
(1980) 03 GUJ CK 0013
In the Gujarat High Court

Hargovind Lallubhai Intwala

APPELLANT

Vs

A.K. Chakravarti and Another

RESPONDENT

Date of Decision : 11-03-1980

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 11(2)(c), 11(2)(c) , 11(3)(v)

Citation : (1980) 2 GLR 60

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by one Billimora Municipal Councillor challenging the order of his having been declared disqualified u/s 11(2)(c) of the Gujarat Municipalities Act, 1963 passed by the Respondent No. 1 Collector, Valsad, whose order came to be confirmed by the Government as per their order, Annexure B, dated 28-12-1977.

2. A few facts require to be stated. The Municipality was in need of some concrete and like material for the purpose of earning out the preemptory repairs of the road in one street of Billimora. Tenders were invited for that material, but no one turned up with the result that no material could be procured. The Municipality thereafter authorised its Chief Officer to procure materials. One firm offered to supply but the rate quoted by that firm was very high. The President of the Municipality, therefore, contacted the petitioner Councillor who is a partner of one firm M/s. Duvada Stones Supply Company ordinarily dealing in similar goods. Pursuant to the directions of the President of the Municipality on 24-12-1975 the materials worth Rs. 731.25 with the liability of sales tax and surcharge amounting to Rs. 81.89 were supplied on 3-1-1976. The bill for the sale materials together with the amount of tax and transport charges was submitted by the said firm in which the petitioner is a partner. A cheque for the amount covering the price of the material, sales-tax and transport charges was given in favour of the firm in the evening of 16-2-1976. As the amount of the transport charges was not to be recovered, the petitioner instructed his firm to

pay back the said amount and therefore on the very following day, namely 17-2-1976, the cheque for that amount of the transport charges, namely Rs. 262.50 was given to the Municipality which was encashed also. In the mean time, on 14-2-1976 one Sadhram and three others had moved the Collector, Valsad u/s 38 of the Act complaining that by entering into the contract with the Municipality for supply of aforesaid goods, the petitioner had incurred the disqualification and therefore should be declared so disqualified. The Collector took up the matter and passed the impugned order which came to be confirmed by the Government as per their order, Annexure B, dated 28-12-1977.

3. Section 11(2)(a) in so far as it is relevant for our purpose would read as follows:

11(2) No person-(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... may be a councillor of such Municipality.

The above quoted Clause (c) would be the law directed to the case of the petitioner but the provisions of Section 11(2) are whittled down by Sub-section 3 which in so far as is relevant for our purpose would read as follows:

(3) A person shall not be deemed to have incurred disqualification--(A) under Clause (c) of Sub-section (2) by reason of his xxxx (v) having a share or interest in the occasional sale to the municipality of any article in which he regularly trades, or in the purchase from the municipality of any article, to a value in either case not exceeding in any official year one thousand rupees or such higher amount not exceeding five thousand rupees as the municipality with the sanction of the State Government may fix in this behalf:

Provided that where the share or interest has been in the sale or purchase of an article which is a controlled article and the sale or as the case may be, the purchase thereof is made with the previous sanction of the State Government the limitation as to value imposed by this clause shall not apply to such share or interest.

4. Both the Collector and the Government took the view that the transport charges which the petitioner initially billed would go to constitute the value of the article supplied. The firm of the petitioner, no doubt, regularly traded in those articles. That is implicit in the impugned orders. What is the value of the goods that were supplied? The price of the material supplied even according to the bill was Rs. 731.25. Even if the amount of sales-tax and surcharge is added, the value would fall short of Rs. 1,000/-. Assuming that the transport charges were intended to be levied when the bill was presented, can we say that it is the value of the goods? Obviously the transport charges cannot have direct access with the value of the goods. So the goods were clearly governed by the exception provided in Clause (v) of Sub-section 3 of Section 11 of the Act.

5. In above view of the matter, the orders Annexures A and B cannot be allowed to stand and are hereby quashed. Rule is accordingly made absolute with no order as to costs.