

(2009) 07 GUJ CK 0038

In the Gujarat High Court

Case No : Special Civil Application No. 344 of 2009

Ajitsinh R. Jadeja

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 37, 37(1), 37(2)

Citation : AIR 2009 Guj 171 : (2009) 3 GLH 396 : (2009) 3 GLR 1866 : (2010) 8 RCR(Civil) 2586

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : D.M. Thakkar, for the Appellant; Maithili Mehta, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—This petition challenges show-cause notices dated 21-11-2008 and 2-1-2009 issued in exercise of powers u/s 37 of the Gujarat Municipalities Act, 1963 (the Act).

2. The petitioner was elected as Councillor of Jetpur-Navagadh Municipality in February, 2003. During the tenure of the said elected body the petitioner held post of President between 12-9-2005 to 4-3-2008. Impugned show-cause notices have been issued on 21-11-2008 and 2-1-2009 and both the notices specifically referred to the alleged defaults during the period of office held in the earlier tenure of the body of which the petitioner was Councillor. It is an accepted position that fresh elections took place in February, 2008 and the petitioner was declared to be elected vide certificate issued by the Election Officer on 19-2-2008.

3. In the backdrop of aforesaid facts, learned Advocate for the petitioner has submitted that the impugned notices are bad in law, being without jurisdiction considering the fact that the defaults alleged pertained to the period relatable to the preceding elected body which is no longer in existence and in the newly

elected body the petitioner has been re-elected with effect from 19-2-2008. Therefore, it was submitted that in light of the decision of this Court in the case of Chhanalal A. Patel, President, District Local Board, Mehsana Vs. State of Gujarat, removal from office has to be confined in point of time only to the term of the local body because the misconduct has to be relatable to the term of office and not at any point or period of time beyond the term of office. That though the said judgment was in context of provisions of Bombay Local Boards Act, 1923 the ratio would be applicable. According to the learned Advocate the petitioner deserves to succeed on this limited count.

4. Learned Assistant Government Pleader submitted that the proceedings were only at the stage of showing cause and the petitioner must be directed to tender reply and the same shall be considered in accordance with law by the Authority. The petition therefore was not required to be entertained.

5. Section 37 of the Act reads as under:

37(1) The State Government may remove from office:

(a) any Councillor of a municipality, [on its own motion or on receipt of] a recommendation of the municipality in that behalf supported by a majority of the total number of the then Councillors of the municipality, or

(b) any President or Vice-president of a municipality. If, after giving the Councillor, President or as the case may be Vice-president an opportunity of being heard and giving due notice in that behalf to the municipality and after making such inquiry as it deems necessary, the State Government is of the opinion that the Councillor, President or as the case may be, Vice-president has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act.

(2) A President or Vice-president removed under Sub-section (1) shall not be eligible for re-election as a President or Vice-president during the remainder of the term of the municipality.

6. A plain reading indicates that either a Councillor, or a President or a Vice-president of the Municipality may be removed from office after giving an opportunity of hearing to such defaulter delinquent and after making such inquiry as necessary by recording an opinion that such a person has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or has become incapable of performing his duties under the Act. Sub-section (2) of Section 37 of the Act indicates that a person holding a post of President or Vice-president removed under Sub-section (1) shall not be eligible for re-election as a President or Vice-president during the remainder of the term of the Municipality. Thus, a conjoint reading of the provisions indicates that the default has to be in relation to the post held during tenure of an elected body. In other words, a person can be held guilty of misconduct in the discharge of his duties, which duties are performed in contravention of the obligations cast in law during the

period the person holds the office and the same has to be co-extensive with the term of elected body. Sub-section (2) of Section 37 of the Act makes this position more than abundantly clear when it stipulates that a president or vice-president removed from office for any of the defaults shall not be eligible to be elected to the said post during remainder of the term of the municipality. In other words, a person has to be held guilty of misconduct in discharge of his duties in relation to the post held during the existence of the elected body of which he holds a post upon being elected to such post by the said body. Once, the elected body undergoes change, namely, constitution of that body changes upon afresh election being held, the mandate given by the members of the elected body to a person to occupy the post of the President or vice-president cannot continue once the newly elected body has come into existence. The requirement that the President continues to hold charge and hand over the same to the newly elected President at the first meeting held immediately on completion of the election programme would not indicate that the term of the said person continues beyond the term of the elected body. It is only to ensure that the body does not administratively suffer during the period during which elections are announced, held and concluded.

7. In light of what is stated hereinbefore, if the facts of the case are considered, it becomes apparent that the acts stated to have been committed by the petitioner are relatable to the office held by the petitioner during the tenure of the earlier elected body, and are not acts which have been committed in discharge of his duties during the tenure of the newly elected body. The impugned notices themselves indicate this when one considers the salutation employed by the said notice describing the petitioner as ex-President, and thereafter, sets out the defaults stated to have been committed in year 2005.

8. Hence, without going into merits of the controversy as to whether such defaults would amount misconduct in the discharge of the duties as a President the petition is required to be allowed on the limited count that provisions of Section 37 of the Act cannot be invoked in a case where the term of the elected body is over.

9. The petition is accordingly allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.