

(1978) 04 GUJ CK 0005
In the Gujarat High Court

Chimanbhai Ashabhai Patel	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 25-04-1978

Acts Referred:

Constitution of India, 1950 — Article 235
Gujarat Municipalities Act, 1963 — Section 7(1), 7(1)

Citation : (1978) 19 GLR 1067

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.

1.The dispute in this petition relates to the impending elections to Nadiad Municipality. The term of Nadiad Municipal council expired on 23rd February 1978. The Government extended its term until 23rd May 1978. In October 1977, the Collector asked the municipality to send its proposals for delimitation of wards and the number of seats to be allotted to each ward with reservation for women and members of the scheduled castes. On 24th October 1977, a meeting of the municipal council was held. It was resolved to authorise three persons to enter into consultation with the Collector and the Government and to decide delimitation of wards and other matters. These three persons held consultation with the Collector, In a formal letter one of the members communicated the proposals to the Collector. The proposals which these three persons made were not placed before the municipal council or before its executive committee. On 17th February 1978, the State Government issued the delimitation order. It was substantially in accordance with the proposals made by these three persons. On 21st February 1978, a corrigendum was issued. On 1st March 1978, the Collector fixed the election programme.

2. In this petition, the petitioner challenges the delimitation notification issued by the State Government on 17th February 1978. The ground of challenge is that the impugned notification has not been issued in compliance with the provisions

of Sub-section (1) of Section 7 of the Gujarat Municipalities Act, 1963. Mr. Takwani who appears on behalf of the Collector of Kaira has raised a preliminary objection to the maintainability of this petition. According to him, this petition has been barred by gross delay and laches. The facts which he has pressed into service are as follows:

3. On 24th October 1977, the municipal council authorised three persons to enter into consultations with the State Government through the Collector. On 15th December 1977, they held consultations with the Collector. On 30th December 1977, the Collector forwarded his proposals to the State Government. On 17th February 1978, the Government issued the impugned delimitation notification. On 1st March 1978, the election programme was announced. Nominations were required to be filed between 10th April 1978 and 14th April 1978. This petition was filed on 12th April 1978. Mr. Takwani has tried to argue that the petitioner, in the facts and circumstances of this case, ought not to have waited for two months to file this petition. In any case, after having known on 17th February 1978 that the Government had issued the delimitation notification, he ought to have approached this Court and sought the relief. He allowed time to pass and also allowed the election programme to be announced on 1st March 1978. He also allowed time to run thereafter and when the period for filing nominations arrived, he filed this petition. According to him, therefore, the petitioner is guilty of acquiescence and the petition is hit by delay and laches. It cannot be gainsaid that there is some substance in what Mr. Takwani has argued. If the petitioner wanted the relief in a matter like this, he ought not to have allowed two months to pass. In any case, he ought to have approached this Court much earlier so that without disturbing the election programme, the relief could have been granted to him if the facts and circumstances of his case warranted it to be granted. However, I do not propose to dismiss the petition in limine on this ground because, in my opinion, it is necessary to set at rest the controversy particularly when polling has yet not been held, 7th May 1978 is the day of polling.

4. In order to examine the merits of the contention which has been taised before me, it is necessary to turn to Section 7 of the Gujarat Municipalities Act, 1963. Sub-section (1) of Section 7 is material for the purpose of the present case. It reads as follows:

For the purpose of the election of councillors each municipal borough shall be divided into wards and the number of wards and the number of members to be elected from each ward shall be such as the State Government may, after consultation with the municipality (if already constituted), by order determine.

Mr. Daru has argued that, in the instant case, there was no effective and meaningful consultation by the State Government with the municipality and that, therefore, the impugned notification is bad and void in law. There is no doubt or dispute about the fact that consultation with the municipality must be effective and meaningful. In *Union of India v. S.H. Sheth* 18 G.L.R. 919, the Supreme

Court while construing Article 222(1), has observed that the consultation required by the Article must be purposeful and that it must be such that the consulting authority gets all the relevant data on the basis of which a decision can be taken. It has been further observed that the consultation in that context cast upon the Chief Justice of India a duty to express opinion on nothing less than a full consideration of the matter on which he is entitled to be consulted. It has been further observed by the Supreme Court that the advice tendered on consultation should be accepted by the consulting authority and that the court will have an opportunity to examine if any extraneous circumstances had entered into the verdict of the consulting authority if it departs from the advice given by the person consulted.

5. It has also been argued by Mr. Daru that consultation within the meaning of Section 7(1) of the Gujarat Municipalities Act, 1963 is mandatory and not directory. On the contrary, it has been argued by Mr. Takwani that consultation within the meaning of Section 7(1) is merely directory. In *Naroda Nagar Panchayat v. State* 18 G.L.R. 814, it has been observed by a Division of this High Court that consultation within the meaning of Section 9(2) of the Panchayats Act is directory in nature and that therefore it does not follow that every departure from that duty would taint the whole proceedings with a fatal blemish and render it void and ineffective. It has been further observed that the word "consultation" cannot be equated with the word "consent" or "concurrence". It may be noted in this context that Sub-section (2) of Section 9 of the Gujarat Panchayats Act, 1961 is in this respect *pari materia* with Sub-section (1) of Section 7 of the Gujarat Municipalities Act, 1963. Sub-section (2) of Section 9 reads as follows:

After consultation with the taluka Panchayat, the district panchayat and the nagar or gram Panchayat concerned (if already constituted) the State Government may, by like notification, at any time

(a) include within, or exclude from, any nagar or gram, any local area of otherwise alter the limits of any nagar or gram....

The question whether consultation within the meaning of Section 7(1) of the Gujarat Municipalities Act, 1963 is mandatory or directory does not arise in this case because the evidence on record shows that the Collector had consulted the municipality. In the affidavit-in-reply filed by Jashbhai Kalidas Patel, Chief Officer, Nadiad Municipality, Nadiad, on 25th April 1978, the following facts have been clearly brought out. The Nadiad municipality had appointed a sub-committee on 30th July 1977 for making recommendations to the municipal council for reconstitution of the wards after taking into consideration the report of the Chief Officer. That committee consisted of 11 councillors, i.e. it consisted of one councillor each from 11 wards. That sub-committee met on various occasions and prepared its report and made its recommendations to the municipal council on 17th October 1977. The municipal council rejected the recommendations made by the sub-committee and sent the entire proceedings to the Collector. There is no doubt or dispute about the fact that this was done in pursuance of

the communication addressed to the municipality by the Collector on behalf of the State Government. It is worthy of note that after having rejected the recommendations made by the sub-committee, the municipal council did not take steps to make any positive recommendations to the Collector for being forwarded to the State Government. These facts show that the State Government through the Collector had discharged its obligation within the meaning of Section 7(1) to consult the municipality and that it was the municipality which had failed to tender advice to the State Government through the Collector. Thereafter on 14th October, 1977, the Collector, Kaira, addressed another communication to the municipality requesting it to express its views on the reconstitution of election wards for the purpose of forthcoming elections to the municipality. The only step which the municipality took in pursuance of that communication was to appoint three persons and to authorise them to enter into consultations with the Collector who was acting on behalf of the State Government. The President, Vice-President and one Dinubhai J. Patel were the three persons who were authorised to perform that function. It is not in dispute or doubt that whatever proposals these three persons made to the Collector were not first placed by them before the municipal council for its approval.

6. It cannot be gainsaid that the municipality is entitled to function through its committees, indeed within the limits prescribed by the Statute. Sections 53 to 56 empower the municipality to constitute several committees. Section 53 deals with the constitution of the executive committee. Section 54 deals with constitution of pilgrim committee. Section 55 deals with the constitution of other committees and Section 56 deals with the constitution of consultative committees. Mr. Daru who appears on behalf of the petitioner has argued that appointment of the three persons was the appointment of the committee within the meaning of Section 56. It has been averred on behalf of the municipality that it was a committee within the meaning of Section 55. Sub-section (1) of Section 55 provides as follows:

Notwithstanding anything contained in Sub-section (2) of Section 53 other committees consisting of such number of councillors as the municipality may decide, may be appointed to exercise the powers and perform the duties of the municipality in respect of any purpose not being, where a Pilgrim Committee is appointed, powers or duties referred to in Section 54. The executive committee shall not exercise any powers or perform any duties which such committee has been appointed to exercise or perform.

Sub-section (2) which has material bearing on the dispute in this case provides as under:

The members of such committees shall be elected by the municipality in accordance with the rules framed under Clause (a) of Section 271 and such members shall hold office for a period of one year.

Section 55 inter alia requires that the committee u/s 55 may be constituted only

in accordance with the rules framed under clause (a) of Section 271 and that it shall hold office for a period of one year. In the instant case, if three persons who were authorised by the municipality to enter into consultations with the Collector constituted a committee, it was not a committee within the meaning of Section 55 because if they were at all constituted into a committee, they were so constituted for an ad hoc purpose, viz. to enter into consultations with the Collector and to tender advice to him in the matter of reconstitution of election wards. As soon as that function was over, that committee would stand automatically dissolved. What Sub-section (2) of Section 55 requires is the constitution of a committee which shall hold office for a period of one year. The term of office prescribed by Sub-section (2) clearly suggests that the committee to be constituted u/s 55 is a committee which is required to perform recurring functions and activities of the municipal council indeed its term being limited to one year. It does not contemplate a committee appointed for an ad hoc purpose the fulfilment of which brings to end its existence. Secondly, constitution of a committee u/s 55 must be in accordance with the rules framed under Clause (a) of Section 271. Clause (a) of Section 271 provides as follows:

A municipality shall make rules not inconsistent with this Act and the rules or orders made by the State Government under this Act, and may from time to time alter or rescind them

(a) regulating the conduct of its business and the delegation of any of its powers or duties to any committee or to the chief officer or subject to the provisions of Section 54 the powers or duties of any committee to any other committee or to the chief officer and the appointment and constitution of committees u/s 55

Nadiad municipality has, under this provision, made its Rules. Sub-rule (1) of Rule 78 provides as follows:

Any committee that the municipality may from time to time appoint u/s 55 of the Act shall consist of not less than three and not more than 5 councillors and shall always include one who is also a member of the executive committee.

It is not necessary to reproduce Sub-rule (2) for the purpose of this case. It is clear that Sub-rule (1) of Rule 78 lays down constitution of the committees other than the executive committee. It does not deal with the appointment of any particular committees. Section 271 empowers the municipality both to appoint and constitute committees. As stated above, Sub-rule (1) of Rule 78 deals with constitution of committees. It is Rule 80 which deals with appointment of specific committees. It provides that the municipality may appoint as many as 11 committees specified therein or any one or more of them. It is not necessary to reproduce names of these different committees for the purpose of this judgment. Suffice it to say for the purpose of this case that, amongst those 11 committees, the committee for consultation with the Collector for reconstitution of election wards is not specified. The rule makes it clear that more committees can be specified and added to the list of committees in that rule only with the sanction

of the Government of Gujarat. Amongst these 11 committees, it is only Law and General Reference Committee which enjoys consultative character within the meaning of Section 56 of the Act. All other committees are executive in character within the meaning of Section 55 of the Act. It has, therefore, been argued by Mr. Dam that since the list of committees specified in Rule 80 does not include the committee of the present character it could not have been appointed u/s 55, Taking into account this terms of Section 55 and Rule 80 of the Nadiad Municipal Rules, I am of the opinion that the three persons whom the municipal council authorised to enter into consultations with the Collector were not appointed as a committee within the meaning of Section 55 of the Act.

7. Mr. Daru has further argued that, under the aforesaid circumstances, the only section under which three persons could have been appointed into a committee would be Section 56 which provides as follows:

A municipality may from time to time appoint such other committees consisting of such councillors as it thinks fit, and may refer to such committees for enquiry and report or for opinion such special subjects relating to the purposes of this Act at the municipality shall think fit, and may at any time discontinue or alter the constitution of any such committee. The municipality may direct that the report of any such committee shall be made to the executive committee, or to a committee appointed u/s 55 instead of to the municipality.

It is not in dispute that these three persons did not make any report to the municipal council or to the executive committee of the municipality. Mr. Daru has therefore, argued that since three persons who were appointed into a committee u/s 56 and since they did not make any report to the municipality, there was no effective and meaningful consultation by the Collector with the municipality. Now, resolution dated 24th October 1977 clearly shows that the municipality had not appointed the President, Vice-President and one Dinubhai J. Patel (three persons) into a committee much less into a committee u/s 56. The municipality had authorised them to enter into consultations with the Collector and to tender to him advice in the matter of reconstitution of election wards for the purpose of the forthcoming general elections to the municipality. In other words, what the municipality had done was to delegate its powers to these three persons.

8. It is not in dispute that the municipal council as a body did not meet to consider the question and did not make any proposals to the Collector, However, what was done was that each municipal councillor was consulted in the matter. Out of 40 municipal councillors, 36 made their suggestions individually. Those suggestions were discussed by these three persons with the Collector and they tendered advice to the Collector on behalf of the municipal council.

9. On the aforesaid facts, can it be said that there was no effective, meaningful and substantial consultation with the municipality by the Collector? Firstly, it is necessary to remember that it is the power of the State Government to reconstitute election wards before general elections to a municipality are held.

Exercise of that power is conditioned by consultation with the municipality. Therefore, the State Government is under obligation to consult the municipality. The State Government directly or through the Collector can write to the municipality to make its proposals in the matter of reconstitution of wards and to advise it. In the instant case, the Collector, acting on behalf of the State Government, did consult the municipality. However, the municipality as a body appears to have failed to make any proposals to the State Government can it, under the aforesaid circumstances be said that the State Government acting through the Collector had failed to consult the municipality? If a person who is under obligation to consult another writes to the latter to make his proposals and to tender his advice on a particular object and if the latter-mentioned person does not tender his advice or does not make any proposal whatsoever, does the power which is vested to the first-mentioned person fail? In my opinion, under the aforesaid circumstances, it does not fail. Mr. Daru has argued that power to delimit election wards is a legislative power which the State Government, as a subordinate legislature, exercises. Assuming that it is true, the power re-constitute wards can never be said to have been exercised unlawfully if the State Government has duly sought advice of one whom it is required to consult and if the municipality which is required to be consulted has failed to communicate its proposals or to tender its advice. Obligation of consultation with the municipality, in my opinion, is fully satisfied if the municipality has been given a due and reasonable opportunity to make its proposals in the matter or tender its advice to the State Government. Obduracy or unreasonable attitude on the part of the municipality not to make any proposals or not to tender its advice cannot lead to a stalemate resulting into failure of the power conferred upon the State Government u/s 7. What more could the State Government have done in the matter? Mr. Daru has argued that the State Government could have forced the municipality to make its proposals or to tender its advice. I see no provision in the Gujarat Municipalities Act, 1963 which empowers the State Government to do so. Indeed, the State Government could have superseded the municipality for failure to discharge its obligation. But that is a matter which falls within political realm. It does not fall within the realm of law in the present context. Therefore, it was for the State Government to decide whether to proceed against the municipality for the latter's failure to discharge its obligation and then to proceed to delimit the election wards. In absence of any proposals from the Municipality whom it has duly consulted and from whom it has not received any proposals or advice, can it be said that the power to delimit the election wards conferred upon the State Government cannot be exercised? In my opinion, in such a situation, the power to the State Government does not fail.

10. I make the above observations on the assumption that the advice tendered by the three persons to the State Government through the Collector did not amount to advice from the municipality as a result of the consultation made with it. However, I am of the view that, in the instant case, the consultation with the municipality which the State Government made through the Collector was fully

effective and did not suffer from any infirmity. The municipality did not constitute three persons into a committee either u/s 55 or 56 but the municipality as a whole had delegated its powers to the three persons to tender advice to the State Government through the Collector by entering into consultations with the latter. They acted upon the suggestions individually made by 36 municipal councillors out of 40 the remaining 4 having chosen not to make any suggestions. The proposals and the suggestions which 36 municipal councillors individually made formed the basis or data on the Strength of which the three persons, authorised by the municipality to hold consultations with the Collector, tendered advice on behalf of the municipality to the State Government through the Collector. In my opinion, such delegation of power is not void in law. Municipality can do it. In *State of Uttar Pradesh v. Ratuk Deo Pali Tripathi and Ors.* 1978 (10) Unreported Judgments, 237, the Supreme Court has laid down in the context of Article 235 of the Constitution of India that High Court can function through its administrative committee and that the Administrative committee can act in the name of the High Court. I am, therefore, of the opinion that the municipality had delegated its power as the resolution dated 24th October 1977 shows, to the three persons to tender advice to the State Government in the matter through the Collector and that they did so after ascertaining the views of the municipal councillors individually. Strictly technically all that can be said is that the suggestions and proposals made by 36 out of 40 councillors, four having chosen not to make any proposals or suggestions, were not considered by the municipal council as a body. I see no special charm in it, particularly when the municipal council had rejected the recommendations made by II persons who were appointed to make proposals and suggestions in the matter to the Collector. Therefore, ascertainment of the views of the councillors individually and tendering advice and entering into consultations with the Collector by the three persons on the basis of those proposals and suggestions was effective, meaningful and substantial consultation within the meaning of Section 7 of the Gujarat Municipalities Act, 1963. Therefore, I find no infirmity in the impugned delimitation order which the State Government has made. To repeat, even if the municipality can be said to have tendered no advice whatsoever to the State Government through the Collector, the impugned delimitation order would not suffer from any infirmity because in the matter of consultation with the municipality, the State Government through the Collector had discharged its statutory obligation and had failed to obtain any advice from the municipality. Abdication on the part of the municipality of its duty cannot lead to failure of the statutory power conferred on the State Government. In my opinion, therefore, the charge which has been made by the petitioner to the impugned delimitations order is without any substance and it fails.

The result is that the petition fails. Rule is discharged with an order as to costs in the facts and circumstances of the case.