

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 239 of 2017

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SANDIPKUMAR KIRANKUMAR SHARMA....Applicant(s)

Versus

STATE ELECTION COMMISSION, & 2....Opponent(s)

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Appearance:

MS SNEHA A JOSHI, ADVOCATE for Applicant

MR KAMAL B TRIVEDI, ADVOCATE GENERAL with MS SANGITA VISHEN,
ASSISTANT GOVERNMENT PLEADER for Opponent No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH
REDDY**
and
HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 15/11/2017

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY)

1. This petition is filed by way of Public Interest Litigation with the prayers, which read as under:

"a. Be pleased to admit this petition.

b. Your Lordships may be pleased to issue a writ of Mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction directing the respondent no.2 for postponement of the meeting and further if the decisions taken whereof, the same should not be declared publicly till the election is over in the interest of

justice.

c. Your Lordships may be pleased to declare that whatever decision may be taken by the respondent's especially respondent no.2 GST Council may be declared as null and void and is requires to be quashed and set aside in the interest.

d. Pending admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to issue suitable direction in the interest of justice.

e. Such and further relief(s) that is just deems fit may be granted."

2. This petition is filed by impleading the State Election Commission as the 1st respondent, Chairman of the Goods and Services Tax Council as the 2nd respondent and the Secretary, Ministry of Finance as the 3rd respondent. The Goods and Services Tax Council, a body constituted under the provisions of the Constitution of India, held its 23rd meeting at Guwahati on 9th and 10th November, 2017. This petition was filed on 10.11.2017.

3. As much as the meeting was already held

on 9th and 10th of November, 2017, the relief sought for in paragraph 13(b) of the petition has become infructuous. In the relief sought for in paragraph 13(c) of the petition, the petitioner prayed to declare the decisions taken by the 2nd respondent-Council, as null and void and also to quash the same.

4. Such relief is sought on the ground that, the 1st respondent Election Commission has already notified the Code of Conduct of elections to Gujarat Legislative Assembly to be held on 9th and 14th December, 2017 and Election Code is in operation. It is the case of the petitioner that only as a political strategy, such meeting was conducted in violation of the Code of Conduct. It is alleged that the recommendations made in the 9th and 10th November, 2017 Council meeting are only to appease the voters in the ensuing elections.

5. We have heard Ms. Sneha Joshi, learned

counsel for the petitioner and Mr. Kamal B. Trivedi, learned Advocate General appearing with Ms. Sangeeta Vishen, learned Assistant Government Pleader, appearing on advance copy served on the government.

6. As the papers are served on the learned Advocate General, he is present when the matter is called and it is brought to our notice that the Goods and Services Tax Council is an independent body constituted under Article 279A of the Constitution. It is stated that the Goods and Services Tax Council regularly meets to make its recommendations and said recommendations are ultimately to be accepted by the government. It is submitted that as much as the Goods and Services Tax Council is an independent body, which is required to meet periodically, to make its recommendations, in terms of Article 279A of the Constitution of India, it cannot be said that the recommendations made by the Goods and Services

Tax Council are in violation of the Code of Conduct. It is submitted that earlier, 22 meetings were already held by the Council and the meeting held on 9th and 10th November, 2017 was the 23rd meeting at Guwahati.

7. By virtue of constitutional amendment, Article 279A is inserted, which empowers the Hon'ble President to constitute a Council to be called the Goods and Services Tax Council. Under Article 279A(4), Goods and Services Tax Council is empowered to make its recommendations to the Union and the States, on taxes, cesses and surcharges etc. As per Article 279A(9), every decision of the Council is to be taken in a meeting, where majority of not less than three-fourths of the weighted votes of the members present and voted.

8. The recommendations made by the Council are ultimately to be accepted by the government. Merely because the Council has met

and made its recommendations, it cannot be said that such recommendations and steps taken by the Council are in violation of the model Code of Conduct, which is in operation in the State of Gujarat. The Council is a constitutional body and is constituted only for the purpose of making recommendations by holding meetings. When 22 meetings were already held and 23rd meeting was scheduled on 9th and 10th November, 2017 at Guwahati and such recommendations are made for making suggestions to the Union and the States on taxes, cesses and surcharges etc., it cannot be said that same will violate the Code of Conduct, which is in operation in the State of Gujarat.

9. Further, it is also brought to our notice by the learned Advocate General that earlier, when elections were to be held in the States of Uttar Pradesh, Punjab & Haryana etc., a petition by way of Writ Petition (Civil) No.18 of 2017 was filed before the Hon'ble

Supreme Court in which, relief was sought to stop the presentation of the Budget, on the eve of elections, alleging that the same will influence the voters. Same was dismissed at the stage of admission by order dated 23rd January 2017. A copy of the order is also produced during the course of hearing. In any event, when the body constituted under the Constitution is required to meet periodically to make its recommendations to the Union and all the States, it cannot be said that such meeting was held and recommendations were made, only to appease the voters in the ensuing election in the State of Gujarat. There is also no basis for making allegations by the petitioner. In that view of the matter, we do not find any merit in this petition and the same is accordingly dismissed at the stage of admission. No order as to costs.

(R. SUBHASH REDDY, CJ)

RADHAN

(VIPUL M. PANCHOLI, J.)

