

Shri Rustamji Nasarvanji Dangor

Vs

Shri Jeram Kunverji Ganatra and Others

Civil Appeal No. 974 of 1975

(Y.V. Chandrachud, A.C. Gupta JJ)

20.10.1976

JUDGMENT

GUPTA, J. -

1. The appellant was elected a councillor of Anjar municipality in Kutch district sometime in 1972, and later, President of the municipality. On June 30, 1973, after he had been elected President, the appellant applied to the chief officer of the municipality for allotting to him a plot of land admeasuring 18 feet x 16 feet situate in the town of Anjar. In his application the appellant stated that he wanted the plot for running a flour mill temporarily until he got a suitable plot from the government. By his order dated July 5, 1973 the chief officer granted the request permitting the appellant to hold the land on payment of rent on condition, inter alia, that the land should be vacated whenever the municipality so ordered. The first respondent who is a resident of Anjar applied to the Collector of Kutch under Section 38 of the Gujarat Municipalities Act, 1963 (referred to as the Act hereinafter) for declaring that the appellant's office has "become vacant" as he has disabled himself from continuing as a councillor by taking lease of the land from the municipality. The Collector having heard the parties held that the appellant had got the land by misusing his position as President of the municipality incurring thereby the disqualification referred to in Section 38(1)(b)(i) of the Act which disabled him from continuing to be a councillor and declared that his office had become vacant. The appellant before us preferred an appeal under Section 38(4) of the Act to the State Government against the Collector's order. The State Government allowed the appeal and dismissed the application of the first respondent. It was held that the land was allotted to the appellant in accordance with the by-laws of the municipality and that there was no evidence of the appellant exerting any influence on the chief officer. The first respondent challenged the order of the State Government by filing a writ petition in the Gujarat High Court. The learned Judge of the High Court who heard the petition allowed the same, quashed the order of the State Government, and restored the order made by the Collector. This appeal by special leave is directed against the judgment of the High Court allowing the writ petition.

2. The appeal turns on Section 38(1)(b)(i) of the Act which reads as follows :

38. Disabilities from continuing as a councillor. - (1) If any councillor during the term for which he has been elected or nominated -

#(a) * * *##

(b) acts as a councillor in any matter -

(i) in which he has directly or indirectly, by himself or his partner, any such share or interest as is described in clause (i), (ii), (iii), (v) or (vii) of sub-section (3) of Section 11, whatever may be the value of such share or interest, or . . .

he shall subject to the provisions of sub-section (2) be disabled from continuing to be a councillor and his office shall become vacant.

The provisions of sub-section (2) are not relevant for the present purpose. Section 11 of the Act enumerates, inter alia, the "general disqualifications for becoming a councillor" and specifies the cases to be treated as exceptions. Section 11(2)(c) disqualifies a person from being a councillor who, save as hereinafter provided, has directly, or indirectly, by himself or his partner any share or interest in any work done by order of a municipality or in any contract or employment with or under or on behalf of a municipality.

Sub-section 3(A)(i) of Section 11 which contains an exception to this rule provides :

(3) A person shall not be deemed to have incurred disqualification -

(A) under clause (c) of sub-section (2) by reason of his -

(i) having any share or interest in any lease, sale or purchase of any immovable property or in any agreement for the same.

Thus a person is disqualified from becoming a councillor if he has a direct or indirect interest in any contract with the municipality, but having any share or interest in any lease of any immovable property or in any agreement for the same is not a disqualification. Section 38(1)(b)(i), quoted above, however provides that if any councillor during the term for which he has been elected "acts as a councillor" in acquiring a direct or indirect share or interest in any lease, he shall be disabled from continuing to be a councillor. We have noted earlier that Section 11(3)(A)(i) is an exception to the general disqualification under Section 11(2)(c), Section 38(1)(b)(i) appears to be an exception to that exception. This means that though having an interest in any lease from the municipality is not a disqualification for becoming or continuing as a councillor, if the councillor "acts as a councillor" in getting such leased from the municipality, he shall be disabled from continuing to be a councillor. The President of the municipality being a councillor, this provision also applies to him. The question therefore is whether the appellant in this case acted as a councillor in the matter of allotment of the land to him.

3. Section 275 of the Act authorises the municipality to make by-laws not inconsistent with the Act. The Anjar municipality has framed the temporary occupation of public streets or land. An English translation of by-law 4 of these by-laws which are in Gujarat reads :

Permission will be given for the use of public road or land within the municipal limits but not of private land for temporary period for the matters mentioned in Schedule 1 hereto on advance payment of fee as stated in the Schedule. Any person who intends to occupy such land shall have to make a written application to the chief officer. But to give such permission or not shall be within the absolute discretion of the chief officer.

Schedule 1 mentioned her prescribes the fees payable by the applicant on such permission being granted. The chief officer in this case permitted the appellant to occupy the land in question exercise

of the power given to him by this by-law. The High Court found that the appellant acted as a councillor and President of the municipality in having the plot allotted to him mainly upon the provisions of Sections 49 and 45 of the Act. Section 49 defines the powers and duties of the chief officer. Sub-section (1) (a) of Section 49 which is relevant in this context is as follows :

49. Powers and duties of chief officer. - (1) The chief officer shall -

(a) subject to the general control of the President, watch over the financial and executive administration of the municipality and perform all the duties and exercise all the powers specifically imposed or conferred upon him by, or delegated to him under, this Act.

Section 45 enumerates the functions of the President; one of the functions is to exercise supervision and control over the acts and proceedings of all officers and servants of the municipality in matters of executive administration. The High Court after referring to these provisions observed that the chief officer being under the general control of the President in all matters of executive administration, must have felt himself bound to grant the appellant's application. The High Court referred to an earlier application for the plot made by one Karan Kanji which the chief officer had rejected. There is also a finding that by-law 4 did not permit the use of the officer went out of his way to help his president. The High Court concluded that if the appellant had not been a councillor of the municipality and its president, his application would have met with the same fate as Karan Kanji's.

4. The legality of the chief officer's order is not however an issue in this case, and the question whether or not the intended use of the plot by the appellant was beyond the scope of by-law 4 need not detain us. According to the High Court it was only because the appellant held the office of president of the municipality that the chief officer allowed his application. This may or may not be true, but it is not a matter relevant to the real question that arises for consideration in this case. Section 38(1) (b)(i) disables a councillor from continuing as such if he "acts as a councillor" in the matter of allotment of any land to himself; there is no bar in the Act to a councillor getting a lease of the land from the municipality, as would appear from Section 11(3)(A)(i). It is only in a case where he acts as a councillor in getting the lease that he is disqualified. There is nothing in the record of this case to show that the appellant had acted as a councillor to have the plot allotted to himself. Even if the chief officer was influenced by the fact that the applicant before him was president of the municipality, that would not attract Section 38(1)(b)(i). It is true that Section 45 confers a general power of supervision and control on the President over the acts of all officers of the municipality and Section 49, which enumerates the powers and duties of chief officer, also makes him subject to the general control of the President in the discharge of these powers. But the general power of supervision conferred on the President does not, in our opinion, imply that in every case where he applies for a lease, which he is entitled to do as Section 11(3)(A)(i) indicates, he should be deemed to have "acted" within the meaning of Section 38(1)(b); otherwise, the president of a municipality under this Act, by virtue of his office would be disentitled altogether from applying for permission to use any land of the municipality. If this were the correct position then there was no point in limiting the disqualification contemplated in Section 38(1)(b)(i) to cases where the councillor acts as a councillor. The words "acts as a councillor" cannot be treated as redundant. In our view the councillor acts as a councillor within the meaning of Section 38(1)(b) where he performs any of the functions which under the Act he is required to perform. An allegation of misuse of his position against a councillor would not attract the disability under Section 38(1)(b)(i)

unless it was shown further that he has acted as a councillor in the matter. In view of the clear provision of Section 38(1)(b)(i) we do not find it possible to support the impugned judgment.

5. The appeal is therefore allowed and the judgment of the High Court reversing the decision of the State Government is set aside. In the circumstances of the case we make no order as to costs.

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