the learned counsel for the petitioners are; (i) that at the behest of some political parties, the respondent no.1 rejected all the nominations papers, (ii) the respondent no.1 removed the resolutions which were attached to the nomination papers and thereby played fraud, (iii) assuming that such resolutions were not attached with the nomination papers, then too, the defect was not of a substantial nature and as the resolution made by their own society -

Visalvasna Seva Sahkari Mandali Ltd., was available with the Election Officer, which was submitted for inclusion of the names of the petitioners in the voters' list, the defect would not be of a substantial nature or character.

3. The respondent no. 1 has filed his affidavit, wherein, he has clearly denied the personal allegations. He has stated that the allegations of playing fraud or rejecting the nominations at the behest of someone else are bad and false and false to the knowledge of the petitioners. He has also submitted that the nominations were not attached with the resolution and he was absolutely justified in rejecting the nominations. He has stated that he acted on his own free will and has not done any act which was unwanting of him.

4. After taking Mr. Patel, learned counsel for the petitioners to this affidavit, we asked him that if the material facts have been challenged and have been controverted on oath then how can a finding into the allegations or counter-allegations that the respondent no.1 worked at the behest of someone or playing fraud by removing the resolutions be recorded by us under Art.226 and, would it not be advisable for the petitioners to go to the Election Tribunal, Mr. Patel submitted that even if those two arguments available to the petitioners are not taken into consideration because of a dispute in relation to the facts, his submission on grounds may be considered and the petition be allowed.

5. It was submitted by Mr. Patel that the learned Election Officer was absolutely unjustified in referring to the election byelaw no. 8(5) made/framed by the respondent no. 3 when the elections are to be conducted in accordance with the rules known as Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982.

6. In our opinion, the objection raised by Mr. Patel should not detain us, because, nominations have not been rejected simply on the ground of non-observance of election byelaw no. 8(5) of the respondent no.3. In fact, the nominations have been rejected in light of Rule 23(2) read with Rule 18(1) and 19(1) of 1982 Rules.

7. Mr. Patel submitted that before referring to these Rules, it would be necessary to refer to Section 74C of Gujarat Cooperative Societies Act, 1961. Section 74C reads as under :

"74C. Provision for conduct of election of commodities and officers of certain societies and term of office of members of the committees.

(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, publish 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 Cooperative Banks;
- (iii) All primary Land Development Banks;
- (iv)(a) All District Cooperative Sale and Purchase Organisations;
- (b) All Taluka Cooperative Sale and Purchase Organisations;
- (v) All Cooperative Sugar Factories;
- (vi) All Cooperative Spinning Mills]
- (vi-a) All district cooperative milk unions;
- (vi-b) All taluka cooperative processing societies;
- (vii) Any other society or class of societies, which the State Government may, by general or special order publish 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 byelaws of any such society, the committee of management shall be elected by a general body of members of the society and all other committees authorized by or under the byelaws 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: Provided that it shall be lawful for the State Government,-

[a] to nominate its representatives on a committee of any such society u/s 80, or

[b] to nominate the first Committee of Management of any such society where the byelaws of such society so provided.

Provided further that it shall be lawful for anybody or authority to nominate its representative on a committee of such society where the byelaws of such society so provide."

A fair understanding of Section 74C would make it clear that these provisions relate to conduct of election of committees and officers of certain societies and term of office of members of the committees.

8. Election of members of the committees and of the officers by the committees of the societies of the categories mentioned u/s 74C shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter. Chapter XI-A relates to elections of committees and officers

of certain societies. It contains Section, 145-A, Section 145-B, Sections 145-C to 145-Z. Chapter XI-A, in fact, is a complete Code in relation to the elections and the manner in which a challenge can be thrown to the elections. At this stage, we would also refer to Section 168 of the Act. Section 168 of the Act says that the State Government shall have powers to make rules for carrying out purposes of the Act. Sub-section (2) of Section 168 says that in particular and without prejudice to the generality of the powers as mentioned in Section 168(1), the State Government may make rules for the whole or any part of the State of Gujarat and for any society or class of societies and to provide for all matters expressly required or allowed by the Act to be prescribed by rules. It cannot be disputed that the election is an integral part of the system and in fact, is an act to be performed by the authorities under the Act for carrying out the purposes of the Act. Rules are required to be framed under such authority and powers vested in the State Government. The State Government has framed the Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982. Rule 18 of 1982 Rules reads as under:

"18. Nomination of candidates.-

(1) Any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and byelaws and his name is entered in the list of voters:

Provided that where a society sends the candidate to stand at election, such society shall pass a resolution in its managing committee authorizing such candidature and the nomination form of such candidate shall be accompanied by a certified copy of such resolution :

Provided further that in the case of joint or associate member, only a member whose name stands first in the share certificate shall be eligible to be nominated as a candidate for the election.

(2) Every nomination paper presented under rule 19 shall be completed in Form II:

Provided that, a failure to complete, or a defect in completing the declaration as to symbols in a nomination paper shall not be deemed to be a defect of a substantial character within the meaning of sub-rule (3) of rule 23.

(3) Any person whose name is entered in the list of voters may be a proposer or a seconder for nominating a candidate for election:

Provided that, in the case of elections from the constituencies of societies, the proposer and the seconder shall be from the same constituency.

(4) The resolution referred to in sub-rule(1) shall be distinct and in addition to the resolution of a society for electing its delegate to vote on its behalf at the election of federal society.

(5) A nomination paper shall be supplied by the Returning Officer to any voter on

demand."

9. Sub-rule (1) clearly provides that any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and byelaws and his name is entered in the list of voters. Provisional voters' list is required to be prepared under Rule 4. Certain particulars are required to be included in the provisional list of voters in accordance with Rule 5. Claims and objections to the provisional list of voters are to be received and disposed of under Rule 6. Final list of voters is to be published under Rule 7. At this stage, we would take up the submission of Mr. Patel that when he says that if society has passed a resolution under which authority was conferred upon the petitioner/petitioners to get their names included in the voters' list to exercise right of franchise, to submit the nomination or withdraw the nomination at a later stage and if his name was included in the voters' list on the strength of the resolution passed by the society and the fact was known to the officer then attaching of the resolution with the nomination form was an empty formality and the requirement could not be held to be mandatory.

10. We would again revert back to the first proviso of sub-rule(1) of Rule 18. The first proviso says that where a society sends the candidate to stand at election, such society shall pass a resolution in its managing committee authorising such candidature and the nomination form of such candidate shall be accompanied by a certified copy of such resolution.

11. At this stage, we would propose to make it clear that inclusion of the name in the list of voters would be a right conferred upon a person and to contest for and on behalf of the society would be yet another right to be specifically conferred by a society. The society may or may not pass different resolution authorising its members to represent and for inclusion of their name in the voter's list and contesting in the election. But the fact would remain that these are different rights conferred upon the representative. If a resolution contains both the facts that the representative is entitled to be included in the voters' list and is also entitled to take part in the election, then the submission of the resolution for inclusion of the name in the voters' list, would be for a limited/specified purpose. When the resolution is submitted to the Election Officer for inclusion of the name, then, resolution will have to be read simply for the purposes of inclusion of the name and not beyond that. If Mr. Patel's argument has to be accepted that the resolution is already available with the Election officer, therefore, the same was not required to be attached with the nomination paper, then, the first proviso to Rule 18 of 1982 Rules would become otios and nugatory.

12. The Court, in accordance with the principles of interpretation is obliged to see that every provision of law is given its fullest meaning and is not made nugatory by its interpretation. If the said principle of law is kept in mind and the provisions as contained in the first proviso to Rule 18 are appreciated and interpreted, then, it would mean that a person who is included in the voters' list may contest in the elections, but if the society has sent his name for taking part in the elections,

then such resolution is to be separately attached with the nomination form.

13. Mr. Patel submitted that Rule 19 simply requires presentation of the nomination paper and to show the requirement for valid nomination, he has referred to sub-rule (1) of Rule 19.

14. While canvassing his submission further that Rule 18(1) proviso is directory, he referred to Rule 23 to submit that under sub-rule (2) of Rule 23, Returning Officer can reject the nomination paper either on objections raised by certain parties or on his own motion after such summary inquiry on the grounds mentioned in sub-rule (2) of Rule 23. Rule 23 sub-rule (2) with its clauses reads as under:-

"23. Scrutiny of nomination papers.-

(1) xxx xxx xxx

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, that is to say:-

[a] that the candidate is disqualified for being chosen to fill the seat by or under the Act, Rules or byelaws.

[b] that the proposer or the seconder is disqualified, subscribing a nomination paper;

[c] that there has been failure to comply with any of the provisions of rule 19 or 21;

[d] that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) xxx xxx xxx xxx

15. According to Clause (a), the nomination can be rejected on the ground that the candidate is disqualified for being chosen to fill a seat by or under the Act, Rules or byelaws. Clause (b) says that nomination can be rejected if the proposer or seconder is disqualified from subscribing a nomination paper. Clause (c) says that there has been failure to comply with any of the provisions of Rule 19 or 21. Clause (d) says that the signature of the candidate or the proposer on the nomination paper is not genuine. We are not concerned with Clause (a), Clause(b) or Clause(d) of sub-rule (2) of Rule 23, because, the nomination paper has not been rejected on any of the grounds mentioned in these clauses.

16. Submission of Mr. Patel is that Clause (c) of sub-rule(2) of Rule 23 provides that the nomination can be rejected if there was failure to comply with any of the provisions of Rule 19 or 21 and as Rule 18 has not been included within the mischief/sweep of this clause, non-compliance with the first proviso to Rule 18 (1) would not prove the fact.

17. For proper appreciation of this clause, we would again have to revert to Rule 19 and Rule 21.

18. Rule 21 relates to deposits to be made by a candidate at the time of submission of the nomination. If the deposits are not made, the nomination can be rejected.

19. So far as Rule 19 is concerned, it clearly says that in what manner, the nomination paper shall be submitted and what are the requirements for submission of a valid nomination paper. Sub-rule(1) clearly provides that on or before the date appointed under sub-rule (1) of Rule 16, each candidate shall either in person or by his proposer deliver to the Returning Officer during the time and at the place specified in the order made under the said rule, a nomination paper completed as provided by rule 18 and signed by the candidate and by two voters of his constituency one of whom shall be proposer and the other as seconder. Pre-requirement of submission of a valid nomination paper is that it is submitted either by a person or by his proposer to the Returning Officer. The second requirement is that it must be submitted during the time fixed and the place specified in the order made under Rule 16. The third requirement is that the nomination paper should be complete as provided by Rule 18 and the fourth requirement is that it is signed by the candidate and by two voters of his constituency, one of whom shall be proposer and the other as seconder. Rule 19(1), if is not observed in its true spirit, then, there is no tender or submission of valid nomination paper. If the nomination paper is not submitted or tendered by a candidate or its proposer, then, it cannot be accepted and it would be rejected outright. If it is not submitted at the time and at the place specified in the order made under Rule 16, such nomination paper would again be liable to be rejected. If the nomination paper is not signed by the candidate and/or by two of his voters and the same is submitted observing the other three requirements, then too, the nomination would not be a valid nomination. Similarly, if a nomination paper is not complete as provided by Rule 18, then, again, the nomination has to be rejected at the time of the scrutiny under Rule 23 of the Rules. We are not referring to the other requirements as provided under Rule 18, because for the present the dispute is whether the resolution passed by the Society which has referred the name of the candidate for election is required to be attached with the nomination. It cannot be disputed that sub-rule (1) of Rule 19 provides for mandatory directions. Nomination paper should be submitted in accordance with sub-rule (1) of Rule 19 and if it is not in accordance with sub-rule(1) of Rule 19, then, clutches of clause (c) of sub-rule (2) of Rule 23 would open to arrest the illegality showing that there has been a failure to comply with any of the provision of sub-rule (1) of Rule 19.

20. Submission of Mr. Patel that the defect is not of substantial character will have to be rejected simply on the ground that if law requires a particular act to be done in a particular manner, then, it must be done in such a manner or not at all. In the present matter, the petitioners want that the nominations should be

accepted de hors the requirement of Rule 19(1) and the clutches of the scrutiny under Rule 23(2)(c); in our opinion, an invalid nomination paper, which is not conforming the requirements of Rule 18 cannot be accepted.

21. At this stage, Mr. Patel, learned counsel for the petitioners submits that in accordance with Rule 23 of the Elections Rules, an opportunity of hearing ought to have been given to the petitioners and without affording such opportunity, the nominations could not be rejected. This argument could certainly assume importance if we were to hold that the requirement of Rule 18 is not mandatory and is directory. Once we hold that the nomination paper was required to be attached with the resolution of the sending society and the nomination papers in the present matter were not attached with the resolution then, there is no escape from the final outcome of the scrutiny irrespective of the fact that the petitioners were heard or not heard.

22. At this stage, we would again revert back to record. The petitioners in all 8 in number while detailing the facts have submitted in paragraph 3.3 of the writ application that "the resolution passed by the sending society was attached with the nomination papers and surprisingly at the instance of the present party in power, as the majority of the petitioners belong to the Congress Party and are presently directors in the respondent no.3-Society, the resolution had been removed which was attached with the nomination papers." These allegations have been made with a view to persuade the High Court that the Election Officer, in fact, played a fraud or he misused or abused the authority conferred upon him. The allegations are not about misinterpretation of law or non-observation of the duty, but are in the nature of misconduct in discharge of the duty, the allegations are in fact, that to oblige and help the party in power, valid nomination papers were made invalid by a conscious act of the Election Officer. The Election Officer Mr. A.V. Gor had stated in his counter-affidavit that the nomination papers were incomplete and the allegations were made against him to malign him. He has stated that the allegations are bald in nature and were, in fact, generated or created by the petitioners. He has submitted that the averments and allegations made by the petitioners relating to political malafides are not correct. He has also stated that the allegations were made without any basis or foundation. He has filed Annexure:R/1 along with his counter-affidavit to show that three persons out of 11 made an application to the Election Officer that due to some bonafides or inadvertence, resolutions of their own society could not be attached with their nomination papers. Mr. Patel submits that those three persons who submitted the applications are not the petitioners before this Court. The submission, prima facie, appears to be lucrative, but if it is examined on the anvil of the grounds raised in support of the petition, specially, Ground-A at page-8 of the writ application, it would clearly appear that the present eight petitioners were trying to make out capital out of rejection of the 11 nomination papers. They had clearly stated in Ground-A that the petitioners and other three who had remained present were of one group and the respondent no. 1 had rejected the nomination papers of all 11 candidates with a view to declare the

rival panel uncontested. A fair understanding of the statement would be that all the 11 had attached the resolutions with the nomination forms and all the 11 resolutions were removed. This statement made by the petitioners in the writ application is contrary to Annexure:R/1 and we must even at this stage hold that to obtain favourable orders, these eight petitioners concocted a cock and bull story of attaching the resolutions with the nomination forms and surreptitious/fraudulent removal of these resolutions by the Election Officer. We must, even at this stage, record our displeasure and condemn the petitioners for making such false statement on oath. In view of the aforesaid discussion, we dismiss the writ application imposing cost of Rs.5,000/- on each petitioner. The cost to be shared equally by the respondents nos. 1,2 and 3. The costs shall be deposited by all the petitioners within 15 days from today and non-deposit of the same shall be taken to be a serious lapse on the part of these petitioners.

23. In view of our afore-recorded finding, we direct the Registry to register a separate case under the provisions of the Contempt of Courts Act, let notices be issued to the petitioners nos. 1 to 8 to show cause why they be not awarded full jail term as provided under the provisions of the Contempt of Courts Act for playing fraud with the High Court by swearing false affidavit with a view to obtain favourable order in their favour.