

(1981) 01 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 3371 of 1980

Prahladbhai Vithaldas Suthar

APPELLANT

Vs

The Returning Officer, Modasa Nagar Panchayat and Others

RESPONDENT

Date of Decision : 22-01-1981

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 4

Citation : AIR 1981 Guj 241 : (1981) 22 GLR 969

Hon'ble Judges : R.C. Mankad, J;M.P. Thakkar, J

Bench : Division Bench

Advocate : H.M Mehta, M.A. Panchal, for the Appellant; J.R. Nanavati, Govt. Pleader for Purnand and Co. and S.V. Raju, for the Respondent

Judgement

Thakkar, J.

(1) A question with regard to the interpretation of S. 4-A of the Gujarat Municipalities Act of 1963 introduced by way of Gujarat Act No. 20 of 1980 which came into force on October 24, 1980 is raised in this petition. The question is whether on a true interpretation of S. 4-A a Nagar Panchayat would automatically become a Municipal Borough so as to be governed by the Gujarat Municipalities Act of 1963. The question has arisen in the context-of elections to the Modasa Nagar Panchayat. The petitioner, an inhabitant of Modasa, has contended that the population of Modasa was less than 25,000 previously but that it has exceeded 25,000 recently, It is contended that as per Annexure "A" dated November 25, 1980, which is a certificate issued by the Talati-Cum-Mantri of Modasa, the population is 30,390. In these premises it is contended that it has already become a Municipal Borough having regard to the provisions contained in S. 4-A of the Act and that as a result thereof the Panchayat functioning in the local area stands dissolved and a Municipality has to be constituted under the Gujarat Municipalities Act, 1963. It is in this backdrop that S. 4-A which reads as under has come up for interpretation:-

"4A. (1) Notwithstanding anything contained in Section 4 of this Act and Section

9 of the Gujarat Panchayats Act, 1961, the area comprised in every nagar in the State, in which the population on the date of the commencement of the Gujarat Panchayats and Municipalities Laws (Amendment) Act, 1980 is 25000 or above shall with effect on and from that date be a municipal borough.

(2) Notwithstanding anything contained in Section 4 of this Act and Section 9 of the Gujarat Panchayats Act, 1961 after making such inquiries as may be prescribed by rules made by it and after consulting the nagar panchayat, the State Government may, by notification in the Official Gazette, declare the areas comprised in a nagar and specified in the notification as a municipal borough, if the population of the nagar is 25,000 or above:

Provided that where the State Government having regard to the geography, extent of urban development and such other factors in relation to that, area ac may be prescribed by it by rules made under this Act and after consulting the nagar panchayat is of the opinion that it is not in public*interest so to do, it shall be lawful for it not to so declare the area,

(3) Notwithstanding anything contained in Section 4 of this Act and Section 9 of the Gujarat Panchayats Act, 1961 where the State Government having regard to the geography, extent of urban development and such other factors in relation to the area comprised in a nagar having population not exceeding 25000 or in relation to the area comprised in a gram as may be prescribed by it by rules made under this Act and after consulting the nagar panchayat or, as the case may be the gram panchayat, is of the opinion that it is in public interest so to do, it may by a like notification declare such area as a municipal borough,

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Explanation.- For the purposes of this section-

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(e) "population" in relation to gram or nagar means the population thereof as ascertained at the last preceding census." Learned counsel for the petitioner contended that upon a bare reading of Section 4-A (1) it would appear that the local area comprised in the Modasa Nagar Panchayat had become. a Municipal Borough, If his contention were to prevail, the consequence suggested by him might follow and the Panchayat would stand dissolved and a Municipality may have to be constituted under the Act. We are, however, of the opinion that whether or not the population of Modasa has in fact exceeded 25,000 is not relevant having regard to the definition of the term "population" embodied in clause (e) of the Explanation to S. 4-A. It is in terms provided that the expression "population" employed by the Legislature in S. 4-A is referable to the population as ascertained in "the last preceding census". It is common ground between the parties that the last preceding census took place in 1971. It is also common ground between the parties that in the said census the population of Modasa was less than 25,000. Under the circumstances, if the expression

"population" contained in S. 4-A (1) were to be interpreted in the light of the aforesaid definition and having regard to the ascertainment made at the last preceding census of 1971 the petition must fail. It must fail because the population did not exceed 25,000 at the last preceding census. If the definition clause contained in clause (e) were to be taken into account, the 11actual" population of Modasa at a given point of time is not a relevant factor to be considered at all. It stands to reason that the legislature has defined the expression "population" in the aforesaid manner. Otherwise the question would arise as to who is to ascertain what is the population of Modasa at a given point of time and whether a reliable ascertainment can be made, by a process other than official census. It must also be realized that the population of a town is usually fluid and fluctuating. Who is to evolve the machinery to determine who are the ordinary residents, and who are tourists, visitors or temporary migrants? Who is to decide whether the enumeration made is reliable ? It requires a vast organization under proper supervision and control with considerable manpower and financial resources. If the question were to be made dependent on the ascertainment made by some uncertain unknown agency numerous complex problems would arise, We fail to understand how the Talaticum-Mantri of Modasa is qualified to certify that the population exceeds 25,000 and on what basis he has done so. The question would arise whether he had sufficient reliable material at his command for the bold assertion made by him. The question regarding the authenticity or the reliability of the ascertainment made by him would also arise. It is, therefore, understandable that the Legislature in its wisdom has defined the expression "population" and has made it referable to the last preceding census i.e. the census of 1971. We are, therefore, unable to accede to the argument advanced on behalf of the petitioner.

2. It was sought to be contended that having regard to the wording of sub-section (1) of S. 4-A, the local area would automatically become a Municipal Borough. S. 4-A in so far as it is material has been reproduced hereinabove. We are unable to uphold the contention that a Panchayat would automatically get converted into a Municipality without anything more by virtue of Section 4-A (1). The provision will have to be read, understood, and interpreted, as a whole, in a harmonious manner. On an analysis of Section 4-A it is evident that the scheme of the section envisions the issuance of a notification after considering the relevant factors embedded therein for "declaring" or "not declaring" it to be a Municipal Borough. To declare or not to declare is the question which has to be faced and answered before any consequence follows in respect of every individual Panchayat. Unless a declaration is made after considering the relevant factors and an informed decision is taken, it cannot be said that it has become a Municipal Borough. The legislative design is thus conspicuously visible. Only when such an informed decision is taken in the light of the percent considerations in the context of each individual Panchayat, it would become a Municipal Borough. Not otherwise. Two conclusions, therefore, emerge: (1) On a true interpretation of S. 4-A (1) *(2y (3) the competent authority or the

Government would have to take into consideration several factors including the factors prescribed in the rules for making appropriate enquiries, and the opinion of the Nagar Panchayat, before taking a decision; and (2) the competent authority has the option of declaring it as a Municipal Borough if the circumstances so demand and of declaring that it would not be a Municipal Borough if the circumstances so warrant.

3. So far as the present matter is concerned, having regard to the definition contained in clause (e) of the Explanation the matter is beyond the pale of controversy inasmuch as the population of Modasa does not exceed 25,000 as per*the last preceding census.

4. The petition must, therefore, fail and be rejected. Rule is discharged. There will be no order regarding costs. The interim relief will stand vacated.

5. Petition dismissed.