
(1984) 02 GUJ CK 0007
In the Gujarat High Court

N.M. Rajguru

APPELLANT

Vs

Gujarat University and Others

RESPONDENT

Date of Decision : 07-02-1984

Acts Referred:

Constitution of India, 1950 — Article 133(1), 134A
Gujarat University Act, 1949 — Section 16(1), 2(12), 2(12)

Citation : (1984) 1 GLR 349

Hon'ble Judges : P.S. Poti, C.J;S.B. Majmudar, J

Bench : Division Bench

Judgement

P.S. Poti, C.J.—A question of considerable interest and importance arises in this case. It is of interest because it is novel in that it does not appear to have arisen for adjudication by courts earlier. It is of importance because of the impact the decision may have in understanding the scope of the system of proportional representation by single transferable vote.

2. The significance of an election is that it reflects the will of the electorate in the choice of its representatives. The simplest and perhaps the earliest form of election was that of simple majority vote in a single member constituency. That is the system in force for the elections to the State Assemblies and the Lok Sabha. This system, it has been said, cannot be said to represent fully the people's choice in that the will of the electors who had voted for the defeated candidate is not reflected in the result of such election. Sometimes it might even happen that the successful candidate may not have obtained the majority of the votes cast in the constituency, but nevertheless he represents the constituency. The system of proportional representation by a single transferable vote envisages reflection of the elector's will in a more effective manner and gives more validity to their options. Many academic bodies have adopted this system of election. We are concerned in this case with the situation arising from a development while working out that system in the matter of election to the Court (elsewhere known as "the Senate") of the Gujarat University.

3. The petitioner before us is a "teacher" as defined in Section 2(12) of the Gujarat University Act, 1949 (hereinafter referred to, in short, as "the Act"). He is enrolled as a voter under the constituency of teacher of affiliated colleges u/s 16(1) Class-II(A)(viii). As a teacher in Economics he has opted from the Faculty of Articles He is working in C.U. Shah Arts College, one of the affiliated colleges run by the Gujarat Law Society, Ahmedabad. Section 15 of the Act enumerates the authorities of the University and one of them, the first is the Court. The composition of the Court is provided for in Section 16(1) of the Act. Class-II of Section 16(1) deals with the "Ordinary Members" component of the Court. Clause (A) enumerates 9 categories of Ordinary Members elected to the Court. It may be relevant for the purpose of this case to refer to three categories of these Ordinary Members, those enumerated in Clauses (v), (viii) & (ix). They read:

(v) one member each elected faculty wise by registered graduates in each of the Faculties from amongst themselves in the manner specified in the Statutes: Provided that the number of such members shall not exceed ten and if the number of Faculties exceeds ten, the Faculties shall be suitably grouped in ten groups in the manner specified in the Statutes for the purpose of electing ten such members ;

(viii) forty-two members by teachers of affiliated colleges (excluding Deans of Faculties and Principals of Colleges) of whom fourteen shall be teachers having teaching experience of less than ten years in a college or in any University established by law in the State from amongst themselves in the manner specified in the Statutes;

(ix) such number of Principals of affiliated colleges, not exceeding thirty-five, as may be fixed in the proportion of one for every four Principals of such colleges, from amongst themselves in the manner specified in the Statutes.

We are concerned in this case only with Clause (viii), but Clauses (v) and (ix) are referred to only for the purpose of understanding the scope of Clause (viii) by reference to the contrast in the language used. Clause (viii) envisages the constituency of 42 members elected by the teachers of affiliated colleges leaving out Deans and Principals. Of these 42 members, 14 have to be teachers having teaching experience of less than ten years in a college or in any University established by law in the State from amongst themselves, the manner of choosing them from amongst themselves being that specified by the Statutes. Statute 10 deals with election to the Court by Teachers from amongst themselves under the above said clause. It may be necessary for the purpose of this case to refer to this Statute and so we extract the same here:

Statute 10:

(1) In the case of election to the Court by Teachers from amongst themselves u/s 16(1) Class II (A) Clause (viii) as on the 31st December just preceding the date of election, the Registrar shall prepare a Roll of teachers excluding the Deans of faculties and the Principals of the colleges affiliated to this University

and showing against the names of teachers having teaching experience of less than ten years, a specific differentiating mark to that effect: and not less than 21 clear days before the date of election, shall publish in the newspapers selected by the Vice-Chancellor, a notice of election to be held by ballot in accordance with the procedure prescribed in St. 126. Election from this constituency shall be held at Polling Centres fixed for the same and in the notice of election, places shall be notified where the voters will be required to go in person to vote.

(2) Every teacher excluding Deans of Faculties and Principals of colleges will be sent by the University a prescribed identity card on which he will be required to affix his or her passport-size photograph which shall be duly signed by him and attested by the Principal of an affiliated college or a member of the Court of the University for the time being or a Magistrate or a J.P. or a Gazetted Officer. Such a teacher will be held eligible to vote at an election only on production of the identity card with the photograph affixed and duly attested as mentioned above.

(3) 42 members by teachers excluding Deans of Faculties and Principals of colleges shall be elected from among themselves in the manner specified herebelow:

No. of teachers having	No. of teachers teaching experience of	having teaching
10 years and above	experience of less than 10 years	Faculty of Arts and Education
10	4	Faculty of Commerce
6	2	Faculty of Science
6	3	Faculty of Medicine
1	1	Faculty of Technology including
1	1	Engineering Faculty of Pharmacy
1	1	Faculty of Law
3	1	Faculty of Dental Surgery
0	1	_____
_____	28	14 _____

Statute 10(a):

(1) In case of election of Principals of affiliated colleges under Clause (ix) of Sec 16(1) the Registrar shall prepare a roll of Principals of affiliated colleges affiliated as on 15th June of every year; and not less than 21 clear days before the date of election shall publish in newspapers selected by the Vice-Chancellor a notice of election to be held by ballot in accordance with the procedure prescribed for the same.

(2) Not more than 35 Principals of affiliated colleges shall be elected in such a manner as would ensure that at least one Principal from each faculty gets its representation of the Court.

35 principals of affiliated colleges shall be elected from among themselves in the manner specified here below:

Faculty of Arts and Education	13	Faculty of Commerce	7	Faculty of Science	8
Faculty of Medicine	1	Faculty of Technology including	1	Engineering Faculty of Pharmacy	1
Faculty of Law	3	Faculty of Dental Surgery	1	_____	35

It may be noted that the Registrar is to prepare a Roll of teachers of all faculties. The statute envisages election from "this constituency" of teachers evidently

referring to the 42 teachers as forming one multi-member constituency. The manner of electing these 42 teachers from among themselves indicates that within the constituency there has to be facultywise representation. Statute 10(3) envisages such facultywise representation and also representation within it of those teachers having experience of less than 10 years and above, 14 teachers are representing the class having less than 10 years' experience.

4. It may be also be noted in this context that, of the enumerated faculties as they stand now, the first, viz. "Faculty of Arts and Education was the result of the recent amendment. Prior to such amendment that was shown as "Faculty of Arts including Education". The controversy in this case arises from the separate identity given to the Faculty of Education by an amendment of the Act and consequently the amendment of the Statutes. We will presently advert to the circumstances of that amendment.

5. Section 23 of the Act enumerates the Faculties of the University and their functions. As it stood prior to amendment by Gujarat Act 10 of 1982 Section 23(1) enumerated the Faculties thus:

23. (1) The University shall include the Faculties of Arts including Education, Science, Technology including Engineering, Law, Medicine and Commerce and such other Faculties as may be prescribed by the Statutes. Each Faculty shall comprise such subjects as may be prescribed by the Statutes.

Evidently there might have been some demand for a separate identity for the Faculty of Education which was treated as included in the Faculty of Articles Act 10 of 1982 gave such separate identity by the section being amended thus:

The University shall include the Faculties of Arts, Education, Science, Technology including Engineering, Law, Medicine and Commerce and such other Faculties as may be prescribed by the Statutes. Each Faculty shall comprise such subjects as may be prescribed by the Statutes.

This amendment came into force on 24-2-1982. This amendment was preceded by an Ordinance, Ordinance 11 of 1981 which had come into force on 8th December, 1981. Naturally as a sequel to the amendment of the section Statute 10(3) which dealt with the manner of electing representatives also had to be amended. That was because consistent with a separate identity being given to the Faculty of Education that had to be enumerated not as a Faculty included in Arts, but as an independent faculty. This purpose was sought to be achieved by amending the first item of enumeration of faculties in Statute 10(3) from Faculty of Arts including Education into Faculty of Arts and Education. This amendment was published under a notification dated 25-8-1983.

6. The separation of the Faculty of Education from the Faculty of Arts by amendment of the Act and the Statutes in the manner indicated above did not give a separate representation to the Faculty of Education since despite the amendment of Statute 10(3) the 14 seats set apart for the Faculty of Arts

including Education continued to be set apart for the Faculty of Arts and Education without in turn defining how many of them were to be for the Faculty of Arts and how many for the Faculty of Education. That was the situation which led to the filing of the special civil application earlier as S.C.A. No. 4682 of 1983 on 21-9-1983.

7. While petitioners 1 and 2 in that application belonged to the Faculty of Education the third petitioner was a teacher in the Faculty of Arts. They complained therein that distinct and separate representations for the Faculty of Arts and Faculty of Education were essential and necessary since the Legislature had contemplated two distinct and separate faculties and in as much as that had not been provided by amendment of the Statute there was discrimination with regard to teachers belonging to the Faculty of Arts and Education. This application which was moved on 21st of September, 1983 on the eve of election to the 42-member constituency of teachers came up before this Court for hearing on 22-9-1983 and a Division Bench of this Court to which one of us was a party issued a Rule on the application. The petitioners had sought ad interim relief restraining the election of 42 representatives of teachers pending disposal of the S.C.A. While issuing the Rule the Court granted interim relief in the following terms:

Interim relief against the process of election in regard to the fourteen seats of Arts and Education Faculties being continued any further.

At the time this interim order was passed after hearing counsel the question whether, under the provisions of the Act and the Statutes, election could be held in regard to the other seats in the 42-member constituency was evidently neither raised nor argued nor did the Court purport to express any view thereon. The Court only passed an interim order in regard to the election to 14 of the 42 seats. On receipt of this order the University issued a notification dated 27th September, 1983 (Annexure 1 to the reply affidavit filed by the Registrar of the University) notifying the stay in regard to the 14 seats. But the election process proceeded in regard to the 28 other seats in the teachers' constituency. Thus while the 14 seats reserved for representatives of Arts and Education Faculties were allowed to remain vacant by reason of non-election the other 28 seats were attempted to be filled up by the election process already commenced. The election was held shortly thereafter on 9th October, 1983. In the meanwhile the petitioner in this Special Civil Application is said to have addressed a letter on 7th October, 1983 to the Registrar of the University pointing out the irregularity in the conduct of election to 28 seats alone in the 42 member constituency and it is the case of the petitioner that he went to deliver the letter personally to the Registrar, but there was no responsible officer available. It is the further case that he visited the University premises on 7th October, 1983 at 4 p.m. and since no responsible officer was available attempt was made to serve it on the inward Clerk who after reading the letter is said to have declined to accept the letter. The letter is said to have been sent by registered post thereafter and it is the

common case that this letter was received only a day after the election, viz. 10th October, 1983. The petitioner was a voter and he participated in the election. Immediately after the election the petitioner approached this Court with the present application S.C.A. No. 5085 of 1983 seeking a declaration that the election of 28 candidates was contrary to the principle of proportional representation and for that reason ab initio void and for directing by the issue of writ of mandamus the holding of fresh election for all the faculties in accordance with the system of proportional representation and single transferable vote. The petitioner also seeks in this application a declaration that Statute 10 is ultra vires of Section 64 and Article 14 of the Constitution of India and he seeks striking down of the Statute. The last of these points we are not dealing with in this judgment as that was not urged at the hearing though raised in the petition.

8. This application came up for admission before this Court on 14th October, 1983 and this Court issued a Rule. Some of the respondents were represented at that time as they were interested in opposing any interim relief that may be granted in the petition. They were heard and this Court while holding that the matter will be heard immediately did not find reason to grant any stay against counting of ballot papers, but the declaration of results of the election to be announced by the Registrar under Statute 171 was held in abeyance. That situation continues. The result has not yet been declared. The case of the petitioner in this application is that the Act as well as the Statutes envisage only a single constituency of 42 members, the voters have only single transferable vote for the entire constituency and neither the Act nor the Statute envisages two independent elections for the 42-member constituency, one for 28 members and the other for 14 members for whom election has not been held. According to him such a process of different elections would directly violate the system of proportional representation based on single transferable vote and would be, for that reason, beyond the terms of the Act and the Statutes. Petitioners urged that when the Court passed the interim order in S.C.A. No. 4682 of 1983 it did not purport to authorise the holding of elections for the 28 seats and the passing of the order staying the election of 14 seats cannot be read as enabling election to be held in respect of the other seats if holding such election would not be warranted by law. The consequences of the stay of the election in regard to 14 seats should have been properly understood and envisaged by the University and if under law an election could not be held independently for the 28 seats alone the order of this Court should not have been taken as authorising such a course. It is, therefore, said that the elections now held in regard to the 28 seats must be held to be bad and illegal. The prayers sought in the petition are founded on these averments. In the reply by the Registrar it is admitted that both the faculties, that of Arts and Education have continued to be combined together in the election. When the Faculty of Education was not separated prior to the amendment the teachers from the Education Faculty also had been elected to the Senate as well as to the Executive Council also. It is said that it was, therefore, thought proper that for the present no further amendment was necessary "save

and except to bring about the legislative intent in the Statute". There is a further averment by the Registrar denying the separate and distinct representation to each faculty as a right of the petitioners. To understand the case of the University in this regard it may be profitable to refer to the following statements in the reply filed by the Registrar:

I say that if the provisions of Section 16 were to be seen, it is abundantly clear that representation faculty-wise is given only in respect of registered constituency. Grouping of various faculties is also contemplated by the Legislature. What was formerly the election of Arts faculty including Education would now be election of Faculty of Arts and Faculty of Education. No prejudice can be said to have been caused to the teachers in the Faculty of Education and/or the teachers in the Faculty of Arts, as alleged. It may be appreciated that the voters are the teachers of all the faculties combined even in respect of separate constituency of any faculty. I deny that there is any discrimination as alleged. Till date, I say that Faculty of Education has been considered as a part of the Faculty of Arts and the Legislature only provided a separate Faculty of Education. Therefore there is no denial of equal treatment as alleged.

Besides this there is also a case for the contesting respondent that irrespective of the merits of the petition no relief ought to be granted in this case since the petitioner had not come to this Court before the election, had participated in the election by voting in it and this conduct must be found to disentitle him to any relief. The learned Advocate-General who appears for the Gujarat University, the 1st respondent in the petition, urged the view that the Court would make different approaches to the question of setting aside an election when parties approach the Court prior to and after the election and in this case since the petitioner has chosen to come to Court after the election relief must be denied to him. We may notice here that though originally only the Gujarat University and its Registrar were the parties others have been impleaded on their motion since they claimed to have interest in opposing the application. Respondents 3, 4 and 5 have been so impleaded as persons who are interested in upholding the result of the election and their counsel have been heard in this case. Before we enumerate the questions that arise for decision in this application it will be useful to note certain aspects of the case as urged by the parties to understand the questions in controversy. It may be profitable here to advert to two provisions of the Gujarat University Act. viz. Section 54 of the Act and Statute 156-B. The marginal note to Section 54 reads : "Election to be by system of proportional representation." The section reads:

54. Every election to any authority of the University made under this Act and every recommendation for the nomination to the office of the Vice-Chancellor under this Act shall be made by the system of proportional representation by means of a single transferable vote by ballot in such manner as may be prescribed by the Statutes.

Statute 156 deals with voting and 156-A with the form of voting paper. We are

concerned with Statute 156-B here. That reads:

Statute 156-B:

Each elector shall have one transferable vote.

(2) An elector in recording his vote-

(a) must place on his voting paper the figure 1 opposite the name of the candidate for whom he votes, and

(b) may in addition indicate the order of his choice or preference for as many other candidates as he pleases by placing against their respective names the figures 2, 3, 4, 5 and so on, in consecutive numerical order.

Since the voter who has only a single vote has a choice of preferences, even if his first vote may not effectively operate for the success of a candidate, his preferences will have bearing in the ultimate result and his voice will be felt in some form or other in the election of the representatives. We believe it will not be out of place here to describe in brief the system of proportional representation based in single transferable vote.

9. Where representative Government operates it may be ideal that the composition of the body elected should bear proper relation to the wishes of the people whose affairs it has to control. We have been so accustomed to the majority vote system that we are sometimes likely to forget that it is not the only effective - and, perhaps, necessarily the more effective - way of representation. Several variations of the single majority vote system have been tried in many countries so much so that today several systems with baffling variety and complexity do exist. For the sake of brevity we would rather refer to certain passages in the book by Enid Lakeman "How Democracies Vote", a treatise which is a study of various electoral systems. We are referring to the fifth edition of the book.

10. Referring to the single transferable vote Enid Lakeman at page 111 of the book observes:

The system is designed to make every vote as effective as possible, whether used to support a party or not. It will be seen in what follows that if the electors are guided largely by party considerations the party will obtain proportional representation, but this will be only as a consequence of the voters' choice. The object of the single transferable vote is to enable each citizen to take part as freely and as fully as possible in the selection of his own representative, in the belief that this is the essence of true democracy.

The shortcoming in the one constituency vote system which naturally gives way only to the majority, relative or absolute, is dealt with by the author at pages 112 and 113 of the book thus:

Why is it that the vote intended to give us an influence on the election of our

representatives so often fails of its purpose? and is there a remedy? The reason lies in our use of an electoral system under which the whole representation of any one constituency goes to the majority (relative or absolute), and, in particular, our use for Parliamentary purposes of single-member constituencies in which nothing else is possible. One M.P. can be the choice of only one body of electors-at best of a clear majority: the minority, even if only one fewer, cannot possibly elect anyone. If the votes of the minority, as well as of the majority, are to have any effect on the result, it is essential to elect several representatives who can be shared among at least two political groups. And to secure minority representation is essential if we want to make sure of majority rule.

11. The single transferable vote system was invented by Thomas Hare in England in 1857 and independently by Andrew in Denmark two years earlier. Appendix III to Lakeman's book discusses Thorns Hare's original proposals and the learned author observes that the modifications made thereto concern only improvements in detail of adaptation of the special conditions and not any change in essentials. The distinction between this system and the system based on simple majority would be effectively illustrated by example given by the author at pages 113 and 114:

The essential principle of the system is probably most easily understood by reference to an election carried out by open voting without ballot papers, and this example should be kept in mind whenever considering the mechanism. Rowland Hill (famous in the history of the Post Office) records that, when he was teaching in his father's school, his pupils were asked to elect a committee by standing beside the boy they liked best. This first produced a number of unequal groups, but soon the boys in the largest groups come to the conclusion that not all of them were actually necessary for the election of their favourite and some moved on to help another candidate, while on the other hand the few supporters of an unpopular boy gave him up as hopeless and transferred themselves to the candidate they considered the next best. The final result was that a number of candidates equal to the number required for the committee were each surrounded by the same number of supporters, with only two or three boys left over who were dissatisfied with all those elected. This is an admirable example of the use of the S.T.V.

In any ordinary election by this method, ballot papers take the place of the living voters and move as Rowland Hill's boys did, according to directions given by each voter. Those directions are given by numbering the candidates in the order of the voter's preference or by writing down names in that order; thus, a paper marked as below:

7 Bill 4 Charlie 2 Fred George 1 Jack Jim 5 Roger 6 Sam 3 Tom

would be a boy's instruction to the returning officer that he wished to vote in the first place for Jack, but if Jack were either so popular as to have no need of his vote or so unpopular as to have no chance of election, the vote was not to be

wasted but was to be used instead to help Fred. Similarly, if Fred were either already elected or out of the running, the vote should go to Tom, and so on until it reached a candidate it could help to elect. Our voter has numbered all the candidates except two either not knowing enough about either of these two to have any opinion about them, or else disliking both so cordially that he will in no circumstances vote for either.

This example has been chosen deliberately to emphasize the contrast between the single transferable vote and all party list system: nowhere in the above account is there any hint of the existence of political parties or any analogous divisions. These, which are the indispensable foundation of the list system, are in no way essential to the working of single transferable vote. Neither are they, however, irrelevant. If all, or nearly all, the votes cast are made effective by their transference from a candidate they cannot help to a candidate they can help, it must be expected that the total result will reflect the opinion of all, or nearly all, the voters; if so, in a Parliamentary election it certainly should reflect their opinions about anything so important as a party. How it comes to do so should be clear if we imagine that all of Jack's supporters are also Fred's: in that case if Jack has twice as many votes as he needs, the surplus will go to Fred and secure his election also, while if the two between them have only enough to elect one the less popular will be eliminated and the transfer of his votes will secure the election of the more popular.

Evidently the assessment of the electors will based on preferences tends to give more effect to their choice as Lakeman observes at page 144:

The object of making the vote transferable is to ensure that as nearly as possible every vote cast shall be effective - as effective as any other vote.

The essential feature of the system is summed up in the following paragraphs at page 149:

Proportional representation requires that each elector should have one vote, which is made effective by being passed on, as may be necessary, from the candidate he has marked "1" to the candidate he has marked "2" and so on, the method being applied not in single-member constituencies (as with the alternative vote) but in constituencies returning at least three members. Each successful candidate is elected, not by a majority, but by a quota, that quota being one vote more than the number obtained by dividing the total number of valid votes by one more than the number of seats to be filled. "PR" in this sense differs from all list systems (even the most flexible) in two ways.

Firstly, it allows the voter full freedom to express his preferences for individual candidates, either with or without regard to those candidates' party affiliations. Secondly, it ensures that no vote shall assist in the return of any candidate or any party unless the voter has expressly indicated that he wishes it to do so.

Examination of the effects of the system in practice shows that it possesses at

least the following advantages: (1) the elected body reflects, within limits of a few per cent, the strength of political parties or other groups of opinion among the voters; (2) any party or other group having a majority of votes will have a majority of seats; (3) the element of the gamble is eliminated; (4) the elector is enabled to choose between candidates on personal as well as party grounds, and his choice overrides that of any party organization.

12. It may be of interest to refer to the book "The Irish Election System" by J. F. Section Ross (1959 Edn.). The learned author is referring in that book to the Irish election system which is a combination of preferential voting and quota counting. As to the advantage of the system he observes:

The system usually gives a voter the opportunity of choosing between several but he can also choose between individual candidates on the different parties, score of their personal ability and character.

Referring to quota counting the author notices:

Quota counting is the method devised for dealing as accurately as possible with the polls recorded by means of preferential voting in constituencies returning three or more members. It is planned to ensure that, when the electors have exercised their judgment and made their decisions, that Judgment is not distorted, nor those decisions nullified, in the process of counting.

The quota for a successful candidate is fixed by dividing the total number of valid votes cast plus 1 by the number of candidates plus 1. Having so fixed the quota it would be found that the votes received by any successful candidate in excess of the quota would be really a waste if those votes are not taken into account for the purpose of understanding the wishes of the voters as to what would happen had they not been voting for that candidate. Therefore, the second preferences in regard to such votes become relevant and they have the same force as a first vote. So also the case with votes given to ineffective candidates. Even in an election where the primary allegiance of the voters is to their party candidates sometimes the preferences given by such voters would be sufficient to turn an otherwise unsuccessful candidate, not of their party, into a successful candidate. This cannot be illustrated better than by referring to an actual instance noticed by Ross in his book relating to election of Eamon De Valera in Ireland. The following passages from the book adverted to would make interesting reading in this context:

It must be a delightful experience for a candidate to receive far more votes than he needs for election, and no one need grudge him the satisfaction he draws from this evidence of his popularity. But he can make no practical use of his surplus votes: once he has the quota extra votes give him no real advantage. On the other hand, the electors who vote for him so enthusiastically should not lose by reason of their numbers. The electors who gave their first preferences to Mr. De Valera at the last election were almost numerous enough to entitle them to elect two deputies. But there is only one Eamon De Valera, and no amount of

popularity could make two of him. So, obviously, the fair thing in every case is to use the surplus votes to help to elect another deputy or deputies, and that is what is systematically done under the quota method of counting. The way this distribution of surplus votes is carried out can probably best be made clear by taking an actual example. Let us look at what happened in Mr. De Valera's constituency when it was known that he had received 7,133 more first preferences than he needed to secure his election to the Dail. All the 16,159 ballot papers which gave him as their first preference were re-examined, and a note was made of the second preferences expressed on them so many to this candidate and so many to that; some going in fact to each of the other four candidates. These totalled 16,159 - since every elector had expressed a second preference - but the number of surplus votes to be distributed was only 7,135. So calculations in simple proportion were made to find the correct distribution. The number of second preferences recorded for each candidate was multiplied by 7,135 and divided by 16,159 the resulting figure giving the number of votes that that candidate was entitled to receive from Mr. De Valera's surplus. It was found that the other two candidates of Mr. De Valera's own party received 5,666 and 1,182 respectively, while the remaining two candidates (belonging to a different party) received 114 and 173 respectively.

It will be seen that the distribution of surplus votes was carried out in strict conformity with the wishes of the electors concerned, as expressed by the second preferences that they had themselves set down on their ballot papers. It will also be noted that 96 per cent of Mr. De Valera's surplus went though in very unequal proportions to the other two candidates of his own party. The unequalness of that distribution, together with the fact that the remaining 4 per cent went to candidates of another party, illustrates the freedom which, under this system, the elector enjoys to distribute his votes as he thinks fit, allowing him to express both his attachment to a particular party and his opinion of the personal qualities of the candidates who seek his vote.

In the actual case we are considering, this transfer of surplus votes from the candidate successful at the first count just sufficed to bring two other candidates up to the quota and so to fill the other two seats. One of them, a member of Mr. De Valera's own party, was nearly 3,000 votes short of a quota on the first count but was brought well above it by the 5,666 votes that were transferred to him. The other, belonging to a different party, was only 48 votes short of a quota on the first count, and the transfer of even so few as 173 votes brought him up to the required number.

13. In the case before us there is a further factor to be taken into account. Not only is proportional representation sought to be achieved by the system of single transferable vote, but within the constituency itself seats are reserved for different classes, each class representing a faculty and further within each faculty there are reservations for two different classes, those with 10 years and more experience and those with less than 10 years of experience. Therefore, in the

elimination process even those who would be normally elected on the application of the system of proportional representation on transfer of the single votes would not be elected merely because the candidate has polled votes in excess of the quota. As an illustration we may, with reference to the distribution of seats envisaged in Statute 10(3), notice an example. The Faculty of Commerce has 8 seats, 6 for those with 10 years and above and 2, with less than 10 years. Even if persons from the Faculty of Commerce get votes in excess of the quota the seventh man would not be elected and a person who has less than 10 years in the Faculty of Commerce with lesser votes may be elected as he belongs to a class with a reservation. Similarly if from the Faculty of Science more than nine candidates have obtained votes in excess of those in the Faculty of Law with 4 seats only, they may not get elected in excess of the 9 seats. Those in the Faculty of Law with lesser votes may be elected to the four seats reserved for them. Therefore what is envisaged in Statute 10(3) is a further modification of the simple system of proportional representation based on single transferable vote. If prediction of result in an election by proportional representation with the voters having multi-preferences to enable their single vote to be transferred becomes much more difficult than in the case of a simple majority vote system, the various reservations within the 42-member constituency makes prediction yet more difficult as the behavioural pattern of the voters in a 42- member constituency with all the preferences available to them and the working of the preferences on the reservations would be difficult even to speculate, let alone predict. We have dealt with the pattern of election to the Court from 42-member constituency only to provide the background for a proper appreciation of the contention of the petitioner in this case that the election is vitiated for two reasons. Firstly, according to him, neither the Act nor the Statute envisages election to a portion of the constituency leaving the election to the rest to be conducted later except in specified cases and specified instances for which provision is made either in the Act itself or in the Statutes. According to the petitioner except in those cases which are so provided for as necessitated by the exigencies of the situation and which for that purpose may not deflect the system as such, adoption of more than one election for one constituency would be contrary to the very scheme of election envisaged in the Act and the Statutes and therefore, will have to be held to be invalid. The other contention is that election being a process by which the electors' will is to be effectively ascertained and given effect to the adoption of a method by which it is seen that the will of the electorate is materially and substantially deflected would be unsustainable in law and therefore ought not to be sustained by the Court. According to the petitioner such a situation has arisen in this case as the result of the election as if for a 28-member constituency leaving another election for a 14-member constituency to be held. This envisages the electors voting twice over that would, according to the petitioner, be a violation of the single vote concept and more than that the freedom given to the elector to indicate his preferences when he is asked only to vote for 28 seats would exhibit a pattern entirely different from that arising from a situation where his choice is of a larger

constituency, that of 42 candidates.

14. Having posed the petitioner's case thus let us notice what the answer offered by the respondents is. Counsel appearing for the contesting respondents point out that there is no prohibition against holding election to 28 seats and there will necessarily be situations where the entire election cannot be held such as by the resignation of a member, conviction of a member by a court of law, by the expiry of a term of one year in some case, the candidate ceasing to have the character in which he was elected and when a candidate is elected for more than one constituency. It is, therefore, pointed out that the Statute itself envisages circumstances when there can be election to less number of seats than 42 and therefore, election to 28 seats need not be treated as any contravention of the Statute. It is also said for the respondents that the result of the election has not been vitiated. As we have already observed it is also pointed out for them that now that the election is over the approach to the question must be different from what it would have been had the petitioner come to the Court earlier.

15. Now we may pose the questions that arise for decision in this case. They are:

(1) Under the provisions of the Gujarat University Act and the Statutes made thereunder could the election have been validly held for some only of the 42 seats in the Teachers' constituency or should the election have been held only when it was possible to hold it for the 42-member constituency as one unit?

(2) Has the Act or the Statute provided independent elections to one or more seats in the 42-member constituency and if so under what circumstances?

(3) Can election process commenced for a 42-member constituency envisaged under Statute 10(3) be continued for some only of the seats under circumstances other than those envisaged in the Statutes? If such election is so held is it likely to vitiate the result of the election and deflect the result by the will of the electorate not being materially reflected in accordance with law in the election?

(4) If the election results would be materially deflected whether the election would under such circumstances be valid?

(5) Is there any difference to be made in the approach in a case where challenge is made after the election?

(6) Is the conduct of the petitioner in this case such that the Court may refuse to grant relief in the petition?

16. Now we will go into a discussion of the questions formulated. But before we do so it may be necessary to refer to a few more provisions of the Act and the Statutes in order to have a proper appreciation of the case. We have already adverted to Section 54 of the Act read with Statute 156-B, to Section 16(1) Class II (A)(v), (viii) and (ix) and Statute 10. We may refer to Statute 8 in this context which deals with publication of the electoral roll for every election to "Court". That Statute, we may notice, deals only with the procedure concerning elections.

17. We may now advert to certain provisions of the Act which deal with the circumstances under which there could be a fresh election in the 42-member constituency in regard to one or more seats. We are referring to these provisions to indicate that the Act envisages circumstances under which, despite the system of single transferable vote and proportional representation based on the exercise of such vote, provision has been made to hold elections to one or more of the seats in situations where such election is called for. In other words despite the system being one of giving to the elector the right to cast a single vote and that too transferable and the ultimate election depends upon the proportional representation based upon the preferences of the voter, there may be situations which may call for a further exercise by the voter and that is conceived by the Act in certain sections and also by the Statute. We are referring to those provisions. Section 55(1) of the Act deals with the resignation of a member. On such resignation his office becomes vacant. Sub-section (2) of Section 55 deals with another situation. On conviction by a court of law of an offence which involves moral turpitude a member ceases to be a member and there again vacancy arises. u/s 16(2) of the Act the terms of certain classes of elected and nominated members is specified as 5 years, but in respect of members referred to in Clause (i) of paragraph (B) in Class-II the term is only one academic year. Those are the student representatives to the Court and their period is naturally one academic year. The proviso to Section 16(2) limits the term of office of certain classes of members who are elected by reason of their being representatives of a class such as Principal, Headmaster, secondary teacher, teacher or student, Dean of Faculty, Professor of University Department or University teacher or head of a recognised institution to the period they retain their character and they cease to be members on their ceasing to have that character. Section 56 of the Act deals with the filling up of casual vacancies. That provides that when any vacancy occurs in the office of a member before the expiry of the term of office of such member the vacancy shall be filled up by the election, nomination, appointment or co-option, as the case may be, of a member. These are cases where vacancies arise after a person has been elected as a member and certain contingencies arise when his office falls vacant. It may also arise even before a person takes office. Reference may be made to Statute 172. A candidate may be elected to more than one constituency. He has to resign or he is to be treated as elected to one constituency alone. This is provided in Statute 172. Statute 172(d) provides for fresh election in that event.

18. We have, therefore, a scheme before us of the Act and the Statute envisaging situations where a fresh election to a seat or seats is warranted by law. If the law envisages modifications called for in regard to the ordinarily understood concept of the system such exercise would not in any way be improper or invalid. We are only indicating that the provisions which we have adverted to are inbuilt in the system itself and the system of proportional representation adopted is that subject to these provisions conceived by the Act and the Statutes.

19. It has been pointed out to us that neither the Act nor the Statutes have made provision for contingency where the candidate dies before election and also where there is no valid nomination for a Faculty either because none of the nominations are valid or no one has filed nomination for that Faculty. Of course where Statutes envisage countermanding of election on the death of a candidate that would be so provided specifically as in Section 52 of the Representation of the People Act and Section 7 of the Presidential and Vice-Presidential Elections Act. What would be the consequence of the absence of such a provision in the Gujarat University Act is not a matter which should engage our attention here. Whether election should be countermanded in the event of death of a candidate is not a matter on which we are called upon to express any opinion nor are we called upon to express any opinion as to what should happen if there be no valid candidate for any faculty. Prima facie it appears to us that if there be no valid nomination from any faculty election will still be held to the 42-member constituency without there being anyone to represent the seats allotted to any particular reserved faculty. But that is not a matter which may be of any relevance for the purpose of this case and hence we are not expressing any final opinion.

20. Now let us go into the questions which we have formulated earlier as arising for decision in this case. We will first deal with points 1 and 2 of the points enumerated in para 15 above. We have adverted to the scheme of the Act and the Statutes in detail earlier. Though the teacher's constituency of 42 members falls within the scope of Clause (viii) of Section 16(1) Class 11(A) we referred to Clause (ix) and (v) also only to compare and contrast the language of these clauses with that of Clause (viii). Clause (v) contemplates one member each elected facultywise by registered graduates in each of the faculties from amongst themselves. Evidently each faculty is a separate constituency and one member each is to be elected from such constituency with the modification that if the number of faculties exceeds ten, the faculties are to be suitably grouped in ten so that the sum total of representatives of registered graduates of the various faculties does not exceed 10. When we come to Clause (viii) there is no reference to facultywise representation in the Act, but only representation for 42 members by teachers of affiliated colleges from amongst themselves. Similar is the case with Clause (ix) which envisages one constituency of Principals of affiliated colleges. The number of members of that constituency is to be fixed in the proportion of one for every four Principals, but not exceeding 35 in all. Though earlier we have not adverted to Clause (B) of Section 16(1) Class II a brief reference to one of the provisions of Clause (B) may be relevant. Clause (B) deals with the election of 12 students in the manner specified in the Statutes as constituents of the class of Ordinary Members. Clause (c) reads:

(c) five members elected Faculty-wise from amongst themselves by post-Graduate and undergraduate students of each of the Faculties other than the Faculties of Arts, Science and Commerce.

There is a proviso that if the number of such Faculties exceeds five, they have to be suitably grouped in five. There again the reference is to election from among themselves for members facultywise. Therefore, there is a clear indication in the section itself as to what a constituency would be where a specific faculty is to elect a member or members independently, in the sense independent of members of other groups. Each faculty then forms a constituency. But in the case of teachers, the 42 members constitute one constituency under the Act.

21. Statute 10 which we had adverted to more than once indicates particularly in Clause (1) thereof that the election to the Court is "by Teachers from amongst themselves". It is not as if teachers of one faculty choose a representative of that faculty. Teachers of all faculties choose 42 members. Statute 10(3) envisages the manner of the election by providing for reservation of representation within the 42-member group. Whichever reserved group is to be elected it is elected not by any section of the members belonging to the class of teachers, but by all the teachers together. The reference in Statute 10(1) to "election from this constituency shall be held at Polling Centres" further shows that the scheme is one of treating the 42 members as a constituency. Statute 10(3) also refers to election of "42 members by teachers" in the manner specified therein. We do not think it is open to serious argument that the constituency envisaged in the statute is a constituency of teachers. In fact Mr. Girish Patel appearing for some of the contesting respondents agreed with this approach and in fact contended that it can only be that the 42 members constitute one single constituency. Though at one point of time the Advocate-General appearing for the University went to the extent of saying that in the teachers' constituency there could be separate elections for the different faculties even the learned Advocate-General did not contend for the position that the 42 members constituted more than one constituency.

22. We hold that election contemplated to the teachers' constituency is a constituency of 42 members.

23. We will forget for the time being that the reason for dropping the election in regard to fourteen seats in the constituency was an order of stay passed by the Court. Whether the fact that it was the order of Court that persuaded the University to take the stand, as it did, would make any difference is a question which must necessarily be considered and we will deal with it later when we consider question No. 3. The question before us is whether election to some seats only in the constituency of 42 members, leaving the election for the rest to be held later would be in accordance with law or in other words there could be two or more independent elections of the 42-member constituency. The system of proportional representation based on single transferable vote envisages the exercise of a single vote by a voter, that single vote being transferable in accordance with the preference to give effect to such vote at some point or other. The essential consequence of splitting up a constituency of 42 members, say, into 21 and 21 and holding two different elections would be to give the same

voter votes twice over. That is because when the election for part only of the constituency is held, such as for 21 seats, the voters remain the same. All those who are registered as voters in the teachers' constituency are entitled to vote at the election for the 21 seats. They exercise their vote in regard to 21 seats only the first time, but exercise their vote again for candidates a second time, thus casting two votes which is not contemplated either by the Act or by the Statutes.

24. It may be worthwhile to consider the consequences of two elections being held as above in regard to a constituency such as the one with which we are concerned here. Apart from the fact that it may not appear to be in accordance with what is envisaged by the Act and the Statutes, we are considering whether the consequences of such second voting would in any way render the result materially different. When the voters have a choice to exercise their preference vote in respect of any from among the candidates for the 42 seats they may vote for any of such candidates, but when the same voters are restricted in their voting, say, to candidates for 21 out of the 42 seats those who would have normally voted for the candidates of the faculties left out will have to choose from among the candidates in the faculties representing the 21 seats. This is to be said about not only the first vote but the second preference, third preference and so on. In other words, the pattern of voting in regard to 42 candidates by an electorate may not be identical with the pattern of voting when this identical electorate is given a choice of candidates for 21 seats only and not 42. The distribution of votes is most likely to be different, for, those who would have concerned themselves with their first preference, second preference or third preference and so on if the candidates for the other 21 seats had been in the list are free now to vote in a fashion they like and such freedom given to them would deflect the result that would have arisen from a situation where the other 21 seats were also to be filled up. In the case before us out of 42 seats election has been held for 28 seats. Candidates from the Faculty of Arts and Education are not put up before the voters. But all the teachers including the teachers in the Faculty of Arts and Education are allowed to vote. Had the teachers in Arts and Education also stood in the 14 seats reserved for them some of them would have been elected. In fact 14 of them should be elected. Some of them would have been elected on their first votes, some of them on the first and second preference votes and so on. Those votes which would have served to elect those 14 candidates as also votes which would have gone to unsuccessful candidates in the Arts and Education Faculties are now freely available to be distributed to the 28 candidates in the other faculties. The result is evidently not predictable particularly so when there are further limitations by way of reservations facultywise. Therefore, there could be no denial of the fact that the result in two elections, one conducted for 28 seats and the later one for 14 seats, would not be identical with the result if election is held for 42 seats. If a subsequent election is to be held for the 14 seats the teachers in the Faculty of Arts and Education will have to face an election where all the voters of all the faculties are voting for the candidates in the Faculty of Arts and Education only. No doubt

even in an election for 42 seats they would have to face such a situation, but the difference is that teachers other than those concerned with and interested in the Faculties of Arts and Education will then be actively engaged in voting for the other 28 candidates also. Those votes which might have been cast for candidates in the other faculties are now free and they have a second choice of voting freely for any candidate in the 14-member election. It may be said that this may not adversely effect the right of a voter as, in fact, he gets two chances for voting in place of one and therefore he should be happier. That is certainly not true. A voter's right is not merely to vote, but to anticipate a result as near to his choice as possible. Otherwise voting would make no sense. In other words voting enables a person to show his preference and if the preference which he has made and which is likely to succeed is affected by an external factor not contemplated by law he is affected. It cannot be said that merely because he had occasion to cast his vote he is not affected as if he is disinterested in the result.

25. The extreme case of how the system of proportional representation operates to make an otherwise unsuccessful candidate successful is furnished by the illustration to which we have adverted to viz. the election of Eamon De Valera in Ireland. There we saw that in spite of party affiliations a candidate of the opposition was elected on the second preference vote of the voters evidently owing allegiance to De Valera's party. In a case like this even if teachers form themselves into groups and vote groupwise, in a situation such as the one here there is bound to be material deflection in the result and consequently the election would not truly reflect the choice of the voters.

26. Election in a democracy is intended to honour the people's choice. Any Government of the people must necessarily work through representatives whom the people approve as their choice. Election is a process by which such approval is ascertained. There can be no fool-proof system to give effect to the will of the people. Any system which gives effect to the will of the majority should be good enough. As a result of working the election process through the years innovations have been made to the system to secure a process which would give validity to the preferences of the maximum number of electors. The system of proportional representation on single transferable votes aims at this object and it would be effective in multi-member constituencies. In fact the more the number of members, the more effective the representation would be. What is true of election to a Government would be equally true of election to autonomous bodies such as Universities.

27. Right to vote and elect persons of the voters' choice is not a common law right nor is it a natural right. It was invented by civilised man as a workable system of representation. It has been given shape by statutes. Necessarily, therefore, the terms of the statutes must govern the determination whether the election is in accordance with law. Only where a situation arises that is not covered by the Statute the court is called upon to examine the facts in order to determine whether the process of election is otherwise valid according to law.

28. We have indicated that the election to the 42 member-constituency is what is contemplated. If the elections are split up into two such elections that would be to form two separate constituencies formed out of the 42-member constituency. Such a process would not only be contrary to law, but would also cause material deflection of the result of the election. It was in this context that counsel for the respondents argued that there would be situations where the elections cannot be held to all the 42 seats and there may be need to conduct fresh elections for some of the seats, that in such cases the voter votes again for the seats left over and that if such voting by the voter and election so independently held cannot vitiate the election there is no reason why election held to 28 seats only of 42-member constituency leaving the election to the 14 seats to be held later should be considered as bad. As we noticed earlier, what the system of election should be is a matter for the statutes to prescribe. When it adopts a system of proportional representation by single transferable vote it must necessarily envisage contingencies where despite the system being adopted there may have to be fresh elections such as by reason of vacancies arising by death, resignation and the like. The fact that the statutes envisage these situations and provide for elections to some seats or other when such situations arise does not in any way affect the character of proportional representation system for these are in-built provisions in the Act and it is subject to those provisions that the system itself is envisaged. To secure representation in such contingencies as are envisaged in Sections 55(1) and (2) of the Act as also Section 16(2) of the Act provision has been made in the Act itself. So is the case with a fresh election where a member who stands for more than one seat and gets elected for more than one has to give up one or the other as contemplated by Statute 172. By analogy this cannot be extended to all situations, for it would be reading into the enactment provisions which are not there. In other words merely because statute provides for certain specified situations in which there could be fresh election to one or other of the seats in the 42-member constituency and that is required because of the exigencies of the situation in the nature of the system itself, it cannot be said that even where the statute does not provide for splitting up the 42-member constituency it may be so split up and election held more than once particularly when the consequence is what we have indicated earlier. Thus while we advert to the provisions of Section 53, Section 16(2) and Statute 172 as situations where independent elections to one or more seats are contemplated under the Act we hold that subject to the abovesaid provisions under the Gujarat University Act and the Statutes made thereunder election has to be held for the 42-member teachers' constituency.

29. A question has been posed to us as to what would happen if in the 42-member constituency some faculty or other goes by default, by either no candidate offering himself or the nomination papers of all the candidates being rejected for good reason. The election would nevertheless be to the 42-member constituency in such a case and the representation of the faculty concerned would necessarily go by default for nobody's fault. The question does not pose

any problem.

30. Now we come to the third question. To some extent it is covered by answer to questions 1 and 2. But still we have posed it in this manner only because it was contended by counsel for the respondents that Statute 10(3) as well as the University Act envisages only a proper commencement of the election for 42 seats and that once it is so commenced it could be continued even for a lesser number of seats. Shri Girish Patel went to the extent of contending that perhaps election cannot be held to the 42 seats reserved for the Faculty of Arts and Education afresh as it would be a second exercise by the same voters, but even so election for the 28 seats would be good. We will examine that contention also. But to understand this it is necessary to appreciate the circumstances under which the University decided to proceed with the election for 28 seats only.

31. We have referred earlier to the interim order passed by this Court in S.C.A. No. 4682 of 1983 staying the election to 14 of the 42 seats. In that interim order this Court did not purport to examine whether it would be possible to conduct election for the 28 seats when once election to 14 seats stood stayed. The question whether such election would be possible was foreign to the scope of that interim order. It is one thing to say that this Court stayed elections in regard to 14 seats and another to say that this Court permitted election to the other 28 seats. If in law election to the rest of the seats could not be held when once election to 14 seats stood stayed this Court's order could not have been taken as permitting such election to be held. Of course, it could very well be said that the University acted in all good faith believing that it could proceed with the election to 28 seats because only election to the 14 seats have been stayed. The good faith of the University is not on question in this case. The circumstances show beyond any pale of controversy that the University acted in the best of faith in conducting election to the 28 seats. If this Court's order did not amount to directing election to the 28 seats to be held or even approving of the validity of such an election, merely because the Court stayed election for 14 seats it cannot be said that the election for the other 28 seats was nevertheless held because of the Court's order. In other words, if under law election for 28 out of the 42-member constituency would be illegal the illegality would not stand removed as if the elections were held under the Court's order or even as if the Court's order contemplated such election. We are emphasising this because at one point of time it was argued by counsel for the respondents that since it was the Court's order which was implemented it would not be proper to set aside the election held for the 28 seats. Of course no Court will be anxious to set aside an election. In this case we are concerned with a situation, of consequences far beyond the contours of this case. We have to understand the nature of the election system adopted by the University and to see whether election as held now would be valid or proper. What we say here may be of consequence in similar situations which may arise in future.

32. We have already indicated that Section 16(1) Class II(A)(viii) contemplates a

42 member constituency of teachers and that is expressly indicated in Statute 10. Statute 10(1) refers to "holding of election to that constituency". It is, therefore, not sufficient if election is commenced for the 42 member constituency and continued for some or other of the seats in that constituency. The election to the 14-member constituency will necessarily have to be held hereafter and that would mean that having held that this is not proper we should still allow the election for another 14 members to be held. We are only pointing out the rather anomalous situation. That apart there is no reason for holding that when the constituency is that of 42 members it is sufficient if election is commenced for the 42 seats, and elections could be held thereafter separately for some only of the seats from time to time. We have already indicated, in answering questions 1 and 2 that the holding of the election by splitting of the constituency into 28 members and 14 members is bound seriously to deflect the results and that the will of the electorate would not be reflected truly.

33. Our discussion necessarily leads to state in answer to the fourth point that the answer is simple. An election being a process of ascertaining the will of the voters any violation of the provisions of law relating to election which has the consequence of materially deflecting the will of the voters must necessarily be held to be void. We, therefore, find in favour of the petitioner on this point too.

34. Now we come to the question whether in the facts and circumstances of this case our approach should be different from what it would have been had the election been not held when the petitioner made resort to this Court. This is not a contention based on any delay, for there could be no scope for any plea of delay. In view of the order of stay by the High Court the University decided to proceed with the election to the 28 seats and notified about it only on the 28th of September, 1983. The election was to be held within about 11 days thereafter and it was so held on the 9th and soon thereafter, on the 13th, the petitioner came to this Court. In fact the petitioner came even before the declaration of the results. But what is said is that nevertheless the approach to the question of determining the validity of an election when a party resorts to the Court after the election should in law be different from an approach when the same party comes to the Court before the election. In one sense this may be true. There may be procedural and substantive requirements one or other of which may be violated in the process of election. Some violations may be material, some may be inconsequential. In the matter of an election any violation which tends ultimately to affect the result of the election would certainly be a material violation. If the violation be inconsequential and will not materially affect the result of the election non-compliance may not have serious consequences. Even so if a party comes to a court prior to an election pointing out that there has been a clear violation of a provision and the court finds so, irrespective of whether such violation may materially affect the result of the election the court would have an opportunity of setting right the election process by giving appropriate directions. In that behalf the court will exercise itself. But if some such irregularity is pointed out after an election a court may not interfere so as to set aside the election for

that reason. But this is not to say that when violation or infringement of the provisions, procedural or substantive, is of a character tending to deflect the result the Court will not interfere after the election. Reference was made by counsel for the respondents to the decision of this Court in *Sojitra Mohan Haribhai and Another Vs. Vala Visaman Kalubhai and Others*, in support of their plea. The question in that case was whether the requirement in Rule 8(1) of the Gujarat Municipalities Election Rules, 1964 that the nomination paper shall be delivered by the nominators personally to the returning officer was "directory" in character and not "mandatory". That was considered to be directory only and therefore non-compliance thereof was held to be not any irregularity or any illegality rendering the election void. It is in this context that the Court said that while the returning officer can refuse to receive a nomination paper if it is not presented by the nominator himself, once it is accepted without demur at the time of presentation and the election is gone through, the successful candidate will not be unseated and the election will not be declared void, setting at naught the free will of the people expressed through ballot box on account of any irregularity. It may be an irregularity not having the effect of rendering the election void. The rule that the approach of the courts in election matters in cases where the eligibility or qualifications of the candidates are not questioned and "where the fountain of the will of the people is not polluted by any corrupt practices, fraud or deception" cannot be the same as where an election is polluted for those reasons was so laid down in that case in the context of an irregularity or illegality which did not in any way materially affect the result of the election. Thakkar, J. speaking for the Bench well explained the vitiating factor sufficient to invalidate an election in these terms at page 141 of the report:

The approach of the Courts, however, in cases where the eligibility, or qualifications of the candidates are not questioned and where the fountain of the will of the people is not polluted by any corrupt practices, fraud or deception, cannot be the same. Because of three reasons. First, the will of the people that is material at the point of time of the election in question can never be repeated and re-ascertained. The electorate is a fluctuating body. Some of those who voted may not be alive to vote any more. Those who were then underage from the point of right to vote and ineligible to vote would have subsequently acquired the right to vote. Some might have migrated. It would, therefore, be impossible to re-enact the elections and re-asertain the wishes of the people at the point of time of the earlier elections at a future date. This is a strong reason which would justify exercise of restraint in the matter of setting aside the election when it is questioned on grounds which do not touch the essential factor of purity and eligibility. Coming to the next consideration, elections involve considerable expenditure of public revenue (not to speak of private funds) and result in great inconvenience and loss of public time. There would be good reason, therefore, for setting at naught the election which reflects the true will of the people for some non-essential failures or defects. This is the second vital consideration. And, lastly, we come to an important factor which cannot be ignored by the

Courts altogether, namely the consideration regarding the utility, purpose and value of setting aside the election. What is the purpose of setting aside an election, if the will of the people has been freely, truly, and intelligently exercised and recorded in the result? In matters of election the will of the people must prevail and Courts would be understandably extremely reluctant to set at naught the will of the people truly, freely, and intelligently exercised. If Courts were to do otherwise, the Courts would be pitting their will against the will of the people, or cuntermanding the choice of the people without any object, aim or purpose. And the Courts will not do anything in vain. Apart from public expenditure and inconvenience, the frustration of the people will also have to be taken into account. Every decision rendered by the Court takes the place of a brick in the edifice of its public image. And the Court would be slow to so act that the common man with the common sense at his command is shaken in his faith for the judicial machinery which has to strike the balance between competing interests and resolve the conflicts with the end in view to subserve the interests of the society at large.

35. We have already found on the facts of this case that the election to 28 of the 42 seats which has been held and the election to be yet held to 14 seats would completely distort the pattern of voting besides giving the same electorate an opportunity to exercise their votes twice over. We have found this would be sufficient to deflect the result of the election substantially and materially. In this view we do not think that merely because the petitioner had approached the Court after the election we should hold the election to be valid.

36. The last of the questions which we have to consider in this case is one urged with considerable force by the learned Advocate-General appearing for the University as well as counsel appearing for the other contesting respondents. Their case is that the conduct of the petitioner disentitles him to any relief at the hands of this Court. It is said that though this Court's interim order of stay was passed on 23-9-1983 and the election was held only 16 days thereafter on 9-10-1983 the petitioner who must have been aware of the proposed election to 28 seats only chose to challenge the election only after the election, that he participated in the election as a voter and therefore at his instance this Court should not exercise its discretion. At first blush this argument may sound attractive. But on a closer examination we do not think that we should, the facts of the case having been well brought to our notice, uphold the election to the 28 seats. According to us, in all probability, the situation has led to the election of 28 candidates who, or some of them, if the election had been held in accordance with law might not have been the representatives of the Teachers' constituency. What is equally significant is that we may have to place our seal of approval on an election to 14 seats to be yet held knowing that the candidates who may be chosen at such election by the voters exercising their votes once again may not be those who may be elected if the election is held to the 42 seats together. The petitioner in this Special Civil Application was not one of the petitioners in the earlier petition in which this Court directed stay of election to the 14 seats. The

University, despite the order of this Court staying election for 14 seats, decided to proceed with the election to the 28 seats. The petitioner was only a voter. As soon as he understood that the election would be bad he attempted to bring it to the notice of the University. If he had kept away from the election as a voter it would not have made any difference. He was not a candidate for the election. He was voter. Merely because he has voted it is not as if he has made any representation leading anybody to act upon it. He came to the Court soon thereafter. The challenge before us has caused an examination by us of all the facts and applying the law we have found that the election would be bad. Having come to this conclusion it appears to us it would be unfair for us to say that whatever be the situation, and though the election result has been materially affected, let those who have been elected take office and let further election be held on the same approach. We asked counsel for the respondents what would be the injury or harm if the present election is set aside. Unless the other 14 seats are also filled up by a proper election representation to the 42-member constituency would not be complete. The election to the other 14 seats must necessarily take some time. If we direct an election to all the 42 seats it is not going to entail any further time, for the time taken for voting for a 14-member constituency would be the same as the time taken for voting for a 42-member constituency. The same voters will have to exercise their votes so much so that no extra effort is involved on the part of the electors if the election be to 42 seats and not to 14 seats. The only consequence of setting aside the election to the 28 seats would be that all those who have been successful in this election may not find themselves successful in an election held for the 42 seats together. Some of them may nevertheless succeed. Some may have to yield place to others. They can have no grievance about it, for if in law the election ought to have been to the 42 seats the voters exercising single transferable vote, any advantage gained by departure therefrom cannot be an advantage which they should seek to retain. We think that in the peculiar facts and circumstances of this case no irreparable harm will be done by setting aside the election to the 28 seats so as to enable the election to 42 seats to be held together. If that would be the appropriate requirement of law we see no reason to hesitate to grant such relief. The situation perhaps may not have come to our notice at all had it not been for the petitioner moving this petition. We see no reason to decline to interfere in the circumstances. We declare that the election process relating to 28 seats in the 42-member Teachers' constituency is not in accordance with law and is, therefore, liable to be set aside. We set aside the same. We direct the University of Gujarat to hold fresh elections for the 42-member constituency in accordance with the system of proportional representation and single transferable vote. In view of the relief granted the order of interim relief granted by us staying the declaration of the results will stand discharged with the necessary consequence that in the light of our decision the question of declaration does not arise. Whatever proceedings are to be taken for election pursuant to this judgment shall be commenced within three months from this date.

37. Rule made absolute. No costs, 7th February, 1984. Learned Advocate-General appearing for the University made an application under Article 134A read with Article 133(1) of the Constitution of India for leave to appeal to the Supreme Court of India. Though we see a substantial question of law arising we see no substantial question of law of general importance which needs to be decided by the Supreme Court arising in this case. Hence leave declined.