

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 266 of 2000

In

SPECIAL CIVIL APPLICATION No 5276 of 2000

With

LETTERS PATENT APPEAL No 267 of 2000

In

SPECIAL CIVIL APPLICATION NO.5212 OF 2000

WITH

CIVIL APPLICATIONS NOS.5238 AND 5239 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAFIDBHAI MOGAL

Versus

JAGDISHBHAI GOVINDBHAI

DHARAJIA

Appearance:

1. LETTERS PATENT APPEAL No. 266 of 2000

Mr.N.D.Nanavati with

MR TUSHAR MEHTA for Appellant
Mr.Y.N.Oza with
MR NIRZAR S DESAI for Respondent No. 1
Ms.Harsha Devani, learned AGP for respondent No.2
MR RJ OZA for Respondent No. 3

2. LETTERS PATENT APPEAL No. 267 of 2000

Mr.N.D.Nanavati with
MR TUSHAR MEHTA for Appellants
Ms.Harsha Devani, learned AGP for respondent No.1
Mr.Y.N.Oza with
MR BC DAVE for Respondent Nos. 2 to 5
Mr.R.J.Oza for respondent No.6
Respondent No.7 served

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision:31 /08/2001

CAV COMMON JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. These two Letters Patent Appeals are directed against the judgment and order dated 26.6.2000 passed by the learned single Judge whereby the Special Civil Application No.5212/2000 filed by Amreli Municipality and its Incharge President was dismissed and Special Civil Application No.5276/2000 filed by the candidate, who according to the proceedings of the meeting drawn by Assistant Collector, secured majority votes, is entitled to be declared as elected, was allowed and the rule was made absolute.

2. Whereas both the Letters patent Appeals are directed against the same impugned common order dated 26.6.2000 and common questions are involved based on identical facts relating to same dispute, we propose to decide both these Appeals by this common judgment and order.

3. It is the infight of the political parties, which has given rise to this litigation - which is essentially a political issue which has come to the court in the form of an issue with legal questions raised by both the sides on the allegations of betrayal versus betrayal.

4. Briefly stated the facts of the case are that general election to Amreli Municipality was held in

December 1999, 36 Councillors were elected out of which 20 belonged to Congress and 16 belonged to Bharatiya Janta Party, first general meeting of the Municipality was held on 20.1.2000, election for the post of President was held on that very date and one Shri Jitendrabhai Vasurbhai Vichhiya of the Congress party was elected as the president of the Municipality. On 5.4.2000 a no confidence motion was moved against the President of the Municipality and the same came to be passed on 4.5.2000 against Jitendrabhai with support of all the 33 members who were present and the three members, namely, Jitendrabhai, Mumtasben and Rekhaben abstained and thus a vacancy became available in the office of the President of the Municipality. The Collector, therefore, declared that the elections for the post of President will be held on 19.5.2000 and the Agenda for the said election was issued on 8.5.2000. Shri Rafiqbhai Mogul the Vice-President became the Incharge President.

5. Now as it usually happens with regard to the number game in the politics, out of the 20 members, who were elected from the Congress Party, the following three members, namely, Rekhaben Jayantibhai Ranwa, Mumtazben Aminbhai Hot and Jitendrabhai Vasurbhai Vichhiya (unseated President by no confidence motion) are first alleged to have tendered their resignations before the Incharge President on 12.5.2000 and are also alleged to have sent individual letters dated 18.4.2000, (in advance), 12.5.2000 and 2.5.2000 respectively to the Collector, Amreli stating that if any letter regarding their resignation are received, the same may not be accepted without hearing them as the same may be forged one. It was stated in the said letter that in politics, the signatures are obtained on blank papers and such signatures may be misused for the purpose of resignation. These members had also filed affidavits on stamp paper stating that they apprehended that forged resignation letters may be made since they have not given any resignation from the office of the members of the Municipality and that the same may not be accepted. It is also alleged that these three members also sent letter on 15.5.2000 stating that they had received the information that their forged resignations had been accepted and, therefore, necessary inquiry may be held as they had not tendered any such resignation letters. They also prayed that they may be permitted to cast vote in the election for the post of President, which was fixed to be held on 19.5.2000 under the Agenda dated 8.5.2000. The Respondent - Collector passed interim order dated 15.5.2000 on receipt of the application under Section 35(5) of the Act and granted stay against the

implementation of the acceptance of the resignation letters of these three members and the matter was fixed for hearing on 29.5.2000.

6. Amreli Municipality filed Special Civil Application No.4980/2000 in this court praying to quash and set aside the aforesaid interim order dated 15.5.2000 passed by the collector. This Court by order dated 18.5.2000 i.e. a day before the date of election, directed the Collector, Amreli to decide the question of validity of such resignations, and to consider all the facts and he had also been asked to pass the final speaking order by 20.5.2000 and the election of the President of the Municipality was ordered to be held on 29.5.2000 instead of 19.5.2000. The Collector, Amreli after giving detailed reasons passed the final order on 26.5.2000 in exercise of the powers conferred under Sub-section (5) of Section 35 of the Act and disapproved the resignation of the aforesaid three members of the Municipality.

7. Amreli Municipality then filed Special Civil Application No.5212/2000 before this court challenging the aforesaid order passed by the Collector, Amreli on 26.5.2000 and this Court by an order dated 29.5.2000 directed the Collector to keep the result of the election of the President of the Municipality in abeyance till final disposal of the said petition, with the observation that the three Councillors, who are alleged to have tendered their resignations as the Councillors, may cast their vote in such election and further that the Presiding Officer is directed to keep such votes cast by such Councillors in a sealed cover and/or separately and not to declare the result of the election till final disposal of the said petition or till further orders that may be passed in the said petition and the matter was adjourned to be heard on 12.6.2000 and the Registry was directed to intimate the order to the Collector, Amreli by fax or by telephone at the cost of the petitioners on that day. The election process was started at 11.0 A.M. on 29.5.2000 and till then the order dated 29.5.2000 passed by this court in Special Civil Application No.5212/2000 could not be communicated. The election process, therefore, commenced. Two nominations for the post of President were received; one from Shri Jagdishbhai Govindbhai Dharajia, and another from Rafiq Rahim Moghul at 11.35 A.M. and 11.45 A.M. respectively and, thereafter, at 11.50 A.M. the scrutiny/verification of the said forms was over and both the forms were held valid. The Returning Officer made the present members to understand that in the said election as per the

provisions of Rule 9(2) the election of the President of the Municipality has to be held by show of hand and not otherwise and accordingly 19 votes were received by Shri Jagdishbhai Govindbhai Dharajia and 17 votes were received by Rafiq Rahim Moghul by show of hands. The proceedings were over and whereas the order dated 29.5.2000 passed by this court had been received, the result was not declared officially. The procedure, which was held by the Returning Officer, shows that Shri Jagdishbhai Govindbhai Dharajia had secured 19 votes and his opponent Rafiq Rahim Moghul could secure only 17 votes. On the basis of these facts, claim of the petitioner Shri Jagdishbhai Govindbhai Dharajia in Special Civil Application No.5276/2000 was that he was required to be declared as elected President of the Municipality, but as per the Minutes recorded by the Returning Officer in absence of the formal declaration of the result, the petitioner Shri Jagdishbhai Govindbhai Dharajia was not allowed to function as the President of the Municipality and being aggrieved and dissatisfied with this act, the petitioner preferred Special Civil Application No.5276/2000.

8. In the Special Civil Application No.5212/2000 which was filed by Amreli Municipality and Rafiqbhai Mogul, it was held out that the President of the Municipality was Shri Jitendrabhai Vichhia. 16 Councillors of the petitioner Municipality had moved a no confidence motion against him, which was taken up on 4.5.2000. It was alleged that out of 36 members, 33 members supported the motion of no confidence and three members, namely, Jitendrabhai Vasurbhai Vichhia, Mumtasben Aminaben Hot and Rekhaben Jayantibhai Ranva had abstained. After the motion of no confidence was carried out Shri Rafiqbhai Mogul was made Incharge President as he was Vice President of the Municipality. On 12.5.2000 the respondents Nos.3,4 and 5 tendered their respective resignations before the Incharge President of the Municipality and Shri Rafiqbhai Mogul Incharge President discussed the question of resignation and whereas the three members insisted for acceptance of their resignation from the Office of the councillors, Shri Rafiqbhai Mogul as Incharge President accepted their resignations on 12.5.2000 itself as contemplated under Section 35(3) of the Gujarat Municipalities Act, 1963 according to which the resignation becomes effective from the day on which it is received by the President. Whereas Shri Rafiqbhai Mogul has accepted the resignations of these three Members on 12.5.2000, by operation of law resignation had become effective on 12.5.2000 itself and the Incharge President had also made

an endorsement on the resignation so as to accept the same. The Chief Officer of the Amreli Municipality had intimated the vacancies having arisen to the State Election Commission and also to the Collector, Amreli and once the resignation had become effective by operation of statutory provisions and the vacancies had been declared, it appears that the District Collector was approached by filing an affidavit purporting to be an application under Sec.35(5) of the Act. The Copy of such application was never supplied to the Municipality and on this application, the Collector, Amreli proceeded to pass the order dated 15.5.2000 and granted injunction. Aggrieved from this order, Amreli Municipality had approached this court by way of filing Special Civil Application No.4980/2000. Caveat was entered on behalf of Vajsurbhai Ravatbhai Vichhia, Jitendrabhai Vasurbhai Vichhia, Mumtasben Aminaben Hot and Rekhaben Jayantibhai Ranva. After hearing the Amreli Municipality and the caveators, this Court had passed order on 18.5.2000 in Special Civil Application No.4980/2000 directing the Collector, Amreli to decide the dispute finally on or before 23.5.2000. This order was later on modified to change the date from 23.5.2000 to 26.5.2000 and whereas the certified copy of the order became available only on 25.5.2000, Amreli Municipality moved a Civil Application praying for modification of the date, but the said modification was not granted by the Court. The Incharge President was served with the order on 26.5.2000 at 1.35 P.M. in the late night and the Collector, Amreli had also fixed the meeting to be held for electing the President on 29.5.2000 and the Agenda in that behalf was issued.

9. The learned single Judge heard both these Special Civil Applications together and decided both these petitions by common order dated 26.6.2000 impugned in these two Letters Patent Appeals - at the instance of the Incharge President Rafiqbhai Mogul in L.P.A.No.266/2000 and Amreli Municipality and Shri Rafiqbhai Mogul in L.P.A.No.267/2000.

10. Section 35 (3) provides for the resignation of the Councillors and according to the provisions of this Section 35(3) any Councillor may resign his office by tendering his resignation in writing to the President and such resignation shall take effect from the date on which it is received by the President. Learned single Judge has considered the interpretation of this provision with reference to the decision in the case of Shirishkumar Mayachandbhai Modi v. The Collector, Banaskantha District, reported in 16 GLR Page 703, and has held that the resignation contemplated under sub-section (3) must

be a genuine resignation because a forged resignation is no resignation at all in the eye of law and it is a genuine and valid resignation which takes effect on the date on which it is received by the President and if there is any dispute about the genuineness or validity of the resignation of a Councillor, it takes effect in terms of the provisions contained in sub-section (5) of Section 35. If the person tendering the resignation challenges the genuineness and validity or anyone else challenges its genuineness or validity, the dispute can be taken for decision to the Officer appointed by the State Government. If such Officer records his conclusion that it was a genuine resignation, the seat has to be declared to have fallen vacant and if he records the conclusion that it was not a genuine resignation, he has to make a declaration that the Councillor continues. Based on the decision in the case of Shirishkumar Mayachandbhai Modi v. The Collector, Banaskantha District, reported in 16 GLR Page 703, which was followed in Kasammiya Ahmedmiya Saiyed v. K.D.Parmar, reported in (1988 (2) GLH (UJ) 21), the learned single Judge has held that the dispute regarding the resignation of the Councillor could be raised by any person or voter in the form of complaint to the Collector. Therefore, it is clear that resignation could be disputed even by the father of one of the Councillors, as was done in the instant case by Vajsurbhai Ravatbhai Vichhia (respondent No.2 in L.P.A.No.267/2000) who was father of the Councillor Jitendrabhai Vasurbhai Vichhia.

11. In the facts of the present case, the Collector had come to the conclusion that the resignations were not genuine and valid. So far as the genuineness of the signatures is concerned, the Collector has held that it could not be conclusively decided. She had to take decision on the basis of the material placed before her and the reasons, which have been given by her in support of her order, are neither irrelevant nor the same can be said to be not germane. Learned single Judge, therefore, held that the Collector had acted bonafide and decided the dispute within time fixed by the Court.

12. We have considered the submissions made before us with the aid of the records, as have been produced. We find that the Collector while passing the order has given adequate reasons and merely because she has observed that the genuineness of the signatures could not be conclusively decided in such proceedings, it cannot be said that the findings recorded by the Collector are inconclusive or indefinite. Therefore, when the dispute can be raised by any person challenging the validity of

the resignation, the collector ultimately comes to the conclusion that the signatures on the resignation letters were not genuine and valid, there was no question of such resignation being effective. The quest of the Special Civil Application No.5212/2000 filed by the Amreli Municipality and the Incharge President is that if the three Members are taken to have resigned, they could not participate in the election, which was held on 29.5.2000 and whereas there was a difference of only two votes between Incharge President Shri Rafiqbhai Mogul (17) and Jagdishbhai Dharajia (19) he (Shri Rafiqbhai) could have been declared elected had the three Councillors not been allowed to vote and it is for this reason that the Amreli Municipality through its Acting President came with the petition. It was submitted that initially the Councillor belonging to the Congress party, who was the President, felt betrayed by the members of his own party and as a mark of protest with anguish he alongwith his two supporters resigned from the office of Councillor and later on to teach lesson to those who did not support his cause, joined with the other side and thought that if he and his supporters continue as Councillors and support the other side by adding to its number, his position would be better vindicated and therefore it was projected that resignations were not tendered.

13. Be that as it may for the reasons discussed in the earlier part of this order the view taken by the Collector that the resignations were not genuine and valid, there was no question of not allowing these three persons to participate in the elections nor it could be said that the meeting, which was held under the orders of the Court on 29.5.2000 for election to the Post of the President was invalid and once the votes had been counted on the basis of show of hand as per the provisions relating to the election of the post of the President of the Municipality and Shri Jagdishbhai Govindbhai Dharajia of Bharatiya Janta Party had obtained 19 votes as against 17 votes received by Shri Rafiqbhai Mogul, Shri Jagdishbhai Govindbhai Dharajia of the Bharatiya Janta Party had to be declared elected and the Special Civil Application No.5276/2000 had been rightly allowed by the learned single Judge and the other Special Civil Application No.5212/2000 was rightly dismissed. We agree with the reasons given by the learned single Judge in support of the order and hereby dismiss both these Letters Patent Appeals and uphold the rejection of Special Civil Application No.5212/2000 and allowing of Special Civil Application No.5276/2000. No order as to costs.

14. The learned single Judge had himself continued the interim direction against the declaration of the result till 3.7.2000 while passing the impugned judgment and order dated 26.6.2000. The order passed by the learned single Judge to continue the interim relief till 3.7.2000, which was continued in the Letters Patent Appeals on 3.7.2000 upto 5.7.2000 in the first instance and thereafter from time to time, ceases to be operative forthwith.

15. Whereas the main Appeals have been dismissed, there is no question of continuing the interim relief. Civil Application No.5238/200 in Letters Patent Appeal No.266/200 as well as Civil Application No.5239/2000 in Letters Patent Appeal No.267/2000 are hereby rejected. Interim order stands vacated. No order as to costs.

(M.R.Callan,J)

(R.R.Tripathi,J)