

(2011) 04 GUJ CK 0179

In the Gujarat High Court

Case No : Special Civil Application No. 4188 of 2011

Sunil Narsinh Hathila and Others

APPELLANT

Vs

Designated Authority Under The Gujarat Provision For Disqualification
and Another

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Local Authorities of Defection Act, 1986 — Section 3, 6
Local Authorities of Defection Rules, 1987 — Rule 3(1)(B)

Citation : (2011) 04 GUJ CK 0179

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Dilip B. Rana, for the Appellant; Pranav Dave, AGP for Respondents 1 and H.L. Patel, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the Petitioners have prayed for an appropriate writ, direction and / or order quashing and setting aside the impugned order passed by the Designated Officer under the provisions for Disqualification of Members of the Local Authorities of Defection Act 1986 and Rules, 1987 (hereinafter referred to as the "Act & Rules") dated 24.3.2011 passed in Appeal No. 51 of 2010, by which the Designated Officer has passed an order to disqualify the Petitioners u/s 6 of the Act r/w Rule 3(1)(B) and Rule 6 of the Rules, 1987 disqualifying the Petitioners as member of Jalod Taluka Panchayat.

2. The facts leading to the present Special Civil Application in nutshell are as under:

2.1. All the Petitioners were elected as member of the Jalod Taluka Panchayat, elected in an election held on 2.10.2010. The total strength of the panchayat is 35 members out of which 22 members were elected on the symbol of BJP and 12

members have been elected on the symbol of Indian National Congress and one member is from independent party. That all the Petitioners were elected on the symbol of BJP. That first meeting of the panchayat to elect the President of the Taluka Panchayat was to be convened and held on 9.11.2010. It is the case of the Petitioners that so averred in the petition is that Zalod Taluka Sankalan Samittee hold meeting on 29.10.2010 and it was resolved to elect Petitioner No. 2 herein Rameshbhai Bachubhai Damor as President of the Taluka Panchayat and accordingly further steps has taken to elect him. It is the case of the Petitioners that Pradesh Pramukh of BJP Shri R.C. Fardu issued mandate /whip on 7.11.2010 authorizing District President of BJP, Dahod, Shri Maheshbhai Bhuriya, indicating the members to be elected on the post of President and Vice President of the Panchayat. It is the case of the Petitioners that the said whip was never served on the Petitioners and / or any of the members of the panchayat who were elected on the symbol of BJP. According to the Petitioners they visited to the Dahod District Party Office to meet Jilla Pramukh Shri Maheshbhai Bhuriya and inquired about any mandate to vote in the election of President and Vice President of the Taluka Panchayat, however no information was supplied and the Petitioners were informed that the mandate will be served tomorrow by the authorized person. According to the Petitioners, District President issued a letter dated 9.11.2010 addressing to Rameshbhai Hathila for service of mandate to the elected members of the BJP penal, but the said letter was never served on the elected members before the election and the Petitioners were not intimated about the mandate and the process of election started at the scheduled i.e. 9.11.2010. That meeting for electing the President and Vice President of the Taluka Panchayat started at 12 noon on 9.11.2010 in which one Bhaveshkumar B. Katara secured 8 votes and Rameshbhai B. Damor secured 26 votes and accordingly the Petitioner No. 2 was declared as elected President of Zalod Taluka Panchayat and one Sunilbhai N. Datila was declared uncontested as Vice President of Zalod Taluka Panchayat. That thereafter, Respondent No. 2 approached the Designated Officer under the Act being Application No. 51 of 2010 declaring Petitioners to disqualify as member of the Panchayat under the Provision of the Act alleging inter alia that despite the mandate / whip issued by the appropriate authorities on dated 9.11.2010, the Petitioner No. 2 contested the election for the post of President and the respective Petitioners cast their votes in favour of the Petitioner No. 2 despite the contrary mandate, therefore, it is submitted that respective Petitioners have incurred disqualification as their act has not been condoned by the party.

2.2. That the respective Petitioners contested the aforesaid application by submitting that as such no mandate / whip was served upon the Petitioners. It was also the specific case on behalf of the Petitioners that in fact they tried to get information whether any whip/ mandate has been issued with respect to election of President, however there was no intimation. It was also the case of the Petitioners even no such mandate / whip was given to the Presiding Officer and even it was not read over at the commencement of the meeting. It was also

the specific case on behalf of the Petitioners that in fact one Rameshbha Hathila who was entrusted the work to serve whip and who did not serve whip / mandate to the Petitioners and other members, was served with the show cause notice by the party of the District President BJP and therefore, it was established that the whip has not been served upon the members / Petitioners and others. Therefore, it is requested to dismiss the said application.

2.3. That Designated Officer by impugned order dated 24.3.2011 allowed the aforesaid application by observing that no efforts were made by the Petitioners to get information whether any whip has been issued by the party or not and nothing has been produced whether the act of the Petitioners has been condoned by the party or not and consequently held that the respective Petitioners have acted contrary to the whip/ mandate issued by the Pradesh Pramukh and consequently declared the Petitioners as disqualified as member of the Jalod Taluka Panchayat. Hence, Petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri B.B. Naik, learned Senior Advocate has appeared with Shri Dilip Rana, learned advocate for the Petitioners. Shri Naik, learned Senior Advocate for the Petitioners has vehemently submitted that the Designated Officer has materially erred in holding that the Petitioners have acted contrary to the mandate / whip issued by the Jilla President, BJP. It is submitted that as such no whip / mandate has been served upon the Petitioners and/ or any members belonging to the BJP. It is submitted that as such one Rameshbhai Hathila was entrusted the duty of serving the whip/ mandate in respect to the post of President of Jalod Taluka Panchayat, however the said Rameshbhai Hathila did not serve the whip/ mandate upon any of the Petitioners and/ or members. It is submitted that in fact President BJP, Dahod District serving show cause notice upon said Rameshbhai Hathila dated 11.10.2010 seeking explanation of the said Rameshbhai Hathila why the whip / mandate has not been served upon the Petitioners and the members of the Taluka Panchayat belonging to the BJP, which was replied by the said Rameshbhai Hathila vide explanation dated 13.11.2010. Therefore, it is submitted that it is provided that no mandate / whip issued by the President BJP and/ or District President BJP was served upon any of the members of the Panchayat belonging to the BJP. It is submitted that therefore, when admittedly the whip was not served upon the Petitioners there was no question of acting contrary to the said whip by the Petitioners and therefore, the Petitioners could not have been declared disqualified as member of the panchayat on the ground that the Petitioners have committed a breach of mandate and/ or have acted contrary to the mandate of whip.

3.1. Shri Naik, learned Senior Advocate for the Petitioners has further submitted that even it was specific case on behalf of the Petitioners that Petitioners have even tried to get information on 8.11.2011 from the District President, BJP, Dahod with respect to any mandate and the Petitioners were informed that till then there is no whip received and they will be informed at the time of election

which was never informed to the members belonging to the BJP. It is submitted that therefore, even the efforts were made by the Petitioners to get information whether any whip has been issued or not therefore, the observations made by the Designated Officer that Petitioners have not even tried to get necessary information with respect to mandate is factually incorrect. It is further submitted that even the Petitioners sought permission to cross examine the District President, BJP, Dahod on the aforesaid. It is further submitted by Shri Naik, learned Senior Advocate for the Petitioners that even no such intimation with respect to any mandate or whip was given to the Presiding Officer. It is further submitted that even no such whip or mandate was read over at the time of election. Therefore, it is submitted that the Designated Officer has committed an error in holding that the Petitioners have acted contrary to the whip/ mandate and consequently the Designated Officer has materially erred in declaring the Petitioners disqualifying as member of the Jalod Taluka Panchayat. Therefore, it is requested to allow the Special Civil Application and quashed and set aside the impugned order.

4. Petition is opposed by Shri Ashim Pandya, learned advocate for H.L. Patel Advocates appearing for the Respondent No. 2 original applicant and Shri Dave, learned AGP appearing on behalf of the Respondent No. 1. It is submitted by Shri Pandya, learned advocate for the Respondent No. 2-original applicant that in fact mandate was issued by the President BJP on dated 7.11.2010 and the Petitioners have acted contrary to the said whip / mandate and their act has not been condoned by the party and in fact Petitioners were served with the show cause notice by the party and therefore, designated officer has rightly passed the impugned order to disqualify the Petitioners as members of the Jalod Taluka Panchayat and therefore, it is requested to dismiss the present petition.

4.1. It is further submitted by Shri Pandya, learned advocate for the Respondent No. 2 that in fact it was the duty cast upon the Petitioners to inquire about any mandate / whip at the time of election and not on the earlier date and therefore, designated officer has rightly passed an order to disqualify the Petitioners by observing that it was the duty cast upon the Petitioners to inquire about any mandate, which the Petitioners have failed and therefore, it is requested to dismiss the present Special Civil Application.

4.2. Shri Dave, learned AGP appearing on behalf of the Respondent No. 1 designated officer has submitted that under Order 20 the duty cast upon the concerned members to inquire with respect to any whip/ mandate and nothing was on record whether any such attempt was made and therefore, the designated officer has rightly passed an order declaring the Petitioners as disqualified as members of the Jalod Taluka Panchayat.

5. Heard the learned advocates appearing on behalf of the respective parties. At the outset, it is required to be noted that it is the case of the Respondent No. 2 that whip was issued with respect to the post of the President of Jalod Taluka Panchayat by the Pradesh Pramukh of BJP Shri R.C. Fardu on dated 7.11.2010 by

which it was decided that one Mr. Bhaveshkumar B. Katara would contest the election for post of President of the Jalod Taluka Panchayat and despite the same the respective Petitioners, more particularly, Petitioner No. 2 contested the election for the post of President of the Jalod Taluka Panchayat and the respective Petitioners cast their votes in his favour which is just contrary to the whip/ mandate dated 7.11.2010. Considering the statement made by the learned advocates for the respective parties and the document on record, it appears that by communication dated 7.11.2010 the Pradesh Pramukh, BJP Shri R.C. Fardu authorized Shri Maheshbhai Bhuriya, BJP Dahod to issue the mandate / whip as per the communication dated 7.11.2010. Nothing is on record whether any further mandate was issued by the said Shri Maheshbhai Bhuriya. Be that as it may even treating the said communication dated 7.11.2010 as the mandate issued by the party in that case, it appears that said Shri Maheshbhai Bhuriya, BJP, Dahod entrusted the work of serving the said mandate / whip to the members of the Taluka Panchayat belonging to the BJP to one Shri Rameshbhai Hathila and it is an admitted position that the said Shri Rameshbhai Hathila did not serve any whip/mandate to the Petitioners and/or others members Taluka Panchayat, Jalod belonging to the BJP. Not only that even the President BJP, Dahod District serving show cause notice upon said Rameshbhai Hathila dated 11.11.2010 seeking explanation of the said Rameshbhai Hathila why the whip / mandate has not been served upon the Petitioners and the members of the Taluka Panchayat belonging to the BJP, which was replied by the said Rameshbhai Hathila vide explanation dated 13.11.2010. Thus, it is established that no whip/mandate was served upon the Petitioners. Even from the reply dated 13.11.2010 by the said Rameshbhai Hathila addressed to Shri Mahesh Bhuriya, District President, BJP, Dahod, it appears that the local people / members were not in favour of Bhaveshkumar B. Katara whose name was selected for the post of President of Jalod Taluka Panchayat for the reasons stated in the said communication / reply and therefore, it appears that the said Rameshbhai Hathila might not have served the whip/ mandate upon the members of the Taluka Panchayat belonging to the BJP. Be that as it may, the fact remains that the whip/mandate was not served upon the Petitioners and when the whip/mandate was not served on the Petitioners, there was no question of any breach by the Petitioners and / or acting contrary to the said whip/mandate. Considering the provisions of the Act, more particularly Section 3 /Rule 3 the mandate / whip was required to be served upon the concerned members. It also appears that even the respective Petitioners have also tried to get information on 8.11.2010 from the District President, BJP, Dahod with respect to any mandate and it is the case of the Petitioners that they were informed that no such mandate has been received and the respective Petitioners will be informed at the time of election. Therefore, even the efforts were made by the Petitioners to get information with respect to any mandate issued by the party. Nothing is on record that any mandate was served upon the Petitioners at the time of election and/ or it was brought to the notice of the Petitioners. Nothing is on record that copy of any mandate / whip was given to the Presiding

Officer at the time of election. Nothing is on record that the mandate /whip issued by the party of which the breach is alleged, was read over at the time of election. Considering the aforesaid facts and circumstances, Designated Officer erred in holding that the Petitioners have acted contrary to the whip/mandate and have incurred disqualification under the Act. From the impugned order, it appears that the Designated Officer has observed that it was the duty cast upon the Petitioners to inquire from the party whether any mandate was issued or not and therefore, it is not believable that the Petitioners were not aware of any mandate /whip issued by the party. The aforesaid finding is on surmise and conjectures. On the other hand it has been found that in fact persons who was entrusted the work of serving summons has not served whip/mandate upon the Petitioners and other members belonging to the BJP and as stated above his explanation was also sought. Considering the aforesaid facts and circumstances of the case, the impugned order passed by the Designated Officer cannot be sustained and same deserves to be quashed and set aside.

6. In view of the above and for the reasons stated above, petition succeeds. The impugned order passed by the Designated Officer dated 24.3.2011 passed in Appeal No. 51 of 2010 disqualifying the Petitioners as member of the Jalod Taluka Panchayat under the provisions of the Act is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No cost. Direct service is permitted.