

Reserved On : 25/07/2025

Pronounced On : 01/08/2025

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****R/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****R/SPECIAL CIVIL APPLICATION NO. 5610 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL****With****HONOURABLE MR. JUSTICE A.S. SUPEHIA****and****HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

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Approved for Reporting	Yes	No
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MAHENDRABHAI RAMJIBHAI DESAI**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR. DEEPAK SANCHELA, ADV. WITH MR. DINESH GAUTAM, ADV. WITH MR
HARIBHAI J PATEL(9810) for the Appellant(s) No. 1****MR. G.H.VIRK, GP WITH MS. DHARITRI PANCHOLI, AGP for the Respondent(s)
No. 1,2****MR. KIRTAN H MISTRY(10012) 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****MR. NAMAN K. BRAHMBHATT FOR RESPONDENT NO.3 IN CA/1/2022**

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

This larger bench has been constituted on a reference made by the Division bench vide judgment and order dated 06.07.222 in the abovementioned two letters patent appeals, wherein the judgment and order dated 25.04.2022 passed by the learned Single judge, relying on the Division bench decision in **Shivangiben Chetankumar Patel v/s. State of Gujarat and others** reported in **2019 (2) GLH 523**, is subject matter of challenge.

2. The question referred to the larger bench is that :-

“Whether the judgment of the Division Bench in **Shivangiben (supra)** disposed of on 09.05.2018 would be contrary to the settled principles of law?”

3. It was noted by the Division bench in the referral order dated 06.07.2022 that the decision of this Court in **Shivangiben(supra)** has been challenged before the Apex Court in Special leave to appeal (C)No(s). 14892 of 2018, wherein no stay has been granted.

4. The brief facts pertaining to the controversy before the learned single Judge are relevant to be noted for our purposes

before entering into the above noted question referred to us. The two connected letters patent appeals, wherein the reference was made vide judgment and order dated 06.07.2022, are arising out of two writ petitions namely SCA No. 5606 of 2022 and SCA No. 5610 of 2022. As in both the writ petitions, identical questions were raised about the validity of the No-Confidence motion dated 03.03.2022 against the petitioners therein namely, elected President and Vice President of Aamod Municipality, both were decided by a common judgment and order dated 25.04.2022 passed by the learned Single judge.

5. The facts in brief are that in the election of Aamod Municipality consisting of 24 members, results were declared vide notification dated 02.03.2021. Further, election of the President and Vice President was held on 13.07.2021. The motion of No-Confidence was moved by 12 Members against both the President and Vice President of Aamod Municipality on 09.02.2022 invoking Section 36(1) of the Gujarat Municipalities Act, 1963 (the Act' 1963). On such a motion, a Special general meeting came to be convened on 03.03.2022 as per Section 51(2) of the Act, 1963, for which a notice dated 25.02.2022 as required under the Act, came to be issued. In the Special general meeting held on 03.03.2022, all 24 elected members remained present and the motion of No-Confidence came to be passed by a majority of 17 Members supporting the motion, meaning thereby 2/3rd majority of the members supported the No-Confidence motion.

6. On a challenge to the validity of the No-Confidence motion against the petitioners namely the President and the Vice President of the Municipality, the learned Single judge has simply relied upon the decision of the Division bench in **Shivangiben (supra)** and has proceeded to hold that the Court sees no reason to deviate from the view expressed by the Division bench in **Shivangiben (supra)** as relied upon in another judgment in **Narenbhai Gunvantlal Jayaswal vs. State of Gujarat**, an unreported judgment passed in **SCA No. 1994 of 2021**. The motion of No-Confidence dated 03.03.2022 was quashed and set aside by the writ court relying upon the statement of law in **Shivangiben (supra)**, on the ground that the same was brought within a period of one year from the date on which the petitioners (President and Vice President) were elected.

7. Having noted the above, we are required to take note of the fact that in Special leave to appeal (C) No.(s) 14892 of 2018, the judgment and order dated 09.05.2018 passed by the Division bench in **Shivangiben (supra)** has been subjected to challenge. A three Judges Bench of the Apex Court presided over by the Hon'ble the Chief Justice of India, while issuing notice in the SLP, has observed in the order dated 02.07.2018 as under:-

“Issue notice.

Pendency of this special leave petition would not debar the petitioners to move another No Confidence Motion in accordance with law, if they are so advised.”

8. Taking note of the above fact, we find that the question

as to whether the statement of law made by the Division bench in **Shivangiben (supra)** construing the provisions of Section 56 of the Gujarat Panchayats Act, 1993 providing that the period of one year from the date of declaration of the result should be considered as a reasonable time within which no motion of No-Confidence could be permitted for removal of an elected Sarpanch under Section 56 of the Gujarat Panchayats Act, 1993, keeping in mind the object of 73rd Constitutional Amendment Act, 1992, i.e. the continuity and stability of the Panchayat Raj Institutions, is a question which is directly and substantially in issue for consideration before the Apex Court.

9. From the discussion made in **Shivangiben (supra)**, we find that the Division bench has proceeded to examine the scheme of establishment of the Panchayat Raj Institutions by 73rd Constitutional Amendment Act, 1992 while making the said statement of law.

10. In our considered opinion, the question as to whether the statement of law in **Shivangiben (supra)** could have been applied by the learned Single judge in deciding the question of correctness of the No-Confidence motion brought against the President and Vice President of the Municipality elected under the scheme of the Gujarat Municipalities Act, 1963, is an independent question which ought to have been decided by the Division bench in the letters patent appeals for examining the correctness of the order of the learned Single judge.

11. A perusal of the referral order indicates that the issue argued before the Division bench in the appeals was that the law stated in **Shivangiben (supra)** has no application in the matter of bringing No-Confidence motion against the President and Vice President of the Municipality under the existing provision, namely Section 36 of the Gujarat Municipalities Act, 1963. To the contrary, it was argued that Section 36 of the Gujarat Municipalities Act, 1963 is akin or similar to the provisions of the Section 56 of the Gujarat Panchayats Act, 1993 and hence, the statement of law in **Shivangiben (supra)** was rightly applied by the learned Single judge to quash the No-Confidence motion against the President and the Vice President of the Municipality.

12. The issue referred to the larger bench in the referral order dated 06.07.2022, however, is only about the validity of the judgment and order dated 09.05.2018 passed by the Division bench in **Shivangiben (supra)** on the premise that the said decision is contrary to the settled principle of law as the function of the Court is only to expound the law and not to legislate and being a co-ordinate bench judgment, it requires reconsideration by a larger bench.

13. In our considered opinion, the validity or the correctness of the decision of the co-ordinate bench in **Shivangiben (supra)** rendered on 09.05.2018 being directly and substantially in issue before the Apex Court in the Special Leave Petition, wherein notices have been issued on 02.07.2018 by the Apex Court, it would be improper for us to

deliberate on the correctness of the decision in **Shivangiben (supra)**, which has been rendered in light of the scheme of the Gujarat Panchayats Act, 1963 in the matter of removal of Sarpanch by bringing No-Confidence motion within a period of one year from the date of declaration of the result of the election.

14. The question as to whether the statement of law in **Shivangiben (supra)** would have a binding effect on the Division bench in the letters patent appeals considering the validity of the decision of the learned Single judge, would be an independent question, which was required to be addressed by the appellate court. We are conscious of the provisions contained in Rules 5 and 6 of the Gujarat High Court Rules, 1993, which provide that a single Judge or a Division bench may refer any matter before him or question arising in the matter to a larger bench and there is no need to record any reason for doing so. We are also conscious of the procedure that the source of reference must be a judicial order passed by any bench while deciding a judicial matter.

15. The proper question which could have been framed and referred by the Division bench to the larger bench was as to whether the judgment rendered in **Shivangiben (supra)** under the scheme of Section 56 of the Gujarat Panchayats Act, 1993 having regard to the 73rd Constitutional Amendment Act, 1992, would have a binding value in the case of No-Confidence motion brought against the President and the Vice President of the Municipality under the scheme of Section 36

of the Gujarat Municipalities Act, 1963.

16. It may not be out of place to mention here that in one matter, namely the Letters Patent Appeal No. 642 of 2016, the Division bench of this Court while dealing with the challenge to the convening of the meeting of the Councilors of Jetpur-Navgadh Municipality on the requisition for No-Confidence motion under the provisions of the Gujarat Municipalities Act, 1963, has taken note of the rules framed by the Jetpur-Navagadh Municipality, which deals with the procedure for carrying out the No-Confidence motion under the Gujarat Municipalities Act, 1963. One of the reliefs prayed in the writ petition, out of which the said letters patent appeal had arisen, was to quash and declare the act of the Jetpur-Navagadh Municipality in framing the rules, specifically Rule 24 for carrying out the No-Confidence motion, being ultra vires/violative of the provisions of the Gujarat Municipalities Act, 1963.

17. The Division bench therein referring to Section 271(a) of the Gujarat Municipalities Act, 1963, has noted that the said provision empowers the Municipality to make rules regarding conduct of its business. Jetpur-Navagadh Municipality in exercise of the powers under Section 271(a) of the Gujarat Municipalities Act, 1963 has framed rules, which were approved by the competent authority and Rule 24 read with Rule 22(2) therein were applicable for No-Confidence motion as contemplated under Section 36 of the Gujarat Municipalities Act, 1963.

18. Thus, relying upon the rules framed under Section 271(a) of the Gujarat Municipalities Act, 1963, it was held therein that the No-Confidence motion moved under the provision of Section 36 of the Gujarat Municipalities Act, 1963, being specifically covered by the rules framed by Jetpur-Navagadh Municipality providing procedure for carrying out No-Confidence motion, shall be given effect to and No-Confidence motion moved being contrary to the provisions of the rules, was hence quashed.

19. No such inquiry has been made by the learned Single judge in the judgment impugned to find out the rules framed by the concerned Municipality, namely Aamod Municipality, if any, in exercise of the powers conferred under Section 271 of the Gujarat Municipalities Act, 1963.

20. We are, therefore, of the view that no question arising out of the controversy involved in the letters patent appeals, has been referred to us by the Division bench in the referral order dated 06.07.2022 and under the scheme of Rules 5 and 6 of the Gujarat High Court Rules 1993, we find that being a Referral Court, we are required to answer only the question referred to us. We, thus, find it difficult to answer the questions, which are arising for consideration of the appellate court in the facts and circumstances of the instant case.

21. Moreover, on any perceived conflict with the statement of law in **Shivangiben (supra)** faced by the appellate court, we do not find any reason to deliberate on the issue, which

has not been referred to us and, in our considered opinion, does not merit an authoritative exposition by a larger bench. In our considered opinion, the said issue can very well be adjudicated by the appellate court.

22. The only question referred to us, “that the judgment of the co-ordinate bench in **Shivangiben (supra)** disposed of on 09.05.2018 would be contrary to the settled principles of law”, cannot be answered by us in view of the foregoing observations.

23. The Reference stands answered, accordingly.

24. The letters patent appeals may now be placed before the appropriate Division bench for disposal in light of the above, which shall be independent of any of the observations made hereinbefore, which are confined to the issue before us.

(SUNITA AGARWAL, CJ)

(A. S. SUPEHIA, J)

(ANIRUDDHA P. MAYEE, J.)

C.M. JOSHI/pps