

(2021) 11 GUJ CK 0019

In the Gujarat High Court

Case No : R/Special Civil Application No. 23053 Of 2019

Gajraben Karansinh Solanki

APPELLANT

Vs

Additional Development Commissioner

RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Panchayats Act, 1993 — Section 55, 57, 57(1)

Citation : (2021) 11 GUJ CK 0019

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Ritu R Guru, Meet Thakkar, HS Munshaw, RB Thakor

Final Decision : ?Dismissed

Judgement

Biren Vaishnav, J

1. Heard Ms. Ritu R. Guru, learned counsel for the petitioner, Mr. Meet Thakkar, learned AGP for the respondent No.1 - Additional Development Commissioner and Mr. H.S. Munshaw, learned counsel for respondent No.2 - District Development Officer, District Panchayat, Banaskantha.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the orders dated 17.6.2019 and 9.12.2019. By an order dated 17.6.2019, the District Development Officer, District Panchayat, Banaskantha in exercise of powers under Section 57(1) of the Gujarat Panchayats Act, 1993 removed the petitioner as a Sarpanch. The order, when carried in appeal, the respondent No.1 - Additional Development Commissioner confirmed the same. Hence, this petition.

3. The facts in brief are as under:

3.1. The petitioner - a lady Sarpanch elected on a reserved category was discharging her duties as such being a Sarpanch of Samadhi (Motaa-vass) of

Taluka Palanpur, District Banaskantha. In order to promote Swachh Bharat Mission, toilets were to be constructed at the level of the Gram Panchayat. For carrying out the project, agreements were executed by Talati-cum-Mantri with two agencies i.e.

(a) Dasha Ma Sahay Jooth Gram Sangathan and (b) Naklang Sakhi Mandal Gram Sangathan for construction of toilets. A report was submitted by the DRDA on 18.6.2018. Shortcomings were found, inasmuch as, 57 toilets were though not constructed were shown as completed and payments were made to the agencies who undertook such construction.

3.2. A show cause notice was issued to the petitioner being a Sarpanch of the concerned Gram Panchayat on 26.2.2019 asking her to show cause as to why action under Section 57(1) of the Act, 1993 be not taken. The petitioner responded to such notice on 8.3.2019. By the impugned order of 17.6.2019, the petitioner was removed as a Sarpanch which was so confirmed by the Additional Development Commissioner.

4. Ms. Ritu R. Guru, learned counsel for the petitioner made the following submissions:

4.1. She would submit that there were several discrepancies in the report of the authorities on which reliance was placed in so far as number of non-completed constructed toilets were concerned. She would further submit that in fact if the report, which was subsequently available to the petitioner under the Right to Information Act is considered of the 57 names who took the benefit of the Scheme though without the toilets being constructed, 9 of them had their names reflected twice. That apart, Ms. Guru would submit that based on the details of the forms and the certificates annexed with the rejoinder she signed those completion forms entirely relying on the submission of these certificates with the photographs attached to them given by the Talati-cum-Mantri.

4.2. She would further submit that it was her first term as Sarpanch on the reserved category and she was not well conversant with the discharging of duties as the Sarpanch so expected to perform. At best, it can be termed as negligence which would not tantamount to misconduct or abuse of powers so as to warrant removal from the post of Sarpanch in exercise of powers under Section 57 of the Act.

4.3. Having extensively taken me through the rejoinder and the documents annexed thereto, Ms. Guru would submit that even a separate list of 19 persons would show that the payments were made twice. That there was no proper verification by the authorities which prepared the report which formed the basis of the petitioner's removal from the post of Sarpanch. In support of her submission, Ms. Guru learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in the case of Tarlochan Dev Sharma v. State of Punjab and Haryana reported in AIR 2001 SC 2524 to submit that this imputation cannot be treated as one as abuse of powers and the act done as dishonest

intention to invite removal.

5. Mr. H.S. Munshaw, learned counsel for respondent No.2 - District Development Officer, District Panchayat, Banaskantha would invite the attention of the Court to the affidavit-in-reply filed by the District Development Officer, Banaskantha. Inviting attention to Section 55 of the Act, Shri Munshaw would submit that the executive functions of Sarpanch, or Upa-Sarpanch would indicate exercise of supervision and control over the acts done and actions taken by all officers, contingent expenditure etc. Based on the report it was found that the payments were made to the agencies on the certificate signed by the Sarpanch. He would submit that even action has been taken against the concerned Officer and the Talati-cum-Mantri also.

6. Mr. Meet Thakkar, learned AGP would support the order of the Additional Development Commissioner, particularly, relying on para 6.3. thereof.

7. Having considered the submissions made by the learned counsel for the respective parties, perusal of the orders impugned in this petition would indicate that under the Swachh Bharat Mission, two agencies namely; (a) Dasha Ma Sahay Jooth Gram Sangathan and (b) Naklang Sakhi Mandal Gram Sangathan were given the task of undertaking construction of toilets in order to promote the mission. The report of 18.6.2018 indicates that 57 toilets were not constructed though payments for the same had already been released. Turning to the guidelines or conditions, on which, payments were made to be released would indicate that a form needed to be filled by the beneficiary of the Scheme based on the counter signature of the Talati-cum-Mantri and certifying that the work of the construction of toilets was completed. Forms were to be forwarded for release of the benefit to the ultimate beneficiary. The form would then be given to the Engineer and the Taluka Development Officer for verification and the Taluka Development Officer after checking the form would release the 100% amount and pass such order.

8. At first blush, when the record of the rejoinder is perused, the applications and the certificates which are annexed wherein the petitioner has been a signatory confirming the completion of the constructed toilets, possibly, would indicate that such completion certificates were sanctioned by the Sarpanch after having shown full faith in the Talati-cum-Mantri. However, keeping in mind the principles based on which the conditions stipulated, onward payments to be made to the agencies and to the beneficiaries of the toilets under the mission, it would indicate that the entire system of making payments to the agencies and to the beneficiaries could be triggered only on the basis of signatures of the Sarpanch and / or Talati-cum-Mantri.

9. Reading of the affidavit-in-reply would indicate that the petitioner is not the only one who is singled out for action. Being an elected member of Panchayat only recourse of the Act could have been taken which in the opinion of this Court has rightly been so taken. Talati-cum-Mantri, as the affidavit-in-reply reveals is

facing disciplinary action and also was transferred subsequently. It is also stated in the affidavit that out of more than Rs.8,00,000/- which was to be recovered, Rs.6,94,400/- is recovered from the agency. The enormity of the amount involved based on the mere signatures on the certificates granted for such payments indicates culpability of the petitioner as a signatory in discharging of executive functions as expected of Sarpanch under Section 55 of the Act. This is a case where it cannot be said that the Panchayat committed any error in exercising the powers under Section 57 of the Act.

10. Under the above circumstances, the petition deserves to be dismissed and accordingly it is dismissed with no order as to costs.