

(2010) 04 GUJ CK 0043
In the Gujarat High Court

Case No : Special Civil Application No. 8332 of 2009

Chunilal Nathabhai Harkhani

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Panchayats (Amendment) Act, 1993 — Section 47, 49, 57, 57(1), 57(3)

Citation : (2010) 04 GUJ CK 0043

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Jal Soli Unwalla, for the Appellant; Janak Rawal, Assistant Government Pleader for Respondents 1 and 3, V.G. Dave, for Pranav V. Shah, for Respondent 2 and L.R. Pathan, for Respondents 4-9, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Leave to amend the cause-title of the petition is granted.

2. Rule. Mr. Janak Rawal, learned Assistant Government Pleader, waives service of notice of Rule on behalf of respondents Nos. 1 and 3, Mr. V.G. Dave, learned advocate, waives service of notice of Rule on behalf of respondent No. 2 and Mr. L.R. Pathan, learned Counsel, waives service of notice of Rule on behalf of respondents Nos. 4 to 9. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

3. The present petition has been preferred under Articles 226 and 227 of the Constitution of India with the following prayers:

(a) Quashing and setting aside the impugned orders at Annexure-C and G dated 20-2-2009 and 24-7-2009 passed by the District Development Officer, Gujarat State, Gandhinagar as well as the Additional Development Commissioner, Gujarat State, Gandhinagar, under the provisions of Section 57(1) and 57(3) of the

Gujarat Panchayats Act, 1993 respectively as being violative of principles of natural justice and being bad in law and illegal and be further pleased to permit the petitioner to function as Sarpanch of the Ranpur Gram Panchayat from the day on which he had been elected;

(b) Pending the hearing and final disposal of this writ petition, be pleased to stay the operation, implementation and execution of the orders at Annexure-C and G dated 20-2-2009 and 24-7-2009 passed by the District Development Officer, Gujarat State, Gandhinagar as well as the Additional Development Commissioner, Gujarat State, Gandhinagar, under the provisions of Section 57(1) and 57(3) of the Gujarat Panchayats Act, 1993 respectively as being violative of principles of natural justice and being bad in law and illegal and be further pleased to permit the petitioner to function as Sarpanch of the Ranpur Gram Panchayat from the day on which he had been elected;

(c) To grant any other appropriate and just relief/s;

4. Briefly stated, the factual background of the case is that the petitioner had been elected as Sarpanch of Ranpur Gram Panchayat for the period from 2002 to 2007. After completion of his term, the petitioner came to be re-elected as Sarpanch of the said Gram Panchayat, in the year 2007. A show cause notice dated 05.01.2009 was issued to the petitioner under the provisions of Section 57(1) of the Gujarat Panchayats Act, 1993, asking him to show cause as to why he should not be removed from the post of Sarpanch in view of the three grounds stipulated therein. The petitioner gave a reply to the show cause notice. Thereafter, proceedings before the District Development Officer (respondent No. 2) took place, which culminated in order dated 20.02.2009, by which the petitioner has been removed as Sarpanch. It is the case of the petitioner that on perusal of the order dated 20.02.2009, he came to know that the District Development Officer had relied upon an inquiry report dated 15.12.2008, submitted by the Director, District and Village Development Agency, Junagadh, a copy of which has not been supplied to him. The petitioner requested for a copy of the order dated 20.02.2009 as well as the inquiry report, by letter dated 24.02.2009 and, said report has been supplied to the petitioner by the District Development Officer on 25.02.2009. The petitioner filed an appeal before the Additional Development Commissioner (respondent No. 3) against the order of respondent No. 2. The said appeal has been rejected by impugned order dated 24.07.2009, giving rise to the filing of the present petition.

5. Mr. Jal S. Unwalla, learned Counsel for the petitioner, has raised just one ground, before this Court. It is submitted by him that the impugned order dated 20.02.2009, passed by respondent No. 2, heavily relies upon the inquiry report dated 15.12.2008, a copy of which has never been supplied to the petitioner. It is further contended by the learned Counsel for the petitioner that even the show cause notice dated 05.01.2009 makes no mention of the said report, therefore, the petitioner was unaware about the material being relied upon by the respondents, against him. The learned Counsel for the petitioner has submitted

that even though this ground has been raised before respondent No. 3 in appeal, the same has been overlooked and no finding has been given thereupon. Further, respondent No. 3 has ignored the judgment of the High Court in (Shri) Prabodhrai Dhirajram Nayak v. (The) District Panchayat, Surat and Ors. 1983 GLH 782; Kamlaben Rohitbhai Patel v. Additional Development Commissioner 2000(2) GLR 1174 and other judgments cited before him, and absolutely no findings have been given by the said authority, on the ground of violation of the principles of natural justice.

The learned Counsel for the petitioner has emphatically argued that by relying upon material which has not been provided to the petitioner, the principles of natural justice have been violated and the petitioner has been deprived of his valuable right of defence. In support of the above submissions, reliance has been placed upon (i) (Shri) Prabodhrai Dhirajram Nayak v. (The) District Panchayat, Surat and Ors. 1983 GLH 782 (ii) Kamlaben Rohitbhai Patel v. Additional Development Commissioner 2000(2) GLR 1174 and (iii) Malavkumar Arunbhai Patel v. Sardar Patel University and Ors. 2007(1) GLR 413.

6. Mr. V.G. Dave, learned advocate for Mr. Pranav V. Shah, learned Counsel for respondent No. 2, has submitted that it cannot be said that a copy of the inquiry report has not been supplied to the petitioner, as the same was supplied on 25.02.2009, but this aspect has not been disclosed by the petitioner in the appeal filed before respondent No. 3. Had this disclosure been made by the petitioner, perhaps, respondent No. 3 would have passed a different order. It is further submitted that respondent No. 2 has passed the order after relying upon inquiry report dated 15.12.2008, and the said order is just and proper.

7. Mr. Janak Rawal, learned Assistant Government Pleader for respondents Nos. 1 and 3, submits that though the inquiry report has not been supplied to the petitioner before passing of the order dated 20.02.2009 by respondent No. 2, respondent No. 3 has found that the order of respondent No. 2 is legal and valid. However, if the Court comes to a conclusion that the principles of natural justice have been violated, an appropriate order may be passed.

8. Mr. L.R. Pathan, learned Counsel for respondents Nos. 4 to 9, submits that the said respondents are the complainants, at whose behest proceedings against the petitioner have been initiated. The learned Counsel for the said respondents does not deny that they have been made parties only at the appellate stage. Mr. Pathan further submits that the impugned orders passed by respondents Nos. 2 and 3 are just and proper. It is further submitted that the petitioner had knowledge that the respondents have lodged a complaint against him., therefore it cannot be said that he was unaware of the enquiry report.

9. I have heard the learned Counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

10. As the learned Counsel for the petitioner has confined his arguments only to

the ground of violation of the principles of natural justice, this Court does not propose to enter into the merits of the case.

11. It is an admitted position that the show cause notice dated 05.01.2009 does not make mention of the inquiry report dated 15.12.2008. It is also admitted by the learned Counsel for respondent No. 2 in the affidavit-in-reply, that the inquiry report has been supplied to the petitioner only on 25.02.2009, i.e. after the passing of order dated 20.02.2009 by respondent No. 2. A perusal of the said order makes it amply clear that respondent No. 2 has taken into consideration the said inquiry report, while passing the impugned order. In fact, the material contained in the said report has been heavily relied upon. A perusal of the impugned order dated 24.07.2009 passed by the Additional Development Commissioner (respondent No. 3) discloses that the petitioner has specifically raised the ground of violation of the principles of natural justice, as a copy of the inquiry report has not been supplied to him. It is amply clear from a perusal of the impugned order that this ground has not been dealt with by respondent No. 3, who has chosen merely to gloss over it. Even the judgments cited by the learned Counsel for the petitioner have not been dealt with, or taken into consideration. To put it clearly, the impugned order does not disclose that respondent No. 3 has given any finding on the point of violation of the principles of natural justice, while confirming the order passed by respondent No. 2.

12. Coming to the judgments cited by the learned Counsel for the petitioner, in (Shri) Prabodhrai Dhirajram Nayak v. (The) District Panchayat, Surat and Ors. (supra) the Court was dealing with the issue of removal of the Chairman of the Nagar Panchayat. A preliminary inquiry was made in respect of the allegations against the Chairman and on the basis of the said inquiry, a notice was issued but the statements of persons recorded at the inquiry were not supplied to the petitioner therein. A learned Single Judge of this Court held that the order of removal was illegal and deserved to be quashed. This is what the Court has stated:

10. I have already enumerated the powers which are prescribed by Section 47. If one examines every allegation, it would only show, at the highest, to be lack of supervision. "Lack of supervision" could never be equated with "abusing of power". It could be that, if an enquiry was properly held, it could have been shown that, either the petitioner misused the powers or the Secretary misused his powers. But, for that purpose, a proper enquiry was required to be made. Preliminary enquiry was made and the papers were not made available to the petitioner. Apart from the preliminary enquiry, Section 49 contemplates that the Chairman may be removed from office after giving him an opportunity of being heard and giving due notice to him in this behalf to the panchayat and after such inquiry as it is deemed necessary. Now, therefore, not only a notice, not only an opportunity of being heard, but "inquiry" is contemplated. The papers show that an Associate Member of the Executive Committee of the District Panchayat put certain questions one by one and got answers either from the petitioner or from

his lawyer. It clearly appears that it was not an "inquiry" but a verbal altercation or verbal exchanges between the two parties. One party was defending himself and other from the questions put which clearly appears that he had made up his mind; and after so having made up his mind, he led the Executive Committee to pass the Resolution. To say the least, it is more than clear that an elected person, like the Chairman of a Nagar Panchayat, is treated most shabbily. In the first instance, he was not supplied with copies of preliminary inquiry. When he requested for the copies of the preliminary inquiry, he was told that the papers were in the Nagar Panchayat and he can inspect there. Thereafter, when detailed answers were given in regard to each allegation, it was more than clear that it was not possible even to allege as to what the Chairman did or what the Secretary did. The result was only an altercation between the two Members in the Executive Committee and thereafter without any inquiry, a Resolution came to be passed and an elected Chairman of the Nagar Panchayat was removed. A democratic election was set at naught without due inquiry and the whole process was vitiated from the very start.

13. In *Kamlaben Rohitbhai Patel v. Additional Development Commissioner* (supra) the Court was dealing with the removal of a Sarpanch under the provisions of Section 57(1) of the Gujarat Panchayats Act, 1993. It has been held in paragraph-10 of the above-mentioned judgment as under:

10. Even if it is taken that the allegations as were levelled had been framed on the basis of the report given by the Taluka Development Officer, such allegations were certainly required to be proved by way of evidence so as to show that it was the petitioner who was responsible for these allegations. It was to be seen as to what was the actual role of the petitioner so as to constitute a case of real misconduct against her. It is admitted that no inquiry whatsoever was held and thus the concept of "some inquiry" as envisaged by Section 57 i.e. after inquiry as it deems necessary" has been violated and this requirement of Statute has been given a go-bye, more particularly when it is the case of the respondents themselves that no preliminary inquiry was held.

The opportunity would mean a real and effective opportunity. The real and effective opportunity would not simple mean taking a reply and pass the order taking the allegations as proof of the allegations. The effective opportunity would mean a real application of mind to the allegations, replies and the material placed in support of the allegations based on evidence, documentary or otherwise. While it is the grievance of the petitioner that large number of documents running into 1 to 264 which were filed along with the reply have not been considered, the authors of the impugned orders at places more than one have mentioned that the petitioner failed to substantiate her replies by documents. It therefore, appears to be a case of no real and effective consideration of documents before recording that the petitioner failed to substantiate her replies by documents.

14. Further, in *Malavkumar Arunbhai Patel v. Sardar Patel University and Ors.*

(supra) this Court, after referring to the decision in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant* 2001(1) SCC 182 has come to the following conclusion:

26. It is now an accepted proposition of law that any statutory body which is entrusted by statute with discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other. Even an administrative order, which involves civil consequences must be made consistently with the rules of natural justice. Although, the expression "civil consequences" has not been defined anywhere, the observation made in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, is relevant in this context, and reads as below:

What is civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties material deprivation and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

In the present case, undoubtedly, the inquiry report and material relied upon against the petitioner has not been supplied to him and an order of removal has been passed, which entails civil consequences.

15. From a perusal of the impugned order and other material no record and keeping in view the judicial pronouncements discussed hereinabove, in the considered view of this Court, there has been a serious violation of the principles of natural justice by not supplying a copy of the inquiry report and other material relied upon by the District Development Officer to the petitioner, before passing the impugned order dated 20.02.2009. No doubt, the Additional District Development Officer (respondent No. 3) could have rectified the situation in appeal, but chose not to deal with this ground, which has specifically been raised before him, by the petitioner.

16. In view of the above, as the petitioner has not been granted an opportunity to defend himself in relation to the material relied upon against him, the impugned orders, dated 24.07.2009, passed by respondent No. 3 and 20.02.2009, passed by respondent No. 2, cannot be sustained in law.

17. Accordingly, the said two orders are quashed and set aside. The matter is remanded to the District Development Officer (respondent No. 2) for fresh hearing, after supplying the petitioner with a copy of the inquiry report and other material relied upon against him. The petitioner may make appropriate application in this regard to respondent No. 2. After the requisite documents have been supplied, respondent No. 2 may hear the parties afresh and pass an order, in accordance with law.

18. It is made clear that this Court has not entered into the merits of the case,

and all rights and contentions can be availed of by the parties during the fresh hearing of the matter.

19. The petition is partly allowed, as above. Rule is made absolute, to the above extent. There shall be no orders as to costs.