

(2008) 02 GUJ CK 0106

In the Gujarat High Court

Case No : Special Civil Application No. 487 of 2008

Ganpat Mohanbhai Vasava

APPELLANT

Vs

Additional Development Commissioner and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Panchayats (Amendment) Act, 1993 — Section 57, 57(1), 57(2), 57(3)

Citation : AIR 2008 Guj 88 : (2008) 2 GLH 342 : (2008) 1 GLR 844

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : M.M. Saiyed, for the Appellant; Jaswant K. Shah, Learned Assistant Government Pleader for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner with a prayer to quash and set aside the order dated 6-10-2007 (Annexure SB) passed by the respondent No. 2 whereby the proceedings against the respondent No. 3 (Sarpanch) have been withdrawn and, further to quash and set aside the order dated 7-12-2007 (Annexure SC) rendered by the respondent No. 1, whereby the appeal filed by the petitioner has been returned.

2. Briefly stated, the facts of the case as emerging from a perusal of the averments made in the petition as well as the documents annexed thereto are, that the petitioner is a resident of village Siludi, Tal. Valia, District: Bharuch. The respondent No. 3 is the Sarpanch of the Siludi Gram Panchayat. The said respondent was elected as Sarpanch in the year 2002 and his term of office was to end on 17-1-2007. Thereafter, the election for the office of Sarpanch, for the period 2007 to 2012 was held in December, 2006 wherein, the respondent No. 3 contested the election for office of Sarpanch and was declared elected on 12-12-2006.

3. It is the case of the petitioner that on 28-12-2006, a meeting of the Gram Panchayat was held and Resolution No. 4 was passed, whereby seven properties of persons belonging to the Adivasi community, including the property of the petitioner, came to be mutated in the name of one Shri Panch Bhaya, a non Adivasi person, on the basis of a writing made on stamp papers worth Rs. 10 and Rs. 20/-. It is averred that the respondent No. 3 transferred the property of the petitioner and his brother to Shri Panch Bhaya, on the basis of the writing made on a stamp paper of Rs. 10/-, of the year 1985. The grievance of the petitioner is that before effecting the mutation entry to this effect in the revenue records, the petitioner was not informed or given an opportunity of being heard.

The averments in the petition disclose that thereafter, the petitioner filed an application dated 14-7-2007 against the respondent No. 3 (Sarpanch) before the respondent No. 2 (District Development Officer), who initiated proceedings for removal against the respondent No. 3, under the provisions of Section 57 of the Gujarat Panchayats Act, 1993 (The Panchayats Act for short). On the basis of the complaint made by the petitioner, a show cause notice dated 22-8-2007 was issued to the respondent No. 3. An inquiry was conducted by the Taluka Development Officer, who also recorded the statements of various persons. Pursuant to the notice issued to the respondent No. 3, he was given an opportunity of hearing by the respondent No. 2. The respondent No. 3 was heard and the report of the Taluka Development Officer was considered by the respondent No. 2, who found that the charges against the respondent No. 3 related to his previous term of office, and, therefore, the notice was withdrawn and the proceedings dropped. While withdrawing the notice u/s 57(1) of the Panchayats Act, the respondent No. 2 kept open the option of taking action against the respondent No. 3 under the provisions of Section 57(2) of the Panchayats Act.

4. Being aggrieved by the order dated 6-10-2007 passed by the respondent No. 2, the petitioner approached the State Government by filing an appeal u/s 57(3) of the Panchayats Act. The appeal of the petitioner has been returned by respondent No. 1 vide order dated 7-12-2007, on the ground that the appeal is not maintainable, as the petitioner is not an aggrieved party, as contemplated by the provisions of Sections 57(1) and 57(2) of the Panchayats Act and is a third party, and also because the final decision in respect of the proceedings against respondent No. 3 is still to be taken. Aggrieved by the above-mentioned communication of the Additional Development Commissioner (respondent No. 1) dated 7-12-2007, the petitioner has approached this Court by way of the present petition.

5. Mr. M.M.Saiyed, learned Counsel for the petitioner has submitted that the order of the respondent No. 2 dated 6-10-2007 is illegal, perverse and violative of the fundamental rights of the petitioner, inasmuch as the respondent No. 2 has withdrawn the proceedings u/s 57(1) of the Panchayats Act after having come to the conclusion that the action of the respondent No. 3, as pointed out by

the petitioner in his application dated 14-7-2007, was not in accordance with law. The learned Counsel for the petitioner has emphasised, that it was incumbent upon the respondent No. 2 to invoke the provisions of Section 57(1) of the Panchayats Act and exercise his discretion, by removing the respondent No. 3 as Sarpanch of the Gram Panchayat. According to the learned Counsel for the petitioner, the communication dated 7-12-2007 of the respondent No. 1, whereby the appeal of the petitioner was returned, is also illegal and arbitrary and both the impugned orders i.e. order dated 6-10-2007 of the respondent No. 2 and order dated 7-12-2007 of the respondent No. 1, deserve to be quashed and set aside. The learned Counsel for the petitioner has submitted that the respondent No. 2 has kept open the option of taking action against the respondent No. 3 under the provisions of Section 57(2) of the Panchayats Act, as recorded in order dated 6-10-2007. However, according to Mr. Saiyed, the proceedings under Sub-section (2) of Section 57 can only be initiated within a period of six months from the date on which the person resigns or ceases to hold office, and since the earlier tenure of respondent No. 3 came to an end on 17-1-2007, no action can now be taken against him under Sub-section (2) of Section 57. In support of his contentions Mr. M.M. Saiyed, learned Counsel for the petitioner has placed reliance on a decision of this Court in *Kalaji Hathiji Thakore v. State of Gujarat* reported in 2000 (2) G.L.H. 582.

6. Mr. Jaswant K. Shah, learned Assistant Government Pleader for the respondent No. 1 has supported the orders of the respondents Nos. 1 and 2. He has submitted that the petitioner, admittedly, is a third party and, therefore, there is no infirmity in the decision of the respondent No. 1, as communicated vide letter dated 7-12-2007, whereby the appeal of the petitioner has been returned. He has opposed the issuance of notice in the petition and has prayed for its dismissal.

7. I have heard the learned Counsel for the respective parties at length and in great detail, and have perused the averments made in the petition as well as the documents annexed thereto. In my considered opinion, the submissions made by Mr. M.M.Saiyed, learned Counsel for the petitioner, cannot be accepted, for reasons indicated herein-under.

8. The principal question which arises for consideration in this petition is whether an appeal filed by the petitioner under the provisions of Section 57(3) of the Panchayats Act against an order of the competent authority u/s 57(1), whereby notice has been withdrawn, is maintainable? To answer this question it will be fruitful to advert to the relevant provisions of the Panchayats Act.

9. Section 57 of the Panchayats Act, empowers the competent authority to remove the Sarpanch or the Upa-Sarpanch from office. The provisions of this Section are reproduced herein-under:

57. Removal from office (1) The competent authority may remove from office any member of the Panchayat, the Sarpanch or, as the case may be, the Upa-

Sarpanch, thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat.

(2) The competent authority may, after following the procedure laid down in Sub-section (1) disqualify for a period not exceeding five years any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch, or otherwise ceased to hold any such office and has been guilty of misconduct specified in Sub-section (1) or has been incapable of performing his duties and functions:

Provided that an action under this Sub-section shall be taken within six months from the date on which the person resigns or ceases to hold any such office.

(3). Any person aggrieved by an order of the competent authority under Sub-section (1) or (2) may, within a period of thirty days from the date of communication of such order, appeal to the State Government.

10. A bare perusal of the above Section makes it clear that the Legislature has empowered the competent authority (in this case the District Development Officer respondent No. 2) to remove from office any member of the Panchayat, including the Sarpanch or the Upa-Sarpanch, after giving him an opportunity of being heard and after giving due notice in that behalf to the Panchayat. The Section also contemplates the holding of an inquiry, if deemed necessary. The Sarpanch or the Upa-Sarpanch, as the case may be, can be removed at the discretion of the competent authority after being heard, and after considering the contents of the inquiry report. The discretion to remove or not to remove the Sarpanch or the Upa-Sarpanch, as the case may be, is to be exercised solely by the competent authority. The language of Section 57(1) is explicit and provides that after giving an opportunity of being heard to the Sarpanch or the Upa-Sarpanch and after conducting an inquiry, if said Sarpanch or Upa-Sarpanch has been found to have committed any misconduct, as described in the said Section, he may be removed from his office at the discretion of the competent authority. It, therefore, follows that the discretion to exercise, or not to exercise, the powers u/s 57(1) is solely vested in the statutory authority and it is not for the Court or for any other person to direct the competent authority how, and in what manner, such discretion is to be exercised.

11. Section 57(2) of the Panchayats Act empowers the competent authority to disqualify, for a period not exceeding five years, any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch, or otherwise ceased to hold any such office, after following the procedure laid down in Sub-section (1), if such

person has been found guilty of misconduct, as specified in Sub-section (1) or has become incapable of performing his duties and functions, within the period prescribed in the proviso.

12. Further, Section 57(3) stipulates that if any person is aggrieved by the order of the competent authority, made under the powers conferred by Sub-sections (1) or (2) of Section 57, he can prefer an appeal, within a period of thirty days from the date of communication of such order, to the State Government. The above provisions of law make it sufficiently clear that the power to exercise jurisdiction u/s 57(1) is conferred upon the competent authority, and none else. A bare reading of the above-quoted provisions of law makes it amply evident that an appeal under Sub-section (3) of Section 57 is contemplated at the behest of any person aggrieved by an order of the competent authority made under the provisions of Sub-section (1) or Sub-section (2) of Section 57. A person aggrieved by an order under those Sub-sections, is necessarily a person against whom the competent authority has passed an order under those statutory provisions. In the present case, the competent authority has, by order dated 6-10-2007, withdrawn the proceedings initiated u/s 57(1) of the Panchayats Act and has kept open the option of exercising powers u/s 57(2) of the said statute. Had the proceedings not been dropped and had culminated in an adverse order, in that case, the respondent No. 3 would have been a person aggrieved within the meaning of Section 57(3), and could have preferred an appeal. By dropping the proceedings under Sub-section (1), the respondent No. 2 has, after considering the enquiry report and after having heard the respondent No. 3, chosen not to proceed with the matter, which decision is within the parameters of the discretion vested in him by law.

13. The petitioner, having made a complaint against the respondent No. 3, upon which proceedings were initiated, cannot insist that those proceedings be continued or should culminate in an order of dismissal of respondent No. 3. Once the petitioner has filed a complaint, no further role is contemplated for him as far as the procedure laid down in Section 57 is concerned. It, therefore, follows that the submission of the learned Counsel for the petitioner that the competent authority could not have dropped the proceedings u/s 57(1) of the Panchayats Act and should have taken those proceedings to their logical conclusion by removing the respondent No. 3, cannot be accepted in view of the clear language of Section 57, read as a whole. It is not for the petitioner to direct how, and in what manner, the powers u/s 57(1) of the Act are to be exercised.

14. The second submission of the learned Counsel for the petitioner, to the effect that the respondent No. 1 has wrongly returned the appeal filed by the petitioner, is also not sustainable in law, in view of the provisions of Section 57(3) of the Panchayats Act. As has already been stated hereinabove, Any person aggrieved by an order passed under Sub-sections (1) and (2) can prefer an appeal, as stipulated under Sub-section (3) of Section 57. The entire Section has to be read harmoniously, and as a whole and upon such a reading, the clear and apparent

meaning that emerges is that any person aggrieved would be a person against whom an order under Sub-section (1) or (2) of Section 57 has been passed, since Sub-sections (1) and (2) contemplate the passing of an order of removal of a Sarpanch or Upa-Sarpanch or member of a Panchayat, after following the prescribed procedure. The language of Section 57(3) cannot be artificially stretched to include a person other than a person against whom an order under Sub-section (1) or (2) of Section 57 has been passed. The provisions of Sub-section (3) of Section 57 have to be read in the context of the provisions of Sub-sections (1) and (2) of Section 57, and not in isolation.

15. A combined reading of Sub-sections (1), (2) and (3) of Section 57 leaves no room for doubt that the competent authority has been vested with the power to remove from office, any member of the Panchayat, the Sarpanch or the Upa-Sarpanch, after following the procedure, as prescribed in the Section. The competent authority has also been vested with the discretion to remove the Sarpanch or Upa-Sarpanch from the membership of the Panchayat. It, therefore, follows that an order under Sub-section (1) of Section 57 can be passed against a Sarpanch, Upa-Sarpanch or a member of the Panchayat, as the case may be. Sub-section (2) contemplates the disqualification of a person, who has resigned his office as a member, Sarpanch or Upa-Sarpanch, as provided therein. It is in the context of the provisions of Sub-sections (1) and (2) of Section 57 that the provisions of Sub-section (3) of Section 57 are to be read and, not independently. Any person aggrieved, as contemplated by Sub-section (3) of Section 57, can, necessarily, only be the person against whom the order under Sub-sections (1) or (2) has been passed, namely the Sarpanch, Upa-Sarpanch, or a member of the Panchayat. The word any in Sub-section (3) cannot be stretched to mean all and sundry, as such a meaning would result in rendering the provisions of Sub-sections (1) and (2) nugatory. Such a reading would amount to adding to it, something which is neither intrinsic to it, nor intended by the Legislature, which is not permissible in law. In the light of the above, the petitioner cannot be said to be a person aggrieved within the meaning of Section 57(3) of the Panchayats Act.

16. Who can be said to be a person aggrieved is no longer *res integra*. While addressing this proposition, a Division Bench of this Court in *Lalbhai Trading Company and Others Vs. Union of India (UOI) and Others*, , has held as under:

14 On a conspectus of the aforesaid case-law, it becomes clear that the words "person aggrieved" are required to be ascertained with reference to the purpose of the provisions of the statute in which they occur. The meaning may vary according to the context of the statute. However, one thing is certain, a person can be said to be aggrieved if a legal burden is imposed on him which may be in the form of being denied or deprived of something to which such person is legally entitled.

[a] The meaning of the words "aggrieved person" cannot be read as an expression which is rigid, exact and comprehensive. Apart from the content and

intent of the statute, the specific circumstances of the case, the nature and extent of the person's interest, and the nature and extent of the prejudice or injury suffered by the person are relevant factors.

[b] The duty of the Court is to read into the statute, a duty to act fairly in accordance with the principles of natural justice. If a person suffers a wrong as a result of unfair treatment on the part of the authority, he is a person who has suffered a legal grievance, against whom a decision has been pronounced which decision has either wrongfully deprived him or wrongfully refused him something or wrongfully affected his title to something. In other words, the person must have suffered a legal wrong or injury, in the sense, that his interest is prejudicially and directly affected by the act or omission of the authority.

[c] The grievance has to be his own beyond some grievance or inconvenience suffered by him in common with the rest of the public. The test is: can the person be said to be entitled to object and be heard by the authority before the authority takes the impugned action.

[d] The person has to be directly and immediately affected. An aggrieved party is one whose personal, pecuniary or property rights are adversely affected by another person's action or by a decree or judgment by a Court.

[e] An appeal can be preferred from every original decree or from every decree passed in appeal. The appellant must be a person aggrieved by a decree not merely by a finding. The person must be prejudicially or adversely affected by the decree. In other words, when a person is fastened with liability whereunder his property, of every type, is directly affected. To put it differently, is the person, by virtue of the decree, called upon to discharge a pecuniary liability so as to deprive him of his property. If the answer is yes, he is an "aggrieved person".

17. Applying the above principles of law to the case in hand, it can be clearly derived that any person aggrieved as stated in Section 57(3), can only be a person upon whom some legal burden has been imposed or who has been deprived of something to which he is legally entitled, with reference to the provisions of the statute. In the present case, the provisions of Section 57(1) and (2) are applicable only to the Sarpanch, Upa-Sarpanch or a member of the Panchayat and, therefore, action as contemplated under Sub-sections (1) and (2) of Section 57 can only be taken against persons holding those posts. If the discretion vested in the competent authority is exercised to their detriment and they are removed from their posts, they can be said to be any person aggrieved, within the meaning of Sub-section (3) of Section 57, and no other person can, therefore, invoke the provisions of Sub-section (3) of Section 57 and file an appeal against an order passed under Sub-sections (1) and (2) of Section 57.

18. The action against the respondent No. 3 has been initiated upon a complaint made by the petitioner. In fact, he can be said to have set the machinery in motion. However, after having brought to the notice of the competent authority, certain alleged irregularities, the petitioner no longer has any role to play, so far

as the proceedings u/s 57 are concerned. The discretion to exercise the power under Sub-sections (1) and (2) is vested solely with the competent authority. It is, therefore, for the said authority to decide whether to exercise this discretion or not. The power to exercise discretion also includes within its ambit, the power not to exercise it. Similarly, the power to initiate proceedings, also includes the power to drop those proceedings, if the competent authority comes to such a conclusion, in the facts and circumstances of the case. In the present case, the proceedings against respondent No. 3 have been dropped after enquiry and after giving him an opportunity of hearing. In my view, there is no infirmity or illegality in the action of the competent authority in doing so. It cannot be said that every action initiated u/s 57(1) must necessarily culminate only in the removal of the Sarpanch, Upa-Sarpanch or a member of the Panchayat. If such a narrow meaning is put upon to the language of the Section, it would be rendering the whole Section ineffective and redundant. The intention of the Legislature in enacting the said provision of law becomes evident from a bare reading of it, and in the light of the aforesaid, the communication dated 7-12-2007 of the respondent No. 1, whereby the appeal of the petitioner has been returned, does not suffer from any legal infirmity.

19. Regarding the submission of the learned Counsel for the petitioner, that proceedings under Sub-section (2) of Section 57 of the Panchayats Act, cannot be initiated at this stage since the time stipulated has already expired, this aspect becomes irrelevant in the light of the fact that in the communication dated 7-12-2007, the petitioner has been informed that the final decision regarding the respondent No. 3 is yet to be taken.

20. The learned Counsel for the petitioner has placed reliance upon Kalaji Hathiji Thakore (Supra). In that case, the petitioner was a Upa-Sarpanch, who had been removed under the provisions of Section 57(1) of the Panchayats Act. The petitioner therein was not a member of the Panchayat at the relevant point of time and had challenged his removal on this ground. However, the Court upheld the removal of the petitioner as Upa-Sarpanch. This judgment will not be of any help to the petitioner since, it turns upon its own facts and also does not touch upon the issues which arise in the present case.

21. As a result of the legal and factual position as discussed hereinabove, in my considered view, there is no infirmity in the action of the respondent No. 2 in withdrawing the proceedings against respondent No. 3. Similarly, the order of the respondent No. 1, returning the appeal of petitioner against the order of respondent No. 2, suffers from no illegality.

22. For the above-mentioned reasons, the petition, being devoid of any merit, deserves to be dismissed. It, therefore, stands dismissed.