

(2016) 09 GUJ CK 0016
In the Gujarat High Court

Case No : Letters Patent Appeal No. 642 of 2016 in Special Civil Application No. 9171 of 2016 with Civil Application No. 6632 of 2016

Shardaben Harsubhai Barot

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 271(a), Section 36, Section 51(2)
Jetpur Navagadh Municipality Rules — Rule 22(2), Rule 24

Citation : (2017) AIR(Gujarat) 10

Hon'ble Judges : Mr. R. Subhash Reddy, CJ. and Mr. Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Shri Dhaval D. Vyas, Advocate, for the Appellants No. 1; Shri Bhaumik Dholariya, Advocate, for the Respondent Nos. 4 to 9 and 11 to 29; Shri Bhavesh P. Trivedi and Shri R.R. Trivedi, Advocates, for the Respondents No. 3; Shri Prakash K. Jani, Additional A

Final Decision : Allowed

Judgement

Mr. R. Subhash Reddy, C.J. - Heard Shri Dhaval D. Vyas, learned counsel for appellant; Shri P.K. Jani, learned Additional Advocate General assisted by Shri Dhawan M. Jayswal, learned Assistant Government Pleader for respondent nos.1 and 2; Shri Bhavesh P. Trivedi, learned counsel for respondent no.3; Shri Bhaumik Dholariya, learned counsel for respondent nos. 4 to 9 and 11 to 29 and Shri P.J. Kanabar, learned counsel for respondent no.10.

2. This Letters Patent Appeal, under Clause 15 of the Letters Patent, is filed by the original petitioner in Special Civil Application No.9171 of 2016, aggrieved by the order of the learned Single Judge dated 19.07.2016. By the aforesaid order the learned Single Judge has dismissed the Special Civil Application filed by the appellant herein. Special Civil Application No.9171 of 2016 is filed with the following prayers:

"23(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in

the nature of mandamus, and any other appropriate writ, order or direction, quashing and setting aside the communication dated 10.06.2016 and further be pleased to declare the act of Jetpur Navagadh Nagarpalika to be violative of the provisions of the Gujarat Municipalities Act, 1963 ultra vires.

(B) Your Lordships may be pleased to issue a writ of prohibition or a writ in the nature of prohibition, and any other appropriate writ, order or direction, prohibiting the Jetpur Navagadh Nagarpalika from convening the meeting pursuant to requisition dated 21.05.2016.

(C) Pending the admission, hearing and disposal of the present petition, Your Lordships may be pleased to stay the further proceedings pursuant to the communication dated 10.06.2016.

(D) Such other prayer as may be deemed just and proper may be granted in the facts of the present case."

3. In the Special Civil Application the appellant-original petitioner has challenged the convening of meeting of the councilors of Jetpur-Navagadh Nagarpalika/ Municipality on the requisition for "No-Confidence Motion" dated 21.05.2016 under the provisions of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act").

4. Elections for the post of councilors of Jetpur Nagarpalika were held on 10.02.2013 and result was declared on 12.02.2013. In its first meeting, President and Vice President were elected as contemplated under section 32 of the Act. Requisition against the appellant herein as President of the Nagarpalika came to be moved for "No-Confidence" citing three reasons. On the said requisition, Special General Meeting of the Nagarpalika was held on 20.05.2016 and the same has failed, as it was not supported by majority as contemplated under section 36(2) of the Act. It appears that on the very next day, viz. 21.05.2016, the councilors moved another no-confidence motion on the same set of allegations. The appellant-President refused to accept the requisition, resultantly, the requisition was accepted by the Vice President and meeting was ordered to be convened on 15.06.2016. Before the meeting could be convened, the appellant herein has questioned such notice by way of Special Civil Application.

5. Before the learned Single Judge it was the case of the appellant herein that on the earlier requisition, no-confidence motion against the appellant herein has failed on 20.05.2016, as such it is not open for the councilors to move another no-confidence motion by sending requisition on the very next day, viz. 21.05.2016. Mainly, the requisition was under challenge on the ground that once motion has been moved and voted upon in the meeting on 20.05.2016, no motion raising substantially the same question be allowed within the period of three months from the date of voting of such motion. The appellant herein has placed reliance on Rule 24 of Jetpur Municipality Rules framed under section 271(a) of the Gujarat Municipalities Act, 1963. The learned Single Judge placing

reliance on judgment of learned Single Judge of this Court (inadvertently noted as judgment of Division Bench) dated 12.05.2011 rendered in Special Civil Application No.4505 of 2011 in the case of Ajitsinh Ramubhai Jadeja v. State of Gujarat & others, has dismissed the petition. In the aforesaid case it was held by the learned Single Judge of this Court that Rule 24 of the of Jetpur Municipality Rules referred to above is not applicable with respect to motion of no-confidence as it relates to general functioning of the Committee. The learned Single Judge has taken the view that in absence of any bar regarding time period under which second no-confidence motion could be moved, it is open for the councilors to move requisition again.

6. In this appeal it is contended by Shri Dhaval D. Vyas, learned counsel appearing for the appellant that when meeting was convened pursuant to earlier requisition, on 20.05.2016, when no-confidence motion has failed, it is not open to move another requisition within the period of three months. It is represented that in view of Rule 24 of the said Rules approved by the competent authority in exercise of powers under section 271 of Gujarat Municipalities Act, 1963, once motion has been moved, no motion raising substantially the same question in any other manner shall be allowed, admitted or taken up within three months from the date of voting of such motion. It is submitted that in a decision in the case of Ajitsinh Ramubhai Jadeja v. State of Gujarat & Others, dated 21.02.2013 (supra), in Letters Patent Appeal No.837 of 2011, Division Bench of this Court has left open that question with regard to interpretation of Rule 24 of the said Rules. It is submitted that the view taken by the learned Single Judge in the case of Ajitsinh Ramubhai Jadeja (supra) in Special Civil Application No.4505 of 2011, is not in accordance with the rules and there is no reason to exclude applicability of such rule, to convene Special General Meeting of the Nagarpalika, where no-confidence motion will be discussed. On the other hand the learned Additional Advocate General appearing for the State and the learned counsel appearing for the councilors opposing the plea of the appellant submit that the Rules of Jetpur Municipality framed under section 271 of the Gujarat Municipalities Act will not apply to the motion of no-confidence and such rules are made applicable only for the general functioning of business of the Committee. As such it is submitted that in absence of any stipulation prohibiting moving of no-confidence motion after earlier requisition has failed, it is submitted that the requisition of notice issued by the councilors is in conformity with the law. It is contended that under section 36 of the Act there is no prohibition for moving no-confidence motion after its failure pursuant to earlier requisition made by councilors. It is contended that in democratic institutions, unless such power is conferred on the councilors, it will defeat the very objective of electing President by majority.

7. The learned Additional Advocate General also filed an affidavit in this Letters Patent Appeal reiterating that Jetpur Municipality Rules made under the Gujarat Municipalities Act, 1963 are not applicable to no-confidence motion. In support of his argument the learned Additional Advocate General placed reliance on judgments in case of --

- (i) Jayendrasinh Bhupatsinh Diama-(2) v. State of Gujarat, through Additional Secretary (Inquiry) & others, reported in 2012(2) GLR 1096,
- (ii) Narmadaben V. Parmar v. Taluka Development Officer, Kheralu, reported in 1998 (1) GLR 225,
- (iii) Nandlal Bavanjibhai Posiya and others v. Director of Agriculture Marketing & Rural Finance, reported in 2002 (2) GLR 1132,
- (iv) Bhanumati and others v. State of Uttar Pradesh, through its Principal Secretary and others, reported in (2010) 12 SCC 1,
- (v) Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and others, reported in (2011) 9 SCC 573,
- (vi) Usha Bharti v. State of Uttar Pradesh and others, reported in (2014) 7 SCC 663,
- (vii) Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and others, reported in (2015) 8 SCC 1.

8. Before we proceed further to consider the submissions made on behalf of the parties, we deem appropriate to note certain relevant provisions of the Gujarat Municipalities Act, 1963 and the rules made thereunder.

9. Section 36 of the Gujarat Municipalities Act deals with the provisions relating to motion of no-confidence, which reads as under:

"36. Motion of no confidence: - (1) Any councilor of a municipality who intends to move a motion of no confidence against its president or vice-president may give a notice thereof, in such form as may be prescribed by the State Government, to the municipality. If the notice is supported by not less than one third of the total number of the then councilors of the municipality, the motion may be moved.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of then councilors of the municipality, the president or, as the case may be, the vice-president shall cease to hold office after a period of three days from the date on which the motion is carried unless he has earlier resigned; and thereupon the office held by him shall be declared to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder, the president, or as the case may be, vice-president shall not preside over a meeting in which a motion of no confidence against him is discussed; but he shall have the right to speak in or otherwise take part in the proceeding of such meeting (including the right to vote)."

10. Chapter IV of the Gujarat Municipalities Act, 1963 deals with various provisions relating to conduct of business. Subsections (1) and (2) of Section 51 of the Act, which are relevant for the purpose of disposal of this appeal read as under:

"51. Provisions in regard to meetings of municipality and procedure:- The following provisions shall be observed with respect to the meetings, provisions in of a municipality:-

(1) There shall be held four ordinary meetings in each year for the disposal of general business, in the months of January, April, July and October respectively and such other ordinary general meetings as the president may find necessary. It shall be the duty of the president to fix the dates for all ordinary general meetings.

(2) The president may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the councilors in the case of a motion of no confidence against the president or vice-president and one fourth of the councilors in any other case and on a day not later than fifteen days after the presentation of such request, call a special general meeting. If the president fails to call a special general meeting as provided in this clause the vice-president shall call such meeting on a day not later than thirty days after the presentation of such request:

Provided that where the president and the vice-president fail to call such meeting the Chief Officer shall make a report thereof to the Collector who shall call the meeting on a day not later than thirty days after the presentation of such report."

11. From reading of section 51(2) of the Act it is clear that president of the Municipality/Nagarpalika has to convene meeting to discuss no-confidence motion, when there is a request of not less than 1/3rd of the councilors against the President or Vice-President of the Municipality. Such meeting is to be convened within the period of 15 days after presentation of such request. In case, for any reason, President fails to call special general meeting, Vice-President is empowered to call for such meeting within the period of 30 days after presentation of such request. As per the proviso to section 51(2) of the Act, where the president and the vice-president fail to call such meeting the Chief Officer shall make report thereof to the Collector, who shall call meeting on a day not later than 30 days after presentation of such report, by the Chief Officer.

12. Section 271 of the Gujarat Municipalities Act, 1963 empowers the Municipality to make rules, not inconsistent with the provisions of the Act and the rules made thereunder. Section 271(a) of the Act, which empowers the Municipality to make rules regulating conduct of its business reads as under:

"271. Municipalities to make rules :- A municipality shall make rules not inconsistent with this Act and the rules or orders made by the State Government under this Act, and may from time to time alter or rescind them -

(a) regulating the conduct of its business and the delegation of any of its powers or duties to any committee or to the Chief Officer or subject to the provisions of section 54 the powers or duties of any committee to any other committee or to the Chief Officer and the appointment and constitution under section 55;"

13. Jetpur Municipality, in exercise of powers under section 271(a) of the Act has framed rules which are approved by the competent authority and the said Rules are called "conduct of its business rules". They will cover the business and duties of and conduct of Board meeting, committee meeting, Chief Officer of the Municipality. Rules 19 to 24 of the Conduct of its Business Rules, which throw light on the issue which fall for consideration in this case read as under:

"Rule 19 - About motion -

No motion shall be admissible,

(a) which is not clearly and precisely expressed,

(b) which shall contain arguments, inferences, ironical expressions, or defamatory statements,

(c) which does not raise or show one definite issue.

Rule 20 - Motion how moved -

(1) A councilor who wishes to move a motion shall give a notice as prescribed in section 51(3) of the Act and deliver the same at the office of the Secretary, Chief Officer or Head Clerk concerning the meeting, by whom, it shall be dated, numbered in order in which it is received and entered in a book, register of motion which shall be open for inspection of every councilor before the said officer.

(2) Ordinarily a councilor moving a motion shall be allowed to speak for 10 minutes and a councilor moving amendment or taking part in the debate to speak for five minutes. The presiding Authority may however, at his discretion increase or decrease the time limit.

(3) If a motion is permitted to be moved orally, it shall be immediately recorded in writing by or under the orders of presiding Authority and read out to Proposer.

(4) A motion permitted by the presiding Authority to be moved as a Special business may be moved provided that it shall be in writing and handed over to the presiding Authority if so required be (sic., by) him before it is moved.

Rule 21 - Moving of motion -

(1) A councilor who has given a notice of motion shall when called upon either,

(a) state that he does not wish to open the debate, or

(b) shall move the motion in terms appearing on the list of business and after being formally seconded subject to rule 28 commence his speech, provided that before (sic., before) he begins he may with permission of the presiding Authority make a minor or verbal alteration in terms of the motion,

(2) If the councilor when called is absent, any other councilor authorised by him in writing in this behalf may with the permission of the presiding Authority move

the said motion. If no councilor has been so authorised or such permission is not granted, the motion shall lapse,

Rule 22 - Limitation as to discussion -

(1) No councilor shall except with the consent of the presiding Authority be entitled to propose a motion other than one directly arising from the subject before the meeting.

(2) No direct vote of no confidence shall be moved unless notice of it is given to the councilors of the general meeting in the agenda supplied to them at least one week in advance of the date of the meeting.

Rule 23 - Seconding the motion -

Except the motion of an amendment suggested by the presiding Authority which does not require to be seconded, no motion or amendment shall be discussed or noted in the minutes unless it is seconded.

Rule 24 - Repetition of the motion -

When a motion has been moved and voted upon in the meeting with whatever the outcome, no motion raising substantially the same question in any other manner shall be allowed, admitted or taken up within three months from the date of voting of such motion."

14. From Rule 24 of the aforesaid Conduct of its Business Rules it is clear that when a motion has been moved and voted upon in the meeting with whatever outcome, no motion raising substantially the same question in any other manner shall be allowed, admitted or taken up within three months from the date of voting of such motion. Rule 22 of the Rules provide limitation as to discussion. In Rule 22 (2) of the Rules, special reference is made for moving no-confidence motion. As per the said Rule, no direct vote of no-confidence shall be moved unless notice of it is given to the councilors of the general meeting in the agenda supplied to them at least one week in advance of the date of the meeting.

15. From combined reading of the provisions under section 36 read with sections 51 and 271 of the Gujarat Municipalities Act, 1963, it makes very clear that no-confidence motion against elected president or vice-president is provided under section 36 of the Act. From section 51, which is in Chapter IV, which Chapter deals with conduct of business, it makes clear that whenever there is request of not less than 1/3rd of the councilors in case of motion of no-confidence against president or vice-president, it is obligatory on the part of the president, vice-president to convene meeting to discuss such no-confidence motion. As section 51 is in Chapter IV, which deals with conduct of business, it is clear that even a meeting which is to be convened to discuss no-confidence motion is part of conduct of business as per Chapter-IV of the Act. From further reading of the provisions of section 271 of the Act it is also clear that Municipality is empowered to frame rules regulating conduct of its business. From combined reading of the

provisions of section 51(2) read with section 271(a) of the Act, it is clear that the Municipalities are given power to frame rules regulating conduct of business to hold its meetings, including the meeting where no-confidence motion is to be discussed in the event of any requisition by councilors for moving no-confidence motion against president and vice-president of the Municipality/Nagarpalika. Further, Jetpur Municipality Rules, which are approved by the competent authority also make it clear that when a motion is moved and discussed and, whatever be the outcome, no motion raising substantially the same question in any manner shall be allowed, admitted or taken up within three months. Further, from reading Rule 24 read with Rule 22(2) of the Rules, it makes amply clear that the rules framed by Jetpur Municipality, which are approved by the competent authority are applicable for no-confidence motion as contemplated under section 36 of the Act. It appears that if there is no such bar, once motion is failed, on the very next day, councilors may make an attempt for no-confidence motion on the very same issues on which earlier requisition was sent for moving no-confidence motion against president and vice-president of the Nagarpalika. It appears that such provision is intended to prevent successive no-confidence motion by sending requisition immediately after its failure in the meeting pursuant to earlier requisition sent by councilors.

16. We had benefit of the judgment of the learned Single Judge rendered in Special Civil Application No.4505 of 2011 in the case of Ajitsinh Ramubhai Jadeja v. State of Gujarat & others (supra), on which basis the learned Single Judge has passed order in Special Civil Application No.9171 of 2016. Having perused the reasons stated by the learned Single Judge, we are not in agreement with the view taken by the learned Single Judge in Special Civil Application No.4505 of 2011. When the provisions of section 51(2) are in Chapter IV, when Municipality has framed Rules under section 271(a) of the Act for conduct of its business which empowered to conduct general meetings and special meetings, there is no reason to hold that Rule 24 of the Rules is not applicable with respect to motion of no-confidence. Thus, we hold that as much as discussion pursuant to requisition of no-confidence is in special general meeting of the Nagarpalika/Municipality and the same is part of conduct of business under Chapter-IV of the Act, we are clearly of the view that Rule 24 prohibits moving another motion within the period of three months from the date of voting motion pursuant to earlier requisition given by councilors.

17. The learned Additional Advocate General, Shri P.K. Jani has placed reliance on certain judgments, but after going through such judgments, we are of the view that the authorities relied on by the learned Additional Advocate General would not render any assistance having regard to the provisions of the Gujarat Municipalities Act, 1963 and the Rules framed thereunder and the facts and circumstances of the case. In the judgment in the case of Jayendrasinh Bhupatsinh Diama-(2) v. State of Gujarat, through Additional Secretary (Inquiry) & others, reported in 2012(2) GLR 1096 (supra), Full Bench of this Court has discussed various provisions of the Gujarat Panchayats Act, 1993 and Gujarat

Panchayats (Procedure) Rules, 1997. In the said case, whether an appeal lies against result of no-confidence motion moved against Sarpanch, Upa-Sarpanch, President, or Vice President of Taluka Panchayat, was the issue. In the context of provisions of Gujarat Panchayats Act, 1993 and rules framed thereunder, Full Bench of this Court has held that the language used in the Panchayat Act for the purpose of no-confidence motion need not be for passing a resolution, as such no appeal lies before Appellate Forum under section 242 of the Act.

18. In the judgment in the case of Narmadaben V. Parmar v. Taluka Development Officer, Kheralu, reported in 1998 (1) GLR 225 (supra), the learned Single Judge of this Court has held that the body which has power to elect its office bearers by a simple majority has also the inherent or implied power to remove them by passing the motion of no-confidence by a simple majority, unless there are special provisions prescribing a special procedure or special requirement, such as, the requirement for 2/3rd majority to remove the President/Vice President of the Taluka Panchayat/District Panchayat. In the judgment in the case of Nandlal Bavanjibhai Posiya and others v. Director of Agriculture Marketing & Rural Finance, reported in 2002 (2) GLR 1132 (supra), Full Bench of this Court, while considering the provisions of the Gujarat Agricultural Produce Markets Act, 1963 has held that the office bearers elected by Market Committee can be removed by way of no-confidence motion, even in absence of any statutory provisions to that effect. In the judgment in case of Bhanumati and others v. State of Uttar Pradesh, through its Principal Secretary and others, reported in (2010) 12 SCC 1 (supra), while considering various provisions of Uttar Pradesh Panchayats Act, a provision for moving no-confidence motion against elected persons of the Panchayat in Zila Parishad held to be constitutionally valid. In the aforesaid case, by applying the doctrine of silence, the Hon''ble Supreme Court has held that even after 73rd Constitutional Amendment making detailed provision for democratic de-centralisation and self-government, constitutional provisions cannot be interpreted to exclude the provision of no confidence motion in respect of the Office of the Panchayat Chairperson, just because of its silence on this aspect. In the case of Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and others, reported in (2011) 9 SCC 573 (supra), while considering the provisions of Advocates Act, 1961 and M.P. State Bar Council Rules, 1962, the Hon''ble Supreme Court has taken the view that right of hearing cannot applied for moving no-confidence motion as much as such a move is controlled by specific provisions, which are not arbitrary or unreasonable. In case of Usha Bharti v. State of Uttar Pradesh and others, reported in (2014) 7 SCC 663, while considering the provisions under U.P. Kshettra Panchayats and Zila Panchayats Act, 1961, the Hon''ble Supreme Court has held that the provision for removing an elected representative, such as, Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives. In the judgment in the case of Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and others, reported in

(2015) 8 SCC 1 (supra), while considering various provisions of the Gujarat Cooperative Societies Act, 1961 and the provisions under Article 213 of the Constitution of India, the Hon''ble Supreme Court issued directions in the case of cooperative societies registered under any Central or State Law, a motion of no-confidence against an office-bearer shall be moved only after two years of his assumption of office. Further, it is held that in case the motion of no-confidence is once defeated, a fresh motion shall not be introduced within another one year. While agreeing with the view taken by this Court, the Hon''ble Supreme Court has disapproved the view taken by other High Courts, viz. Andhra Pradesh, Bombay, Kerala and Punjab & Haryana.

19. After carefully going through the scheme of the provisions of the Gujarat Municipalities Act, 1963 with special reference to the provisions of sections 36, 51(2) and 271 of the Act and Jetpur Municipality Rules framed under section 271(a) of the Gujarat Municipalities Act, 1963, which are approved by the competent authority, we are of the view that the aforesaid judgments relied on by the learned Additional Advocate General would not render any assistance in support of his case. As much as no-confidence motion to be moved under the provisions of section 36 of the Act is especially covered by the rules framed under section 271(a) of the Act, with regard to conduct of business as contemplated under Chapter-IV of the Act, we are of the view that the procedure prescribed in the rules framed by the Municipality, approved by the competent authority clearly prohibits moving of no-confidence motion within the period of three months from the defeat of motion pursuant to earlier request.

20. For the aforesaid reasons, we allow this Letters Patent Appeal, by setting aside the order dated 19.07.2016 passed by the learned Single Judge in Special Civil Application No.9171 of 2016. Consequently, requisition notice dated 21.05.2016 moved by certain councilors for convening of meeting for discussion on no-confidence motion stands quashed. No order as to cost.

21. As the Letters Patent Appeal is allowed, the Civil Application stands disposed of in the aforesaid terms.