
(1992) 11 GUJ CK 0011
In the Gujarat High Court

Jivanlal Vishrambhai Barot and Another	APPELLANT
Vs	
R.C. Patel. Collector and Another	RESPONDENT

Date of Decision : 18-11-1992

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 14, 31, 32, 39(1)(a), 39(2)

Citation : (1993) 1 GLR 591

Hon'ble Judges : S. Nainar Sundaram, C.J;R.K. Abichandani, J

Bench : Division Bench

Judgement

S. Nainar Sundaram, C.J.—The matter arises under the Gujarat Municipalities Act, 1963, hereinafter referred to as "the Act". We propose

to delineate only the broad facts of the present case, considering the scope and nature of the points arising for our consideration. The point is built

on construction of Section 42 of the Act, which section we shall presently extract. In Anjar Nagarpalika, the seat of one of the councillors fell

vacant in September 1991 on the ground that the concerned councillor absented himself for more than three consecutive months from the

Municipal Borough within the meaning of Section 39(1)(a) of the Act The declaration of the vacancy was made by the Collector u/s 39(2) of the

Act on 13-9-1991. There was no notice of vacancy given by the Chief Officer of the Nagar-palika or by any other officer designated for the

purpose as contemplated u/s 42(1) of the Act within 15 days from the date on which the vacancy occurred. Thus the Collector had no occasion to

arrange for holding an election within three months from tile date of the receipt of a notice for filling up the vacancy, as contemplated u/s 42(2)(a)

of the Act. The admitted position is that no notice of vacancy at all was received by the Collector within a period of three months from the date on

which the vacancy occurred. Hence there is no question of any councillor getting elected within a period of three months from the date of receipt of the notice u/s 42(1). In short no notice of vacancy was given and no election was or could be held within the outer time limit either way. Section 42(3) of the Act, as we would presently see, speaks about the Collector filling up the vacancy by appointing a person thereto who is qualified to be elected if no councillor is elected within a period of three months from the date of the receipt of the notice under Sub-section (1) or if no notice of a vacancy of a councillor is received by the Collector within a period of three months from the date on which the vacancy occurred. The adherence to this process is being insisted upon by the appellants. However, the Collector published an election programme long after the lapse of three months outer limit. We gather that the Collector earlier in July 1992, published an election programme and the appellants questioned the action of the Collector in the Civil Court and obtained interim orders. The second respondent came to this Court by way of Special Civil Application No. 6396 of 1992 and obtained interim orders. The present Notification is dated 23-9-1992. Hence we are called upon and we are deciding the question of the legal propriety of the Collector taking action for holding election after the lapse of three months spoken to in Section 42(3) of the Act. It is not claimed that we should not examine this question and certainly our decision, if that should be the case, will govern the question if arising in other proceedings. The appellants by preferring Special Civil Application No. 7319 of 1992 only questioned the action of the Collector from legal angle.

2. Before the learned single Judge who heard the Special Civil Application, it was contended on behalf of the appellants that after the lapse of the three months" period the action of the Collector in initiating the election process must be held to be incompetent. The learned single Judge declined to accept the construction put forth by the learned Senior Counsel for the appellants herein, the petitioners before the learned single Judge on Section 42 of the Act and rejected the Special Civil Application. This Letters Patent Appeal is directed against the order of the learned single Judge.

3. Mr. K. G. Vakharia, learned Senior Counsel for the appellants would submit

that Section 42 is a self - contained provision concerning filling up of vacancies and when the contingency set forth in Section 42(3) had arisen and action on the basis of that contingency with regard to electing a councillor within the prescribed period was not or could not be taken, the Collector has no other alternative but to fill up the vacancy by appointing a person thereto who is qualified to be elected and the Collector thereafter cannot resort to the process of election. Learned Senior Counsel for the appellants would submit that the same will be the position when no notice of vacancy was given within a period of three months from the date on which the vacancy occurred. For the purpose of appreciating the submission of the learned Senior Counsel for the appellants, we feel obliged to extract Section 42 of the Act as follows:

42(1) When any vacancy occurs due to failure to elect the full number of Councillors at a general election or due to the non-acceptance of office by a person elected to be a Councillor, or due to an election set aside under provisions of Sub-section (2) of Section 14 or any vacancy of a President, Vice-President or Councillor occurs due to any reason the Chief Officer of the Municipality and in the absence of the Chief Officer, such officer as the Collector may, by general or special order, designate for the purpose, shall within fifteen days from the date on which the vacancy occurs give a notice thereof to the Collector.

(2) On receipt of a notice under Sub-section (1) the Collector shall:

(a) in the case of the vacancy of a Councillor arrange for holding an election in the manner prescribed by Rules made by the State Government

within three months from the date of the receipt of the notice, for filling up the vacancy, and

(b) in the case of a vacancy of the President or Vice-President, call within twenty-five days from the date of the receipt of the notice a general

meeting of the Municipality for the election of the President or as the case may be Vice-President and the provisions of Sections 31 and 32 shall

mutatis mutandis apply to such meeting and election.

(3) If no Councillor is elected within a period of three months from the date of the receipt of the notice under Sub-section (1) or if no notice of a

vacancy of Councillor is received by the Collector within a period of three months from the date on which the vacancy occurred, the Collector

shall as soon as possible fill in the vacancy by appointing a person thereto who is qualified to be elected and the person so appointed shall be

deemed to have been duly elected under Clause (a) of Sub-section (2).

(4) The name of the person elected or appointed as a Councillor under this section shall be notified as soon as conveniently may be, in the Official Gazette.

(5) A person elected or deemed to be elected as a Councillor or elected as a President or Vice-President under Sub-section (2) shall hold office

so long only as the Councillor, President or Vice-President in whose place he is selected, would have held office had the vacancy not occurred

(6) Notwithstanding anything contained in Sub-section (2) where any vacancy of a Councillor occurs within four months preceding the date on

which the term of the Municipality expires it shall not be filed.

(7) When the offices of both the President and Vice President become vacant simultaneously, the Chairman of such Committee as the Collector

may authorise in his behalf, shall, pending the election of the President exercise all the powers and perform all the functions and duties of the

President

Sub-section (1) of Section 42 contemplates the giving of the notice of vacancy either by the Chief Officer of the Municipality or such other officer

designated for the purpose, within 15 days from the date on which the vacancy occurs. The notice has to be given to the Collector. There are four

circumstances under which a vacancy could occur as per Sub-section (1) of Section 42. Of the four, we are concerned only with the fourth,

namely, the vacancy of a councillor occurring due to any reason. This will certainly take in the case of a vacancy occurring as per Section 39(1)(a).

Sub-section (2) of Section 42 contemplates the Collector arranging for holding an election within three months from the date of the receipt of the

notice for filling up the vacancy. For the purpose of present case, we are not concerned with Clause (b) of Sub-section (2) of Section 42. Then we

come to Sub-section (3) of Section 42 which says that if no councillor is elected within a period of three months from the date of the receipt of the

notice under Sub-section (1) or if no notice of a vacancy of the councillor is received by the Collector within a period of three months from the

date on which the vacancy occurred, the Collector shall as soon as possible fill in

the vacancy by appointing a person thereto who is qualified to be elected. Either it no councillor is elected within a period of three months from the date of the receipt of the notice under Sub-section (1) or if no notice of vacancy of a councillor is received by the Collector within a period of three months from the date on which the vacancy occurred, the only power available to the Collector is set down in Sub-section (3) and on a plain reading of the said provision, it is not possible to clothe the Collector with a power to set in motion the election process. It is true, Sub-section (6) contemplates that where any vacancy of a councillor occurs within four months preceding the date on which the term of the Municipality expires, it shall not be filled. That is not the contingency that is presenting in the instant case so as to cause an embargo on the power of the Collector as per Sub-section (3) of Section 42. Reading plainly and as per the ordinary language used in the provision, we have no ambiguity in our mind that when there has been either no councillor elected within a period of three months from the date of the receipt of the notice under Sub-section (1) or if no notice of vacancy of a councillor is received by the Collector within a period of three months from the date on which the vacancy occurred, the Collector has to resort to the process of filling up the vacancy by appointing a person thereto who is qualified to be elected as set down under Sub-section (3) of Section 42. Here in the instant case, no notice of vacancy at all was given within the prescribed time limit. Thus the holding of election within the prescribed time limit therefore could not also occur.

4. The learned single Judge declined to follow the plain language of the provision in Sub-section (3) of Section 42 on the ground that the object of the Legislature must be taken as a guideline and if so taken the affairs of the local bodies must be conducted normally through the elected representatives of the people. Guided by the above view the learned single Judge went further and held that the provision is only directory and not mandatory.

5. Mr. Y. S. Mankad, learned Counsel for the second respondent, who is the contesting respondent advanced submissions stating that election process is democratic and the intention of the Legislature is that the affairs of the Municipality should be administered only by elected bodies and

taking guidance from such intention, the Court must construe Sub-section (3) of Section 42 so as to say that despite the contingencies set forth

therein coming into play, the Collector could go ahead to hold the election. We are bound to remember that the primary rule that should guide us is

the rule of literal or plain construction. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in

the ordinary and natural meaning of the words and sentences. Only when there is an ambiguity in the language used in the statutory provision and

there is any doubt or difficulty as to its interpretation, then the Court can legitimately look to the object of the enactment or the purpose for which it

was made. Even otherwise we must state that nothing is categorically evident from the provisions of the Act or from the Statement of Object and

Reasons that under all circumstances the affairs of a Municipality should be administered only by elected representatives of the people. Here we

find a provision specifically set forth in Section 42(3) of the Act dealing with the filling up of the vacancy in the office of a councillor in stated

contingencies and there is no difficulty with regard to the language used in Section 42(3) of the Act to understand its meaning and implications. We

cannot import and support a theory that any objective behind and any intention of the Legislature must override the clear and explicit language of

the provision in the statute.

6. Where the language of a statute is clear and explicit, Courts are bound to give effect to it whatever may be the consequences. The reason is

obvious because the words of the statute speak of the intention of the Legislature. Section 42 has found a place in the Statute Book and it has got

a purpose to serve. Section 42 has been introduced by the Legislature itself. If the enforcement of Section 42 has brought in a disadvantageous

position for any one, we cannot help him. The Courts are not concerned with the results of interpretation. If the results are unfortunate, it is for the

Legislature to take action to remedy the defects of the law enacted; and it is not for the Courts to usurp the functions of the Legislature. When we

are guided, as we are bound to be, by the above principles, we find that Section 42(3) comes in the way of the Collector launching upon the

election process at this juncture after the lapse of the time prescribed by the statutory provisions.

7. There was an endeavour on the part of Mr. Y. S. Mankad, learned Counsel for the second respondent to say that this question could as well be agitated in an election dispute u/s 14 of the Act and this Court must relegate the appellants only to that remedy and should not interfere at this juncture assuming there are merits in the case of the appellants. Learned Counsel for the second respondent would contend that the election process has already commenced and the Court should not injunct it. Here we find that what the Collector has done, patently runs counter to the mandates of Sub-section (3) of Section 42 of the Act and it is not possible to uphold the action of the Collector. It is incompetent and it is without jurisdiction, in the sense, it is without legal authority. Assuming that the appellants could resort to any remedy u/s 14 of the Act, considering the nature and ground of challenge of the action of the Collector, which challenge we have upheld, we do not think that we should relegate the appellants to any such alternative remedy as suggested by the learned Counsel for the second respondent. Learned Counsel for the second respondent did cite before us certain authorities in support of his submissions. In the view, which we have taken, we do not consider them to be relevant to be adverted to.

8. In view of the above discussion, we are not able to fall in line with the thinking of the learned single Judge when he discountenanced the case of the appellants. Accordingly, we allow this Letters Patent Appeal; set aside the order of the learned single Judge in Special Civil Application No. 7319 of 1992 and that Special Civil Application is allowed according to the prayer set forth in paragraph 9(A) thereto. We make no order as to costs.