
(2013) 01 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No. 382 of 2013

Naranbhai Sidibhai Bambhaniya

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 01 GUJ CK 0058

Hon'ble Judges : S.H. Vora, J; Mukesh R. Shah, J

Bench : Division Bench

Advocate : P.S. Champaneri, for the Petitioners No. 1, for the Appellant; Nisha Thakore, AGP for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Mukesh R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for an appropriate writ, order and/or direction, challenging the action of the respondent No. 4 - District Development Officer, District Panchayat, Junagadh, in issuing notice dtd. 4/1/2013 and directing to convene the meeting of Sutrapada Taluka Panchayat for election of President and Vice President of the said Taluka Panchayat, which had fallen vacant in view of order passed by the Competent Authority declaring five members of the Sutrapada Taluka Panchayat, inclusive of the President and Vice President of the Sutrapada Taluka Panchayat, disqualified under the provisions of the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986 (herein after referred to as "Disqualification Act, 1986"). It appears that proceedings were initiated under the Disqualification Act, 1986, and the Competent Authority, vide order dtd. 26/9/2012 disqualified five members of the Sutrapada Taluka Panchayat, inclusive of the President and Vice President of the said Taluka Panchayat and therefore, the posts of the President and Vice President of the Sutrapada had fallen vacant and therefore, for election of the President and Vice President of the Taluka Panchayat, District Development

Officer, Junagadh has directed to convene the meeting of the members of the Taluka Panchayat which had fallen vacant due to order of disqualification passed by the Competent Authority declaring the then President and Vice President of the Taluka Panchayat as disqualified.

2. Being aggrieved by and dissatisfied with the impugned notice dtd. 4/1/2013 issued by the District Development Officer, Junagadh directing to convene the meeting of the Taluka Panchayat on 16/1/2013 for the election of the President and Vice President of the Taluka Panchayat, petitioner herein, who is a member of the Sutrapada Taluka Panchayat, has preferred the present Special Civil Application.

3. Shri Champaneri, learned advocate for the petitioner has vehemently submitted that as per Section 63 of the Panchayat Act a committee is required to be convened for the election of its President and Vice President of the Taluka Panchayat on the constitution of a Taluka Panchayat or on its re-constitution u/s 13 or under any other provisions of Panchayat Act. Therefore, it is submitted that when the post of five members of the Taluka Panchayat had fallen vacant the authority is first required to hold the election of the said post which had fallen vacant and consequently Taluka Panchayat to be re-constituted and only thereafter the meeting is to be convened for the election of its President and Vice President from amongst its elected members.

3.1. It is further submitted by Shri Champaneri, learned advocate for the petitioner that unless and until all the posts members of the Taluka Panchayat i.e. in the present case 17 posts have been filled in, there cannot be any election of President and / or Vice President. It is submitted that in the present case if at present the meeting of the Taluka Panchayat is permitted to be convened for the election of President and Vice President of Taluka Panchayat, as there are only 12 members in the Taluka Panchayat, the President and Vice President of the Taluka Panchayat would be elected by and from amongst the 12 members only and not by all the members of the Taluka Panchayat i.e. 17 members, which would be against the democratic process.

3.2. It is further submitted that as such earlier the Taluka Development Officer proposed and sent recommendation to fill up the post of members of the Taluka Panchayat which had fallen vacant due to disqualification of five members of the Taluka Panchayat as well as to hold the election of President and Vice President of the Panchayat. However, only second recommendation has been accepted to convene the meeting for election of the President and Vice President of Taluka Panchayat and no fresh election to fill up the posts of members of the Taluka Panchayat which had fallen vacant due to disqualification have been held and / or conducted. Therefore, it is submitted that action of the District Development Officer, Junagadh in issuing impugned notice to convene the meeting of Sutrapada Taluka Panchayat for the election of President and Vice President of said Taluka Panchayat to be convened on 16.1.2013 is illegal and most arbitrary and the same deserves to be quashed and set aside.

4. Heard. Shri Champaneri, learned advocate for the petitioner and Ms. Nisha Thakore, learned Assistant Government Pleader for the respondent no. 1. At the outset, it is required to be noted and it is not in dispute that five members of the Taluka Panchayat out of which two members were elected as President and Vice President of Sutrapada Taluka Panchayat had fallen vacant due to their disqualification under the Disqualification Act. As out of five members who are disqualified, two members were holding post of President and Vice President of the said Taluka Panchayat and therefore, on their disqualification as members the post of President and Vice President of the said Taluka Panchayat had fallen vacant. Therefore, considering Section 75 of the Panchayat Act, a meeting is to be convened for the election of President and Vice President by the competent authority. As per sub-section (2) of Section 75 of the Gujarat Panchayat Act such election shall be held in the same manner in which election of President or Vice President is held u/s 63 of the Act. Considering Section 63 of the Panchayat Act a meeting is required to be convened for the election of its President and Vice President from amongst its elected members. On fair reading of Section 63 of the Act, it can be said that the President and Vice President of the Taluka Panchayat are to be elected from amongst its elected members at the relevant time and it does not say that they shall be elected from amongst all the members of the Panchayat. The "elected members" mentioned in Section 63 of the Act would be the elected members at the relevant time. The contention on behalf of the petitioner that after the five members were declared disqualified, their posts are first required to be filled in by holding fresh election and after such election it can be said that there is re-constitution of the Taluka Panchayat and only thereafter the meeting for election of the President and Vice President of the Taluka Panchayat is to be convened to be elected and such President and Vice President should be elected from and amongst all the 17 members cannot be accepted. The post of President and Vice President cannot be permitted and / or directed to be kept vacant till all the posts of the members have been filled in (which are fallen vacant due to disqualification). In a given case it may happen that for one reason or the other all the posts of the members of the Taluka Panchayat are not filled in and for one reason or the other the posts of members had fallen vacant / remained vacant. Therefore, the contention on behalf of the petitioner that the President and Vice President of the Taluka Panchayat is to be elected from and amongst all the members of the Panchayat i.e. in the present case 17 members, in aforesaid situation the post of President and Vice President is required to be kept vacant till all the posts of the members of the Panchayat are filled in. The aforesaid cannot be accepted. As soon as the post of the President and Vice President have fallen vacant, the same is required to be filled in by election from and amongst the elected members at the relevant time.

5. Under the circumstances, no illegality has been committed by the District Development Officer in convening the meeting on 16.1.2013 for election of President and Vice President of the Sutrapada Taluka Panchayat, which calls for the interference of this Court in exercise of powers under Article 226 of the

Constitution of India. In view of the above and for the reasons stated above, there is no substance in the present petition, which deserves to be dismissed and is accordingly dismissed.