

(2005) 03 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 14565 of 2003

Geetaben L. Rathwa

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Panchayats Act, 1961 — Section 249(4), 259, 36, 70, 70(2)

Citation : (2005) 03 GUJ CK 0085

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : S.K. Jhaveri and Jirga D. Jhaveri, for the Appellant; M.R. Mengdey, Ld. AGP for Respondent No. 1 and H.S. Munshaw for Respondent No. 2-4, for the Respondent

Judgement

Jayant Patel, J.—Rule. Mr. Mengdey, learned AGP appears for Respondent No. 1 and waives service of notice of Rule. Mr. Munshaw, learned Counsel appearing with Mr. Gajendra Singh for Respondents No. 2, 3, and 4 waives service of notice of Rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner was formerly holding the office of the President of Devgadhi Baria Taluka Panchayat (hereinafter referred to as the "Panchayat" for short). On 25.8.2003, 14 elected members of the Panchayat submitted a motion of no-confidence against the President and Vice-President of Taluka Panchayat. It appears that after the motion was submitted, the petitioner proceeded on leave on 1.9.2003 and it is the case of the Taluka Development Officer that the meeting was required to be held for considering the motion of no-confidence and, therefore, the agenda was issued and the copy of the agenda was also affixed at the residence of the petitioner. However, as per the petitioner, the said place was not the residence of the petitioner and the petitioner was at the relevant point of time in hospital and it is the case of the petitioner that the petitioner was not aware of the meeting which was scheduled

for considering the motion of no-confidence. There is no dispute on the point that on 24.9.2003, the motion of no-confidence was carried by 2/3rds majority and the said motion was carried against the President and Vice-President of the Panchayat. The grievance of the petitioner is that as the petitioner was not served with the agenda, she was deprived of remaining present in the meeting and of addressing the house when the motion was to be considered and, therefore, it has been submitted that prejudice is caused to the petitioner by non-service of the agenda and, therefore, the motion which was carried out by 2/3rds majority of the Taluka Panchayat is illegal.

3. It appears that the petitioner preferred revision before the State Government u/s 259 of the Gujarat Panchayats Act (hereinafter referred to as the "Act" for short), the Secretary exercising power of the State Government partly allowed the revision by observing that the petitioner will have the remedy of preferring appeal u/s 249(4) of the Gujarat Panchayat Act and it was further observed that if such appeal is preferred u/s 249(4) of the Act, until the appeal is finally decided the post of the President of Taluka Panchayat should not be filled up. It is under these circumstances, the petitioner has approached this Court by preferring this petition challenging the order passed by the State Government in revisional jurisdiction as well as the resolution passed by the Panchayat in its meeting dated 24.9.2003, whereby the motion of no-confidence was passed against the petitioner.

4. Heard Mr. S.K. Jhaveri, learned Counsel appearing for the petitioner, Mr. Mengdey, learned AGP appearing for the State Authorities and Mr. Munshaw, learned Counsel appearing with Mr. Gajendra Singh for the District Development Officer, Taluka Panchayat and Taluka Development Officer.

5. Mr. Jhaveri, learned Counsel for the petitioner raised the first contention that as the agenda was not served upon the petitioner, the petitioner is deprived of the opportunity to address the house and to attend the meeting and, therefore, a prejudice is caused to the petitioner and, therefore, under these circumstances the State Government ought to have entertained the revision. Section 70 of the Act which is relevant for the consideration reads as under:

"70. Motion of no confidence - (1) Any member who intends to move a motion of no confidence against the President or Vice-President may give a notice thereof in the prescribed form to the panchayat. If the notice is supported by such number of members as may be prescribed, the motion may be moved.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then members of the panchayat, the President or the Vice-President, as the case may be, shall cease to hold office after a period of three days from the date on which the motion is carried, unless he has resigned earlier; and thereupon the office held by such President or Vice-President shall be deemed to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder

a President or Vice-President shall not preside over a meeting in which a motion of no confidence is discussed against him; but he shall have a right to speak or otherwise to take part in the proceeding of such a meeting (including the right to vote).

(4)(a) Notwithstanding anything contained in section 122, a meeting of the panchayat for dealing with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which a notice of such motion is received by the panchayat.

(b) If the President of the panchayat fails to call such meeting, the Secretary of the panchayat shall make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the panchayat within a period of fifteen days from the date of the receipt of the report."

As per sub-section(2), if the motion is carried by a majority of not less than two-thirds of the total number of the then members of the panchayat, it has been provided that the President or the Vice-President, as the case may be, shall cease to hold office after a period of three days from the date on which the motion is carried, and it has been further provided that, unless he has resigned earlier, and thereupon the office held by such President or Vice-President shall be deemed to be vacant.

6. The pertinent aspect is that the language used by the legislature is "if the motion is carried by a majority of not less than 2/3rds of the total number of the then members of the Panchayat" and the another language used is that "the President or the Vice-President, as the case may be, shall cease to hold the office after a period of three days from the date on which the motion is carried", and the further language used is "thereupon the office held by such President or Vice-President shall be deemed to be vacant." Therefore, the language used by the legislature is not that a resolution is passed by Panchayat for approving the motion of no-confidence or not approving the motion of no-confidence, but requirement is that the motion should have been carried by the majority of not less than 2/3rds of the members. The language used, "motion to be carried" cannot be fully equated with any resolution, which may be passed by a Panchayat on its meeting for transacting its business in normal course. As such the support to the motion would be the only test for meeting with the requirement of carrying the motion or otherwise. The second aspect is that the legislature itself has provided that if the motion is carried by the majority of not less than 2/3rds of the total number of members, the President or the Vice-President, as the case may be, shall cease to hold the office after a period of three days from the date on which the motion is carried out. Even for creating fiction of cessation of the office the language used by the legislature is carrying of the motion and not the resolution of a Panchayat at its meeting like passing of the resolution while transacting its business in normal circumstances. Further, it has been so expressly provided by the legislature that thereupon if the motion is carried out and after the expiry of three days from today, office held by such

President or Vice-President shall be deemed to be vacant. Therefore, in view of the aforesaid expressed specific language used by the legislature for consideration of the motion of no-confidence and of giving effect to such motion of no-confidence, if carried out by majority of not less than 2/3rds of the total number of the then members of the Panchayat, it cannot be said that such carrying of the motion by the majority members of the Panchayat can be said as the resolution which may be passed by the Panchayat on its meeting in normally course of its business.

Section 259 of the Act reads as under:

" The State Government has clothed with the power to call for and examine the record of the proceeding of any Panchayat or any Committee thereof, or of any Officer for the purpose of satisfying itself as to the legality and propriety of any order passed and is empowered to revise or modify the order as it shall deem just."

7. In view of the aforesaid express language used by the legislature for carrying the motion of no-confidence and in view of the express contingencies provided under the Act in the event the motion is carried by the majority of not less than 2/3rds of the members in respect to cessation of the office by the President or Vice-President of the Panchayat, as the case may be, and in view of the express provisions made by the legislature for giving deeming fiction to make the office of the President and Vice-President as vacant, I am of the view that the power of the State Government u/s 259 of the Act cannot be attracted when it is a matter pertaining to carrying of the motion of no-confidence or otherwise. When the legislature itself provides for express language and giving effect to the carrying of the motion of no-confidence and the contingencies thereupon, it is not possible to agree with the submission that the State Government will have the revisional jurisdiction over the decision of the elected representatives in the matter of considering the motion of no-confidence or otherwise. As such, Section 70 of the Act provides for a complete mechanism of its own for reflecting the "will" of the elected representative in the President and Vice-President of the Panchayat. The State Government may have general power of superintendence which may include the revisional jurisdiction u/s 259 of the Act, but such revisional jurisdiction, if read with the State Government, in my view, may result into diluting the effect of carrying the motion by elected representation as provided u/s 70(2) of the Act and, therefore, I find that in a matter where the subject matter is pertaining to carrying of the motion of no-confidence u/s 70(2) of the Act, the power of the State Government u/s 259 of the Act would not be attracted.

8. There is one additional reason for taking the aforesaid view and the same is that in a matter to consider the motion of no-confidence it is the confidence of the elected representatives/members which is of paramount consideration. No procedure for holding of the meeting or otherwise can be allowed to operate so as to frustrate the real Will and desire of the elected representatives. If the

elected representatives have lost the confidence upon the President or Vice-President of the Panchayat, the only requirement would be to state as to whether such motion is carrying out or not. Even if it is presumed for the sake of consideration that there were some procedural lapse while convening the meeting and or of issuing the agenda and/or other procedural aspects, the same cannot be allowed to operate which results into nullifying the effect of the motion of no-confidence, which is otherwise passed by the requisite majority of the elected representatives, more particularly when the legislature itself has provided for the contingencies thereupon and the cession of the Office by the Office bearers against whom the motion of no-confidence is carried. The power u/s 259 of the Act of the State Government is largely concerned with the procedures to be adopted by the Panchayat for the purpose of maintenance of its record and the proceedings and in view of the aforesaid observations, as the proceedings and the procedure pertaining to the motion of no-confidence do not assume much importance in the matter of carrying the motion of no-confidence and giving its effect, even if the principles of purposive interpretation of the statute are considered, it would be reasonable to hold that the power of the State Government u/s 259 of the Act shall not be attracted in a matter where it is pertaining to carrying of the motion of no-confidence by the elected representatives or otherwise.

9. Mr. Jhaveri, learned Counsel for the petitioner relied upon the decision of this Court in case of " Haresh Octroi Co. Vs. S. Ramabhadran and Others, for contending that even if the finality is attached under the Act, the State Government will have the revisional jurisdiction and by taking support of the aforesaid decision, he further contended that as the prejudice is caused to the petitioner by non-receipt of the agenda and by non-availability of the opportunity to address the house, the petitioner could invoke the revisional jurisdiction of the State Government u/s 259 of the Act. The decision in case of "Haresh Octroi Co. v. S. Ramabhadran and Ors." (supra) was a matter pertaining to the grant of octroi contract by a Gram Panchayat to the Octroi Contractor and, therefore, as such the same cannot be made applicable in a matter where the motion of no-confidence is to be carried or otherwise by the elected representatives of Panchayat. Further, as observed earlier it is not the matter where only finality is attached by the legislature as per Section 70(2), but the legislature itself has provided for further contingencies thereupon of cessation of the office and a deeming fiction that the office shall be deemed to be vacant. Therefore, the said decision cannot be made applicable to the facts of the present case and hence the reliance placed upon the said decision is ill-founded.

10. Further, so far as the contention raised on the aspects of prejudice is concerned, the affidavit-in-reply has been filed by Taluka Development Officer stating that the attempt was made to serve the agenda and ultimately it was affixed at the residence. The dispute is raised by the petitioner contending, inter alia, that the said house was not the residence of the petitioner and it was the residence of the father-in-law of the petitioner and the petitioner at the relevant

point of time was in the hospital. Even if such disputed questions are kept aside and the contention of the petitioner is considered for the sake of examination, then also if a motion of no-confidence is moved, it is mandatory that the meeting is to be held within the stipulated time provided under the statutory provisions. If a motion is moved against the President and the Vice-President who is on leave or is not available for one or another reason, the same in my view cannot be said to be a valid ground for non-consideration of the motion of no-confidence by the remaining members. If such a contention is entertained and accepted, no elected representative will be in a position to reflect his will by showing no-confidence, merely because the person against whom no-confidence is moved is not available. Further, the proceeding shows that in all there were 21 members of the Panchayat and 18 members remained present at the meeting and 15 members supported the motion of no-confidence and, therefore, the motion is carried by the majority of not less than 2/3rd. Therefore, even if the petitioner had remained present and opposed the motion, it would have made hardly any difference so far as carrying of the motion by the majority of not less than 2/3rds of the then members of the Panchayat was concerned. Therefore, I find that it cannot be said that any serious prejudice is caused to the petitioner, merely because the petitioner could not remain present at the meeting for addressing the house when the motion was considered in the meeting dated 24.9.2003. At this stage, it would be profitable to refer to certain observations of this Court in the case of "Patel Manubhai Khodidas v. Shri Sonara and Ors.", reported in 1989 (2) GLR 1215 and it deserves to be recorded that the observations were made by this Court in the aforesaid decision based on the observations of Division Bench of this Court in the LPA No. 223/1988 decided on 21.6.1988 in the case of "Gordhanbhai Kanjibhai v. Upleta Municipality". This Court in the decision of "Patel Manubhai Khodidas" (Supra) at para 7, inter alia, has observed as under:

"7. ...It is obvious from the above observations that when the notice of motion does not spell out a ground other than stating that the members signing the notice of motion have lost confidence that is sufficient for the purpose of Section 36 of the Act. We, therefore, do not see any merit in the first submission made before us."

The further observations, which are extracted, read as under:

"Although a ground may be mentioned when passing a motion of no-confidence, the existence of a ground is not a prerequisite of a motion of no-confidence. There is no legal bar to the passing of motion of no-confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no-confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members."

It was further observed as under:

"Thus, the Division Bench approved the view taken by the learned Single Judge

that the essence of a notice of no-confidence motion is that the party against whom such motion is moved has ceased to enjoy the confidence of the requisite majority of members and for that reason when a notice of motion does not spell out a ground other than stating that the members signing the notice of motion have lost confidence then that should be regarded as sufficient for the purpose of the Act."

11. Therefore, if 15 members have supported the motion expressly of no-confidence in the petitioner out of 21 members of the Panchayat, I find that merely because the petitioner could not remain present at the meeting and address the house and/or merely because the petitioner could not cast the vote at the time of consideration of the motion of no-confidence, would not make any material difference to the final outcome of the carrying the motion by the majority of no less than 2/3rds of the elected representatives of a Panchayat and, therefore, it cannot be said that any serious prejudice is caused to the petitioner, nor can it be said that had the opportunity been given to the petitioner, the result would have been otherwise or materially affected.

12. Further, even if it is the case of the petitioner that any prejudice is caused to the petitioner because of the carrying of motion of no-confidence by the members of Panchayat, in view of the observations made hereinabove, the power of the State Government u/s 259 would not be attracted and, therefore, the petitioner can at the most challenge the motion or the action, by preferring a petition before this Court under Article 226 of the Constitution of India. Therefore, even if the contention of prejudice is examined, it cannot be held that in a matter of consideration of no-confidence motion, the power of the State Government would be attracted u/s 259 of the Act. Further as observed earlier, since it cannot be said to be serious prejudice to the petitioner or in any case it has not materially affected the factum of carrying the motion of no-confidence, is meritless and, therefore, fails even if considered under Article 226 of the Constitution of India.

13. In view of the above, I find that there is no substance in the challenge to the decision of the Gram Panchayat taken in its meeting dated 24.9.2003 against the petitioner and the challenge to that effect fails.

14. I further considered the matter for examining the legality and validity of the order dated 1.10.2003 passed by the State Government in exercise of revisional jurisdiction in passing the order by partly allowing the revision of the petitioner and relegating the petitioner to the remedy u/s 249(4) of the Act is not required, in view of the reasons recorded hereinabove as the State Government had no power to entertain the revision in a matter of consideration of motion of no-confidence. Therefore, no useful purpose would be served in further examining the challenge. Further I find that the order passed by the State Government in revisional jurisdiction even otherwise also cannot be sustained in the eye of law so far as relegating the petitioner to the remedy of appeal u/s 249(4) of the Act, because as observed earlier the matter is considered for carrying of the motion

of no-confidence or otherwise and it is not a matter of passing the resolution by a Panchayat while transacting its normal business and, therefore, even otherwise also the appeal would not be competent u/s 249(4) of the Act on the same reasoning as recorded by this Court pertaining to the consideration of motion of no-confidence.

15. When the State Government had no jurisdiction to entertain the revision, in any case, the interim order passed by the State Government prohibiting the Panchayat from filling up the post of President and Vice-President until finalisation of the appeal u/s 249(4) of the Act could not have been passed. Further, once the statute has expressly provided for the contingencies of treating the office as vacant upon the expiry of the period of three days from carrying of the motion of no-confidence, no such order could have been passed even otherwise also by the State Government which results into nullifying the express provisions made by the legislature. Normally, in a matter where the motion of no-confidence is carried by the requisite majority, post of President of Taluka Panchayat cannot be allowed to be kept vacant by such an interim order and, therefore, considering the facts and circumstances, it appears that the interim directions given by the State Government is not only without any jurisdiction, but even otherwise also is ex-facie arbitrary and running counter to the intention of the legislature. Therefore, the order passed by the State Government to that extent also deserves to be quashed and set aside.

16. In view of the above, the petition is partly allowed to the aforesaid extent by quashing and setting aside the order dated 1.10.2003 as being ultra vires the power and the order being arbitrary and unreasonable. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.