

**(2014) 06 GUJ CK 0046**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 1642 of 1990

Dahyabhai J. Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 09-06-2014

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84C  
Constitution of India, 1950 — Article 14, 16

**Citation :** (2015) 1 GLH 629 : (2014) LabIC 3311

**Hon'ble Judges :** C.L. Soni, J

**Bench :** Single Bench

**Advocate :** Jeet Patel, Advocate for the Appellant; Niraj Ashar, Advocate for the Respondent

## Judgement

@

C.L. Soni, J.—The petitioner, who died pending the petition and whose heirs are brought on record, has challenged the order of his dismissal from service dated 17/02/1990 as also the order of his suspension dated 09/09/1981. Though the petitioner also sought declaration that Rule 10(3) of the Gujarat Civil Services (Discipline and Appeal) Rules 1986 is ultra vires to Articles 14 and 16 of the Constitution of India however, this prayer was not pressed by the petitioner as recorded in the order dated 12/03/1990. It is the case of the petitioner, that he joined services as Extension Officer in year 1956 and promoted in the month of June, 1975 as Taluka Development Officer (TDO), however, came to be suspended by order dated 09/09/1981 and then was served with charge-sheet dated 03/08/1982. Before he was suspended he had put in 31 years of blotless service. He filed two different petitions in the year 1988-1990, challenging his continuous suspension for more than 7 years. The petitioner has averred that the allegations in the charge-sheet for irregularities committed by him in granting Non-Agricultural permission (N.A.) were totally vague and the inquiry conducted against him was in gross violation of the principle of natural justice. It is his case

that he was not provided the copies of documents relied in the inquiry. The petitioner has further averred that he granted N.A. Permissions as per the guidelines and the resolution of the State Government and he has not committed any illegality in granting such N.A. permissions. The petitioner has taken many other grounds in the petition to challenge the order of his dismissal from service.

2. The petition is opposed by affidavit-in-reply filed on behalf of the respondent No. 1, stating that the departmental inquiry conducted against the petitioner was as per the procedure laid down in the rules and that the charges levelled against the petitioner were proved and based on the findings recorded by the inquiry officer and considering the nature of charges, the disciplinary authority imposed punishment of dismissal of the petitioner from service. As regards the suspension, it is stated that the period of suspension of the petitioner cannot be said to be prolonged suspension and his suspension was for good reasons and in accordance with the rules and policy of the Government.

3. I have heard learned advocates for the parties. Learned advocate Mr. Jeet Patel for the petitioner submitted that the charges levelled against the petitioner are totally vague and even the findings recorded by the inquiry officer are general and vague in nature. Mr. Patel submitted allegations as regards not verifying the documents, not verifying the names of the applicants from revenue records, not verifying as to whether there would be a breach of the provisions of Tenancy Act, or after N.A. permission open lands shall be used for bricks/stone/sand etc. were all without giving the particulars of the respective cases dealt with by the petitioner and the petitioner was also not provided copies of the documents based on which such charges were levelled against the petitioner, though the petitioner repeatedly demanded the same. Mr. Patel submitted that the inquiry against the petitioner was conducted in gross violation of the principle of natural justice inasmuch as no witness was examined by the respondents to prove any document against the petitioner. Mr. Patel submitted that the inquiry officer though relied on the record of various N.A. permissions granted by the petitioner, the petitioner was not given the copies of any document from such record. Mr. Patel submitted that the inquiry officer just considered the written brief submitted by the presenting officer as if the same was legal evidence and recorded that on perusal of record of the N.A. cases, the three charges against the petitioner are proved. Mr. Patel submitted that the findings recorded in inquiry report are contrary to the legal procedure and rules and based on such inquiry report, the dismissal of the petitioner was not at all warranted. Mr. Patel submitted that this Court had an occasion to deal with the orders of N.A. permissions granted by the petitioners at the instance of some of the applicants whose N.A. permissions were cancelled by the higher authority of the State and in the decision reported in Patel Chhotabhai Madhavbhai and Another Vs. State of Gujarat and Another, , this Court has found that no illegality was committed as regards grant of N.A. permissions by the petitioner. Mr. Patel submitted that on account of the policy of the Government in the year 1981 for grant of N.A. permission for industrial purpose, there was rush of many applications and based

on the scrutiny done by the officers serving under the petitioner, the petitioner granted N.A. permissions in accordance with the policy of the Government and on account of such N.A. permissions, the Government could collect the revenues in the form of conversion tax in respect of the lands for which N.A. permissions were granted by the petitioner. Mr. Patel submitted that since no legality could be said to have been committed by the petitioner in respect of the N.A. permissions granted by him, his dismissal from service was not justified. Mr. Patel thus urged to allow the petition.

4. As against the above arguments, learned Assistant Government Pleader Mr. Niraj Ashar appearing for the respondent submitted that the petitioner granted N.A. permissions in large number of cases without verifying the requisite details for grant of N.A. permission and contrary to the Government policy for grant of N.A. permission. Mr. Ashar submitted that in many cases the petitioner did not verify the status of the applicants and did not verify whether the N.A. permission would result into breach of the provisions of the Tenancy Act. Mr. Ashar submitted that on scrutiny of all cases dealt with by the petitioner for N.A. permission, it was found that the petitioner committed gross irregularities in the matter of grant of N.A. permission and, therefore, the petitioner was rightly suspended under the rules. Mr. Ashar submitted that the petitioner was given full opportunity to defend himself. Mr. Ashar submitted that since the charges levelled against the petitioner were based on the record of the N.A. permission granted by the petitioner, there was no necessity to examine any witness to prove such charges. Mr. Ashar submitted that since there were large number of orders granting N.A. permission by the petitioner, the petitioner was permitted to have inspection of record of N.A. permissions granted by him, as it was not possible to supply each and every document from the record of the N.A. permissions. Mr. Ashar submitted that the petitioner had in fact given detail reply in respect of each application for N.A. permission dealt with by him and therefore it cannot be said that he was deprived of his legitimate right to defend himself on account of non-availability of the documents in relation to N.A. permissions granted by him. Mr. Ashar submitted that the inquiry officer had verified the record of N.A. permission granted by the petitioner and rightly came to the conclusion that the petitioner granted N.A. permissions without verifying the required details and contrary to the policy, rules and resolutions of the State Government for such purpose. Mr. Ashar submitted that the State Government had reversed many N.A. permissions granted by the petitioner. Mr. Ashar submitted that the dismissal order passed against the petitioner is based on findings recorded by the inquiry officer and since the charges proved against the petitioner are serious in nature, the respondents committed no illegality in passing the order of dismissal against the petitioner. Mr. Ashar submitted that the continuous suspension of the petitioner was for holding the departmental inquiry against the petitioner, and therefore, it cannot be said that the continuous suspension was illegal, especially when the petitioner has failed in his challenge before this Court against his continuous suspension in two round of litigations.

Mr. Ashar thus urged to dismiss the petition.

5. Having heard learned advocates for the parties, it appears that the petitioner while serving as T.D.O. exercised powers under Section 65 of the Bombay Land Revenue Code for grant of N.A. permission in many cases. Though the charge-sheet at annexure "E" dated 03/08/1982 does not reflect for which period the petitioner was alleged to have shown negligence and committed irregularities in the matter of grant of N.A. permission. However, it appears that the same was in respect of the applications filed for N.A. permission in the year 1981. The allegations in the charge-sheet are divided into three main charges. First is that the petitioner has not followed the Government Rules and Regulations, for grant of N.A. permission. Second is that the petitioner did not verify the details like the survey number of the land, considered the uncertified entries in revenue record, did not verify whether the name of the applicant was shown in the revenue record as the occupant of the land, did not verify whether the permission of the Bank or the Co-operative society, whose charge was on the land, was taken or not, did not verify whether the permission of the collector for the restricted land was taken, did not verify whether there would be any breach of the provisions of Tenancy Law or the Fragmentation of Law, and granted N.A. permission for using open land for dumping the materials like sand, stone etc.; and third charge is that the petitioner sent the cases for verification to Circle Officer instead of Talati of the village; that the N.A. permissions were granted within a short period of 10 to 20 days without proper verification and not as per the rules; and that the N.A. permissions were granted without following the provisions made in the Government Resolution dated 25/03/1981.

6. It is required to be noted that the charges did not particularise the irregularities alleged but were general and vague. The petitioner gave his detail reply with explanation in the tabular form in connection with 110 cases dealt with by him for different survey numbers of different villages in the Vaghodia Taluka wherein he was serving as TDO. From the inquiry report at Annexure "I", it appears that no evidence in respect of any of the applications for N.A. permission dealt with by the petitioner was led to bring home the charges levelled against the petitioner as to nature of the irregularities alleged to be committed by the petitioner. The presenting officer just submitted his written brief pointing out that for which cases the petitioner did not either take care to verify the details for grant of N.A. permission, did not follow the Government resolutions and did not consider the aspect of breach of Tenancy law and the Fragmentation law; and also stating that the petitioner granted N.A. permission by relying on the verification done by subordinate officer, like Circle Inspector. The Inquiry Officer recorded his findings by stating that he considered the written brief of the presenting officer and of the petitioner and on verification of the record, he found that what was stated by Presenting Officer was proper and thus the allegations into three main charges were proved against the petitioner. It appears from the inquiry report that the findings recorded by the inquiry officer are as vague and general as were the charges levelled against the petitioner. Though, the strict

principle of Evidence Act may not be applicable to the proceedings of the departmental inquiry, however, by some evidence specific findings referring the instances of what exactly the petitioner did or omitted to do were required to be recorded.

7. It appears that pursuant to the Government Resolution for grant of N.A. permission for industrial purpose, many applications were submitted for N.A. permission. As per the provisions of Section 65 of the Bombay Land Revenue Code, such applications are to be dealt with within a short time of three months. The petitioner is alleged to have decided such applications within a short period of 10 to 20 days. However, as stated by the petitioner, the Government could collect revenue in respect of N.A. permissions granted in the form of conversion tax. Be that as it may, but when the petitioner has given out explanation for each of the applications dealt with by him, only on considering the written brief submitted by the presenting officer, the inquiry officer was not justified to hold that on his examining the record the charges against the petitioner were proved. It is required to be noted that the petitioner had completed about 31 years of service when he was charge-sheeted. Therefore, such long tenure of service could not have been put to an end on vague findings without any legal evidence.

8. During course of the hearing of petition, when learned advocate Mr. Patel for the petitioner submitted that most of the orders made by the petitioner for N.A. permissions were upheld by this Court in group of petitions filed by the respective applicants who asked for the N.A. permission in the year 1983, the Court asked learned AGP Mr. Ashar to call for the details as to in how many cases dealt with by the petitioner, the superior authority had interfered. Mr. Ashar then placed details on record and pointed out that out of 110 cases dealt with by the petitioner, 89 cases were taken in revision under Section 211 of Bombay Land Revenue Code. In those cases N.A. permissions were cancelled by the revisional authority. He further pointed out that out of those 89 cases where the permissions were cancelled, 48 cases were taken to the High Court by different petitions and this Court set aside the orders made by the revisional authority and confirmed the orders made by the petitioner. Learned advocate Mr. Patel pointed out from the decision in the case of Patel Chhotabhai Madhvbhai (supra) that this Court had in fact dealt with the allegations of committing irregularities while deciding applications for N.A. permission. The relevant observations made in paragraph Nos. 14, 16, 17, 18, 19, 20, 21, 22 need to be referred. They read as under:

"14. A large area admeasuring more than 350 acres of land situated under Waghodia Taluka had the benefit of obtaining the non-agriculture use permission. This was done by the original landlords or occupants. In no case the non-agricultural use permission has been obtained by a transferee or a vendee after the execution of the sale deed. The petitioners in each of the petitions have attributed mala fides on the art of the Government. I do not propose to decide these matters even on a remote concern with the mala fide alleged to the State

Government. In my view therefore, a detailed reference to the allegation of the mala fides in the petitions should not find their place in the present orders. I would suffice to note that, according to the petitioners, following a Government policy large areas of lands were permitted to be converted to the non-agricultural lands use. But later on an Intra Cabinet dispute had resulted into the revision of the orders. I may not go to that aspect as, already indicated by me the rate of the petitions do not depend upon the allegations or the proof of the mala fides question is as to whether any of the infirmities pointed out by the revisional authority can be said to be even an illegality or an irregularity. While considering this question, one will have to forget everything regarding the orders which could be said to be orders in nullity or orders void ab initio. On reading of the orders under challenge it becomes clear that they do not even breach of any provision or rule and that the orders granting the permission at any rate, even cannot be characterised, as illegal or invalid, justifying the exercise of the revisional powers under Section 211 of the Code.

16. The first ground on which the orders are sought to be characterised as nullity is the say that, in all these matters the permissions were obtained not by the occupants but by some other persons whose names had never appeared in the Revenue record. This finding in a vague and round about fashion recorded by the revisional authority probably wanted to say that, there was a large scale purchase of the lands by industrialists and even before their names could be entered in the Revenue Record, the N.A. use permissions were granted to them. If this is the meaning which the revisional authority wanted to give to its order, it shall have to be said, of course with anxiety and concern that there appears to be a total non-application of mind on the part of the revisional authority. As the Table shows in all the cases the N.A. permission was asked for an obtained not by the transferees or the vendees but the original landlords or occupants whose names stood in the Revenue records since long. There was not a single case in which the N.A. permission was transferee or the vendee after obtaining the transfer in the name. Thus the very first ground under which the orders granting the N.A. permission are sought to be characterised as order void ab initio or orders in nullity vanishes. On the contrary this demonstrates a total non-application of mind on the part of the authority exercising the revisional jurisdiction. It may also be indicative of a manner or a fashion in which the revisional powers were being exercised, which in any case and in any view of the matter appears to be cavalier.

17. The second ground on which the orders granting the N.A. use permission are sought to be branded as the orders in nullity or orders void ab initio is the ground that the use to which the lands were to be put were open N.A. use. The revisional authority says that in all the cases such a permission has been granted and later on the factories could not have come up on this lands. This is nothing but putting a cart before the horse. When the N.A. permissions were obtained there was no factory and there was no construction. The lands were agricultural lands in respect of which the permissions were sought for and were given. If

after the granting of the permission and after the transfer of the land to certain other people, the buildings and factories have come up, can it be said for a moment that the authority granting the permission had passed such orders which could be characterised as orders in nullity or orders void ab initio. Moreover, a reference to the provisions contained under Section 65 of the Code does not invite such a distinction. Section 65 speaks of the conversion of the use of the land from agriculture to non-agriculture. The amended provisions under Section 65A of the Code prescribe the procedure if the occupant wishes to put to and use for his land to a different form of non-agricultural use not envisaged under the original orders. This amendment is the statutory recognition of a prevalent practice to obtain the permission on the change of the purpose. Merely because after obtaining the N.A. permission, after the sale of the lands to the third parties and after the construction of the factory buildings, the Government was of the opinion that this could not have been done, the orders granting the N.A. permission can never be said to be orders in nullity or orders void ab initio. The reasoning adopted by the revisional authority for coming to this conclusion appears to be so amusing that it deserves an outright straight rejection.

18. These are the grounds on which the revisional authority has said that the orders would be orders in nullity or orders ab initio void. On examination of the reasoning adopted by the revisional authority, it becomes clear that not only the orders cannot be said to be orders in nullity or orders void ab initio but even they cannot be said to be the orders falling within the category of invalid or illegal orders.

19. The learned Government Counsel Ms. Mandavia wanted to urge with great emphasis that, even if the principle is to be accepted that the revisional powers must be exercised under Section 211 of the Code within a reasonable time, the reasonableness of the time should be decided qua the date of the commencement of the proceedings. M/s. Mandavia placing reliance upon the observations of the revisional authority wanted to urge further that, this all was brought to the notice of the Government, some officer was appointed to make necessary inquiries and ultimately the notices were issued and the powers were exercised. The learned Counsel Mr. Patel for the petitioners while replying this contention wanted to urge that, there is absolutely no mention in the show cause notice saying that the Government would like to treat the orders as orders in nullity. The learned Counsel further urges that, what the Government had done as a spade work, preparatory to the exercise of the powers under Section 211 was never brought to the notice of the petitioners and that this becomes evident for the first time, when one reads the orders of the revisional authority. The question appears to be have been decided in case of Patel Raghav Natha (supra). The Supreme Court does not speak of the initiation of the proceedings under Section 211 of the Code. This decision of the Supreme Court and the decision referred to above, would speak not of initiation of the proceedings but the exercise of the revisional powers under Section 211. The whole exercise of revision must be done within the time frame as provided by the Supreme Court

in the case of Raghav Natha (supra). If the Supreme Court wanted to rule that even an initiation of the proceedings by way of notice within a reasonable time would salvage the situation. It would have so befallen from the Supreme Court, which has not happened. Moreover, no decision says that some preliminary exercise to be done by the Government popularly known as "Spade Work" would amount to the exercise of the powers within the meaning of Section 211 of the Code. Moreover, if initiation is to be taken into consideration, then also, as seen from the Table it is definitely not within the time frame. The spade work or the inquiry by some Government officer would not tantamount to exercise of the powers under Section 211 of the Code. In view of this position even if it is accepted, disregarding the contention of the learned Counsel Mr. Patel that nothing was brought to the petitioner even during the course of the hearing, then also, all what is done by the revisional authority cannot be said to be the exercise within the time frame provided by the Supreme Court in case of Raghav Natha (supra).

20. In the four petitions at Sr. Nos. 11 to 14, in addition, the notice under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 came to be issued on September 15, 1983, the further implementation of the same have been stayed, while granting Rule in these matters. These notices shall have to be quashed for the apparent reason that before the transfer of the lands involved in the said petitions, the provisions for conversion to Non-Agricultural use were already obtained. Thus, these lands, before the sale had, ceased to be the Agricultural lands to which the provisions of Section 84C of the Act of 1948 could be made applicable. The provision contained under Section 84C of the Act of 1948 can be invoked only in respect of a transfer or acquisition of any land, which is or becomes invalid under the provisions of the Act of 1948. The lands involved in these petitions had come out of the purview of the Act of 1948, and therefore, the proceedings under Section 84C of the Act of 1948 could not have been initiated. Such notices, therefore, shall have to be quashed.

21. Three conclusions therefore would follow: Firstly the revisional authority was not justified in taking up the exercise of revision after such a pretty long time as evidenced by the Table above-referred, in view of the Supreme Court pronouncement in case of Raghav Natha (supra). Secondly & alternatively even if it to be accepted that the revisional authority could do so after such a pretty long time, then also, orders granting the N.A. use permission can never be said to be orders in nullity or void ab initio that, a close scrutiny of the reasons assigned by the revisional authority demonstrates that these order even cannot be said to be illegal, invalid or unlawful orders. Thirdly, and lastly, the notice under Section 84C of the Bombay Tenancy Act, 1948 shall have to be quashed.

22. Therefore the impugned orders/notices shall have to be quashed and set aside by allowing the present petitions. This group of petitions therefore shall stand allowed. The impugned orders/notices are hereby quashed and set aside. Rule is made absolute accordingly."

9. From the above observations of this Court in the case of Patel Chhotabhai Madhavbhai (supra), and from the inquiry report, it clearly appears that the allegations made against the petitioner could not have been taken as proved misconduct warranting dismissal of the petitioner from service. Learned AGP Mr. Ashar however submitted that at least in rest of the cases which were reversed by the revisional authority, the petitioner could be said to have shown negligence and committed irregularities in the matter of grant of N.A. permission. However, in which specific case and what negligence or irregularity was committed, is not proved by any specific evidence. Consideration of the written brief submitted by the presenting officer as well as examination of the record by the inquiry officer cannot substitute the requirement of legal proof, though strict principles of the Evidence Act do not apply in departmental enquiry. This Court, finds that not only the charges levelled against the petitioner in the charge-sheet are vague and general in nature but even the findings recorded by inquiry officer are vague and general. In such view of the matter and having regard to the decision in the case of Patel Chhotabhai Madhavbhai (supra), though rendered on 05/12/1994 i.e. subsequent to the order of dismissal, the order of dismissal against the petitioner cannot stand scrutiny of law. However, the prayer for quashing the order of suspension cannot be considered at this stage. Since the petitioner passed away pending the petition, he shall be required to be treated as reinstated in service with continuity of service. In the facts of the case, and the petitioner having not worked and since many years have passed after impugned order was passed, the petitioner could be awarded 25% back wages with other retirement benefits flowing from continuous service of the petitioner. For the reasons stated above, the petition is partly allowed. The order dated 17/02/1990 at Annexure "A" dismissing the petitioner from service is quashed and set aside. The petitioner late Shri D.J. Patel shall be treated as reinstated in service with continuity of service and with 25% back wages. The respondents are directed to work out and pay 25% back wages with pension and other consequential benefits to the petitioners within three months from the date of the receipt of this order. Rule is made absolute to the extent above.