
(1978) 11 GUJ CK 0006
In the Gujarat High Court

Narsinhbhai Govindbhai Rank

APPELLANT

Vs

Devshi Laxmidas Dedania and Others

RESPONDENT

Date of Decision : 15-11-1978

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 21, 21, 21(6)
Representation of the People Act, 1950 — Section 14

Citation : (1979) 1 GLR 841

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—These two petitions though filed by two different persons and in respect of two separate prayers can be conveniently disposed of together because, in the former the Sarpanch's election is challenged while in the other the election of the member from Ward No. 8 of that village is challenged. The common features of this election are the challenge to the electoral roll.

2. The Village Panchayat concerned is Ramlechi Gram Panchayat in Junagadh District. The Respondent No. 3 in both these petitions is the Mamlatdar of Talala Taluka who was appointed as the Specified Officer u/s 21 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Act" for brevity's sake). In the former petition No. 1774 of 1975, the first respondent Devshi Laxmidas was declared elected as the Sarpanch on his having allegedly secured 529 votes as against his rival, the second respondent, who was found to have secured 384 votes. In the Special Civil Application No. 1790 of 1975, the second respondent in that petition Lakshmidas Bhovan Padalia is said to have secured 72 votes in that Ward No. 8 whereas the first respondent, Kanji Hira Kansagra, is said to have secured 81 votes. Obviously the first respondent was declared elected by the third respondent who was also the Returning Officer. In the first case election is challenged on the ground that the voters' list stood vitiated because of the wrongful inclusion in all of 274 voters in the voters' list for the entire village. In the second petition it was alleged that 70 persons were added in the list wrongfully and that too in the face of the prohibition contained in Section 21(6)

of the Gujarat Panchayats Act, 1961. Additions in the voters' list as complained of in the former petition are also said to have been effected in flagrant violation of the mandate of Sub-section (6) of Section 21 of the Act. This is the factual background of both these cases.

3. It is complained in both these petitions that the third respondent, Mamlatdar, had misconstrued the provisions of Section 21 in respect of the list of voters. For the sake of convenience I reproduce Section 21 below as it, was before its substitution by Gujarat Act No. 18/78:

21. (1) The electoral roll of the Gujarat Legislative Assembly prepared under the provisions of the Representation of the People Act, 1950, for the time being in force for such part of the constituency of the Assembly as is included in the relevant electoral division, shall, subject to any amendment, deletion or addition made under Sub-section (3) or any inclusion of any name under Sub-section (5), be the list of voters for that electoral division.

(2) Such officer as the State Government may specify in this behalf hereinafter referred to as "the specified officer" shall maintain a list of voters for each electoral division; the list shall be published in the prescribed manner.

(3) If on an application made to him in this behalf or on his own motion the specified officer is satisfied that the list of voters is at variance with the relevant part of the electoral roll of the Gujarat Legislative Assembly on account of any mistake in the list, he shall amend the list so as to bring it in conformity with the said electoral roll and for that purpose may amend, delete or add any entry in that list.

(4) Any person who has become entitled to be registered in the relevant part of the electoral roll of the Gujarat Legislative Assembly under the Representation of the People Act, 1950, after the qualifying date may apply to the specified officer for inclusion of his name in the list.

(5) Where the specified officer after making such inquiry as he may consider necessary, is satisfied, that the applicant is entitled to be registered in the relevant part of the electoral roll of the Gujarat Legislative Assembly under the Representation of the People Act, 1950, he shall direct the name of the applicant to be included in the list of voters:

Provided that no such direction shall be given if the applicant is disqualified to vote under this Act or any other law for the time being in force.

(6) No amendment, deletion or addition of any entry in the list of voters for an electoral division shall be made under Sub-section (3) and no direction for inclusion of a name in that list shall be given under Sub-section (5) during the period between such date as the State Government may, by general or special order, notify in this behalf and the date of the completion of any concerned election in the electoral division.

Explanation:- In this section, the expression "qualifying date" has the same meaning as in Clause (b) of Section 14 of the Representation of the People Act, 1950.

4. Even a bare look at the above provisions of Section 21 of the Act shows that on the basis of the electoral roll a voters" list wardwise is required to be maintained but Section 21(1) enjoins upon the concerned authority to see that voters" list for the purpose of the Act is nothing but a photo copy of the electoral roll maintained under the provisions of the Representation of the People Act, 1950. It, however, many a time happens that there would at times be some variance at some points between the electoral roll and the voters" list. Under Sub-section (3), therefore, a duty is cast upon the specified officer moving suo motu or moved by an interested person, to be satisfied about the list of voters in any way at variance with the relevant part of the electoral roll of the Gujarat Legislative Assembly on account of any mistake in the list. It is the duty of the specified officer on being so satisfied to amend the list so as to bring it in conformity with the said electoral roll. This is the first duty of the specified officer. The second duty of the specified officer is to see that those persons who become entitled to be registered in the electoral roll after the qualifying date, namely, first January in each year, is to enroll them in the voters" list though their names do not find place in the electoral roll. In other words, only those persons can apply under Sub-section (4) for inclusion of their names in the voters" list who have become entitled to be registered in the relevant part of the electoral roll after the first January. Such persons may or may not apply for inclusion of their names in the electoral roll but they can certainly apply directly to the specified officer for inclusion of their names in the voters" list. On such applications being received, it becomes the duty of the specified officer to make necessary inquiry as he thinks necessary and on being satisfied that the applicant is entitled to be registered in the relevant part of the electoral roll of the Gujarat Legislative Assembly, he has to direct the name of the applicant to be included in the list of voters. In other words, the power to include additional names in the voters" list is confined to only those persons who become entitled to be registered in the relevant part of the electoral roll after the qualifying date, namely, 1st January of that particular year though they may not be on the electoral roll. The clause "who has become entitled to be registered in the relevant part of the electoral roll of the Gujarat Legislative Assembly under the Representation of the People Act, 1950, after the qualifying date" is very clear in its connotation. Such a person without moving the registering authority under the Representation of the People Act, 1950, can directly approach the specified officer and convince him that he having attained 21 years of age after the qualifying date and being not otherwise disqualified is entitled to be added in the voters" list. This is the right conferred on such a person acquiring the right of a voter for the first time after the qualifying date, namely, the 1 st January of the relevant year. On such right being exercised by that person himself, a duty is cast upon the specified officer by Sub-section (5) of Section 21 of the Act to

make such inquiry as he thinks necessary. If as a result of the inquiry the specified officer is satisfied that the applicant is entitled to be registered under the relevant part of the electoral roll of the Gujarat Legislative Assembly under the Representation of the People Act, 1950, he shall direct the name of the applicant to be included in the list of voters even though that man by that time might not have got his name inserted in the roll of the Legislative Assembly. Barring this duty enjoined upon the specified officer by Sub-section (5) of Section 21, he has no right to insert any name.

5. To put in a nutshell the law relating to the list of voters is as follows:

(1) Whoever is enrolled in the electoral roll of the Gujarat Legislative Assembly automatically becomes a voter in the voters' list.

(2) Under Rule 26 of the Registration of Electors Rules, 1960, any person who is, as per Section 19 of the Representation of the People Act, 1950, not less than 21 years of age on the qualifying date, namely, 1st January of any year and who is ordinarily resident in that particular constituency is entitled to be registered in the electoral roll for that constituency. Say, for example, a man aged 30 has never been enrolled as a voter. He is certainly entitled, u/s 19, to be so enrolled. Under Rule 26 of the abovementioned Rules, he can make an application for correction of entries and inclusion of names in the electoral roll even after the qualifying date. In other words, the procedure provided for rectification and correction of the Assembly electoral roll is a procedure which is perennial in operation all the year round and it can continue up to any date and even up to the last moment of the time before the election. The moment such a man gets his name included in the electoral roll, Section 21(1) of the Gujarat Panchayats Act would come into operation and such a man will automatically be mentioned in the voters' list for the panchayat elections by virtue of the duty cast on the specified officer by Sub-section (3).

(3) If a person becomes 21 years of age after 1st January of the relevant year, he has no right to have his name included in the electoral roll but he has to wait till the advent of the new year because one of the two requisites for getting the right to be registered in the electoral roll is that such a person must "not be less than 21 years of age on the qualifying date".

(4) However, if a person who has completed 21 years of age after 1st January of the relevant year, and is desirous of exercising his right as a voter in some panchayat election to be held in that year, a special remedy is provided for him in Sub-section (4) of Section 21. As said above, it is not open to him to get his name enrolled in the roll of the Legislative Assembly but nevertheless he will be able to exercise his right to vote at the panchayat election because of the special remedy provided in Section 21 Sub-sections (4) and (5) of the Gujarat Panchayats Act.

6. The above clear-cut exposition of law, therefore, makes it clear once for all that a person who has missed the train of getting himself registered in the

electoral roll of the Legislative Assembly despite being qualified to be so enrolled on 1st January, his only remedy is to get his name included in the electoral roll and he cannot be directly given a place in the voters' list under the Gujarat Panchayats Act. The sum and substance of Sub-sections (4) and (5) of Section 21 of the Gujarat Panchayats Act is that only new entrants can be obliged by the specified officer but not those who were already entitled to be registered in the electoral roll for that constituency on the qualifying date and had omitted to do so.

7. Coming to the case on hand, we find that in the Special Civil Application No. 1774 of 1975 challenging the election of the first respondent-Sarpanch, as many as 274 new voters were added by the third respondent. Originally there were in eight wards 714 voters to which 274 new entrants were added by the specified officer. The say of the petitioner in that petition is that out of these new entrants 178 persons were such who were already entitled to be registered on the qualifying date. How could the specified officer put them on the voters' list in view of the legal exposition made above? The specified officer had no authority at law, looking to Section 21 Sub-sections (4) and (5) of the Gujarat Panchayats Act, to incorporate their names in the voters' list because all these persons were above 21 years of age on 1st January 1975 which was the qualifying date for that particular year. As noted by me above, the only course left open to these 178 persons was to get their names enrolled in the electoral roll and if they had done so, they would have got an automatic entry in the voters' list by virtue of Section 21(1) and (3) of the Gujarat Panchayats Act. As far as the third respondent, the specified officer, is concerned, he had no authority at law to include their names. The details of these persons ward wise are given by the petitioner of the Special Civil Application No. 1774 of 1975 in paragraph 10 of his petition. In that paragraph, 68 persons are also shown to have gone to that village only for the short duration for the purpose of finding out some occupation during the famine conditions. The petitioner's uncontroverted say is that these persons were not ordinarily resident of the constituency and, therefore, under sec. 19 of the Representation of the People Act, 1950, they would not be entitled to be enrolled as voters in the electoral roll. It is truism to state that one who is not entitled to be enrolled in the electoral roll cannot claim a placement in the voters' list under the Act. Such 68 persons also were wrongly added. The residue of 28 persons, of course, can be said to have been rightfully entered by the specified officer.

8. In this petition, neither the specified officer nor the other two respondents have chosen to appear and controvert the factual allegations made by the petitioner in that petition. For want of any denial, the sworn statement of the petitioner in respect of all these facts must of necessity be accepted as true. The factual position that thus emerges is to the rightful voters 714 + 28 (28 being the persons who became entitled for the first time after 1st January 1975) there was an addition of 246 voters in the background of 742 rightful claimants of franchise. The unauthorised insertion of 246 voters in the voters' list can

certainly be said to be such as can decisively tilt the balance one way or the other. In this case the successful first respondent had secured 529 votes whereas the second respondent had secured 384 votes. The difference between the two figures is only 145 votes. Had the voters' list been what it should have been, this difference of 145 votes between the first respondent and the second respondent might not have been there and the outcome of the election might have been something different. In this view of the matter, the election can be said to have been vitiated.

9. Coming to the facts of the election in the Ward No. 8, the total number of voters as per the electoral roll was 84. In that voters' list, 70 persons were added in the supplemental list by the third respondent, the Marnlatdar, Out of these 70 persons,- 15 persons were not qualified to be enrolled as voters in the list of voters because they did not belong to the said village. Speaking technically, they were not ordinarily resident of that village. 57 voters as set out in paragraph 13 of that petition No. 1790 of 1975 were already more than 21 years of age even on 1st January 1975 which was the qualifying date for that year. In view of my judgment above, they could not be bought forth directly in the voters' list by the specified officer. The only remedy open to them was to be in the voters' list via the electoral roll. In this petition also, neither the first and the second respondent on the one hand nor the specified officer, the third respondent, on the other has chosen to controvert the factual allegations made in the petition. For want of anything contrary, the sworn statement of the petitioner deserves to be accepted. There was, as a matter of fact, double the number of voters in this ward. The difference between the first respondent and the second respondent was of only 9 votes. It is, therefore, clear that insertion of as many as 70 persons unauthorisedly must have tilted the balance wrongly.

10. As the respondents have chosen not to appear, certain possible questions of law had cropped up in my mind and I propose to deal with them. The first question is whether a writ petition would lie or whether an election petition u/s 24 of the Gujarat Panchayats Act would be competent. It appears that an election authority u/s 24 of the Act cannot go behind the voters' list because the provisions of Section 22 of the Act make the voters' list final and conclusive. The election tribunal, therefore, would have no authority to go into that question at all. The elections in these two petitions are challenged on the ground that one of the two vital steps, namely, the voters' list was vitiated and the submission was that as the very foundation is vitiated, the edifice built on the substratum should be deemed to have cracked down.

11. The second probable question that arose in my mind is whether the costly process of election should be set at naught merely at the instance of a voter in each of these two petitions. There is nothing on the record to show that the respective petitioner took part in the elections and finding the outcome disagreeable has come with a prayer for a writ of quo warranto. There is nothing in equity to disentitle him from being entrusted with the writ prayed for. In the

above view of the matter, both the petitions are required to be allowed. I declare that the election of the first respondent in the Special Civil Application No. 1774 of 1975 for the post of the Sarpanch was vitiated and that election is, therefore, set aside. Rule is accordingly made absolute with no order as to costs in that Special Civil Application. In Special Civil Application No. 1790 of 1975 the election of the first respondent as the Member of the Panchayat from Ward No. 8 is declared vitiated and, therefore, his election is set aside. Rule is accordingly made absolute in that petition also with no order as to costs.