IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16510 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.C. RAO

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

CHAUDHARI KIRTIBHAI PRABHUDAS
Versus
STATE OF GUJARAT

Appearance:
MR CP CHAMPANERI(5920) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 2,3
MS ASMITA PATEL AGP for the Respondent(s) No. 1
MR PK JANI, SR. COUSNEL WITH MR SIVANG JANI for the Respondent(s) No.3
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CORAM: **HONOURABLE MR. JUSTICE A.C. RAO**

Date : 24/12/2020
ORAL JUDGMENT

Heard learned counsel for the respective parties.

2. By way of present petition, the petitioners have

prayed for below mentioned relief:-

> "8(B) That this Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of same and be pleased to quash and set aside the same impugned order dated 12.12.2020 at Annexure A to the present petition in the interest of justice:
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> (C) That this Hon'ble Court may kindly be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of same and be pleased to direct the respondent no.2 to include the name of petitioner no.1 in the Final voters list for the Elections of Mehsana District Cooperative Milk Producers Union Ltd. as representative of petitioner no.2 society;"

3. The short facts leading to filing the present petition, are that:-

3.1 That the election of Mehsana District Cooperative Milk Producers Union Ltd. were due to be held in the month of November, 2020 as the term of earlier committee was to come to an end.

3.2 That as per the provisions contained in Rule 5 of the Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982, the petitioner no.2 society in its meeting passed the resolution

appointing the petitioner no.1 as the representative of petitioner no.2 society to participate in the election of the Mehsana District cooperative Milk Producers Union Ltd. upon invitation of the resolution of the society as per rule 5 by the Mehsana District cooperative Milk Producers Union Ltd., the resolution passed by the petitioner no.2 society was also submitted to the Mehsana District cooperative Milk Producers Union Ltd. Due process of law as envisaged under law was followed for submission of resolution. The name of petitioner no.1 was shown in the preliminary voter's list as representative of the petitioner no.2 society.

3.3 That the respondent no.3 raised objection that the petitioner no.1 is engaged in the business of cold storage and hence, he cannot vote as per bye law no.48 as he has direct or indirect interest involved with the working of the union.

3.4 That on 10.12.2020, upon receipt of objections, the respondent no.2 intimated the petitioner no.1 and

petitioner no.2 to submit their documentary evidence by remaining present. The said intimation was issued by the respondent no.2 vide communication dated 10.12.2020.

3.5 That the petitioner nos.1 and 2 had remained present before the respondent no.2 at the time and place mentioned in the intimated date 10.12.2020. The petitioner nos.1 and 2 submitted the reply that the petitioner no.1 has no direct or indirect interest involved with the union. The petitioner no.1 also pointed out that there is no disqualification under the act the rules or the bye laws that if the petitioner no.1 is engaged in the business of cold storage he cannot vote at election.

3.6 That on 12.12.2020, the respondent no.2 without considering the submissions made by the petitioner nos.1 and 2 passed the order impugned and has deleted the name of the petitioner no.1 concluding beyond the objections of the respondent no.3 and allowed the objections. The order is such erroneous that the

society therefore loses it's right to representation in the election which is highly violative of article 19(1)(c) of the Constitution of India.

4. In present petition, the petitioner has challenged the order of the respondent No.2 dated 12.12.2020 wherein it is stated that as the objection was taken by the respondent no.3 and as the petitioner is in business of cold storage and that therefore, name of the petitioner was deleted from the voter's list of Mehsana District cooperative Milk Producers Union Ltd. [for short 'Union']. According to the petitioner, the said order cannot sustain in the eye of law as it is without application of mind and that therefore, the same deserves to be quashed and set aside. It is submitted that the respondent No.2 has not conceded to the submissions of the petitioner and that therefore, the impugned order is in total breach of interest of justice. It is vehemently contended that the disqualification is beyond the scope and power and the respondent No.2 has entered into the forbidden area and jumped to the

conclusion. It is also submitted that the petitioner is in no way connection with the activities prohibited by the bye-laws of the Union. It is contended that the interpretation of bye-laws, more particularly bye-law No.48 done by the respondent No.2 is totally erroneous. It is submitted that the respondent No.2 has violated the provision of Article 19(1)(c) of the Constitution of India. It is also submitted that the order impugned passed by the respondent suffers from bias and prejudice and it is with malafide intention.

5. Learned Senior Counsel Mr. Jani has appeared with instructing lawyer Mr. Shivang Jani. His appearance is strongly objected by the learned advocate for the petitioner. BY way of objection, it is contended that he is not served with the notice and no notice was issued to him and that therefore, he could not be heard and he has not filed any caveat application as well.

I do not agree with the submissions made by learned advocate for the petitioner regarding

appearance of the learned senior counsel Mr. Jani as he is representing the respondent No.3, who has taken objection and who is interested party in the matter.

6. At the time of hearing, learned counsel for the petitioner has drawn my attention to the objection taken by the respondent No.3 (page no.62 of the petitioner) wherein he has stated that the petitioner is running the business in the name and style of Kishan Cold Storage and as per bye-law No.48 of the Union, he cannot be entitled for voting and therefore, his name cannot be continued in the voter's list.

7. A preliminary objection is raised by the learned counsel for the respondent No.3 that this writ petition is not maintainable and so as to substantiate his arguments, he has relied on the decision of the Apex Court in the case between S*adguru Janardan Swami (Mohingiri Maharaj) Sahkari Dudh Utpadak Sanstha v. State of Maharastra* [2001 (8) SCC 509] wherein referring various sections of the

Maharashtra Cooperative Societies Act, the Apex Court has held that the Maharashtra Cooperative Societies Act is a complete code and there is a remedy provided under the said Act and there is alternative remedy with the petitioner for not including the name of the petitioner in the voter's list and therefore, the writ would not be maintainable. Relying on the said decision, learned senior counsel for the respondent no.3 has contended that the provision of the Gujarat Co-operative Societies Act is perimateria to the provision of Maharashtra Co-operative Societies Act. It is contended that the petitioner can file an election petition after the election process is over. The election is scheduled on 5.1.2021. Under the circumstances, the petitioner is not entitled to writ as per the above cited decision wherein the Apex Court has clearly stated that the writ petition is not maintainable as there is alternative remedy.

8. Per contra, learned advocate for the petitioner has relied on the judgment of the Apex Court in the case between *Election Commission of India through*

Secretary v. Ashok Kumar [2000 (8) SCC 216]. Relying on the said decision, it is contended that the issue involved in this petition does not in any way hinder the election process. On the contrary, it would sub-serve the process of election and if the writ petition is allowed, it would be free and fair election. It is submitted that the respondent no.2 has taken arbitrary decision and the name of the petitioner is removed from the voter's list and thereby, the valuable right of the petition to cast vote is taken away and therefore, this petition is required to be allowed. He has also contended that in similar petition, where the petitioner was engaged in a transport business, the Coordinate Bench has granted injunction stating that the transport business cannot be considered as that of a business having connection with the business of procuring and processing the milk and therefore, there is no violation of the provisions of bye-law No.48(2)(b) and (c) and thereby, the respondents were directed to permit the petitioner to vote in the election to be held on 5.1.2020. It is contended that the same order

is required to be passed in this petition.

9. I have taken into consideration the rival submissions tendered on behalf of both the sides and also the material available on record.

10. Before proceeding further, at the outset, it would be fruitful to refer to bye-law No.48(2)(c) of the Union, which is in vernacular, however, as per free translation, it can be read as "(c) a person directly or indirectly doing the same business, industry or profession of the union or doing any activity or having any interest or is a terminated employee of the union then he is not qualified for voting in the election". It is undisputed that the Union is in the same business of procuring and selling the milk.

11. It is the case of the respondent No.3 that the Union has its own cold storage. It is undisputed that the petitioner has a cold storage and the petitioner has entered into the contract with the union for

storage of the milk. It is needless to say that the Union is in business of procuring and selling huge quantity of milk and that therefore, the Union has to store milk for running its business. So, storing of the milk is also the activity which is to be carried out to run the business by the Union and the present petitioner is in activity of storing the milk. Under the circumstances, the petitioner has contended in one breath that he has business contract with the Union and in other breach he is contending that he is not in the similar business of the Union. Considering the rival submissions of both sides and the documents on record, I hold that the petitioner is in the same activity as of the Union. The decision cited on behalf of the petitioner i.e. *Ashok Kumar (supra)* is not helpful to the petitioner in present case. So order of the respondent cannot be said arbitrary or without application of mind.

12. For the foregoing reasons, I am of the view that present petition cannot be entertained. The petitioner is not entitled to the reliefs he has

prayed in present petition. The petition is dismissed and stands disposed of accordingly.

(A. C. RAO, J)

MAYA S. CHAUHAN/kdc