

(2011) 09 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 6729 of 2011

Patel Ishwarbhai Venabhai

APPELLANT

Vs

Sabarkantha District Cooperative Sale Purchase Union Ltd.
and Another

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Election Rules, 1982 — Rule 16, 5, 5

Gujarat Co-operative Societies Act, 1961 — Section 145A, 145C, 145D, 145E, 145G

Citation : (2011) 09 GUJ CK 0077

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Ashish H. Shah, for the Appellant; Shalin Mehta, for Vidhi J. Bhatt for Respondents 1, 2, 3, 11, 13 and 39, L.B. Dabhi, Asstt. Government Pleader for Respondents 2, 40 and, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—Present petition under Articles 226 and 227 of the Constitution of India has been preferred by the Petitioner - original Plaintiff to quash and set aside the impugned judgment and order dated 20.05.2011 passed by the Gujarat State Cooperative Tribunal in Appeal No. 464/2010 as well as the judgment and award dated 25.11.2010 passed by the learned Board of Nominees, Mehsana in Lavad Suit No. 81/2010.

2. Facts leading to filing of the present petition in nut-shell are as under:

2.1. That the Petitioner is the member of Respondent No. 1 Society. That Respondent No. 1 - Sabarkantha District Cooperative Sale & Purchase Union Ltd. (hereinafter referred to as "Society") is specified Society, specified u/s 74 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "Act, 1961"). That the management and administration of the Society are required to be carried out by duly elected Managing Committee as per the provisions of the Act,

Rules and the Bye-laws. The last election of the members of the managing committee of the Society was held on 10.09.2007. That the term of the managing committee of the Society is three years. That the election of the members of the managing committee were due and scheduled to be held in the month of October, November 2010. That as per the provisions of bye-law No. 28, the managing committee of the Society shall consist of the following 22 members.

Category of affiliated member society -13

Category of individual members -04

Government Representatives -03

Nominee of the Sabarkantha District Bank -01

Nominee of the Registrar -01

Total -22

2.2. That according to the Petitioner, the election rules and more particularly, Rule 16 provides that in case of election of delegate from the category of individual member, the decision regarding the date, time and place of the election shall be notified on the notice board of the main office and all the individual members, included in the voters list shall be informed by publishing an advertisement regarding the same in a daily newspaper having wide circulation. It appears that there are in all 2381 individual members of the Society and 378 affiliated member societies. It was the case on behalf of the Petitioner that the Society without issuing an advertisement in a widely circulated newspaper, surreptitiously and behind the back of the majority of individual members conducted elections of the delegates in the category of individual members. That Respondent No. 2 - Election Officer published election programme for the election of the delegates from the individual members category. That the said programme was not widely published in order to manipulate the election results. According to the Petitioner, 87 nomination forms were received and after scrutiny, the Election Officer declared 78 nomination forms as valid. That on the last day of the withdrawal of nomination, 41 nomination forms were withdrawn and remaining 37 candidates - Respondent Nos. 3 to 39 were declared as elected uncontested. Having come to know about the same, when the news item was reported in daily newspaper "Sandesh" on 18.05.2010 regarding conduct of election of 37 delegates representatives, the Petitioner instituted Lavad Suit No. 81/2010 before the learned Board of Nominees, Mehsana inter-alia praying to declare the election of 37 uncontested delegates from the category of individual members as illegal, arbitrary, contrary to election rules and contrary to the provisions of the Act. That in the said suit the Petitioner submitted an application for injunction Exh.6. That the learned Board of Nominees vide order dated 25.07.2010 granted ad-interim relief in terms of paragraph 5(a) and (b) which reads as under:

5(a) to declare that the election of the delegate members of the Defendant

Sangh and the members of the Sangh is required to be held as per the bye law No. 28(7) of the Defendant Sangh as well as the provisions of Section 145-A to 145-Z of the Gujarat Cooperative Societies Act and the Election Rules, 1982 and that the voters list of the delegates is to be prepared by the Collector and Collector is required to hold the election of the delegate members;

(b) to declare action of original Defendant No. 2 in declaring 37 delegate members as uncontested delegate members is illegal and against the provisions of the bye laws of the Sangh as well as against the provisions of the Gujarat Cooperative Societies Act and the Rules;

Respondent Nos. 3 to 39 preferred Revision Application No. 107/2010 before the Cooperative Tribunal challenging the ad-interim ex-parte order dated 27.05.2010. That the Tribunal vide order dated 11.06.2010 dismissed the revision application and directed the Board of Nominees, Mehsana to decide the stay application on or before 25.06.2010. That the learned Board of Nominees vide order dated 24.06.2010 dismissed the stay application and vacated the ad-interim order passed earlier. Being aggrieved and dissatisfied with the order passed by the learned Board of Nominees below Exh.6 dated 24.06.2010, the Petitioner preferred Revision Application No. 128/2010 before the Cooperative Tribunal. That the Tribunal vide order dated 09.07.2010 allowed the said revision application and directed Respondent No. 2 to hold fresh elections of the delegate members within a period of one month after publishing the election programme in a newspaper having wide circulation. That being aggrieved and dissatisfied with the order passed by the Cooperative Tribunal in Revision Application No. 128/2010, Respondent Nos. 1 to 39 preferred Special Civil Application No. 8111/2010 before this Court and this Court vide judgment and order dated 19.07.2010 allowed the said petition and directed the learned Board of Nominees to finally decide and dispose of the said Lavad Suit within a period of one month. It appears that being aggrieved and dissatisfied with the order passed by this Court in Special Civil Application No. 8111/2010, the Petitioner preferred Letters Patent Appeal No. 1642/2010 before the Division Bench. The Division Bench initially stayed the order passed by this Court in aforesaid Special Civil Application No. 8111/2010. The Respondents preferred Civil Application for vacating stay. The Division Bench modified the stay and observed that in the meantime, the Respondents will not conduct any elections without prior permission of this Court. That the Division Bench ultimately vide order dated 11.10.2010 disposed of the said Letters Patent Appeal with a direction to learned Board of Nominees to dispose of the Lavad Suit on merits preferably within one month. The Division Bench also directed that in the meantime no election shall be held and the parties should maintain status-quo. That thereafter by judgment and award dated 25.11.2010, the learned Board of Nominees dismissed the aforesaid Lavad Suit No. 81/2010. Being aggrieved and dissatisfied with the judgment and award passed by the learned Board of Nominees, Mehsana dated 25.11.2010, Petitioner preferred Appeal No. 464/2010 before the Cooperative Tribunal. In the said Appeal, Petitioner submitted stay application which came to

be allowed by the Tribunal vide order dated 30.11.2010 and the Tribunal restrained further election process of delegate members. Being aggrieved and dissatisfied with the order passed by the learned Tribunal in stay application, Respondent Nos. 3 to 39 herein preferred Special Civil Application No. 15734/2010 which came to be dismissed by this Court. That thereafter the Tribunal by impugned judgment and order dated 20.05.2011 has dismissed the said Appeal confirming the judgment and award dated 25.11.2010 passed by the learned Board of Nominees, Mehsana in Lavad Suit No. 81/2010. Being aggrieved and dissatisfied with the judgment and award passed by the learned Board of Nominees, Mehsana and confirmed by the learned Tribunal, Petitioner - original Plaintiff has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Ashish Shah, learned advocate appearing on behalf of the Petitioner has vehemently submitted that both the Courts below have materially erred in misconstruing the election rules of the Respondent Society and more particularly, election Rule No. 16. It is further submitted by Shri Shah, learned advocate that both the Courts below have erred in not finding that the election of the delegates from individual members category was surreptitiously held behind back of majority of individual members and in contravention of provisions of election Rule No. 16. It is submitted that both the Courts below ought to have held that there is clear breach of Rule No. 16 in as much as prior to the elections, no advertisement was issued in a widely circulated newspaper. It is submitted that as such Rule 16 clearly provides for issuance of an advertisement in a widely circulated newspaper intimating the members regarding the schedule of the elections of the delegates.

3.1. Shri Shah, learned advocate appearing on behalf of the Petitioner has further submitted that even in the elections of 2006-07, Respondent Society had issued an advertisement in a vernacular daily newspaper intimating individual members regarding the schedule of the elections of the delegates from individual members category. It is, therefore, submitted that the aforesaid fact itself shows that Rule 16 provides for issuance of advertisement in a widely circulated newspaper.

3.2. It is further submitted by Shri Shah, learned advocate that both the Courts below have erred in finding that mere publication of the election notifications on the notice board would amount to sufficient compliance of Rule 16 of the election rules and would also amount to wide publication of the election programme.

3.3. It is further submitted by Shri Shah, learned advocate appearing on behalf of the Petitioner that even Respondent Nos. 3 to 39 who were declared uncontested delegates, majority of them are relatives of the sitting members of the managing committee as well as the election officer and therefore also, the election process is vitiated. Making above submissions, it is requested to allow the present Special Civil Application quashing and setting aside the impugned judgment and order passed by both the Courts below and allow the Lavad Suit

No. 81/2010 and declare the election of Respondent Nos. 3 to 39 as delegates illegal.

4. Petition is opposed by Shri Shalin Mehta, learned advocate appearing on behalf of the contesting private Respondents -delegates who were declared as uncontested delegates as well as Respondent No. 1 Society. An affidavit-in-reply is filed on behalf of Respondent No. 1 affirmed by one Shri Natvarlal Purshottamdas Patel, Manager of Respondent No. 1 Society. It is submitted that as such there are concurrent findings of fact given by both the Courts below on interpretation of election rule No. 16 which are not required to be interfered by this Court in exercise of powers under Articles 226 and 227 of the Constitution of India.

4.1. It is further submitted by Shri Mehta, learned advocate that Respondent No. 1 passed resolution No. 12 in the meeting held on 17.04.2010 for holding election of delegate members as their term was due to expire. It is submitted that thereafter the election officer appointed by Respondent No. 1 Society published the election programme on 19/04/2010 and the same was forwarded to the District Registrar, Sabarkantha. It is submitted that as per the election programme, Respondent No. 2 election officer invited nomination forms for 37 posts of delegate members and in response thereto 87 nomination forms were received by the Election Officer. That after scrutinizing the same, the Election Officer declared 78 nomination forms as valid and accepted the same on 05.05.2010. It is further submitted that before the last date of withdrawal of nomination forms, as stipulated in the election program, 41 nomination forms were withdrawn by the candidates and rest of the 37 candidates were declared as elected uncontested on 12.05.2010. It is submitted that accordingly the election officer declared the result of the delegate members who were elected uncontested. It is submitted that even subsequently Respondent No. 1 passed resolution No. 10 in a meeting held on 22.05.2010 and approved the election result of delegate members elected uncontested. It is further submitted that even the election programme on the notice board of the Society was not notified. It is submitted that as there was no contest and for 37 posts of delegates, the election officer received 37 nominations only, the election was not required to be held and therefore, the election programme for the post of delegates was not required to be published in the local newspaper by publishing advertisement. It is submitted that by law No. 16 does not make it mandatory to publish public advertisement even when no election is to be held and when delegate members are elected uncontested. No other submissions have been made. Making above submissions, it is requested to dismiss the present petition and confirm the judgment and order passed by both the Courts below.

5. Heard the learned advocates appearing for respective parties appearing on behalf of respective parties at length. At the outset it is required to be noted that Respondent No. 1 Society has framed the rules for election of the members of the delegates framed under bye law No. 36A and as per Rule 16 of the said

election rules, the election of the delegates is required to be completed on or before 30th April and only those delegates who are eligible under Rules 5 and 6 and delegates whose nominations have been found to be valid can be declared as elected. It also further provides that if there are less candidates/nominations then the post of those candidates whose nominations are found to be valid will be declared as elected and with respect to the rest of the posts, the managing committee or the election officer will fill up the same by co-option. Under Rule 16, place of election and counting shall be at Himatnagar in the premises of the Society for which the date and time shall be fixed by the managing committee of the Society or the election officer. Rule 16 specifically provides that the said decision of the election programme shall be placed on the notice board of the main office of the Society and all the individual members as mentioned in the published voters list shall be informed with respect to the election programme by giving public advertisement in local newspaper having wide circulation in the District. In the present case, admittedly, no such election programme for holding the election of delegates had been published in local newspaper having wide circulation in the District. Out of 2381 individual members of Respondent No. 1 Society and 378 affiliated member societies, it appears that only 87 nomination forms were received out of which 78 nomination forms were declared as valid and on the last day of withdrawal of nomination forms, 41 nomination forms were withdrawn and thus, 37 candidates Respondent Nos. 3 to 39 were declared elected uncontested. Therefore, it appears that majority of individual members were not informed and/or made aware about the election programme for the election of delegates. Thus, there is a clear breach of Rule 16 of the election rules. So far as the case on behalf of the contesting Respondents that as for 37 posts, only 37 candidates remained and therefore, no election was to be held and therefore, the election programme was not required to be published in the local newspaper having wide circulation and therefore, the same was not published and therefore, there is no breach of Rule 16 of the election rules is concerned, the aforesaid cannot be accepted. It is to be noted that there are various stages of election programme right from the publication of the voters list, submitting the nomination forms; scrutiny of nomination forms by the election officer; declaring the list of the candidates whose nomination forms are declared valid; conducting the election and declaring the result. Only when wide publication is given in the local newspaper intimating the election programme and various stages of election of the delegates, the other individual members can know the election programme and contest the election and submit their nominations. At the initial stage, the election officer and/or Respondent No. 1 cannot know that there is no likelihood of election at all and there will be 37 nominations only against the posts of 37 delegates. Respondent No. 1 and/or the election officer cannot presume from the beginning that there is no likelihood of contest and therefore, they are not required to publish the election programme in the local newspaper having wide circulation in the District. Therefore, the contention on behalf of the contesting Respondents that as there was no election to be held as against the post of 37 delegates, only 37 candidates contested and therefore, the election

programme was not required to be published in the local newspaper having wide circulation in the District cannot be accepted. If the aforesaid is accepted, in that case, it would tantamount to presuming from very beginning that there is no likelihood of contest at all. It is to be noted that even in past in the year 2006-07 also, the election programme was published in local newspaper having wide circulation in the District as required under Rule 16. Therefore, the past practice negatives the contention on behalf of the contesting Respondents. The aforesaid has not been considered by both the Courts below and both the Courts below have misinterpreted Rule 16 of the election rules.

6. In view of the above, when there is a clear breach of Rule 16 of the election rules and there was no wide publicity and individual members were not made aware about the election of delegates, the right of the members to contest the election has been affected and therefore, the entire election and/or action declaring Respondent Nos. 3 to 39 as uncontested delegates is vitiated and the same deserves to be quashed and set aside and Respondent Nos. 1 and 2 are to be directed to hold fresh election of delegates from the individuals after following due procedure as required under Rule 16.

6.1. In view of the above and for the reasons stated above, petition succeeds. The impugned judgment and order passed by the Gujarat State Cooperative Tribunal dated 20.05.2011 passed in Appeal No. 464/2010 as well as the judgment and award dated 25.11.2010 passed by the learned Board of Nominees, Mehsana in Lavad Suit No. 81/2010 are hereby quashed and set aside and Lavad Suit No. 81/2010 preferred by the Petitioner before the learned Board of Nominees, Mehsana is hereby allowed and the action of Respondent Nos. 1 and 2 declaring Respondent Nos. 3 to 39 as elected uncontested as delegates is hereby quashed and set aside and Respondent Nos. 1 and 2 are directed to hold election of the delegates afresh right from declaring the voters list and after following due procedure as required under the election rules, more particularly, Rule 16 and till then Respondent No. 1 and/or 2 are hereby restrained from holding the election of the managing committee of Respondent No. 1 Society. The aforesaid exercise of conducting fresh election shall be concluded at the earliest but not later than two months from today as the term of the managing committee of Respondent No. 1 Society has already expired and due to the present dispute, old managing committee is continued despite there term has expired. Rule is made absolute to the aforesaid extent. No costs. Direct service is permitted.