

193

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2533 of 2008

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GUJARAT PRADESH CONGRESS COMMITTEE THROUGH GENERAL
SECRETARY - Petitioner(s)

Versus

STATE OF GUJARAT THROUGH MANJULA SUBRAMANIAM & 2 -
Respondent(s)

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Appearance :

MR EM MANGUKIYA for Petitioner(s) : 1,
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL WITH MS. SANGEETA VISHN,
AGE, for Respondent(s) : 1,

MR. NV ANJARIA, FOR RESPONDENT NO.2

MR. SN SHELAT, SENIOR ADVOCATE WITH MS. VD NANAVATI FOR RESPONDENT
NO.3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 15/02/2008

ORAL ORDER

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition has been preferred by the petitioner, a political party through its Secretary, seeking a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction holding and declaring that Notifications dated 21.1.2008 and 24.1.2008, fixing the dates of counting of votes qua the elections held for municipalities and the date of voting at elections for Panchayat is ex-facie arbitrary and ultra vires. The petitioner has further prayed for a direction to the State Election Commission to defer counting of votes at Municipal Elections which is scheduled on

19.2.2008 to 21.2.2008.

2. Heard Mr. B.M.Mangukia, learned Advocate, appearing on behalf of the petitioner. The thrust of the principal contention is based on the distinction between Rule-5 and Rule-52 of the Gujarat Municipalities (Conduct of Election) Rules, 1994. It is submitted that under Rule-5 of the said Rules various dates from filing of nominations till the point of time of holding of Poll have been mandatorily provided for, as against which under Rule-52 of the said Rules the fixing of date, time and place of counting of votes is not statutorily provided except to the extent of one week before the date fixed for the poll. However, Proviso under Rule-52 of the said Rules also carves out an exception permitting the Returning Officer to reschedule the date, time and place of counting of votes for any reason that the Returning Officer thinks it necessary to do so. Referring to the two notifications, first one dated 21.1.2008 relating to elections to municipalities wherein the election schedule stipulates polling on 17.2.2008 and counting of votes on 19.2.2008, and the second notification dated 24.1.2008 relating to elections to Local Self Governments wherein polling is scheduled on 20.2.2008, it was submitted that despite the fact that in both the cases the election schedule prescribes completion of the process by 25.2.2008 the State Election Commission has purposefully fixed the schedule in such a manner that the results of elections to municipalities would have a material bearing on the elections which are to be held on the subsequent day for the Local Self Government Bodies. It is further alleged that this has been done at the instance of the ruling party/State Government. Referring to the constitutional provisions relating to the appointment, status and powers of the Election Commissioner it was submitted that the said Authority is required to be fair and impartial in conduct of polls.
3. Mr. S.N.Shelat, learned Senior Advocate, appearing on behalf of the State Election Commissioner pointed out that the petitioner has sought mandamus which presupposes that a legal right is vested in the petition which is not being satisfied. That in fact, the petition was based only on a political perception without there being any basis for the averments made in the petition. That the units going to polls for the municipalities and the Local Self Government bodies are different, located in different parts of the State, and there could be

no presumption that voting pattern or the results to the election in case of one unit would affect the voting pattern in another unit. It was, therefore, submitted that the petition was required to be rejected.

4. Mr. N.V. Anjaria, learned Advocate, appearing for respondent No.2, adopted the contentions raised on behalf of the respondent No.3 Authority and further submitted that once the election process was on this High Court should not undertake any exercise which would either result in disruption or postponement of the schedule fixed.
5. Learned Advocate General, appearing for the respondent No.1, invited attention to the three decisions of the Apex Court, viz. (i) ELECTION COMMISSION OF INDIA v/s. ASHOK KUMAR AND OTHERS, reported in (2000) 8 SCC 216; (ii) ELECTION COMMISSION OF INDIA v/s. STATE OF HARYANA, reported in 1984 (Supp) SCC 104, and (iii) DIRECTOR IF SETTLEMENT, A.P. & ORS. v/s. M.R. APPARAO & ANR., reported in (2002) 4 SCC 638, to point out that the parameters within which the High Court can intervene in an election process have been laid down and are well settled. The High Court, therefore, was not required to entertain the petition.
6. On a plain reading of Rule-5 and Rule-52 of the Election Rules, 1994, it becomes apparent that in so far as fixing of date for counting of votes is concerned the Returning Officer is under a mandate to see that the date, time and place for counting of votes is fixed and notified at least one week before the date of poll, but beyond that there is no other mandate. Furthermore after having fixed the date, time and place, as aforesaid, the Proviso grants discretion to the Returning Officer to alter the said schedule for the reasons that may weigh with Returning Officer, which would depend on the facts and circumstances in relation to particular unit undergoing poll. However, from the aforesaid provision it is not possible to read any prohibition or any legislative intent which would permit this Court to intervene and direct the Returning officer to alter the schedule for counting of Votes. The provision also does not stipulate any right being vested in any party, namely, a candidate or the election Agent.

159

7. Hence, it is not possible to come to the conclusion that the respondent Authority has, while fixing the election schedule, been actuated by any malafides or has acted at the behest of anybody else so as to hold that the said Authority has not acted in a fair and impartial manner.

8. Hence, it is not possible to grant relief as prayed for. The petition is accordingly rejected with no order as to costs. Notice discharged.

(D.A. MEHTA, J.)

(Z.K. SAHYED, J.)

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