

(2004) 10 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 3239 of 2004

Ajit Jayantibhai Patel

APPELLANT

Vs

Arvindbhai Devjibhai Rohit

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 59, 59(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 223, 307

Citation : (2005) 104 FLR 727

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : P.K. Jani, for the Appellant; Dharendra Mehta, for Respondent No. 1, Mehta, for Respondent No. 1, H.S. Munshaw and Gori, Asst. Government Pleader, for the Respondent

Judgement

Jayant Patel, J.—With the consent of learned advocates for the parties matter is finally heard today.

2. The short facts of the case appear to that the complaint was filed against the respondent No. 1 for offence under Prevention of Corruption Act and on the basis of the same, ACB, Baroda had investigated the matter. It appears that as such the respondent No. 1 was holding the post of Sarpanch at the Gram Panchayat. The DDO in exercise of powers u/s 59(1) of the Gujarat Panchayats Act (hereinafter referred to as "the Act") suspended the respondent No. 1 from the post of Sarpanch. The said order dated 23.1.2004 is produced by the learned counsel appearing for the respondent No. 1. It appears that the respondent No. 1 carried the matter before the Addl. Devp. Commissioner and the Addl. Devp. Commissioner found that the decisions of this court in the case of Naranbhai Veljibhai Chaudhary v. R.S. Vaghela and Ors. reported in 1997 GLR 599 and in the case of Bikhumiya Sarfumiya Malek v. Dist. Devp. Officer, Mehsana reported in 1999(3) GLR 2693 are not considered and he further found that the opportunity of hearing has not been given to the respondent No. 1 and it was observed by the Devp. Commissioner that had the opportunity of hearing given proper facts

and circumstances could have been examined and for the purpose of giving opportunity of hearing he also has referred to the Govt. Circular dated 5.6.96 instructing to give opportunity of hearing before exercising power u/s 59 of the Act. The petitioner who is an ex-Sarpanch of the village Pathiyapura has approached this court by preferring the present petition challenging the order passed by the Devp. Commissioner.

3. Upon hearing the learned counsel appearing for the parties it appears that there is no dispute on the point that the opportunity of hearing was not given by the DDO before the order u/s 59 is passed. Even the perusal of the order, dated 23.1.2004 u/s 59 of the Act passed by the DDO shows that it has not referred to any show cause notice or opportunity of hearing. Mr. Mehta, learned counsel appearing for the respondent No. 1 relied upon the decision of this court (Coram: M.R. Shah, J) dated 21.7.04 in SCA No. 5602/04 in case of Dalsingji Godarbhai Chaqudhary v. DDO for supporting his contention that the opportunity of hearing was required to be given by the DDO before exercising power and he submitted that therefore the Devp. Commissioner has rightly passed the order setting aside the order of the DDO. The perusal of the said decision, dated 21.7.04 in case of Dalsingji Chaudhary (supra) shows that at para 6 it has been observed as under:

"It is true that a criminal complaint has been filed against the petitioner for the offences punishable u/s 307 read with Sections 147, 148, 149 and 223 of the IPC. However, the fact remains that before passing the impugned order, the Dist. Devp. Officer has not given any show cause notice and no opportunity of being heard has been given to the petitioner. When the Sarpanch is required to be suspended u/s 59 of the Gujarat Panchayat Act it will entail civil consequences and the under circumstances, an opportunity of being heard ought to have been given by the DDO before suspending the petitioner u/s 59 of the Gujarat Panchayat Act."

4. Therefore, if the opportunity of hearing is not given, it can not be said that the Development Commissioner has committed any error to the extent of setting aside the order passed by the DDO. However, when the order is set aside on the ground of non-observance of principles of natural justice in normal circumstances it would be a case to remand the matter after giving opportunity of hearing to the party concerned. Even while referring to the aforesaid two decisions of this court in the matter of Naranbhai Veljibhai Chaudhary (supra) and Bikhumiya Sarfumiya Malek(supra), it has not been found by the Development Commissioner that there are no circumstances for exercise of power u/s 59, but what is observed by the Devp. Commissioner is that the facts and circumstances should have been considered. Incidentally observations are made that the proceedings are initiated on account of personal rivalry, but no opportunity of hearing is given. Therefore, in a case where the appellate authority found that opportunity of hearing is not given and the authority has not arrived at a decision after giving opportunity of hearing, the matter may be required to be considered afresh by remanding the matter to the DDO and the Development Commissioner

has committed error in allowing the appeal in toto without giving directions to the DDO to issue show cause notice and to give opportunity of hearing and thereafter to decide the matter afresh.

5. In the above circumstances, the present petition is allowed only to the extent that the DDO shall give opportunity of hearing to the respondent No. 1 within a period of one month from the date of receipt of this court and shall consider the matter in accordance with law and shall pass appropriate orders as early as possible preferably within three months from the date of issuance of show cause notice.

6. Petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.