
(1965) 07 GUJ CK 0020
In the Gujarat High Court

Vir Vikramsinhji Mulvaji Jadeja

APPELLANT

Vs

Chunilal Dahyabhai Patel and Others

RESPONDENT

Date of Decision : 27-07-1965

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 14(1), 55(5), 55(5), 55(6), 55(6)

Citation : (1965) 6 GLR 836

Hon'ble Judges : J.M. Shelat, C.J;A.S. Sarels, J

Bench : Division Bench

Judgement

J.M. Shelat, C.J.—The petitioner challenges the election of the respondent No. 1 as the President of Lodhika Gram Panchayat and prays that he himself be declared as duly elected as the President and further prays that any other appropriate writ order or direction should be issued in that behalf.

2. The undisputed facts are these: The petitioner was a member of Lodhika Taluka Panchayat in his capacity as the Sarpanch of the Lodhika Gram Panchayat. The respondent No. 1 was a member of the said Taluka Panchayat in his capacity as the elected chairman of the co-operative societies within the Taluka. On 24-1-1963 the respondent No. 1 was elected as the President of the Lodhika Taluka Panchayat. His tenure as the Chairman of his co-operative Society expired on 31-12-1963 and therefore he ceased to be a member of the Lodhika Taluka Panchayat. The District Development Officer who is respondent No. 3 having come to the conclusion that he viz. the respondent No. 1 ceased to be the President ordered a fresh election for the office of the President of the Lodhika Taluka Panchayat. That fresh election took place on 24-1-1964. By that time the respondent No. 1 had again become eligible for election. He and the petitioner were the two contestants in the election to the office of the President. The Presiding Officer at the meeting where the election took place was respondent No. 2. In that election the respondent No. 1 was declared by the Presiding Officer as duly elected. He had secured according to the Rojkam (proceedings) 21 valid votes as against 19 secured by the petitioner. The petitioner challenges that

election.

3. The challenge to the election is on three grounds: viz (1) Two persons who were entitled to vote at the election were wrongly prevented by the Presiding Officer to vote. These two persons according to the petitioner were one Ranubha Tapubha and one Bharatsinhji Harisinh. According to the petitioner Ranubha Tapubha was the Up-Sarpanch of a Gram Panchayat and as such he was entitled to vote but was prevented by the Presiding Officer from exercising his right to vote on the ground that he was not a Sarpanch. As regards Bharatsinhji Harisinh who was the Sarpanch of Pal Pipalia and was as such entitled to vote the Presiding Officer took the view that he being a part-time Government servant had become disqualified. The petitioners contention is that in both these cases the Presiding Officer was in error. (2) Two votes were wrongly rejected as invalid. It appears from the averments made in para 10 of the petition read along with the Rojkam produced along with the affidavit in reply that three ballot papers were rejected by the Presiding Officer. Of these three ballot papers two ballot papers were marked with the required crosses against the name of the petitioner but those marks were not placed in the column set apart for the voters mark. On that ground the ballot papers were rejected. The petitioners contention is that this rejection was contrary to law and illegal. (3) The Presiding Officer respondent No. 2 had according to the petitioner no right to vote at the election but had voted in favour of respondent No. 1. These are therefore the three grounds on which the election in this case is challenged by the petitioner.

4. The petitioner it appears first approached the competent authority under Sub-section (6) of Section 55 of the Gujarat Panchayats Act 1961 but as the competent authority refused to entertain his application on the ground that it had no jurisdiction he has come to this court.

5. The respondent Nos. 1 and 2 have appeared and the respondent No. 1 has filed an affidavit in reply. In that affidavit he denies that the two persons who were prevented from voting namely Ranubha Tapubha and Bharatsinhji Harisinh were entitled to vote. He denies that the two votes in favour of the petitioner which were rejected by the Presiding Officer were illegally rejected and he contends that the petitioner is estopped from pleading that they were valid votes in his favour. He also denies that the respondent No. 2 had voted at the election and urges that a fresh election was not necessary as in law he continued to be the President. This last contention however was not argued or urged at the hearing in this court on behalf of the respondent Nos. 1 and 2.

6. After the arguments were heard for some time Mr. Shah who appears for the petitioner stated that he did not want to press his first and third points. That being so we are called upon to consider only the second of the three points on which the election is challenged in this case. The relevant facts in respect of that ground may first be set out. It appears that after the voting had taken place and when the ballot papers were counted the Presiding Officer held 40 ballot papers to be valid and rejected three. In respect of the three ballot papers which were

rejected a copy of the Rojkam which has been produced on behalf of the respondents and which is in Gujarati when translated reads as under:

The Secretary had given necessary directions to the Chairman as regards the objections raised in this meeting as per the rules and the Gujarat Panchayats Act and accordingly the voting was held. On completion of voting the ballot box was sealed in order to preserve ballot papers and it has been kept in our custody. These ballot papers one showing cross mark against the name of Vir Vikramsinhji one having blank cross mark and one having cross mark in the space meant for serial number against the name of Vir Vikramsinhji are declared to be invalid.

Mr. Shahs contention is that this action on the part of the Presiding Officer was illegal in so far as it related to the two ballot papers in which the cross were against the name of the petitioner though not exactly in the column meant for that purpose. In order to appreciate this contention it is necessary first to refer to the Rules relating to the manner of voting in the election.

7. These Rules are the Gujarat Taluka and District Panchayats (President and Vice President) Election Rules 1962 Rule 1 deals with short title; Rule 2 with definitions; Rule 3 place of meeting; Rule 4 notice of meeting; Rule 5 Mode of serving notice; Rule 6 Nomination of candidates; Rule 7 Scrutiny of nominations and Rule 8 with Election. Rule 8 reads as follows:

(1) If only one candidate has been duly nominated he shall be declared to have been elected as President.

(2) If more than one candidate have been duly nominated the members present at the meeting shall proceed to elect President by ballot. The ballot paper shall be in form B appended to these Rules.

(3) If two candidates have been duly nominated the candidate who obtains larger number of votes shall be declared to have been duly elected as the President.

(4)...

(5)...

(6) If at the final voting (at which there are only two candidates) there is an equality of votes the result of the election shall be decided in accordance with Sub-section (5) of Section 55 or as the case may be Sub-section (5) of Section 679.

The rest of the Rules are not relevant for the purpose of this petition. The form B which is referred to in Rule 8(2) is a form of the ballot paper wherein there are two columns-the first column is for the name of the taluka or district panchayat and the second is for full name of the candidate proposed for election as President/ Vice President. On the opposite side of these columns there is blank space headed voters mark. At the foot of the form the following directions are given.

A cross (x) is to be put against the name of the candidate to whom the voter desires to give his vote.

Reading Rule 8(2) along with this form B therefore it would appear that the Rule directs that the vote should be recorded by putting a cross against the name of the candidate to whom the voter has to give his vote and that cross should be placed in the column headed voters mark. It would appear from the Rojkam that the crosses in case of both the ballot papers in dispute were against the name of the candidate i.e. the petitioner in one case against his name but not in the column headed voters mark and in the other case in the column where serial number was shown.

8. Mr. Shah on behalf of the petitioner argues that the mere fact that the crosses in this case were not placed exactly in the column meant for "voters mark is not sufficient to invalidate the ballot of the petitioner. It would appear that the Gujarat Taluka and District Panchayats (President and Vice President) Election Rules 1962 while prescribing in Rule 8(2) read with the form B the manner in which the vote shall be recorded namely by putting a cross and while indicating in the form that the cross shall be put in the place shown as voters mark does not provide for the consequences of the non-observance of this procedure. In this connection Mr. Shah invited our attention to Rule 16 of the Gujarat Taluka Panchayats (Election) Rules 1962 which prescribe the manner of election of the members of a Taluka Panchayat under Clause (iii) of Sub-section (1) of Section 14 of the Gujarat Panchayats Act 1961 The said Rule 16 reads as under:

16. Void ballot papers: The Election Officer shall reject as void any ballot paper:

(i) which is unmarked;

(ii) on which the vote has recorded more votes than he is entitled to give;

(iii) the marking on which is such as to make it doubtful as to the candidate to whom the vote has been given or

(iv) which bears any writing or mark by which in his opinion the voter can be identified;

Provided that in the case of Clause (iii) the ballot paper shall be void only in respect of that candidate in respect of whom the making is doubtful.

This Rule therefore provides for the circumstances in which the ballot paper is to be rejected and states that the ballot paper so rejected shall be void as a ballot paper. There is no such provision in the Gujarat Taluka and District Panchayats (President and Vice President) Election Rules 1962 and no such consequence as to the legality of a ballot paper which does not observe this requirement is there laid down. That being so on settled principles of interpretation the direction as to the place where the mark (voters mark) is to be placed must be construed as directory and the question then would be what is the effect under the general law of election of a mark which is not placed in the column meant for the same.

9. In this connection Mr. Shah invited our attention to a decision of Patna High Court in Krishna Nandan Sahay and Another Vs. Ravaneshwar Misra and Others, . That case related to an election of a representative from amongst the members of the Legislative Council to the Senate of the Bihar University in accordance with Section 17 of the Bihar University Act 1960 There were two candidates. The total number of votes was 78 out of which two were rejected and out of the balance of 76 votes each candidate secured 38. In these circumstances the Presiding Officer of the Legislative Council ordered a fresh election. Against that order both the candidates filed writ petitions in the Patna High Court. The question for consideration before that High Court was about the validity of two of the ballot papers in which votes were recorded. In that case the ballot paper was in substance in the same form as Form B in the present case. In one of the ballot papers the cross was put against the name of the candidate in the column meant for the cross but there was also another cross in the column where the name of the candidate was to be written. It was contended on behalf of the candidate that the cross over his name was on account of folding of the ballot paper but the High Court proceeded to consider the case on the footing that in fact two crosses were placed. In the other ballot paper the cross against the name of the candidate who happened to be the same candidate as in the first ballot paper was placed in front of the candidates name that is to say in the space meant for serial number and not in the column meant for marking the cross. The High Court after considering some English decisions to which we shall refer presently held that the ballot paper should not be rejected as void merely because there are two cross marks against the name of the candidate or the cross marks are put in front of the name of the candidate instead of within the ruled compartment opposite the name of the candidate if the marks are placed in such a position in the ballot paper as to leave no doubt for whom the voter intended to vote. Of the English decisions referred in that judgment one is the case of Woodward v. Sarsons. (1876.) 10 L.R. .C.P. 733. There the election for the office of Town Councillor from the Nichells Ward of Borough of Birmingham was challenged on several grounds which it was urged made the election void. Lord Coleridge who delivered the judgment set out first the broad propositions of law as to when an election is to be declared void under the common law applicable to Parliamentary elections. His Lordship observed that the election can be declared void if it was so conducted that the tribunal which is asked to avoid it is satisfied as a matter of fact either that there was no real election at all as for example when a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference by general corruption or general intimidation or by being prevented from voting by want of the machinery necessary for voting or that the election was not really conducted under the subsisting election laws. Examining the second part of the proposition as to when an election can be said to be not really conducted in accordance with the subsisting election law the learned Judge observed that the question to be asked is substantially the same namely whether the departure from the prescribed method was so great that the tribunal was satisfied as a

matter of fact that the election was not an election under the existing law. His Lordship then referred to the provisions of the Ballot Act and also of the rules and directions issued thereunder. So far as the provisions of the Ballot Act were concerned he pointed out that they were mandatory in nature but all that they provided was that the voter having secretly marked his vote on the paper and folded it up so as to conceal his vote shall place it in an inclosed box. So far as the rules and directions were concerned His Lordship having examined them came to the conclusion that they were directory in nature and were therefore to be obeyed or fulfilled substantially. Now one of the rules or directions read as follows:

The voter will go into one of the compartments and with the pencil provided in the compartment place a cross on the right hand side opposite the name of each candidate for whom he votes thus X.

Having examined the various directions the learned Judge set out the position in law as under (P. 748):

The result seems to be as to writing or mark on the ballot paper that if there be substantially a want of any mark or a mark which leaves it uncertain whether the voter intended to vote at all or for which candidate he intended to vote or if there be marks indicating that the voter has voted for too many candidates or a writing or a mark by which the voter can be identified then the ballot paper is void and is not to be counted or to put the matter affirmatively the paper must be marked so as to show that the voter intended to vote for some one and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote nor so as to mark it possible, by seeing the paper itself or by reference to other available facts to identify the way in which he has voted.

Therefore so far as it concerns the manner of voting by placing a mark in a particular column in the ballot paper the general law of election does not invalidate the vote so long as there is no uncertainty from the ballot paper on the question whether the voter intended to vote or not or on the question as to the candidate for which he intended to vote. If there is no uncertainty on these points the ballot paper cannot be held to be void for non-observance of the rule relating to the place where the mark is to be placed. The same principle is enunciated in another English decision referred to in the judgment of the Patna High Court namely *Pontardawe Rural District Council case; V. Hodgson v. Evans* 1907 KB 313. There the direction relating to the voting was that the voter shall place a cross on the right-hand side opposite the name of his candidate for whom he votes Ridley J. in a short judgment observed as follows:

As long as the mark is opposite the name of the candidate so as to make it clear that the voter intended to vote for him the vote is good. If the mark were above

or below the name it Bottled not be clear and the paper would be void for uncertainty.

Now applying the principles deducible from these decisions with which we with respect agree to the facts of the present case it will be noticed that in both the ballot papers which were held by the Presiding Officer to be invalid the voter had placed one cross and the cross was so placed as to indicate that he intended to vote. There is no uncertainty in that regard. In both the ballot papers the voter had placed the cross against the name of the petitioner. There was therefore no uncertainty also as to the candidate for which the voter intended to vote. That candidate was the petitioner. It is true that he did not place his cross in the column meant for the voters mark but that by itself having regard to the principles earlier stated is not a valid ground for rejecting the ballot paper as invalid.

10. It is then contended by Mr. Mankad on behalf of the respondent No. 2 that even so these two ballot papers and the votes recorded thereunder should not be taken into consideration because so he argues the petitioner is estopped from contending that they were valid votes. He also contends that even if these are in fact valid votes the substance of the matter is that the Presiding Officer had a right to decide whether the votes were or were not valid votes. That question he submits was a question of fact and this court was not entitled to sit in judgment like a court of appeal on the decision of the Presiding Officer on such a question of fact. We shall now proceed to consider these two submissions.

11. There is in our view little substance in the contention that the petitioner is estopped from contending that the two votes were valid votes. The contention being based wholly on the wording of the Rojkam dated 24 a copy of which has been produced by the respondent No. 1 along with the affidavit in reply. It is necessary to refer to that Rojkam in greater detail. The Rojkam is signed by the Presiding Officer the two candidates and the Secretary of the Taluka Panchayat. There are two paragraphs in that Rojkam. In the first paragraph of the Rojkam it is stated that the Presiding Officer has decided some objections. This obviously refers to the objections of Ranubha Tapubha and Bharatsinhji Harisinh. It then goes on to say that after the voting was over the sealed boxes were brought before the Presiding Officer and after the seals were examined they were opened in the presence of the Presiding Officer. After removing the seals the ballot papers were counted one by one and it was found that Vir Vikramsinhji had obtained 19 votes and Chunilal Dahyabhai Patel 21 votes and that the Presiding Officer had thereby satisfied himself that Chunilal Dahyabhai Patel had obtained two more votes. The Rojkam then goes on to say And this is correct and the result which is being declared is acceptable to us. At the time of counting of the votes each of us was shown the voting papers and we have satisfied ourselves about the correctness of the voting papers. The first paragraph of the Rojkam ends here. Pausing here for a moment it may be observed that it is this part of the recitals in the Rojkam which is being relied on by Mr. Mankad in support of

his contention of estoppel. Before examining this contention however it is relevant to complete the examination of the remaining part of the Rojkam. In the second paragraph of the Rojkam it is stated that as regards the objections raised at the meeting the Secretary had given necessary guidance to the Presiding Officer in the light of the Gujarat Panchayats Act and the Rules and the voting was held accordingly. It further goes on to say that after the voting was over the boxes were sealed and kept in custody. Thereafter follows the recitals relating to three invalid votes which recitals have already been set out earlier.

12. Now reading the Rojkam as a whole it is not possible to hold that the petitioner had accepted the invalidity of the two votes recorded in his favour which were rejected by the Presiding Officer. The statement in the Rojkam as to the correctness of what was done and the acceptance of the result related obviously to the unsealing of the boxes taking out of the ballot papers counting of the ballot papers and the result of counting. It meant that the signatories did not dispute the correctness regarding 19 and 21 votes which were there referred to. It could not reasonably be inferred that thereby the petitioner was accepting the rejection of the two votes in his favour in respect of which reference was made later in the Rojkam. In fact it appears from the petition that soon after the declaration of the result the petitioner had approached the competent authority against the declaration of the result under Sub-section (is) of Section 55 of the Gujarat Panchayats Act but the competent authority did not entertain the application on the ground that it had no jurisdiction to decide the question. In our view therefore there has been no such conduct on the part of the petitioner as to justify the conclusion that he had accepted as correct and valid the rejection by the Presiding Officer of the two ballot papers which recorded votes in his favour.

13. Now the question is whether on the facts proved an estoppel would arise against the petitioner that is to say whether he is estopped from contending that the votes were valid and should have been counted in his favour. Section 115 of the Evidence Act which is relevant provides as under:

115. When one person has by his declaration act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

An estoppel may arise in various ways and one of ways in which estoppel may arise is by conduct and it is this kind of estoppel which is being urged by the respondents against the petitioner. As to this estoppel the general principle as stated by the Lord Chancellor in the case of Cairncross v. Lorimer 3 H.L.C. 829 and quoted in by the Privy Council in Sarat v. Gopal 19 I.A. 203 at page 206 is as under:

The doctrine will apply which is to be found I believe in the laws of all civilised

nations that if a man either by words or by conduct has intimated that he consents to an act which has been done and that he will offer no opposition to it although it could not have been lawfully done without his consent and he thereby induces others to do that from which they otherwise might have abstained he cannot question the legality of the act he had so sanctioned to the prejudice of those who have so given faith to his words or the fair inference to be drawn from his conduct.

There should therefore be such conduct as amounts to consent on the part of the person against whom an estoppel is pleaded such consent being necessary to validate the act of the party affected. The act of the party affected should be based on that conduct and should have led to a change in his position which otherwise would not have occurred but for the conduct of the party against whom estoppel is made. In this case the facts do not establish that there was any such conduct on the part of the petitioner. In fact his consent if any would not give rise to any legal rights in favour of the respondent as the decision as to validity or otherwise was in this case a question of law. It cannot be said that there was any act on the part of the petitioner which led respondent No. 1 to change his position to his prejudice. In the circumstances the principle of estoppel is not attracted in this case. What has happened is that the Presiding Officer has as we shall presently point out acted contrary to law and against such an act a plea estoppel cannot arise. The contention about estoppel therefore is not sustainable.

14. It is then argued by Mr. Mankad that what has happened in this case is that the Presiding Officer has decided a question of fact namely whether the vote recorded in a particular manner was a valid vote and against that decision this court cannot sit in judgment. This argument is not consistent with the recitals in the Rojakam to which reference has been made earlier. Those recitals show that the two ballot papers with which we are concerned were rejected by the Presiding Officer not on the footing that there was any doubt in his mind as to whether the voter had recorded his vote or as to whether the vote recorded was or was not for the petitioner but were rejected by him merely on the ground that the votes recorded therein were not recorded in the column meant for voters mark. The question whether the voter intended to vote or whether the vote recorded by him was for a particular person would no doubt be a question of fact. But the question whether the manner in which the vote was recorded made the vote invalid by reason of the provisions of the Rules is not a question of fact but is a question of interpretation of the Act and the Rules under which the vote has to be recorded. As to this interpretation which is the only question for consideration we have earlier pointed out that the Rules in that regard are directory and under the general law of election the votes cannot be held invalid but in fact they must be held as valid votes recorded in favour of the petitioner.

15. The result is that the grounds urged by the petitioner in that regard are well founded and deserve to be accepted. The question then is as to the order that

we should pass in this case. Mr. Mankad says that the order should be an order of setting aside the election. We are unable to accept this submission. In the view which we have taken the position is that each of the candidates i.e. the petitioner and respondent No. 1 secured 21 valid votes and that being so the Presiding Officer was under Sub-section (5) of Section 55 of the Gujarat Panchayats Act 1961 required to declare the result by drawing a lot. It is only that concluding part of the process of election which has not been observed by the Presiding Officer in accordance with law. That being so what is invalidated is not the election as a whole but the declaration made by the Presiding Officer of the result of the election. That being so in our view it would be enough to restore the position which would have obtained if the Presiding Officer had observed the law as regards the two ballot papers and had then proceeded in accordance with Section 55(5).

16. We therefore direct that the Presiding Officer should proceed on the footing that the two ballot papers which were rejected as invalid were in fact valid and were required to be taken into consideration and that if so considered the petitioner and respondent No. 1 each would have 21 votes. We further direct that the Presiding Officer should on that footing proceed to complete the result of the election in accordance with the procedure prescribed in Sub-section (5) of Section 55 of the Gujarat Panchayats Act 1961. If as a result of the following the procedure laid down in that sub-section the lot that is drawn is in favour of the petitioner he should be declared to have been elected. If however the lot that is drawn is in favour of the respondent No. 1 then as we are informed he has ceased in the meanwhile to be a member of Panchayat as representing chairman of the cooperative societies it would not be feasible for the Presiding Officer to declare him as elected and in that case it would become necessary to hold a fresh election.

The petition allowed. Rule made absolute to the extent above stated. The respondents Nos. 1 and 2 to pay petitioners costs of this petition.