

HIGH COURT OF GUJARAT (D.B.)

LALITABEN HAMIRBHAI MAKWANA

Versus

ELECTION OFFICER AND CITY DEPUTY COLLECTOR (WEST), AHMEDABAD

Date of Decision: 19 January 2024

Citation: 2024 LawSuit(Guj) 109

Hon'ble Judges: [Umesh A Trivedi](#), [Rajendra M Sareen](#)

Case Type: Special Civil Application

Case No: 7658 of 2022

Subject: Constitution

Editor's Note:

Gujarat Provincial Municipal Corporations Act, 1949 Sec. 16, Sec. 403, Sec. 418- Special Civil Application challenged ordered to issue witness summons- petitioner has suppressed her marital status and filled the nomination form on oath- Election Tribunal has exercised discretion - Judge may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents- petition is rejected. [Para 2, 4, 5, 8]

Law Point :- For the purposes of any inquiry or proceeding under this Act, the Judge may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents, by the same means and, as far as is possible.

Acts Referred:

[Constitution Of India Art 227, Art 226](#)

[Gujarat Provincial Municipal Corporations Act, 1949 Sec 16, Sec 403, Sec 418](#)

Final Decision: Petition dismissed

Advocates: [Rohan Lavkumar](#), [Nanavati Associates](#), [Rituraj M Meena](#), [Y N Ravani](#)

Cases Referred in (+): 3

Umesh A. Trivedi, J.

[1] By way of this petition, though stated to be under Articles 226 and 227 of the Constitution of India, an order dated 16.03.2022 passed by the Chief Judge, Small Causes Court, Ahmedabad below Exh. 24 in Election Petition No. 5 of 2021, is challenged by the petitioner, who is elected as a Councillor, whereby the learned Judge ordered to issue witness summons to Palabhai Jivabhai Parmar as mentioned in paragraph no.3(a) of application Exh. 24.

[2] The petitioner as also respondent no.3 herein, are candidates contesting election of Councilor from Ward no.6 Nava Vadaj of Ahmedabad Municipal Corporation, which was conducted on 21.02.2021. The result thereof came to be declared on 23.02.2021, wherein, the petitioner herein was declared elected as Coucillor of Ward no.6, Nava Vadaj of AMC. Being aggrieved by the outcome of election, respondent no.3 herein filed Election Petition no.5 of 2021 before the Small Causes Court, Ahmedabad under Section 16 of the Gujarat Provincial Municipal Corporations Act, 1949 (hereinafter referred as 'the Act'). During pendency of the same, vide application Exh - 24, respondent no.3, as election petitioner before the Election Tribunal, applied for issuance of witness summons to one Palabhai Jivabhai Parmar, who claimed to be the father-in-law of the petitioner, as according to the case of election petitioner i.e. respondent no.3 herein, the petitioner has suppressed her marital status and filled the nomination form on oath, which is incorrect. To prove the marital status of the petitioner herein, a request was made to issue witness summons. The learned judge, after hearing both the parties before it, vide impugned order, allowed the application Exh. 24 and directed the witness summons to be issued to the person named in paragraph no.3(a) of the application Exh. 24. It is that very order, which is under challenge, before this Court, by the petitioner.

[3] Mr. Rohan Lavkumar for Nanavati Associates, learned advocate for the petitioner vehemently submitted that for any Election Petition filed under Section 16 of 'the Act', summary inquiry is provided for, and therefore, it has to be conducted as inquiry based on pleadings and production of documents only.

3.1 It is further submitted that the inquiry as provided under Section 16 of 'the Act' is not a trial, and therefore, no witnesses can be examined even on the request made by any of the parties for the purpose of deciding the Election Petition by the learned Election Tribunal.

3.2 In support of his aforesaid submission, Mr. Rohan Lavkumar, learned advocate for the petitioner has relied on the decision of the Madras High Court in the case of Aurobindo Ashram Trust represented by Managing Trustee Mr. Harikant C Patel and another Vs. Kamal Dora, 2000 3 CTC 160 more particularly, paragraph nos.9 and 10 thereof. It is submitted that issuance of summons for examining witnesses is not

automatic but the Court is supposed to examine the bona fides of the requests to issue witness summons. It is further submitted that, based on the very same decision, respondent no.3 herein is trying to irritate, harass the petitioner and malign her as it is her case that she has never married but it was incumbent upon the Court before issuing witness summons to ascertain bona fides of respondent no.3 herein.

3.3 Another decision in the case of Saifuneessa Vs Assain N.K and others, 2019 SCCOnlineKer 5904 is relied upon, more particularly, paragraph no.12 thereof. It is submitted that Election Petition is not an action at law or a suit in equity, and therefore, no witnesses can be examined. There cannot be resort to the provisions of the Code of Civil Procedure, 1908. Therefore, the order impugned passed by the learned Tribunal is illegal. Therefore, he has submitted that the impugned order passed by the learned Judge below Exh. 24, issuing witness summons, be quashed and set aside and the petition be allowed.

3.4 At the same time, Mr. Rohan Lavkumar had drawn attention of this Court to the order dated 03.10.2022. It is submitted that despite this Court directed respondent no.3 to produce the affidavit, which was filed before the Election Tribunal at Exh. 22/1, before this Court and a separate affidavit of that very witness Palabhai Jivabhai was also directed to be filed stating that petitioner is his daughter-in-law. Despite the order by this Court, respondent no.3 produced affidavit at Exh. 22/1 of Palabhai Jivabhai but no separate affidavit of him along with sufficient proof about the so-called marriage solemnized with his son Rameshbhai Palabhai came to be produced. Therefore, it is submitted that it is nothing but an attempt to harass the petitioner, the witness summons is sought to be issued by respondent no.3 herein, and therefore, the impugned order is required to be quashed and set aside with exemplary cost to be paid by respondent no.3 herein i.e. the original election petitioner.

[4] Mr. Y.N Ravani, learned advocate for respondent no.3, submitted that in an order issuing witness summons on an application preferred by the election petitioner, the Election Tribunal has exercised discretion for the purpose of conducting inquiry before it, which cannot be interfered with, more particularly, when it is a petition filed under Article 227 of the Constitution of India before this Court. He has further submitted that even if any inquiry is to be conducted in the Election Petition under Section 16 of 'the Act', when election of a Councillor is challenged, to prove that elected Councillor has filed false affidavit along with her nomination paper, there has to be an evidence before this Court i.e. oral and documentary. Under the circumstances, the issuance of summons to witness for oral evidence in respect of issue at large in the Election

Petition, nothing illegal is committed by the learned Judge, and therefore, present petition is required to be rejected summarily with cost.

4.1 In support of his submissions, Mr. Ravani learned advocate for respondent no.3 relied upon the decision in case of Kailash Vs. Nanhku and others, 2005 4 SCC 480, more particularly, paragraph no.7 thereof, for a proposition that Election Petition is a civil trial, and therefore, the provisions of the Code of Civil Procedure, 1908, would apply to the trial under Election Petition unless specifically barred by the special law i.e. 'the Act'. It is further submitted that so long as applicability of CPC is not barred specifically, broadly all the provisions of CPC would be applicable for the purpose of the inquiries or trials, more particularly, when an election petition is considered to be civil trial. It is further submitted that though the aforesaid decision is pertaining to Election Petition under the Representation of Peoples Act, 1951, nonetheless all Election Petitions where remedies are provided for challenge to the elected persons of local self government, it is to be treated as civil trial. Therefore, order issuing witness summons by the learned Judge cannot be found fault with and therefore, it is prayed to reject the petition.

[5] Having heard learned advocates appearing for the respective parties and going through 'the Act' as well as the Code of Civil Procedure, 1908 and the materials annexed with the petition, it emerges that when the purpose for which witness is required to be called is already mentioned in the application below Exh. 24, as well as in the affidavit of the witness, who is requested to be examined also produced along with it, the purpose can be spelt out from it.

5.1 It is pertinent to note here that the petitioner herein vide Exh.27, filed reply to Exh. 24 objecting to issuance of witness summons to Palabhai Jivabhai, but nowhere any dispute with regard to the purpose for which he is being examined or her marital status is disputed in writing by the petitioner herein. Therefore, permitting the witness to be examined for the purpose of false claim made in the nomination form with regard to the marital status, when witness is to be examined, in absence of any denial of the said status in reply to Application Exh.24 in writing, no fault can be found with the impugned order. At the same time, it is not the case of the petitioner that he is being examined as a witness for the purpose of irritating or harassing the petitioner, as orally submitted.

5.2 The procedure prescribed under Section 403 of 'the Act' has not restricted the applicability of 'the Act' under which witness summons is being issued to examine the witnesses named therein. At the same time, it would be profitable to refer Section 418 of 'the Act', which reads as under:

"418. Power to summon witnesses and compel production of documents

(1) For the purpose of any inquiry or proceeding under this Act (emphasis by us), the Judge may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents, by the same means and , as far as is possible, in the same manner as is provided in the case of a Court of Small Causes by or under the relevant Small Cause Courts Act and in all matters relating to any such inquiry or proceeding the Judge shall be guided generally by the provisions of the said Act so far as the same are applicable.

(2) If, in any such inquiry or proceeding, the person against whom the complaint or application had been made fails to appear, notwithstanding that he has been duly summoned for this purpose, the Judge may hear and determine the case in his absence.

(3) The costs of every such inquiry or proceeding as determined by the Judge shall be payable by such parties and in such proportions as the Judge shall direct and the amount thereof shall, if necessary, be recoverable as if the same were due under a decree of a Court of Small Causes constituted under [the relevant Small Causes Courts Act];

Provided that, if such inquiry or proceeding relates to a dispute regarding expenses declared to be improvement expenses by or under any provisions of this Act, the amount of the costs directed by the Judge to be paid by the owner or occupier of the premises on respect of which or for the benefit of which the improvement expenses were incurred shall be a charge on such premises and may also be recovered in the manner prescribed in Section 442. "

[6]

6.4 Looking to the aforesaid provisions, it is very clear that for the purpose of any inquiry or proceedings under 'the Act', the Judge may summon and enforce the attendance of witnesses and compel them to give evidence as also production of documents. Therefore, it is very clear that even if it is Election Petition under Section 16 of 'the Act', it is to be considered as an inquiry under 'the Act', and therefore, learned judge conducting an inquiry is empowered to issue witness summons as provided under Section 418 of 'the Act'. Though section 418 of 'the Act' falls within Part VI titled as 'proceedings before the Judge'; falls under Chapter XXVI, nonetheless, it applies to all the inquiries and proceedings under 'the Act'.

[7] Reliance placed on the decision in the case of **Shri Aurobindo (Supra)** is misplaced as purpose for which witness summons is proposed to be issued is already

revealed in the application Exh. 24, as also affidavit of the witness annexed with the same and copy of which is served to the petitioner herein, and therefore, it cannot be said that witness is being examined with a view to irritate or harass the petitioner. At any rate the said decision cannot be applied to the facts of the present case, as it is determined in that very context.

7.1 The decision in the case of **Saifuneessa (Supra)** relied upon by the learned advocate for the petitioner, to submit that the Election Petition is not an action at law or issue in equity but as held herein above, the Election Petition is a civil trial and more particularly, when provisions under which the Election Petition is filed also provides for power to issue witness summons by the learned judge.

[8] The aforesaid decisions are not applicable to the facts of the present case. Therefore, we find no substance in the submission that no witness summons could have been issued by the learned Judge as it is an inquiry and not trial and no provisions of Code of Civil Procedure, 1908 would apply. Therefore the petition merits no consideration, that too, while exercising jurisdiction under Article 227 of the Constitution of India, therefore, the present petition is hereby rejected. Notice is discharged. Interim relief granted earlier, if any, shall stands vacated.