
(1979) 10 GUJ CK 0011
In the Gujarat High Court

Patel Bhagwanbhai Narottamdas and Others

APPELLANT

Vs

Authorised Officer, of the District Registrar of Co. Op.
Societies and Others

RESPONDENT

Date of Decision : 04-10-1979

Acts Referred:

Gujarat Agricultural Produce Markets Act, 1963 — Section 11(1)(i), 11(1)(i)
Gujarat Agricultural Produce Markets Rules, 1965 — Rule 8, 8(1)

Citation : (1979) 2 GLR 406

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—The petitioners were aggrieved by the preparation of the Voters" list by the authorised Officer-respondent No. 1, and have

filed the present petition for the issue of a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of

certiorari or any other appropriate writ, order or direction directing respondent No. 1 to exclude respondents No. 3 to 70 from the final voters list,

and to include the names of the members of the Managing Committee of 7 Seva Shakari Mandalies mentioned in para 7 of the petition.

2. The petitioners also prayed for the issue of a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or

direction not to hold election of 8 agriculturists constituency of Agricultural Produce Market Committee, Visnagar. During the pendency of the

petitioner in this Court, this Court did grant the interim relief restraining respondent No. 1 the authorised officer from holding election of 8

agriculturists on the basis of the agriculturists voters" list of Agricultural Produce Market Committee.

3. In substance, the grievance of the petitioners before me was, that in the instant case, the final voters' list was published by the authorised officer

on May 19, 1978, and the election of 8 agriculturists as provided in Section 11(1) (i) of the Gujarat Agricultural Produce Markets Act, 1963

(hereinafter referred to as "the Act") was to take place on June 27, 1978. It may be stated at this stage, that the tentative or the provisional list of

voters was published by the authorised officer on April 30, 1978, and in the said tentative or the provisional list of voters, the names of

respondents No. 3 to 70 were not included. It may be also stated at this stage, that the names of respondents No. 3 to 70 were shown for the first

time in the final list of voters which was published on May 19, 1978.

4. On the facts stated above, there was no controversy before me, and the learned advocate argued the whole matter on the basis that the

provisional or the tentative list of voters was prepared on April 30, 1978 and that the provisional list did not contain the names of respondents

Nos. 3 to 70 as the voters. It was also an admitted fact before me that the final list of voters was published by the authorised officer on May 18,

1978 and it was only in the final list of voters that the names of respondents No. 3 to 70 appeared.

5. On the aforesaid admitted facts and on which there was no dispute before me, it was urged by Mr. Vakharia, the learned advocate for the

petitioners, that as the preparation and the publication of the final list of voters was not in accordance with law, I should give a direction to

respondent No. 1 to exclude the names of respondents Nos. 3 to 70 from the final voters' list. He also urged, that if the final voters list was not in

accordance with law and the rules framed under the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter be referred to as "the Rules") I

should give a direction to respondent No. 1 not to hold election of 8 agriculturists as provided in Section 11(1)(i) of the Act.

6. In order to substantiate the point involved in the petition, Mr. Vakharia invited my attention to Section 11 of the Act. Section 11 of the Act

provides as follows:

11 (1) Every market Committee shall consist of the following members namely:

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

societies) dispensing agricultural credit in the market area;

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

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

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

societies;

Provided that where the number of co-operative marketing societies so situate does not exceed two, only one representative shall be so elected;....

The rest of the section is not necessary to be referred for the disposal of the present petition.

7. Mr. Vakharia's grievance was, that in the instant case, there was a dispute in regard to the formation of the market committee which would

include 8 agriculturists who were to be elected by the members of the Managing Committee of the Co-operative Societies (other than Co-operative

marketing societies) dispensing agricultural credit in the market area. Mr. Vakharia urged before me, that respondents No. 3 to 70 are not the

members of the managing committees of co-operative societies dispensing any agricultural credit in the market area, and hence, the names of

respondents No. 3 to 70 should not have been included in the final voters' list published by respondents No. 1 on 19 May, 1978.

8. Mr. Vakharia, in this behalf, invited my attention to Rule 5 of the Gujarat Agricultural Produce Markets Rules, 1965. Rule 5 is in the following

terms:

5. Different lists of voters: For the purpose of Section 11, there shall be in respect of the market committee three separate list of voters in Gujarati

as follows, namely:

(1) under Clause (i) of Sub-section (1) Section 11 of the Act, a list of members of managing committees of Co-operative Societies dispensing

agricultural credit in the market area ;

(2) under Clause (ii) of Sub-section (1) of Section 11 of the Act a list of traders holding general licences in the market area;

(3) under Clause (iii) Sub-section (1) of Section 11 of the Act, a list of members of managing committees of Co-operative Marketing Societies

situated in the market Area.

9. Rule 6 provides for qualifications of persons who can vote. It provides that a person whose name is entered in a list of voters shall be qualified

to vote at an election to which the list of voters relates, unless he has ceased to hold the capacity in which his name was entered in such list.

10. Rule 7 provides for preparation of list of voters for general election. Rule 7 is in the following terms:

7. (1) Whenever general election to a market committee is to be held:

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

committee together with the place of residence of each member;

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

residence of each such trader; and

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

residence of each such member.

To the authorised officer before such date as the Director may be order fix in that behalf:

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

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

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

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

11. Rule 8 of the Rules provides as follows:

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

Officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market

area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered

therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters.

(2) If any application is received under Sub-rule (1) the Authorised Officer shall decide the same and shall cause to be prepared and published the final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election.

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

12. Mr. Vakharia, the learned advocate for the petitioners urged before me, that the Rules provide for preparation of the provisional list of voters.

He also urged before me, that the provisional list of voters should be published by the Authorised Officer by affixing a copy thereof at the office of

the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person

whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that his name or

the name of some other person has been wrongly entered therein or has not been correctly entered, may apply within a specified time from the

date of the publication of the notice to the authorised officer for the amendment of the list of voters. In substance, Mr. Vakharia's submission was,

that after the publication of the provisional list of voters or a tentative list of voters, an opportunity should be given to persons to object to the

wrong inclusion of the voters in the voters's list or the wrong deletion or the removal of the names of the voters in the voters" list. He also urged

that Rule 8 also contemplates that if the name of a voter was not correctly entered in the voters" list, an opportunity was also given to a person for

making an application for the necessary amendment of the list of the voters. In the instant case, Mr. Vakharia urged that in the provisional list which

was prepared by the authorised officer on April 30, 1978 the names of

respondents Nos. 3 to 7 did not appear at all with the result that the petitioners had no opportunity to rise any objection in regard to the names of respondents No. 3 to 70 suddenly appearing in the final list of voters.

In substance, Mr. Vakharia's grievance was that the names of respondents Nos. 3 to 70 should not have been included in the final list of voters as

they were not the members of the managing committees of cooperative societies dispensing agricultural credit in the market area.

13. Mr. Vakharia also invited my attention to Sub-rule (2) of Rule 8 of the Rules, which provides that if any application is received under Sub-rule

(1) of Rule 8 of the aforesaid rules, the Authorised Officer shall decide the same and shall cause to be prepared and published the final list of

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

be prepared at least thirty days before the date fixed for the nomination of candidates for the election. Mr. Vakharia strongly urged before me, that

the whole scheme of Rules 5 to 8 of the aforesaid Rules is that if a person's name is included in the voters' tentative list of if a person's name is

removed as a voter from the tentative list, an opportunity must be given to the concerned parties to object either to the inclusion of a name or the

removal of a name in the voters' list, and after the receipt of any objection in this behalf, it would be the duty of the authorised officer to decide the

objection, and that thereafter, the final list of voters should be published. He urged, that in the instant case, before the publication of the final list of

voters which contained the names of respondents Nos. 3 to 70 as the voters, no opportunity whatsoever was given to the petitioners to object to

the inclusion of the names of respondents Nos. 3 to 70 in the final voters.

14. Under the circumstances, Mr. Vakharia urged that the action of the Authorised Officer in publishing the final list of voters is in flagrant violation

of Rule 8 of the Rules, and that, therefore, I should grant the aforesaid reliefs prayed in para 21 of the petition. Mr. Vakharia also urged, that the

impugned action on the part of the Authorised Officer viz. the publication of final list of voters also suffers from the vices of rules of natural justice

being violated and the rules of fair play being not observed in a matter which pertains to election.

15. Mr. Vakharia also invited my attention to the reported decision of the

Supreme Court in Chief Commissioner, Ajmer Vs. Radhey Shyam Dani,

. In the aforesaid judgment in para 12 at page 307 it is observed as follows:

It is of the essence of those elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained

it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons

enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the

adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the

authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be

liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame

rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective.

16. In Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, in paragraphs 16 and 17 it is observed as follows:

Now a code of procedure must be regarded as such, it is "procedure", something designed to facilitate justice and further its ends: not a penal

enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for

reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to "both sides") lest the very means

designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that

men should not be condemned unheard, that decisions should be reached behind their backs, that proceedings that affect their lives and property

should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and

where they are clearly defined they must be given effect to. But taken by the large, and subject to that proviso, our laws of procedure should be

construed, wherever that is reasonably possible, in the light of that principle.

17. Mr. Vakharia's submission before me was, that what would be the direct

consequence of the inclusion of names of respondents Nos. 3 to 70

in the voters' list behind the backs of the petitioners? Mr. Vakharia urged, that the direct consequence of such an inclusion would be to affect the

representation of the concerned persons u/s 11(1)(i) of the Act. If the said right of the petitioners is adversely affected by such a wrongful and

illegal inclusion of respondents Nos. 3 to 70 in the voters' list behind the backs of the petitioners, can it be said that the impugned action of the

authorised officer is in accordance with law or the principles of natural justice or fair play? What prevented the Authorised Officer from giving to

the petitioners and intimation or a public notice that respondents No. 3 to 70 applied to him for being included in the voters list as they were the

members of the managing committees of co-operative societies dispensing agricultural credit in the market area. This suppression on the part of the

Authorised Officer in a small village is obviously and patently with an ulterior motive, and the same is bound to affect the rights of the persons

inasmuch as there cannot be proper and valid representation on the market committee as provided in Section 11(1)(1) of the Act. Under the

circumstances, Mr. Vakharia urged that this is a fit case where 1 should accept his petition.

18. Mr. M.C. Shah, the learned advocate appearing for the respondents resisted the petition very strenuously. In substance, his submission was,

that on reading Sub-rule (2) of Rule 8 of the Rules, it is necessary to hear a party, if the party's name is ordered to be deleted in pursuance to any

objection received from any party by the Authorised Officer; but Mr. Shah urged, that whenever cases arise for the inclusion of names in the

voter's list, on the reading of the very sub-rule (2) of Rule 8 of the Rules, no opportunity should be given to other persons (save and except the

applicants who intend that their names should be included in the voter's list) for raising any objection, the reason being, that in the former case

there is controversy, and in the later case there is no controversy. In support of the submission, Mr. Shah also urged, that in the later case, by

giving such an opportunity to others, new controversies might crop up.

19. In substance, Mr. Shah's submission was that Sub-rule (2) of Rule 8 of the Rules should be construed to mean, that as and when the name of

any voter is removed or deleted from the voter's list, an opportunity should be

given to a person whose name is to be removed or deleted from the voters" list, whereas on reading of that very Sub-rule (2) of Rule 8 of the Rules, it should be construed to mean that whenever the names of new persons are to be entered in the voters" list, it is not at all necessary for the authorised officer to give any public notice inviting objections from other persons regarding the inclusion of the new names in the voters" list.

20. With respect, it is not possible for me to accept the said submission of Mr. Shah. The foot of the chancellor should not vary with the aforesaid

two types of situations viz. (1) at the time of the inclusion of new names in the voters" list and (2) at the time of the removal of the names of the

voters" list. As stated above, the scheme of Rule 8 of the aforesaid Rules is, that whenever a name is included in the tentative list or whenever a

name is removed from the tentative list or whenever the amendment is necessary in regard to the names of the voters" list, an opportunity should be

given to parties who are affected by such objections, and if no such opportunity is given, obviously, there would be flagrant violation of Sub-rule

(1) of Rule 8 of the Rules. Not only there would be flagrant violation of Sub-rule (1) of Rule 8 by not giving proper notice to the parties adversely

affected by inclusion of such names in the voters" list, but the action of the Authorised Office in a matter which pertains to election can be safely

stigmatised as an action suffering from the vice of not respecting rules of fair play and natural justice.

21. A right to be represented, in accordance with the statutory provisions of the Act, is a very vital and precious right affecting the agriculturists.

Their right to see that proper representatives are elected on the market committee is a valuable and a precious right as the market committee by

their actions and decisions may affect the day to-day life of the agriculturists. Under the circumstances, can the Authorised Officer conceive of

inclusion of respondents Nos. 3 to 70 in the voters" list without giving any opportunity of being heard to the petitioners particularly when according

to petitioners, respondents Nos. 3 to 70 are not the members of the Managing Committees of the Co-operative societies who are dispensing

agricultural credit in the market area? To affect such a right of the agriculturists under the Act would amount to nothing, but denial of their aforesaid

valuable right.

22. In view of what has been stated above, it is impossible for me to agree or accept the submission of Mr. Shah.

Mr. A.J. Patel, the learned Assistant Government Pleader also invited my attention to the contents of Rule 8 and could not support the submissions

of Mr. Shah with full confidence. He left the entire matter to my sole discretion.

23. As a result of the aforesaid discussion, I am convinced, that this is a fit case where I should give a direction to respondent No. 1 to exclude

respondents Nos. 3 to 70 from the final voters' list. Under the circumstances, I direct respondent No. 1 to prepare a final list of voters after having

given a suitable public notice after affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal

market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his

name should be entered therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has

not been correctly entered, may within 14 days from the date of the publication of the notice, apply to the authorised office for an amendment of

the list of voters. After the receipt of objections from the concerned parties, the Authorised Officer should decide the application, and thereafter,

he should prepare a final list of voters. Having thus prepared a final list of voters in light of the observations made hereinabove, I direct respondent

No. 1 to see that the election is held in respect of 8 agriculturists, who should be elected by members of Managing Committees of co-operative

societies (other than co-operative marketing societies) dispensing agricultural credit in the market area. It will be open to the petitioners to raise

such objections for the inclusion of such voters as they think fit. It will be also open to the petitioners to make proper applications in support of

their pleas that some members of the co-operative societies mentioned in paragraph 7 of the petition should be included in the final voters' list, 1

direct the Authorities to hold election in accordance with law as expeditiously as possible and preferable within period of three months from to-

day.

Accordingly, the petition succeeds and the rule is made absolute, but having regard to the facts and circumstances of the case, I make no order as

to costs.