

(2020) 01 GUJ CK 0127

In the Gujarat High Court

Case No : R/Special Civil Application No. 17965 Of 2018

Deepakkumar Lalitchandra Butaala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Gujarat Panchayat Act, 1993 — Section 58(1)
Indian Penal Code, 1860 — Section 147, 149, 323, 324
Bombay Police Act, 1951 — Section 135

Citation : (2020) 01 GUJ CK 0127

Hon'ble Judges : A.G.Uraizee, J

Bench : Single Bench

Advocate : Jigar G Gadhavi, Asmita Patel, Manish J Patel

Final Decision : Allowed

Judgement

A.G.Uraizee, J

1. Rule. Ms. Asmita Patel, learned AGP waives service of notice of rule on behalf of respondent No.1. Mr. Manish J. Patel, learned advocate waives service of notice of rule on behalf of respondent Nos. 2 and 3. With the consent of learned advocates for the parties the petition is taken up for final disposal today as the issue involved moves in a narrow compass.

2. The petitioner contested the election for the post of Sarpanch of village-Butaal one another candidate named Vipul Nadiya had also contested the said election with other candidates for the post of Sarpanch. The petitioner got elected and assumed charge as Sarpanch of Butall village panchayat on 17. 01.2017. It is the case of the petitioner that the said Vipul Nadiya was the nephew of one Shri Mohan Nadiya. They were barbering political rivalry against the petitioner and had threatened that the petitioner would be removed from the post of Sarpanch in no time. One Pravin Jayantibhai Vaghela had encroached the panchayat land, and therefore, the petitioner had asked him to remove the encroachment. Said Vipul Nadiya and Mohan Nadiya were having good relations with said Pravinbhai,

and therefore, they in cahoot with Pravinbhai instituted a false case against the petitioner under the Prevention of Corruption Act and on the basis of complaint an FIR vide C.R. No. I-2/2018 came to be registered against the petitioner with ACB Police Station, Modasa on 16.03.2018. The Police Inspector, Arravali Police Station vide communication No.313/2018 dated 16.03.2018 intimated the registration of ACB Case against the petitioner and his consequent arrest to DDO, Modasa (respondent No.3). Upon receipt of communication, respondent No.3 by order dated 23.04.2018 suspended the petitioner from the post of Sarpanch with effect from 16.03.2018 without issuing notice and affording an opportunity of hearing. The petitioner, therefore, challenged his suspension by filing Appeal No.26 of 2018 before the Development Commissioner, Gujarat State, Gandhinagar (respondent No.2). The appeal preferred by the petitioner came to be dismissed by Additional Development Commissioner by order dated 17.10.2018 inter alia on the ground that Section 59 of Gujarat Panchayat Act, 1993 does not contemplate personal hearing. The petitioner has, therefore, challenged the orders passed by the respondent No.3 as confirmed in Appeal by respondent No.2 in this petition chiefly on the ground that they are in violation of principle of natural justice as indisputably the respondent No.3 had not afforded any opportunity of hearing to the petitioner.

3. I have heard Mr. Jigar Gadhvi, learned advocate for the petitioner, Ms. Asmita Patel, learned AGP for respondent No.1 and Mr. Manish Patel, learned advocate for respondent Nos. 2 and 3.

4. Mr. Gadhvi, learned advocate for the petitioner submitted that the respondent No.3 suspended the petitioner from the post of Sarpanch on the basis of communication received from the Police Inspector, Aravalli Police Station without affording an opportunity of hearing. He submitted that the petitioner challenged his suspension before the respondent No.2 who has ignoring the circular of the government which was incorporated in the appeal memo has held that an opportunity of hearing was not required as the allegations against the petitioner were very serious. He submitted that even if the hearing before the respondent No.2 is considered as a personal hearing, the requirement of hearing before passing the suspension order by respondent No.2 cannot be condoned. It is his further submission that even respondent No.2 was required to scrutinized the material transmitted to him by the Police Inspector along-with his communication to record the satisfaction whether the petitioner was rightly implicated in the corruption case or not? To buttress his submission, he has placed reliance in the case of Bikhumiya Sarfumiya Malek v. DDO Mehsana passed by this Court in Special Civil Application NO.6307 of 1998, Ajit Jayantibhai Patel v. Arvindbhai Devjibhai Rohit in Special Civil Application No.3239 of 2004 & Super Foods v. State of Gujarat, 2009 SCC Online Guj 1471.

5. Mr. Patel, learned advocate for the respondent No.3 has supported the impugned orders. He submitted that Section 58(1) of the Panchayat Act does not contemplate an opportunity of hearing before passing suspension order. It is his

further submission that the petitioner has availed full opportunity of hearing before the respondent No.2, therefore, now the petitioner cannot make a grievance that he was not afforded an opportunity of hearing. He submitted that the serious offence of accepting bribe is registered against the petitioner, and therefore, the authorities have not committed any error in suspending the petitioner from the post of Sarpanch. Hence, he submitted that the petition may be dismissed.

6. Ms. Asmita Patel, learned AGP for respondent Nos. 1 & 2 has adopted the arguments of Mr. Patel, learned advocate for the respondent No.3.

7. This Court in the case of Satishchandra Naginlal Jaiswal v. State of Gujarat & others reported in 1993 (1) GLH (U.J.) 19 has observed as under:-

"The petitioner contends that the application for renewal of licence has been rejected without affording an opportunity of being heard. Therefore, even though the appellate authority afforded an opportunity of being heard to the petitioner, the order refusing to renew the licence cannot be sustained in view of the fact that the original order passed by the Sub-Divisional Magistrate, Dabhoi is in contravention of the principles of natural justice and therefore nullity. It is not disputed that before passing the order dated January 31, 1992, the petitioner has not been afforded an opportunity of being heard. Therefore, the said order is in contravention of the principles of natural justice and hence nullity. The circumstance whether the appellate authority has granted an opportunity of being heard to the petitioner or not pales into insignificance inasmuch as the original order being nullity, the order passed by the appellate authority amounts to confirmation of nullity only. On this point the law is settled by the Supreme Court in the case of Institute of Chartered Accountants of India v. L.K. Ratna reported in AIR 1987 Supreme Court 71 wherein it is held that the observance of principles of natural justice should be at both the stages, i.e. at the original stage as well as at the appellate stage (see para 17 of the decision). In view of this position of law laid down by the Supreme Court, the impugned orders cannot be sustained."

8. This Court in the case of Narabhai Veljibhai Chaudhary v. R.S. Vaghela and Others reported in MANU/GJ/0359/1996 has held as under:-

"3. It is contended by the learned Counsel for the petitioner that there are serious allegations against the respondent No.3 inasmuch as, that he attacked on the petitioner with deadly weapons like Dharia and caused hurt to him. This act of the respondent No.3 on the facts of the case constitutes an offence of moral turpitude and as such the respondent No.1 has exceeded jurisdiction in interfering with the order of the respondent No.2 District Development Officer. The learned Counsel for the petitioner placed reliance on a decision of this Court reported in MANU/GJ/0102/1996 : AIR 1996Guj3 (Jorabhai Hirabhai Rabari v. D.D.O. Mehsana) have gone through the judgment. This Court has held that whether an offence involves moral turpitude or not cannot always be judged in

isolation and merely with reference to the ingredients of an offence. The learned judge explaining the earlier decision of this Court in the case of *Thakor Bhagabhai v. D.D.O Sural and Another* reported in 1980 (XXI) GLR 966 observed thus:-

Therefore, the observations which have been made by the Hon'ble Mr. Justice B.K. Mehta in *Thakorbhahi Bhagabha* (supra) to the effect that it cannot be said that the alleged offences under Sections 323, 324, 149, 147 and I.P.C. of Section 135 of the Bombay Police Act were offences involving moral turpitude in the sense that the alleged acts can be said to be a conduct which is contrary to honesty, good morals or unethical since at the most it was an incident of some scuffle between the petitioner and other persons alleged to be involved in the incident, are to be read in context of the facts of that case and did not lay down a strait-jacket formula that irrespective of the manner in which these offences are committed or against whom they are committed and the circumstances under which they are committed, i.e., even without reference to the facts of the case they should be treated as offences involving moral turpitude.

Thus, Sarpanch cannot be suspended just on institution of Criminal Case. Whether the act constitutes an offence of moral turpitude, there cannot be a strait-jacket formula. It depends on various factors including the manner and circumstances in which the offence alleged to have been committed. The rule of suspension of a person holding public office is based on a public policy to maintain purity in public life. A person facing charge of offence of moral turpitude should be barred from holding public office. However, this power in current aggressive competitive politics must be exercised with great circumspection. While criminalization in public life is not unknown, the false implication has also become hazards of public life. This has put more pressure on the judiciary to scrutinise such cases with more care and caution. It is true that it will not be for the Court to enter into the merits of the case, but still it is desirable to undertake brief scrutiny of the facts to rule out any chance of false implication.

9. It is an undisputed fact that the respondent No.3 did not afford any opportunity of hearing to the petitioner before passing suspension order under Section 59 of the Panchayat Act. This Court has in various decisions consistently taken a view that before passing any order of suspension, an opportunity of hearing is sine qua non. Not only that even after an opportunity of hearing the DDO is required to scrutinize the material placed before him to record a satisfaction that the charges are not frivolous or concocted as has been held by this Court in the case of *Naranbhai Veljibhai Chaudhary* (supra). The contention of Mr. Patel, learned advocate for respondent No.3 that though the opportunity was not given by DDO, the petitioner had in appeal assailed the removal order on all available grounds, he, therefore, now cannot complain that he was deprived of the opportunity of hearing cannot be countenanced. As has been held by this Court in the case of *Satishchandra Naginlal Jaiswal* (supra) relying upon the decision of the Supreme Court in the case of *Institute of*

Chartered Accountants of India v. L.K. Ratna reported in AIR 1987 Supreme Court 71 that the observance of principle of natural justice should be at both the stages i.e. at original stage as well as the appellate stage. Hence, in my view the denial of opportunity of hearing by the DDO, renders the removal order of the petitioner from the post of Sarpanch as nullity. I am, therefore, in my view the order passed in appeal by respondent No.2-Development Commissioner and the order passed by respondent No.3-District Development Officer cannot be sustained and the matter must go back to respondent No.3 for fresh consideration.

10. For the foregoing reasons, the petition succeeds and is hereby allowed. The impugned order dated 17.10.2018 passed by respondent No.2-Development Commissioner at Gandhinagar and impugned order dated 23.04.2018 passed by respondent No.3-District Development Officer at Modasa, District Aravalli are hereby quashed and set aside. The matter is remanded to the respondent No.3-District Development Officer at Modasa, District Aravalli to decide the same afresh after making due inquiry in the matter and affording proper opportunity of hearing to the petitioner as discussed hereinabove. Rule is made absolute to the aforesaid extent. No order as to costs.

11. It is clarified that this Court has not examined the merits of the case and the respondent No.3 shall decide the matter in accordance with law without being influenced by this order.