

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 658 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 5606 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 658 of 2022
With
R/LETTERS PATENT APPEAL NO. 659 of 2022
In
SPECIAL CIVIL APPLICATION NO. 5610 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 659 of 2022
In
SPECIAL CIVIL APPLICATION NO. 5610 of 2022

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MAHENDRABHAI RAMJIBHAI DESAI

Versus

STATE OF GUJARAT

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Appearance:

MR HARIBHAI J PATEL(9810) for the Appellant(s) No. 1
 MR. K.M. ANTANI, AGP, ADVANCE COPY SERVED TO GOVERNMENT
 PLEADER/PP for the Respondent(s) No. 1
 MR NAMAN K BRAHMBHATT(11307) for the Respondent(s) No. 3
 NOTICE SERVED for the Respondent(s) No.
 10,11,12,13,14,15,16,17,18,19,2,4,5,6,7,8,9

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 06/07/2022

COMMON ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. In these appeals, the issue relates to No Confidence Motion moved by 10 councilors of Amod Municipality against the President and Vice President who are elected as such in

the election held on 17.03.2021. The said No Confidence Motion was moved on 09.02.2022 which came to be placed before Special General Meeting conveyed by the Vice President vide special meeting notice dated 25.02.2022 to hold the meeting on 03.03.2022. In the said Special General Meeting held on 03.03.2022, all the 24 members remained present, wherein No Confidence Motion moved against President and Vice President was taken up and came to be supported by 17 councilors out of 24 councilors and as such motion of No Confidence was successfully moved. This was challenged by one of members before the Regional Commissioner, Surat Zone, and he stayed the resolution of no-confidence by order dated 09.03.2022. The order of the Regional Commissioner came to be challenged before the learned Single Judge in Special Civil Application No. 5286 of 2022, wherein initially learned Single Judge stayed the order dated 09.03.2022 passed by the Regional Commissioner and subsequently by order dated 16.03.2022, the Special Civil Application came to be allowed. During the interregnum, the resolution of No Confidence Motion successfully moved on 03.03.2022 came to be challenged by filing two separate

petitions in Special Civil Application Nos. 5606 of 2022 and 5610 of 2022 by the President and Vice President against whom the No Confidence Motion had been moved. The said petitions came to be allowed by the learned Single Judge by order dated 25.04.2022 by quashing the motion of No Confidence which had already been passed on 03.03.2022 principally on the ground that said No Confidence Motion had been brought in a short span of less than a year and by relying upon the principles enunciated by the Coordinate Bench in the case of ***Shivangiben Chetankumar Patel Vs. State of Gujarat & Ors.*** reported in ***2018 (2) GLH 523***, wherein the provision of Gujarat Panchayats Act, 1993 was under consideration, whereas in the instant case, Section 36 of Act governed the subject relating to Motion of No Confidence against the President and Vice President of a Municipality. The said provision reads : -

“Section 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 thereunder, 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)."

2. A plain reading of the above provision would clearly indicate that any councilor of a municipality is empowered to move a motion of no confidence against its president or vice-president and can give a notice thereof, in such form as may be prescribed by the State Government, to the municipality and said motion of notice requires to be supported by not less than one-third of the total number of the councillors of a municipality. On such motion being carried by a majority of not less than two-thirds of the total number of the councillors of the municipality, the President or the Vice President as the case may be shall cease to hold office after a period of three days from the date on which the motion is carried unless during the interregnum, he resigns and thereupon the office held by him is deemed to have fallen vacant. Sub-section (3) of Section 36 mandates that neither the the President nor the

Vice President would be empowered to preside over a meeting in which a motion of no confidence is moved against him / them which is being discussed, but shall have the right to speak or otherwise take part in the proceedings of such meeting including the right to vote.

3. Perusal of the order of the learned Single Judge would clearly indicate that resolution of Municipality dated 03.03.2002 has been set aside by relying upon the judgment of this Court rendered in the matter of **Shivangiben (supra)** and holding that principles enunciated in **Shivangiben's case (supra)** would squarely be applicable to present case as elections have been held within very short span of assuming the office and at present substantial period of tenure is over and only few days are left for completing the period of one year. Section 33 of the Act provides for term of office of President and Vice President and section 33(1)(a) provides the term of office of President and Vice President of the municipality shall be two and half years.

4. A contention came to be raised by the appellant

herein who was the respondent before the learned Single Judge to the effect that ***Shivangiben's case (supra)*** relied upon by respondents before the learned Single Judge had no application and the period of one year indicated in ***Shivangiben's case (supra)*** would not be applicable and the existing provision namely Section 36 does not indicate of any prohibition to the elected councilor to move a no confidence motion against a President and Vice President within a period of one year. It is in this background, the learned Single Judge has held that the Division Bench had read down Section 56 of the Gujarat Panchayats Act, 1993 which is akin or similar to the provision of Section 36 of Gujarat Municipalities Act, 1963 and as such it would also cover the said issue and hence, No Confidence motion brought within one year from the date of election is required to be held as bad in law.

5. As noticed hereinabove and at the cost of repetition, it requires to be noticed that in the instant case, the facts revealed that Amod Municipality came to be constituted on 02.03.2021 and election of President and Vice President was held on 17.03.2021 and Sriyuths Maheshbhai and Ushaben

were duly elected as President and Vice President. The No Confidence Motion was moved by the requisite number of councilors on 09.02.2022. No doubt said No Confidence Motion was moved within one year from the date of their election. The provision of Section 36 does not place any embargo or prohibition for a councilor to move a No Confidence Motion that too within a prescribed period. The Coordinate Bench which has attempted to read down section 56 of Gujarat Panchayats Act, 1993 having regard to the Constitution (73rd Amendment) Act, 1992 was of the view that under the Gujarat Cooperative Societies Act, 1961 and the Gujarat Agricultural Produce Market Act, 1963, there is provision for prohibition of moving No Confidence Motion for a period of six months from the date of election and as such applying the doctrine to purposive interpretation to Section 56 of the Gujarat Panchayats Act, 1993, it came to be held as under : -

“30. To construe provision under Section 56 of the Gujarat Panchayats Act, 1993, by applying principle of purposive interpretation, we are of the view that unless elected Sarpanch is allowed to work for a reasonable time, he/she cannot be permitted to be removed by way of no confidence motion. It is fairly stated that while dealing with doctrine of purposive interpretation, construction of statute, as is well known, must subserve the test of justice and reasons. Equally, it is fairly settled principle of law that in a given case, with a view to give

complete and effective meaning to statutory provision, some words can be read into and some words can be subtracted."

6. We are of the considered view that Courts would not legislate and it is the domain of legislative. It is trite law that if language of a Statute is simple and clear. Courts would not add or subtract anything. In ***Hiralal Rattanlal Etc. Etc. vs State of U.P. and Anr. Etc. Etc. reported in (1973) 1 SCC 216***, Hon'ble Apex Court observed : -

"22. It was next urged that on a true contribution of Explanation II to Section 3-D, no charge can be said to have been created on the purchases of split or processed pulses. It was firstly contended that an Explanation cannot extend the scope of the main section; it can only explain that section. In construing a statutory provision, the first and foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so called proviso has substantially altered the main section. In Commissioner of Income-tax, Bombay City, Bombay v. Bipinchandra Maganlal & Co. Ltd., Bombay, this Court held that by the fiction in Section 10(2) (vii) second proviso read with Section 2 (6C) of the Indian Income-tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income."

7. In the matter of ***B. Premanand & Ors vs Mohan Koikal***

& Ors. reported in (2011) 4 SCC 266, Hon'ble Apex Court

has observed : -

"9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation CIVIL APPEAL NO. 2684 OF 2007 other than the literal rule, vide Swedish Match AB v. SEBI, AIR 2004 SC 4219."

*"18. In **Jinia Keotin & Ors. vs Kumar Sitaram Manjhi & Ors.** reported in (2003) 1 SCC 730, this Court observed :*

"48. The Court cannot legislate under the garb of interpretation."

Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron."

- 8.** It requires to be noticed that function of the Court is only to expound the law and not to legislate. It is cardinal principle of interpretation of Statute that the work of a Statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of

the Statute to suggest to the contrary. The legislative is presumed to have made no mistake where the legislative intent is clear from the language, the Court should give effect to it.

9. Section 56 of the Gujarat Panchayats Act, 1993 or Section 36 of the Gujarat Municipalities Act, 1963 does not place any embargo of time limit on an elected councilor to move a No Confidence Motion with requisite number of members / councilors. If the legislature has felt that there should be no time limit fixed, the Courts under the garb of purposive interpretation cannot legislate and place any such embargo.

10. Hence, we are of the considered view that the judgment of Coordinate Bench in ***Shivangiben Chetankumar Patel Vs. State of Gujarat & Ors.*** disposed of on 09.05.2018 reported in **2018 (2) GLH 523** would be contrary to settled principles of law and as such the said judgment having been rendered by the Coordinate Bench, we are of the considered view this requires consideration by a Larger Bench. Hence, we direct this issue to be resolved by

Larger Bench, particularly when this order of Division Bench having not been stayed by the Hon'ble Apex Court in Petition(s) though Special Leave to Appeal (C) No(s). 14892 of 2018 is pending before the Hon'ble Apex Court, whereunder liberty has been given to the Councillors of Amod Municipality to move a fresh No Confidence Motion.

- 11.** Hence, this issue requires to be resolved by the Larger Bench and direct the Registry to place this matter on the Administrative side for placing this matter before the appropriate Bench that may be constituted.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

AMAR SINGH