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In the Court of 3rd Joint Civil Judge, (J.D.), Junagadh, At Junagadh.

EX. NO. 56

Civil Suit No. 410 of 1967

Pleaders Shri Laxmidas Madhavdas

Shri V.P. Bhimani of JunagadhPlaintiff
Manavaty.

Against

- (1) Prof. W.G. Ranga - President of Swatantra Party, Central Office, Bombay.
- (2) Shri M.R. Mhasani - Secretary of Swatantra Party, Central Office, Bombay.
- (3) Shri Marayan Dandekar, Acting Secretary of Swatantra Party, Central Office, Bombay.
- (4) Shri Bhailalbhai D. Patel, President, Gujarat State, Unit of the Swatantra Party, Vallabh Vidyanagar.
- (5) Shri Harkant B. Shukla - Executive Secretary Gujarat State Unit, Swatantra Party, Ahmedabad.
- (6) Shri Gautamrai P. Majumdar, President - Junagadh District Unit of Swatantra Party Junagadh ... Defts.

Suit for declaration and injunction;

Judgement

This is a suit arising out of election disputes of a unit of the political party known as the Swatantra Party (Hereinafter referred to as the party) which has framed its own constitution. The party is having nation wide branches. There is a hierarchy all along the line to govern these branches. At the apex is the National Executive and at the base are the constituency committees of Primary Units. In between there are District Committees and State or Regional councils. The National Executive of the Party at its meeting on March 15, 1967 adopted a definite time-table for Party Elections and prescribed procedure for such elections. The time-table limit fixed for elections of the committees of Primary Units was September 15, 1967 and the same for elections of the

District level September 30, 1967. The present suit is the off shot of the elections at the District level of the Junagadh District Unit of the Party. The plaintiff is a member of the party and was elected as the district representative from the Primary Unit of Manavadar Taluka. He thus became a member of the District Committee of the Junagadh District unit of the party. The election of the office bearers of this District committee from amongst the members of the District Committee was scheduled to be held on September 24, 1967 at Junagadh. In the same meeting election of the District Committee's representatives on the State or Regional Council was also to be held. One Shri Bhagwanji Patel was nominated by the State Council as the Returning Officer to preside over the meeting for holding the elections. The agenda for the scheduled meeting was circulated by the Returning Officer and the meeting was held on 24-9-67 as scheduled. There were three items on the agenda. The first item was for co-option of three members in the District Committee. The next was the election of the office-bearers of the District Committee and the last was the election of ten representatives for the State Council. The Returning Officer, Shri Bhagwanjibhai B. Patel, presided the meeting and conducted the proceedings of elections at items No. 1 and 2 on the agenda of election of the representatives for the State Council was taken on hand. In one of the panels proposed for election of these representatives the name of the Returning Office was included. The Returning Officer was included to accept his nomination and so he stepped down and appointed one Manilal Patel as the Returning Officer to conduct the election of representatives. The election was then held. One of the candidates in this election was Shri Virendra J. Shah and he was defeated in election. It is the case of the plaintiff that because of his defeat Shri Virendra Shah and Dharansinh Patel of his group had been trying to set at naught this election and that

the Central Office of the Party had arbitrarily set aside the whole election. The defendant No. 4 was informed telegraphically by the Central Office of the Party to treat these elections cancelled and appoint a new Returning Officer to hold fresh elections on 11-10-67. The Yuvraj of Jardan was appointed as the new Returning Officer and the defendant No. 6 was directed to arrange for fresh election. The plaintiff, therefore, filed the present suit on 9-10-67 against the present six defendants and the Yuvraj of Jardan who was originally the defendant No. 6. The present defendant No. 6 was the original defendant No. 7. The name of the original ^{defendant} No. 6 was struck off under Order 1 rule 10(2) C.P.C. as per order on the application ex. 22 and so he is no more a party to this suit. The reliefs sought by the plaintiff are: 1) for declaration that the elections of the District level of the Junagadh District Unit of the Swatantra Party held on 24-9-67 are legal and constitutional and that the action revoking the same is illegal, ultravires, without good faith and in violation of the principle of natural justice; 2) for permanent injunction restraining the defendant or their nominees from interfering with the elected members from exercising their privileges as such elected members.

2) The defendant No. 1, 2 and 3 are the only defendants who have filed the written statements. The defendants No. 4 and 5 have remained absent. The defendant No. 6 (original defendant No. 7) has not filed any written statement and has taken little interest in the proceedings of the suit. The defendants No. 1, 2 and 3 are represented by advocate Miss K.C. Joshi. She had undertaken to file the vakalatnama and written statements of the defendants No. 4 and 5 but that undertaking was not fulfilled. The original defendant No. 6 had filed his written statement. But he is no more a party to the present suit.

3) The defendant No. 2 has disowned the liability for the action taken by the Central Office on the ground that he was on leave during the relevant period. His written statement is at Ex.10. The written statements of the defendant No. 1 and the defendant No. 3 are at Ex.17 and Ex.12 respectively. They are almost identical excepting that the defendant No. 1 does not accept liability. The main defence taken up by them is that the impugned elections were held in flagrant violation of rule 27 of the Procedure for party Election and so were illegal and void. It is denied that the action revoking these election is arbitrary or mala fide or in violation of the principle of natural justice . Contention was raised that the suit of the present nature does not fall within the scope of section 9 of the Civil Procedure and so the plaintiff has no cause of action. This contention was heard a preliminary issue and negatived as per order on Ex. 25.

4) The following issues now arise for determination as settled at Ex. 25:-

- 1) Whether the election held on 24-9-67 by the Junagadh District Swatantra Party to elect its office bearers and representatives to the State Council is illegal and void?
- 2) Whether the defendants No.1 and 2 are concerned in the action revoking the said election?
- 3) Whether the action taken to revoke the said election is illegal ultravires, without good faith and in violation of the principle of natural justice?
- 4) What order and decree?

My findings are:-

- 1) in affirmative;
- 2) in negative;

- 3) in negative;
- 4) as per final order

Issues No. 1 and 3:-

5) It would be convenient to incorporate at the outset the rule 27 of the Procedure for party Election. These rules are printed and one point is at Ex. 36. The rule 27 runs as follows:-

"This first meeting shall be presided over personally by the Returning Officer appointed by the State or Regional Committee to supervise elections in the District. The Returning Officer should not himself be a candidate for office or a member of the District Committee of the District in question.

(a) The Returning Officer will call for nomination for the offices mentioned above. There should be duly proposed and seconded by anyone from among those present (the rest is no relevant).

(b) Thereafter the meeting will also proceed similarly to elect the District Committee's representatives on the State or Regional Council in accordance with the quota allotted to it.

The first meeting referred here in this rule 27 is the meeting of the representatives elected from the Primary Units to the District Committee for holding election of the office-bearers of the District Committee and its representatives on the State or Regional Council as provided in rule 26. The defence lays emphasis on the provisions in the rule 27 that this first meeting shall be presided over personally by the Returning officer and that the Returning Officer should not himself be a candidate for office. The Returning Officer, in case of impugned elections, has committed breach of both these provisions. He has not presided personally to supervise elections

all throughout the meeting. He had no authority to nominate any other person to supervise the elections to be held in such meeting. He was debarred from offering himself as a candidate for any office to be elected in such a meeting. The plaintiff has in order to get out from this difficulty, relied upon instructions alleged to have been issued by the Executive Secretary of the Gujarat State unit of the Party. The copy of the letter containing these instructions is filed with the minutes of the meeting produced in evidence at Ex.31. In this letter it is stated that if the name of the Returning Officer is proposed as a candidate he may nominate someone else to preside over the meeting and to supervise the election. But these instructions are in general terms and the letter does not disclose that these instructions ~~xxx~~ would apply to elections of the District level. In the procedure for party Elections there are separate rules providing procedure for elections at Primary Unit level. In those rules (rules 17 and 21) it is provided that the Returning Officer or his duly authorised nominee will preside over the meeting in which elections of Primary Units were to be held. But in rule 27 it is specifically provided that the Returning Officer shall preside personally. The instructions given in the letter of the Executive Secretary of the State Unit cannot override the rules framed by the National Executive. Bhagwanjibhai Patel, the Returning Officer appointed for holding the elections of the party unit of Junagadh District acted in flagrant violation of rule 27 by offering himself as a candidate and by nominating Manilal Patel to preside over the meeting for supervising election of the representatives to the State Council. The meeting was one and so all the proceedings were vitiated though illegality crept in midway. All the elections held in the meeting of 24-9-67 were, therefore, affected by violation of procedural rules prescribed by the National Executive.

6) Shri Dharamshi Patel is a member of the Gujarat Legislative Assembly. He is the member of Junagadh District Committee of the party.

He was present in the meeting held on 24-9-67. He objected to Bhagwanji Patel's nomination. Some other members also took objection in that behalf. But their objections were overruled. Shri Dharamshi Patel then sent a written complaint to the Central Office. D.W. S.V. Raju (ex.43), who has given evidence on behalf of the defendants, is the Executive Secretary of the Central Office of the Party. He has stated that the defendant No. 2 was on leave and the defendant No. 3 was temporarily out of India when this complaint was received from Shri Dharamshi Patel. He has stated then that he was authorised in writing by the defendant No. 3 to act on his behalf in urgent matters connected with election. On receipt of this complaint (ex.52) he issued instructions to the State Council of the Gujarat State Unit to cancel the elections held on 24-9-67 in the meeting of the District Committee of the Junagadh District Unit and to make arrangement for holding fresh elections on 11-10-67. The defendant No. 4, as the President of the Gujarat State Unit, ordered fresh election and appointed Yuvraj Kumar of Jadan as the returning officer. This election was ratified by the National Executive of the Party in its meeting on 25-11-67. D.W. Raju says that he had acted in the matter because he was satisfied from the complaint made in writing by Shri Dharamshi Patel and oral complaint of Shri Virendra Shah, M.P., made earlier that Bhagwanjibhai Patel had acted in flagrant violation of rule 27 of the Procedure for Party Election. He says that prompt action was necessary because the elections of the District Level were to be completed in time to enable holding of elections of the State level as per schedule fixed. He also says that he did not feel any necessity to order inquiry as the complaints came from esteemed members of the party and from the complaints made flagrant violation of rule 27 was disclosed. Now the question is whether this action of Raju subsequently ratified by the defendant No. 3 and then by the National Executive was ultravires, arbitrary, mala fide and in violation of the principle of natural justice. In considering this question I have to bear

in mind that this is an action of a domestic tribunal of a voluntary association of persons. Their action is not to be judged by principles applicable to statutory bodies. The learned advocate for the plaintiff has cited a number of rulings where certain criteria are laid down in judging the question of this kind. But all those cases relate to statutory bodies. A.I.R. 1965 Assam 106 Dinesh Chandra V. Board of Revenue is a case under Assam Board of Revenue Act and action challenged was of the Assam Board of Revenue which is a statutory body. In A.I.R. 1966 Allahabad 207 Surendra Kumar V. T.E. Board. The action challenged was of the Technical Education Board which was a statutory body. In 1966 Punjab 269 Rajendra Kumar V. Punjab University, a statutory body. In A.I.R. 1966 Kerala 55 the action of a Sales tax officer was challenged. Only in A.I.R. 1967 Kerala 121, Ahmad Kabir V. Principal Medical College there is a case of a domestic tribunal. In that case one medical student was suspended by the college authority. It is held that an institution like college, conducting domestic inquiry, must scrupulously follow principles of natural justice especially in a case where punishment imposed would blast career of a student and spoil his good name. It is observed that it is open to the domestic tribunal to gather information from any source it thinks fit, but before using it as evidence it is necessary that materials should be put to the delinquent. But in case of a student entering a College he does not do so as a person joining a political party. A college is always affiliated to a statutory body like a University and is always answerable to it for any action it takes. The action of the College authority is thus subject to the authority of a statutory body. That is not the case with the political parties. They have more freedom of action than the Statutory authorities. A student entering a college does so in order to build his ~~career~~ career which would enable him to earn his bread. No doubt a person joining a political party desires to build his political career but that career cannot be said to be sought after for earning one's bread. A man is always free to change his affiliation

from one party to another. A student, especially on joining a technical College, has no such freedom. It condemned from one college he may find doors closed to him in other colleges. Such is not a case with a member of a political party or any other such kind of voluntary association of persons should be judged in most liberal terms. Such bodies are financed by members and not by the Exchanger. There is always a question of costs in holding elaborate inquiries. They have their schedule of work which would be ~~disturbed~~ disturbed if any elaborate inquiry is ordered. So merely because a particular action is not tantamount to violation of the principle of natural justice. The Court has not to sit in appeal over the actions taken by such domestic tribunal. The court should interfere only when the action taken is actuated by improper motive and is grossly unjust. No doubt if the situation absolutely called for an inquiry and or of giving an opportunity of being heard to the person affected the action taken otherwise may be considered in violation of the principle of natural justice. But in the present case I do not consider that there was absolute necessity of holding an inquiry or giving to the persons affected the opportunity of being heard. The action revoking the elections was directed against all the elected members generally. The plaintiff is not singled out. It is not his case that any notice was meant against him. What he alleges is that the action was improperly influenced by Shri Virendra Shah who is alleged in the election of the representatives to the State Council. D.W. Raju who has directed the action, has denied emphatically that he was in any way improperly influenced either by Shri Virendra Shah, M.T. or Shri Dharamshi Patel, M.L.A. I do not find the allegation of improper influence substantiated by any evidence on record. It has been argued that Shri Raju had no authority to initiate such action. Shri Raju has produced the written authority given to him by defendant No. 3 who was then acting General Secretary because of the defendant No. 2 being on leave. It was suggested that this authority is issued

after the present suit is filed. I do not find any substance in this suggestion. Again this action is adopted by the State Council and ratified by the National Executive. So the action taken by Shri Raju is not ultra-vires of his authority. Then the next question is whether the inquiry was absolutely necessary or whether it was absolutely necessary to hear the parties concerned before taking such an action. Shri Raju has stated that no inquiry was called for because on the face of the report made by Shri Dharamshi Patel flagrant violation of rule 27 was disclosed. I do not see any reason to

disagree with him. As the things stand, no useful purpose could be served by holding an inquiry and giving the persons concerned the opportunity of being heard. I do not consider that the action revoking the election and ordering fresh elections is in violation of the principle of natural justice. It has been argued on behalf of the plaintiff that the elections so far held in compliance of rules should not have been set aside. But Shri Raju has explained that ~~as~~ all the elections were held in one meeting wherein flagrant violation of the whole proceeding of that meeting. It cannot be said that this action can on that account; be considered grossly unjust. So on the whole I find that the action revoking the impugned elections cannot be said to be ultra-vires, without good faith and in violation of the principle of natural justice. The action challenged does not call for any interference from the Court.

Issue No. 2.

No doubt the defendant No. 2 was on leave during the relevant period. Shri Raju has produced extracts from minutes-book showing that the defendant No. 2 was on leave during the relevant period. Shri Raju has stated the defendant No. 1 has no executive function and so not responsible for the impugned action. But the proceeding of the meeting of the National Executive in which the impugned action was ratified shows the presence of the defendant No. 1 and the defendant No. 2 among others. The minutes of this meeting held on 25-11-67 are at Ex. 5460 it cannot be said that the defendant No. 1 and the defendant No. 2 are not concerned in the impugned action.

Issue No. 4

In the result the plaintiff's suit fails. The plaintiff has filed the present suit to vindicate the rights which, he bonafide believed, were violated. None of the defendants has appeared personally. The question involved in the present suit was from being a common one. Looking to all these factors I would leave the parties to bear their own costs. Accordingly I pass the following order.

ORDER

The plaintiff's suit is dismissed. No order as to costs. Decree accordingly.

Pronounced in open court on this 29th day of April 1968.

Sd/-.. C.C. Morakhia.,

3rd Jt. C.J. (J.D.)

Junagadh.