

(2011) 05 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 4505 of 2011 and Civil Application No. 4744 of 2011 in Special Civil Application No. 4505 of 2011

Ajitsinh Ramubha Jadeja

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 271, 51(11)
Jetpur Navagadh Municipality Rules — Rule 19, 20, 21, 22, 23

Citation : (2011) 05 GUJ CK 0077

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : D.M. Thakkar, for the Appellant; M.O. Narsinghani, AGP for Respondent 1, R.R. Trivedi and Bhavesh P. Trivedi for Respondent 3 and Ashish M. Dagli, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—By way this petition under Article 226 of the Constitution of India, the Petitioner who is President of Jetpur Navagadh Municipality has prayed for an appropriate writ, direction and order quashing and setting aside the order/direction issued by the District Collector, Rajkot dated 6.4.2011 at Annexure A to the petition by which he has directed the Chief Officer of the Jetpur Navagadh Nagar Palika to call/convene the meeting to consider no confidence motion against the Petitioner as per the notice moving no confidence motion against the Petitioner dated 23.3.2011.

2. It is the case of the Petitioner that Petitioner is councilor and President of Jetpur Navagadh Municipality. That the members of the municipality submitted motion for no confidence against the Petitioner on three issues mentioned therein in their notice dated 24.1.2011. That apropos to the above notice meeting was called by the Petitioner on 28.1.2011. However, in the said meeting, an application for adjournment of the meeting was submitted by 19 members of the

municipality on the ground that 8 members of Municipality are disqualified for defection by the competent authority and as they have challenged the order of competent authority by filing a writ petition, which was kept for hearing and therefore, till the final disposal of the said petition, special general meeting called by the Petitioner in respect of no confidence motion should be adjourned. It is the case of the Petitioner that therefore, the said Special General Meeting for no confidence motion was adjourned. It is the case of the Petitioner that however, the Vice President of the Municipality made a noting that in view of Section 51(11) of the Act, now meeting be called on 5.2.2011. It is the case of the Petitioner that on 5.2.2011, again 20 members of the municipality submitted an application with a request to call the meeting on 15.2.2011. It is the case of the Petitioner that on 15.02.2011 Chief Officer of the municipality informed the aforesaid 20 members as the special general meeting on 28.1.2011 was adjourned at their request till the final disposal of the writ petition filed by the 8 members of their party against their disqualification, now again the meeting cannot be called on 15.2.2011 as per their request. It appears that Vice President and other members of the municipality moved a Special Civil Application No. 3037 of 2011 before this Court making grievance against the Petitioner for not calling special general meeting as per their request and the said petition came to be disposed of by this Court vide order dated 10.3.2011 with a direction to the District Collector, Rajkot to call the special general meeting. It is the case of the Petitioner that thereafter as per the direction of this Court, the Deputy Collector, Gondal vide notice dated 14.3.2011 called special general meeting on 21.3.2011 and for want of majority support for passing the motion for no confidence, the motion for no confidence against the Petitioner was rejected. It appears that thereafter another motion for no confidence was moved against the Petitioner by notice dated 23.3.2011 and neither the President nor the Vice President directed to convene the meeting to discuss the no confidence motion against Petitioner pursuant to the notice of no confidence dated 23.3.2011, after obtaining necessary legal opinion, the Collector, Rajkot, by impugned communication dated 6.4.2011 has directed the Chief Officer to call the special general meeting to discuss the no confidence motion against the Petitioner pursuant to the notice of no confidence dated 23.3.2011.

2.1. Being aggrieved and dissatisfied with the aforesaid communication dated 23.3.2011, the Petitioner has preferred present Special Civil Application under Article 226 of the Constitution of India.

2.2. It appears that during the pendency of the present petition meeting was already convened by the Vide President of the Jetpur Navagadh Nagar Palika on 15.4.2011, the Petitioner has preferred Civil Application No. 4744 of 2011 restraining the Respondents from convening the special general meeting scheduled on 15.4.2011 and in the said application this Court by way of ad-interim relief directed that any decision in the meeting to be convened on 15.4.2011 to discuss the no confidence motion against the President, shall be subject to the ultimate outcome of present Special Civil Application and subject

to further order that may be passed in the present Special Civil Application. It is reported that as such in the meeting held on 15.4.2011 no confidence motion has been passed against the Petitioner by 24 votes in favour of motion and one vote (of the Petitioner himself) against the motion of no confidence.

3. Shri D.M. Thakkar, learned advocate for the Petitioner has only made one submission relying upon Rule 24 of Jetpur Navagadh Municipality regarding the meeting of general board and continues, their powers and function and rules of Chief Officer that once motion of no confidence was rejected for want of majority in special general meeting convened on 21.3.2011, second motion for no confidence against the Petitioner is not maintainable within a period of three months from the date of voting of such motion. It is submitted that the aforesaid rules are framed by the Municipality u/s 271(a) of the Gujarat Municipalities Act, 1963 and therefore, it is submitted that the second motion for no confidence as per the notice dated 23.3.2011, which is within a period of three months is not maintainable and therefore, the Collector has materially erred in directing to convene the special general meeting of the municipality to discuss no confidence motion against the Petitioner pursuant to the notice of no confidence motion dated 23.3.2011. Shri Thakkar, learned advocate for the Petitioner has heavily relying upon Rule 24 of the aforesaid Rules, which reads as under:

When a motion has been moved and voted upon in the meeting with whatever the outcome, no motion raising substantially the same question in any other manner shall be allowed, admitted or taken up within three months from the date of voting of such motion.

3.1. By making above submission, it is requested to allow the present petition.

4. Petition is opposed by Shri Bhavesh Trivedi, learned advocate for the Respondent No. 3, Shri Dagli, learned advocate for newly added Respondent No. 4 and Ms. Narshinghani, learned AGP for the Respondent State. Shri Trivedi, learned advocate for the Respondent No. 3 and Shri Dagli, learned advocate for the Respondent No. 4 have submitted that Rule 24 of the Rules upon which reliance has been placed by the Petitioner will not be applicable with respect to special general meeting to discuss no confidence motion. It is submitted that the said Rule 24 is with respect to other motion of business and transaction of the municipality and general meeting and not with respect to motion to discuss no confidence motion. It is submitted that as such there is no such provision in the Gujarat Municipalities Act that once motion of no confidence has failed another motion for no confidence again brought within a period of three months is not maintainable. Therefore, it is submitted that the contention on behalf of the Petitioner that once the motion of no confidence has failed there cannot be another motion of no confidence within a period of three months shall be contrary to the provision of Gujarat Municipalities Act and/or same shall be inconsistent with the provision of the Ac. Therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that the only contention on behalf of the Petitioner in the present Special Civil Application is that once the motion of no confidence was rejected in the meeting convened on 21.1.2011, within a period of three months thereafter there cannot be any fresh motion for no confidence within a period of three months. In support of the above contention and submission, the learned advocate for the Petitioner has heavily relied upon Rule 24 of the Rules, which are framed u/s 271(a) of the Gujarat Municipalities Act, which is referred to hereinabove. Therefore, the short question which is posed for consideration of this Court is whether the aforesaid Rule 24 shall be applicable to the special general meeting and/or motion for no confidence? Now considering the aforesaid rules as a whole, it appears that whenever the word "motion" is used the same is referable to motion moved by a councilor to discuss the particular question in the meeting and it does not refer to the motion for no confidence for which special general meeting is required to be convened. For that purpose, Rules 5, 19, 20, 21, 22, 23 and 28 are required to be read conjointly and as a whole. The word "motion" referred to in the aforesaid provision is with respect to a motion by the councilor and the rules provided for procedure of conducting the meeting of the general board which is as per Section 271(a) of the Gujarat Municipalities Act. Therefore, the reliance placed upon Rule 24 of the Rules regarding meeting of the general board referred to hereinabove shall not be applicable to the motion for no confidence as sought to be contended on behalf of the Petitioner. It appears to the Court that Rule 24 shall be applicable with respect to any motion moved by councilor with respect to general meeting and general motion and the question to be incorporated in the agenda. It is to be noted that motion for no confidence is altogether different than that of motion moved by a councilor to be discussed in the general meeting or meeting of the general Board. Rule 19 provides about the motion and it provides for how to move the motion and it provides no motion shall be admissible, which is clearly and precisely not expressed; which shall contain arguments, inference, ironical expression or defamatory statement; or which does not raise or show one definite issue. Rule 20 provide how to move the motion. Rule 21 provides for moving of motion and Rule 22 provides for limitation as to discussion and Rule 23 for seconding the motion. Considering the aforesaid as such it does not refer to motion for no confidence. In the motion for no confidence as such there is no question of mentioning anything in the motion as provided in Rule 19 or Rule 20 or Rule 21. The motion for no confidence is governed by Section 51(11) of the Gujarat Municipalities Act and as such it does not provide that there cannot be any second and/or fresh no confidence motion within a period of three months from the rejection of the earlier motion. At this stage, it is to be noted that Section 271(a) of the Gujarat Municipalities Act permits the municipalities to have prescribed their own rule in consistent with the Act and may frame the rules which shall be consistent with the Act and for the subject provided in Section 271. That provision for motion for no confidence is provided under sub Rule 51(2) only, which reads as under:

The president may, whenever he thinks fit and shall upon the written request of not less than one third of the councillors in the case of a motion of no confidence against the president or vice president and one forth of the councillors in any other case and on a day not later than 15 days after the presentation of such request, call a special general meeting. If the president fails to call a special general meeting as provided in this clause the vice president shall call such meeting on a day not later than thirty days after the presentation of such request.

6. Considering the above provisions of the Act, it does not provide anywhere that fresh and/or second motion of no confidence is not permissible within a period of three months from the earlier motion of no confidence. Under the circumstances, the contention on behalf of the Petitioner that in view of the earlier motion of no confidence failed/rejected in the meeting dated 21.3.2011 thereafter another fresh/second motion of no confidence within a period of three months is not permissible cannot be accepted. In a given case it may happen that in the particular meeting for no confidence motion may fail for whatever reasons, however subsequently within few days only the act of the President/Vice President is as such detrimental to the interest of the Municipality and/or Nagar Palika, in that case certainly it is permissible to move another fresh motion of no confidence. However, such an interpretation canvassed on the part of the Petitioner is accepted in that case, once the motion of no confidence has failed, it will give free hand to the President/Vice President to act arbitrarily and/or against the interest of the municipality/Nagar Palika, which cannot be the intention of the legislature.

7. Under the circumstances and in view of the above, the contention on behalf of the Petitioner cannot be accepted and therefore, the petition fails and same deserves to be dismissed and is accordingly.

8. In view of dismissal of main Special Civil Application, ad-interim relief order passed by this Court passed in Civil Application is hereby vacated and the said application is also dismissed.