
(1994) 01 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 6590 of 1993

Anishbhai Ishabhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gujarat Panchayats Act, 1961 — Section 49, 49(1)

Citation : AIR 1995 Guj 118 : (1994) 2 GLR 456

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : J.S. Yadav, for the Appellant; S.P. Dave, Asstt. Govt. Pleader, H.S. Munshaw, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The grievance voiced by the petitioner in this petition under Article 227 of the Constitution of India, is that his removal from membership of Gram Panchayat and resultant disqualification is unjust and illegal.

2. The relevant facts giving birth to this petition shortly may be stated firstly. The petitioner was a member of Sanjeli Gram Panchayat against whom proceedings came to be initiated; for his removal on account of various complaints, under the provision of Section 49 of the Gujarat Panchayats Act, 1961 (the Panchayat Act" for short). It appears that the petitioner has wrongly mentioned in the petition that he is removed from the membership of the Panchmahals Jilla Panchayat. Unfortunately, the petition is founded upon a fact wrongly conceived that the petitioner is removed from the membership of Jilla Panchayat instead of mentioning the Gram Panchayat. Apart from that, the case of the petitioner is that provisions of Section 49(1) of the Panchayat Act were not attracted and his removal under the said provisions is unjust, illegal and contrary to the provisions of the Panchayat Act.

3. The defence of the respondent-authority disclosed in the affidavit-in-reply is

that the petitioner was involved in serious irregularities and offences. Therefore, it was thought expedient not to continue him as a member of the Sanjeli Gram Panchayat. Therefore, after following due procedure laid down in the Panchayat Act, appropriate resolution was passed by the executive committee of the District Panchayat at Godhra by virtue of which the petitioner came to be removed from the membership. He had questioned his removal order before appropriate appellate forum and he lost in the appeal. The respondents have denied all the allegations levelled in the petition. According to the contentions of the respondents, the questioned order of removal is passed by the appropriate authority after observing the procedure prescribed in the Panchayat Act and it is reasonable, just and legal. It is also contended by the respondents that there is no case for interference under Article 227 of the Constitution of India and, therefore, the petition should be dismissed.

4. The first order of removal passed by the executive committee of the district Panchayat at Godhra on November 28, 1990 by resolution No. 479/13 whereby the petitioner came to be removed u/s 49(1) of the Panchayat Act, was questioned by the petitioner before the State Government in an appeal u/s 49(3) of the Panchayat Act. The, appeal was allowed by an order dated April 24, 1991 passed by the Additional Development Commissioner, State of Gujarat. Thus, the first order of removal was quashed and the matter was remanded to the executive committee of the Panchmahals District Panchayat at Godhara.

5. Subsequently, the executive committee of the district Panchayat of Panchmahals District passed the impugned order by passing a unanimous resolution on October 21, 1991 u/s 49(1) of the Panchayat Act, whereby imposing penalty of removal and resultant disqualification from the membership of the Gram Panchayat upon the petitioner which is under challenge in this petition.

6. The petitioner carried the matter again before the State of Gujarat by filing an appeal u/s 49(3) of the Panchayat Act. The impugned order was confirmed by the appellate authority dismissing the appeal on March 30, 1993.

7. Before the merits of the petition under Article 227 of the Constitution of India are considered, it would be necessary at this juncture to mention that the scope and the extent of the powers of this court unlike Article 226 is very much circumscribed. Again, this court is not sitting in an appeal against "the verdict of the adjudicating statutory authority. The powers of this court under Article 227 of the Constitution of India are required to be exercised cautiously as they are designed to be used sparingly and only in certain appropriate cases so as to keep the subordinate Courts, tribunals and statutory authorities below within the bounds of their authority. In fact, they are also not intended to be used for correcting merely errors.

8. When there are findings of facts, no interference is called for unless the impugned order or decision is shown to be manifestly perverse, illegal or against

the provision of law or if it is shown to be actuated with ulterior and extraneous considerations like mala fides. In short, the power of superintendence contemplated by the provision of Article 227 has been limited in a narrow compass. Therefore, merits are required to be examined in this legal background.

9. It has been vehemently contended by Mr. Yadav, learned counsel for the petitioner that the impugned order of removal against the petitioner is actuated by mala fides. This submission is unsustainable. Apart from the fact that no specific plea was ever raised before the statutory authority, it has no legal legs to stand in this petition. The learned counsel also has not been able to substantiate this contention from the record of the present case. Therefore, this submission is raised for being rejected straightway.

10. The next contention of the learned counsel for the petitioner is that the impugned order is illegal, in that, it has been forcefully contended that it is violative of the provisions of Section 49(1) of the Panchayat Act and principles of natural justice. This submission is countenanced with equal vehemence. With a view to appreciating this contention, it would be appropriate at this juncture to refer to the provisions of Section 49 of the Panchayat Act. It provides for a provision for removal from office. The holder of office of the panchayat or member thereof can be removed on the proof of any one of the objective facts enumerated in the section. Section 49 reads as under:--

"Removal from office: (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 make 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-section (1) or has been incapable of performing, his office;

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."

11. It could be seen from the aforesaid provisions that Section 49 circumscribes the ambit and zone within which statutory competent authority can function. The provisions of Section 49 do not confer any unchanalised or un-fettered powers upon the Authorities for removal. On objective facts or proof of any one of the objective facts on the basis of evidence, holder of office of the panchayat could be removed from his membership or from the office enjoyed by him. No doubt, it is true that the competent statutory authority is bound to observe the strict procedure prescribed in this section. The procedure prescribed in this section is in one sense a judicial procedure. A person against whom allegation is levelled ought to be given due notice thereof and also reasonable opportunity of being heard. After having given such an opportunity, the statutory competent authority can adjudicate upon such allegation made against a member or office holder and record its finding against the person against whom such adverse order is passed by the competent authority. A statutory right of appeal u/s 49(3) is also given to such person. The State Government is conferred with a statutory jurisdiction to hear an appeal against the order made by the competent statutory authority. Therefore, it could safely be concluded that the provisions of Section 49 contain sufficient and appropriate guidelines and define the jurisdictional area within which the competent authority could act while taking an action for removal of a member or office holder of the panchayat. In short, the procedure prescribed in Section 49 is statutory, judicial and also there is appellate machinery provided for the purpose of correcting the error of the competent authority. In other words, Section 49 prescribes a machinery and the procedure without which duly elected member of the panchayat cannot be ousted from his office.

12, A simple glance at the provisions of Section 49 of the Panchayat Act would undoubtedly, go to show that they provide provisions for removal of a member of the panchayat, sarpanch, upa-sarpanch, chairman or vice-chairman, from the office held by the person concerned. Removal can be directed only in the following cases:

- (i) if he has been guilty of misconduct in the discharge of his duties; or
- (ii) if he has been guilty of any disgraceful conduct; or
- (iii) if he has abused his power; or
- (iv) if he makes persistent default in the performance of his duties and functions under the Act; or (v) if he has become incapable of performing his duties.

It is quite appropriate and sufficient if any one of the above five events or conditions exists for removal. However, Sub-section (2) of Section 49 further prescribes that order of removal could be passed only and only after giving due notice and opportunity of being heard to the person concerned. It also provides that office bearer may be removed not only from the office but also from the

membership, at the discretion of the competent authority. It is also provided that the competent authority may disqualify any such person for a period not exceeding four years who has either resigned from his office or has ceased to hold his office for any other reason, after following the procedure laid down in Sub-section (1). If the person is found to be guilty of misconduct or has been rendered incapable of performing his duties, such an action can be taken within six months of his resigning or the date of, ceasing to hold the office otherwise. Sub-section (3) of Section 49 provides that an appeal can be filed before the State Government against an order of the competent authority. It is, therefore, very clear that elective office in a democratic set-up can only be set at naught after observing strict provision providing for "removal of the member or holder of office of the panchayat,

13. Serious charges were levelled against the petitioner on account of serious complaints against him as a member of the gram panchayat. The respondents have contended that on account of misuse of powers as a member and due to the misconduct and disgraceful conduct, the competent authority, after observing the procedure prescribed u/s 49 of the Act, passed the order of removal from membership against the petitioner. A person who is found guilty of misconduct in the discharge of his duties as a member or office bearer of the panchayat, could be removed from the office held by him under the provision of Section 49(1). Like-. wise, a person who has been guilty of disgraceful conduct and also a person who has abused or misused his powers could also be removed. Misconduct pertains to functions and duties of a member or office; whereas disgraceful conduct, contemplated u/s 49(1) is an individual who is a member and not necessarily only in discharge of his duties as such. The expression is "any disgraceful conduct" and, therefore, it would mean that unlike misconduct, disgraceful conduct may not be in discharge of one's duties.

14. The expressions "misconduct" and "disgraceful conduct" are not statutorily defined in the Act. Therefore, they are required to be considered from the dictionary meaning. A person, knowing what he is doing, also being conversant with the consequences, if does something which is wrong, bad, illegal or causing loss or damages, his conduct obviously would tantamount to misconduct. Thus, misconduct must be misconduct in the discharge of the duties; whereas, "disgraceful conduct" is prefixed by the expression "any" and need not necessarily be in discharge of the duties. Though there is fine distinction but it is real, there being no statutory definitions, the expressions like "misconduct" and "disgraceful conduct", import of such expressions will have to be examined from the context in which they are employed in Sub-section (1) of Section 49. Misconduct is such conduct as is in complete disregard of the duty and responsibility of a member or an office bearer of a panchayat under the Panchayat Act as such conduct would be wholly inconsistent or incompatible with the express or implied conditions of his office of such responsibility; whereas, "disgraceful conduct" within the meaning of Section 49(1) need not be circumscribed to something done in the course of one's duty as a member or

office bearer. "Disgraceful conduct" while reading in light of the provisions of Section 49(1) would mean any allegation which, because it is done by an elected member or office bearer, is sufficiently reprehensible to be classified as disgraceful. Thus, misconduct is classified by the phrase "in the discharge of his duties"; whereas, no such classification or fetter is available or seen for the expression "disgraceful conduct". On the contrary, it is prefixed by the expression any". Therefore, the contention that disgraceful conduct should also be shown in discharge of one's duties is though subtle, is not sound and sustainable.

15. Nothing has been successfully shown from the, record which would even remotely suggest that the impugned order of removal from the membership of the panchayat is passed without observing the procedure prescribed u/s 49 of the Panchayat Act. On the contrary, it has been shown from the record (it may be mentioned that the original record was called for satisfaction of this Court) by the respondents that the impugned order is not only just and proper but is also valid and legal. This Court is fully satisfied that the impugned order is justified and there is not a fit case for interference in this petition.

16. The contention that principles of natural justice are not observed is not only half-hearted but is without there being any heart in it. Doctrine of natural justice commands that there should be an opportunity of being heard. There are statutory provisions prescribed for holding inquiry and giving an opportunity of being heard to the guilty member or holder of office of panchayat before removal order is passed against him. The provisions of Section 49 are strictly complied with by the respondents before passing the impugned order. Therefore, the petitioner has no case to make grievance that principles of natural justice are not observed. Again, this Court is not sitting as appellate forum against the impugned decision but is examining its merits while exercising its extraordinary power of superintendence under Article 227 and, therefore, it will not be permissible for this Court to go into the factual merits of the impugned order. Both the statutory competent authorities, including the appellate one, have, after observing the due process of law and affording an opportunity of being heard to the petitioner, have reached consistently and concurrently a conclusion which otherwise cannot be interfered with by this Court while hearing a petition under Article 227 of the Constitution of India, except in a limited situation which is non-existent in the present case.

17. In the result, this petition only and only deserves dismissal and accordingly, this petition is dismissed with no order as to costs in the facts and circumstances of the case. Rule is discharged.