
(1996) 06 GUJ CK 0022
In the Gujarat High Court

Sagrambhai Bhayabhai Bharwad

APPELLANT

Vs

Mukeshkumar Indulal Chauhan and Others

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 277, 33

Citation : (1997) 1 GLR 314

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Judgement

N.N. Mathur, J.—Rule. Mr. Harin Raval waives service of Rule on respondent Nos. 1 and 2. Mrs. Harsha Devani, learned A.G.P., waives service of Rule on respondent Nos. 3 and 4. On the request of the learned Counsels for the parties, this matter is taken up for final hearing today.

This Special Application under Article 226 of the Constitution of India has been filed, seeking appropriate writ of directions for quashing and setting aside the election of respondent No. 1-Mukeshkumar Indulal Chauhan as the President of Dhrangadhra Municipality.

2. The facts in short are that the petitioner and the respondent No. 1 were elected as Councillors of Dhrangadhra Municipality in the election held in December 1994. A meeting was convened on January 8, 1996 to hold the election for the office of the President of Dhrangadhra Municipality. As per the Roster point provided under the Gujarat Municipalities (Reservations of Scheduled Castes, Scheduled Tribes, Backward Class and Women) Rules, 1994, hereinafter referred to as the Reservation Act, 1994, the second term was reserved for Backward Class. Only two persons, i.e., petitioner and the respondent No. 1 who belong to Backward Class filed the nomination. The petitioner raised the objection that the respondent No. 1 has not filed the Certificate of Caste to show that he is a person belonging to Backward Class and further, the fact that he has been elected from the General Constituency. The

respondent No. 1 promptly at 5-20 p.m. submitted the Caste Certificate. In view of this, the objection was overruled by the Returning Officer.

3. In this Special Civil Application, Mr. Yogesh Ravani has mainly raised the following two contentions:

(1) That the Returning Officer wrongly overruled the objections of the petitioner as the respondent No. 1 did not submit the certificate before the scheduled time as required under Rules (6) and (8) of the Gujarat Municipalities (President and Vice-President) Election Rules, 1964; and

(2) That the respondent No. 1 has been elected from the constituency of the general class and as such, he is not qualified to hold the post of President, reserved in favour of the backward class.

4. So far as the first contention is concerned, it is not in dispute that there is no requirement of submitting any certificate alongwith the nomination forms with respect to the caste. It is also not in dispute that the certificate was submitted on the same day, i.e., on January 8, 1996. The only point raised by the learned Counsel for the petitioner, Mr. Raval is that the certificate was submitted after the scrutiny process was over. There is no material to show that the process of scrutiny was over at 5-20 p.m. The respondent No. 1, in his affidavit, has stated that the moment the objection was raised, the certificate was produced. In view of this, in my view, there is no substance in the first contention raised by the petitioner.

5. So far as the second contention is concerned, it may be stated that the State of Gujarat in exercise of its powers u/s 277 read with Sub-section (3) of Section 33 of the Gujarat Municipalities Act, 1963 framed the Rules called as the Gujarat Municipalities (Reservation of S.C., S.T., B.C., and Women) Rules, 1994 for the office of the President (which hereinafter referred to as the Reservation Rules, 1994, for convenience). The said Rules are reproduced as follows:

1. Short title: These Rules may be called the Gujarat Municipalities (Reservation of S.C., S.T., B.C. and Women for the office of the President) Rules, 1994.

2. Reservation in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women: The office of the President of a Municipality shall be reserved in favour of the Scheduled Castes, Scheduled Tribes, Backward Classes and Women in accordance with the roster shown in Schedule.

3. Reservations to continue for casual vacancies;-- If any election is to be held for filling up a casual vacancy that has arisen in the office of the President, the reservation, if any, applicable for the election of the previous President (whose term has not been completed) shall continue for such election.

4. Roster point when Municipality is reconstituted: Where a Municipality has been reconstituted either after the term of the previous Municipality has expired or the previous Municipality has been dissolved before its term has expired, then for the

election of the President after such reconstitution, the Roster point next to the one last used shall be used as the starting point.

5. Duration of Roster: This Roster shall continue to be effective for a period of ten years starting from the first election held in accordance with these Rules.

6. Roster points when a new Municipality is constituted: When a new Municipality is constituted either by amalgamation of new areas or otherwise the State Government shall decide its Roster points on the same principles under which this Roster is decided for such Municipality and in this case, Roster of other Municipalities shall not be disturbed.

Rule (2) provides that the office of the President of the Municipality shall be reserved in favour of the Scheduled Castes, Scheduled Tribes Backward Classes and Women, in accordance with the Roster shown in the Schedule. The extract with respect to Dhrangadhra Municipality is concerned, is given as below:

Sr. No.	Name of the ROSTER POINT	Municipality							
1	2	3	4	5	6	7	8	9	10
13. Dhrangadhra G BC G W G									
SC G W G W									

6. It is not in dispute that this was the second year and therefore, as per the Roster point, the post of the President was reserved for backward class. It is contended by Mr. Ravani that, under Rule (2) of the Reservation Rules, 1994, when it is said that the office of the President is reserved for a particular reserved community or a class, it essentially refers to the persons elected from that reserved constituency. He further submits that the intention behind the Rule is that there is a representation of the said reserved community or a class. The person who has not been elected from the reserved constituency even if he belongs to that particular reserved class, still he cannot be said to represent the reserved community or a class. On the other hand, Mr. Raval submits that a plain reading of Rule (2) suggests that the reservation has been made in favour of the Scheduled Castes, Scheduled Tribes, Backward Class and Women. It does not refer to the constituency.

7. The Rule announced in enumerable cases is that, if the meaning of the language of the Statute is plain, there is really no need for construction as the legislative intention is revealed by the apparent meaning that is the meaning clearly expressed by the language of the Statute. A plain reading of Rule (2) clearly speaks that there shall be reservation for the office of the President of the Municipality in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women in accordance with the Roster shown in the Schedule. Therefore, it refers to persons belonging to the particular community or class, and not persons representing particular constituency. It will not be correct to read the word "persons elected from reserved constituency of S.C., S.T., B.C. or Women" as

against the plain words "persons belonging to S.C., S.T., B.C., or Women." Even if I look to the intention of the legislature, then also at the first instance reservation is provided for the specified communities or class, in order to secure their presence in the Municipality, i.e., by reservation of constituencies; at the second instance, Rule is provided to secure place for the persons belonging to the reserved community or class as head of the local body. It has nothing to do with the constituency from which the candidate for election for the office of President is elected. The object is to secure not only participation of persons of reserved community or class in the governance of the local body, but also as actual head of the body. This cannot be confined only to reserved constituency. Thus, in my view, the second contention is also not sustainable and thus, the same is rejected.

8. In view of the aforesaid, there is no merit in this Special Civil Application and the same is rejected. Rule discharged. No order as to costs.