

(2017) 07 GUJ CK 0062
In the Gujarat High Court
Case No : 10984 of 2017

SHREE JANJARVA SEVA SAHAKARI MANDALI LIMITED

APPELLANT

Vs

DIRECTOR & ORS.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

Constitution of India, Article 226 -
Gujarat Cooperative Societies Act, 1961, Section 74 -
Agricultural Produce Markets Rules, 1965, Rule 28

Citation : (2017) 07 GUJ CK 0062

Hon'ble Judges : Bela M. Trivedi

Bench : Single Bench

Advocate : BHARAT T RAO, ?VENUGOPAL PATEL ?DIPEN DESAI

Final Decision : Dismissed

Judgement

1. The authority and jurisdiction of the authorized

officer appointed under the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the said Act") while discharging functions as authorized officer during the process of election of the agricultural market committees is being questioned time and again by the aggrieved persons by invoking extraordinary jurisdiction under Article 226 of the Constitution of India. This is one of such matters, where the petitioner society has challenged the order dated 5.6.2017 passed by the respondent authorized officer deleting the names of the members of the petitioner's managing committee from the voters' list of agriculturist constituency prepared for the election of the Agriculture Produce Market Committee, Mandal (hereinafter referred to as "the APMC, Mandal").

2. The brief facts as stated in the petition are that the petitioner is a cooperative society registered under the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Societies Act"). The administration of the society is being looked after by the managing committee of the society and the object of

the society is to extend the benefit of agricultural finance to its members. As per the audit report certified by the Auditor, Cooperative Societies, Ahmedabad, the petitioner society was given Grade-A for the period 2015-16. It is further case of the petitioner society that the election of APMC, Mandal was declared on 4.5.2017 as per the election programme (Annexure-B). The petitioner society, therefore, had forwarded the names of the members of its managing committee to the authorized officer for being included in the voters' list of agriculturist constituency. The authorized officer had accordingly included the said names in the preliminary voters' list declared on 17.5.2017 (Annexure-C). However, the respondent No.4 having raised objection against the inclusion of the names of the members of the petitioner's managing committee, the authorized officer vide the impugned order dated 5.6.2017 deleted the said names (Annexure-F), on the ground that the petitioner society had increased the number of members of its managing committee from 9 to 21 only with a view to increase the number of votes in the election of the APMC, Mandal. Being aggrieved by the said order, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. The petition has been resisted by the respondent Nos.3 and 4 by filing their respective replies mainly contending inter alia that after the declaration of the election of APMC, Mandal on 4.5.2017, the petitioner society had called the general body meeting on 10.5.2017 and selected 21 members for its managing committee without holding any election, and therefore, their names could not have been included in the voters' list.

4. Mr.B.T. Rao, learned Advocate for the petitioner society, pressing into service various provisions contained in the said Act and the Societies Act, vehemently submitted that the authorized officer had exceeded his jurisdiction by going into the issue of deciding the validity of the election/nomination of the members of the petitioner's managing committee, and by observing that the petitioner had increased the number of its members only with a view to increase the number of votes in the APMC, Mandal. He further submitted that the petitioner society had carried out amendment in its bye-laws in consonance with the provisions contained in the Societies Act on 8.4.2017, which was approved by the concerned authority and thereafter the decision to select and appoint 21 members in the managing committee was taken in the general body meeting held on 10.5.2017, as nobody had filled up the nomination forms. Mr. Rao has placed heavy reliance on the decisions of the Division Bench of this Court in case of Kalubhai Ranabhai Akabari Vs. State of Gujarat & Ors., reported in 2007(3) GLH 57, in case Vibhapar Seva Sahakari Mandali Limited Vs. State of Gujarat and Ors., decided on 15.7.2010 in Special Civil Application No.6587 of 2010 and others, and in case of Vibhaniya Seva Sahakari Mandali Limited & Ors. Vs. State of Gujarat & Ors., reported in 2012(1) GLH 575 to submit that the scope of inquiry, which the authorized officer can undertake is limited statutorily by the Rules and

none of the Rules relating to preparation of list of voters permits the authorized officer to travel beyond verifying the list of members of the managing committee of the agricultural credit societies.

5. However, the learned AGP Mr.Venugopal Patel for the respondent Nos.1, 2, and 3 and Mr.Dipen Desai, learned Advocate for the respondent No.4, raising the preliminary objection as regards the maintainability of the petition, submitted that the exclusion or inclusion of the names in the voters' list being not an extraordinary circumstance, warranting interference by this Court under Article 226 of the Constitution of India, such questions are required to be decided in the election petition under Rule 28 of the Agricultural Produce Markets Rules, 1965 (hereinafter referred to as "the said Rules"), as held by the Full Bench in case of Daheda Group Seva Sahakari Mandli Limited Vs. R. D. Rohit, Authorized Officer and Co-operative Officer (Marketing), reported in 2006 GCD 211 (SCA No.2489 of 2005 dt. 27.4.2005). Mr.Desai has also placed reliance on the judgement of the Division Bench in case of Mandropur (Fatehpur) Juth Seva Sahkari Mandali Limited Vs. State of Gujarat & Ors., decided on 22.7.2016 in Letters Patent Appeal No.541 of 2016 to submit that once the election process has started, the dispute with regard to the election should be adjudicated by way of election petition only. He also relied

upon the minutes of the meeting of the general body of the petitioner society held on 10.5.2017 to buttress his submissions that the election of the 21 members of the managing committee having not taken place, the names of such 21 members could not have been sent by the petitioner society to the authorized officer for being included in the voters' list.

6. Before dealing with the issues raised in the petition, it would be beneficial to refer to the ratios of the judgements laid down by the Supreme Court as well as by the High Court as regards the scope of interference in the election process by the High Court in a petition under Article 226 of the Constitution of India. The Supreme Court in case of Election Commission of India Vs. Ashokkumar, reported in (2000) 8 SCC 216, after considering various judgements, held inter alia that the Court must guard against any attempt at retarding, interrupting, protracting or stalling of election proceedings. Care has to be taken to see that there is no attempt to utilize the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. The action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory

body being shown to have acted in breach of law.

7. The Full Bench of our High Court, in its decision in case of Daheda Group Seva Sahakari Mandli Limited Vs. R. D. Rohit, Authorized Officer (supra), while answering the reference as to whether the person whose name is not included

in the voters" list can avail provision of Rule 28 of the said Rules by filing election petition and whether such remedy can be said to be efficacious remedy or not, held as under:-

"33. In view of the above discussion, we answer the Reference as under:

- i. A person whose name is not included in the voters" list can avail benefit of provisions of Rule 28 of the Rules by filing Election Petition.
- ii. As the authority under Rule 28 has wide power to cancel, confirm and amend the election and to direct to hold fresh election in case the election is set aside, remedy under Rule 28 is an efficacious remedy.
- iii. Even though a petition under Article 226 of the Constitution of India is maintainable though alternative remedy is available, the powers are to be exercised in case of extraordinary or special circumstances such as where the order is ultra vires or nullity and/or ex facie without jurisdiction. The exclusion or inclusion of names in the voters" list cannot be termed as extraordinary circumstances warranting interference by this Court under Article 226 of the Constitution of India and such questions are to be decided in an

Election Petition under Rule 28 of the Rules."

8. Hence, the settled legal position is that the Court normally should refrain itself from interfering with the process of election, as also the decision of the authorized officer not including or excluding the names in the voters" list. Such disputes have to be agitated before the competent authority created under Rule 28 of the said Rules by filing election petition. The scope of scrutiny by the Court is very limited to see as to whether the authorized officer has acted within his authority and powers or not. Hence, let us see as to whether the respondent authorized officer in the instant case had acted arbitrarily or without jurisdiction while excluding the names of the members of the petitioner"s managing committee from the voters" list.

9. At this juncture, it is required to be noted that the petitioner society is a cooperative society registered under the Societies Act and is bound to follow the provisions of the said Act. So far as the management of the cooperative society is concerned, Section 74 of the Societies Act deals with the constitution of the managing committee, its powers and functions. Sub-section (1A)(i) thereof states that except as otherwise provided herein, the managing committee of a society, which is not an apex society, shall consist of, among others, such number of elected members not exceeding 21 and Section 74(1A) (ii) inter alia provides that except as otherwise provided in the Act, only the elected members shall be entitled to be the office-bearers of the managing committee. From the bare reading of the said provision, it transpires that except as provided under the Act, the members of the managing committee of the cooperative society have to be elected members and their number should not exceed 21.

10. So far as the facts emerging from the record of the petition are concerned, it appears that the petitioner society had amended its bye-laws on 8.4.2017 by which number of members of managing committee was increased from 11 to 21. Thereafter in the general body meeting held on 10.5.2017, 21 members were selected as the members of the managing committee by observing that nobody had filled up the nomination form for the 9 vacant posts of the members of managing committee. The minutes of the said meeting have been placed on record by the petitioner as well as by the respondent No.4. Hence, it clearly transpires that as such no election had taken place for the said 21 members of the petitioner's managing committee, and 21 persons were selected and appointed as the members of the managing committee. Since the said names were sent by the petitioner society to the authorized officer for being included in the voters" list of

agriculturist constituency of APMC, Mandal, the authorized officer had included the said names in the preliminary voters" list, however, subsequently the respondent No.4 having raised the objection that the said persons were not the elected members of the managing committee of the petitioner society, the authorized officer after giving opportunity of hearing to the petitioner society, deleted the said names, while publishing the revised voters" list on 5.6.2017 and also passed the impugned order at Annexure-F. Therefore, the question, which falls for consideration before the Court is whether the authorized officer had the authority or the power to make inquiry into the authenticity or validity of the names of the members of the managing committee of the petitioner society while carrying out his function of preparing the voters" list under the said Rules. In this regard, it will be beneficial to reproduce Rules 7 and 8 of the said Rules:-

"7. Preparation of list of voters for general election.-

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

(i) 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 members; (ii) the market committee shall communicate the full names of the traders holding general licenses in the market area together with the place of or 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 authorized officer before such date as the Director may by order fix in that behalf;

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

(2) The authorized officer shall within seven days from the date fixed under

sub- rule (1) cause to be prepared the lists 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.

"8. Provisional and final publication of lists of voters.-

(1) As soon as a list of voters is prepared under rule 5, it shall be published by the authorized 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 authorized officer for an amendment of the list of voters.

(1-A) After receiving applications if any, under sub-rule (1) a revised draft list of voters shall be published by the authorized officer by affixing a copy thereof on the notice board of Agricultural Produce Market Committee and at some conspicuous place in the principal market yard of the market area, along with a notice stating that any person who wishes to raise any objection against any new name entered in this list, may apply within seven days from the date of publication of this notice to the authorized officer for an amendment in the revised draft list of voters.

(2) If any application is received under sub-rule (1-A), the authorized 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."

11. As transpiring from the said Rule 7, so far as agriculturist constituency is concerned, the cooperative society dispensing agricultural credit in the market area has to communicate the full names of the members of its managing committee together with the place of residence of each member to the authorized officer. The authorized officer within seven days from the date fixed has to cause to be prepared the lists of voters as required by rule 5 on the basis of

information received under Sub-Rule (1) and if necessary after making such inquiry as he may deem fit. Hence, the authorized officer has been empowered to make such inquiry as he may deem fit before preparing the list of voters as required by Rule 5 of the said Rules. Again as per Rule 8(1), as soon as a list by

voters is prepared under Rule 5, the authorized officer is required to publish the provisional voters" list along with the notice stating inter alia 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 name of some other person has been wrongly entered therein or has not been correctly entered, may within 14 days from the date of publication and the notice, apply to the authorized officer for an amendment of the list of voters. Now, at this juncture the authorized officer is expected to make some inquiry as to whether the person who claims that his name has not been entered in the voters" list should be entered or not, or as to whether the person whose name is claimed to have been wrongly entered in the voters" list should be deleted or not. Merely because somebody makes application that his name should have been included or that somebody's name has been wrongly included, the authorized officer is not expected to mechanically include or exclude the names. He has to make at least a preliminary inquiry with

regard to the applications received by him after the publication of the provisional list and before publishing the revised voters" list.

12. Hence, from the conjoint reading of Rules 7 and 8 of the said Rules it transpires that the authorized officer is empowered to make an inquiry, as he may deem fit before publishing the provisional voters" list and also before publishing the revised voters" list in respect of the applications, if received by him against the inclusion or exclusion of any person in the provisional voters" list. When the authorized officer is expected to consider the applications or objections with regard to the inclusion or exclusion of the names of the persons in the provisional voters" list, he is expected to apply his mind and take decision whether such person or persons in respect of whom he has received the application or objection should be included in the revised voters" list or not. At this juncture, though the scope of inquiry would be very limited, nonetheless he would be perfectly justified in making the inquiry as to whether a particular person shown as member of the managing committee of the society is, in fact, member of the managing committee of such society or not, more particularly when the objection is raised in that regard, and the material placed before him show that such person could not have been included in the voters being not the member of the managing committee of a particular society.

In the instant case, the respondent No.4 having raised the objection that the members of the managing committee of the petitioner as shown by the petitioner could not be the members, they having not been elected as per the provisions contained in the Societies Act, the authorized officer was expected to look into the matter and take a decision. If the authorized officer after giving an opportunity of hearing to the petitioner society and after considering the material placed before him, had come to the conclusion that the petitioner society without conducting election, had selected 21 members for its managing committee only with a view to increase the number of voters in the election of

APMC, Mandal, it could not be said that the authorized officer had exceeded his jurisdiction or had acted without his jurisdiction or powers. As stated earlier, Section 74 of the Societies Act mandates that only elected members shall be entitled to be the members of the managing committee. Hence, the constitution of managing committee consisting of 21 members selected by the petitioner society without election was ex facie not in consonance of Section 74 of the Societies Act. The Court, therefore, does not find any illegality or infirmity in the impugned decision of the Authorized Officer.

13. At this juncture, it is very relevant to mention that though the provisions contained in Section 11 of the said Act, which deals with the

constitution of the market committee have been substantially amended by the Government Act No.14 of 2015, changing the very eligibility criteria of the members of different constituencies for the election of market committees, no corresponding amendments have been made in the Rules in conformity with the said amended Section 11 of the said Act. As a result thereof, the requirement of furnishing the details by an agriculturist or a trader or a cooperative society to the authorized officer as mentioned in the Rules do not tally with the requisite criteria laid down in the provisions contained in the amended Section 11 of the said Act. If the Rules are suitably amended requiring the concerned agriculturist, trader or cooperative society to furnish the details as per the criteria laid down in the amended Section 11, many litigations could be avoided. It is expected that the State Government shall look into the matter at the earliest and suitably amend the Rules.

14. In that view of the matter, the Court is of the opinion that apart from the fact that the petitioner has an alternative efficacious remedy of approaching the authority under Rule 28 of the said Rules by filing election petition, the Court also does not find any illegality or infirmity in the impugned order passed by the authorized officer. The present petition, therefore, being devoid of merits deserves to be dismissed.

15. In view of the above, the petition is dismissed. Copy of the order be sent to the Chief Secretary and the Secretary, Agriculture and Cooperation Department, Government of Gujarat, Gandhinagar.