

(1990) 07 GUJ CK 0010

In the Gujarat High Court

Case No : Letters Patent Appeal No. 39 of 1987

B.K. Shukla

APPELLANT

Vs

Natverlal Ratanji Kevat and Others

RESPONDENT

Date of Decision : 03-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 48

Citation : AIR 1992 Guj 57 : (1990) 2 GLR 495

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;C.V. Rane, J

Bench : Division Bench

Advocate : P.M. Raval, for the Appellant; Y.V. Shah and G.N. Desai, for the Respondent

Judgement

Gokulakaishnan, C.J.—This Letters Patent Appeal is directed against the order of the learned single Judge dismissing the Special Civil

Application filed by the Appellant herein. Chief Officer of Billimora Nagarpalika came forward with Special Civil Application No. 822/83

questioning a resolution passed by the Municipality by 2/3 majority u/s 48 of the Gujarat Municipalities Act dismissing him from the post of Chief

Officer. The learned single Judge of this High Court after considering all the points raised by Mr. Raval, learned counsel appearing for the appellant

herein, dismissed the special civil application and hence this letters patent appeal has been filed.

2. Mr. Raval, learned counsel appearing for the appellant raised five contentions before us. The first contention is that the President of the

Nagarpalika has no power to issue charge-sheet against the appellant herein. Since the Municipality is the appointing and removing authority as per

the provisions of the statute, the original charge-sheet issued by the President calling for explanation from the appellant herein is itself vitiated.

Meeting this contention we are of the view that there is no substance in this contention. Three charge-sheets were given alleging various mal-

practices on the part of the Chief Officer. These mal-practices were committed in the Municipality by the Chief Officer and the President who is

the head of the Municipality has issued the charge-sheets. It is admittedly by Mr. Raval that necessary opportunity was given to the appellant

herein and the enquiry report thereof is not vitiated by any procedural defects nor hit by the principles of natural justice. The only contention Mr.

Raval wants to press is that the President "cannot issue the charge-sheet but only the Municipality can do so. Considering the facts of the case and

also the fact that the appellant was made known that it is the Municipality that is questioning the corrupt practice of the appellant, the argument that

the charge-sheets are vitiated cannot be pressed into service. Hence we do not think there is any substance in the first contention raised by Mr.

Raval.

3. The second contention is that the resolution passed suffers from mala fides in as much as the President who is bent upon removing the Chief

Officer has managed to have the resolution passed somehow or other. For this contention Mr. Raval pointed out the three adjourned meetings and

ultimately passing the resolution when there was two-third majority. It is also contended by Mr. Raval that the President who is biased against the

appellant participated in the meeting and voted. Section 48 of the Gujarat Municipalities Act reads as follows:

No chief officer or officer appointed under sub-section (4) or (5) of Section 47 shall be removable from office, reduced in rank or suspended

except by a resolution passed by a majority of at least two-thirds of the total number of the then councillors and shall not be punishable with fine.

It is an admitted fact that the appellant was dismissed from service under this S. 48 of the Gujarat Municipalities Act. The adjournment of the

meetings was done by the President and in the adjourned meeting, where the resolution was passed, the proper agenda was before it regarding the

removal of the appellant herein. It is not an individual act where in bias or mala fides can be attributed for the decision rendered by such an

individual. The statutory provisions clearly make out that the council as such with its two-third majority should pass the resolution for the purpose

of removing the Chief Officer. It is needless to say that every one of the councillors acts independently and applies his mind before any such

resolution is passed and as such the question of bias or mala fides on the part of the President alone cannot be taken as a vitiating circumstance in

passing the resolution at the relevant meeting. Considering the fact that the - resolution was. Passed unanimously with two-third majority of the total

number of councillors, it is too much on the part of the appellant to contend that such a resolution is vitiated by mala fides. The facts of the case

and also the averments made by him do not support the averment regarding mala fides and bias. Hence the second contention of Mr. Raval also

fails.

4. Thirdly Mr. Raval contended that the members of the Municipality, at least 10, were not conversant with English language and they demanded

the translation "of the enquiry report before the resolution was passed. Nevertheless such translation was not given to the said councillors; the

resolution was passed unanimously. This, according to Mr. Raval, shows as to how the councillors blindly and mechanically without understanding

the purport of the resolution, has voted for the resolution. Hence according to the learned counsel the resolution is vitiated. The resolution as such

which has been extracted in the judgment by the learned single Judge, narrates the whole history of the charges leveled against the chief officer,

report of the enquiry officer and as to how it is necessary that the Chief Officer has to be dismissed from his post in the interest of the Municipal

administration." The said resolution amply spells out that all the councillors who were present at the meeting, had applied their mind and passed a

speaking resolution after understanding the charges, report and also the implication of such resolution if passed. Hence we do not think that there is

any substance in the third contention raised by Mr. Raval.

5. Fourthly Mr. Raval contended that the President being the complainant and witness, should not have participated in the voting. The resolution, as

we have discussed in paragraph supra, has to be passed in accordance with Section 48 of the Gujarat Municipalities Act. The statutory duty which

is to be performed by the Municipality, as envisaged by the statute, becomes

enforceable only if it is passed by the majority of two-third of the total number of the then councillors. Admittedly the members Kesent and voted for the resolution satisfies -the" requirement of Section 48 of the Act. Such a statutory duty to be, performed by the elected members in a democratic process cannot be turned down stating that the member who is alleged to have had grudge against a particular officer should be restrained from participating in such meeting. The statute which is intended to perpetuate the democratic principles clearly spells out the necessity of the members participating and voting in the meeting. The President being one of the members, has rightly participated in the meeting and such participation cannot vitiate the resolution passed. Hence we do not think that the participation of the President in the meeting has in any way vitiated the resolution passed.

6. The fifth contention of Mr. Raval is that the councillors simply endorsed the enquiry report and as such there is no application of mind by the councillors concerned. It is admitted that the report was given to all the councillors and they were aware of the report against the appellant herein.

The councillors, being the representatives of the public, are presumed to have read the report and passed the speaking resolution after applying

their mind to the charges leveled against the Chief Officer and also the report given by the enquiry officer. Hence it is too much to say that the

councillors have acted mechanically without applying their mind to the charges leveled against the appellant herein.

7. Mr. G. N. Desai, learned counsel for the respondent-Billimora Nagarpalika, has correctly stated that there is no evidence to show that there

was any personal bias by the President against the appellant herein. When there is no specific allegation, which has been factually established, the

arguments advanced by Mr. Raval regarding bias and mala fides against the Chief Officer cannot be appreciated.

8. Thus, looking from all the angles we do not think there is any violation of principle of natural justice nor any violation of, the statutory provisions

as enshrined in the Gujarat Municipalities Act in dismissing the appellant from-the post of Chief Officer in the Billimora Municipality. For the

reasons stated by the learned single Judge and also for the reasons stated by us in paragraphs supra we do not find any merit in any of the

contentions raised by the appellant in the letters patent appeal and accordingly this letters patent appeal is dismissed.

9. Appeal dismissed.