

(2020) 08 GUJ CK 0296

In the Gujarat High Court

Case No : R/Special Civil Application No. 11866 Of 2019

Laleshbhai Dalpatram Thakkar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Provision For Disqualification Of Members Of Local Authorities For Defection
Rules, 1987 — Rule 10
Gujarat Provision For Disqualification Of Members Of Local Authorities For Defection
Act, 1986 — Section 3, 3(1)(a), 3(1)(b)

Citation : (2020) 08 GUJ CK 0296

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : CP Champaneri, Kanva M Antani, C B Upadhyaya

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1 This petition, under Article 226 of the Constitution of India, has been filed by the petitioner challenging the order dated 15.06.2019 passed by the State of Gujarat. By the impugned order, the respondent No.1, i.e. the designated authority rejected the Dispute Application No.5 of 2018 preferred by the petitioner. The application was filed by the petitioner seeking prayers to declare the respondents Nos. 2 to 14 disqualified for holding the post of Member of Patan Municipality.

2 The facts in brief are as under:

2.1 The general elections to the Patan Municipality were held in December, 2015. The strength of members of the municipality was 44. Out of the 44, 32 were elected on the symbol of the Indian National Congress Party and 10 members were elected on the symbol of the Bharatiya Janta Party and two were independently elected.

2.2 Since the term of the President and the Vice-President of the municipality was to come to an end, an agenda was issued on 31.05.2018 for holding a meeting on 07.06.2018 for election of the President and the Vice-President.

2.3 The case of the petitioner was that the Indian National Congress had issued a mandate for electing the petitioner for the post of President and one Babiben Maganbhai Solanki for the post of Vice-President. According to the petitioner, an authorized person of the party had issued a communication to the Presiding Officer of the meeting for holding election of the President and the Vice President, requesting him to ensure its circulation. The communication had a mandate issued in such communication. The case of the petitioner is that, it was served to all the members of the Indian National Congress Party elected on the symbol of the Indian National Congress. The case of the petitioner is that the respondent Nos. 9 and 13 also put their endorsement of having confirmed the receipt of the mandate. The respondents No. 2 to 8 and 10 to 12 accepted the mandate but refused to put an endorsement on the receipt.

2.4 The case of the petitioner is that the mandate was also circulated through Whatsapp messages and telephonic communications. The case of the petitioner is that the respondent No.7 filled in a form to contest for the post of President against the mandate of the party. His name was proposed by respondent no. 3 and seconded by respondent no. 9. The respondent no. 10 filed his nomination for the post of Vice-President which was also proposed and seconded by the respective respondents.

2.5 On the elections being held for the post of President and the Vice- President, the respondent members who are otherwise elected on the ticket of the Indian National Congress, voted for respondent no. 7 for the post of President and respondent no. 10 for the post of Vice-President against the mandate of the party, as a result of which, the petitioners stood defeated in the election as a President.

2.6 It is under these circumstances that the petitioner filed a Dispute Application before the Designated Authority requesting the authority to hold the respondents Nos. 2 to 14 as disqualified under Section 3(1)(a) of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as "the Act"). The application was heard and by the impugned judgment dated 15.06.2019, the same was rejected.

3 Mr. Chintan Champaneri, learned advocate has appeared for the petitioner and Mr. Chitrajeet Upadhyay, learned advocate has appeared for the respondent Nos. 2, 5, 6, 7, 11 & 13 and Mr. Kanva M. Antani, learned AGP, has appeared for the respondent - State.

4 Mr. Chintan Champaneri, learned advocate for the petitioner made the following submissions:

(A) Mr.Champaneri, learned advocate, has invited the attention of the Court to

page no..116 of the paper book to submit that the Party i.e. the Indian National Congress Party had circulated a whip on 07.06.2018 informing the members that the petitioner and one Babiben Maganbhai Solanki were candidates for the post of President and the Vice-President on behalf of the party and the mandate was that the party members should vote for them. He would further invite the attention of the Court to a communication dated 01.12.2015 issued by the Indian National Congress. It is a communication by which, according to Mr. Champaneri, learned advocate, Mr. Balubhai Patel, was authorized to issue a whip in the elections for the posts in the State of Gujarat and the districts. He further invited the Court's attention to page 115 of the paper book to submit that it is not even disputed that the whip was sent to the Presiding Officer and the mandate was also enclosed with the communication. Inviting the attention of the Court to Section 3 of the Act, Mr. Champaneri, learned advocate, submitted that the fact that the respondent Nos. 2 to 14 voted against the mandate, was a disqualification as defined under Section 3(1)(a), inasmuch as, it amounted to voluntarily giving up the membership to the political party. He would also submit that it was apparent from reading the second part of Rule 10 of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules (hereinafter referred to as 'the Rules') that the mandate was known to the respondents.

(B) Mr. Champaneri, learned advocate, also invited the attention of the Court to the findings of the authority whose order is under challenge and would submit that the order is bad and perverse and deserves to be set aside. He would submit that the order is based on surmises and conjectures.

(C) In the submission of Mr. Champaneri, learned advocate, the conduct of the respondents were clearly capable of drawing the inference that they had voluntarily given up the membership. He would further submit that in accordance with the provision of Rule 10 of the Rules, it is the duty of the member to enquire and obtain the mandate issued by the political party. No grievance was raised by them of having not received the mandate, and therefore, the order of the designated authority is contrary to law.

(D) Mr. Champaneri, learned advocate, would further submit that the designated authority committed an error of law in holding that the whip was not issued by the authorized person of the Congress Party and the authorization was not forming part of the resolution, and therefore, there was no evidence to show that the whip was issued by the authority concerned.

5 As against that, Mr. Chitrajeet Upadhyay, learned advocate appearing for the private respondents, would support the order of designated authority. He would submit as under:

(A) He submitted that the basic allegation in the dispute application was that the mandate came to be issued from the Congress Party on 07.06.2018, the mandate was produced and as per the mandate the respondents were bound to

obey and vote in favour of the petitioner.

(B) That though what was produced was a communication dated 01.12.2015, the resolution of 25.07.2015 was not produced before the designated authority, and therefore, there can be no fault found, for the authorities to have dismissed the dispute application.

(C) Even assuming that there was a resolution of 25.07.2015, even at that point of time when the election was held in 2018, Shri Bharatsinh Solanki was no longer the President of the party and it was Shri Amit Chavda, who was the Chairman of the Committee from March 2018, and therefore, even otherwise the mandate was without authority of law. He would, therefore, submit that the dispute application was rightly rejected.

(D) Neither the provisions of Section 3(1)(a) nor the provisions of Section 3(1)(b) of the Act can be invoked for the purposes of disqualification of the respondents as the District President himself has suspended the respondents from the primary membership of the political party for not obeying the mandate. The petition, therefore, deserves to be rejected.

6 Considering the submissions on hand, the appreciation of the controversy would indicate that the election for the post of President and the Vice President were scheduled pursuant to the Collector's communication dated 31.05.2018. The Collector issued the agenda note and it was declared that the election for the post of the President and the Vice-President of the Patan Municipality will be held on 07.06.2018.

6.1 Assailing the order of the designated authority, Mr. Champaneri, learned advocate, has taken the Court through the communication dated 01.12.2015 and also has supported his submission by showing that the whip was served on the respondent No.13 whose name appears at page 122 of the paper book at serial no.24.

6.2 Before the designated authority, 3 issues were raised for consideration of the dispute application. The first issue was whether the whip or the mandate was issued by an authorized officer. Secondly, whether even when the whip was served, did the members i.e. the respondents vote against such a mandate and whether the respondents can be said to have voluntarily left the membership of the party.

7 Having gone through the order of the dispute resolution authority or the designated authority, let us test the reasonings set out by the authority. The authority has opined that though the communication dated 07.06.2018 was specifically addressed to the members of the party, relying on the communication of 01.12.2018 i.e. a letter of the President Shri Bharatsinh Solanki authorizing Shri Balubhai Patel as the Chairman of the Co-ordinating Committee to issue a mandate, the communication of 01.12.2015 talked about the resolution of 25.07.2015 which was not produced on record. What has also come on record

and which is not disputed even by the petitioner is that when the election was held on 07.06.2018, the Indian National Congress had a change of guard inasmuch as, Shri Bharatsinh Solanki was not the President of the party and it was Shri Amit Chavda who was made the President of the Congress Party. Mr.Amit Chavda was made the President of the party in February 2018. The elections were held four months after the election of the President, and therefore, in the opinion of the designated authority, the authorization letter of 01.12.2018 had no force of law. The authority, therefore, held that the issue whether the whip was issued by authorized person, against the petitioners.

7.1 Perusal of the communication dated 01.12.2015 produced with the paper book would indicate that it refers to a resolution passed by the party on 25.07.2015. Admittedly, as is evident from the findings of the designated authority, such a communication was not a part of the record. Therefore, on two counts, the application of the petitioner before the designated authority ought to have failed. Firstly, on the ground that the whip was issued by a person who was not authorized. This has been discussed just in the earlier portion of the judgment, inasmuch as, that when the election was held, it was Shri Amit Chavda who was the President and not Shri Bharatsinh Solanki, and therefore, the letter of 01.12.2015 cannot be said to be a letter authorizing Balubhai Patel as a competent authority to issue the mandate. Secondly, even otherwise, the resolution authorizing Shri Balubhai Patel i.e. Resolution dated 25.07.2015 was not produced on record. These two basic fallacies exposed the weakness of the application of the petitioner for pressing for disqualification of the respondents under Section 3(1)(a) of the Act.

8 Even perusal of the record would indicate a communication addressed by the respondents on 05.06.2018 to the Presiding Officer of the Patan Election of the Municipality. They had specifically under their signatures informed the Presiding Officer that the number of the signatories exceeded 1/3rd of the group, and therefore, they did not face disqualification so as to warrant the rigors of the Act especially Section 3(1)(a) of the Act. This document, therefore, makes it apparent that the rigors of Section 3(1)(a) of the Act were not attracted in the case of the respondents herein.

9 Perusal of the order of the designated authority impugned in this petition would further indicate that in absence of any mandate or an authorization of such mandate validly produced before the designated authority by way of the petitioner's dispute application, no fault can be found in the order so passed by the designated authority.

10. The petition is, accordingly, dismissed with no orders as to costs.