

HIGH COURT OF GUJARAT (D.B.)**POPATLAL DEVIDAN GANDAVI***Versus***SATISHKUMAR RAMESHCHANDRA AHIR****Date of Decision:** 13 January 1998**Citation:** 1998 LawSuit(Guj) 6**Hon'ble Judges:** [K G Balakrishnan](#), [A K Trivedi](#)**Eq. Citations:** 1998 2 GLR 1217, 1998 1 GLH 301, 1998 2 GCD 1136, 1998 AIHC 1718**Case Type:** Letters Patent Appeal; Special Civil Application**Case No:** 1632 of 1997; 1227 of 1997**Editor's Note:****Gujarat Municipalities Act, 1963 - Sec 37 - Councilor, President or vice-president - Removal permissible for misconduct in relation to the office only - Appeal dismissed****Acts Referred:**[Gujarat Municipalities Act, 1963 Sec 37](#)**Final Decision:** Appeal dismissed**Advocates:** [Jayant Patel](#), [Nanavati Associates](#), [R M Chhaya](#)**Cases Cited in (+): 3****Cases Referred in (+): 2****K. G. BALAKRISHNAN, J.**

[1] This is an appeal preferred by a third-party after having obtained leave of this Court. Respondent No. 1 was the President of the Municipal Corporation. An order was passed against him under Sec. 37(I)(b) of the Municipalities Act alleging that he had shown disgraceful conduct. The order was challenged by him before the learned single Judge and the learned single Judge allowed the Special Civil Application and held that merely because there happened to be registration of an offence against the 1 st respondent and when that offence was not alleged to have been committed by him in

discharge of his duties as Municipal Councillor, it was not open for the State Government to remove him under Sec. 37 of the Gujarat Municipalities Act.

[2] The judgment of the learned single Judge is under challenge by way of this Letters Patent Appeal before us.

[3] The learned Counsel for the appellant submitted that Sec. 37(l)(b) of the Act could be invoked against the President of the Municipality even if the disgraceful conduct is unconnected with his duties as the President of the Municipality. Section 37(l)(b) reads as under :

"Any President or Vice-President of a Municipality, if after giving the Councillor, President or as the case may be Vice-President, an opportunity of being heard and giving due notice in that behalf to the Municipality and after making such an inquiry as deems necessary, the State Government is of the opinion that the Councillor, President or as the case may be, Vice-President has been guilty of the misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act."

[4] The learned Counsel for the appellant placed reliance on a decision reported in AIR 1995 Guj. 118 : [1994 (2) GLR 1402] (Anishbhai Ishabhai Patel v. State of Gujarat & Ors.). In that case a similar provision contained in Gujarat Panchayats Act was interpreted by the learned single Judge and held that "disgraceful conduct" need not necessarily be connected with the official function of the Member of the Panchayat. It is held that the term "misconduct" mentioned in the Section must be misconduct in discharge of his duties, whereas "disgraceful conduct" is prefixed by the expression "any" and therefore, it need not necessarily be in the discharge of his duties. It is also held by the learned single Judge that "disgraceful conduct" shown in Sec. 49(1) of the Gujarat Panchayats Act would mean any allegation which because it is done by an elected member of the office-bearer is sufficiently reprehensible to be classified as "disgraceful".

[5] In an earlier decision of a Division Bench of this Court reported in 1983 (1) GLR 67 (Chimanbhai R. Patel v. Anand Municipality & Ors.) a contrary view was taken. In that case, Sec. 37 of the Gujarat Municipalities Act was interpreted and it was held that the misconduct or the disgraceful conduct must have connection to the official duties as a President of the Municipality. It was stated in para 5 of the judgment that act of misconduct or disgraceful conduct or the incapacity must relate to the office of which he is sought to be stripped under the aforesaid provision.

[6] In the present case admittedly, the allegation regarding disgraceful conduct has no relation to the duties and functions of the President of the Municipality. On going

through the Section, as stated above, it is clear that the President or the Vice-President, as the case may be, must have shown disgraceful conduct in relation to any act in discharge of his official duties. It is important to note that the President is an elected member of the people and he is holding such an office by virtue of the mandate given by the electorates. The State Government is given power of removal only if he has been guilty of misconduct in the discharge of his duties or he has shown disgraceful conduct in respect of his official duties or if he is incapable of performing his duties. A plain reading of the relevant portion would only convey the meaning that disgraceful conduct also should have connection to his official duties. The learned single Judge was perfectly justified in taking that view. No other point was urged by the appellant. The L.P.A. is dismissed.

Appeal dismissed.

