

(1995) 02 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 577 of 1995

Pushpendra Chandraprakash Sharma

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 — Section 6

Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987 — Rule 1, 6

Citation : AIR 1995 Guj 156

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : K.G. Vakharia, for C.H. Vora, for the Appellant; Y.M. Thakkar, AGP and V.P. Shah, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—Rule.

2. Mr. Y. M. Thakkar, learned AGP waives service of Rule for Respondent No. 1 and Miss. V.P. Shah waives service of Rule for Respondent No. 2. Looking to the facts of the case, the matter is taken up for final hearing today.

3. Facts culled out from the petition are that Respondent No. 2 approached before Respondent No. 1 by way of application dated 25-1-1995 u/s 6 of the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986 (which hereafter be referred to as the "Act") and the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Rules, 1987 (which hereinafter be referred to as "the Rules") contending inter alia that the petitioner who has been elected as a Councillor in the election of Gandhidham Municipality and also as a President in the meeting held on 13-1-1995, has not voted as per whip issued by the elected members of Bharatiya Janta Party, and as such he is liable to be disqualified as Councillor

under the provisions of the Act, 1986. Respondent No. 2 also prayed for the interim relief. On the same day Respondent No. 1 by impugned ex parte order restrained the petitioner from proceeding with the meeting scheduled on 28-1-1995 and further not to act as President till the matter is finally decided.

4. Mr. K.G. Vakharia, learned Senior Advocate, assisted by Shri C. H. Vora, learned Advocate has assailed the impugned order on the following grounds:

(a) that the impugned order is wholly without jurisdiction as the order has not been passed by the officer designated by the State Government u/s 6 of the Act.

(b) that there is no provision for grant of interim relief under the Act of 1986.

(c) that ex parte injunction has been granted causing serious prejudice to the petitioner without caring to record special reason, further without satisfying the prima facie case, if there is any evidence of issue of whip by the concern political party.

(d) that the ex parte stay order has been made effective till final decision of the case as such hearing to petition for interim relief has been completely denied.

(e) that impugned order shows that further enquiry u/s 6 of the Act 1986 is to be held before the Deputy Secretary.

(f) that the petition presented is not in accordance with the Act and the Rules.

5. This Court while issuing the notice by order dated 31-1-1995 directed the Government Pleader to keep ready the relevant file in which the impugned order has been passed for the perusal of the Court. Relevant file was produced and the English translation of the relevant Noting dated 25-1-1995 has also been made available to the Court, which reads as under:--

(File No. PSN-1095/1.CHH.) Co-operation Section /CHH

Submitted,

An application at P. 1 / c from the applicant, Shri Madhukant Javerchand Shah may please be seen. The application has been made u/s 6 of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986, and Rule 6 of the Rules made thereunder.

As stated in the application Shri Pushpen-dra Chandraprakash Sharma had contested the election under the banner of Bharatiya Janata Party and has been elected as a councillor and thereafter he has been elected as the President of the Gandhidham Nagar Palika with the support of the Congress and Bahujan Samaj Party. He has convened a general meeting of the Gandhidham Nagar Palika on 28-1-1995 in the morning at 10.00 a.m. In the said meeting, the business to be conducted is as per the Agenda mentioned in the reference dated 19-1-1995. As alleged in the petition-application, Shri Pushpendra Chandraprakash Sharma is a defector and therefore he should not be continued as a councillor of the said Nagar Palika. The applicant Shri Madhukant Javerchand Shah, while raising

dispute in this connection, has submitted the application. His further submission is for passing an order immediately so as to postpone the meeting scheduled to be held on 28-1-1995 and prevent the respondent to act as the President, and for granting necessary stay for the purpose, till the final disposal of this application. As per the discussion held with the Additional Chief Secretary (Cooperation) today in this connection, the stay order as per the draft at p. 63/c has been issued. The hearing of this matter has been fixed on 9-2-1995 at 3.30 p.m.

Sd/- D. K. Shah D.S.(A) 25-1-1995.

A.C.S. (Coop). Sd/- R. Parthasarthey."

6. Mr. K.G. Vakharia, learned counsel for the petitioner contends that proceedings u/s 6 of the Act, are quasi judicial proceedings and thus, it was incumbent on the Addl. Chief Secretary to pass the order himself after hearing the parties. He further contends that notings only suggest that as per the draft order, the impugned order was issued, on the basis of certain discussion with Additional Chief Secretary. Thus, the contention of the learned Counsel is that Shri R. Parthasarthey has at all not applied his judicial mind and in any case the order cannot be said to have been passed by him and in that view of the matter the entire order is without jurisdiction and deserves to be quashed.

7. Shri Y.M. Thakkar, learned AGP contends that in fact the order has been passed by the designated officer i.e. Additional Chief Secretary Shri R. Parthasarthey, and only the order was communicated by Deputy Secretary Shri O.K. Shah, Miss. V.P. Shah, learned Advocate, appearing for Respondent No. 2 Shri Madhukant Zayerchand Shah, has invited my attention to the statement of Respondent No. 2, that petition was considered by the Additional Chief Secretary Shri R. Parthasarthey and he had discussion with him. Only after the discussions with him and having been convinced by his submissions, he ordered for granting Ad interim relief returnable on 9-2-1995. The contention of Ms. V.P. Shah is that it cannot be said that there is non-application of mind by Shri R. Parthasarthey, and in fact, only under his instructions the impugned order was drafted and communicated under the signature of the Deputy Secretary, and therefore, it cannot be said that the impugned order is without jurisdiction.

8. I have considered the rival contention of the parties. Section 6 of the Act provides that if any question arises as to whether a councillor of a municipality has become subject to disqualification under the Act, the question shall be referred to the Chief Secretary the State Government to such officer not below the rank of a Secretary of any Department of the State Government as may be designated by the State Government in this behalf and his decision shall be final.

Section 6 of the Act, reads as under:

"6. Decision on question as to disqualification on ground of defection :-- If any question arises as to whether-

- (1) a councillor of a municipal corporation, or
- (2) a member of a panchayat; or
- (3) a councillor of a municipality

has become subject to disqualifications under this Act, the question shall be referred to the Chief Secretary to the State Government or to such officer not below the rank of a Secretary of any Department of the State Government as may be designated by the State Government in this behalf and his decision shall be final".

Thus the question with respect to disqualification can be decided only by the designated officer, appointed by the State Government.

9. It is not in dispute that Shri R. Parthasarthey, Additional Chief Secretary to the Government of Gujarat was appointed as designated officer. The controversy in the present petition is whether the impugned order was passed by the Designated Officer or not. There is no material to show that at any stage Shri R. Parthasarthey, Additional Chief Secretary himself had passed the order. The contention of the respondent is that the matter was heard by the Additional Chief Secretary and under his instructions the impugned order was issued. It goes without saying that the proceedings u/s 6 are quasi-judicial proceedings. A quasi-judicial function is one which stands midway between administrative and judicial function. When an administrative authority is required to decide rights between the parties objectively with a binding force it is said to be quasi-judicial function. Such authority has a duty to follow the "judicial approach" in determining the question involved in the case. The concept of judicial act implies a duty cast on the executive authority to conform to norms of judicial procedure. It is established law that quasi-judicial power vested in a authority by statute, must be exercised by the person holding that office and no other. This is expressed by saying that "judicial duties" cannot be abnegated. In administrative functioning procedure of noting, submission and draft orders are well known but this procedure is foreign to judicial proceedings. A executive authority exercising a quasi-judicial power vested by a statute must personally hear the matter and draw it's order. The authority should not leave to its subordinate to draft the order.

10. Admittedly, the impugned order is not issued under the signature of the Designated Officer. Even if it is taken only as a order of communication, there is no order of the designated Officer on the file produced before me. The noting reproduced is a submission of Deputy Secretary, which only speaks that as per the discussion held with Additional Chief Secretary stay order as per draft at page 63 / c has been issued and the hearing of the matter has been fixed on 9-2-1995 at 3.30 p.m. It is a submission in the nature of reporting which appears to have been noted and signed by Shri R. Parthasarthey.

11. Thus, I conclude that the impugned order has not been passed by the

designated officer u/s 6 of the Act, and as such is null and void.

12. In view of the aforesaid discussions, this Special Civil Application succeeds and the impugned order dated 25-1-1995 at Annexure "C" is quashed. Rule made absolute. There shall be no order as to costs.

13. The parties will appear before the Designated Officer i.e. Additional Chief Secretary on 9-2-1995 on the scheduled date for further enquiry under the Act of 1986.

14. Miss. Shah, learned Counsel for Respondent No. 2 submits that this order may be stayed for a period of four days. Mr. K.G. Vakharia oppose the prayer. I find no good reason to stay the order. The prayer is accordingly rejected.