

(1979) 08 GUJ CK 0003
In the Gujarat High Court

Hirjibhai Haribhai Trambadia

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-08-1979

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 23(i)(g), 23(i)(g)

Citation : (1979) 2 GLR 226

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—The petition is directed against the impugned orders at Annexures "A" and "B" to the petition, whereby a declaration was made that the petitioner is disqualified as a Panchayat Member of the Jam Jodhpur Nagar Panchayat u/s 23(i)(g) of the Gujarat Panchayats Act, 1961, on the ground that the petitioner's daughter was in service of the Boys' and Girls' High school run by the Nagar Panchayat, and hence, the petitioner had interest in the work done by the Panchayat.

2. At the relevant time, the petitioner was duly elected member of the Panchayat of the Jam Jodhpur Nagar Panchayat in the elections held in December, 1972. When the petition was filed, it was averred that under the provisions of the Gujarat Panchayats Act, the petitioner was entitled to continue as Panchayat member for a period of five years till the next elections were held of the Nagar Panchayat of Jam Jodhpur. The petitioner's daughter named Chandrikaben was appointed in the Boys' and Girls' High School run by the Nagar Panchayat of which the petitioner to be disqualified as a member of the Nagar Panchayat u/s 23(i)(g) of the Gujarat panchayats Act, 1961. Section 23(i)(g) of the Gujarat panchayats Act, 1961 provides as follows in so far as it is relevant to this petition:

23(1) No person shall be a member of a Panchayat or continue as such who.

x x x x x (g) has directly or indirectly by himself or his partner, any share or interest in any work done by order of the Panchayat, or in any contract with, by

or on behalf of, or employment with or under the Panchayat.

Explanation. I. A person shall not be disqualified under Clause (g) for membership of a Panchayat by reason only of such person.

x x x x x x x x x (g) merely being a relative of a person in employment with or under or by on behalf of the panchayat.

3. It was submitted that the word "relative" occurring in Clause (g) of Explanation 1 to Section 23 would include all relatives near or remote. It was also submitted that the word "relatives" would thus include wife, a son, a daughter or the like near relatives. It was urged that on correct interpretation of the relevant provisions of Section 23(1)(G) read with Explanation 1(g) or the Act would go to show, that merely because a son or a daughter of a member of a Panchayat is in service of an institution run by the Panchayat, would not by itself disqualify the concerned member as a Panchayat member.

4. The aforesaid point was considered by this Court in its decision in Special Civil Application No. 365 of 1966 decided by Hon"ble Mr. Justice J.B. Mehta on March 2, 1970. In the aforesaid case the petitioner was the member of Sami Gram Panchayat, and the Collector dismissed the Panchayat member's against the order of District Development Officer-respondent No. 1 holding that the petitioner was disqualified from membership u/s 23(i)(g) of the Gujarat Panchayats Act, 1961. In that case, the petitioner's son was employed as a clerk in the Panchayat service. The Court observed that it is true that Section 23(1)(g) uses wide expression as it covers not only share or interest in any contract with the Panchayat but also in any work done by the order of the Panchayat. It was further observed that the relevant Clause would, however, be attracted when the petitioner himself directly or indirectly or through his partner has such share of interest. Merely because his son is in panchayat employment, the father would not incur this disqualification on account of his said relationship. The point is also concluded by the decision of the Supreme Court in Gulam Yasin Khan Vs. Sahebrao Yeshwantrao Walaskar and Others, . In view of the aforesaid two decisions, it is clear to my mind that simply because the petitioner's daughter is employed as a teacher in the Boys" and Girls" school conducted by the Nagar Panchayat, no disqualification can be attached to the petitioner for the purpose of being a member of the Panchayat.

5. In view of what has been stated above, it is hereby declared, that by reason of the petitioner's daughter serving in a school conducted by a Nagar Panchayat Jam Jodhpur, no disqualification can ever be attached to the petitioner for the purpose of being a member of the Panchayat.

In view of what has been stated above, the rule is made absolute with no order as to costs.