

## Don Juth Seva Sahakari Mandli Ltd. and Others Vs State of Gujarat and Others

**Court:** Gujarat High Court

**Date of Decision:** April 18, 2011

**Citation:** (2011) 2 GLR 1579

**Hon'ble Judges:** V.M. Sahai, J; G.B. Shah, J

**Bench:** Division Bench

**Advocate:** Dilip B. Rana, for the Appellant; Raxesh Rindhani, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

**Final Decision:** Allowed

### Judgement

V.M. Sahai, J.

The Petitioners are co-operative societies registered under the Gujarat Co-operative Societies Act, 1961 (for short "the

Act"). The term of Respondent No. 3-Gujarat State Co-operative Marketing Federation Society Ltd., expired on 12-3-2011. Election to the

apex society is to be held, in which the members of the societies registered as the district level societies are to participate. The elections are to be

held as per the provisions of Chapter-XIA of the Act and the Gujarat Specified Co-operative Societies Election to Committees Rules, 1982 (for

short "the Rules").

2. The Petitioner-societies forwarded list of their members along with details and resolutions of each of the member-societies on 23-2-2011 to the

District Registrar, Ahmedabad for being forwarded to Respondent No. 2 Election Officer, which included the names of the Petitioner-societies.

The District Registrar, Ahmedabad forwarded these lists to Respondent No. 2 Election Officer on 1-3-2011 for publishing provisional voter list.

The programme for publication and finalisation of the voter list was published on 17-3-2011 in daily newspaper "Sandesh". According to the

advertisement, the provisional voter list was to be published on 18-3-2011 and the last date for inviting suggestions and objections to the

provisional voter list was 24-3-2011. Final voter list was to be published on 4-4-2011.

3. The provisional voter list was published by the Election Officer on 18-3-2011, which included the names of the Petitioner-societies as voters.

Objection was filed against the names of the Petitioner-societies by Karsanbhai Mohandas Patel and Natwarbhai Somabhai Patel, on the ground

that the Petitioner-societies were not registered/enrolled as members on 31-3-2010 and they were enrolled after 1-4-2010. The objection was

that Rule 4 of the Rules provides that, "provisional list of voters shall be prepared by every society for the year in which general election is due to

be held and persons who are members as on the date of drawing up the accounts in the year immediately preceding the year in which election is

held, shall be included in the provisional voter list. As the voter list was being prepared in March, 2011, therefore, only those registered societies

could be members which were registered/enrolled on or before 31-3-2010.

4. Objection raised by Karsanbhai Mohandas Patel and Natwarbhai Somabhai Patel has been upheld by the Election Officer and the names of the

Petitioner-societies have been deleted on the ground that since the voter list was to be finalised in March, 2011 and the Petitioner-societies were

not registered/enrolled on 31-3-2010, their names have wrongly been included in the provisional voter list and their members were not eligible to

participate in the election.

5. We have heard learned Counsel Mr. Dilip Rana for the Petitioners and learned Assistant Government Pleader Mr. Raxesh Rindhani for

Respondent Nos. 1 and 2.

6. Learned Counsel for the parties agree that in the present case, legal issues are involved and these petitions can be disposed of at the admission

stage without calling for counter-affidavits. Therefore, we have taken up this group of petitions for final disposal.

For better understanding of the case, it is relevant to extract Rule 4(1) of the Rules, which is as follows:

Rule 4: Provisional list of voters:

(1) A provisional list of voters shall be prepared in Gujarati by every society for the year in which general election is due to be held. Persons who

are members as on the date of drawing up the accounts of the year immediately preceding the year (in which such election is due) shall be included

in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency-wise as laid down

in the bye-laws.

7. From the perusal of the Rule, it becomes clear that the provisional list of voters has to be prepared for forthcoming general election by every

society. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year in which the election is

due shall be included in the provisional voter list. If an election has to take place between 1-4-2010 to 31-3-2011, then voters would be members

of those societies which are registered/enrolled on or before 31-3-2010. In the instant case, final voter list has to be published by 4-4-2011, that

means election would be notified after 4-4-2011. Election programmes have not yet been notified by the Respondents for electing the members of

Respondent No. 3 Gujarat State Co-operative Marketing Federation Society Ltd. Further, from Rule 4(1) of the Rules, it is culled out that if

elections are scheduled to be held between 1-4-2011 and 31-3-2012, then members of those societies which were registered/enrolled on or

before 31-3-2011, would be eligible voters and their names have to be included in the voter list, either provisional or final if they have not incurred

any disqualification.

8. Since, the election would be held after 1-4-2011 and at any time between 1-4-2011 to 31-3-2012, the voter list as on 31-3-2011 would be

valid voter list and the names of members of registered societies whose names find place on 31-3-2011, are eligible to be included in the

provisional voter list and their names could not be struck off on the objection filed by on the ground that the Petitioner-societies were not

registered/enrolled on 31-3-2010 or they were not members on 31-3-2010. Therefore, the view taken by the Election Officer cannot be upheld as

the Petitioner-societies were registered/enrolled on or before 31-3-2011 and elections to be held after 1-4-2011 their members would be valid

voters.

9. In the result, the petitions succeed and are allowed. Order dated 2-4-2011 passed by the Election Officer is quashed. He shall pass fresh order

in accordance with Rule 4 of the Rules and in light of observations made in this order, within a period of one week from today.

Direct Service is permitted.