

(1999) 03 GUJ CK 0031

In the Gujarat High Court

Case No : Spl. Civil Application No. 334 of 1999

Dhulaji Punjaji Thakor

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats (Amendment) Act, 1962 — Section 49

Citation : AIR 1999 Guj 250

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : B.B. Oza, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—The brief facts of the case are that the petitioner is a Sarpanch of the Sherisa Gram Panchayat. On 20-6-98 the then District Development Officer of the District Panchayat, Mehsana issued a show cause notice to the petitioner containing the charges against him therein. On 31-7-1998, the petitioner submitted a detailed reply to the said show cause notice. It is the case of the petitioner that the District Development Officer, District Panchayat, Mehsana after considering the reply filed by the petitioner was satisfied with the reply and the show cause notice was withdrawn. After transfer of the earlier officer, the officer, who has taken over, has given a show cause notice dated 10-12-98 to the petitioner. The petitioner filed his reply to that show cause notice on 4-1-1999. It is the grievance of the petitioner that the second show cause notice has been given in respect of the some charges, which were the subject-matter of the first show cause notice. The petitioner having the apprehension of his removal from the office of the Sarpanch, filed this special civil application before this Court.

2. The learned Counsel for the petitioner Contended that the second show cause notice for the same charges for which earlier show cause notice has been given

and the same has been dropped, is illegal. It has next been contended that the respondent-District Development Officer is bent upon to harassing the petitioner by removing him from the office of the Sarpanch and his proceedings, which have been initiated by this second show cause-notice is only eye wash, otherwise the decision has already been taken by the authority to remove the petitioner from the office of the Sarpanch. Lastly, it is contended that the identical matter, this Court has protected the petitioner therein, the reference in this respect has been made to the order of this Court dated 29-4-98 in special civil application No. 3152/98.

3. I have given my thoughtful consideration to the submission made by the learned counsel for the petitioner.

4. From the perusal" of the show cause notices dated 20-6-98 and dated 10-12-98, prima facie I find that the contention pf the learned Counsel for the petitioner that the grounds given in both the show cause notices are identical is not correct. However, as it is the state only where a show cause notice has been given to the petitioner I do not consider it to be appropriate to decide this point finally in this special civil application, otherwise it may prejudice the case of the petitioner before the said authority.

5. It cannot be said that the District Development Officer, District Panchayat, Mehsana has altogether lacking the jurisdiction in giving this alleged second show cause to the petitioner. It is a case where the petitioner has been given show cause notice and no final order has been passed. The petitioner has given the reply to this show cause notice also but instead of taking a decision in the proceeding initiated against him by the authority concerned, he has approached to this Court by this special civil application. Otherwise also, this petition is premature. What the petitioner really intending is to get an order in his favour from this Court so that ultimately order passed by the District Development Officer in the matter, if it goes against him, may not be given effect to. The petitioner by this special civil application in fact wants to get an interim relief against an apprehended adverse order to be passed against him by the District Development Officer. That approach of the petitioner is difficult to appreciate. Nor such protection can be given by the Court to the litigants. It is not out of the context to state that the final order passed in the proceeding initiated against the petitioner is appealable and the appellate authority has all the powers to grant the interim relief if a case has been made out for grant thereof by him. It is the stage where only a show cause notice has been given and this petition has been filed only for the purpose to get all advance interim relief against the adverse order which may be passed in the proceeding. It is a matter to be considered by the authority concerned and for a prayer for which the approach of the petitioner at this stage to this Court is wholly ill-advised. These are the discretionary matters of the authority and no such direction at this stage by this Court is called for. It is too much to except from the Court to regulate the subordinate Courts or the executive authority or the quasi judicial authorities as how to exercise their

discretion in matter and that too even at a stage where no order adverse to the petitioner has been made. What the real attempt to the learned counsel for the petitioner is that when the petitioner approached to this Court something has to be granted to him only for his satisfaction, is not proper and reasonable. The Court cannot grant any advance interim relief to the petitioner, more so, when the ultimate order which is passed in the proceeding, out of which this special civil application arises and if it is against the petitioner, is appealable. It is a case where the petitioner has already filed the reply to the show cause notice and he has all the right to contest the show cause notice on all the grounds available to him. A writ petition against a show cause notice in this Court is not maintainable, more so, where the petitioner has already filed the reply to the same. The exception to this normal rule i.e. where the authority issued the show cause notice, has no jurisdiction in the matter but is not the case of this nature. The reference in this respect may have to the decision of the Apex Court in the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, .

6. In the result, this special civil application fails and the same is dismissed.