

**(1982) 09 GUJ CK 0006**

**In the Gujarat High Court**

**Case No :** Spl. Civil Application No's. 2169 and 3213 of 1981

Chimanbhai R. Patel and etc.

APPELLANT

Vs

Anand Municipality, Anand and Others

RESPONDENT

**Date of Decision :** 24-09-1982

**Acts Referred:**

Constitution of India, 1950 — Article 133(1), 136  
Gujarat Municipalities Act, 1963 — Section 11(1), 259, 271, 31, 37  
Gujarat Panchayats Act, 1961 — Section 49, 49(1)

**Citation :** AIR 1983 Guj 136 : (1983) 1 GLR 67

**Hon'ble Judges :** R.J. Shah, J; A.M. Ahmadi, J

**Bench :** Division Bench

**Advocate :** V.P. Shah, for K.M. Patel, for the Appellant; M.P. Anand and M.B. Shah, Asst. Govt. Pleader, instructed by Purnanand and Co., for the Respondent

**Final Decision :** Allowed

## Judgement

A.M. Ahmadi, J.—The question which arises for determination in these two petitions is, whether the State Government can in exercise of power conferred upon it by Sub-section (1) of Section 37 of the Gujarat Municipalities Act, 1963 (hereinafter called "the Act") remove a Councillor of a Municipality from office for misconduct or disgraceful conduct committed in the discharge of his duties as the President of the Municipality or Chairman of a Committee constituted u/s 55 of the Act. The brief facts which may be stated for the disposal of these two petitions are as under.

2. Re: Special Civil Application No. 2169 of 1981 :-- The petitioner of this petition was elected President of the Municipality u/s 31 of the Act sometime in 1971. The meeting of the General Board of the Municipality was called on 18th Feb. 1980 for sanctioning the annual budget for the year 1980-81. The budget was not sanctioned by the general Board at the said meeting. On 3rd Mar. 1980 a Resolution of "No Confidence" was passed against the petitioner President. Thereupon the Chief Officer of the Municipality wrote a letter dated 5th Mar. 1980

to the Collector of the District to exercise the extraordinary powers conferred upon him by Section 259 of the Act since an emergency had arisen. The Collector, acting on the said letter, passed an order dated 30th Mar. 1980 (Annexure "A") authorising the petitioner in his capacity as the president of the Municipality to perform certain functions enumerated in the said order. After the receipt of this order, the petitioner did certain acts which are the subject matter of the charges levelled against him. It appears that the petitioner on realising that he had lost majority, submitted his resignation on 8th April 1980 effective from 15th April 1980 (after office hours) as the President of the Municipality, Thereupon respondent No. 3 Shri Babubhai G. Patel was elected president of the Municipality in the vacancy caused by the petitioner's resignation. The new President called a special general meeting of the Board on 14th May, 1980 inter alia to decide on the measures to be taken against the petitioner for certain acts of misconduct and/or disgraceful conduct committed while he was in office. By a letter dated 12th May, 1980 the petitioner was informed that he should remain present to give hi explanation at the said special general meeting of the Board in response to the said letters the petitioner remained present at the said Board meeting on 14th May, 1980. He tendered his written explanation but the president of the Municipality who was in the chair at the said meeting refused to accept his written explanation where upon the petitioner and his supporters walked out of the meeting hall. Thereafter the Board passed Resolution No. 67 recommending action against the petitioner u/s 37(1) of the Act on four distinct charges, namely-

(i) The petitioner caused an obvious loss of Rs. 16,626/- to the Municipality in the purchase of transformers at a price of Rs. 92,463/- and then sanctioned payment after his resignation as the President of the Municipality became effective.

(ii) Without following the prescribed procedure, the petitioner, in his capacity as the President of the Municipality gifted an idol of Lord Hanuman worth Rs. 2,650/- and thereby indirectly encouraged the construction of a temple on a public road resulting in obstruction to traffic.

(iii) Without obtaining the sanction of the Board for additional work, the petitioner, in his capacity as the President of the Municipality, sanctioned the construction of a first floor on the existing building occupied by the Gujarat Primary School; and

(iv) Even though a Town Planning Committee was established by Resolution No. 179 dated 30th July, 1979, the petitioner signed the proceedings of the said Committee as its Chairman in respect of Resolutions No. 175 dated 31st July, 1979 and No. 176 dated 17th Aug., 1979.

The Collector of Kaira forwarded his report dated 30th Sept. 1980 (Annexure "B") recommending action against the petitioner on the aforesaid four charges u/s 37(1) of the Act. It appears that thereafter the petitioner was served with a

show cause notice dated 18th Feb., 1981 (Annexure "C") to which the petitioner sent his reply on 28th Feb., 1981. This was followed by another show cause notice dated 3rd Mar., 1981 whereby the petitioner was given an opportunity to remain present in person or through his authorised representative for hearing. To this the petitioner sent a reply on 13th Mar. 1981. Thereafter the second respondent, the Director of Municipalities, passed an order of removal dated 25th Mar. 1981 u/s 37(1) of the Act. Against this order, the petitioner filed a Special Civil Application No. 1429 of 1981 in this Court. When the said petition was called on for hearing, it was realised that as the impugned order of removal dated 25th March. 1981 was not a speaking order, it was liable to be struck down. The said order was, therefore, withdrawn and on the very same day the petitioner was given a fresh show cause notice dated 29th April, 1981 (Annexure "D") for personal hearing. In response to the said notice the petitioner appeared through his counsel and made submissions before the second respondent. The second respondent, however, by a speaking order dated 9th June, 1981 (Annexure "L") passed the impugned order of removal in exercise of power conferred by Sub-section (1) of Section 37 of the Act. It is this order passed by the second respondent which is challenged before us in the present writ petition.

3. Re: Special civil Application No. 3212/82. -- The petitioner was elected a Councillor of the Municipality and in that capacity he was nominated as the Chairman of the Dispensary Committee of the Municipality. Respondent No. 4 who was a member of the Committee was later elected the President of the Municipality and as such by virtue of Sub-section (1) of Section 59 of the Act, the petitioner ceased to be the Chairman of the said Committee. Soon after respondent No. 4 and his group acquired majority in the Municipality, action was taken against the petitioner for his removal u/s 37(1) of the Act. A resolution was passed by the Municipality recommending to the Government to take action against the petitioner u/s 37(1) of the Act and in pursuance of the said resolution passed at a special general body meeting on 14th May, 1980, the petitioner was served with a show cause notice dated 21st May, 1981 by the second respondent, the Director of Municipalities. The petitioner submitted his written reply to the said show cause notice wherein he pointed out that the allegations made against him were as a result of political rivalry and not warranted in fact or law. The petitioner's grievance is that without appreciating the contentions raised in his written reply, the second respondent by his order dated 23rd June, 1981 (Annexure "B") removed him from the office of Municipal Councillor in exercise of power u/s 37(1) of the Act. The petitioner challenges the constitutional validity of Section 37 of the Act on the ground that it confers naked and arbitrary powers on the State Government to remove a President. Vice-president or Municipal Councillor from office on the ground of alleged misconduct or disgraceful conduct.

4. The petitioner came to be indicted on the following five counts:--

(i) When the need for emergency lights in the hospital arose, he, without inviting

tenders from standard Companies, placed an order with Honest Surgicals, Baroda, without consulting the Doctors or Engineers working in the said Hospital.

(ii) He purchased medicines of inferior quality from the local market in an arbitrary manner at exorbitant prices instead of purchasing high quality medicines and thus acted to the prejudice of the Municipality.

(iii) Even though the work of whitewashing and repainting the hospital was estimated to cost around Rs. 9,600/-, he entrusted the same to a single party in two parts without consulting the Engineers of the Municipality and without obtaining an estimate of the work from them. On inquiry it was later found that as per the estimate prepared by the Engineers on the basis of the existing rates, the estimated cost worked out to Rs. 9,585-50 PS. and thus there was a misappropriation to the tune of Rs. 544-50 Ps.

(iv) Two persons, namely, Shantaben A Christian and Chandubhai Patel were appointed in an arbitrary manner without the approval of the Committee in anticipation of such approval but the matter was never brought for approval at any subsequent stage and thus he grossly abused his office: and

(v) Four sterilisers costing Rs. 6.594 were deliberately purchased in two parts directly from Messrs Honest Surgicals in anticipation of approval by the Committee without inviting tenders even though Honest Surgicals were not the manufacturers of sterilisers.

5. Section 37(1) 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 Councillor, 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."

It, therefore, empowers the State Government to remove any Council or, President or Vice-President of a Municipality if, it is of the opinion that the Councillor, President of the Vice-president, as the case may be, 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 provides that where a President or Vice-President has been so removed, he shall not be eligible for re-election as a President or Vice-President

during the remainder of the term of the Municipality. Sub-clause (ii) of clause (a) of Sub-section (1) of Section 11 provides that no person who has been removed from office u/s 37 shall be eligible to be a Municipal Councillor unless four years have elapsed from the date of his removal, unless he has, by an order made by the State Government been relieved from the disqualification arising on account of such removal from office. It is, therefore, obvious from the aforesaid provisions that the removal from the office of a Municipal Councillor, President or Vice-President of a Municipality results in disqualification. The power of removal conferred on the State Government under Sub-section (1) of Section 37 can be exercised if the Councillor, President or Vice-president of the concerned municipality has been guilty of (i) misconduct in the discharge of his duties; or (ii) of any disgraceful conduct; or (iii) has become incapable of performing his duties under the Act. The test, therefore, is clearly objective. The Procedure to be followed for removal is quasi-judicial in nature because Sub-section (1) of Section 37 itself provides that the removal can be ordered after giving the Councillor, President or Vice-President, as the case may be, an opportunity of being heard and giving due notice in that behalf to the Municipality and after making such inquiry as the State Government deems necessary. It is only after this procedure is followed that the State Government becomes competent to form an opinion as to whether the Councillor, President or Vice-President, as the case may be, 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. On a plain reading of this provision it is clear that the removal is from the office held by the concerned person at the relevant point of time. The act of misconduct or disgraceful conduct or the incapacity must relate to the office of which he is sought to be stripped under the aforesaid provision. In other words, if a person has abused his powers as the president he can be removed from that office but not also from the office of a Municipal Councillor, in a given case the duties may overlap in which case the incumbent can perhaps be removed from both the offices. However, where the duties to be performed are distinct or attached to a particular office and can only be performed by a person holding that office, then it is obvious that he can be removed from that office on the ground that he misconducted himself while discharging his duties pertaining to that particular office. Therefore, a person who misconducts himself or conducts himself in a disgraceful manner while performing his duties as a President or a Chairman of a Committee constituted by the Municipality under the Act can be removed from the office of the President or Chairman, as the case may be, but it seems difficult to hold that he can also be removed from the office of Municipal Councillor even though the alleged misconduct or disgraceful conduct was not referable to anything done in the discharge of duties as a Municipal Councillor.

6. In *Akbarali Kasamali v. N. G. Pandya* (1973) 14 GLR 287 : (AIR 1974 Gui 17, the Division Bench was called upon to consider a more or less similar provision contained in Section 49 of the Gujarat panchayats Act, 1961. That Section insofar as it is relevant for our purpose, may be reproduced for ready reference

(at pp. 17 and 18) :--

"49. (1) The competent authority may remove from office any member of a Panchayat or the Sarpanch, the Upa-Sarpanch, the Chairman or as the case may be, the Vice-Chairman thereof after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member. Sarpanch, Upa-Sarpanch Chairman or Vice-Chairman as the case may be, has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties under this Act.

The Sarpanch, Upa-Sarpanch, Chairman or as the case may be, Vice-Chairman so removed may at the discretion of the competent authority also be removed from the membership of the panchayat."

It is necessary to point out at this stage that there is no provision similar to the second part of Sub-section (1) of Section 49 of the Gujarat Panchayats Act which permits removal at the discretion of the competent authority from the membership of the Panchayat also if the Sarpanch, Upa-Sarpanch. Chairman or Vice-Chairman has misconducted himself or conducted himself in a disgraceful manner in the discharge of his duties as such in Sub-section (1) of Section 37 of the Act with which we are presently concerned. It necessarily implies that a person who has misconducted himself or conducted himself in a disgraceful manner in the discharge of his duties as a President of a Municipality or a Chairman of a Committee appointed by a Municipality cannot be removed from the office of a Municipal Councillor. The Division Bench while construing Section 49 (1) of the Gujarat Panchayats Act observed as under (at p. 18) :--

"In our opinion, the grounds of removal stated in Sub-section (1) of Section 49 govern both his removal from the office which he holds in the panchayat and also his removal from the membership. However, it must be said that a person who is, on proof of any one of the grounds stated in Sub-section (1), removed from the office which he holds in the Panchayat cannot ipso facto be removed on that account from the membership. It is necessary for the competent authority to weigh and determine distinctly and separately the impact of his findings upon the membership of the person concerned as well as upon the office which he holds. It cannot be held as a matter of rule that what is good for removing a person from the elective office which he holds shall always be good for removing him from the membership of the panchayat."

These observations must be read in the context of the power conferred by Sub-section, (1) of Section 49 of the Gujarat Panchayat Act which in terms states that the Sarpanch, Upa-Sarpanch, Chairman or, as the case may be. Vice-Chairman so removed, meaning thereby, removed under the first part of the said Sub-section, may at the discretion of the competent authority also be removed from the membership of the panchayat. No such power is found in Sub-section (1) of

Section 37 of the Act with which we are concerned and, therefore, we think that a person who renders himself liable to be removed from the office of the President or Chairman of a Committee appointed under the Act while discharging his duties concerning the said office held by him, cannot be removed from the office of the Municipal Councillor which is a distinct and separate office. As stated earlier, there may arise cases where the alleged misconduct or disgraceful conduct may overlap but such is not the situation with which we are faced in the present two petitions. The Division Bench after emphasising that notwithstanding the fact that the competent officer is empowered to remove a person who has misconducted himself in the discharge of his duties as Sarpanch or Upa-Sarpanch or Chairman or Vice-Chairman of a Panchayat, as the case may be, from the membership of the panchayat, the discretion must be exercised after weighing and determining distinctly and separately the impact of his findings upon the membership of the person concerned as well as upon the office which he holds. In the case before the Division Bench the petitioner was a member and Chairman of the Sihor Nagar Panchayat and he had misconducted himself while discharging his duties as the Chairman of the said panchayat. Two allegations were made against him, namely, (i) that he did not reinstate a panchayat servant in service even though he was directed to do so by the District Development Officer and Development Commissioner; and (ii) he introduced octroi in spite of the fact that the introduction was stayed by the District Panchayat. In regard to these two acts he had to exercise his executive power as the Chairman of the panchayat. It did not fall within the realm of his duties or functions as a member of the panchayat to take any decision concerning the foresaid two acts. An ordinary member of panchayat hardly has anything to do with the implementation of the stay order granted by the District panchayat or with the reinstatement of a panchayat servant pursuant to the orders passed by a superior officer. A member of the panchayat has limited duties and functions to perform under the provisions of the relevant Act and it could, therefore, not be stated that he had been guilty of misconduct or disgraceful conduct in the discharge of his duties and functions as a member of the panchayat. Bearing these facts in mind, the Division Bench proceeded to observe as under (at P. 19) :--

"If the petitioner disobeyed the aforesaid two orders, he did so as the Chairman. He did not do so and could not have done so as a member of the panchayat. In our opinion, therefore, the order of the District Development Officer as confirmed by the order of the Development Commissioner in so far as it relates to the removal of the petitioner from the membership of the Nagar Panchayat, Sihor, cannot be justified on the aforesaid grounds, though on the aforesaid grounds we are of the opinion that his removal from the Chairmanship of the Nagar Panchayat is justified."

This decision of the Division Bench, therefore, leaves no doubt that the act of misconduct or disgraceful conduct must be in the discharge of duties connected with the office held by the incumbent so as to invoke the power of removal. If a person has misconducted himself or conducted himself in a disgraceful manner

while performing his duties as the President of a Municipality or Chairman of a Committee appointed under the Act and if his acts have nothing to do with the office of the Municipal Councillor, he can only be removed from the office of the President or Chairman, as the case may be, but he cannot be removed from the office of Municipal Councillor held by him. This position seems to us to be crystal clear not only from the plain language of the statute but also from the decision in Akbarali Kasamali Ravjani Vs. N.G. Pandya and Another, where a similar provision in the Panchayats Act was construed.

7. At the hearing of these two petitions, the learned counsel for the petitioners addressed us on this preliminary contention and submitted that without going into the question of the correctness of the findings recorded against the two petitioners, they would be in a position to show that the power exercised by the State Government under Sub-section (1) of Section 37 of the Act for the removal of the petitioners as Municipal Councillors cannot be justified. We examined this preliminary contention at the outset and since we were inclined to think that the said contention must be upheld, we did not call upon the learned counsel for the petitioners to go into the merits of the findings recorded by the second respondent, the Director of Municipalities, so far as the charges levelled against the petitioners are concerned. We have already pointed out in the earlier part of this judgment that the ex-President of the Municipality Shri Chimanbhai R. Patel alias Raja was indicted on four counts set out earlier. Out of these four counts it is obvious that the second and the third counts relate to abuse of power as president of the Municipality. So far as the fourth count is concerned, the allegation is that he in his capacity as the president of the Municipality signed proceedings as the Chairman of the Planning Committee in respect of Resolutions Nos. 175 and 176. The first count relates to the sanction accorded for payment of Rs. 92,463/- for the transformers purchased by the Municipality. The allegation is that the petitioner signed the payment voucher on 16th April, 1980 even though he had ceased to be the President of the Municipality with effect from 15th April, 1980 as per his letter of resignation. It was, therefore, stated that since he signed the payment voucher on the date he had ceased to be the President of the Municipality, it must be held that he had signed the said voucher in his capacity as a Municipal Councillor. This submission is clearly fallacious for the simple reason that as a Municipal Councillor he had no power to sanction payment and sign a payment voucher. On a bare perusal of the payment voucher also it becomes clear that he has signed it in his capacity as the President of the Municipality. We may mention that according to the petitioner the date 16th April, 1980 appearing below his signature was put subsequently by someone, else with a view to roping him in on the charge of having illegally and unauthorisedly signed the payment voucher. We may in this connection state that the question regarding the payment for the transformers purchased by the Municipality was under consideration since before March 1980. This becomes clear on a conjoint reading of the resolutions produced at Annexures E6 to E12 appended to his petition. Annexure E12 shows that the petitioner had in his

capacity as the President of the Municipality finally sanctioned payment on 15th April, 1980, that is, the last date in office. The payment voucher was prepared after sanction was accorded, under Annexure E12 and, therefore, it is obvious that he signed the payment voucher in his capacity as the president of the Municipality. Even if we assume for the sake of argument that he signed the payment voucher on 16th April 1980, there is no escape from the conclusion that his signature was required as the President of the Municipality. No, Municipal councillor could have sanctioned payment or signed the payment voucher because no such power is conferred on a Municipal Councillor under the provisions of the Act. There can, therefore, be no doubt that so far as the petitioner. Ex-president of the Municipality is concerned, he is sought to be removed as Municipal Councillor for certain acts of misconduct or disgraceful conduct alleged to have been committed in the discharge of his duties which can only be relatable to the office of the president which he held up to 15th April 1980. We have, therefore, no hesitation in coming to the conclusion that the State Government was not empowered to remove him from the office of Municipal Councillor for acts of misconduct or disgraceful conduct committed in the discharge of his duties as the President of the Municipality.

8. So far as the other petitioner C. C. Shah is concerned, it is an admitted fact that he was the chairman of the Dispensary Committee at the relevant point of time when the alleged acts of misconduct or disgraceful conduct were committed. The statutory Committees are the Executive Committee, Pilgrim Committee and the Consultative Committee established by Sections 53, 54 and 56 of the Act. Section 55(1) next provides that notwithstanding anything contained in Sub-section (2) of Section 53 (that sub-section enumerates the powers of an Executive Committee) 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. It further provides that 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) of Section 55 says that 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 59(2) next provides that a Municipality may appoint a Chairman for a Committee of which there is no ex-officio Chairman, However, if the President or Vice-President is elected a member of any Committee, Sub-section (1) of Section 59 provides that he shall be the ex-officio Chairman of that Committee. Respondent No. 4 was a member of the Dispensary Committee along with the petitioner and when he was elected as the President of the Municipality on 19th April, 1980, he became the ex-officio Chairman of the Dispensary Committee by virtue of Sub-section (1) of Section 59 of the Act. The petitioner was, therefore, required to step down and make room for respondent No. 4 as the Chairman of the Committee immediately after the latter's election as

President of the Municipality on 19th April, 1980. It was stated that there was no provision in the Act for the removal of the Chairman of a Committee appointed under Sub-section (1) of Section 55 of the Act. That indeed is true. That however, does not mean that a Chairman of a Committee cannot be removed from the office of Chairman in the absence of specific provision in that behalf. In that case the general rule that the appointing authority, namely, the Municipality can remove the Chairman of the Committee if he abuses his power as the Chairman thereof must apply. The office of the Chairman of a Committee is distinct and separate from the office of a Municipal Councillor. All the alleged acts of misconduct or disgraceful conduct were committed by the said petitioner in his capacity as the Chairman of the Dispensary Committee and not in his capacity as a Municipal Councillor. The two offices being distinct and separate, a penalty which can be imposed for acts of misconduct or disgraceful conduct in the performance of duties concerning one office cannot be extended to the other office for the obvious reason that the incumbent cannot be said to have misconducted himself in the discharge of duties as Municipal Councillor. We are, therefore, of the opinion that the petitioner's removal from the office of Municipal Councillor under Sub-section (1) of Section 37 of the Act for acts of misconduct or disgraceful conduct committed in the discharge of his duties as Chairman of the Dispensary Committee cannot be sustained.

In the result both the petitions succeed. The impugned orders of removal are quashed. Rule is made absolute accordingly with no order as to costs. Prayer for a certificate of fitness under Article 133(1) of the Constitution is rejected because we do not think that any substantial question of law which needs to be decided by the Supreme Court arises in this matter. However, since Mr. Anand for the Municipality states that he desires to move the Supreme Court under Article 136 of the Constitution we direct that even though the petitioners will be at liberty to attend the meetings of the Municipality, they will not be permitted to vote for four weeks.