

(2001) 10 GUJ CK 0033
In the Gujarat High Court

Case No : Letters Patent Appeal No's. 1157 and 1143 of 2001 in Special Civil Application No. 1353 of 2001 and Civil Application No's. 11494 and 11581 of 2001

Agricultural Produce Market Committee	APPELLANT
Vs	
Patel Jayantilal Purshottamdas	RESPONDENT

Date of Decision : 24-10-2001

Acts Referred:

Citation : AIR 2002 Guj 245 : (2002) 1 GLR 924

Hon'ble Judges : D.M. Dharmadhikari, C.J.; R.R. Tripathi, J

Bench : Division Bench

Advocate : Gaurang H. Bhatt, in Letters Patent Appeal No. 1157 of 2001 and P.K. Jani, No. 1 in Letters Patent Appeal No. 1143 of 2001, for the Appellant; D.C. Dave, in Letters Patent Appeal No. 1143 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, C.J.—Learned Single Judge by the impugned order has dismissed the petition by taking the view that once the petitioner's term as a nominee of the municipal council, Unjha to the market committee, Unjha came to an end, today, in his status as a councillor, he cannot continue as ex-officio nominee on the market committee.

2. The relevant facts to be mentioned are that the petitioner who is the appellant in LPA No. 1143, as a councillor of municipal council, Unjha, was nominated by the council as a member of the market committee, Unjha. The term of the municipal council, Unjha came to an end on expiry of four years. Thereafter, fresh elections were held for constitution of municipal council and the appellant again came to be elected as a councillor.

3. A short question of law has arisen before the learned Single Judge and in appeal before us, whether on the above statutory events, the appellant can still continue as a member on the market committee as a councillor of the municipal

council.

4. A few relevant dates alone are required to be noted for deciding a purely legal question raised. The appellant was elected as Councillor of Unjha municipal council and was nominated as a Member of the Marketing Committee by Resolution of municipal council dated 16-01-1999. The term of Market Committee is four years. The newly constituted Market Committee met in its first meeting on 16-01-1999 and the claim of the appellant as Councillor of Unjha municipal council is that he is entitled to continue for the full term of four years of the Market Committee irrespective of constitution of new municipal council in Unjha. The term of Unjha municipal council came to an end on 06-01-2000. The Collector of Mehsana District appointed an Administrator, who took charge on 10-01-2000. Fresh elections were held for Unjha municipal council and the appellant again contested in the election and was elected as Councillor. The first meeting of the newly constituted municipal council was held on 20-01-2000. The term of the earlier municipal council expired on 06-01-2000 and from 10-01-2000 to 19-01-2000, an Administrator was in charge of the municipal council. The newly constituted Unjha municipal council in its meeting held on 28-02-2000 did not make a fresh recommendation in favour of the appellant, instead respondent no. 4 was recommended as nominee of the municipal council to act as a member of Unjha Market Committee. The legal question raised both at the instance of Market Committee and the present appellants in these two Letters Patent Appeals is that irrespective of constitution of a fresh elected body to the Unjha municipal council, the nomination made by the erstwhile elected body of the Unjha municipal council to the Market Committee would continue for the full term of the Market Committee and the newly elected body of Unjha municipal council could not make a fresh nomination of respondent no.4 as member of the Market Committee.

5. Learned counsel Mr. P. K. Jani for the appellant very strenuously urged that status for continuance of the nominated member of the municipal council does not depend on expiry of the term of the municipal council and the provisions of the Gujarat Agricultural Produce Market Act, 1963 do not contemplate any bar on the continuance of the nominee councillor. No fresh nomination is required to be made by the newly elected municipal council.

6. The argument advanced is that once a councillor is nominated for a particular term to the market committee, he continues for his full term irrespective of his status as councillor ceasing on expiry of term of the municipal council.

7. Alternatively, it is urged that in any case, the appellant having been re-elected as a councillor, his earlier status as nominee of the erstwhile elected municipal council would continue. Reliance has been placed on the decision of the Bombay High court in *Jehangir Bhikaji Panthaki vs. Corporation of the city of Nagpur* (1960) 62 BLR 450 and decision of the Rajasthan High Court in *Kanta Devi and Another Vs. State of Rajasthan and Others*, .

8. Having gone through the said decisions, we find that they are clearly distinguishable. In the Bombay case, arising from Nagpur Bench, from the constituency of textile mills, a representative was elected by the Directors of the two cloth Mills at Nagpur to nominate him as councillor to the Corporation of Nagpur. The court held that merely because the directors had nominated him as councillor, they had no power to recall him on the ground that he had lost their confidence. The Rajasthan case is also distinguishable where, after making nomination to the municipal council, Government wanted to substitute him by another nominee. It was held that Government cannot change its mind and nominate another person without following the required procedure. The subsequent notification issued for the above purpose was held to be beyond their power.

9. In the Gujarat Act, the procedure of nomination is regulated by section 11(1) (iv) and Section 14. The relevant part of these sections reads as under :

"11. Constitution of Market Committee: (1) Every market committee shall consist of the following members, namely-

(i) x x x

(ii) x x x

(iii) x x x

(iv) one member to be mentioned by the local authority (other than the market committee) within whose jurisdiction the principal market yard is situated from amongst its councillors or, as the case may be, members who do not hold any general licence;

Provided that where under the law applicable to the local authority its councillors or members have vacated office and any person or administrator has been appointed to exercise the power and perform the functions of the local authority, such person or, as the case may be, administrator shall nominate a member under this paragraph from amongst persons qualified to be councillors or members of the local authority and not holding a general licence;"

"14. Disabilities from continuing member: (1) An elected or nominated member shall cease to hold office as such member if-

(i) xxx

(ii) xxx

(iii) he being a member nominated by a local authority, ceased to be a councillor , or as the case be, a member, of the local authority , or is granted a general licence under this Act."

10. As the facts stated above, the appellant was nominated by the erstwhile municipal council whose term expired and thereupon, the appellant's status as a councillor ceased. An Administrator was thereafter appointed and in the fresh

election, the appellant has been re-elected but as an effect of section 14(1)(iii), on expiry of the term of erstwhile council, the appellant's status as a municipal councillor ceased. As an effect of section 14(1)(iii), his nomination qua councillor ceased. His re-election would not revive his nomination. The newly elected municipal council has not sent him as a nominee to the market committee. The proviso to section 11(1)(iv) very clearly provides that on the appointment of Administrator, all elected members shall vacate their office. The proviso below section 11(5)(iv) reads as under:-

"Provided that where under the law applicable to the local authority its councillors or members have vacated office and any person or administrator has been appointed to exercise the power and perform the functions of the local authority, such person or, as the case may be, administrator shall nominate a member under this paragraph from amongst persons qualified to be councillors or members of the local authority and not holding a general licence;"

11. The provision of sending a nominee of the municipal council to the market committee is with the object that the interest of the council be protected in conducting the affairs of the market committee in coordination with municipal council. If the argument advanced by the learned counsel for the appellant is accepted, it would allow continuance to a councillor who has ceased to be a councillor of the council which has nominated him to the market committee. Such interpretation would defeat the very object of sending of nominee from the municipal council as their agent to the market committee. It is to be noted that nomination is ex-officio and is attached to continuance of the councillor. If his status as councillor at any time is lost, the nomination would cease. On appointment of administrator, his status as councillor was lost with the outgoing elected body of the council. There is no provision in the Act which revives his position as nominee merely because he happened to be re-elected as councillor to the newly elected body. Neither the administrator who was in control of the council for a brief interregnum period nor the newly elected council has nominated him again to the market committee. His erstwhile status as nominee of the erstwhile council cannot continue after re-election and consequent upon reconstitution of fresh council which has made a nomination in favour of respondent No.4. The status of a nominee of council survives or expires with the continuance or expiry of the term of the elected body which has nominated him.

12. For the aforesaid reasons, we find no ground to take a different view on the provisions of law as taken by the learned Single Judge. The LPAs, therefore, fail and are dismissed. No orders on civil applications.