

# Rameshbhai Babubhai Katariya vs State Of Gujarat on 29 August, 2019

**Author: S.R.Brahmbhatt**

**Bench: S.R.Brahmbhatt, A. P. Thaker**

C/LPA/1571/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1571 of 2019

In

R/SPECIAL CIVIL APPLICATION NO. 11414 of 2019

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2019

In

R/LETTERS PATENT APPEAL NO. 1571 of 2019

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RAMESHBHAI BABUBHAI KATARIYA

Versus

STATE OF GUJARAT

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Appearance:

MR. A. P. RAVANI, FOR HIRAK P GANGULY(8002) for the Appellant Nos. 1, 2, 3, 4  
for the Respondent No. 1, 10, 11, 12, 13, 14, 15, 16, 17, 2, 3, 4, 5, 6, 7, 8, 9  
MR. B.M.MANGUKIYA (437) for the Respondent no.2

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CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

HONOURABLE DR.JUSTICE A. P. THAKER

Date : 29/08/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT)

1. Heard learned counsel for the parties.

2. The petitioners, who happened to be the respondent nos.2 to 6 in the Special Civil Application no.11414 of 2019 have taken out this appeal under Clause 5 of the Letters Patent challenging the judgment passed by the learned Single Judge wherein the learned Single Judge of this Court partly allowing the petition quashed and set aside the order of the Designated Authority Respondent no.1

dated 31st May 2019, wherein the purshis on behalf of the petitioners to drop the proceedings was accepted and remanded the matter to the Designated Authority for dealing with the submissions that may be made by all the concerned. The operating part in Para 7 contains the said direction.

3. The facts as could be gathered from the memo of the petition and shorn off unnecessary details deserves to be set out as under : 3.1 The elections were held in the month of February 2018 for the Rajula Municipality. Total strength of the members panchayat is 28, out of which 27 members were elected on the symbol of Indian National Congress Party, and 1 elected on symbol of BJP. The ruling party in the State therefore, in minority in the Municipality.

3.2 The petitioners and respondent nos.2 to 8 are elected on the symbol of Indian National Congress Party. It is stated that the person elected on the post of president of the Municipality was indulging in various irregularities and illegalities with the aid and assistance of the Chief Officer of the Municipality and therefore, a requisition for moving the no confidence motion was moved against the then President of Municipality on 2nd April 2018 by 20 members which is more than 2/3 of the majority. The provisions of the Gujarat Municipalities Act, empowers moving the motion of no confidence and to vote accordingly as per the conscience of every individual member of the Municipality as per the provisions of the Act. The said right to vote under the Municipalities Act cannot be curtailed by any other legislature for the time being in force. No mandate of the party on whose symbol the petitioners are elected informed on or before the meeting or served to the petitioners. The petitioners had no knowledge of any mandate whatsoever. The petitioners caste their vote during the meeting on 17th April 2018.

3.3 After the voting in the meeting took place on 17th April 2019, the petitioners came to know that the mandate issuing authority of the Indian National Congress Party had issued a mandate and therefore they had issued a mandate and therefore, they had approached the said authority pointing out of their lack of knowledge and sought his advise on the aspect. The mandate/whip was issued by the District President of Amreli District Congress Committee. During the consultation with him the petitioners pointed out their reality about lack of knowledge of the mandate/whip and their voting in the meeting dated 17th April 2018. The Mandate/whip issuing authority gave the understanding to the petitioners that as the same has happened out of lack of knowledge, and their activity not being detrimental to the ideology of the party or malicious in any nature, it can be pardoned.

3.4 The party and the District Committee after having realized that the directions could not be followed under mistaken notions it was required to be pardoned but then the question arose as to who can pardon it. The advise was taken by the District President from the higher level and have knowledge that the mandate issuing authority only can pardon the violation of the mandate under his signature because of two reasons (1) the mandate issuing authority is the authorized person by the party as per section 3 and therefore, he enjoys the delegated powers by the party in the matter of issuance of the mandate and the matters related to the mandate and (2) based on the principle that the authority to appoint would include authority to remove as provided in The General Clauses Act.

3.5 The mandate issuing authority who is authorized by the party condoned the act of the petitioners of not following the mandate due to lack of knowledge and the said pardon was informed by the

petitioners to the respondent no.1 on 15th May 2018 i.e. within 30 days time limit as prescribed in Rule 3(6). Even the Rajula Shahar Congress Committee on 16th May 2018 informed the respondent no.1 that the act of the petitioners is pardoned by the party. Hence, no proceedings for disqualification under anti-defection law can lie after pardon of the act by the authorized person of the party.

3.6 It is stated that the respondent no.1 despite the aforesaid facts, passed the impugned order in arbitrary manner by disqualifying the petitioners and respondent no.7 for holding the post of member of the Amreli Municipality and let go the respondent nos.3 to 6 though they were on the same footing.

3.7 The learned Single Judge passed the order dated 17th July 2019 partly allowing the petition quashed and set aside the order of the Designated Authority dated 31st May 2019 respondent no.1, wherein the petition on behalf of the petitioners to drop the proceedings was accepted and remanded the matter to the Designated Authority for dealing with the submissions that may be made by all the concerned.

3.8 Being aggrieved by the aforesaid order of the learned Single Judge, the appellants' original respondent nos.3 to 6 filed the present appeal.

4. Learned counsel for the appellants invited Court's attention to the three judgments i.e. [1] 2012 (5) GLR 3769 in case of Ashraf Abubakar Ansari Vs. Commissioner & Anr., [2] (2002) 4 SCC 638 in case of Director of Settlements A.P. & Others Vs. M. R. Apparao & Anrs., [3] (1976) 1 SCC 671 in case of Jasbhai Motibhai Desai Vs. Roshan Kumar & Anrs. and submitted that the learned Single Judge unfortunately did not appreciate the contention that the petitioners did not have locus to approach the Court and the unfortunate reliance placed upon the decision of Supreme Court in case of Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and others reported in (2004) 8 SCC 747 was misconceived and erroneous as the facts pertaining therein were different than the facts of the case on hand. The ratio of the judgments therefore, did not have any applicability to the case on hand and the Court had therefore, on account of application of wrongful ratio of the judgment remanded the matter which has warranted filing of this appeal.

5. Learned counsel for the appellants further submitted that this Court in case of Ashraf Abubakar Ansari Vs. Commissioner & Anrs. Reported in 2012 (5) GLR 3769 held that the writ petition would be maintained only when the personal injury or injury is required to be established and in absence of any injury or infringement of right, the writ petition would not be maintainable. Learned counsel for the appellants further submitted that in the instant case, the petitioners could not be said to have suffered any injury on account of petition in question and therefore, the petition itself was not maintainable.

6. Learned counsel for the appellants further submitted that the writ, which is entrusted to the petitioners could not have been entrusted to the petitioners as they themselves have incurred disqualification for carrying writ of Court and hence, Court may admit this LPA and grant relief as the remand would be absolutely uncalled for.

7. Learned counsel for the appellants further submitted that the whip with the 'Dandak' of the party, who had issued the whip and whose whip is alleged to have been flouted in regard to the so-called disqualification, he himself has condoned and given pardon to the delinquents and in that eventuality, the entire issue ought not to have been groan[ed] out of the proposition and therefore, the order deserves to be quashed and set aside.

8. Learned counsel for the appellants further submitted that the petitioners also did not object to the purshis when the same shall be acted upon by the authority and therefore, they would not eligible to challenge the said aspect subsequent in the petition.

9. This Court is of the considered view that this appeal is required to be dismissed for the following reasons.

(i) The operative part of the learned Single Judge's order deserves to be set-out as under :-

"[6.0] Having heard learned advocates

appearing for the respective parties, I am of the opinion that the submission made by learned advocate Mr. Champaneri appearing for the petitioners is required to be accepted in view of the decision of the Hon'ble Supreme Court in the case of Dr. Mahachandra Prasad Singh (Supra) and particularly in view of the observations made in paragraph 16 of the said decision, which reads as under:

"16. Sub[rule] (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said Rule and sub[rule] (6) of the same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is 'PROCEDURE'. Sub[rule] (1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and sub[rule] (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition.

These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth

Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule.

Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman.

There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-Rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

[7.0] Hence, the petition is allowed in part. The impugned order dated 31.05.2019 passed by the respondent No.1 accepting the purshis on behalf of the petitioners to drop the proceedings is hereby quashed and set aside and the matter is remanded to the authority to deal with the submissions which may be made by the petitioners at the time hearing of the proceedings qua the issue referred to herein above. However, the authority shall pass judgment only qua the issue referred to herein above i.e. the issue of dropping of proceedings against the private respondent Nos.3 to 6, within a period of two months from the date of receipt of the present order, without being influenced by the earlier order. Therefore, the impugned order is quashed and set aside in part only and matter is remanded for fresh consideration of the issue referred to herein above only. Rule is made absolute to the aforesaid extent only."

This order in our view in fact does not affect the party's respite to contention in any manner. It merely relegates the party on remand and the matter to be decided by the Designated Authority. In our view, the said order cannot be said to be required or warranted to be interfered with.

(ii) The Supreme Court judgment, which has been cited at the bar to indicate that there was incorrect reliance placed upon by the learned Single Judge itself contains a specific observation qua the litigation in question, which cannot be gainsaid in any manner that the same is not an adversary

and when the litigation itself is not characterize to be an adversary, the concept of injury or lack of injury of right pales into insignificance. In that view of the matter, we are unable to accept the submission of learned counsel for the appellants in regard to the concept of injury or lack of injury.

(iii) This brings the Court to consider the subsequent aspect of no objection against the operation. We are of the view that the petitioners' right is well within the right to file the final outcome litigation, as the purshis was only interregnum action, which otherwise could not have been appreciated by any adjudicatory authority. In that view of the matter that objection is of no avail to the appellants.

10. The Court is of the view that the contention qua condoning of the laps or division of the whip is unfortunately not accepted by the Designated Authority and therefore, this Court would not be now require to delve elaborately upon this aspect. But, suffice it to say that the party if had an authority to condone the whip or not, because it is a question, which needs little probing. The party, which has issued the whip is required to condone the laps and therefore, this aspect could be argued in case if it is permissible under law. Therefore, we need not elaborately go into this aspect. Suffice it to say that when the appellants have not made□but any case warranting this Court to interfere with the order of learned Single Judge, this appeal is required to be dismissed. Accordingly, the same is dismissed. The order impugned in this appeal dated 17th July 2019 passed by the learned Single Judge is hereby confirmed. However, there shall be no order as to costs.

11. Learned counsel for the appellants at this stage urged the Court that the Designated Authority be directed to decide the matter as expeditiously as possible by granting appropriate opportunity to the appellants also and instead of 2 months, it may be decided by 3 months. The Designated Authority is directed to decide the matter within the period of 3 months instead of 2 months after affording opportunity to the appellants..

12. In view of the order passed in the main matter, no orders in the connected Civil Application and the same is disposed of.

(S.R.BRAHMBHATT, J.) (A. P. THAKER, J.) AMAR RATHOD...