
(1972) 04 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 878 of 1969

Akbarali Kasamali Ravjani

APPELLANT

Vs

N.G. Pandya and Another

RESPONDENT

Date of Decision : 24-04-1972

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 49, 49(1)

Citation : AIR 1974 Guj 17 : (1973) GLR 287

Hon'ble Judges : S.H. Sheth, J;J.B. Mehta, J

Bench : Division Bench

Advocate : H.M. Mehta, for the Appellant; G.T. Nanavaty, Asstt. Govt. Pleader and A.A. Patel, of Purnanand and Co. and Addl. Govt. Pleader, for the Respondent

Judgement

S.H. Sreth, J.—The petitioner was a member and Chairman of the Nagar Panchayat, Sihor in Bhavnagar District. On 3rd March 1969 the District Development Officer, Bhavnagar the competent authority within the meaning of Section 49 of the Gujarat Panchayat Act, 1961- served upon him a notice to show cause why he should not be removed from the membership and chairmanship of the Nagar Panchayat on the grounds stated in the said show cause notice. The notice stated three grounds. The first of them was that he had not reinstated in service one U. S. Desai, Secretary of the Sihor Nagar Panchayat who had been removed from service by the Nagar Panchayat and who was ordered to be reinstated by the District Development Officer whose decision was confirmed by the Divisional Commissioner. The second ground which was stated was that he had not carried out an order of interim stay granted by the District Panchayat, Bhavnagar against the introduction of octroi within the limits of the Sihor Nagar Panchayat under the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964. The third ground was that he had made allegations against and held out threats to the District Development Officer by his letters dated 22nd July, 1968 and 30th July, 1968. After having given him a reasonable opportunity of being heard in the matter the District Development Officer by his order dated 5th April 1969 held that all the three grounds which were alleged against him

were proved and he removed the petitioner both from the membership and chairmanship of the Sihor Nagar Panchayat u/s 49 (1) of the Gujarat Panchayats Act, 1961. The petitioner appealed against the said order to the Development Commissioner, Gujarat State. The Development Commissioner confirmed the findings of the District Development Officer on the first two allegations and set aside his finding on the third allegation. In that view of the matter he confirmed the order of the District Development Officer removing the petitioner both from the membership as well as from the chairmanship of the Sihor Nagar Panchayat.

2. It is that order which is challenged in this petition.

3. Mr. Mehta, appearing for the petitioner, has raised before us the following five contentions.

(1) Section 49 of the Gujarat Panchayats Act, 1961 is ultra vires Art. 14 in so far as it confers power upon the competent authority to remove a person from his membership of a panchayat because it is an arbitrary power conferred upon him.

(2) Acts of misconduct alleged against the petitioner were really committed by the Panchayat and not by the petitioner and therefore the petitioner was not liable to be removed from membership and chairmanship of the Panchayat.

(3) The petitioner was not given a reasonable opportunity of being heard in the matter.

(4) The District Development Officer who held the inquiry against the petitioner was biased against him.

(5) In any case, there was no reasonable ground for removing the petitioner from the membership of the Nagar Panchayat.

4. So far as the first contention raised by Mr. Mehta is concerned, it is necessary to reproduce Section 49 of the Gujarat Panchayats Act, 1961. It is as follows :

"(1) The competent authority may remove from office any member of a panchayat or the Sarpanch, the Upa-Sarpanch, the Chairman or as the case may be, the Vice-Chairman thereof after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch, Upa-Sarpanch, Chairman or Vice Chairman, as the case may be, has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties under this Act. The Sarpanch, Upa-Sarpanch, Chairman or as the case may be, Vice-Chairman so removed may at the discretion of the competent authority also be removed from the membership of the panchayat.

(2) The competent authority may, after following the procedure laid down in subsection (1) disqualify for a period not exceeding four years, any person who has resigned his office as a member, Sarpanch, Upa-Sarpanch, Chairman or Vice

Chairman or otherwise ceased to hold any such office and has been guilty of misconduct specified in sub-s (1) or has been incapable of performing his duties:

Provided that an action shall be taken within six months from the date on which the person resigns or ceases to hold any such office.

(3) Any person aggrieved by an order of the competent authority under sub-section (1) or (2) may, within a period of thirty days from the "date of the communication of such order, appeal to the State Government."

The section, in our opinion, circumscribes the area within which the competent authority may function. It does not confer upon him any unguided or uncanalized power. There are two aspects of Section 49 which must be pointed out. The office bearer of a panchayat or a member thereof can be removed on the proof of any one of the objective facts mentioned therein. Those objective facts are as follows.

(1) if he has been guilty of misconduct in the discharge of his duties.

(2) if he has been guilty of any disgraceful conduct.

(3) If he has abused his powers.

(4) if he has made persistent default in the performance of his duties and functions under the Act or if he has become incapable of performing his duties under the Act.

These are objective facts any one of which must be proved on evidence before a member or an office bearer of a panchayat is removed from his membership or from the office held by him, Secondly, the procedure which has been prescribed is a judicial procedure. A person against whom an allegation is made or allegations are made by the competent authority must be given due notice thereof and must also be given a reasonable opportunity of being heard. It is also necessary under the Act to give due notice of the proceedings to the panchayat of which he is a member or an office bearer. After having given notice the competent authority is required to hold an inquiry and adjudicate upon the allegations made against a member or office bearer and record his findings. Any person against whom an order has been made by the competent authority has a right of appeal under sub-section (3) of Section 49. Within the period prescribed by the said sub-section an aggrieved member or office bearer can appeal to the State Government against the order made by the competent authority under sub-section (1). It is, therefore, clear that Section 49 contains sufficient guidelines and circumscribes the area within which the competent authority has to act while taking action under sub-section (1) of Section 49. So far as the procedure is concerned, it is a judicial procedure and sub-section (3) provides for corrective machinery in order to correct the errors which might have crept into the order of the competent authority.

5. In *Satubha K. Vaghela v. Moosa Raza*, (1969) 10 Guj LR 23 it has been held that the functions of the competent authority under the Act are quasi-Judicial

functions. The section lays down sufficient guidelines and a judicial procedure which cannot be assailed. It is difficult under these circumstances to uphold the contention raised by Mr. Mehta that Section 49 is ultra vires Article 14 of the Constitution.

6. Mr. Mehta has, however, tried to argue that so far as the removal from the membership is concerned, it has been left by sub-section (1) at the discretion of the competent authority and that therefore so far as the -power of the competent authority is concerned, it is unguided and uncanalized. In other words, according to him, that particular power is an arbitrary power. We are unable to accede to that contention raised by Mr. Mehta. In our opinion, the grounds of removal stated in sub-section (1) of Section 49 govern both his removal from the office, which he holds in the panchayat, and also his removal from the membership. However, it must be said that a person who is, on -proof of any one of the grounds stated in sub-section (1), removed from the office which he holds in the panchayat cannot ipso facto be removed on that account from the membership. It is necessary for the competent authority to weigh and determine distinctly and separately the impact of his findings upon the membership of the person concerned as well as upon the office, which he holds. It cannot be said as a matter of rule that what is good for removing a person from the elective office which he holds shall always be good for removing him from the membership of the panchayat. In this view of the matter, the first contention raised by Mr. Mehta fails and is rejected.

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10. The last contention which Mr. Mehta has raised before us is that in any case there was no reasonable ground for removing the petitioner from the membership. A person can be removed from the membership of a Panchayat only on the proof of one of the acts of misconduct or incapacity mentioned in subs. (1) of S. 49. The expression "misconduct" is an expression of wide amplitude. The test as to misconduct has been laid down by a Division Bench of this High Court of which my learned brother was a member in the case of (1969) 10 Guj LR 23 (supra). The test laid down in that case for judging misconduct which would justify dismissal is that it must be inconsistent with the fulfillment of the express or implied conditions of service so that it can be said that the servant has disregarded the essential conditions of the contract of service. The fundamental principle is that to justify dismissal the servant must contravene the express or implied conditions of his service. The same principle can be invoked with equal force in a case where a person holds an elective office from which he is sought to be removed on one or more of the grounds specified in sub-section (1) of Section 49. In the context of sub-section (1) of Section 49 the misconduct must be such as would be in complete disregard of his duty and responsibility under the Act and wholly inconsistent or incompatible with the express or implied conditions of his office. In the instant case, two allegations have, on evidence, been held to have been proved by the Development Commissioner. The first one

of them is that the petitioner did not reinstate U. S. Desai in service even though he was directed to do so by the District Development Officer and the Development Commissioner. Secondly, he introduced octroi in spite of the fact that the introduction was stayed by the District Panchayat and he thereby contravened the interim order made by the superior panchayat. These are two acts in regard to which the petitioner had to exercise his executive power as the Chairman of the Nagar Panchayat. The District Development Officer as well as the Development Commissioner have failed to assess, in our opinion, the impact of these two findings distinctly and separately on the office held by the petitioner and on his membership. The disobedience on the part of the petitioner in regard to the aforesaid two orders fell within the realm of his executive power which he had as the Chairman of the Nagar Panchayat. It did not fall within the realm of the duties or functions which he was required to perform as a member. An ordinary member of a panchayat has hardly anything to do with the implementation of the stay order granted by the District Panchayat. He has hardly anything to do also with the order of reinstatement passed by a superior officer in respect of any servant of the panchayat. As a member he merely functions when a meeting of the panchayat is convened. In such a meeting when a proposal is moved he participates in the discussion and votes for or against it. If the petitioner disobeyed the aforesaid two orders, he did so as the Chairman. He did not do so and could not have done so as a member of the panchayat. In our opinion, therefore, the order of the District Development Officer as confirmed by the order of the Development Commissioner in so far as it relates to the removal of the petitioner from the membership of the Nagar Panchayat, Sihor, cannot be justified on the aforesaid grounds, though on the aforesaid grounds we are of the opinion that his removal from the Chairmanship of the Nagar Panchayat is justified.

11. For the aforesaid reasons, we partly allow the petition and issue a writ of certiorari quashing the impugned order in so far as it relates to the removal of the petitioner from the membership of the Nagar Panchayat, Sihor and we confirm it in so far as it relates to his removal from the chairmanship of the Nagar Panchayat. Rule is made absolute to the aforesaid extent only. In the circumstances of the case, there shall be no order as to costs,

12. Petition partly allowed.