
(1967) 10 GUJ CK 0005
In the Gujarat High Court

Takhatsing Gulabsing

APPELLANT

Vs

Chandulal Shivilal Shah and Others

RESPONDENT

Date of Decision : 04-10-1967

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Panchayats Act, 1961 — Section 2(5), 2(5), 24, 24, 44

Citation : (1968) 9 GLR 987

Hon'ble Judges : J.M. Sheth, J

Bench : Single Bench

Judgement

J.M. Sheth, J.—This is a writ petition filed under Article 227 of the Constitution of India by the petitioner against the opponents, praying that the order passed by the opponent No. 5, the Civil Judge, Junior Division, Modasa, Mr. H.P. Vora, in an Election Petition No. 1 of 1967, filed by the opponent No. 1 be set aside on the ground that the opponent No. 5 had no jurisdiction to entertain such election petition.

2. The facts leading to this petition are briefly stated as under:

The office of the Sarpanch of the Gram panchayat of Malpur fell vacant as the former Sarpanch was elected to Taluka Panchayat. In a meeting of the panchayat, held on 11-4-1967, the present petitioner was elected as a Sarpanch of Malpur Gram panchayat. The opponent No. 1 had filed a nomination paper for standing as a candidate for the election of a Sarpanch of the said Gram panchayat. His nomination paper was rejected. The nomination paper of the present petitioner was accepted. He, being the only validly nominated candidate, was declared duly elected as a Sarpanch of the said Gram panchayat. The opponent No. 1 thereupon filed an election petition No. 1 of 1967 in the Court of the Civil Judge, Junior Division, at Modasa, challenging the validity of the said election. One of the grounds was that that his nomination was improperly rejected. The present petitioner filed a written statement in that election petition and had amongst other pleas taken up a plea that the learned Civil Judge had no

jurisdiction to entertain the said election petition. It was his contention that the validity of the election for the office of a Sarpanch can be challenged only before a competent authority. These contentions raised by him did not find favour with the learned Civil Judge. He found that the election was invalid on several grounds. He, therefore, allowed the election petition and declared that the election was invalid and set aside the election. Against that order, the present writ petition has been filed by the original opponent No. 1.

3. The learned Advocate, Mr. Mehta, appearing on behalf of the petitioner, for Mr. Daru, contended that the learned Civil Judge had no jurisdiction to entertain the election petition in which the validity of an election of a Sarpanch of Gram panchayat was challenged. He contended that such election could only be challenged in a proper proceeding, filed before a competent authority. In support of his argument, he invited my attention to Sections 44(6), 53, 24 and 2(5) of the Gujarat Panchayats Act, 1961, which will be hereinafter, referred to, as the Act.

4. Before I refer to those sections, I first propose to refer to some other sections. Section 17 deals with a topic in regard to a term of panchayat and reconstitution thereof on expiry of term. Section 18 deals with a topic regarding the Election of members to a panchayat. It lays down the mode as to how the election should be conducted.

Section 24, Sub-section (1) of the Act states:

If the validity of any election of a member of a panchayat is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within 15 days after the date of the declaration of the results of the election, apply to the Civil Judge (Junior Division), and if there be no Civil Judge, (Junior Division) then to the Civil Judge (Senior Division), (hereinafter referred to as "the Judge") having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.

(2) An enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary, pass an order, confirming or amending the declared result, or setting the election aside. For the purposes of the said enquiry the said judge may exercise all the powers of a Civil Court and his decision shall be conclusive....

A perusal of this section clearly indicates that the validity of an election of a member of a panchayat can be challenged in a proceeding taken before a Civil Judge, Junior Division and if there be no Civil Judge, Junior Division, then to the Civil Judge, Senior Division, as contemplated by Section 24. It does not refer to the validity of election of a Sarpanch of a Gram panchayat. It relates only to the validity of election of a member of a panchayat.

Section 44 of the Act falls in Chapter 5 which contains provisions relating to

Presiding Officers of Panchayats and Members of Panchayats.

In Part I of it, there are provisions relating to Gram Panchayats and Nagar Panchayats. The material part of Section 44 for our purposes, runs as under:

(1) On the constitution of a gram or nagar panchayat or on its reconstitution u/s 17 or under any other provision of this Act, there shall be called the first meeting thereof for the election of its Sarpanch and Upa-Sarpanch or as the case may be, its Chairman and Vice-chairman....

... (3) The first meeting shall be presided over by such officer as the competent authority may by order appoint in that behalf. Such officer shall have such powers and follow such procedure as may be prescribed but shall not have the right to vote.

(4) No business other than the election of the Sarpanch and, Upa-Sarpanch or as the case may be, the Chairman and the Vice-chairman shall be transacted at the meeting.

... (6) In the event of a dispute arising as to the validity of an election under the foregoing provisions of this section, the dispute shall be referred to the competent authority for decision. The decision of the competent authority shall be final and no suit or other proceeding shall lie against it in any Court.

These provisions of Section 44 of the Act make it abundantly clear that in case the validity of an election of a Sarpanch of the Gram Panchayat is to be challenged, it can be challenged by referring the dispute to the competent authority for a decision. Furthermore, the decision of the competent authority is given a finality and no suit or other proceeding can lie against it in any Court. It is, therefore, evident that if the validity of an election of a Sarpanch held under the provisions of Section 44, is sought to be challenged, it can be challenged only before the competent authority.

Section 53 of the Act deals with a topic regarding filling up of vacancies. In the instant case also, the office of Sarpanch of the Gram Panchayat in question fell vacant as the Sarpanch was elected to Taluka Panchayat. This Section 53 will, therefore, apply in a case like the instant case. Sub-section (2) of it, which is material for our purposes, runs as under:

The meeting for the election of the Sarpanch or Upa-Sarpanch of a Gram Panchayat or of the Chairman or Vice-chairman of a Nagar Panchayat under Sub-section (1) shall be convened by the competent authority on such date as it may fix, and election shall be held in the same manner in which the election of a Sarpanch or Upa-Sarpanch or Chairman or Vice-chairman is held u/s 44 and the provisions of that section shall so far as may be, apply in respect of such elections.

These words underlined by me have been added to Sub-section (2) by the Act No. 7 of 1965 Section 8. It is, therefore, evident that in a case like the present

case, in view of the said addition to Sub-section (2) of Section 53, the election is to be held as provided by Section 44 and the provisions of that section shall, so far as may be, apply in respect of such elections also. It is, therefore, evident that in a case like the present case, if the validity of the election of a Sarpanch of the Gram Panchayat is to be challenged, the Forum is not the Civil Judge, Junior Division as contemplated by Section 24 of the Act, but the forum is the competent authority as provided by Section 44(6) of the Act. Both these Sections 44 and 53 are to be read together. On reading together those sections and also on taking into account the fact that Section 24 only provides a remedy for challenging the validity of an election of a member of the Panchayat, it is evident that such an election can only be challenged as contemplated by Section 44(6) of the Act and not as contemplated by Section 24 of the Act.

Section 2(5) of the Act defines "competent authority" It is an agreed position that the competent authority is Malpur Taluka Panchayat. It appears from the judgment of the learned Civil Judge that the present opponent No. 1 has also filed an application before the competent authority, challenging this particular election. It is thus quite clear that the learned Civil Judge had no jurisdiction to entertain the election petition in question and had no power to set aside the election of the present petitioner as a Sarpanch. That order has, therefore, got to be set aside.

5. The learned Civil Judge has relied upon a decision in the case of Patel Kanchanbhai Mangalbhai v. Maneklal Maganlal Gandhi VI Gujarat Law Reporter 200. The relevant observations made therein are as under:

There is no hard and fast rule that where there is an alternative remedy, the Court should not entertain a petition under Article 226 or refuse to grant relief to the petitioner. There is always a discretion vested in the Court to entertain the petition and grant relief to the petitioner notwithstanding the existence of the alternative remedy. Of course the discretion is a judicial discretion and the exercise of it must consequently depend on the facts and circumstances of the case.

That decision only lays down that even though there is an alternative remedy provided, in a fit case, the High Court can exercise its jurisdiction under Article 226 and entertain a writ petition and may issue a proper writ. That decision has nothing to do with the question involved in the present case. The order passed by the learned Civil Judge is, therefore, Without jurisdiction and it has got to be set aside.

6. Taking into consideration the circumstances of the case, it will be proper and just to order each party to bear its own costs in this writ petition.

7. The Special Civil Application No. 1129 of 1967 is allowed. The order passed by the learned Civil Judge, Junior Division, Modasa, in the Election Petition No. 1 of 1967, setting aside the election of the petitioner is set aside on the ground that he had no jurisdiction to entertain and hear the election petition. Each party is

ordered to bear its own costs in this Petition. Rule is made absolute.