

(2012) 02 GUJ CK 0080

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1559 of 2011 in Special Civil Application No. 6729 of 2011, Civil Application No. 11029 of 2011 in Letters Patent Appeal No. 1559 of 2011, Civil Application No. 13402 of 2011 in Letters Patent Appeal No. 1559 of 2011

Sabarkantha District Co-Op Sale Purchase Union Ltd. and
Another

APPELLANT

Vs

Patel Ishwarbhai Venabhai and Others

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Election Rules, 1982 — Rule 16, 5, 6

Gujarat Co-operative Societies Act, 1961 — Section 145(B), 145(C), 145(D), 145(E), 145A

Citation : (2012) 02 GUJ CK 0080

Hon'ble Judges : V.M. Sahai, J;A.J. Desai, J

Bench : Division Bench

Advocate : Shalin Mehta and Ms Vidhi J. Bhatt - 38, for the Appellant; Mihir Joshi Assisted by Mr. Ashish H. Shah Respondent : 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice A.J. Desai

1. By way of present Appeal under clause 15 of Letters Patent, the appellants have challenged the judgment dated 26.09.2011 passed by learned Single Judge in Special Civil Application No.6729 of 2011 by which the learned Single Judge has quashed and set aside the judgment and award dated 20.5.2011 passed by Gujarat State Co-operative Tribunal in Appeal No.464 of 2010 and also the judgment and award dated 25.11.2010 passed by learned Board of Nominees, Mehsana in Lavad Suit No.81 of 2010 and further directing the respondents No.1 and 2 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. The brief facts of the present appeal are as under:

2.1 That the original petitioner - respondent No.1 herein is the member of respondent No.1 Society. That present appellant 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 original petitioner, the Election Rules regarding the election of delegates of the Sabarkantha District Co-operative Marketing Society Limited, Himmatnagar (hereinafter referred to as "Election Rules") 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 original 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 present appellant 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 original 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 original 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 original 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;

2.3 Appellants 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 original 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, appellants 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 original 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 appellants 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, original 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, appellants 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 had preferred the aforesaid Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. The arguments advanced by the original petitioners before the learned Single Judge 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 16 was accepted and the learned Single Judge has come to the conclusion that the original respondent No.1 and 2 have not followed Rule 16 in stricto sensu. The learned Judge has accepted that the society has not followed the procedure of advertising the election programmes in the local widely circulated newspaper which is a condition of Rule 16 of the Election Rules. Rule 16 of the Election Rules reads as under:

The translation version of Rule 16 of Election Rules reads as under:

16. The work of the election of the delegates of the member of the society shall be done till 31st of April, as per rule-5 as many as the delegates who shall be liable to be elected, if only those candidature forms are lawful, they shall be declared elected. If there are less numbers of candidates than the number of the seats liable to be elected, lawful candidates shall not be declared elected and the seats which have not been filled up shall be filled up by the Managing Committee or the Election Officer by Co-option. The place of election and counting shall be at the Head Office of society in Himmatnagar. The date and time shall be as

prescribed by the Managing Committee of the society and Election Committee. The declaration of the decision in this regard shall be placed on the notice board of the Head office of the society and the person- Member of the society mentioned in the published Electoral roll shall be informed by publishing advertisement in one daily news paper having wide publication in District."

4. It appears that, in past, the society has followed the said rule by issuing advertisement in vernacular daily newspaper about the schedule of the election of the delegates from individual members category. The original petitioners had produced the said advertisement with regard to election of 2006-2007 along with the petition. After hearing the other side i.e. delegates who were declared uncontested elected members, the learned Single Judge has held that the society has committed breach of Rule 16 and, therefore, directed the society to hold election afresh. The learned Judge, after perusing the judgment of the Board of Nominees as well as the Tribunal has observed as under:

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 Himmatnagar 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."

5. We have heard learned counsel Mr. .Shalin Mehta assisted by learned advocate Ms. Vidhi J. Bhatt for the appellants and learned senior counsel Mr. .Mihir Joshi assisted by learned advocate Mr. .Ashish Shah for the respondents.

6. Learned advocate Mr. .Mehta appearing for the appellants has submitted that the appellant No.1 has not committed any breach, particularly breach of Rule 16 of the Election Rules, since the notice of election was affixed on the notice board of the main office of the society. He has submitted that, when there were only 37 candidates against 37 seats, whose nominations were accepted, there was no need to publish about the details of election programme in a newspaper in a vernacular language having wide circulation in the area. Since there were no candidates more than the seats available for the delegates, there was no election of the delegate members and, therefore, the society has not committed breach of Rule 16 of the Election Rules.

7. As stated hereinabove, it appears that, 87 nomination forms were received by the Election Officer, out of which 78 nomination forms were declared as valid. It

also appears that, on the last day of withdrawal of nomination, 41 nomination forms were withdrawn and therefore remaining 37 candidates, whose nominations were accepted, were declared as uncontested. This raises some doubts about the conduct of the society. There was no reason for the society not to follow Rule 16 of the Election Rules and give wide publicity of the election programme in vernacular language in a daily having wide circulation in the said area. There are about 2381 individual members of the society and there are 378 affiliated members of the society. If wide publicity of the election as provided under Rule 16 had taken place in the present election, which was followed in the election of 2006-2007, more members could have known the factum of election and details thereof. The election is of entire district having members residing in entire district and therefore wide publicity of election is necessary and Rule 16 provides the same. As far as later part of Rule 16 is concerned, it has been categorically stated with a purpose for publishing the election programme in a 'daily' so that individual members who are residing in entire district can have knowledge of election.

8. When the society and the Election Officer has failed in giving wide publicity of the election to the individual members by publishing the advertisement of the election programme, right of each member to contest the election is affected and vitiated. In view of this, we do not accept the submissions made by learned advocate Mr. .Shalin Mehta that there was no necessity to publish the election programme in the newspaper.

9. We do not find any infirmity in the judgment passed by the learned Single Judge and we confirm the order passed by learned Single Judge and direct the appellants i.e. original respondents No.1 and 2 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 the original 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 original respondent No.1 - appellant No.1 society has already expired and due to the present dispute, old managing committee is continued despite their term has expired.

10. In view of the aforesaid observations and directions, the appeal is dismissed with no order as to costs. In view of dismissal of main appeal, Civil Application No.11029 of 2011 and Civil Application No.13402 of 2011 stand also dismissed.