

(2010) 12 GUJ CK 0204

In the Gujarat High Court

Case No : Special Civil Application No. 4947 of 2010

Kantibhai Somabhai Patel and 2

APPELLANT

Vs

Additional Development Commissioner and 3

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 57

Citation : (2010) 12 GUJ CK 0204

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : V.C. Vaghela, for Petitioners 1-3, for the Appellant; J.K. Shah, AGP for Respondent 1, H.L. Patel Advocate for Respondent 2 and Mrnj Patel, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The Petitioners have challenged an order dated 20.8.2009 passed by the Additional Development Commissioner by which appeal of Respondent No. 4 came to be allowed.

2. Respondent No. 4 is an elected Sarpanch of Limbadia Gram Panchayat. u/s 57 of the Gujarat Panchayat Act proceedings were instituted for his removal on the ground of certain alleged irregularities. District Development Officer by his order dated 20.11.2008 removed the Sarpanch. He thereupon appealed before the Additional Development Commissioner. Additional Development Commissioner allowed the appeal by the impugned order.

3. Petitioner No. 1 is resident of the village and Petitioners No. 2 and 3 are elected members of the Gram Panchayat. They seek to challenge the said order on various grounds.

4. It may be noted that it was not on the basis of the complaint filed by any of the Petitioners that proceedings were instituted against the Sarpanch by the District Development Officer. The Petitioners were not even parties in the

proceedings before the District Development Officer or before the Development Commissioner. At one stage, they did make an attempt for joining as additional Respondents before the Development Commissioner. However, their application was dismissed. They took no further steps in this regard.

5. Short question is whether Petitioners have any locus to challenge the order of the Development Commissioner. This issue is no longer *res integra*. Division Bench of this Court in judgment dated 25.6.2010 passed in Special Civil Application No. 12298/2009 approved the view of the learned Single Judge in case of Ganpat Mohanbhai Vasava v. Additional Development Commissioner reported in 2008 (2) GLH 342. View taken by the learned Judge in the said decision was referred to the Division Bench by another learned Single Judge raising *prima facie* doubt about the ratio. Division Bench after examining the provisions contained in Section 57 and other provisions of the Gujarat Panchayat Act observed as under:

In the present case, it cannot be stated that the decision rendered by the District Development Officers are materially adverse to the Petitioners. The Petitioners are not deprived of any vested rights or anything which was legally due to them. None of the legal rights of the Petitioners are violated or breached. The term "person aggrieved" must be understood in the context in which the provisions of the statute under consideration have been made. Section 57 of the Act, as already noted, empowers removal or disqualification of an elected member, Upa-Sarpanch or Sarpanch. It is held that such removal should not be lightly resorted to. The Competent authority must consider all relevant aspects of the matter before taking a final decision on the basis of the available material on record. The role of the complainant in such a case is to bring to the notice of the competent authority the alleged irregularities. It is thereafter a matter between the elected members, Upa-Sarpanch or Sarpanch as the case may be and the competent authority. As a complainant, a person who brings such irregularities to the notice of the Competent Authority may participate in the proceedings and bring on record material at his command. He, however, cannot claim to be a "person aggrieved" if ultimately on the basis of the evidence on record, the proceedings are dropped by the competent authority. We must remember that issue involves question of removal of a member, Up-Sarpanch or Sarpanch of a Gram Panchayat who are elected by people. Question of removal of such an elected member through administrative order must be confined between the competent authority and the member concerned. Any member of public claiming interest in the *lis* cannot be entrusted with the right to appeal if the competent authority on the basis of evidence on record holds that the proceedings need to be dropped.

It is by now well settled that right to appeal is a statutory right and cannot be claimed as an inherent right by any person unless it is statutorily provided.

8. In view of the above discussion, I am of the opinion that present petition is not maintainable since the Petitioners lack locus. Only on this ground, the petition is dismissed.