

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5943 of 2000

with

SPECIAL CIVIL APPLICATION No 8522 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NATVARSINH PRABHATSINH RATHOD

Versus

DIRECTOR OF AGRICULTURAL MARKETING & RURAL FINANCE

Appearance:

MR TUSHAR MEHTA for Petitioners No. 1-4
MR PREMAL JOSHI, AGP for Respondents No. 1-2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 29/11/2001

COMMON ORAL JUDGEMENT

1. What is challenged in these two petitions which has been filed under Article 226 of the Constitution of

India, is the judgment and order dated June 5, 2000, passed in Appeal No.9 of 2000 by the Director of Agricultural Marketing & Rural Finance, Gandhinagar, by which the election petition preferred by respondent No.3 under Rule 28 of the Gujarat Agricultural Produce Markets Rules, 1965 ('the Rules' for short) came to be allowed and thereby the result of the election of the agriculturist constituency of the Agricultural Produce Market Committee, Derol, has been set aside.

2. In order to appreciate the controversy raised in these petitions it would be advantageous to refer to the facts stated in Special Civil Application No.5943 of 2000.

3. From the averments made and the grounds stated in the petition, it is manifest that the petitioners are duly elected members of agriculturist constituency of the Agricultural Produce Market Committee, Derol. The election of the said committee was held on February 22, 2000, and the results were declared on February 23, 2000. Thereafter the first meeting of the market committee was convened under which the election of the Chairman and Vice Chairman also took place and petitioner No.1 was duly elected as Chairman of the said Committee.

4. Thereafter respondent No.3 herein filed an application dated February 28, 2000, before respondent No.1 wherein it has been alleged that the petitioners were not qualified to the said election. Since the said application was not in accordance with law, respondent No.1 directed respondent no.3 to file an appeal. Thereafter respondent No.3 filed an appeal on December 6, 2000, with the aid of Rule 28 of the Rules. According to the petitioners, any election dispute is required to be raised within a period of seven days and, therefore, the appeal filed by the present respondent No.3 is clearly time barred. However, the said appeal was entertained by respondent No.1 though respondent No.1 had no power to condone the delay. The petitioners had produced all the relevant materials before the respondent No.2 to show that they were agriculturists. The petitioners also produced Form No.7/12 (copy of the revenue record) showing that they were agriculturists. Respondent No.1, by impugned order dated June 5, 2000, has set aside the election of the agriculturist constituency of the said Committee which has given rise to the present petition.

5. Though no reply affidavit is filed, the petition is contested by respondents No.1 and 2 by making oral submissions.

6. Mr. Tushar Mehta, learned advocate who appears for the petitioners contended that any election dispute is required to be raised within a period of seven days and, therefore, the appeal filed is clearly time barred and there is no provision to condone the delay. However, respondent No.1 has entertained the said appeal and decided the same against the present petitioners de hors the statutory provisions contained in Sec.2(ii) of the Gujarat Agricultural Produce Markets Act, 1963 ('the Act' for short) and Rule 28 of the Rules. What is contended by the learned advocate is that voluminous evidences are produced before the officer who has accepted the nomination as well as before respondent No.1 which clearly establish that the petitioners are agriculturists within the meaning and definition of Sec.2(ii) of the Act. It is further contended by the learned advocate for the petitioners that, on perusal of the memo of appeal, it is seen that respondent No.3 had joined six members of the Agricultural Produce Market Committee, Derol, out of which four are the petitioners herein. The main contention raised in the memo of appeal is to the effect that respondents No.2,3,4 and 5 themselves are not agriculturists but their fathers are agriculturists. So far as the remaining two respondents mentioned in the appeal are concerned, the objection raised against them is to the effect that they are not doing the business within the market area of the said Committee. In view of the said election petition, respondent No.1 has exercised the powers and has set aside the election of the entire agriculturist constituency and a fresh election is ordered with respect to the entire constituency. It is further contended by the petitioners that Jashwantsinh Ramasinh Solanki and Mahendrasinh Chandrasinh Gohil were not even parties to the election petition filed by respondent No.3 nor they were served with any notice in spite of that the election of the entire constituency is set aside by respondent No.1 even qua those two members also and, therefore, the powers exercised by respondent No.1 is clearly a case of non-application of mind. What is stressed by the learned advocate for the petitioners is that the appeal is decided by respondent No.1 on the returnable date without even recording any evidence and on this count also the order is vulnerable and therefore he urged that the petitions may be allowed by quashing and setting aside the impugned order and declaring the election of the petitioners as valid. Alternatively, he submitted that the matter may be remanded for deciding afresh in light of the statutory provisions contained in Sec.2(ii) of the Act and Rule 28 of the Rules, and also in light of the

settled principle enunciated by a the Division Bench of this Court in the case of Chimanbhai P.Trivedi Vs. B.R.Katara, reported in 1996(1) GLR 512.

7. Mr.Premal Joshi, learned AGP for the respondents No.1 and 2 has contended that, in view of the observations made in the impugned order by respondent No.1 that the officer who has accepted the nomination has not examined whether the petitioners were land owners or not and hence no interference is called for in these petitions. He therefore supported the impugned order throughout and urged that the petitions are required to be dismissed.

8. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith and the impugned order dated June 5, 2000, passed in Appeal No.9 of 2000 by the respondent No.1 and also judgment cited at the bar by the learned counsel for the petitioner.

9. In order to appreciate the controversy raised in these petitions it would be advantageous to refer to the statutory provisions contained in Sec.2(ii) of the Act and Rule 28 of the Rules which inter-alia reads as under:

"Sec.2(ii) "agriculturist" means a person who ordinarily by himself or who by his tenants or hired labour or otherwise is engaged in the production or growth of agricultural produce, but does not include a trader or broker in agricultural produce although such a trader or broker may also be engaged in the production or growth of agricultural produce."

"Rule.28 Determination of validity of election:(1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election, apply in writing -

(a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer, and

(b) to the state Government if the election has

been conducted by the Director as an Election Officer.

- (2) On receipt of an application under sub-rule (1), the Director, or the State Government, as the case may be, shall, after giving an opportunity to the applicant to be heard and after making such inquiry as he or it, as the case may be, deems fit, pass an order confirming or amending the declared result of election or setting the election aside and such order shall be final. If the Director or the State Government as the case may be sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such member."

10. Sec.2(ii) of the Act defines "agriculturist", which means, a person who ordinarily by himself or who by his tenants or hired labour or otherwise is engaged in the production or growth of agricultural produce, but does not include a trader or broker in agricultural produce although such a trader or broker may also be engaged in the production or growth of agricultural produce. The question therefore arises for consideration in these petitions is whether at the time of filing of nomination the petitioners were agriculturists within the definition of Sec.2(ii) of the Act or not. There is no manner of doubt that respondent No.1 has also observed in its order that the election officer examined the copy of the property i.e. Form no.7/12 issued by Talati-cum-Mantri of that village wherein their names were shown as agriculturists but the election officer has not examined as to on what basis the petitioners were holding the land. In my view, there is always a presumption that a person whose name is shown in the column of pani patrak i.e. in Form No.7/12 as an owner of the land then it is presumed that he is the owner. Similarly when his name is included in the column of occupant then also it is presumed that he is the tenant and that covers the definition of agriculturist. Therefore in my view the observation made by the respondent No.1 in the impugned order is contrary to the statutory provisions of the Act.

11. The Division Bench of this Court in the case of Chimanbhai P.Trivedi (supra) has interpreted Sec.2(ii) of the Act and held that the petitioners who are in possession of agricultural land, whose names are shown in the column of the occupant and not in the column of owner

they are still agriculturists. It is further held that when a person who is in possession of the agricultural land and cultivating the land and his possession is not unlawful, it cannot be said that he is not an agriculturist.

12. In view of the aforesaid discussion, I am of the opinion that respondent No.1 has mis-read the definition contained in Sec.2(ii) of the Act as well as Rule 28 of the Rules wherein the limitation for filing the appeal is prescribed under Rule 28 of the Rules, and therefore, the impugned order is liable to be quashed and set aside by remanding the matter for deciding afresh after giving a reasonable opportunity to all the parties concerned, considering the Sec.2(ii) of the Act, Rule 28 of the Rules and the binding precedent pronounced by the Division Bench of this Court in the case of Chimanbhai P.Trivedi (supra).

13. For the foregoing reasons, the petitions succeed and accordingly the same are allowed. The impugned order is quashed and set aside. The matters are remanded to the authority for deciding afresh after giving ample opportunity to the parties concerned in light of the observations made hereinabove. In each petition, Rule is made absolute with no order as to costs.

(A.M. Kapadia, J.)

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