

(2009) 03 GUJ CK 0087
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1173 of 2008 in Special Civil Application No. 30920 of 2007

Jyotiba S. Zala

APPELLANT

Vs

District Development Officer and Another

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 310
Gujarat Panchayats (Amendment) Act, 1993 — Section 57, 57(1), 57(3)
Gujarat Panchayats (Procedure) Rules, 1997 — Rule 10, 11, 11(2), 40

Citation : (2009) 2 GLR 1150

Hon'ble Judges : Mohit S. Shah, J; H.N. Devani, J

Bench : Division Bench

Advocate : P.V. Hathi, for the Appellant; H.S. Munshaw and Jirga Jhaveri, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—By this appeal under Clause 15 of the Letters Patent, the appellant has challenged the judgment and order dated 4th August, 2008 passed by the learned single Judge dismissing the petition filed by the appellant challenging the order dated 22nd August, 2007 passed by the District Development Officer, Ahmedabad in exercise of powers u/s 57(1) of the Gujarat Panchayats Act, 1993 ("the Act") whereby the appellant was removed from the office of Sarpanch of village Dholera, which order was confirmed by the Additional Development Commissioner by his order dated 25th September, 2007.

2. The appellant was elected to the office of Sarpanch of Dholera Gram Panchayat on 12th December, 2007 (sic.) and took charge on 17th January, 2007. Within a short period of about five months, the District Development Officer issued a show-cause notice dated 20th June, 2007 against the appellant calling upon her to show-cause as to why she should not be removed from the office of Sarpanch u/s 57(1) of the Act. The charges levelled against the

appellant were (i) a meeting of Dholera Gram Panchayat was convened on 28-2-2007, in which meeting no member was present and despite the fact that there was no quorum as required under the Panchayats Procedure Rules, vide resolution No. 7 it had been resolved to demolish circles; (ii) in the meeting held on 25-1-2007 only two members were present and there was no quorum despite which resolution Nos. 2 to 4 were passed; (iii) in the meeting convened on 28-3-2007, no member was present, however, despite there being no quorum the minutes were recorded; (iv) in the meeting convened on 25-4-2007, no member was present, however, despite there being no quorum the minutes were recorded, and (v) two circles of the Dholera Gram Panchayat were constructed by the Government with the participation of the public. By demolishing the said circles, loss has been caused to public property. On the aforesaid charges, it was alleged that the appellant is guilty of abuse of powers and lack of devotion towards her duties.

3. In response to the said show-cause notice, the appellant submitted a reply dated 29th June, 2007 denying the allegations levelled against her. According to the appellant, it is the duty of the Talati-cum-Mantri to decide as to whether there is a quorum. When there is no quorum, under the provisions of the Panchayats Act minutes of a non-quorum meeting are not to be recorded, however the Talati-cum-Mantri has recorded the same. Thus, in respect of such action, it is the Talati-cum-Mantri who is responsible. As regards Resolution 7, an application had been received from shopkeepers to demolish the circles and that as a part of her duties she had presented the same at the meeting, whereupon the Talati-cum-Mantri had written the resolution. According to the appellant, it was the duty of the Talati-cum-Mantri to write the resolution and if the resolution was illegal the Talati-cum-Mantri had not given any guidance in that regard. Resolutions of the Gram Panchayat are to be implemented by the Talati-cum-Mantri, who had not suggested to her as to what course of action is required to be adopted to remove the circles, which were in the nature of hindrances. No authority had been authorised to implement the said resolution, however, it appears that the implementing authority has acted in accordance with his understanding. As regards Resolution Nos. 2 to 4, it was submitted that despite the meeting being non-quorum the Talati-cum-Mantri has written the resolutions as well as the minutes to malign the elected office-bearers. In respect of the other allegations it is submitted that the minutes were recorded by the Talati-cum-Mantri and that when the under the rules minutes of a non-quorum meetings were not to be recorded, the Talati-cum-Mantri ought not to have recorded the same and should have given proper guidance to the elected body. According to the appellant, she was not conversant with the provisions of the Gujarat Panchayats Act and the Rules thereunder and that the entire proceedings were done by the Talati-cum-Mantri who was conversant with the provisions.

4. By the impugned order dated 22nd August, 2007 the District Development Officer in exercise of powers u/s 57(1) of the Act removed the appellant from the office of Sarpanch of Dholera Gram Panchayat. Being aggrieved the appellant

challenged the said order by way of an appeal u/s 57(3) of the Act before the Additional Development Commissioner who vide his order dated 25th September, 2007 dismissed the appeal and upheld the order of the District Development Officer.

5. The appellant carried the matter further by way of a writ petition under Articles 226 and 227 before the Court, which came to be dismissed by the learned single Judge by the impugned judgment and order dated 4th August, 2008. The learned single Judge held as follows:

5. Having heard the learned Advocates appearing for the parties, I find that as many as on four occasions, the petitioner had transacted important business without required quorum of the Panchayat. On certain occasions, other than the petitioner, not a single other member was present throughout such meeting. Some important business such as granting of contracts, construction of road in the village, repairing of the swimming pool, repairing the roads etc. was transacted. One such resolution pertained to removal of the two circles constructed in the village, through the participation of the members of the public. The petitioner cannot explain such conduct on the ground of ignorance. It was not an isolated incident but repeated recurrence. The authorities, therefore, rightly found that the petitioner has misconducted herself in discharging of her duties. Powers under Sub-section (1) of Section 57 of the Gujarat Panchayats Act, was therefore, validly exercised.

6. Learned Advocate for the petitioner, however, submitted that certain material was not supplied to the petitioner. When in essence, the charge was of holding meetings without quorum and transacting important business during such meetings and when these basic facts are not in dispute, I do not find it necessary to interfere with the impugned orders only on the above ground.

6. Mr. P.V. Hathi, learned Advocate for the appellant submitted that the appellant had been elected as Sarpanch on a reserved vacancy for women for the first time and as such, the Talati-cum-Mantri of the village was duty-bound to assist and guide the newly elected Sarpanch. However, he continuously misguided her and displayed non-co-operation in connection with which, a number of complaints and representations were made by her to the concerned authorities in the months of April and May, 2007. However, no immediate action was taken against the said Talati-cum-Mantri. Referring to the impugned order passed by the District Development Officer, it was submitted that the findings recorded by the District Development Officer do not establish any misconduct or any disgraceful conduct or abuse of power or persistent defaults in the performance of her duty. It was further submitted that the District Development Officer had relied upon certain material which was not supplied to the appellant, hence, the impugned order passed by the District Development Officer was violative of the principles of natural justice. It was further submitted that the findings recorded by the District Development Officer are beyond the scope of the showcause notice inasmuch as he has referred to various resolutions which do not find a reference in the show-

cause notice. It was submitted that in any case, the alleged lapses on part of the appellant were not intentional and were not so serious so as to justify the removal of the appellant from the office of Sarpanch. That she had bona fide relied upon the Talati-cum-Mantri of the Gram Panchayat in discharge of her duties, having no experience of the procedure to be followed in calling and conducting the meetings. It was, accordingly, submitted that the circumstances, did not warrant such harsh action like removal of the appellant from the office of Sarpanch.

7. In support of his submissions, the learned Advocate for the appellant has placed reliance upon the decisions of this Court in the case of Prabhodhrai Dhirajram Nayak v. District Panchayat, Surat and Ors. 1983 (2) GLR 1221 and Kamlaben Rohitbhai Patel v. Additional Development Commissioner 2000 (2) GLR 1174.

8. Appearing on behalf of respondent No. 1, District Development Officer, Mr. H. S. Munshaw, learned Advocate opposed the appeal. It was submitted that the appellant had been persistently negligent in the discharge of her duties. On two occasions despite the fact that the meetings were non-quorum, the minutes had been recorded and had been signed by the appellant. On other occasions, despite the fact that the meetings were non-quorum, the appellant had passed the resolutions in respect of various works of the Panchayat, and thereby, abused her powers. It was further submitted that two traffic circles had been constructed with public participation and that the appellant had, in a meeting without quorum, passed a resolution for demolishing the said circles and that the said traffic circles had in fact been removed without the prior sanction of the competent authority. It was, accordingly, submitted that the appellant being guilty of abuse of powers as well as lack of devotion towards her duties, had rightly been removed from the office of Sarpanch in exercise of powers u/s 57(1) of the Act, and that the Additional Development Commissioner as well as the learned single Judge had rightly upheld the order passed by the District Development Officer.

9. Ms. Jirga Jhaveri, learned Assistant Government Pleader has supported the impugned judgment and order as well as the orders passed by the District Development Officer and the Additional Development Commissioner.

10. We have considered the rival submissions advanced by the learned Advocates for the parties and have perused the record of the case. As can be seen from the impugned order dated 22nd August, 2007 passed by the District Development Officer, the District Development Officer has not accepted the explanation tendered by the appellant on the ground that under the Gujarat Panchayats (Procedure) Rules, minimum three members are required to be present for constituting the quorum. If there is no quorum, no business can be transacted at the meeting. Despite which, on 28th February, 2007 though none of the members were present in the meeting, the Sarpanch had passed resolutions in connection with water re-survey of Moti Talav, construction of road of Harijan

Vas, construction of public canal near the S.T. Bus-stand, repairing of swimming pool, putting road metal in the village, demolition of circles near the Vegetable Market, etc. Looking to the resolution of 28-2-2007, it is apparent that only the Sarpanch has signed the same. The District Development Officer further found that in the meeting held on 25-1-2007 despite the meeting being non-quorum Resolution Nos. 2, 3 and 4 had been passed during the meeting and the proceedings had been signed by the Sarpanch. Thus, the resolutions had been passed in breach of the provisions of the Gujarat Panchayats Act. The District Development Officer has also recorded that two circles had been constructed in the Dholera Gram Panchayat with public participation, and that, before removal of such Government property, it was necessary to take steps for obtaining permission of the competent authority. However, the Sarpanch had not obtained any permission to remove such Government property. That according to the learned Advocate for the Sarpanch, the Sarpanch is not aware as to who has demolished the property of the panchayat. She has not filed any police complaint. Thus, despite it being her duty to maintain the properties falling within the limits of the panchayat she has passed a resolution to demolish construction in a non-quorum meeting. By passing resolutions in the Gram Panchayat according to her own whims, she has caused loss to the Government property. The District Development Officer, has accordingly, found that the appellant has displayed grave negligence in the discharge of her duties. Based upon the aforesaid findings the District Development Officer has passed the order removing the appellant from the office of Sarpanch.

11. Before entering into the merits of the case, it may be noticed that under Rule 10 of the Gujarat Panchayats (Procedure) Rules, 1997 the requisite quorum for transaction of business at the meeting of the panchayat is one-third of the total number of members of the panchayat including the Sarpanch and Upa-Sarpanch. Rule 11 of the Rules provides for adjournment for want of quorum. Sub-rule (2) thereof provides that if at any time during a meeting, it is brought to the notice of the Presiding Officer that the number of members present inclusive of the Presiding Officer falls short of the number required for quorum, the Presiding Officer shall if there be no quorum after waiting for a period of not less than thirty minutes and not more than one hour, adjourn the meeting to some other day xxx. Rule 40 of the said Rules provides that the minutes of such meeting of the panchayat shall be recorded in a bound book in Gujarati by the Secretary. In this book, he shall enter the names of the members present at each meeting, the decision arrived at, the number of members voting for or against and the number of members remaining neutral. The minutes of the meeting shall be prepared on the day following the day of the meeting or as soon thereafter, as may be, and shall be signed by the Presiding Officer and shall be read out at the next meeting of the panchayat for confirmation.

12. Examining the charges levelled against the appellant in the light of the aforesaid statutory provisions, it is apparent that it is the duty of the Secretary to record the minutes of the meeting. Hence, if the minutes of a non-quorum

meeting could not have been recorded, it was the Secretary who would be liable for recording the minutes. Merely because, the appellant, a lady Sarpanch who having assumed charge of office recently, and therefore, may, not have been aware of the procedure, has signed the minutes written by the Talati-cum-Mantri, she could not have been held liable for recording the minutes of the said meetings. Besides, a conjoint reading of the show-cause notice along with the finding recorded by the District Development Officer clearly shows that the findings recorded by the District Development Officer travel much beyond the show-cause notice, inasmuch as the show-cause notice refers to only one resolution, viz. resolution No. 1 having been passed on 28th February, 2007 whereas the impugned order refers to various other resolutions having been passed on the same day. Thus, the appellant having not been put to notice as regards the said resolutions would certainly not have been in a position to deal with the same. In the circumstances to that extent the impugned order suffers from the vice of being violative of the principles of natural justice as the same travels beyond the scope of the show-cause notice.

13. The main allegation levelled against the appellant pertains to the removal of two traffic circles near the Vegetable Market. According to the appellant, she was not aware as to who had demolished the property of the panchayat. In the show-cause notice, it is alleged that by removing the two circles, loss has been caused to the Government property, whereas after considering the explanation given by the appellant, the District Development Officer has made out a totally new ground holding that the appellant has not lodged any complaint before the police in respect of demolition of the circles, and that, by passing a resolution for removal of the circles in a non-quorum meeting, she had caused loss to the Government properties, without indicating as to how by merely passing a resolution, the appellant had caused loss to the Government properties.

14. It may also be pertinent to note that in response to the averments made in the petition, the respondent No. 1-District Development Officer had filed an affidavit-in-reply wherein he has referred to a report of the Taluka Development Officer as well as the affidavits filed by shop-keepers, on the basis of which he has passed the order of removal u/s 57(1) of the Act. Admittedly, the said documents do not find a reference in the show-cause notice, in absence of which, the appellant was not in a position to ask the respondent No. 1 to supply the same to her. In the circumstances, the impugned order which is based upon material which is neither mentioned in the show-cause notice nor supplied to the appellant, is violative of the principles of natural justice, and as such, cannot be sustained.

15. After giving the above findings showing breach of principles of natural justice more than once, we would have simply quashed the impugned orders and would have ordinarily left it open to the respondent authorities to hold a fresh inquiry u/s 57(1) of the Act. However, in the facts and circumstances of the case, for the reasons that follow, we are not inclined to grant such liberty to the respondent

authorities.

16. It is an admitted position that the appellant, a lady Sarpanch was holding such office for the first time, and was in all probability, elected to the office reserved for women. The appellant could not, therefore, be expected to be conversant with the procedural rules in respect of the meetings of the panchayat. The appellant took charge on 17th January, 2007 and the four meetings referred to in the show-cause notice were convened within a short time thereafter from 25-1-2007 to 25-4-2007. In two of the meetings, only two members were present and in two meetings, no member was present. It appears that neither the Talati-cum-Mantri nor the members present have drawn the attention of the appellant to the procedural rules, regarding the requisite quorum. The resolutions passed at various meeting without quorum were in connection with water re-survey of Moti Talav, construction of road of Harijan Vas, construction of public canal near the S.T. Bus-stand, repairing of swimming pool, putting road metal in the village, etc. These activities were certainly for the benefit of the people at large in the village and not to their detriment. In the circumstances, even otherwise the order of removal is very harsh and overlooks the practical aspects of the matter.

17. At this juncture, we may remind the authorities of the following observations made by us in our judgment and order dated 28th December, 2008 in the case of Chetanbhai Virjibhai Dhamecha v. State of Gujarat rendered in Letters Patent Appeal No. 842 of 2008, which would apply on all fours to the facts of the present case:

The appellant was elected on a seat reserved for S.E.B.C. candidate. The authorities were expected to impart some training to such newly elected officebearers elected on seats reserved for Scheduled Caste/Scheduled Tribe/S.E.B.C./Women. The purpose of making such reservation by the constitutional amendments would be defeated if the elected office-bearers in the local self government are not given such training regarding the procedures to be followed by such public functionaries. It was certainly the duty of the Talati-cum-Mantri also to invite attention of the Sarpanch to such procedural requirements.

18. Examining the facts of the present case in the light of the aforesaid decision, it was the duty of the Talati-cum-Mantri to invite the attention of the appellant to the procedural requirements in respect of the meeting held by the panchayat. In the present case, not only has the Talati-cum-Mantri failed to draw the attention of the appellant to the procedural requirements, but the Talati-cum-Mantri had proceeded to record minutes of non-quorum meetings which he could not have recorded and obtained the appellant's signature thereon, without drawing her attention to the statutory provisions. In the circumstances, the appellant could not have been held liable in respect of the same.

19. In the context of the issue involved in the present case, it would also be pertinent to take note of the observations made by the Apex Court in Tarlochan

Dev Sharma Vs. State of Punjab and Others, wherein it has been held that the elected President of a local body cannot be removed on the grounds of abuse of his powers or habitual failure to perform his duties when there are procedural mistakes in the discharge of duties. Removal from an elected office is a serious matter. The case for removal must be clearly made out before action is justified. Holding and enjoying an office, discharging related duties is a valuable statutory right of not only the returned candidate, but also his constituency or electoral college. Removal curtails the term of the office-holder and also casts a stigma upon him. The Apex Court therefore held that a case that grounds under a particular provision for removal are applicable must be clearly made out.

20. A learned single Judge of this Court also had a similar occasion to make following observations in the case of Kamlaben Rohitbhai Patel v. Additional Development Commissioner 2000 (2) GLR 1174:

For the purpose of removing a Sarpanch from holding the elective office, the officers who are charged with the statutory duties under the Act cannot act in such a cursory manner with casual approach so as to curtail or truncate the tenure of the holder of an elective office. The elected representatives for the purpose of removal cannot be treated like Government servants whose services are controlled at the pleasure of the President or Governor under Article 310 of the Constitution. The officer charged with the power for removal u/s 57 does not enjoy any such pleasure. The pleasure doctrine is alien in case of elected representatives. If the elected persons are allowed to be removed on such jejune grounds, it would simply mean throttling down the principles of democracy in the local self-bodies and the elected representatives of the people like the petitioner would be made to lose their tenure at the altar of the arbitrary exercise of powers by the officers who have been charged with the duty under the Act to at least address themselves to the real object behind such provision besides the grounds and procedure.

21. In view of the above discussion, the impugned order dated 22nd August, 2007 passed by the District Development Officer, Ahmedabad in exercise of powers u/s 57(1) of the Act cannot be sustained and is required to be quashed and set aside. Consequently, the order dated 25th September, 2007 passed by the Additional Development Commissioner as well as judgment dated 4th August, 2008 of the learned single Judge affirming the said order are also required to be quashed and set aside. It is ordered accordingly.

22. The Letters Patent Appeal is accordingly allowed with no order as to costs. Consequently, the appellant is entitled to be restored to the office of Sarpanch of Gram Panchayat, Dholera with immediate effect.