

(2014) 12 GUJ CK 0141
In the Gujarat High Court

Case No : Special Civil Application No. 12485 of 2014

Kailasba Jilubha Jadeja

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 GLR 1168

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Mehul Sharad Shah, for the Appellant; Udit D. Mehta, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.?Rule. Mr. Udit D. Mehta, learned Assistant Government Pleader, waives service of notice of Rule for respondent No. 1-State of Gujarat, and Mr. H.S. Munshaw, learned Advocate, waives service of notice of Rule for respondent Nos. 2 and 3. On the facts and in the circumstances of the case, and with the consent of learned Advocates for the respective parties, the petition is being heard and decided finally. The petitioner, who was elected as the Sarpanch of Bhadreshwar Gram Panchayat, has filed this petition under Art. 226 of the Constitution of India, praying for the issuance of a writ of mandamus or any other appropriate direction, quashing and setting aside the resolution/proceedings dated 11-8-2014 of Bhadreshwar Gram Panchayat, accepting the no-confidence motion against the petitioner.

2. Briefly stated, the facts of the case are that the petitioner was elected as the Sarpanch of Bhadreshwar Gram Panchayat in the year 2012. Since, then she was performing the functions and discharging the duties of that office until the passing of the above-mentioned no-confidence motion. A meeting of the Gram Panchayat was convened on 11-8-2014, at Mahatma Gandhi Gram Sachivalay, Bhadreshwar, at 12-00 noon, wherein a total number of nine members, including

the present petitioner, were present. The Upa-Sarpanch, who had already resigned as such, also remained present in the said meeting, which was presided over by him. It is the case of the petitioner that respondent No. 3-Talati-cum-Mantri of the said Gram Panchayat, read out the proposal of the no-confidence motion against the petitioner. Thereafter voting on the said motion took place by asking the members to raise their hands either in favour of the no-confidence motion, or against it. According to the petitioner, six members, including the Upa-Sarpanch who had already resigned, cast their votes in favour of the no-confidence motion and three members, including the petitioner, voted against the said motion. The proposal of no-confidence motion was passed against the petitioner and the resolution was signed by the Upa-Sarpanch and Talati-cum-Mantri. The grievance of the petitioner is that under the provisions of Sec. 56(3) of the Gujarat Panchayats Act, 1993 ("the Act", for short), the Sarpanch against whom a motion of no-confidence is proposed to be passed, shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote). As per the judgment in the case of Geetaben Bharatbhai Patel Vs. State of Gujarat and Others--> , the provision of law is mandatory in nature. On this short ground, the petitioner challenges the no-confidence motion passed against her, by way of the present petition.

3. Mr. Mehul Sharad Shah, learned Advocate for the petitioner, has submitted that the resolution passing the no-confidence motion against the petitioner, dated 11-8-2014, makes it clear that the petitioner has not been granted an opportunity to speak before the no-confidence motion was passed. The petitioner was not allowed to speak against the no-confidence motion in the meeting held on 11-8-2014, resulting in a serious miscarriage of justice. That the right to address a meeting convened to discuss a no-confidence motion before it is put to vote is the statutory right of the petitioner. The interest of justice demanded that the petitioner be permitted to put forth her case before the Gram Panchayat, prior to the voting.

4. Learned Advocate for the petitioner has relied upon the judgment in the case of Geetaben Bharatbhai Patel Vs. State of Gujarat and Others--> in support of the above submissions, in view of the provisions of Sec. 56(3) of the Act.

5. Mr. H.S. Munshaw, learned Advocate for respondent No. 2-Taluka Development Officer, Mundra Taluka Panchayat, Mundra, and respondent No. 3-Talati-cum-Mantri, Bhadreshwar, Taluka - Mundra, has opposed the submissions advanced on behalf of the petitioner, by making submissions on the lines of the affidavit-in-reply filed by respondent No. 2, affirmed on 9-10-2014. The learned Advocate for the petitioner has drawn the attention of the Court to Paragraph 6 of the said affidavit-in-reply, wherein it is stated that the proceedings of the meeting held on 11-8-2014 were videographed and from the compact disc of the said videography, it is clear that the petitioner was offered an opportunity to address the house by the Presiding Officer, but she did not avail of it.

6. As respondent No. 2-Taluka Development Officer, has stated on oath, in his

affidavit, that the proceedings of the meeting held on 11-8-2014 were videographed and the videography shows that the petitioner was granted an opportunity to address the house, but did not avail of it. In view of this stand, the Court requested the learned Advocate for respondent Nos. 2 and 3 to produce the compact disc of the videographed proceedings. Accordingly, a further affidavit-in-reply on behalf of respondent No. 2-Taluka Development Officer, affirmed on 12-12-2014, has been filed, placing on record the compact disc of the proceedings dated 11-8-2014.

7. Before this Court adverts to the contents of the compact disc of the meeting, it would be relevant to refer to the written proceedings of the meeting held on 11-8-2014, as recorded by the Talati-cum-Mantri, during which the no-confidence motion against the petitioner was passed. Upon a perusal of the said proceedings, it is clear that it is nowhere mentioned therein, that an opportunity of speaking was granted to the petitioner before the motion of no-confidence against her was put to vote. The proceedings were recorded in the presence of ten members, out of whom one member, shown at Serial No. 9, has resigned. The proceedings indicate that after taking the signatures of the members present at the meeting, the Upa-Sarpanch, who acted as the Chairman, commenced the proceedings and read out the proposal of the no-confidence motion against the petitioner. Immediately thereafter, the proposal was put to vote and the no-confidence motion was passed against the petitioner, by a majority of six members voting in favour of it and three members voting against it. The proceedings recorded by the Talati-cum-Mantri do not indicate that the petitioner was granted an opportunity of addressing the members present in the meeting, before the motion of no-confidence was put to vote.

8. In view of the averments made in Paragraph 6 in the affidavit-in-reply affirmed on 9-10-2014, filed by the Taluka Development Officer, this Court appointed Mr. Zubin F. Bharda, learned Advocate, to act as a Commissioner of the Court, in order to watch the compact disc and file a report regarding whether the petitioner was granted an opportunity of speaking at the meeting before the passing of the no-confidence motion against her, or not.

9. The learned Court Commissioner has filed his report dated 12-12-2014 in a sealed cover, which has been opened today, in the Court. Copies of the report have been provided to the learned Advocates for the respondents. In the said report, the Court Commissioner has stated as below:

"6. Upon perusal of the compact disc, I have nowhere noticed that the petitioner-Kailashba Jilubha Jadeja was called upon to address against the No-Confidence Motion moved against her despite the fact that the Talati-cum-Mantri read over in entirety the contents of the No-Confidence Motion, which contained the reasons as to why the No-Confidence Motion was moved against the Sarpanch. I would respectfully add here that I have also not noticed the petitioner-Kailashba Jilubha Jadeja making any request to the representatives of the Taluka Development Officer for speaking against the No-Confidence Motion moved

against her except that she raised her hand in dissent when the representative sought the vote of the members who were opposing the No-Confidence Motion."

10. The report has been accepted by Mr. H.S. Munshaw, learned Advocate for respondent Nos. 2 and 3. From the averments made in the report, it is clear that the petitioner was not offered an opportunity to address the house during the meeting when the no-confidence motion against her was being discussed and voted upon. It is stated in the report that the petitioner did not ask for an opportunity of hearing, as well.

11. The position of law regarding the right of a Sarpanch against whom a no-confidence motion is being put to vote, has been clearly stated by this Court in the judgment of Geetaben Bharatbhai Patel Vs. State of Gujarat and Others--> in the following terms:

"14. Based on the above judicial pronouncements, it is necessary to examine whether the provisions of Sec. 56(3) of the said Act which provide that a Sarpanch, or as the case may be, an Upa-Sarpanch though shall not preside over a meeting in which a motion of no-confidence is discussed against him, shall have a right to speak or otherwise to take part in the proceedings of the no-confidence motion including right to vote; is a mandatory requirement of law or is merely directory so that the proceedings of no-confidence motion would not vitiate even if the requirement is not strictly fulfilled.

15. From the above recording of the relevant provisions of the said Act, and the said Rules and in particular Rules 29 to 35, it can be seen that even in the capacity of a member of the Panchayat, Sarpanch against whom no-confidence motion is being conducted would have a right to participate and to speak subject, of course, to the provisions contained in Rules 29 to 35 of the said Rules. Section 56(3) of the said Act not only preserves this right, but highlights the aspect that a Sarpanch, or as the case may be, an Upa-Sarpanch who is facing no-confidence motion though shall not preside over such a meeting, but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting as also shall have a right to vote. The words "shall have a right to speak or otherwise to take part in the proceedings of such a meeting" have been used by the Legislature advisedly and unless it is found from the attending provisions of the statute that the Legislature intended that such provision should not be mandatory, it is not possible to hold that the requirement is merely directory in nature. A right to address a meeting or otherwise to take part in the proceedings including to vote are statutory rights vested in the Sarpanch or Upa-Sarpanch who is facing a no-confidence motion. A no-confidence motion has to be tabled and debated before the same can be put to vote. A Sarpanch whose position and reputation are at stake definitely has a right to speak at such a meeting and when denied such a right, prejudice would be caused to him or her, as the case may be. In a democracy when an elected Sarpanch or, as the case may be, an Upa-Sarpanch is being sought to be removed through a motion of no-confidence and when the provisions of Sec. 56(3) of the said Act specifically provide that a

Sarpanch or, as the case may be, Upa-Sarpanch who is facing such a no-confidence motion shall have a right to speak, it is not possible to hold that such a requirement is merely directory in nature. The Sarpanch or, as the case may be, Upa-Sarpanch, through his persuasive power or logical arguments may be able to prevail upon some of the members present at the meeting to change their mind and persuade them to oppose the no-confidence motion. By denying the Sarpanch or, as the case may be, Upa-Sarpanch an audience altogether, this statutory right is being violated. It is not possible to judge the prejudice that may be caused in an individual case by the denial of such a right. It is also not possible to interpret the provisions of Sec. 56(3) of the said Act keeping in mind an individual fact situation in a given case. It is, therefore, not possible to accept the contention of the learned Advocate Shri Raval for respondent No. 6 that in the present case when as many as 14 out of 17 members voted in favour of no-confidence motion, no prejudice was caused to the petitioner even if she was denied the right to speak at the meeting and that eventually what matters is the opinion of two-third members of the Panchayat that no-confidence motion should be adopted. What would have been the position if the petitioner was permitted to speak and participate in the said meeting is not possible to predict. Before a no-confidence motion could be put to vote, the petitioner had a statutory right to address the meeting. When such a mandatory requirement of law was not followed, all consequential steps of putting the motion to vote and counting of votes and adoption of resolution would automatically fail having no effect or validity.

16. In view of the conclusion that I have reached, namely, that the requirement of Sec. 56(3) of the said Act is mandatory in nature and not merely directory, all consequential steps from the stage of voting of no-confidence motion and its adoption by the meeting would be rendered non est and ineffective, since it is factually concluded in the earlier portion of the judgment that the petitioner was not given an opportunity to speak at the meeting or in any other manner to participate except to vote."

12. Letters Patent Appeal No. 1677 of 2005 was filed against the above-mentioned judgment but was dismissed by the Division Bench, vide order dated 8-12-2005. The principles of law enunciated in the above judgment have, therefore, attained finality. The provisions of Sec. 56(3) of the Act are mandatory in nature and not merely directory. It was, therefore, incumbent upon respondent Nos. 2 and 3 to have granted an opportunity of addressing the house to the petitioner before the passing of the no-confidence motion against her. It may be true that the petitioner may not have made a request for being granted an opportunity of speaking. However, when a right accrues to the petitioner by law by way of Sec. 56(3) of the Act, such right would not get eroded merely on the ground that the petitioner did not demand an opportunity of hearing. It may well be that the petitioner is not conversant with the law or the judgment of this Court. On the other hand, respondent Nos. 2 and 3 are responsible authorities, whose duty it is to enforce the provisions of law and follow the judgments of this

Court in letter and spirit. By not granting the petitioner an opportunity of speaking during the meeting dated 11-8-2014, respondent Nos. 2 and 3 have failed to discharge the duties enjoined upon them by the statute, thereby, causing grave prejudice and injustice to the petitioner.

13. The Court is pained to observe that respondent No. 2-Taluka Development Officer, Mundra Taluka Panchayat, Mundra has sworn on oath, that the videographed proceedings of the meeting held on 11-8-2014, show that the petitioner was granted an opportunity of speaking, but she did not avail of it. This statement is totally belied by the report of the Court Commissioner as well as the proceedings recorded by the Talati-cum-Mantri. The Taluka Development Officer has further sworn on oath that he is conversant with the facts of the case, has perused all the contentions raised by the petitioner in the memorandum of the petition, and has gone through the record of the office of the Mundra Taluka Panchayat. This certainly does not appear to be the case. Had the Taluka Development Officer gone through the record, such an irresponsible statement, which is now proved to be false, would not have been made by him on oath, before this Court. It, therefore, appears that respondent No. 2 has filed the affidavit-in-reply only with a view to curtailing the legal rights of the petitioner, in order to persuade the Court to reject the petition. This Court does not appreciate such a casual attitude towards the legal rights of a democratically elected representative, on the part of an officer who occupies an important position, such as respondent No. 2.

14. Reverting back to the facts of the present case, the proceedings of the meeting recorded by the Talati-cum-Mantri and the compact disc of the videography of the said meeting done by the respondents, clearly reveals that the mandatory provisions of Sec. 56(3) of the Act have not been followed by respondent Nos. 2 and 3 during the meeting, which resulted in the no-confidence motion being passed against the petitioner, de hors the said provisions of law. Then entire proceedings have been conducted in violation of the mandatory provisions of Sec. 56(3) of the Act. The petitioner has not been granted an opportunity of speaking, as enjoined by law, therefore, the entire proceedings of the meeting dated 11-8-2014, deserve to be quashed and set aside.

15. Accordingly, the following order is passed:

The resolution and proceedings of the no-confidence motion dated 11-8-2014, passed by Bhadreshwar Gram Panchayat against the petitioner, are hereby quashed and set aside. As a consequence thereof, the petitioner shall be reinstated as the Sarpanch of the said Gram Panchayat, forthwith.

Respondent No. 2 shall personally pay costs of Rs. 20,000/- to the petitioner, within a period of two weeks from today.

The petition is allowed, in the above terms. Rule is made absolute, accordingly. Direct Service is permitted.

Before parting with this judgment, the Court records its gratitude and appreciation for the assistance rendered to it by Mr. Zubin F. Bharda, learned Advocate.