
(2008) 08 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 9194 of 2008

Subhash Dolatray Bhojwani and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 258, 271, 36, 51, 51(10)

Citation : (2009) 1 GLR 427

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : Ashish Shah, for Harin P. Raval, for Petitioners 1 - 20, for the Appellant; J.K. Shah, AGP for Respondent 1, Chirag B. Patel, for Respondent 4 and D.N. Pandya, for Respondents 5 - 7, for the Respondent

Judgement

Akil Kureshi, J.—In the present petition, petitioners have challenged an order dated 1.7.08 passed by the Collector, Vadodara by which the Collector was pleased to suspend the operation of resolution No. 34 passed by the Municipality on 26.6.2006.

2. Brief facts leading to the present petition are as follows:

The petitioners are councillors of Dabhoi Nagarpalika. Nagarpalika comprises of 36 councillors. Respondent No. 5 herein is the President of the Nagarpalika.

Two councillors Shri Dushyantkumar J. Jain and Smt.Shantaben S. Tadvi gave notice to respondent No. 5, President of the Nagarpalika to call a special general meeting to discuss and vote on the motion of no-confidence against the President. Such a notice was signed by 20 other councillors.

Pursuant to the notice, respondent No. 5 called a special general meeting of the Nagarpalika on 26.6.08. The agenda of the meeting was circulated on 21.6.08 which contained a single item, viz. for taking a decision on the no confidence motion moved by the councillors on 16.6.2008 u/s 51(2) of the Gujarat Municipalities Act, 1963 (the Act for short).

During the course of the meeting on 26th June 2008, two councillors moved a proposal to postpone the meeting and to hold the same on 3rd July 2007 for deliberation and voting on the said agenda. By a majority of 22 out of 26 councillors present during the said meeting, the resolution was passed. It was thus resolved that the meeting stands adjourned to 3rd July 2008 and shall be convened at 4 O' clock for the same agenda. It may be noted that 4 councillors, including the President who were present during the said proceedings opposed the resolution stating, inter alia that there is no provision for adjourning a no confidence motion.

Respondent No. 5 thereupon addressed a letter to the Collector, Vadodara on 26th June 2008 requesting him to stay the implementation of the resolution. On the said application of respondent No. 5, Collector, Vadodara passed his impugned order dated 1.7.08 and, as mentioned earlier, suspended the resolution No. 34 dated 26.6.08 passed by the Nagarpalika. The Collector was of the opinion that no confidence motion should be discussed on the date fixed and the same could not have been adjourned without any reason. On these grounds, the Collector was pleased to suspend the further implementation and operation of the resolution.

3. The petitioners are, therefore, before this Court challenging the said order of the Collector.

4. Appearing for the petitioners, learned advocate Shri Ashish Shah submitted that the Collector committed grave illegality in suspending the resolution of the Municipality without valid grounds. He submitted that powers u/s 258 of the Act cannot be utilized for such purpose. He further submitted that the general body had the authority to adjourn the proceedings if majority of the councillors found it necessary to do so. There is no limitation on the power of the general body to regulate its internal functioning during meeting and the general body had ample power to adjourn the meeting to a future date. It was contended that the issue has been settled by learned single Judge of this Court in the case of Gordhanbhai Kanjibhai Vs. Upleta Municipality and Another,

5. On the other hand, learned advocate Shri Pandya appearing for respondent Nos. 5 to 7 in response to the notice of final disposal issued by this Court opposed the petition. He submitted that meeting of no confidence motion is a special category of meeting and general rules of adjournment of meeting would not apply. He submitted that on the date so fixed, it is incumbent on the general body to either pass no confidence motion or else such a motion would fail. He submitted that in the resolution seeking adjournment of the proceedings or in the resolution that the Municipality adopted, no reasons were indicated why adjournment was necessary. Without any reason, it was not open for the general body to postpone the meeting. Reliance was placed on several decisions of this Court as well as the Apex Court to which reference will be made at a slightly later stage. He also submitted that the petitioners have alternative remedy before the State Government and this petition, therefore, may not be entertained.

6. Section 36 of the Act provides for motion of no confidence which reads as follows:

36.(1) Any councillor 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 councillors 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 the then councillors 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 there under, the president, or as the case may be, the 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 proceedings of such meeting (including the right to vote).

Section 51 of the Act governs the procedure of meetings of the Municipality. Section 52, insofar as, it is relevant for our purpose reads as under:

51. The following provisions shall be observed with respect to the meetings of a municipality:

(1) There shall be held four ordinary general meeting 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 Councillors in the case of a motion of no confidence against the President or Vice-President and one-fourth of the Councillors 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 cause 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.

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(7) If less than one-third of the whole number of the Councillors be present at a meeting at any time from the beginning to the end thereof the presiding

authority shall after waiting for not more than 30 minutes adjourn the meeting to such hour on the following or some other future day as he may reasonably fix, a notice of such adjournment shall be fixed up in the municipal office, and the business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting or at any subsequent adjournment thereof whether there be a quorum present or not.

xxxxx (10) Save as otherwise provided by or under this Act all questions shall be decided by a majority of votes of the Councillors present and voting, the presiding authority having a second or casting vote in all cases of equality of votes. Votes shall be taken and result recorded in such manner as may be prescribed by rules in that behalf for the time being in force under Clause (a) of Section 271.

(11) Any general meeting may, with the consent of a majority of the Councillors present, be adjourned from time to time to a later hour on the same day or to any other day, but no business shall be transacted at any adjourned meeting, other than that left undisposed of at the meeting from which the adjournment took place.

A notice of such adjournment posted in the Municipal Office shall be deemed sufficient notice of the adjourned meeting.

xxxxx. It is on the basis of the above statutory provisions that one has to ascertain whether the action of the Municipality of adopting the resolution of adjournment of the meeting was valid.

7. u/s 36 of the Act, motion of no confidence can be initiated against the President or the Vice President by any councillor of the Municipality by giving notice in that regard. If such a notice is supported by not less than one-third of the total number of the then councillors of the municipality, such motion is required to be moved. Such a motion if carried by a majority of not less than two-third of the total number of the then councillors of the municipality, the President or the Vice-President shall cease to hold the office and his office shall be declared to be vacant.

Section 51 of the Act provides for procedure of the meeting of the Municipality. In addition to holding four ordinary general meetings in each year, the same also provides for other meetings such as special meeting and meeting for motion of no confidence against the President or the Vice-President. Upon receipt of no confidence motion backed by not less than one-third of the councillors, it is the duty of the President to call for a special meeting and upon failure to do so, the Collector has to call a meeting upon report from the Chief Officer in this regard.

As per Sub-section (10) of Section 51 of the Act, save as otherwise provided under the Act all questions during the meetings are to be decided by a majority of votes of the Councillors present and voting, the presiding authority having a

casting vote in all cases of equality of votes.

As per Sub-section (11) of Section 51 of the Act, any general meeting with the consent of a majority of the Councillors present can be adjourned from time to time to a later hour on the same day or to any other day, subject however to the rider that no business shall be transacted at any adjourned meeting, other than that left undisposed previously.

8. It can thus be seen that the general body had ample authority to decide the manner in which to transact its business on the date fixed for deliberating on the no confidence motion moved by the councillors. It was open for the general body to discuss and put to vote the motion. In terms of the provisions of Sub-section (11) of Section 51, it was also open for the Municipality with the consent of majority of the councillors present to adjourn the meeting to any other appropriate date. Sub-section (10) of Section 51 also, as already noted, provides that unless otherwise provided under the Act, all questions during the meeting have to be decided by majority of the councillors present and voting. By adopting resolution No. 34 on 26th June 2008, all that the Municipality did was to adjourn the proceedings to 3rd July 2008. This resolution was adopted on a motion being moved by the councillors and was duly voted by majority of 22 out of 26 councillors. Thus, overwhelming number of councillors present desired that no confidence motion be adjourned to 3rd July 2008. Nothing in the above mentioned provisions contained in the Act would limit the powers of the general body to adjourn the proceedings if such a motion was supported by majority of the members present during the such a meeting.

9. It was contended that meeting could not have been adjourned without valid reasons. Nothing contained in Section 36 or Section 51 of the Act requires any special reason for adjournment of a meeting including a special meeting called for discussing a no confidence motion against the President or Vice-President of the Municipality if such adjournment is desired by majority of members. This aspect has been decided by the learned single Judge of this Court in the case of Gordhanbhai (supra) wherein it was held that it is open for the Municipality to adjourn the proceedings of no confidence motion.

10. Coming to the authorities cited by the learned advocate for respondent Nos. 5 to 7, learned single Judge of this Court in the case Pushpendra C. Sharma Vs. Nagshi Malshi Matang and Others, was interpreting the requirement of the President calling a special general meeting within 15 days from the receipt of a requisition. In this regard, it was held that the President must hold a meeting within the said time frame.

10.1 In the case of Harendr R. Pandya Vs. Bharuch Municipality and Others, Division Bench of this Court was considering the power of the Collector u/s 258 of the Act and the issue involved therein was not one of adjournment of no confidence motion meeting.

10.2 Learned single Judge of this Court in the case of Bahauddin Hasnabhai

Chauhan Vs. The Director of Municipalities, Gujarat State, Ahmedabad and Others, disapproved adjournment of a meeting by the Vice-President malafide. It was a case wherein allegations were made against the President that he had lost majority and therefore meeting was adjourned malafide. The decision is rendered in a different factual background and the ratio laid down therein is not applicable to the facts of the present case. In the present case the meeting was adjourned not by the Chairman of the meeting but by majority of members.

10.3 In the case of Kantilal J. v. Vinay Sharma 1971 GLR 741 Division Bench of this Court observed that the right to adjourn the meeting which is properly convened inherently vests in the meeting itself and the Chairman presiding over the meeting has no unfettered right to adjourn the said meeting and to interrupt its work at his sweet will. It was held therein that:

- (1) It is inherent right of the meeting itself to decide whether it should adjourn before transacting its business fully;
- (2) The chairman has no inherent power to adjourn the meeting as his sweet will, and
- (3) The duty of the chairman is to regulate the conduct of the meeting but not to encroach upon the right of the members of the meeting to discharge their statutory duties to continue their deliberations. In fact, the duty of the chairman is to be helpful in the conduct of the meeting.

This decision in fact would further the case of the petitioners since the Division Bench in the decision had opined that the body has an inherent right to adjourn the meeting and the Presiding Officer does not have unfettered right to adjourn such a meeting.

10.4 In the case of Jayantbhai Manubhai Patel and Others Vs. Arun Subodhbhai Mehta and Others, the Apex Court observed that though the Mayor had the implied power to cancel a meeting or postpone a meeting which was duly convened before the said meeting commenced and to convene the same on a subsequent occasion, such power must be exercised by the Mayor bona fide and not for a collateral purpose. In the said decision, the Apex Court while upholding the power of the Chairman of a meeting to adjourn the same found that such power has to be exercised bona fide. In the present case, it was not the Chairman who had adjourned the meeting. The entire body through overwhelming majority decided to adjourn the proceedings. The question of bonafide therefore would not arise.

10.5 Division Bench of this Court in the case of Fazalbai v. Baroda Municipality 1966 GLR 367 was once again considering the situation where the President of the Municipality had adjourned the meeting called for discussing no confidence motion. It was in this background that the Division Bench opined that once the President allows the motion to be moved and discussion thereon also takes place, only thing left is to put such a motion to vote for determination by the

meeting and the President has no power to prevent such a motion being put to vote.

11. On the basis of the statutory as well as legal position examined by different courts, as noted above, I do not find that there was any illegality in the general body deciding to adjourn the meeting of no confidence motion to a later date particularly when such a motion was approved by 22 out of 26 members present at the meeting.

12. The contention of the counsel for respondent Nos. 5 to 7 that the petitioners be relegated to alternative remedy is not required to be accepted in the present case when I find that the case involves interpretation of statutory provisions and there is no factual dispute between the parties.

13. The Collector, therefore, committed an error in suspending such a resolution. His order, therefore, cannot sustain. Accordingly, the order of the Collector dated 1.7.2008 is quashed.

14. Date on which the meeting was adjourned has already passed. The President, respondent No. 5 herein, therefore, shall have to convene a fresh meeting pursuant to the notice of no confidence motion already moved by the members. This shall be done not later than 13th September 2008 which shall give him more than fifteen days time which otherwise is prescribed under the provisions of the Act.

15. Learned advocate Shri Pandya appearing for respondent Nos. 5 to 7, at this stage, prayed that this decision may be stayed for some time to enable the said respondents to appeal against the same. Since respondent No. 5 has time upto 13th September 2008 to carry out the directions, it is not necessary to stay the order since the said time-frame will permit respondent No. 5 to take appropriate legal recourse in the meantime.

Petition is disposed of accordingly.