

(2008) 06 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 8104 of 2008

Kaminiben S. Padhya

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 258

Citation : (2008) 2 GLR 1833

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Prakash K. Jani, for the Appellant; Vijay Patel, for H.L. Patel, for the Respondent

Final Decision : Allowed

Judgement

K.M. Thaker, J.—Notice was issued on 9-6-2008 and in view of the facts of the case, it was made returnable today. Mr. V.H. Patel, Advocate has entered appearance on behalf of respondent No. 2. In view of the issue raised, Rule. Mr. Shah and Mr. Patel waive service of Rule. Considering the impugned order and on request of the parties and with their consent, Rule returnable today and matter is taken for final hearing and disposal today. The petitioner in this petition under Article 226 of the Constitution of India has approached this Court against the communication order dated 7-6-2008. According to the petitioner, the respondent No. 1 has, by the said communication-order, restrained the Siddhpur Nagarpalika from holding meeting(s) until 18-6-2008. The petitioner has preferred the petition, mainly, on the ground that the respondent No. 1 does not have any power or jurisdiction to restrain the Nagarpalika from holding meeting(s) and/or members of the Nagarpalika from participating in the meetings.

2. It is the case of the petitioner that the general elections of the Siddhpur Nagarpalika were held on 22-5-2005 pursuant to which the new body was

elected. The petitioner is one of the elected members. The petitioner has further stated that a meeting of the Nagarpalika was held on 5-5-2008 when the President and Vice-President of the Nagarpalika were elected. The petitioner has further submitted that on or around 16-5-2008 the respondent No. 2 filed an application being Application No. 18 of 2008 before the designated authority under the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as "the Disqualification Act") praying inter alia that the petitioner and certain other members of the Nagarpalika be disqualified under the provisions of the Disqualification Act for having not voted in favour of the candidates set up by the party on whose symbol the said persons got elected. It is further stated that the petitioner and other six members have filed a writ petition being Special Civil Application No. 8305 of 2008 in this Court praying that the aforesaid disqualification proceedings pending before the designated authority be transferred before any other designated authority and that the said petition, after issuance of notice, is pending in this Court and further hearing of the said petition is scheduled to take place on 17-6-2008. It is further stated by the petitioner that in her capacity as the President, an agenda was issued on 4-6-2008 for a meeting scheduled to be held on 9-6-2008 and that though the agenda was issued on 4-6-2008 it was only on 7-6-2008, which happened to be Saturday, the respondent No. 2 appears to have approached the respondent No. 1 and requested the respondent No. 1 to issue appropriate directions so that the meeting scheduled to be held on 9-6-2008 may not be held. The petitioner claims that on 7-6-2008, i.e., on Saturday the respondent No. 1 passed an ex-parte order without affording opportunity of hearing to the petitioner or the other six members i.e., the petitioners of above referred writ petition being Spl.C.A. No. 8035 of 2008 and the meaning and purport of the said order is that the Nagarpalika is restrained from holding the meeting scheduled to be held on 9-6-2008 and any meeting until 18-6-2008.

3. Mr. Jani appearing for the petitioner submitted that the said communication order dated 7-6-2008 is not only wholly without any authority in law, but is also contrary to the law laid down by this Hon'ble Court (Coram: Hon'ble Smt. Justice Abhilasha Kumari) vide judgment dated 28-4-2008/2-5-2008 passed in Special Civil Application No. - 6584 of 2008 Devabhai Parbatbhai Avadia and Others Vs. District Collector and Another, and that the respondent No. 1 ought not to have issued the impugned direction restraining Siddhpur Nagarpalika from holding the meetings.

4. Mr. V.H. Patel on behalf of the respondent No. 2, inter alia, submitted that the petitioner and other six members of the Siddhpur Nagarpalika are facing disqualification proceedings and that therefore it is in the fitness of things and in the interest of justice that a meeting of the Nagarpalika, wherein the said persons may be in a position to participate, is not held and the meeting may be deferred until the proceedings before the designated authority are concluded. Mr. Patel also made some effort to distinguish the facts of present case from the

facts involved in Spl.C.A. No. 6584 of 2008, however after some time he dropped the said attempt. He then submitted that considering the facts of the case, and more particularly the fact that the President and other six members are facing proceedings under Disqualification Act, it would be just and proper if appropriate directions imposing certain restrictions as regards the business which may be transacted during the meetings and/or against the said persons are issued.

5. It appears that the respondent No. 1 was influenced by the submission that proceedings under Disqualification Act are pending against the petitioner and other six members of Siddhpur Nagarpalika, and that therefore, the meeting ought not be permitted as a result of which the said members can be, indirectly restrained from participating in the meeting and from exercising their rights as elected members of the Nagarpalika, and he, under such belief, appears to have passed the said order. As a result of the impugned order, the meeting of Siddhpur Nagarpalika which was scheduled to take place on 9-6-2008 could not be held and as a result of the impugned order the Siddhpur Nagarpalika would not be in a position to hold any meeting at least until 18-6-2008.

6. It is pertinent that a Nagarpalika is a root-level institute of a democratic culture, system and set-up in this country. It is at the level of Gram Panchayats and Nagarpalikas that the basic structure of democracy is built-up. Accordingly, the said institutes are the foundations, and therefore, it is all the more necessary that the said institutes function and/are permitted to function in a most democratic manner and the rights of the said institutes and the members of the said institutes are zealously and jealously guarded. Restraining a Nagarpalika from holding its meetings, which even otherwise the Nagarpalika is obliged to do by virtue of provisions under the Act, and restraining its members from participating in the meetings amounts to an attack on such institute and the rights of the members. By virtue of the judgment in Spl.C.A. No. 6584 of 2008, this Court has laid down the law that it is beyond the authority and competence of the Collector to restrain the members of Panchayat or a Municipality from attending the meetings or restraining the Panchayat or Nagarpalika from holding meetings. Despite such clear declaration of legal position by this Court, the respondent No. 1 proceeded to pass the impugned order dated 7-6-2008. The said order is an assault, in most undemocratic manner, on the rights of democratically elected body of Siddhpur Nagarpalika and its members. It is eminently clear that the impugned order dated 7-6-2008 is contrary to the law laid down by this Court, vide judgment in Spl.C.A. No. 6584 of 2008. Hence, the said order cannot be allowed to operate.

7. The respondent No. 1 has, in passing the impugned order, transgressed his authority. When the proceedings under the Defection Act are pending, then during its pendency the respondent No. 1 has no authority or power in law to pass a restrain or prohibitory order, in parallel proceedings before him u/s 258 of Municipalities Act, restraining the elected members or office-bearers (against whom proceedings under Defection Act are pending) from participating in general

body or special general meeting or restraining the Municipality from holding meetings, on the ground that the proceedings are pending. It would be transgression of authority.

It is required to be noted at this stage that, in response to the submissions of Mr. Patel to the effect that the facts of present case warrant that appropriate directions are issued to check the business which may be transacted during the meetings which may be held by the Nagarpalika, Mr. Jani stipulated that if any resolutions involving financial liability or consequence qua the Nagarpalika are passed or are required to be passed and then the same will be implemented only after intimating the respondent No. 1 about the details of such resolutions. In other words, the respondent No. 1 will be kept informed about the resolutions involving financial liability or obligations. Mr. Jani has also stipulated that 4 days' notice shall be issued for holding meetings.

8. In light of the judgment in Spl.C.A. No. 6584 of 2008 and in view of the aforesaid discussion, the impugned order dated 7-6-2008 is declared unsustainable, and consequently, the same is set aside. The petition is, to the aforesaid extent, allowed. Rule is made absolute to the said extent. In the facts of the case, there shall not be any order as to costs.