

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7267 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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

MADHAVSINH J. VAGHELA

Versus

STATE OF GUJARAT THRO' DIRECTOR, AGRICULTURAL

Appearance:

1. Special Civil Application No. 7267 of 2002
MR KS JHAVERI for Petitioner No. 1-9
GOVERNMENT PLEADER for Respondent No. 1-3
SERVED BY RPAD - (R) for Respondent No. 4,6
RULE SERVED for Respondent No. 4,6
RULE SERVED BY DS for Respondent No. 4,5,6

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. The present petition is jointly filed by 9 petitioners under Article 226 of the Constitution of India for issuance of writ or any type of writ order or direction quashing and setting aside the impugned order dated 4.8.2002 passed by respondent No.2 (Annexure-A collectively). It is also prayed that the petitioner be allowed to contest election of Agricultural Constituency, Traders Constituency and Cooperative Societies Constituency, which was scheduled to be held on 16.8.2002.

#. The Director, Agricultural Produce Marketing and Rural Finance, Gandhinagar-respondent No.1 by notification dated 18.5.2002 declared the intention of holding the election of Agricultural Produce Market Committee, Nadiad (hereinafter referred to as "the Committee"). Pursuant to the directions issued by this court in the writ petition filed by one of the petitioners i.e. Vinubhai Nathubhai Patel-petitioner No.4, one of the petitioners i.e. petitioner No.6-Jayantibhai D. Patel has filed complaint before the Director against the former Chairman of the Committee. The Director passed an order dated 21.6.2002. The said order was challenged under Section 48 of the Act before the Deputy Secretary (Appeals) and the State Government issued notice and fixed it for hearing on 16/6.2002.

#. In pursuance of the election programme declared by the respondent No.1 all the petitioners filed their nomination forms on 3.8.2002. Other private respondent Nos.4 to 6 filed separate petitions against their candidature before the District Registrar, Cooperative Societies and Deputy Director, Agricultural Produce Marketing and Rural Finance and Election Officer, Nadiad-respondent No.2 (Annexure-B collectively). Notices were ordered to be issued against the petitioners and they were called upon by the Election Office to file the reply. Accordingly, they filed joint reply dated 4.8.2002 (Annexure-A). After extending an opportunity of hearing to the petitioners and considering the objections raised by the private respondent Nos.4 to 6, the Election Officer rejected the nomination on 4.8.2002 (Annexure-A collectively). The said orders are challenged in this petition.

#. Last date for withdrawal of the nomination forms was

7.8.2002 and publication of names of the candidates was also on 7.8.2002. The election was fixed on 15.8.2002. All the petitioners had alternative remedy under Rule 28 of the Gujarat Agricultural Produce Market Rules, 1965 (for short "the Rules"). Under Rule 28 of the Rules, time to approach the Director is within 7 days from the date of the rejection. The petitioners have not availed that remedy and within 2 days of the rejection of nomination forms approached this court by way of this writ petition on 6.8.2002. The matter was placed before the Division Bench of this court on the next day i.e. on 7.8.2002. Division Bench of this court (Coram : N.G.Nandi & H.K.Rathod, JJ.), after hearing the learned counsel Mr. Jhaveri for the petitioners ordered to issue short notice to the respondents making it returnable on 9th i.e. within two days and Direct Service was permitted. We find from the order sheet of this petition that on 9.8.2002 the same Division Bench of this court ordered to issue rule and made it returnable on 28.8.2002 and passed a brief speaking order while granting interim relief in favour of the petitioners, which we would like to reproduced the same.

"1. Heard. Rule. Ms.D.S.Pandit, learned AGP waives service and accepts notice of Rule for respondent No.1 to 3. Rest of the respondents be served. Rule returnable on 28.8.2002.

2. As far as the interim relief is concerned, it is submitted by Mr.Jhaveri, learned advocate for the petitioners that, the order rejecting nomination of the petitioners is violative of Rule 16 of Gujarat Agricultural Produce Market Committee Rules, 1965, in as much as, none of the requirements of Rule 16 is attracted in the present case, and has also relied on the judgement rendered by Learned Single Judge in case of KANJIBHAI BABALDAS PATEL VS. ELECTION OFFICER OF A.P.M.C. VISNAGAR, reported in 2001(1)G.L.R. pg.259.

3. In the instant case, nomination of the petitioners have been rejected on the ground other than the one contemplated under Rule 16 of the Rules. For the present purpose, it is sufficient to prima facie hold that the impugned order does not satisfy the requirement of Rule 16 of the Rules, and therefore, operation and execution of the impugned order dated 4.8.2002 passed by the respondent No.2 is required to be stayed.

4. In view of the above, the operation/execution of the impugned order Annexure-A dated 4.9.2002 passed by the respondent No.2 is stayed, with the following directions:-

1) The nomination filed by the petitioners earlier which has been rejected by the impugned order Annexure-A, Respondents No.1 to 3 are directed to accept the nomination of the petitioners rejected vide Annexure "A", and allow the petitioners to contest the ensuing election of Agricultural Produce Market Committee, Nadiad, scheduled to be held on 16.8.2002;

2) The result of the said election shall be subject to the ultimate outcome in the writ petition.

5. Notice of rule be served to Respondents No.4 to 6 by Court process as well as R.P.A.D. Direct service permitted, today.

This order is permitted to be conveyed to the respondents by fax by the Registry, at the cost of the petitioners".

#. Thus, under the interim orders of the court, the petitioners were permitted to contest the election held on 17.8.2002 for different categories and the outcome of the election was that from the agricultural constituency Jivabhai Bhulabhai Jala (petitioner No.5), Jayantibhai Dhyabhai Patel (petitioner No.6), Vinubhai Nathabhai Patel, Atulkumar Vittalabhai Patel, Harshad Magan Patel, Mukesh Punam Patel, Manubhai Umedbhai Patel, Dhanjibhai Vaghaji Solanki declared as elected.

#. From the traders constituency, Bhikhabhai Ambalal Patel, Harish Ramanlal Parikh, H.C.Shah and D.N.Shah were declared as elected.

#. From the Cooperative Purchase and Sales Mandli-Commercial Constituency, S.D.Patel and C.J.Patel were declared elected. In the election of General Body petitioner Nos.2, 4 and 6 have been declared elected, whereas, remained petitioner Nos.1, 3, 7, 8 and 9 have

lost the election. Thereafter, election of the Chairman and Vice-Chairman was held on 24.11.2002 and S.D.Patel was declared elected as Chairman and H.R.Parikh declared elected as Vice Chairman.

#. Thus, this petition was required to be straightaway dismissed qua petitioner Nos. 1, 3, 7, 8 and 9, who have lost the election as having become infructuous and accordingly it is dismissed. However, the petition survives qua remaining petitioner Nos.2, 4, 5 and 6, who contested the election and declared elected.

#. It may be stated that because of the short notice of 2 days only the respondent authorities were not in a position to file reply affidavit in this case. But, now, they have filed reply affidavit, wherein several contentions, objections have been raised, including preliminary objections about the maintainability of this writ petition. On merits also, they have opposed this petition. Rejoinder is filed by Jayantibhai D. Patel, petitioner No.6 in this petition.

##. One of the preliminary objections raised in the reply affidavit is that joint petition at the instance of 9 petitioners was not maintainable, therefore, on this ground alone it should be dismissed. Though there is some substance in this preliminary objection, we would not like to decide that objection in this petition as we are of the considered opinion that there is a strong case in favour of the respondents regarding second preliminary objection about the maintainability of the writ petition in view of the alternative remedy available to the petitioners under Rule 28 of the Rules before the Director against the rejection of the nomination form.

##. As stated earlier, nomination forms of the petitioners were rejected on 4.8.2002. The elections were to take place on 16.8.2002. Under Rule 28 of the Rules, statutory remedy of appeal / election petition as available to the petitioners, which they ought to have been availed within 7 days after the declaration of the result of the election before the Director. But, admittedly, they have not availed of the same. Instead of that all the petitioners have rushed to this court by way of this petition on the ground of rejection of their nomination.

##. When statutory remedy of challenging the decision / order of rejecting nomination forms was available to the petitioners and when special mechanism was provided under Rule 28 of the Rules for challenging the said order of

rejecting nomination form for determination of the election dispute, then ordinarily, this court would not interfere with the election process, which has actually started and completed. The jurisdiction of this court under Article 226 of the Constitution of India can be exercised in exceptional cases only. This court is loath to exercise its discretionary jurisdiction under 226 of the Constitution of India when alternative statutory remedy is available to the petitioners. Such discretion can only be exercised only in favour of honest persons having clean record. From the reply affidavit it is clear that earlier the petitioners were the members of the Market Committee and they were found liable for financial loss caused to the Market Committee, which had seriously hampered the interest of the Market Committee. It is stated in para 8 of the reply affidavit that "at the relevant point of time the present petitioners were members of the Market Committee and at the relevant point of time liability of the members of the Committee were fixed by the Director vide order dated 21.6.2002 due to mismanagement and misuse of finance of the Market Committee and the very persons who are held liable for the said loss during the tenure of the earlier Market Committee of which they were members had filled up nomination forms for the Election of the Market committee and against the same the objections had been raised by the contesting parties".

##. From the order dated 21.6.2002 annexed to the affidavit in rejoinder shows that there was a misappropriation of in all Rs.98,75,158/= and it is alleged that Rs.33,94,460/- and Rs.9,61,426/= was required to be recovered from the petitioners.

##. In view of the aforesaid facts, when the election officer has rejected the nomination forms, then we would not like to exercise our discretionary jurisdiction in favour of the petitioners.

##. It is true that at the admission stage, Division bench of this court passed interim order and permitted the petitioners to contest the election. We are now fully satisfied that this is not a case in which this court should exercise its discretionary jurisdiction in favour of the persons, who have indulged themselves in misappropriating lakhs of rupees. When the petitioners had alternative remedy of election petition under Rule 28 then we would certainly not entertain this petition on this ground. Therefore, without going into the merits of the case, we upheld the preliminary objection raised by the otherside regarding the maintainability of this writ

petition and dismissed the same on this ground along. Rule is discharged. Interim relief granted earlier to continue till then.

##. We may state that Mr.Jhaveri, learned counsel for the petitioners submitted that rightly or wrongly once Division Bench of this court entertain this writ petition, then on the ground of alternative remedy available to the petitioners, the petition cannot be dismissed. In support of his submission he has placed reliance on the judgments of the Hon'ble Supreme Court reported in (i) AIR 1971 SC 33 and and AIR 2002 SC 2171. He has also placed reliance on the judgment of the learned Single Judge of this court in case reported in 1979(2) GLR 676. There cannot be any quarrel with the principle laid down by the Hon'ble Apex Court but as stated above, we are not inclined to entertain the petition on the ground mentioned hereinabove. Merely because the matter was entertained by another Division Bench of this court, that does not mean that this court at final hearing stage, cannot consider the question regarding alternative remedy.

##. Mr.Jhaveri then submitted that if the petitioners are thrown out today, then they will be left remediless because the period of 7 days in challenging the impugned orders at Annexure-A after the declaration of the result of the election petition is over. That period has gone and that there is no provision of condoning the delay in approaching the Director by way of election petition. Therefore, they will be remediless. It is true that the limitation period is over and now they are remediless, but the petitioners have to blame themselves for the same. Though they were aware that they had statutory remedy of approaching the authority within 7 days from the declaration of the result they have not thought it fit to approach the authority and instead of that they have preferred this petition.

##. Mr.Jhaveri then insisted to incorporate the arguments which he tried to advance on merits. We are not inclined to entertain this request as on the ground of alternative remedy petition is rejected, therefore, we have refrained ourselves from dealing with the contentions of Mr.Jhaveri on merits in this petition.

##. Mr.Jhaveri then made a request to continue the interim relief granted earlier, which we are not inclined to continue for a minute as in our considered opinion when the writ petition is dismissed on the ground of alternative remedy, then there is no question of

continuing the interim relief even for a minute. Hence,
this request is rejected.

(B.J.Shethna, J.)

(Akshay H. Mehta, J.)

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