

Gujarat High Court

Patel Kaushik Manharbhai vs Vallabh Industries on 13 April, 2023

Bench: Biren Vaishnav

C/LPA/435/2023

CAV JUDGMENT DATED: 13/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO.435 of 2023

In

R/SPECIAL CIVIL APPLICATION NO.4104 of 2023

With

CIVIL APPLICATION (FOR INTERIM RELIEF) NO.1 of 2023

In

R/LETTERS PATENT APPEAL NO.435 of 2023

FOR APPROVAL AND SIGNATURE :

HONOURABLE THE ACTING CHIEF JUSTICE
MR. JUSTICE A. J. DESAI

Sd/-

and

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1 Whether Reporters of Local Papers may be NO allowed to see the judgment ?

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy
of the judgment ? NO

4 Whether this case involves a substantial question NO

of law as to the interpretation of the Constitution of India or any order made thereunder ?

===== PATEL KAUSHIK MANHARBHAI
Versus VALLABH INDUSTRIES =====

Appearance :

MR PERCY KAVINA, SENIOR COUNSEL ASSISTED BY MR DILIP B RANA for the Appellants.

MS MANISHA LAVKUMAR ASSISTED BY MS SHRUTI PATHAK, AGP for the Respondent Nos.18
MR VC VAGHELA for the Respondent Nos.1 to 17. NOTICE NOT RECD BACK for the Respondent
Nos.20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37 NOTICE SERVED for the Respondent

No.19.

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C/LPA/435/2023 CAV JUDGMENT
DATED: 13/04/2023 CORAM:HONOURABLE THE ACTING CHIEF JUSTICE MR.

JUSTICE A.J.DESAI and HONOURABLE MR. JUSTICE BIREN VAISHNAV Date : 13/04/2023
CAV JUDGMENT (PER : HONOURABLE THE ACTING CHIEF JUSTICE MR.

JUSTICE A. J. DESAI)

1. The present Letters Patent Appeal under Clause 15 of the Letters Patent arises from an oral order dated 14.3.2023 passed by learned Single Judge accepting the petition filed by the private respondent and quashing and setting aside the order dated 22.2.2023 passed by the Authorized Officer and Cooperation Officer (Markets), Chhotaudepur by which names of the original petitioners - (private respondents herein), as voters of Traders Constituency for the elections of Agriculture Produce Market Committee Bodeli, Tal. Sankheda, Dist. Chhotaudepur were removed from the voters' list accepting the objections raised by the present appellants treating that they have not paid the cess fees periodically but have paid in lump sum.

2. The appeal was listed on 28.3.2023 and considering the publication of election programme of the APMC, Bodeli, notice was made returnable on 3.4.2023. Learned advocates appearing for the respective respondents appeared and waived service. Accordingly, the appeal was heard on 3.4.2023.

3. The short facts arise from the record are as under :-

3.1 That Director of Agricultural Marketing & Rural Finance, Gujarat State published the election programme of Agriculture Produce Market Committee, Bodeli on 18.1.2023. Part III of the Gujarat Agricultural Produce Market Rules, 1965 (hereinafter referred to as 'APMC Rules') provides the procedure for election of Market Committee. Under Rule 10 of the said APMC Rules, stages of election were declared in the said election programme issued by the Director of Agricultural Marketing & Rural Finance. Rule 7 of APMC Rules provides for supply of list of voters and for the present election in question, the list of voters for general election of APMC, Bodeli were to be supplied on 27.1.2023. As per Rule 7(2) of the APMC Rules, time to supply the preliminary voters' list was declared as 3.2.2023. As provided under Rule 8 (1) of APMC Rules, objectors may submit their reservations about inclusion and/or exclusion of the names in the preliminary voters' list.

3.2 The names of the original petitioners (private respondents herein) were included in the preliminary voters' list and, therefore, the present appellants raised objections against inclusion of their names before the Authorized Officer and Co-operation Officer (Markets) - respondent No.3 herein. The Authorized Officer and Co-operation Officer (Markets) by the order dated 22.2.2023 considered and accepted the objection by deleting the names of these persons which was subject matter of challenge before learned Single Judge.

3.3 Learned Single Judge after hearing the respective parties, accepted each petitions and quashed and set aside the order dated 22.2.2023 passed by Authorized Officer and Co- operation Officer (Markets) and directed to include the names of C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 those members in the voters' list.

3.4 Hence this appeal.

4. Mr. Percy Kavina, learned Senior Counsel assisted by Mr. Dilip B. Rana, learned advocate appearing for the appellants has vehemently submitted that learned Single Judge has committed an error in quashing and setting aside the order dated 22.2.2023 passed by Authorized Officer and Co-operation Officer (Markets), who has after due consideration, found that those persons have not paid cess fees periodically but have paid in lump sum and, therefore, learned Single Judge ought not to have interfered with the said order at the stage when the election process was going on.

4.1 Mr. Kavina would further submit that Section 11 of the Gujarat Agricultural Produce and Marketing (Promotion and Facilitation) Act, 1963 provides for (i) inclusion of those members in a Market Committee who are either agriculturists, whose names are enlisted in the voters' list published by the Election Commission of India for such market area who shall be elected by the members of managing committee of the Primary Agricultural Credit Co- operative Societies dispensing agricultural credit in the market area and (ii) four members to be elected in the prescribed manner from amongst themselves by the commission agents or traders, as the case may be, whose licence granted or renewed under Section 27 or 27A of the Act and (iii) two representatives of the co- operative marketing societies situate in the market area holding general licences etc. 4.2 He would further submit that the appellants have C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 raised specific objections about inclusion of the names of those persons in the Preliminary Voters' list on the basis that they are not traders and are not trading in regulated items and have not paid the cess fees in lump sum. The said objections have been accepted by the authorities after perusing the record. Therefore, learned Single Judge has committed grave error in quashing and setting aside the order dated 22.2.2023 passed by the Authorized Officer and Co-operation Officer (Markets) and further directing to include the names of those persons in the voters' list.

4.3 Apart from this factual aspect, Mr. Kavina would further submit that inclusion or exclusion in the voters' list during the entire election process may be questioned under Rule 28 of APMC Rules, only subsequent to declaration of results of the election. He would further submit that by catena of decisions, the Hon'ble Supreme Court as well as this Court and other High Courts have laid down the law that the Court should not interfere in the election process. He would further submit that in a substantive challenge to the election results, the authority has ample power to quash and set aside the elections, if it is found contrary to law.

4.4 In support of his submissions, he has relied upon the decision of the Hon'ble Apex Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others, (2001) 8 SCC 509. By taking us through the relevant paragraphs of the aforesaid decision, he would submit that the Hon'ble Apex Court has

considered similar facts i.e. process of preparation of voters' list under the Maharashtra Cooperative Societies Act, 1960 read with C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Maharashtra Specified Cooperative Societies Elections to Committees Rules, 1971 and has held that preparation of voters' list is part of the election process for constituting Managing Committee of a specified society and, therefore, ordinarily Court should not interfere at that stage.

4.5 By relying upon a Full Bench decision of this Court in the case of Daheda Group Seva Sahakari Mandli Limited v. R. D. Rohit, Authorized Officer and Co-operative Officer (Marketing), 2006 (1) GCD 211, Mr. Kavina would submit that while replying a reference, the Full Bench of this Court has held that under Rule 28 of the APMC Rules, if the name of the person is not included in the voters' list, the same can be challenged by way of filing petition and authority established under Rule 28 which has wide power to cancel, confirm and amend the election and to direct to hold fresh election. He has further relied on the decisions of Single Judge Bench of this Court in the case of Shri Pratagarh Seva Sahakari Mandali Limited v. Director, Agricultural Marketing and Rural Finance, 2021 (1) GLR 270 and in the case of Mandropur (Fatehpur) Juth Seva Sahkari Mandali Limited v. State of Gujarat, 2017 (2) GLR 1495. He, therefore, would submit that the appeal be allowed and the order passed by learned Single Judge be quashed and set aside.

5. Per contra, Mr. V. C. Vaghela, learned advocate appearing for the original petitioners - private respondents herein has supported the reasons assigned by learned Single Judge. He would submit that the Authorized Officer and Co-operation Officer (Markets) has travelled beyond the scope and powers conferred upon him of the APMC Rules i.e. more particularly Rules 7 and 8.

C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 He would further submit that the names came to be deleted from voters' list are members of Agriculture Produce Market Committee Bodeli, Tal. Sankheda, Dist. Chhotaudepur. He would further submit that inclusion of those members in the Society was never questioned by any of the objectors and, therefore, the respondent No.2 had no jurisdiction to examine the correctness of inclusion of those members in the Society and, therefore, learned Single Judge has rightly quashed and set aside the order passed by respondent No.2 in view of the fact that the Officer has examined those facts which he is not supposed to scrutinize at the time of preparing the voters' list. Part III of the APMC Rules deals with election of Market Committee. As per Rule 7 (2), the Market Committee is supposed to communicate the full names of the Traders holding general license in the market area together with the place of or residence of each such trader. By taking us through the Bye-laws of the Society, of which names were included, he would submit that it did not restrict inclusion of the members who are carrying on only agricultural activities. The activities carried out by the Committee of the Society is many fold and any person can become member as provided therein. Therefore, the respondent No.2 had committed grave error in deciding the issue which is beyond the scope of his powers as well as contrary to the Bye-laws which has been rightly quashed and set aside by learned Single Judge. He would further submit that by various decisions dealing with similar provisions, the Division Bench of this Court has held that the powers of Election Officer at the time of scrutiny of nomination of the candidates are limited.

5.1 In support of his submissions, he has relied upon the decision of the Division Bench of this Court in the case of Kanubhai C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Manibhai Patel v.

State of Gujarat, reported in 2014 (O) AIJEL - HC 232578 as well as in the case of Shrutbandhu H. Popat v. State of Gujarat, 2007 (O) AIJEL-HC 217628. He, therefore, would submit that the appeal be dismissed.

6. Mrs. Manisha Lavkumar, learned Government Pleader assisted by Ms. Shruti Pathak, learned Assistant Government Pleader appearing for the respondent - State has fairly submitted that the respondent No.2 has travelled beyond his jurisdiction while scrutinizing the voters' list. She, therefore, would submit that appropriate order may be passed.

7. We have heard learned advocates appearing for the respective parties and perused the impugned order passed by learned Single Judge as well as the order passed by respondent No.2 and also perused various documents including Bye-laws of the Society.

Before advertizing to deal with the submissions of the parties, it would be relevant to refer to some of the relevant provisions of the APMC Act and the APMC Rules. Section 11 of the APMC Act reads as under :-

"11. Constitution of Market committee. (1) Every market committee shall consist of the following members, namely:-

(i) ten agriculturists having land as such, whose names are enlisted in the voters' list published by the Election Commission of India for such market area, shall be C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 elected by the members of managing committees of the Primary Agricultural Credit Co-operative Societies dispensing agricultural credit in the market area;

(ii) four members to be elected in the prescribed manner from amongst themselves by the commission agents or traders, as the case may be, whose license granted or renewed under section 27 or 27A, who have traded in full conformity with the terms and conditions of the licence in the previous financial year and the fees payable by them has not remained unpaid;

(iii) two representatives of the Co-operative marketing societies situate in the market area, holding general licences, engaged in the business in conformity with their respective objects and have their last accounts audited in class A, B or C, as the case may be, 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. Provided that where the number of co-operative marketing societies so situate does not exceed two, only one representative shall be so elected; Provided further that for voting as well as for being elected to represent their respective class under Clauses (i),(ii) and (iii) above, the person shall be eligible as a voter for only one market committee of the State and also eligible to represent the same market committee and no other market committee of the State in the manner as may be prescribed;

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(iv)

(v)"

Rules 7 and 8 of the APMC Rules is reproduced as under :-

"7. Preparation of list of voters for general election :-

(1) Whenever a general election to market committee is to be held :-

(i) every Co-operative society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each members:

(ii) the market committee shall communicate the full names of the traders holding general licenses in the market area together with the place of or residence of each such trader; and

(iii) every Co-operative Marketing Society shall communicate the full names of the members of its managing committee together with the place of residence of each such member. to the authorized officer before such date as the Director may by order fix in that behalf;

Provided that the date to be so fixed shall not be later C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 than sixty days before the date of general election.

(2) The authorized officer shall within seven days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by rule 5 on the basis of the information received under sub-rule (1) and, if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial number of each voter.

8. Provisional and final publication of list of voters :-

(1) As soon as a list of voters is prepared under rule 5, it shall be published by the authorized officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may, within fourteen days from the date of the publication of the notice, apply to the authorized officer for an amendment of the list of voters.

C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 [(1-A) After receiving applications if any, under sub-rule (1) a revised draft list of voters shall be published by the authorized officer by affixing a copy thereof on the notice board of Agricultural Produce Market Committee and at some

conspicuous place in the principal market yard of the market area, alongwith a notice stating that any person who wishes to raise any objection against any new name entered in this list, may apply within seven days from the date of publication of this notice to the authorized officer for an amendment in the revised draft list of voters.

(2) If any application is received under [sub-rule (1-A)], the authorized officer shall decide the same and shall cause to be prepared and published the final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election."

8. Dealing with the first ground which has been emphatically argued on behalf of the appellants about the availability of alternative remedy under Rule 28 of the APMC Rules is concerned, as held by the Full Bench of this Court in the case of Daheda Group Seva Sahakari Mandli Limited (Supra), it has been held that in ordinary circumstances, the person should avail alternative remedy under Rule 28 of the Rules by filing election petition, however, has held in paragraph 33 of the said decision which reads as under :-

C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 "33. In view of the above discussion, we answer the Reference as under:

i. A person whose name is not included in the voters' list can avail benefit of provisions of Rule 28 of the Rules by filing Election Petition.

ii. As the authority under Rule 28 has wide power to cancel, confirm and amend the election and to direct to hold fresh election in case the election is set aside, remedy under Rule 28 is an efficacious remedy.

iii. Even though a petition under Article 226 of the Constitution of India is maintainable though alternative remedy is available, the powers are to be exercised in case of extraordinary or special circumstances such as where the order is ultra vires or nullity and/or ex facie without jurisdiction. The exclusion or inclusion of names in the voters' list cannot be termed as extraordinary circumstances warranting interference by this Court under Article 226 of the Constitution of India and such questions are to be decided in an Election Petition under Rule 28 of the Rules."

From the above referred observations of the Full Bench, it is clear that a writ petition under Article 226 of the C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Constitution of India is maintainable if the order is ultra vires or nullity and/or ex-facie without jurisdiction.

9. This judgment in the case of Daheda Group Seva Sahakari Mandali Limited (Supra) was considered by the Division Bench in the case of Shrutbandhu H. Popat (Supra) and has discussed about the jurisdiction of the Officer to go behind the license granted by the APMC or its License sub-Committee. Dealing with Section 11 of the Act, it has been held that the Officer has limited power whether they were traders holding general license or not. In paragraphs 12 and 13 of the said

decision, it has been specifically held which reads as under :-

"12. While examining any challenge to the voters' list, the Election Tribunal will have the jurisdiction to examine only those questions which the election officer had the authority to examine. The next question, therefore, would be whether the election officer has any jurisdiction or authority to go behind the licences granted by the APMC or its licence sub-committee. An analysis of the scheme of the relevant provisions of the APMC Act and the Rules does indicate that the Election Officer or the Election Tribunal are not vested with any jurisdiction to go behind the general licences for traders issued by the APMC or its authorised sub-committee and that the matters pertaining to grant, renewal, refusal, suspension and cancellation of licence are governed exclusively by the provisions of Section 27 of the Act read with Rule 56. Such disputes can only be decided by the APMC and finally by the Director/State C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Government under Section 27 read with Rule 56.

Hence, if APMC grants licence on the eve of elections, very little time will be available to any person intending to challenge the grant of licence on the ground that the licence has been obtained through a wilful misrepresentation or fraud or that the licensee has been convicted of any offence under the Act or even in case of renewal of licence that the licensee has committed a breach of any terms and conditions or restrictions imposed by the licence. Rule 56 of the APMC Rules provides that any person desiring to obtain a licence to do business as a trader or a general commission agent in agricultural produce in any market area or part thereof has to make a written application in such form as the APMC may determine. Thus all the information as required by the form will have to be furnished by the applicant along with the fees prescribed by the market committee. On receipt of such application, the market committee is expected to make necessary inquiries which would also mean that as per sub-rule (3) of Rule 56, the APMC or its licensing committee has to form an opinion that the applicant is not insolvent, that the applicant's operations in the market area are likely to further efficient working of the market and that the operations of the applicant are not likely to impede the smooth working of the market under the control of the APMC. The APMC or its licensing sub-committee having powers delegated to it under Section 25 is thus not to grant licences merely on applications being made and the prescribed fees of C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Rs.100 or maximum Rs.200 being paid by the applicant. When such licences are granted in hundreds even after commencement of the election process upon declaration of the date of elections, it will be impossible for any authority to verify before finalization of the voters list for the ensuing elections all the claims and counter claims about the genuineness of each applicant's so-called desire to carry on his business or about the factual aspect whether persons included in the list of voters are really carrying on trading activities in the agricultural commodities concerned in the APMC area. At this stage, we may also record the submission of the learned Addl. Advocate General that the State Government is not averse to a harmonious construction of the provisions of the Act and the Rules being adopted in such a manner that persons who are granted licences after the date of declaration of the elections are not to be included in the voters list. This stand is also consistent with the stand adopted by the State Government as reflected in para 5 of the order dated 27.2.2007 in Special Civil Application No.5029 of 2007, which reads as under:-

"5. Mr Nanavati, learned AGP submitted that with a view to see that there may not be any artificial majority in election in larger public interest, the instructions were issued not to grant fresh licence."

Considering the time frames provided for in Section 27 and Rule 56, when a person makes an application C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 under the said provisions for general licence for traders, the APMC or its licensing committee would be expected to take some time in making genuine scrutiny of the application and if there are a large number of such applications, the APMC would naturally take about a month's time to make such scrutiny. If the APMC has granted or renewed a licence and another person is aggrieved by such grant or renewal of licence, his remedy is to move the market committee under subsection (3) of Section 27 to cancel the licence on any of the grounds indicated in the said sub-section. The market committee will then give reasonable opportunity to the parties and then take a decision in the matter. In case the APMC accepts the representation for cancellation, then the person in whose favour licence was issued may approach the Director of Agricultural Marketing and Rural Finance under sub-section (4) of Section 27 and then the Director would have to give a reasonable opportunity of hearing and decide whether to suspend or cancel any licence granted or renewed by the APMC or its delegate licensing sub-committee. If the APMC refuses to grant or renew a licence, the aggrieved applicant has his remedy under sub-section (5) of Section 27 to move the Director within a period of one month from the date of refusal. In either case, the Director would thereafter be expected to take at least about two months to decide because the Director of Agricultural Marketing and Rural Finance is in charge of the entire administrative machinery supervising the implementation of the APMC C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Act and the Rules in respect of as many as 182 APMCs in the entire State where business worth thousands of crores is being carried on in various agricultural commodities. Hence, the time gap between the date of grant/renewal or refusal of general licence for traders under Section 27(1) read with Rule 56(1) and the date when the APMC has to send the list of voters to the Election Officer under sub-rule (1) of Rule 7 would have to be a period of at least 4 to 6 months, if disputes about grant, renewal or refusal of licence have to be decided by the competent authority before preparation of the voters list.

13. We find considerable force in the submissions of Mr Mihir Joshi, learned Additional Advocate General and the learned counsel for the petitioners that the remedy provided by Rule 28 of the Rules is limited to the extent that election officer and the Election Tribunal will only examine the challenge to exclusion or inclusion of certain persons in the list of voters for the constituency of traders holding general licences under clause (ii) of sub-section (1) of Section 11 of the Act only with the limited aspect whether they were traders holding general licences. The Election Tribunal is not vested with any jurisdiction to examine whether the licence was granted in accordance with the relevant provisions of the Act and the Rules. On the contrary, the matter is to be decided only by the APMC and the Director under the provisions of sub-sections (4) and (5) of Section 27 of the Act. In the election petition under C/LPA/435/2023 CAV JUDGMENT DATED: 13/04/2023 Rule 28, there cannot be any collateral challenge to the grant, renewal, refusal, cancellation or suspension of general licences of traders."

10. Further, in the case of Kanubhai Manibhai Patel (Supra), this Court has dealt with similar provisions of Gujarat Co-operative Societies Act, 1961 and held that a challenge of a membership of

a delegatee as a member of the Society may be subject matter of other proceedings, but that issue cannot be decided by Election Officer at the time of scrutiny of nomination under similar Rule.

11. In view of the aforesaid discussion, we are in complete agreement with the observations made by learned Single Judge in the impugned order dated 14.3.2023, more particularly paragraphs 6 to 8 of the said order. We do not find any substance in this appeal and hence, the present appeal stands dismissed.

Connected application also stands dismissed.

Sd/-

(A. J. DESAI, ACJ) Sd/-

(BIREN VAISHNAV, J) SAVARIYA