

(1979) 11 GUJ CK 0014
In the Gujarat High Court

Haresh Octroi Co.

APPELLANT

Vs

S. Ramabhadran and Others

RESPONDENT

Date of Decision : 08-11-1979

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 290, 290(3), 290(3), 305, 305

Citation : (1979) 2 GLR 551

Hon'ble Judges : P.D. Desai, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

P.D. Desai, J.—The Bagasara Nagar Panchayat, which is the second respondent in the Letters Patent Appeal and petitioner in the writ petition, is constituted under the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Act") and it exercises powers and performs functions under the various provisions of the Act. Section 180, inter alia, enables a nagar panchayat to lease by public auction or private contract to collecting of octroi. The petitioner-Panchayat gave an advertisement in a daily news-paper on July 27, 1979 inviting applications from persons interested in taking such lease. A public auction took place on August 9, 1979. The appellate in the Letters Patent Appeal gave an advertisement in a daily news-paper on July 27, 1979 inviting applications from persons interested in taking such lease. A public auction took place on August 9, 1979. The appellate in the Letters Patent Appeal gave a bid for Rs. 8,26,500/- and the third respondent in the said appeal gave a bid for Rs. 8,27,000/-. There were other bids but they were not higher than the bids of these two parties. By a circular resolution No. 44 passed by the petitioner-Panchayat on August 7/9/10, 1979 the bid of the appellants, which was lower than that of the third respondent, was accepted. The third respondent preferred an appeal on August 16, 1979 to the District Panchayat, Amreli u/s 290. The Appeal Committee of the District Panchayat by its order dated August 20, 1979 dismissed the said appellate order. However, the said writ petition was withdrawn in view of the alternative remedy available u/s 305. Soon after the withdrawal, the third respondent preferred on September 12, 1979 a revision application before the Development

Commissioner u/s 305. The Development Commissioner by his order dated September 29, 1979 allowed the revision application and quashed the order of the Appeal Committee of the District Panchayat as also resolution No. 44 of the petitioner-Panchayat. The ground on which Development Commissioner quashed the aforesaid order and resolution was that upon a bare reading of the resolution in question, it appeared that the lower bid of the appellants was accepted in preference to the higher bid of the third respondent on the ground that whereas the partners of the appellant firm were local residents, the third respondent was outsider. In the opinion of the Development Commissioner, the ground which prevailed with the petitioner-Panchayat was not relevant and germane, particularly in view of the fact that the third respondent was a resident of Junagadh District which was next adjacent to Amreli District. The appellants feeling aggrieved by the decision of the Development Commissioner preferred Special Civil Application No. 2914 of 1979 which came on for hearing before the learned Chief Justice. By a speaking order dated October 17, 1979, the learned Chief Justice summarily rejected the said writ petition. Hence the Letters Patent Appeal. The writ petition of the petitioner-Panchayat, which has been tagged on with the Letters Patent Appeal, is directed against the self-same order of the Development Commissioner and it has come up for hearing for the first time along with the Letters Patent Appeal.

2. We are in entire agreement with the reasoning and conclusion of the learned Chief Justice and, in our opinion, there is no merit in this Letters Patent Appeal as also in the writ petition.

3. One of the grounds which was urged before the learned Chief Justice and which has been forcefully reiterated before us on behalf of the petitioner-Panchayat and the appellants is that the State Government had no jurisdiction u/s 305 to quash the resolution in question passed by the petitioner-Panchayat. The submission before the learned Chief Justice was that u/s 305, the revisional powers could be exercised only in respect of any "order" passed, inter alia, by any Panchayat and that a resolution passed by the petitioner-Panchayat granting lease u/s 180 amounts to a decision and it cannot be said to be such an order. The argument was rejected by the learned Chief Justice on the ground that u/s 305 the State Government had the power to call for and examine the record of proceedings of any Panchayat or Committee thereof and that the width of the power indicated that if any decision taken or order made in such proceeding was not in accordance with law or was improper, the revisional power could be properly exercised. We agree with the view of the learned Chief Justice. In addition, we would like to point out that even assuming that there is a distinction between an "order" and a "resolution" passed by a panchayat and that what is revisable u/s 305 is an "order" and not "resolution", it requires to be noted that so far as the present case is concerned, the revisional power was exercised u/s 305 against the appellate order of the District Panchayat. Section 290, Sub-section (3), which deals with the scope of the appellate power of the District Panchayat, in terms speaks of the District Panchayat passing "such order on the

appeal as it may deem just and proper" (underlining supplied). There is no manner of doubt, therefore, that when the District Panchayat dismissed the appeal preferred by the respondent, its decision amounted to an "order" and that such order would, in any event, be revisable u/s 305 on the plain terms of the said section.

4. Another argument based on Section 305, which was not urged before the learned Chief Justice but which was placed for our consideration, was that u/s 290, Sub-section (3), the order of the District Panchayat in appeal is to be treated as final and that in view of that provision, revisional powers u/s 305 could not be advanced before the learned Chief Justice, it is doubtful whether we can entertain it for the first time in Letters Patent Appeal. Even assuming, however, that such an argument can be entertained, in our opinion, there is no merit in the same. The appellate order upon which finality is conferred u/s 290(3) does not restrict the exercise of revisional powers u/s 305. The power of superintendence is given to the State Government u/s 305 in general terms in respect of proceedings of any panchayat or of any committee thereof or of any officer, excepting the proceedings of the Nyaya Panchayat or of the District or the Sessions Court in judicial proceedings from the proceedings of a Nyaya Panchayat, for the purpose of satisfying itself as to the legality or propriety of any order passed. By mentioning one specific exception to the general power, the Act has indicated an intention to include every other proceeding which is subject to the revisional power of the State Government. This is the view taken by the Supreme Court in *Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others*, in the context of similarly worded provisions of the Maharashtra co-operative Societies Act, 1960. In view of the said decision, in our opinion, which must apply, having regard to the similarity of language even in the context of the provisions of Section 260(3) and Section 305 of the Act, we must reject this argument advanced on behalf of the petitioner Panchayat and the appellants.

5. The next argument on behalf of the appellants and the petitioner-Panchayat was that pursuant to resolution No. 44, a contract for the period commencing from August 22, 1979 and ending with August 21, 1980 was already entered into by and between the petitioner-Panchayat and the appellants on August 13, 1979 and that an amount of Rs. 82,650/- was deposited and the surety bond as required was also executed, on the same day. Not only that, but the contract was also acted upon by the parties. The appellants have already engaged staff for collection of octroi and they are actually collecting the same on and with effect from August 22, 1979. The first instalment of Rs. 50,000/- towards the contract amount was paid on September 1, 1979 and second instalment of Rs. 18,775/- was paid on September 5, 1979 and the third instalment of Rs. 68,875/- was paid on October 3, 1979 by the appellants to the petitioner-Panchayat. In addition, the appellants have also paid a sum of Rs. 6887.50 towards 10% cess levied by the District Panchayat, Amreli on September 1, 1979. Under such circumstances, when the matter was in the realm of a concluded contract, the

revisional power u/s 305 could not have been invoked and exercised and, in any case, such power ought not to have been exercised. From the speaking order made by the learned Chief Justice it is not clear whether this argument was advanced before him, because he has not dealt with the same. Still, however, we have heard the parties on this point and are of the opinion that there is no substance in this submission. So far as jurisdiction to exercise revisional powers under such circumstances is concerned, we have no doubt that the State Government, which is an independent authority, can undoubtedly exercise its quasi-judicial powers u/s 305 to quash the resolution upon which contract was founded, on legitimate grounds. The analogy base on the revisional powers u/s 211 of the Bombay Land Revenue Code, 1879 in respect of which it has been held that such power could not be exercised once a Sanad is granted and the matter is within the realm of contract, cannot be pressed into service. Whereas u/s 305 of the Act, revisional power is conferred upon the State Government which is an outside adjudicating authority in respect of matters which fall within the jurisdiction of an autonomous body like the panchayat, the power u/s 211 of the Bombay Land Revenue Code is conferred upon the State Government and certain other revenue officer in respect of revenue powers exercised by subordinate officers and agents. What the competent authority revises u/s 211 of the Bombay Land Revenue Code, in substance and reality, is the order of one of its own limbs exercising revenue powers and, under such circumstances, once a concluded contract comes into existence, the revisional power has been held to be ousted on the ground that contractual obligations having been incurred by the State pursuant to the contract executed on behalf of the State, it is not permissible to the State or the revenue authorities to alter the covenants in exercise of revisional jurisdiction. Panchayats are not in that sense limbs of the Government exercising governmental powers and contracts entered into by them are not contracts on behalf of the State Government. Panchayats are autonomous bodies functioning under the statute and they have the power to enter into contracts in their own name. Having regard to this basis distinction, we do not think that any argument can be advanced that revisional power u/s 305 of the Act cannot be exercised in relation to the orders of a Panchayat by a quasi-judicial authority like the State Government once a concluded contract comes into existence.

6. The question whether on merits such powers ought to have been exercised on the facts and in the circumstances of the case is really a matter which does not pertain to the writ jurisdiction of the Court, unless it is shown that the exercise of power is vitiated on any ground which could be urged in order to seek the relief of certiorari or in the nature of certiorari. In other words, unless there is lack of jurisdiction or an error of law apparent on the face of the record or breach of natural justice, this Court cannot interfere and sit, as it were, in appeal over the exercise of revisional powers. There is no question here of lack of jurisdiction, as held above, nor any question of breach of natural justice arises. No error of law apparent of the face of record has been shown. The ground which weighed with

the revisional authority was that in accepting the lower bid and granting lease in favour of the appellants, the consideration which weighed with the petitioner-Panchayat was totally extraneous or impermissible, namely, that the partners of the appellant-firm were local resident, whereas the third respondent whose bid was higher was not a local resident. That this was the consideration which must have weighed with the petitioner-Panchayat is apparent from the contents of the circular resolution No. 44, which contains the ground upon which the lower bid was recommended for acceptance by the Chairman of the petitioner-Panchayat. the Development Commissioner and the learned Chief Justice have also found accordingly. We see no reason to take a different view of the matter and having regard to the extraneous consideration which appears to have weighed with the petitioner-Panchayat in accepting the lower bid of the appellants, we have no hesitation in holding that the revisional power was properly exercised.

7. It was urged in this connection that having regard to the course of events, no interference ought to have been made in revision by the Development Commissioner. What was pressed into service in this connection was the various things which have happened in the direction of the implementation of the contract after the circular resolution was passed, the contract has been executed and it has been acted upon and the appellants have worked the contract and made payments. This consideration, though relevant, is not decisive. It cannot be overlooked that this is not a case where the aggrieved party, namely, the third respondent has not resorted to the remedy available to him with expedition and as a result thereof these several things have occurred. Resolution No. 44 was passed on August 7/9/10, 1979. The contract was to commence from August 22, 1979. Meanwhile, soon after the resolution was passed, the third respondent preferred an appeal to the District Panchayat on August 16, 1979, that is to say, within six days of the passing of resolution No. 44 and obtained interim relief before the term of the contract had commenced. The District Panchayat disposed of the appeal on August 20, 1979. The third respondent soon thereafter preferred the earlier writ petition and upon its withdrawal preferred a revision application before the Development Commissioner on September 12, 1979. The revision application was disposed of on September 29, 1979 by an order made in favour of the third respondent. Therefore, the third respondent has shown utmost diligence and expedition and, as a result thereof, within a period of one month and one week of the commencement of the term of the contract, the revisional authority has quashed the resolution which was at the foundation of the contract. The delay, if any, which has occurred and which has brought about some complications is due to the inherent delay which is common in any judicial or quasi-judicial proceeding in our country for which an aggrieved party cannot be refused just relief.

8. Reliance was placed on behalf of the appellants and the petitioner-Panchayat on the decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and, particularly, upon the observations made in para. 35 of the said decision where the Supreme Court

refused to grant relief to the petitioner, although it found that the decision accepting the tender of the respondent was violative of the constitutional provisions. We are unable to appreciate as to how the exercise of discretion by the Supreme Court on the facts and in the circumstances of that case can ever be pressed into service as providing a guideline for the exercise of discretion in another case which must be decided on its own facts. In any case, it is apparent from the observations contained in para. 35 that main consideration which weighed with the Supreme Court in that case was that the petitioner in that case had waited for a period of five months before invoking judicial remedy. Besides, it was found in that case that it was gravely doubtful whether the writ petition preferred by the petitioner was bona fide with a view to protecting his own interest. No such circumstances are present here. In our opinion, therefore, even on this submission the appellants and the petitioner-Panchayat must fail.

9. In the result, we concur in the decision of the learned Chief Justice and summarily reject the Letters Patent Appeal as also the writ petition. No orders on Civil Application No. 2999 of 1979.

10. In view of the fact that as a result of these proceedings the lease granted in favour of the appellants will forthwith come to an end, some complications are likely to arise. It will be for the petitioner-Panchayat to decide as to how it has to act in accordance with law in order to implement the decision of the revisional authority. The petitioner-Panchayat will legitimately take some time in order to reach such decision. It has been averred in the writ petition filed by the petitioner-Panchayat that it has no agency for collection of octroi. The result would be that though octroi has been levied, it may not be possible to collect the same, once the appellants are ousted forthwith. This would result in loss of public revenue and evasion of tax. Such a situation cannot be allowed to prevail. Under such circumstances, we are of the view that till the petitioner-Panchayat takes decision of the revisional authority, the appellants should be allowed to function in accordance with the terms of their contract purely as and by way of a temporary and stop-gap arrangement. The petitioner-Panchayat will take the necessary action within a period of one month from today and the order made herein continuing the arrangement in favour of the appellants will automatically terminate upon the expiry of the period of one month from today. We also wish to make it clear that the claims, if any, of the appellants qua the petitioner-Panchayat as a result of the ultimate outcome of these proceedings and vice-versa, being not the subject matter of the writ petition of the Panchayat and the writ petition out of which the Letters Patent Appeal arose, must not be taken to have been decided herein.