
(1996) 03 GUJ CK 0033
In the Gujarat High Court

Vishnubhai K. Thaker

APPELLANT

Vs

Upadhyay, District Registrar Sidhpur and Another

RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Gujarat Agricultural Produce Markets Act, 1963 — Section 6

Gujarat Agricultural Produce Markets Rules, 1965 — Rule 11, 5, 6

Citation : (1996) 2 GLR 288

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Judgement

M.S. Shah, J.—The following operative order in the present petition was pronounced on 1st March 1996. For constraints of time, the reasons could not be dictated at that time.

Rule Mr. K.M. Mehta, learned A.G.P., waives service of Rule. For the reasons to be recorded hereafter, the petition is allowed. The decision of respondent Mo. 1 taken on 1st March 1996 holding that the petitioner is not qualified to be a candidate at the election to be held on 12-3-1996 to Agricultural Produce Market Committee, Sidhpur, from the traders constituency is hereby set aside and it is declared that the petitioner is qualified to be a candidate from the traders constituency of the Agricultural Produce Market Committee, Sidhpur. Rule is made absolute accordingly with on order as to costs. Direct Service is permitted.

The following are the reasons for allowing the petition as per above order dated 8-3-1996.

2. The petition is filed by a member of the Sidhpur Taluka Sahkari Kharid Vechan Sangh Limited, that is, a Go-operative Marketing Society (Society for short). The petitioner's name was included in the final list of voters for the traders' constituency for election to the Agricultural Produce Market Committee, Sidhpur, in his capacity as a member of the society. The petitioner's nomination for elections scheduled to be held on 12th March 1996 was rejected as per order dated 1st March 1996.

3. The said decision is challenged in the present petition. 3rd and 5th March 1986 were public holidays. The petition came to be filed on 4th March 1996 and circulated on 6th March 1996. This Court issued notice returnable on 8th March 1996. On that day respondents filed affidavit-in-reply. Rule was issued and with the consent of the learned Advocates for the parties, the petition was taken up for final hearing.

4. Elections to the Agricultural Produce Market Committees (A.P.M.C. for short) are governed by the provisions of Gujarat Agricultural Produce Markets Act (hereinafter referred to as the Act) and the Gujarat Agricultural Produce Market Rules, 1965 (hereinafter referred to as the "Rules"). Section 11 provides for constitution of the market committee. The relevant portion of Section 11 reads as under:

II. Constitution of market committee: (I) Every market committee shall consist of the following members, namely:

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area;

(ii) Four members to be elected in the prescribed manner from amongst themselves by the traders holding general licenses;

(iii) two representatives of the Co-operative marketing societies situated in the market area and holding general licenses, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies.

Rule 5 of the Rules provides for three separate lists of voters as under:

(i) A list of members of managing Committees of co-operative societies dispensing agricultural credit in the market area (under Section 11(1)(i))

(ii) A list of traders holding general licenses in the market area and (under Section 11(1)(ii))

(iii) a list of members of managing committees of co-operative marketing societies situated in the market area holding general licenses (under Section 11(1)(iii)).

5. Rule 6 states that a person whose name is entered in the list of voters shall be qualified to vote at an election to which list of voters relates. Rules 7, 8 and 9 provide for preparation of the list of voters and three stages are provided for the same including the stage of inviting the objections. There is no dispute about the fact that the petitioner's name was included in the final list of voters for traders' constituency. Rule 10 provide?; for fixing stages of election and Rule 11 makes provisions for nominations. Rule 12 provides for deposit of nomination. Rule 13 provides for verification of nominations. Rule 14 provides for publication of list of nominations. Rule 15 provides for scrutiny of nominations and Rule 16 provides

for provides for scrutiny of nominations and Rule 16 provides for disposal of objections and rejection of nominations.

6. Rules 11 & 16 read as under:

11. Nominations: (1) Each candidate for election shall, on the date fixed under Clause (b) of Sub-rule (2) of Rule 10 deliver to the Election Officer a nomination paper in Form 1.

16. Disposal of objections and rejection of nomination: The Election Officer shall then examine the nomination papers and shall decide all objections which may be made at the time of scrutiny to any nomination and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, namely:

(i) that the proposer is a person whose name is not in the relevant list of voters, or

(ii) that the nomination has not been made in accordance with these rules.

(2) The Election Officer shall endorse on each nomination paper his decision accepting rejecting the same and if the nomination paper is rejected, shall record in writing brief statement of his reasons or such rejection. The scrutiny shall be completed on the day fixed in this behalf and shall not be adjourned on any ground.

7. In the instant case. Sidhpur Taluka Kharid Vechan Sangh Limited is a cooperative marketing society and is also holding a general licence as a trader. A representative of the said society was entitled to be included in the list of voters for traders constituency and its managing committee members were entitled to be included in the list of voters for the constituency of co-operative marketing societies. Since the list of voters is to comprise of individuals, the society had nominated the petitioner as a person entitled to vote in the traders constituency. A copy of the said nomination is produced on the record of the petition. At the time of hearing Mr. Mehta, learned A.G.P. also confirmed that the said nomination was sent by the society at the time of sending the petitioner's name for the inclusion in the list of voters. However, the controversy has arisen because the petitioner's nomination form is rejected on the ground that at the time of filing the nomination the petitioner had not produced any nomination or resolution of the society, of which he is a member, for contesting the election.

8. The nomination form was rejected solely on the said ground. Annexure-I to petition is a copy of the resolution dated 19th February 1996, passed by the society nominating the petitioner as a voter in the traders' constituency and also authorising the petitioner to contest as a candidate. The said resolution was, however, not produced before the election authority earlier.

9. Mr. P.K. Jani for the petitioner has contended that the petitioner's name was already included in the final list of voters in his capacity as a nominee of the

Society in the constituency of traders, as the said society is holding a traders' licence and is carrying on activities as a trader also, over and above carrying on its activities as a co-operative marketing society. The petitioner's name was not included in the list of voters in the traders' constituency in his individual capacity because the petitioner does not hold the licence as a trader and therefore, it was on account of the nomination made by the said society for the traders' constituency that the petitioner's name was included in the list of voters for the traders' constituency. Mr. Jani has further submitted that nowhere in the Rules there is any requirement that individual nominee of a society, whose (individual's) name is already included in the list of voters as a nominee of the society, is required to submit any resolution or nomination from the society for the purpose of contesting the election and that no such resolution or nomination is required to be produced along with the nomination form.

10. Mr. Jani has also submitted that the respondent has rejected the petitioner's nomination form under the erroneous belief that such a resolution of the society was required to be submitted at the time of nomination. Mr. Jani submitted that the respondent appears to be harbouring under the said erroneous impression on account of the provisions of Rule 18(1) of the Gujarat Specified Co-op. Societies Election to Committee Rules 1982. Rule 198(1) of the said Rules reads as under:

18. Nomination of candidates: (1) Any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and bye-laws and his name is entered in the list of voters:

Provided that where a society sends the candidate to stand at election such society shall pass a resolution in its managing committee authorising such candidature and the nomination form of such candidate shall be accompanied by a certified copy of such resolution:

Provided further that in the case of joint or associate members, only the member whose name stands first in the share certificate shall be eligible to be nominated as a candidate for the election.

Mr. Jani submitted that merely because the respondent is holding elections to the specified co-operative societies as well as to the A.P.M.C.s, the respondent has no power or authority to insist on the requirement for elections to specified societies at the time of holding elections to A.P.M.C.s.

11. Mr., Mehta, learned A.G.P., raised a preliminary contention that the petition should not be entertained as the election process has already commenced and, therefore, the Court should not interfere with the same, Mr. Mehta strongly relied on the judgment of this Court delivered in the case of Mehsana District Co-Operative Sales and Purchase Union Ltd. and Another Vs. State of Gujarat and Others, .

On merits, Mr. K.M. Mehta, learned A.G.P., contended that the petitioner's

nomination was invalid firstly because, the petitioner had not submitted any resolution of the society authorising the petitioner to contest at the election and secondly because, the said society is a co-operative marketing society whereas the petitioner is contesting from the traders' constituency.

12. As regards the preliminary contention pressed on behalf of the respondents, it is true that two Division Benches of this Court have laid down that elections should be concluded as early as possible according to the time-schedule and all controversial matters as well as disputes arising out of the elections including the right to vote or stand as a candidate should be postponed till after the elections are over so as to avoid impediment or hindrance in the election process. The anxiety of Courts has always been to ensure that the election process should not be arrested. However, after recognising the above principle, this Court has also held in the case of *Lajuben Jerambhai Bhil v. Ahmedabad Municipal Corporation and Ors.* reported in 1993(1) GCD 433 as under:

It is true that once the election process has started, it should be allowed to be completed without any interference of the Court and ordinarily the remedy is by way of election petition challenging the election. However, the question of rejection of nomination papers is such a question that if it can be resolved in proper time without disturbing the election process, the Court should try to see that it is resolved so that on that question, the entire election not only for one seat but for all the seats of that ward are not put into jeopardy and do not get set aside. However, if it is not possible to redress this grievance in time, the Court should refrain from interfering with the election process.

(emphasis supplied)

13. In the case of *Trikambhai Bhagwanbhai Patel v. State of Gujarat and Ors.* reported in 1992(1) GLH 5 at page 10 the elections were scheduled to be held on 21st November 1991. The nomination of the petitioner came to be rejected on 24th October 1991. The petition challenging the said rejection was allowed by judgment dated 19th November 1991 and the respondent-authority was directed to accept the nomination of the petitioner, as the Court found that the rejection of the nomination was on a technical ground which was not of a substantive character.

14. On merits of the petitioner's contentions as far as the first defence of the respondents is concerned, it does appear that the respondent has transplanted the requirement for nomination as per Rule 18 of the Rules for Elections to Specified Societies u/s 74-C of the Co-operative Societies Act into the A.P.M.C. Rules although the A.P.M.C. Rules do not contain any such provision requiring the production of a resolution of the society nominating him as a candidate, at the time of filing of nomination papers of the nominee-member, whose name has already been included in the list of voters in his capacity as a nominee of the society. Mr. Jani is right in contending that the A.P.M.C. Rules do not contain any such provision and therefore, the respondent was not justified in rejecting the

petitioner's nomination form.

15. It is also required to be noted that in the case of Lajuben Jerambhai Bhil (supra) this Court has held that "for consideration of validity of nomination papers, utmost liberal approach is required to be taken because the consequences of a technical or narrow approach might ultimately result into setting aside the election for the entire ward and number of candidates would be put to unnecessary great hardship. On the other hand, even if there is a small doubt the nomination paper has to be accepted leaving the question to be decided after the election by appropriate authority. Once a person is allowed to contest the election, there is no possibility of the entire election being set aside without clear proof that the election result is materially affected by improper acceptance of the nomination paper. Therefore, if there is any doubt, benefit of doubt should be given in favour of acceptance of the nomination paper and the nomination paper should be rejected only in dearest case."

16. It is in the light of above principle that the defences raised by the respondent are required to be considered. As discussed above, there is no rule requiring the nominee of a society included in the final voters' list to produce any nomination of the society for the purpose of contesting at the election. In view of this legal position, the first defence of the respondents cannot be accepted.

17. As far as the second ground for rejecting the petitioner's nomination is concerned, the said ground is not mentioned in the communication dated 1st March 1996 at Annexure - H to the petition (at pages 46-48). Apart from that, the said contention is also misconceived inasmuch as there is no dispute about the fact that the society is not merely a co-operative marketing society but it is also a trading society and is holding a licence for trading. No provision of the Act or Rules is brought to the Court's notice to show that the constituency of traders and the constituency of co-operative marketing societies are two mutually exclusive constituencies. Mr. Jani has submitted that there are a number of co-operative marketing societies which are holding licences as traders and the names of their nominees directors are to be found in the lists of voters for the respective constituencies, although different individuals may be nominated/elected by the same society for the respective constituencies. The same view has been taken by this Court in the case of Husseinbhai Ibrahimbhai Malek Vs. P.V. Bhatt and Others, .

18. In view of the above discussion, it is clear that the rejection of nomination of the petitioner was patently illegal and since the mistake can be rectified at this stage without arresting the election process and without in any manner postponing the date of election which is scheduled to be held on 12th March 1996, the petition is entertained on merits, as even by allowing the petition, the Court does not arrest the election process nor does the Court postpone the holding of the elections. The petition, therefore, deserves to be allowed.