

(2010) 03 GUJ CK 0003

In the Gujarat High Court

Case No : Spl. Civil Application No. 1134 of 2010

Gopalbhi Khemchand as Patel

APPELLANT

Vs

District Development Officer and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Bombay Police Act, 1951 — Section 135
Constitution of India, 1950 — Article 226
Gujarat Panchayats (Amendment) Act, 1993 — Section 55, 57, 59, 59(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : AIR 2010 Guj 157 : (2010) 51 GLR 2506

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Shakeel A. Qureshi, for the Appellant; H.S. Munshaw, for No. 1, Moxa Thakkar, AGP for No. 2 and P.M. Thakkar, for Thakkar Assoc. for No. 3, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—Rule. Learned Counsel for the Respondents waive service. The petition was taken up for final hearing in view of the urgency and importance of the issue involved and was heard in extenso. The Petitioner has invoked Article 226 of the Constitution to challenge order dated 29-1-2010 of the Additional Development Commissioner, whereby original order dated 22-6-2009 of the District Development Officer was set aside, thereby setting at naught suspension of Respondent No. 3 ordered in exercise of powers u/s 59 of the Gujarat Panchayats Act, 1993 (for short the Act). The Petitioner is the original complainant in the FIR registered as C.R. No. 125/2009. dated 7-6-2009 and wherein Respondent No. 3. Sarpanch of Village-Jagudan, is accused No. 1. The complaint is for the offences punishable under Sections 147, 148, 149, 337, 323 and 427 of the Indian Penal Code. There is no dispute about the facts that Respondent No. 3 was arrested and taken into custody on 8th June, 2009 and he remained under arrest till 10th July, 2009. During that period show cause notice

dated 16-6-2009 was issued to Respondent No. 3 calling upon him to show cause why he should not be suspended from the office of Sarpanch in accordance with the provisions of Section 59 of the Act. After affording to that Respondent an opportunity of being heard, original order dated 22-6-2009 was made to temporarily suspend him on the basis that he appeared to be involved in the offences involving moral turpitude in respect of which penal proceedings were instituted. Obviously, that order was made while the Respondent was in judicial custody. The District Development Officer considered the fact that Petitioner herein was alleged to have been called at the panchayat office and beaten with logs and hockey and had fractures on his body. There was no dispute about the fact that the Respondent was in jail for nearly 35 days, and hence, could not discharge his duties as a Sarpanch.

2. Upon that Respondent filing an appeal, it was argued on his behalf that DDO was required to apply his mind to the aspect of moral turpitude involved in the alleged acts of the Respondent. By acceding to that argument, the additional Development Commissioner held in the impugned order that the authority ought to have taken the facts and circumstances of the case into consideration and closely examined whether the element of moral turpitude was involved in the offences alleged against Respondent No. 3. Only on the ground that the original order did not take into consideration several judgments of this Court, it was held that it was difficult to consider the Respondent's offences to be in the category of offences involving moral turpitude. Being aggrieved by such order, the Petitioner is before this Court with the contention that the impugned order in appeal is obviously and obnoxiously perverse and illegal.

3. Arguing for the Respondent-Sarpanch, learned Senior Advocate, Mr. P. M. Thakkar submitted that the appellate authority was right in insisting upon proper application of mind by the DDC) as far as the aspect of moral turpitude in the alleged offences was concerned. He further submitted that this Court need not substitute its own judgment and reasoning for the original order insofar as it was the appropriate authority which has to properly apply its mind and such application of mind to the most important aspect must be explicit in the order itself. Learned Counsel, relied upon judgment of this Court in *Thakorabhai Bhagabhai v. D.D.O., Surat and Anr.* 1980 (1) GLR 966, to submit that criminal proceedings must have been initiated against the concerned office bearer or the Panchayat for the offences involving moral turpitude and before such an office bearer can be removed, he must be charged with the offences arising out of an act which is dishonest immoral or unethical. It is further observed in the judgment that the words involving moral turpitude should not be given restrictive meaning, nonetheless, the officer concerned must be imputed with the act constituting offence which is dishonest or immoral or with conduct which is unethical as to render him unfit to hold the office. This Court therein quoted a paragraph from the judgment of the Supreme Court in the matter of *Mr. P. an advocate*, AIR 1963 SC 1313, wherein Gajendragadkar, J. inter alia, observed in the context of a case against an advocate that any conduct which makes a

person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. Thus, instead of prescribing a straight-jacket formula for examining the element of moral turpitude, the Supreme Court appears to have given wider meaning to the phrase involving moral turpitude. On the factual side, it was also submitted by learned Senior Advocate that the Respondent Sarpanch had also filed his complaint against the original complainant, the Petitioner herein, and a charge sheet was also filed against original complainant in relation to the same incident. Be that as it may, the fact remains that the Respondent Sarpanch was in jail at the relevant time and not only the offences involving moral turpitude were alleged against him in the FIR, subsequently even a charge sheet for the same offences is already filed in the criminal Court against him.

4. In examining merits of original order ; dated 22-6-2009, the authority was required to examine the facts obtaining at that time and the most relevant factors were that Respondent No. 3 was charged for the offences involving moral turpitude and he was in jail, duties as Sarpanch. On the ethical aspect of the matter, it would be very hard to even contend that offences of rioting in company of an unlawful assembly, voluntarily causing grievous hurt and causing such hurt by acts endangering life or personal safety of others would not involve moral turpitude and a person charged with such offences can be entrusted the duties and powers of the head of a Gram Panchayat. The view taken by this Court (Coram: N.N. Mathur, J.) in *Naranbhai Veljibhai Chaudhary v. (Shri) R.S. Vaghela and Ors.* 1996 (2) GLH 251 was followed in *Bhikhumiya Sarfumiya Malek v. D.D.O., Mehsana* and *Anr.* 1999 (2) GLH 963 with the discussion as under:

8. Besides this, in the facts and circumstances of this case, I find that in the case of *N.V. Chaudhary v. R.S. Vaghela* (supra) it was considered as to what will constitute the offence involving moral turpitude. No rule of universal application can be laid down that every criminal case will essentially be a case of an offence involving moral turpitude. It would depend upon the facts and circumstances of each and every case and the background in which the offence is committed. In a given case, even an offence u/s 302, may not be an offence involving moral turpitude. For example a son witnesses that his mother or sister or wife is being molested or raped and he is not able to control himself and kills the culprit, it will not at all be a case of offence involving moral turpitude. In *N. V. Chaudhary v. R. S. Vaghela* (Supra) it has been considered and held as under:

Thus, a Sarpanch cannot be suspended just on institution of Criminal Case. Whether the act constitute 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 criminalisation 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.

5. Recently, this Court (Coram : Akil Kureshi, J.) in *Somabhai Bhagwanbhai Gohil v. State of Gujarat and Ors.* 2006 (1) GLH 67 commented on the aspect of moral turpitude and noted that the authorities had mechanically come to the conclusion that the Petitioner was involved in offences involving moral turpitude. Mere involvement in offences punishable under Sections 323, 324, 504 and 506 of Indian Penal Code ipso facto would not constitute offence involving moral turpitude. Without there being anything additional in the complaint, per se such offence cannot be categorized as one involving moral turpitude. In the facts of that case, the allegation against the Petitioner was of having entered into some fight with other villagers without any element of unethical behaviour or dishonest or immoral acts. The Court came to the conclusion that the charges, even if proved, would not amount to conduct which can be described as inherently base, vile or depraved.

6. On the other hand, judgment of this Court (Coram : R. K. Abichandani, J.) in *Jorabhai Hirabhai Rabari Vs. District Development Officer, Mehsana and Another*, observed as under:

4. ...Therefore, it would be a duty of a Sarpanch to safeguard the welfare of the village. The offences of attempted murder, rioting, causing injuries with sharp edged instrument if committed by Sarpanch who is the Chief Executive of the village panchayat would shock the general conscience of the society and render him unfit to become Sarpanch. The question 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 person who commits the offence, the person against whom it is committed, the manner and the circumstances in which it is alleged to have been committed and the values of the society are some of the important factors which are required to be kept in mind before concluding whether the offence alleged to have been committed by the person involves moral turpitude. An offence of simple injury u/s 323, IPC on the face of it may not involve moral turpitude but it might assume a different colour when for instance it is committed against one's own teacher or parent which might shock the conscience of the right thinking persons. Therefore, the observations which have been made by the Hon'ble Mr. Justice B. K. Mehta in *Thakorabhai Bhagabhai* (supra) to the effect that it cannot be said that the alleged offences under Sections 323, 324, 149, 147 of IPC and 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 on 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 formulae 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 not involving moral turpitude.... The truth of the allegations is not required to be gone into in a proceeding u/s 59(1) and the only question which is required to be decided by the authority under that provision is whether a criminal proceeding is instituted against the Sarpanch in respect of offences involving moral turpitude. It is not necessary that the offence should have been committed in connection with the duties of a Sarpanch. It can be any offence involving moral turpitude which would make him unfit to continue in the office of Sarpanch and the suspension would be justified....

7. The above discussion would clearly show that the acts involving moral turpitude have to be examined in the context of the facts and circumstances of each case but the consideration certainly has morality or lack of it as the central point of reference. As discussed hereinabove, and without going into the truth of the allegations, the case against the Respondent was that of calling a person to the office at night and beating him to the extent of causing fractures. Even his application for regular bail was rejected by learned Additional Sessions Judge on 12-6-2009, and therefore, it could not be disputed that Respondent No. 3 was in jail at the relevant time when the original order dated 22-6-2009 was made.

8. According to the plain reading of the provisions of Section 59, it is not only in case of institution of criminal proceeding in respect of an offence involving moral turpitude that the Sarpanch or Upsarpanch of a village Panchayat could be suspended, but there are three other contingencies, in which the power can be or must be exercised to suspend such office bearer. Those other contingencies include the contingency of the office bearer being detained in prison during trial for any offence, the contingency of such officebearer undergoing sentence of imprisonment or being detained under any law relating to preventive detention. Therefore, at the time the first order dated 22-6-2009 was made, the DDO was perfectly justified and within legal limit of his powers in ordering suspension of Respondent No. 3. He could have completely ignored the aspect of the Respondent being involved in an offence involving or not involving moral turpitude and the exercise of power would have been justified only on the ground of the Respondent having been detained in prison at the relevant time. It would be a travesty of the ideals of Local Self Government if a person can head the Village Panchayat in his capacity as a Sarpanch while he remains in jail in connection with the offences registered against him. In such circumstances, it would be imperative for the authorities to exercise the powers conferred upon them u/s 59 of the Act.

9. Reading the impugned order of the appellate authority in the above context, it is found and held to be completely perverse and oblivious of the express

provisions of Section 59 of the Act. It is indeed unfortunate that higher officer of the rank of Additional Development Commissioner should exercise his appellate powers to rescind an order made in due exercise of the powers conferred upon the District Development Officer, particularly, in the facts and circumstances of the present case. Therefore, the impugned order is not only required to be set aside but it has to be deprecated in no uncertain terms.

10. The last argument of learned Senior Advocate, Mr. Thakkar based on the original show-cause notice dated 16-6-2009 and the contention that DDO was indeed required to apply his mind to the aspect of moral turpitude in view of the judgment of this Court cited before him, particularly when the show cause notice mentioned that the offences alleged against the Respondent were involving moral turpitude, has to be dealt with in the broad framework of the scheme and provisions of the Act. Section 55 of the Act vests the executive powers of the village Panchayat in the Sarpanch and makes him directly responsible for due fulfillment of the duties imposed upon the panchayat by or under the Act. The provisions of Section 57 render the Sarpanch liable to be removed for misconduct in the discharge of his duties or disgraceful conduct or abuse of power or persistent default in performing his duties or becoming incapable of performing his duties. An express provision is made in Section 57 to provide for notice, opportunity of hearing and enquiry to give to the proceedings some trappings of an adjudication. And the provisions of Section 59 provide for suspension of Sarpanch or Upa-Sarpanch in the circumstances mentioned earlier. Section 59 expressly confers discretionary powers upon the District Development Officer to suspend Sarpanch or Upa-Sarpanch, predicated upon fulfillment of certain conditions and does not provide for an opportunity of being heard or even issuance of a show-cause notice. If, even then, the DDO has sought to observe the principles of natural justice, the suspended Sarpanch cannot be allowed to bank upon some defect or omission in the show cause notice, if he were otherwise liable to be suspended. In view of the conscious exclusion of any adjudication preceding the suspension, and in view of the urgent and summary nature of requisite verification about fulfillment of conditions precedent to exercise of power, the order of suspension u/s 59 of the Act cannot be assailed on the grounds of violation of principles of natural justice. The impugned order of the appellate authority has completely overlooked this legal aspect of the matter. This is not to say that the appellate authority could not have considered the plea about the offences in question having involved or not involved moral turpitude or about any other legal defect in the order of suspension. It must, however, always be remembered that Panchayati Raj Institutions are accorded a place of pride in our Constitution as units of local-self-Government and the fundamental duties of every citizen, including competent and appellate authorities, include following the noble ideals which inspired the freedom struggle and abjuring violence. Moral turpitude involved in an act of violence ought to be examined keeping in view not only the Constitutional ideals but fundamental duties of a citizen and the standard has to be higher and not lower for people in public life.

11. In the facts and for the reasons discussed hereinabove, the petition is allowed and impugned order dated 29-1-2010 of the Additional Development Commissioner is set aside. Rule is made absolute with no order as to costs.

12. Upon this order being dictated in the open Court, request was made by learned Senior Advocate, Mr. Thakkar that operation and effect of this order may be stayed for four weeks. There being no justification for granting such request, it is rejected.