

**HIGH COURT OF GUJARAT (D.B.)****RAVAL NATHABHAI VAGHABHAI***Versus***DESAI KARMANBHAI HARIBHAI****Date of Decision:** 28 February 2008**Citation:** 2008 LawSuit(Guj) 578**Hon'ble Judges:** [D A Mehta](#), [Z K Saiyed](#)**Case Type:** Special Civil Application**Case No:** 24774 of 2007; 24775 of 2007**Final Decision:** Petition allowed**Advocates:** [Y N Ravani](#), [Nisha Parikh](#), [R C Jani](#)**D. A. MEHTA**

**[1]** Both these petitions are taken up for hearing together as they arise out of common proceedings before the Subordinate Court in Election Petition No. 2 of 2007.

**[2]** On 19.3.2007, a Notification for election of Village Panchayats (Rural) of Sami Taluka was published. Pursuant to the said Notification, election took place on 8.4.2007. The election was contested by the petitioner and respondent no. 3. After the counting on 10.4.2007, the petitioner was declared as winner having secured 36 votes more than respondent no. 3. On 3.5.2007, Election Petition No. 2 of 2007 came to be preferred by respondent no. 3 in the Court of Principal Civil Judge, Harij. The petitioner, respondent defendant in the said Election Petition, filed written statement. On 27.7.2007, respondent no. 3 moved an application being Application Ex. 20. In the said application, respondent no. 3 had prayed to call for the ballot box and direct re-counting of votes. Respondent no. 3 had further stated that the respondent no. 3 was ready and willing to bear the expenses of calling for the ballot box and re-counting. On 18.8.2007, the trial court made an order, whereby, application ex. 20 is stated to have been allowed; respondent no. 3 has been directed to deposit a sum of Rs. 2500/- within a period of 7 days from the date of the order; and upon the aforesaid amount being deposited, the Registrar, Civil Court, Harji has been directed to call for the ballot box.

**[3]** Therefore, the petitioner moved an application on the same day seeking stay of the order dated 18.8.2007 made on application ex. 20. It is recorded in paragraph No.3 of the order that the only order that has been made is to call for the ballot box, re-counting is not to be undertaken at present. But, as the application moved by respondent no. 3 has not been finally decided, it is not necessary to accept the application moved by the petitioner to stay the first order dated 18.8.2007.

**[4]** Heard the learned advocates appearing for the respective parties. Mr RC Jani learned advocate appearing on behalf of respondent no. 3 submitted that though respondent no. 3 has tried to comply with the requirements of Election Rules, more particularly, Rule 6(1) of the Election Rules, the Election Officer had not permitted respondent no. 3 to tender the application and hence, respondent no. 3 was forced to approach the Civil Court.

**[5]** In light of the view that the Court is inclined to adopt, it is not necessary to record any finding as to merits of the aforesaid submissions. Suffice it to state that whether respondent No. 3 had or had not approached the Election Officer is a fact or not, is an issue which can be decided by the trial court after the Election Officer, who is a party in the proceedings before the trial court, is granted an opportunity to meet with the said allegations made by respondent no. 3 and, for which, evidence will have to be led by either side.

**[6]** However, what is more important is the fact that the trial court has contradicted itself by passing two diametrically opposite orders on the same day, that is, dated 18.8.2007. The first order below application Ex. 20 records in the first sentence that the application is allowed, as against that, in the second order dated 18.8.2007 in relation to the stay of operation of earlier order made, the trial court states that application is yet to be heard and decided and only ballot box has been called for. Thus, it is apparent that the trial court has failed to apply its mind to the issue raised before it considering the fact that, on behalf of the petitioner as well as State Authority, various contentions were raised before the trial court as to why the prayers made in Application ex. 20 were not required to be granted. One of the preliminary objection was respondent no. 3 not being entitled, respondent no. 3 having moved the trial court without having taken recourse to the requirements of the Election Rules. If there was a dispute in relation to this aspect of the matter, the trial court was bound to decide the same at the threshold before proceeding further.

**[7]** In the circumstances, without expressing any final opinion on the merits of the issue, the impugned order dated 18.8.2007 made below application ex. 20 is quashed and set aside. The Trial Court is directed to hear all the parties in relation to Application Ex. 20 and record clear and distinct finding as to the preliminary contention raised

before it and pass a speaking order in accordance with law. Both the petitions are allowed accordingly in the aforesaid terms. Rule made absolute to the above extent only. No order as to costs.

