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**(1996) 03 GUJ CK 0001**

**In the Gujarat High Court**

Chandrikaben Kapilbhai Joshi — APPELLANT

Vs

Collector and Others — RESPONDENT

**Date of Decision :** 11-03-1996

**Acts Referred:**
Gujarat Municipalities Act, 1963 — Section 11, 11(2)(c), 38(1)(c), 38(2), 38(l)(b)(i)

**Citation :** (1996) 3 GLR 477

**Hon'ble Judges :** Rajesh Balia, J

**Bench :** Single Bench

## Judgement

Rajesh Balia, J.—Rule. Service of Rule is waived by the Counsel for the respondents.

2. Heard learned Counsels for the parties.

3. The brief facts which led to this petition are that the petitioner was elected as Councillor from Savarkundla in November 1994. The Savarkundla Municipality under Slum Clearance Scheme had undetaken construction of concrete roads within the Municipal limits for which it had invited tenders for supply of cement, concrete metal, stone etc. Tender for supply of portland cement submitted by one Dharmendra Narmadashankar Joshi was accepted along with supply of hand crushed 40 mm metal. The payment for the supplies made by the said Dharmendra Narmadashankar Joshi were also made by the Municipality. The said Dharmendra Narmadashankar Joshi is brother of petitioner''s husband. On some complaint being lodged the Collector issued notice u/s 38(2) to the petitioner that she had to show cause against the proposed action for treating the petitioner to have incurred disqualification and requiring her to vacate the seat u/s 38(l)(b)(i) read with Section 1 l(2)(c) of the Gujarat Municipalities Act, 1963. On 22-1-1996, the Collector made the order that the petitioner cannot continue as a member of the Municipality as per the provisions contained in Section 38(l)(b)(i) of the Act, because she has rendered herself disqualified as per condition No. 1 of Section 11 of the Act; it declared the seat held by the petitioner as vacant. Hence this petition.

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The petitioner contends that on the face of the order, it does not disclose that the petitioner has incurred disqualification referred to in Section 11 (2)(c) which renders a person disqualified to hold the office in terms of Section 38(l)(b)(i), notwithstanding that fact about relationship between the petitioner and said Dharmendra Narmadashankar Joshi as stated above has been accepted and also the fact about the contract of supply of cement and metal having been given to said Dharmendra Narmadashankar Joshi.

4. The relevant provisions of the Municipalities Act reads as under:

11.(2) No person -

(a) xxx xxx xxx xxx(b) xxx xxx xxx xxx (c) who, save as hereinafter provided, has directly or indirectly, by himself or his partner any share or interest in any work done by order of a Municipality or in any contract or employment with or under or by or on behalf of a Municipality; or

(d).....

may be a Councillor of such Municipality.

38. Disabilities from continuing as a Councillor. - (1) If any Councillor during term for which he has been elected or nominated -

(a) xxx xxx xxx xxx

(b) acts as a Councillor in any matter -

(i) in which he has directly or indirectly, by himself or his partner, any such share or interest as is described in Clause (i), (ii), (iii), (v) or (vii) of Sub-section (3) of Section 11, whatever may be the value of such share or interest, or

(ii) xxx xxx xxx xxx

(c) xxx xxx xxx xxx (d).....,

he shall subject to the provisions of Sub-section (2) be disabled from continuing to be a Councillor and his office shall become vacant.

5. The language of the statute is unambiguous and clear in its terms. Before the person can be said to have incurred disqualification under the aforesaid provision, it must be shown that the Councillor had share or interest in any work done by the order of the Municipality or in any contract or employment with or under or by or on behalf of a Municipality. It is not that the disqualification referred to above occurs as soon as the family relationship is shown to exist between the Councillor and the person who has done any work by order of the Municipality or obtained any contract from Municipality or obtained employment under it. The necessary ingredient is that it must be shown that Councillor has a share or interest in such work, contract or employment and that in obtaining such work, contract or employment, such person has acted as Councillor. The finding must show nexus between such share or interest of the Councillor, the

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direct or indirect, by himself or through partner, in any work done by the order of the Municipality or in any contract or employment obtained with or under or by or on behalf of the Municipality, and any act on the part of Councillor in securing such work, contract or employment furthering that share of interest. The provision cannot be read to mean that merely on establishing a relation by blood, marriage or otherwise between the person who has been elected as Councillor and the person who has obtained any contract from Municipality would render the Councillor disqualified to hold the office ipso facto. Councillor''s action as such in securing such contract, work or employment is sine qua non before he incurs disqualification.

6. In the present case, the findings recorded by the Collector reads as under:

(1) That the Savarkundla Municipality under the Slum Clearance Scheme had undertaken construction of cement concrete roads within the Municipal limits. In order to supply cement, concrete metal, stone etc. an advertisement was published inviting tenders to quote the rates for supply of said items and out of the said tenders, one tender of Shri Dharmendra Narmadashankar Joshi to supply portland cement at the rate of Rs. 2,400/- per M.T. was accepted along with the rate of Rs. 95/- per Sq. Mt. of hand crushed 40 mm. metal. As per the statement produced by the Municipality, an amount of Rs. 435,600/- has been paid which means that the Municipality had given contract to Shri Dharmendra Narmadashankar Joshi and made purchases of the cement.

(2) Smt. Chandrikaben Kapilbhai Joshi, respondent No. 1 has already admitted that Shri Dharmendra is her brother-in-law, i.e., he is the brother of the respondent No. 1. Their interest in each other is established. By deleting the name of Dharmendra from the ration card, their relations do not come to an end.

(3) As per the provisions contained in Section 38(1)(c) of the Gujarat Municipalities Act, 1963 - Disabilities for continuing as Councillor - if he is personally interested in any case for or against the Municipality he becomes disqualified as a Councillor, and the seat falls vacant. The Collector has powers to declare the seat as vacant after giving right of hearing to the concerned member. Thus, it appears that Smt. Chandrikaben Kapilbhai Joshi after getting heself elected as a member in the Savarkundla Municipality, she had given contract to Shri Dharmendra Narmadashankar Joshi to supply cement and hand crushed 40 mm. metal and paid Rs. 435,600/- towards supply of cement. In this contract it is established that Dharmendra Narmadashankar Joshi is the actual brother-in-law of the respondent No. 1 and therefore, as per the provisions contained in Section ll(2)(c) of the Gujarat Municipalities Act, 1963, who cannot have save as hereinafter provided has directly or indirectly by himself or by his partner any share or interest in any work done by order of a Municipality or in any contract or employment with or under or by or on behalf of a Municipality. Accordingly, Smt. Chandrikanben''s interest in the supply of cement is established and has rendered herself disqualified.

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(The English translation is supplied by the petitioner, the correctness of which is not disputed)

7. From the aforesaid, it is apparent that the Collector has not even applied his mind whether the Councillor had any interest of any nature in the contract of supply of cement and metal obtained by Dharmendra Narmadashankar Joshi. It has rest contended to observe that because of the relationship which exists between the petitioner and the contractor, the interest in each other does not cease merely because the name of Dharmendra N. Joshi has been deleted from the ration card of the petitioner. One wonders how the interest which one can have with the relation can further be presumed that one has share or interest in other''s commercial or business activity which a man would ordinarily undertake to further his career. In pursuing such activity relationship with Councillor is no disqualification nor any disqualification is incurred by the Councillor to continue to hold offfice merely because any of her relatives in normal pursuit of his business deals with the Municipality. The Councillor must not have actively or indirectly participated to secure any benefit which ultimately reaches her. It is immaterial whether such interest has been accrued in the name of Councillor or in somebody else''s name. It is the furtherance of economic interest that renders the Councillor disqualified and not the existence of the family or personal relations between the two. The order does not disclose existence of such interest in the contract of supply of cement etc., obtained by said Dharmendra N. Joshi from the Municipality. There is not a whisper in the order that the petitioner acted as a Councillor to secure such work or contract from Municipality in favour of said Dharmendra. It is rather undisputed fact that the Councillor was nowhere connected with the Construction Committee which was responsible for the work in question and for grant of contract. That rules out the question of direct interest or share in the contract and participation of Councillor in decision making. There is not even suggestion that the petitioner had any indirect interest in the contract given to said Dharmendra Narmadashankar Joshi by the Municipality.

8. It is clearly a case of acting on no material and the finding that the petitioner has incurred disqualification because of the existence of family relationship by marriage is not sustainable. The order suffers from error apparent on the face of record.

Accordingly, the petition succeeds. The order dated 22-1-1996 (Annexure A) is quashed. Rule made absolute. No order as to costs. Direct service permitted.

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