

(2019) 12 GUJ CK 0020
In the Gujarat High Court

Case No : R/Special Civil Application No. 21063 Of 2019

Yashodaben Ganeshbhai Ravat

APPELLANT

Vs

Vasanji Bhai Babjibhai Kunwar

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Gujarat Disqualification Of Members Of Local Authorities For Defection Rules, 1987 —
Section 6, 10
Gujarat Disqualification Of Members Of Local Authorities For Defection Act, 1986 —
Section 3

Citation : (2019) 12 GUJ CK 0020

Hon'ble Judges : V.M. Pancholi, J

Bench : Single Bench

Advocate : Anshin Desai, Vidita D. Jayswal, Hiren M. Modi

Judgement

V.M. Pancholi, J

1. Draft amendment is allowed. Learned advocate for the petitioner to carry out amendment forthwith.
2. Heard learned Senior Counsel, Mr. Anshin Desai assisted by learned advocate, Ms. Vidita Jayswal for the petitioner and learned advocate, Mr. Hiren Modi appearing for the respondent no. 1 - Caveator.
3. Learned Senior Counsel, Mr. Anshin Desai appearing for the petitioner submits that the election of Subir Taluka Panchayat was held in the year 2015, wherein the petitioner is elected as Member on the symbol of Bhartiya Janata Party (hereinafter referred to as "BJP" for short). It is submitted that total strength of the elected members in the said Taluka Panchayat is 16 members, out of which, 11 members are elected on the symbol of BJP, whereas 5 members are elected on the symbol of Indian National Congress (hereinafter referred to as "INC" for short). He submits that the agenda was issued by the said Taluka Panchayat for calling and convening the meeting on 19.06.2018 for electing President and Vice President for second term of 2½ years and as per the roster point, the seat of

the President was reserved for scheduled tribe woman candidate. He submits that the election was conducted on 19.06.2018, in which, the petitioner as well as other contestant had received equal votes (8 each) and, therefore, a draw was held, wherein the petitioner was elected as President of the said Panchayat. It is contended by learned Counsel that after a period of more than one year and one month, the respondent no. 1 filed an application being Dispute Application No. 1/2019 under Rule 6 of the Gujarat Disqualification of Members of Local Authorities for Defection Rules, 1987 (hereinafter referred to as "the Rules" for short) for disqualifying the petitioner under Section 3 of the Gujarat Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as "the Act" for short). It is submitted that in the said application, it is alleged that the petitioner has not followed the Whip of the political party and, therefore, the petitioner be declared as disqualified from continuing as member of the said Panchayat. It is submitted that the respondent authority, vide impugned order dated 14.11.2019, allowed the said dispute application by declaring the petitioner as disqualified. He, therefore, submitted that the present petition is filed challenging the said order.

4. Learned Counsel would contend that no authority is available with the State President as per the constitution of the political party and the party had never issued any such authorization in favour of Shri Karshanbhai Patel. He would further contend that Shri Karshanbhai Patel had never served any mandate to any of the member in person and so-called Whip/authorization seems to be concocted document and is nothing but an afterthought. It is the specific case of the petitioner that no Whip was issued in favour of any of the member, who are elected on the symbol of BJP and for that, this Court may issue notice to the respondents and verify the original record. It is also contended by learned Counsel that the videography is done by the officer, from which also, it can be verified that the Whip was not served to any of the members. He submitted that even the respondent no. 1 has also not produced any document before the respondent authority, from which, it can be said that so-called Whip was issued and served to the petitioner or to any other members. Learned Counsel has also referred to the minutes, copy of which is produced on record at Page No. 72 of the compilation.

5 . Learned Counsel, thereafter, would place reliance upon the order dated 05.07.2019 passed by the Division Bench of this Court in Special Civil Application No. 11488/2019 and submit that the Division Bench of this Court in similar type of case has issued notice and granted interim relief in favour of the concerned petitioner. It is, therefore, urged that the matter requires consideration and, therefore, this Court may issue notice and grant interim relief in favour of the present petitioner.

6. On the other hand, learned advocate, Mr. Hiren Modi appearing for the respondent no. 1 - Caveator opposed this petition and placed on record affidavit-in-reply filed by the respondent no. 1. Learned advocate has referred to the

averments made in the affidavit-in-reply and, thereafter, referred to the reply filed by the present petitioner before the respondent authority in the Dispute Application No. 1/2019. After referring to the said reply, it is submitted that even as per the case of the petitioner in the said reply, Whip was not accepted by the petitioner and, therefore, when the petitioner has not accepted the Whip, it is not open for her to contend that Whip was not at all issued. Learned advocate has placed reliance upon the decision rendered by the Division Bench of this Court in Letters Patent Appeal No. 733/2011, copy of which is placed on record at Page No. 99 of the compilation and more particularly Paragraph No. 17 thereof. After referring to the said decision, it is submitted that it will be the duty of the member of the Panchayat, who is elected on the symbol of political party, to ensure as to whether any mandate is issued by such political party and in case, any mandate is issued by such political party, it is the duty of the member of the Panchayat to obtain such mandate from such political party or by any person or authority authorized by such political party. It is, therefore, submitted by learned advocate that this petition be dismissed.

7 . This Court has considered the submissions canvassed by learned advocates appearing for the parties for the issuance of the notice and for the grant of interim relief.

8. From the submissions canvassed by learned advocates appearing for the parties, it is revealed that the petitioner is elected as President of the aforesaid Taluka Panchayat on 19.06.2018 and after a period of more than one year and one month, the respondent filed an application being Dispute Application No. 1/2019 before the respondent authority and now the impugned order is passed by the respondent no. 1 in November, 2019. It is the specific case of the petitioner that the petitioner has in fact inquired as to whether any Whip or any mandate is issued by the party or not. However, the petitioner came to know that no such Whip was issued by the party to any of its elected members. It is also the specific case of the petitioner that no authority is available with the State President as per the constitution of the political party to authorize Shri Karshanbhai Patel and the said Karshanbhai Patel had never served any mandate to any of the member. Prima facie, the respondent no. 1 has also failed to place on record the so-called Whip issued by the political party or its authorized person to any of the elected members, who are elected on the symbol of BJP. Thus the said aspect requires scrutiny and, therefore, notice is required to be issued to the respondent authorities so that correct facts can be placed on record.

9. In the interim order dated 05.07.2019 passed by the Division Bench of this Court in Special Civil Application No. 11488/2019, the Division Bench has observed in Para No. 12 as under,

"..... Thus, the emphasized portion of this Rule does not require any further elaboration, as it clearly cast duty upon the Presiding Officer to verify the existence of mandate and its circulation to the mandate. The Designated Authority clearly recorded its finding that there is no mandate or minutization

thereof, as could be seen from pages 94 and 96. Assuming for the sake of examining without holding that there was a mandate and it was served, still the Presiding officer of the meeting dated 11th June 2018 was not absolved of its duty to clearly recording in the minutes of the meeting in compliance with the provision of Rule 10 of the Rules. When the Designated Authority has clearly recorded that the mandate factum has not been minutized, then it was unfortunate that the said fact after recording, has not been appreciated or rather perfunctorily brushed aside by the authority."

10. The decision upon which reliance has been placed by learned advocate for the respondent no.1 i.e. judgment dated 03.08.2011 passed in Letters Patent Appeal No. 733/2011, prima facie would not be applicable as discussed herein above in the facts of the present case. Hence, the matter requires consideration.

11. This Court is also of the view that the balance of convenience is of paramount considerations for granting interim relief. In the present case, if the interim relief as prayed for is not granted then, it would amount to preventing a duly elected member from discharging her duty and if the impugned order is not stayed, the respondent no. 1 will immediately issue election programme for election of the President of the aforesaid Taluka Panchayat. Therefore, interim relief, as prayed for, deserves to be granted.

12. Hence, following order, Notice upon the respondents, returnable on 23rd December, 2019.

Learned advocate, Mr. Hiren Modi appears on caveat waives service of notice for respondent no. 1.

Ad-interim relief in terms of Para No. 9C is granted till returnable date.

Direct service for rest is permitted.