

(2003) 03 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 370 of 2001

Mushtaq Ahmed Hasanbhai Mansuri

APPELLANT

Vs

V.C. Trivedi and Another

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 37, 37(1), 37(2)

Citation : AIR 2003 Guj 214 : (2003) 23 GLH 572 : (2003) 1 GLR 745 : (2003) 3 RCR(Civil) 264

Hon'ble Judges : D.S. Sinha, C.J;M.S. Shah, J;J.M. Panchal, J

Bench : Full Bench

Advocate : B.S. Patel, for the Appellant; A.D. Oza, G.P. for Respondent No. 1 and S.V. Parmar, for the Respondent

Judgement

J.M. Panchal, J.—In instant reference made at the instance of the learned single Judge, two questions arise for consideration of the Larger

Bench, namely, (1) whether the words "'or of any disgraceful conduct'" occurring in Section 37(1) of the Gujarat Municipalities Act, 1963 ("the

Act" for short), are referable to misconduct committed by a Councillor or President or Vice-President, with the words "'in the discharge of his

duties'", and (2) whether a Councillor, even if elected as a Member of a Committee, should be treated as a Councillor alone for the purposes of

Section 37 of the Act as Section 37 of the Act does not recognise a Chairman or a Member of any committee as a separate class.

2. In order to answer the above-referred to issues, it would be necessary to notice the relevant facts in brief.

2.1 In the year 1999, the petitioner was elected as a Municipal Councillor of Dabhoi Municipality, which is impleaded as respondent No. 2 in the

petition. He was also appointed as a Member of Malaria Committee of the Municipality. Some complaints were received against the conduct/behaviour of the petitioner. According to the complaints, the petitioner had gone to a pumping station and picked up quarrel with the superior field worker one Shri Sanjaykumar Inamdar. He had also used filthy language and threatened to hit him. As per the complaints, earlier also the petitioner had behaved in a similar manner with one Shri A.B. Amin, who was then holding the post of Malaria Inspector. Further, as per the complaints, the petitioner had frequently gone to the residence of the President of the Municipality who was a lady living alone, and abused her as well as behaved in an indisciplined manner. On receipt of the complaints a notice dated August 31, 2000 was issued upon the petitioner u/s 37 of the Act, calling upon him to show cause as to why he should not be removed from the office of the Municipal Councillor. The notice was replied by the petitioner on December 4, 2000. The petitioner was also given an opportunity of personal hearing. After holding inquiry against the petitioner, the Director of Municipalities, who is impleaded as respondent No. 1 in the petition, passed an order dated December 14, 2000 removing the petitioner from the office of Councillor against which Special Civil Application No. 370 of 2001 is directed.

2.2 At the time of hearing of the petition it was argued on behalf of the petitioner that the petitioner was not supplied copy of the reports of the Deputy Collector and the Collector, which have been referred to and relied upon by the Competent Authority while passing the order, and therefore, the order removing the petitioner from the office of Councillor having been made in violation of principles of natural justice was liable to be set aside. The said contention has been rejected by the learned single Judge by holding that the reports of the Deputy Collector and the Collector were in fact not relied upon by the Competent Authority and that the reports being preliminary reports were not required to be supplied to the petitioner.

2.3 The second contention which was urged on behalf of the petitioner before the learned single Judge was that the words ""or of any disgraceful conduct"" occurring in Section 37 of the Act have reference only to the discharge of duties either by a Councillor or President or Vice-President, as

the case may be, and as it is not the case of the respondents that the petitioner is guilty of any disgraceful conduct in discharge of his duties as a

Councillor, he could not have been removed from the office of the Councillor. The learned single Judge noticed that in *Chimanbhai R. Patel and*

etc. Vs. Anand Municipality, Anand and Others, a Division Bench of this Court has taken a view that a person who misconducts himself or

conducts himself in a disgraceful manner while performing his duties as a President or a Chairman of a Committee constituted by the Municipality

under the Act, can be removed from the office of the President or Chairman, as the case may be, but it seems difficult to hold that he can also be

removed from the office of the Municipal Councillor even though the alleged misconduct or disgraceful conduct was not referable to anything done

in the discharge of duties as the Municipal Councillor. On critical analysis of the decision in *Chimanbhai R. Patel (supra)*, the learned single Judge

noted that in that case the question was whether the petitioner who was found guilty of misconduct committed in the discharge of his duties as a

Chairman of a Committee constituted by the Municipality, could have been removed from the office as a Municipal Councillor, though the

misconduct committed by him was not referable to his office as a Municipal Councillor, and therefore, the observations made by the Division

Bench to the effect that disgraceful conduct has reference to the discharge of duties are mere obiter. It was further noticed by the learned single

Judge that the decision rendered by the Division Bench in *Chimanbhai R. Patel (supra)* was followed by another Division Bench of this Court in

Popatlal Devidan Gandavi Vs. Satishkumar Rameshchandra Ahir and Others, . At the same time, the decision of the learned Judge delivered in

Anishbhai Isabhai Patel v. State of Gujarat and Ors. 1994 (2) GLR 1402, was brought to the notice of the learned single Judge where a view has

been taken that the misconduct must be misconduct in the discharge of the duties, whereas disgraceful conduct is pre-fixed by the expression "any

and need not necessarily be in discharge of the duties. After noticing the view expressed by the learned single Judge in *Anishbhai (supra)*, the

learned single Judge has expressed an opinion that the words "in the discharge of his duties" occurring in Section 37(1) of the Act only qualify the

words "guilty of misconduct" alone and not the words "guilty of any disgraceful conduct". Therefore, the question which arises for consideration of

the Larger Bench is whether a Councillor or President or Vice-President can be removed if he is guilty of any disgraceful conduct which was not committed by him in discharge of his duties.

2.4 The third contention which was raised on behalf of the petitioner was that the petitioner had committed alleged misconduct in his capacity as a

Member of Malaria Committee, but not in the capacity of Municipal Councillor, and therefore, he could not have been removed from the office of

Councillor. While dealing with this contention, the learned single Judge noticed that in *Chimanbhai R. Patel (supra)* the Division Bench of this Court

has taken a view that when a person who misconducts himself while performing his duties as President or Chairman, he can be removed from the

office of President or Chairman, but not from the office of Municipal Councillor. The learned single Judge was of the view that Section 37 of the

Act does not recognise a Chairman or a Member of any Committee as a separate class and the only classes which are recognised are that of the

President, the Vice-President or the Councillor. As per the learned single Judge, any misconduct committed by the member of a Committee in

discharge of his duties, is for the purpose of Section 37 of the Act, a misconduct committed by the Councillor, and therefore, a Councillor, even if

elected as a Member of a Committee, should be treated as a Councillor alone for the purpose of Section 37 of the Act. The learned single Judge

has expressed the view that if a member of a Committee commits misconduct in discharge of his duties, he is liable to be removed as a Municipal

Councillor u/s 37 of the Act. This view is contrary to the view expressed by the Division Bench in *Chimanbhai R. Patel (supra)*. Thus, the question

which arises for consideration of this Bench is whether a President or Vice-President or a Member of a Committee of the Municipality who

commits misconduct in discharge of his duties as such can be removed as a Municipal Councillor u/s 37 of the Act.

3. We have heard the learned Counsel for the parties at length and in detail, and considered the relevant statutory provisions.

4. First of all, we take up the issue for consideration whether the words "'in the discharge of his duties'" occurring in Section 37(1) of the Act qualify

the words "'guilty of misconduct'" alone or also qualify the words "'guilty of any disgraceful conduct'". In this regard we notice that in *Chimanbhai R.*

Patel (supra), the question which was directly posed for consideration of the Division Bench was whether the petitioner in that case who was found

guilty of misconduct committed in the discharge of his duties as a Chairman of a Committee constituted by the Municipality could have been

removed from office as Municipal Councillor, though the misconduct committed by him was not referable to his office as a Municipal Councillor.

The question whether the words "'in the discharge of his duties'" occurring in Section 37(1) of the Act qualify the words "'guilty of misconduct'" alone

or also qualify the words "'guilty of any disgraceful conduct'" was not a matter at issue. In our view, the Division Bench had no occasion to decide

the issue after active application of mind, and therefore, the observations made by the Division Bench that a person who misconducts himself or

conducts himself in a disgraceful manner in the discharge of his duties as a President or a Chairman of a Committee constituted by the Municipality

under the Act can be removed from the office of the President or Chairman, as the case may be, will have to be regarded as mere obiter, We

further notice that in Popatlal Devidan Gandavi (supra) another Division Bench of this Court has merely followed the obiter laid down in

Chimanbhai R. Patel (supra), and held that a Councillor, a President or a Vice-President can be removed from the office for disgraceful conduct

provided that the same has relation to official duties, but not otherwise. We notice that the view taken by the learned single Judge in Anishbhai

Isabhai Patel (supra) that disgraceful conduct need not necessarily be connected with the official function of the Member of the Panchayat was

brought to the notice of the Division Bench which decided the case of Popatlal Devidan Gandavi (supra), but the Division Bench has not overruled

the decision of the learned single Judge in Anishbhai Isabhai Patel, and has relied upon the decision of the Division Bench in Chimanbhai R. Patel

(supra) for taking the view that the Councillor, President or Vice-President can be removed from the office for disgraceful conduct provided that

the same has relation to his official duties, but not otherwise.

4.1 In order to appreciate the controversy raised in the Reference, it would be necessary to refer to the relevant provisions of Section 37 of the

Gujarat Municipalities Act, 1963, which read as under :

Section 37(1) The State Government may remove from office -

(a) any Councillor of a Municipality, on its own motion or on receipt of a recommendation of the Municipality in that behalf supported by a

majority of the total number of the then Councillors of the Municipality, or

(b) any President or Vice-President of a Municipality,

if, after giving the Councillor, President or as the case may be, Vice-President an opportunity of being heard and giving due notice in that behalf to

the Municipality and after making such inquiry as it deems necessary, the State Government is of the opinion that the Councillor, President or as the

case may be, Vice-President has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of

performing his duties under this Act.

(2) A President or Vice-President removed under Sub-section (1) shall not be eligible for re-election as a President or Vice-President during the

remainder of the term of the Municipality.

A bare reading of the Section would indicate that on the recommendation of the Municipality, by resolution duly passed for the removal of the

Councillor, the State Government may order removal if it is satisfied that the Councillor or President or Vice-President of a Municipality is guilty of

misconduct in the discharge of his duties, or guilty of any disgraceful conduct, or has become incapable of performing his duties as a Councillor and

the explanation furnished by him, if any, is not satisfactory and after making inquiry as is necessary. We notice that after the phrase ""has been guilty

of misconduct in the discharge of his duties"", the legislature has used the words ""or of any"". The word ""or"" is a disjunctive part used to express an

alternative or to give a choice of one among two or more things. It is well settled that the reading of ""or"" as ""and"" is not to be resorted to unless

some other part of the same statute or the clear intention of it requires that to be done. If the word ""or"" occurring in Section 37(1) of the Act is

read as ""and"", it does not convey any intelligible meaning, but renders the said provision absurd and mutilated. The word ""or"" is used in Section

37(1) of the Act as a function word to indicate an alternative between different or unlike things. As the phrase ""of any disgraceful conduct"" is

preceded by the word ""or"", it will have to be interpreted that the words ""the Councillor, President or Vice-President, has been guilty of any

disgraceful conduct"", have no relation to the discharge of duties of the

Councillor, President or Vice-President as the case may be. It is relevant to note that if the phrase "of any disgraceful conduct" is interpreted to mean that the disgraceful conduct must have relation to the discharge of duties, the words "of any" occurring in the phrase "of any disgraceful conduct" would be rendered nugatory and such a construction of a statutory provision must be avoided. Moreover, the word "misconduct" is specified by the phrase "in the discharge of his duties"; whereas, no such qualification is prescribed by the legislature, so far as expression "disgraceful conduct" is concerned. By reading the Section to mean that the words "of any disgraceful conduct" have reference to the "discharge of his official duties", the Court will have to rewrite the provision which is not permissible.

4.2 In order to understand the object and purpose of the legislature in enacting Section 37, it will be worthwhile to notice legislative history

because it is settled principle of interpretation of statute that the Court is entitled to take into account such external or historical facts as may be

necessary to understand the subject-matter of the statute or have regard to the surrounding circumstances which existed at the time of passing of

the statute. By Section 279 of the Gujarat Municipalities Act, 1963, the Bombay District Municipal Act, 1901 and Bombay Municipal Boroughs

Act, 1925 have been repealed. Section 16 of the Bombay District Municipal Act, 1901 was as under :

16. The State Government in the case of City Municipalities, and the Commissioner in other cases, if it or he thinks fit, on the recommendation of

the Municipality, may remove any Councillor elected or appointed under this Act, if such Councillor has been guilty of misconduct in the discharge

of his duties or of any disgraceful conduct, or has become incapable of performing his duties as a Councillor.

Whereas Section 23, Sub-section (7) of the said Act, which dealt with office of President and Vice-President inter alia was as under :

...Every President and every Vice-President shall be removable from his office as such President or Vice-President by the State Government for

misconduct, or neglect of or incapacity to perform, his duty...

A glance at the above-referred to provisions makes it more than clear that u/s 16 of the Bombay District Municipal Act, 1901 a Councillor could

have been removed from his office if he had been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or had become incapable of performing his duties as a Councillor; whereas a President or Vice-President could have been removed from his office for misconduct, or neglect of, or incapacity to perform, his duty under the provisions of the Bombay District Municipal Act, 1901. Therefore, under the provisions of the Bombay District Municipal Act, 1901 a President or Vice-President could not have been removed from his office on the ground that he had been guilty of any disgraceful conduct. So far as the Bombay Municipal Boroughs Act, 1925 is concerned, it is to be noticed that u/s 21(2) of the said Act a President or Vice-President could have been removed from his office for misconduct, or negligent of, or incapacity to perform his duty, whereas as per Section 27 of the said Act a Councillor could have been removed if he had been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or had become incapable of performing his duties as a Councillor. Thus, even under the Bombay Municipal Boroughs Act, 1925, it was never provided that a President or Vice-President could have been removed from office if he had been guilty of any disgraceful conduct. The Gujarat Municipalities Act, 1963 was enacted to consolidate and amend the law regarding the Municipalities in the State of Gujarat so as to give them wider powers in the management of Municipal affairs. For the first time, it has been provided in the Act of 1963 that a President or Vice-President of a Municipality can be removed from his office if he is guilty of any disgraceful conduct. This legislative history would indicate that disgraceful conduct has been treated as a separate class from misconduct committed by the Councillor in the discharge of his duties and the disgraceful conduct may be in the discharge of duty or otherwise. Therefore, the legislative history also makes it abundantly clear that the words "'of any disgraceful conduct'" have no reference to the words "'in the discharge of his duties'" following the words "'has been guilty of misconduct'" and by no reason of interpretation can be read to mean that the disgraceful conduct must have reference to the discharge of duty and not otherwise.

4.3 Further, the word "'misconduct'" used in the phrase "'has been guilty of misconduct in the discharge of his duties'" means misconduct in office. As

explained in Black's Law Dictionary, Sixth Edition by the Publisher's Editorial Staff, "misconduct" is any unlawful behaviour by a public officer in

relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed

improperly, and failure to act in the face of an affirmative duty to act. Misconduct is a transgression of some established and definite rule of action,

a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour; whereas the word "disgrace" means

ignominy; shame; dishonour. Disgraceful conduct need not be circumscribed to something done in the course of one's duty as holder of the office.

The word "disgrace" is frequently used with an odious implication and as a term of general disparagement and equally discreditable as applied to all

persons. In this sense the term may imply disfavour, shame, contumely or even dishonour and is defined as meaning a cause of shame or reproach.

The term "disgraceful" is synonymous with infamous. Therefore, a President or Vice-President or the Councillor of a Municipality may be guilty of

any disgraceful conduct in the discharge of his duties or otherwise also and it cannot be interpreted to mean that the disgraceful conduct must be in

the discharge of duties and not otherwise. At this stage, we may refer to well settled canon of interpretation that where it is necessary to give a

provision a particular construction which is at variance with the way in which the Section is punctuated, it may be read as though there were in fact

punctuation where none appears on the face of the Act. In *Re : Naranjan Singh* 1962 (1) QB 211 Section 10 of the Fugitive Offenders Act, 1881

was considered. The said Section conferred on a superior Court power to discharge a fugitive where "by reason of the trivial nature of the case, or

by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise ... it would be unjust or

oppressive or too severe a punishment to return" him. It was held that, apart from cases of a trivial nature, the Court's discretion to discharge a

fugitive could be exercised in any case in which the return of the man would be unjust or oppressive or too severe, and was not confined to cases

in which the application appeared not to have been made in good faith. In other words, the Section was given a wide construction, as though a

comma had been inserted before "or otherwise". Applying the same principle to the provisions of Section 37 of the Act, we find that the provision

will have to be read as if comma had been inserted after the words ""has been guilty of misconduct in the discharge of his duties"". So read, it

becomes evident at once that the subsequently following phrase ""or of any disgraceful conduct"" has no reference to the discharge of his duties and

that disgraceful conduct can be committed otherwise also.

4.4 The scheme of Section 37 of the Act is clear and unambiguous. As observed earlier, Sub-section (1) thereof empowers the State Government

to remove any Councillor or President or the Vice-President of a Municipality from the office (a) if he is guilty of misconduct in the discharge of his

duties, (b) or if he has been guilty of any disgraceful conduct or (c) if he has become incapable of performing his duties under the Act. A

disgraceful conduct is much more grave than a mere misconduct. A disgraceful conduct brings disrepute not only to the Councillor who is guilty of

such conduct, but would also cast a stigma upon the institution, namely, the Municipality. Webster gives the word ""disgraceful"" meaning as

synonymous of ""infamous"", ""detestable"", ""odious"", ""scandalous"", ""base"", ""vile"", ""shameful"", ignominious"". Acts sanctioned by law are not disgraceful.

The natural consequence of disgraceful conduct is that it brings the person committing the same into contempt among honourable persons. If the

legislative intention had been to confine the power of removal in case of disgraceful conduct committed in the discharge of the duties, an express

provision could have been made or the words ""in the discharge of his duties"" would have followed the second contingency also. Such being not the

language employed by the Legislature, we are of the opinion that the words ""in the discharge of his duties"" do not qualify the words ""disgraceful

conduct"" also. Disgraceful conduct has a reference to his behaviour as a citizen and not necessarily as a Councillor. If a person behaves

disgracefully in the public or in the office of Municipal Council, he is liable to be removed from his office of Councillor notwithstanding the fact that

the misconduct was not with reference to the discharge of his duties. Thus, the first question which is referred to the Larger Bench is answered by

holding that the phrase ""or of any disgraceful conduct"" occurring in the Section cannot be construed to mean that the disgraceful conduct must have

been committed in the discharge of duties only and not otherwise. The President, Vice-President or Councillor, as the case may be, can be

removed from office if he is guilty of any disgraceful conduct which is committed in the discharge of duties or otherwise because the President,

Vice-President or Councillor of a Municipality, as the case may be, is a public figure holding public post and is supposed to conduct himself in such

a manner whether in the discharge of his duties or otherwise, that his conduct does not bring shame or dishonour or ignominy to himself or the

institution. The decisions taking contrary view on this point stand overruled.

5. The second question which requires to be considered by this Bench is whether a Councillor, who is a member of a Committee constituted under

the provisions of the Act, can be removed from the office of Member of Committee or from the office of Councillor. On plain reading of Section

37 of the Act, we are of the opinion that on the recommendation of the Municipality by resolution duly passed for the removal of the Councillor,

the State Government may order removal if it is satisfied that the Councillor is guilty of misconduct in the discharge of his duties, or guilty of any

disgraceful conduct or has become incapable of performing his duties as a Councillor, and the explanation furnished by him, if any, is not

satisfactory and after making inquiry as is necessary. The Act envisages constitution of certain statutory committees such as Executive Committee

which is contemplated by Section 53 of the Act, or Pilgrim Committee as provided in Section 54 of the Act, and other Committees u/s 55 of the

Act and Consultative Committees as contemplated by Section 56 of the Act. When a Councillor becomes member of any of the Committees, he

continues to hold the office of Councillor also. The Councillor, who may be removed u/s 37 of the Act may be a mere Councillor or a Member of

any Committee or a President or Vice-President of the Municipality. When the Councillor happens to be a President, or Vice-President or a

Member of any Committee and is removed as a Councillor under this Section the office of the President or the Vice-President or as the case may

be, the office of the Member of any Committee becomes vacant and the vacancy is to be filled up as provided in the Act. Section 11 of the Act

provides for general disqualifications for becoming a Councillor and vacation of seat, whereas Section 38 provides for disabilities from continuing

as a Councillor. The scheme of Section 37 of the Act is such that when a Councillor in the capacity of President or Vice-President or a Member of

any Committee has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or has become incapable of performing

his duties under the Act, it will have reflection on the office of the Councillor also, and therefore, a President, a Vice-President or a Member of any

Committee can be removed from the office of the Councillor. As noticed earlier, a Councillor is a public figure holding a public post and is also a

public servant. Therefore, he is supposed to conduct himself in such a manner that he does not commit any misconduct in the discharge of his

duties either as a President, Vice-President or a Member of any Committee or is not guilty of any disgraceful conduct either as a President, Vice-

President or a Member of any Committee. Under the circumstances, a Councillor who is a President or Vice-President or a Member of any

Committee can be removed as Councillor if he has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct as

President, Vice-President or a Member of any Committee. This does not mean that the Competent Authority has only one alternative, namely, that

the President or Vice-President has to be removed from the office of Councillor also. In a given case, the Competent Authority may remove a

President or Vice-President from the said post and allow him to hold the office of Councillor. In that eventuality, the President or the Vice-

President will continue to hold the post of Councillor subject to the limits prescribed in Section 37(2) of the Act. But, once a President or the Vice-

President, or as the case may be, a member of a Committee is removed from office of the Councillor, he ceases to be President or Vice-President

or the Member of the Committee. This aspect has not been considered by the Division Bench which decided the case of Chimanbhai R. Patel

(supra) and the decision is rendered on the basis of the language of Section 37 of the Act and Section 49(1) of the Gujarat Panchayats Act, 1961.

5.1 Under the circumstances, the view taken by the Division Bench in the case of Chimanbhai R. Patel (supra) to the effect that if a Councillor has

misconducted himself or conducted himself in a disgraceful manner while performing his duties as a President of the Municipality or Chairman of a

Committee appointed under the Act, and if his acts have nothing to do with the office of the Municipal Councillor, he can only be removed from

the office of the President or Chairman, as the case may be, but not from the office of Municipal Councillor held by him, is hereby overruled. Our

answer to the second question posed for our consideration is that a Municipal Councillor can be removed from the office of Councillor if he is

guilty of misconduct in the performance of his duties or of any disgraceful conduct as President, Vice-President or a Member of any Committee

and when the Councillor happens to be the President or Vice-President or a member of any Committee and is removed as a Councillor under this

Section the office of the President or the Vice-President or a Member of any Committee becomes vacant and the vacancy is to be filled up as

provided under the Act.

6. The Reference accordingly stands answered. The Office is directed to place the petition for further hearing before the Court taking up such

matters.