

Reserved On : 22/07/2025

Pronounced On : 29/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4967 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Approved for Reporting	Yes	No
	✓	

ABDUL VAHAB MOHAMMED SHABBIR SOPARIWALA  
 Versus  
 STATE OF GUJARAT

Appearance:

MR. ZAMIR Z SHAIKH(6857) for the Petitioner(s) No. 1  
 MR KAMAL TRIVEDI ADVOCATE GENERAL ASSISTED BY MR  
 GURSHARANSINGH H VIRK GOVERNMENT PLEADER WITH MS  
 DHARITRI PANCHOLI AGP WITH MR VINAY VISHEN AGP for the  
 Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE NIRAL R. MEHTA

CAV JUDGMENT

[1] Since the issue involved in this petition is in a narrow compass, at the request of the learned advocates appearing for the respective parties, present petition is taken up for final hearing at the admission stage.

[2] By this petition under Article 226 of the Constitution of India, the petitioner has approached this Court seeking writ, direction or order to the respondent – State of Gujarat to reconstitute the Committee with the fresh members those who are having knowledge and experienced over the subject law and further seeking directions upon the respondents to adopt a consultative process involving all religious and cultural communities before any move to the Uniform Civil Code.

[3] Brief facts giving rise to this petition can be stated as under:

[3.1] The Hon'ble Chief Minister of the State of Gujarat, on 4<sup>th</sup> February 2025, in a Press Conference, has announced about constitution of a Committee consisting of five members namely (i) Smt. Ranjana Desai, Judge (Retired), Supreme Court of India; (ii) Shri C. L. Meena, I.A.S. (Retired); (iii) Shri R. C. Kodekar, Advocate; (iv) Shri Dakshesh Thakar, Ex-Vice Chancellor of Veer Narmad South Gujarat University and (v) Ms. Gitaben Shroff, Social Worker, with a view to consider whether a Uniform Civil

Code is necessary for the citizens of the State of Gujarat. The said Committee was to submit its report within a period of 45 days. The said period of 45 days, thereafter, was extended from time to time.

[4] Being aggrieved and dissatisfied by the aforesaid constitution of Committee by the respondent – State of Gujarat, the petitioner has approached this Court by way of this petition under Article 226 of the Constitution of India for the aforesaid reliefs.

[5] I have heard learned advocate Mr. Zamir Z. Shaikh for the petitioner and learned Advocate General Mr. Kamal Trivedi assisted by learned Government Pleader Mr. Gursharansingh H. Virk with learned A.G.Ps. Ms. Dharitri Pancholi with Mr. Vinay Vishen for the respondent – State of Gujarat.

[6] Learned advocate Zamir Shaikh for the petitioner, while seeking reconstitution of Committee by way of Writ of Mandamus, has fairly conceded that power of the State Government under Article 162 of the Constitution of India is not disputed, however, has made the following submissions:

[6.1] Learned advocate Mr. Shaikh for the petitioner submitted that the members of the Committee are not the experts on the subject law and more so, they are the interested parties, therefore, the members so selected for the Committee is against the principles of fair play. Learned advocate Mr. Shaikh further submitted that the object of the Committee is to see the necessity of implementation of the Uniform Civil Code, which would cover many personal laws like Hindu Law, Muslim Law, etc. and would touch the many minorities such as Muslim, Christian, Parsi, Sikh, etc. Learned advocate Mr. Shaikh further submitted that admittedly, in the said Committee, there is no representation of any minority communities. Thus, according to learned advocate Mr. Shaikh, the Committee should have been reformed / reconstituted by including representation from the minority communities so that real purpose and object of the constitution of Committee can be achieved.

[6.2] Learned advocate Mr. Shaikh further submitted that implementation of the Uniform Civil Code in the State of Gujarat, as stated hereinabove, would be materially affecting to the personal

and religious laws of many minority communities and thereby, it is for the State Government to have a consultative process involving all minority communities whose personal laws are going to be affected. Mr. Shaikh, thus, submitted that no such consultative process has been adopted by the State and thereby, mere constitution of the Committee, that too selecting members thereof, in an unilateral manner, is against the basic fundamental of the Constitution of India.

[7] By making above submissions, learned advocate Mr. Shaikh for the petitioner has requested this Court to issue appropriate writ, direction or order, as prayed for, in the larger interest of justice.

[8] *Per contra*, learned Advocate General Mr. Kamal Trivedi for the respondent – State of Gujarat, while opposing the present petition, has made the following submissions:

[8.1] Learned Advocate General Mr. Kamal Trivedi for the respondent – State of Gujarat, at the outset, submitted that in the present case, when the petitioner has not challenged the power of

the State Government to constitute the Committee under Article 162 of the Constitution of India, the petitioner, therefore, cannot challenge the selection of members qua the Committee. According to learned Advocate General Mr. Trivedi, the Writ of Mandamus cannot be granted so far as appointment and / or selection of the Committee members is concerned. Learned Advocate General Mr. Trivedi submitted that constitution of Committee under Article 162 of the Constitution of India is purely an administrative action and has nothing to do with any statutory duty of the State Government. Learned Advocate General Mr. Trivedi further submitted that constitution of Committee is not under any statute. According to learned Advocate General Mr. Trivedi, therefore, there is no legal requirement prescribed by any statute for and how such Committee can be constituted, thereby, constitution of Committee by the State is not a statutory duty and accordingly, it cannot be said that the Committee so constituted by the State is in breach of any statutory legal duties, for which, this Court would issue its prerogative writ i.e. the Writ of Mandamus by exercising its extraordinary powers under Article 226 of the Constitution of India. Learned Advocate

General Mr. Trivedi, therefore, prayed this Court to dismiss the present petition with cost.

[8.2] To substantiate the aforesaid contentions, learned Advocate General Mr. Trivedi has placed heavy reliance on the decisions of the Hon'ble Supreme Court in the case of **Asif Hameed and others vs. State of Jammu and Kashmir** reported in **1989 Supp (2) SCC 364** and in the case of **Anoop Baranwal and others vs. Union of India and others [Writ Petition (Civil) No.1086 of 2022 decided on 9<sup>th</sup> January 2023]**.

[9] By making above submissions, learned Advocate General Mr. Trivedi for the respondent – State of Gujarat has prayed this Court to dismiss the present petition in the interest of justice.

[10] I have heard learned advocates appearing for the respective parties and have gone through the material produced on record. No other and further submissions have been canvassed by the learned advocates appearing for the respective parties, except what are stated hereinabove.

[11] Having heard the learned advocates appearing for the respective parties and having considered the material produced on record, a short question that falls for consideration of this Court is whether, in the facts of the present case, a Writ of Mandamus can be issued to the State Government under Article 226 of the Constitution of India for its action constituting and / or selecting members of the Committee, which has been constituted with a view to consider the necessity of Uniform Civil Code for the citizens of the State of Gujarat?

[12] So as to decide the aforesaid question, first of all, one has to keep in mind the scope and ambit of Article 226 of the Constitution of India in the matter of issuance of Writ of Mandamus. Under what circumstances, the Constitutional Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. A Writ of Mandamus is the tool in the hand of the Constitutional Court, by which the Court can keep check and balance on the executive functions of the State, more particularly, those are prescribed under the statute. By a Writ of Mandamus, the



Court can issue directions upon the State authorities for having neglected to perform statutory duties and / or against performance of the statutory duties not in consonance with the provisions of law. The issuance of Writ of Mandamus is regarded as prerogative powers of the Constitutional Court. Thus, exercise of such prerogative powers shall have to be with utmost care and circumspection so that by virtue of such exercise of powers, routine and general administration of the State authorities is not interfered with. Under Article 226 of the Constitution of India, the Constitutional Courts are having wide powers, however, such powers are expected to be exercised in a case where the fundamental rights of the citizens are violated and / or against the State actions where the statutory duties are not performed. Thus, it is the duty of the Court to satisfy itself with regard to the facts and circumstances which justifies exercising powers under Article 226 of the Constitution of India.

[13] Keeping in mind the aforesaid basic concept, if the facts of the present case are considered, admittedly, it appears that constitution of Committee is not by way of any provisions of

statute. The said Committee is not having any character of statutory in nature. As a matter of fact, the constitution of the said Committee is purely an administrative decision. Thus, in absence of any statutory provisions, the authority cannot be expected and / or directed to act in a particular manner. In other words, when the constitution of Committee is not back by any statutory force, in that event, selection of members of the Committee cannot be subjected to challenge under Article 226 of the Constitution of India. The Court, by exercising powers under Article 226 of the Constitution of India, cannot direct the State authorities to select members in a particular manner. Any direction and / or order, in that regard, would be said to be unjustified and unwarranted interference in a purely administrative affairs of the State authorities, and thereby, this Court would not like to go in the area, which is absolutely within the domain of the State Government on its administrative side. More so, Article 162 of the Constitution of India permits the State Government to take administrative decisions and thus, there shall not be any judicial review of purely administrative decisions taken under Article 162 of the Constitution of India by the State

authorities. By constituting a Committee, it cannot be said that prejudice is caused to any class of people when more particularly it is always open for any class of people to make representation espousing their views on the Uniform Civil Code to the Committee so constituted. Under the circumstances, I see no good reason to exercise extraordinary jurisdiction under Article 226 of the Constitution of India in a realm of administrative decisions taken under Article 162 of the Constitution of India by the State of Gujarat.

[14] At this stage, it is profitable to take notice of the decision of the Hon'ble Apex Court in the case of **Asif Hameed (supra)**. The relevant observations, in para 27, are quoted thus as under:

*“27. We may now examine the submissions. It is an admitted fact that Mr. J.P. Kesar never functioned as part of competent authority. The scrutiny and compilation of the selections was done by two members namely Dr. Aga Ashraf Ali and Prof. Satish Raina. The three member authority was not a statutory authority. It was entrusted with the functions of executive nature. The mere fact that one member did not participate in the selection does not ipso facto render the selections illegal. Mr. Anil Dev Singh disputed the validity of selection placing reliance on the **United Commercial Bank Ltd. v. Their workmen,***

**[1951] SCR 380.** In this case Central Government had constituted an Industrial Tribunal for the adjudication of industrial disputes in banking companies in exercise of its powers under Section 7 of the Industrial disputes Act, 1947. The tribunal was to consist of three members. One of the members did not function on the tribunal for a period of about three months. By a majority judgment this Court held that the two remaining members were not a duly constituted tribunal and any proceedings in the absence of the third member without reconstituting the tribunal were without jurisdiction. This Court, construing the provisions of Sections 7 and 8 of Industrial disputes Act, 1947 read with Rule 5 of the Industrial Disputes Rules, 1949, came to the conclusion that when a vacancy occurred it was obligatory on the Government to notify its decision as to whether it intended to fill up the vacancy or not, and if the Government decided not to fill up the vacancy, a notification under Section 7 of the Act was essential to reconstitute the remaining members of the tribunal. The decision was rendered on the construction of the relevant statutory provisions and keeping in view the fact that the tribunal was to perform quasi-judicial functions. The ratio of this decision is inapplicable to the committee constituted by executive order for performing purely administrative functions. Selection of candidates for admission to medical colleges does not involve performance of any judicial or quasi-judicial functions. Mr. Anil Dev Singh then relied upon **Avadh Bihari Sinha v. University of Bihar, Civil Appeal No.1650 of 1967 decided by this Court on 4<sup>th</sup> January, 1968.** In this case Bihar University Regulations framed under the Bihar State Universities Act, 1960 provided that a Board of moderators must consist of five members of whom two must be external experts. Two external experts were invited to join the Board but they declined. The appointment of members to the Board was to be completed only after they were designated and had accepted their appointment. Three members without the two external experts moderated an award which was set aside by this Court. This was a case where interpreting the statutory provisions of the regulations this Court came to the conclusion that the

*constitution of the Board of moderators was not complete without the designation and acceptance of the appointment by the external experts. The ratio cannot be attracted to the facts of the present case. In the present case competent authority with three members was constituted by an executive action. In the absence of any statutory provision to the contrary, it was perfectly legitimate for the authority to function with two members. Even otherwise the written test and viva voce having already taken place, the selection process was almost complete and nothing much was left for the competent authority to do. It had only to scrutinize and finalise the selection. No arguments were addressed and not a single circumstance was pointed out to show any prejudice to any candidate in the scrutiny and finalisation of the selection by the authority. Mr. Altar Ahmed fairly made all the records available in the Court. The learned counsel for the unsuccessful candidates could not point out any prejudice or injustice to any of them. We have, therefore, no hesitation in rejecting this contention of the learned counsel.”*

[14.1] In the aforesaid decision of **Asif Hameed (supra)**, the Hon’ble Apex Court had an occasion to deal with the decision in the case of **United Commercial Bank Ltd. vs. Workmen reported in 1951 SCR 380**, wherein, an Industrial Tribunal was constituted by the Central Government in exercise of powers under Section 7 of the Industrial Disputes Act, 1947. The Tribunal was to consist of three members. One of the members did not function on the Tribunal for a period of about three months. Therefore, the Hon’ble Apex Court held that two remaining members were not a

duly constituted Tribunal and any proceedings in the absence of the third member without reconstituting the Tribunal were without jurisdiction. The said decision was rendered on the construction of the relevant statutory provisions and keeping in view the fact that the Tribunal was to perform quasi-judicial functions. The Hon'ble Apex Court, in that context, in no uncertain terms, held that the ratio of the said decision cannot be applicable to the Committee constituted by the executive order for performing purely administrative functions. So is the case here in the present case. The Committee has neither been constituted under any statutory provisions nor it is going to perform judicial or quasi-judicial functions. Thus, the decision of the Hon'ble Supreme Court of India will squarely be applicable to the present case.

[15] In view of the aforesaid discussion, this Court is of the firm opinion that once the Committee has been constituted purely by executive order under Article 162 of the Constitution of India, in absence of any statutory provisions to the contrary, selection of particular members for constitution of Committee would be within the absolute domain of the State Government and thereby, it is

perfectly justified for the State authorities to select the members of the Committee and for which, Writ of Mandamus cannot be issued.

I answer the question accordingly.

[16] For the foregoing reasons, present petition is devoid of any merit and is hereby rejected accordingly.

CHANDRESH

**(NIRAL R. MEHTA,J)**