
(1995) 01 GUJ CK 0036
In the Gujarat High Court

Ambaji Gram Panchayat

APPELLANT

Vs

Manubhai J. Suthar

RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 249, 250, 294(1), 294(1)

Citation : (1996) 1 GLR 109

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—Rule. Mr. Munsha waives service of rule on behalf of the respondent. At the instance of the Learned Counsel for both the sides, this matter is being finally decided.

2. The petitioner Panchayat challenges the orders dated 11th January, 1993 and 10th May, 1993 passed by the respondent Taluka Development Officer, suspending various resolutions of the Gram Panchayat. By order dated 11th January, 1993 various resolutions from year's 1983 onwards of the Gram Panchayat under which appointments were given to the posts under the Panchayat were suspended. On 20th February, 1993 the Panchayat made other resolutions which are at Annexure "H" to the petition. From amongst these resolutions, resolution Nos. 164, 165, 172 and 173 were suspended by the respondent by his order dated 10th May, 1993 on the ground that they were not proper.

3. Amongst the resolutions which were made on 20th February, 1993 the resolution No. 164 under agenda No. 9 was passed for filing an appeal against the order of the Taluka Development Officer dated 11th January, 1993. u/s 294(1) of the Gujarat Panchayats Act, 1961, the Taluka Development Officer was empowered to suspend the execution of any order or resolution of the Panchayat which was unlawful. The orders made by the Taluka Development Officer u/s 294(1) could be challenged before the State Government u/s 305 of the Gujarat Panchayats Act, 1961. It is common ground that the powers of the

State Government in such cases are exercised by the Development Commissioner. Therefore, the orders which were made by the Taluka Development Officer in exercise of his powers u/s 294(1) could be challenged by the petitioner-Panchayat before the Development Commissioner u/s 305 of the Act of 1961. The earlier Act is replaced by Gujarat Panchayats Act, 1963, in which provisions similar to Sections 294 and 305 are contained in Sections 249 and 259 respectively. Accordingly, the petitioner-Panchayat could have challenged the orders of the Taluka Development Officer u/s 259 of the Act of 1963 which empowers the State Government to call for and examine the record of proceeding of any Officer for the purpose of satisfying itself as to the legality or propriety of any order passed and empowers it to revise or modify the order as it shall deem just.

4. The Learned Counsel for the petitioner submitted that the orders of the Taluka Development Officer could be challenged by the Panchayat u/s 259 of the Act of 1963 before the State Government but the Taluka Development Officer has suspended even resolution No. 164 under which it was decided by the Panchayat to challenge the order of the Taluka Development Officer. u/s 294(1) of the Act of 1961 which corresponded to Section 249 of the Act of 1963, the Taluka Development Officer could not have suspended a resolution of the Panchayat whereby the Panchayat had decided to challenge his orders under the provisions of the said Act. If power to suspend a resolution whereunder the Panchayat decides to challenge the order of the Taluka Development Officer before the higher authority is conceded to the Taluka Development Officer, that would result in depriving the appellate or revisional authority of their statutory powers under the Act. Surely, a Taluka Development Officer cannot bring about such a situation by an order u/s 294(1) of the Act 1961 or the corresponding provision u/s 249 of the Act 1963. For this reason the order of the Taluka Development Officer dated 10-5-1993 at Annexure "F" to the extent that it suspended the resolution No. 164 of Panchayat made on 20th February 1993 is set aside and it will be open for the Panchayat to challenge impugned orders of the Taluka Development Officer under the provisions of the said Act as may be provided thereunder.

5. The petition is allowed to the above limited extent leaving it open to the petitioner to challenge other orders of the Taluka Development Officer in accordance with law, if it so chooses to do. Rule made absolute to the above limited extent with no order as to costs.

6. The ad-interim relief which was granted in this petition shall continue to operate for a period of four weeks from today to enable the petitioner to challenge the impugned orders of the Taluka Development Officer except as regards the part of the order pertaining to the above resolution No. 164 which has been set aside.