

(2009) 10 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 4150 of 2009

Hansaba Hardevsinh Rana

APPELLANT

Vs

District Development Officer and Another

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

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

Citation : (2009) 3 GLH 529

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : A.B. Gateshaniya, for the Appellant; Dipak C. Raval for Respondent 1 and Ms. Jirga Jhaveri Asst. Government Pleader for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—Considering the scope of the controversy the petition is taken up for final hearing and disposal today. Rule. Learned Advocate and learned Assistant Government Pleader appearing for respective respondents are directed to waive service. The petitioner is an elected member of Modhwana Gram Panchayat. It appears that on 01/04/2008 at a meeting of the Grain Panchayat certain resolution moved from the Chair was opposed by the petitioner and three others, who are petitioners in Special Civil Application Nos.4151, 4152 and 4153 of 2009. One of the subject matter pertained to removal of encroachments. As the petitioner and three other persons had opposed the proposed resolution on this count the Deputy Sarpanch made an application to the Taluka Development Officer reporting the incident. The Taluka Development Officer thereupon forwarded a communication dated 27/05/2008 to respondent No. 1, viz., District Development Officer (DDO). A show -cause notice came to be issued on 07/06/2008 which was replied to by the petitioner on 21/07/2008. On 07/11/2008 an order came to be made by the DDO removing the petitioner and three others from the post of member of the Gram Panchayat in exercise of

powers u/s 57 (1) of the Gujarat Panchayats Act, 1993 (the Act).The petitioner carried the matter in appeal under provisions of Section 57 (3) of the Act and also filed an application for interim relief during pendency of the appeal. On 06/01/2009 the petitioner was granted interim relief staying the operation of order dated 07/11/2008 made by respondent No. 1. Subsequently the appeal came to be dismissed vide order dated 31/03/2009. The petitioner has challenged the aforesaid orders dated 07/11/2008 and 31/03/2009.

2. After narrating the aforesaid facts learned Advocate for the petitioner submitted that as there was no material available to establish any encroachment and the reason for removal of so-called encroachment the proposed resolution was opposed by the petitioner and three others. It was further submitted that the petitioner and three others in principle did not oppose removal of encroachments but the opposition was due to lack of material establishing encroachment. Learned Advocate therefore submitted that the entire exercise was illegal and without jurisdiction as provisions of Section 57 (1) of the Act could not be used in this manner to remove a member from the Panchayat for opposing a proposed resolution.

3. Learned Advocate appearing for DDO read extensively from the order made by DDO to submit that u/s 105 of the Act a Panchayat was duty bound to remove encroachment and if there was any opposition to a proposal to remove encroachments it would mean that the person so opposing would be failing in discharging the duty cast under the provisions of the Act. That there were encroachments was an admitted position and hence the opposition by petitioner and three others itself indicated that the said persons had failed in discharging their duties and were liable to be removed under provisions of Section 57 (1) of the Act. In support of the submissions reliance has been placed on judgment of this High Court in the case of Kalaji Hathiji Thakore v. State of Gujarat reported in 2000 (2) GLH 582.

4. Learned Assistant Government Pleader reiterated what has been stated in the impugned orders dated 07/11/2008 and 31/03/2009.

5. Section 57 (1) of the Act stipulates that a competent Authority may remove from office any member/Sarpanch/Upa Sarpanch of a Panchayat from the office, after giving him an opportunity of being heard and after such inquiry as may be necessary, provided such member, etc., has been: 01) guilty of misconduct in discharge of his duties, or 02) guilty of any disgraceful conduct, or 03) abuses his powers, or 04) makes persistent default in the performance of his duties and functions under the Act, or 05) has become incapable of performing his duties and functions under the Act. Thus each of the contingency stipulated by the provisions are in the alternative to each other and satisfaction of any one of the conditions would render a person liable to be removed from the office.

6. In the facts of the present case the only act of the petitioner and three others which is ascribed to them is opposing a proposed resolution for removing

encroachments. There is no other allegation. The limited question therefore is as to whether it can be said that any of the five conditions stand fulfilled. The answer is an emphatic No.

7. In any democratically elected body an elected member has not only a right but a duty cast on him by the electorate to raise his voice in relation to a proposal which the said member perceives to be against a larger public interest. It is correct that removal of encroachments is statutorily provided for by Section 105 of the Act. However, nothing has been brought on record and the impugned orders are silent as to how and in what manner the petitioner and three others have acted contrary to statutory requirement to remove encroachments. It is not the case of the respondent Authority that the petitioner and three others themselves are encroachers, and thus being interested in perpetuating encroachment opposed the motion. Merely because a dissent was expressed at the point of time when the motion was moved that by itself would not either amount to misconduct or disgraceful conduct. Nor is it possible to read the provisions of the Act to mean that every motion moved by an Authority in the house is required to be passed without recording any dissent as regards the proposal in question.

8. Hence it is apparent that neither the DDO nor the appellate Authority have understood the import of the provision. The provision is not meant to stifle and kill a dissent in a democratically elected body. Even if one accepts the stand of respondent No. 1 Authority that all members of Gram Panchayat are required to assist any removal of encroachment that by itself would not mean that no dissenting voice could be raised when there is a proposal to remove encroachment. There could be various reasons for such opposition. One of them being lack of material as suggested by the learned Advocate for the petitioner. No democratic institution would be safe if the course of action adopted by the respondent Authority is upheld in principle. To the contrary for a healthy democracy an effective opposition is a must and merely because a particular proposal does not go through due to opposition from the members of the house it cannot be said that the members have committed any default so as to visited with drastic penalty of removal from office. In the result the petition is allowed accordingly. The impugned orders dated 07/11/2008 and 31/03/2009 made by respondent are hereby quashed and set aside. In the event the four posts held by the petitioner and three others in the Modhwana Gram Panchayat have not been filled up till date as submitted by learned Advocate for the petitioner, the petitioner and three others viz., Jarawariya Bharatbhai Valjibhai, petitioner of SCA No.4151 of 2009, Sudhirsinh @ Yogendrasinh Dilubha Zala, petitioner of SCA No.4152 of 2009 and Viramsinh Chanubha Zala, petitioner of SCA No.4153 of 2009 shall be reinstated as members for the remaining term of the Gram Panchayat. Rule made absolute in the aforesaid terms with no order as to costs. Direct Service is permitted.