

(2011) 07 GUJ CK 0112

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2220 of 2010 in Special Civil Application No. 3553 of 2010

Keshabhai Panabhai Solanki

APPELLANT

Vs

Dahyaji Babaji Thakor and Others

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Panchayats (Amendment) Act, 1993 — Section 51(1), 57, 57(1), 57(2), 57(3)

Penal Code, 1860 (IPC) — Section 114, 120(B), 143, 146 , 149

Citation : (2011) 3 GLH 335

Hon'ble Judges : S.J. Mukhopadhaya, C.J;K.M. Thaker, J

Bench : Division Bench

Advocate : M.P. Shah and Kruti M. Shah, for the Appellant; N.K. Majmudar, for Respondent 1, Umesh Trivedi, Addl Government Pleader for Respondents 2 - 4 and H.S. Munshaw, for Respondent 5, for the Respondent

Judgement

K.M. Thaker, J.—Present Appeal under Clause 15 of Letters Patent is directed against the judgment and order dated 13.8.2010 whereby the learned Single Judge has allowed the petition preferred by present Respondent No. 1 and set aside the order dated 20.2.2010 passed by the Additional Development Commissioner and restored the order dated 25.6.2009 passed by the District Development Officer ("DDO" for short) by virtue of which present Petitioner was put under suspension in exercise of the powers u/s (1) of Section 59 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as the "Act").

1.1 Having regard to the rival contentions, Admit. Mr. Majmudar, learned advocate for Respondent No. 1 and Mr. Trivedi, learned Additional Government Pleader and Mr. Munshaw, learned advocate for Respondent No. 5 have waived service of admission. With the consent and at the request of learned Counsel the appeal is taken up for final decision.

2. The facts leading to and involved in present appeal need to be stated at this

stage.

2.1 At the relevant time the Appellant herein was holding post of Sarpanch of village Takodi. During his tenure three complaints viz.

(1) CR. No. II-83 of 2008 for the offences punishable under Sections 323, 504, 506(2), 427 and 114 of IPC; (2) CR. No. I-86 of 2008 for the offence punishable under Sections 149, 143, 323, 426 of IPC and (3) F.I.R CR. No. I-15 of 2009 dated 27.1.2009 for the offences punishable under Sections 405, 406, 408, 409, 420, 465, 468,, 471, 478, 477(A) and 120(B) of Indian Penal Code were filed against him. The Appellant was arrested and was detained in prison until he came to be released on bail.

2.2 It appears that present Respondent No. 1 (original-Petitioner) had demanded before the District Development Officer ("D.D.O." for short) that necessary and appropriate steps may be taken against the Appellant in view of his arrest pursuant to the FI Rs. In view of such complaint and insistence of the Respondent No. 1 the D.D.O. had issued a Notice calling upon the Appellant to show cause as to why he should not be suspended from the post of Sarpanch. The said complainant is present Respondent No. 1 and original Petitioner.

2.3 Subsequently, the DDO passed order dated 25.6.2009 suspending the Appellant from the post of Sarpanch. Aggrieved by the said order dated 25.6.2009, present Appellant preferred appeal before the Development Commissioner (present Respondent No. 2) which was registered as Appeal No. 86 of 2009.

2.4 At this stage, it is pertinent to note that in the said Appeal No. 86 of 2009 (preferred by present Appellant) present Respondent No. 1 had preferred an application, before the Development Commissioner, praying that he may be impleaded as party Respondent. The Appellate Authority allowed the said application of present Respondent No. 1 vide order dated 26.11.2009 and impleaded him as a party to the appeal proceedings. Consequently the Respondent No. 1 was one of the parties to the appeal proceedings instituted by present Appellant.

2.5 It is pertinent to note that present Appellant never challenged the said order dated 26.11.2009 and that therefore the said order remained unchallenged and has attained finality.

2.6 In view of the said order dated 26.11.2009, present Respondent No. 1 filed reply against the Petitioner's appeal before the Development Commissioner and supported the D.D.O's order dated 25.06.2009.

2.7 Ultimately, by order dated 20.2.2010 the appeal preferred by present Appellant was allowed and the order dated 25.6.2009 passed by the DDO suspending the Appellant was set aside. The Appellate Authority found that the first adjudicating authority had not examined as to whether the charges and alleged offence amounted to "moral turpitude" or not. He also observed that the

charges cannot be said to be of "moral turpitude".

2.8 Against the said order dated 20.02.2010, present Respondent No. 1 i.e. the complainant preferred the writ petition which was opposed by present Appellant on diverse grounds, including the ground of maintainability of petition and on the ground of complainant's locus.

2.9 After hearing the contesting parties, the learned Single Judge has set aside the order dated 20.2.2010 passed by the Appellate Authority in the aforesaid Appeal No. 86 of 2010 (which was filed by present Appellant) and restored the order dated 25.6.2009 placing present Appellant under suspension. The Appellant is aggrieved by the judgment. Hence, present appeal.

3. Heard Ms. Kruti M Shah learned advocate for the Appellant, Mr. N.K. Majmudar, learned advocate for the Respondent No. 1. Mr. Umesh Trivedi, learned Additional Government Pleader for Respondent No. 2 State, and Mr. Munsha, learned advocate for the DDO (Respondent No. 5). We have perused the record.

4. Ms. Shah, learned Counsel for the Appellant in the first instance has challenged the maintainability of the petition at the instance of present Respondent No. 1 and submitted that the order dated 25.6.2009 placing Appellant under suspension was passed by the DDO, hence the necessary and proper party to the proceedings, particularly in the appeal u/s 59(3) of the Act, would be the Panchayat, the Competent Authority (i.e. the DDO) and the Appellant, while Respondent No. 1 would be a third party to the appeal proceedings since the dispute is between the concerned member (i.e. the Appellant), the Panchayat and the Competent Authority. She submitted that the Respondent No. 1 had no cause and justification to prefer the petition challenging the order passed in the statutory appeal preferred by present Appellant. She also submitted that the Appellant's objection against the maintainability of the petition ought to have been accepted by the learned Single Judge. She further submitted that the Respondent No. 1 is, in any manner, not the affected or aggrieved party. The learned Counsel submitted that it has been held that original complainant cannot be said to be "person aggrieved". It is also contended that the appellate authority's order was legal and based on conclusion that the alleged offence did not amount to "moral turpitude" and ought not have been set aside.

4.1 Per contra Mr. Majmudar, learned advocate for the Respondent No. 1 has submitted that the Respondent No. 1 is resident of the village where before his suspension, the Appellant was Sarpanch of the Panchayat. He has submitted that even if the Appellant's contentions regarding scope of Section 59 and/or against the locus standi of Respondent No. 1 were to be accepted, then also by any stretch of imagination it cannot be said that he i.e. the Respondent No. 1 cannot maintain a writ petition against the order of statutory authority inasmuch as a writ petition by the original complainant and/or by a person who is party to the

Appeal proceedings (from which the petition arose) would be maintainable. He submitted that whether the alleged offence amount to moral turpitude is required to be considered in light of the position held by the Appellant. He also submitted that the Respondent No. 1 is also a member of village Panchayat and that therefore it cannot be said that the Appellant is not interested and/or affected party and has no locus to challenge the order passed by the Appellate Authority - Development Commissioner.

5. While advancing her submissions the learned advocate for the Appellant referred to Section 59(3) of the Act and urged that the Respondent No. 1 is not an aggrieved person and therefore has no locus to question any decision of the authority on the issue about Appellant's suspension. So as to emphasize her submission she relied on Section 57(3).

6. Actually, in the given set of facts in present Letters Patent Appeal maintainability of the said statutory appeal is not the issue but the issues which arise are about the maintainability of petition and the Petitioner's locus to maintain a writ petition under Articles 226 and 227 of the Constitution of India against the order passed by statutory authority in Appeal No. 86/2009 in which the Respondent No. 1 was party. The learned Single Judge entertained the writ petition by the complainant against the appellate authority's order. The Appellant feels aggrieved by the said decision.

7. In view of the Appellant's submissions, we may, before proceeding further take into consideration the said provisions which read thus:

57(3) Any person aggrieved by an order of the competent authority under Sub-section (1) and (2) may, within a period of thirty days from the date of the communication of such order, appeal to the State Government.

59(3) An appeal shall lie against an order passed under Sub-section (1) to the State Government. Such appeal shall be made within a period of thirty days from the date of the order

7.1 Even a cursory glance at the above noted provisions shows that there is a marked difference between the scope and effect of the said two provisions. On one hand, Sub-section (3) of Section 57 does provide for appeal against the order under Sub-sections (1) and (2) of Section 57 i.e. order of Removal of Sarpanch or Up-Sarpanch and / or the order disqualifying Sarpanch or Up-Sarpanch, but the provision confers the said right of statutory Appeal only on the "person aggrieved by an order" of the competent authority whereas the Sub-section (3) of Section 59, on the other hand, is not qualified in like manner by the words "any person aggrieved by an order of Competent Authority.....". (as in case of Sub-section (3) of Section 57) and it merely postulates that an appeal against the order passed under Sub-section (1) of Section 59 shall lie to the State.

7.2 The said omission is deliberate and purposive. The legislature has consciously

not qualified the provision under Sub-section (3) of Section 59 in the same manner as has been done in case of Sub-section (3) of Section 57. Hence, the said provision must be allowed its due and complete role.

7.3 It deserves to be mentioned that the question whether the words "any person aggrieved" in Sub-section (3) of Section 57 would include the original complainant has been considered, upon reference made by learned Single Judge, by the Division Bench in the case of Mr. M.H. Patel v. Sejalben J. Patel (2010 (2) GLH 757) in light of and in the perspective of the provision under Sub-section (3) of Section 57. The Division Bench, after considering other decisions held that the meaning of the term may vary according to the context of the statute and ordinarily a person would be aggrieved if the decision is materially adverse to him and if a legal burden is imposed on him and that normally a person is required to establish that he has been denied or deprived of something to which he is legally entitled and the term "person aggrieved" must be understood in the context in which the provisions of the statute under consideration have been made. It also deserves to be mentioned that in the matter between S.P. Patel v. State of Gujarat (SCA No. 17427 of 2005) the learned Single Judge, while holding that the Petitioner had no locus standi to maintain the petition also took into consideration that "he had not taken any active steps to participate in the proceedings before the D.D.O. and/or the Commissioner and that he was a fence-sitter.

8. Another material and vital fact, which is the main distinguishing feature in present case is that unlike in the said case of S.P. Patel (supra) wherein the complainant remained fence-sitter and had not taken any steps, in present case, the Respondent No. 1 was not only the complainant before the Competent Authority but when the Appellant herein filed Appeal, the Respondent No. 1 had immediately filed application for being impleaded in the appeal and when the Appellate Authority, after considering the objections of present Appellant, vide order dated 26.11.2009, granted the application of present Respondent No. 1 made him / allowed him to be party to the appeal proceedings (in the appeal filed by present Appellant). The Respondent No. 1 also filed his reply/objections and his objections were also taken on record and considered by the Appellate Authority. The further relevant and vital distinguishing fact in present case is that when the application of present Respondent No. 1 was allowed vide order dated 26.11.2009, present Appellant did not challenge the said order dated 26.11.2009 (and thereafter also does not appear to have challenged the said order until now) and it has remained unchallenged and has now attained finality. Therefore when the appellate authority passed the order present Respondent No. 1, filed the petition. Thus, in present case, the Respondent No. 1 (original complainant) consistently and constantly remained present and active in the proceedings.

9. It also emerges from the aforesaid facts that none of the stages / events of the Appeal proceedings were challenged by present Appellant, at any time, before the final order and until the Court issued Notice in the petition against the

Appellate Authority's order. In any case the order dated 26.11.2009 joining Respondent No. 1 as party in the Appeal was never challenged by the Appellant and it was only at that stage i.e. in the said Respondent's petition that the Appellant herein raised the objection about complainant's locus. Therefore, when the Appellant herein never challenged the order dated 26.11.2009 and accepted the said order, it is now not open to the Appellant to challenge the locus of the original complainant in the appeal proceedings and / or to contend that the Respondent No. 1 had no locus to prefer appeal, hence he does not have locus to file the petition.

9.1 Furthermore, maintainability of a writ petition invoking Article 226 and / or Article 227 of the Constitution of India and/or the issue about the locus standi of the Petitioner to maintain a writ petition, ordinarily, cannot be determined on the basis of the provision conferring right of appeal contained in a particular statute. Such provision can only determine maintainability of statutory appeal.

10. While considering the Appellant's objection against the maintainability of the petition and against the locus standi of the Respondent No. 1 to maintain the petition, it deserves to be noted, at the outset, that the two issues viz. (a) maintainability of a petition and (b) at whose instance such petition would lie are two different matters and one cannot be confused with the other. Likewise the issue as to whether the order suffers from any error which would or would not warrant examination by way of judicial review, also stand apart.

10.1 The legality, validity and maintainability of the order of statutory authority can always be made subject matter of judicial review, albeit, within the well recognized limitations applicable to the process of judicial review. In view of the facts and circumstances discussed above, the objection against the maintainability of the petition, (wherein the Petitioner challenged order passed by statutory authority in the proceedings to which he was party) is unsustainable. Hence, the first part of the objection should not detain us and it being without merits, is rejected.

11. Now so far as the Appellant's objection against the locus standi of the Respondent No. 1 is concerned the said issue is, as observed by Lord Denning "in administrative law the question of locus standi is the most vexed question of all" (in "Law of Writs" 5th edition as quoted by Hon''ble Mr. Justice C.K. Thakkar, as his lordships then was).

11.1 The following factual aspects are in the background of the said objections and need to be taken into account while considering the said objection.

(a) Present Respondent No. 1 is a resident of the village where the Appellant, at the relevant time, was Sarpanch.

(b) the Respondent No. 1 also happened to be one of the members of the elected body / village panchayat of which present Appellant was Sarpanch.

(c) before the appellate authority also the Respondent No. 1 had made

application for being impleaded in the proceedings and upon being impleaded prosecuted the appeal proceedings also.

(d) the Respondent No. 1 has, right from inception of the proceedings, continuously remained active in the entire proceedings, after having put the things in motion after the three FI Rs were filed against the Appellant.

(e) the petition preferred by Respondent No. 1 raised questions, in light of and on the strength of the provision contained u/s 59(1) prescribing bar against a person to hold the office of Sarpanch upon occurrence of any of the specified contingency.

12. It follows that the Appellant's objections are required to be examined in light of the fact that the grievance raised in the petition is against the incumbent in public office and about his suitability to hold the office.

12.1 In this view of the matter, should we nip such proceedings, in the bud on the ground of locus alone and thereby allow the appellate authority's order to survive and operate, and that too without even examining and testing it, is the question which arises from the Appellant's objection.

12.2 If we examine the petition, we find that in effect and in substance what the Respondent No. 1 did by filing the petition is that he brought to the Notice, initially of the authority and then to the Notice of the Court, the factum about the FI Rs having been filed against the Appellant and requested for appropriate action in view of the bar imposed by Section 59(1) of the Act. It may be recalled that the Apex Court has observed in the case of *K. Anbazhagan v. Superintendent of Police* (AIR 2004 SC 524) that:

In many a cases the political opponents in, democracy, play an important role both inside and outside the House. They are the watchdogs of the Govt. in power. It will be their effective weapon to counter the misdeeds and mischiefs of the Govt. in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected.

12.3 In present case the Respondent No. 1 may be in political rivalry with the Appellant, nonetheless it is a matter of record that he happened to be one of the members of the Panchayat (in which the Appellant was Sarpanch) and his complaint before the DDO put the things in motion and his petition questioned the Appellant's continuation in public office upon 3 FI Rs were having been filed against him and that therefore before deciding as to whether the action in law taken out by the Respondent No. 1 against the Appellant should be nipped in the bud by accepting the Appellant's objection on the ground of locus of Respondent No. 1, we would rather take into account the aforesaid factual aspects and also certain decisions and precedents on the issue.

12.4 Now so far as said Respondent's locus to prefer the petition is concerned, ordinarily the judicial redress by writ petition is available to a person who has suffered legal injury and whose legal right is impinged or prejudicially affected.

The recognized and settled concept is that a person seeking writ of mandamus must have legal right and the opposite party must be obliged with corresponding legal duty and the Petitioner's legal right must have been adversely affected and the demand to remedy the injury is not paid heed to.

12.5 However, the said traditional concept of personal injury or the concept that the seeker of the judicial redress should be the aggrieved person are fast vanishing and law has, as observed by the Apex Court, veered round from genuine grievance against the order effecting prejudicially to "sufficient interest" in the matter. Thus, in certain cases, demonstration of even "sufficient interest" may make a petition maintainable, whereas in some case, in view of compelling and conscience disturbing facts, a petition by a person who has genuine, justified and sincere concern deeper than that of busybody can satisfy the court on the said count. In the case between Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, the Apex Court observed that:

The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept.

12.6 Then in the case of S.P. Gupta Vs. President of India and Others, the Apex Court observed that:

The basic of entitlement to judicial redress is personal injury from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.

12.7 The Apex Court has considered the concept of locus standi by categorizing or classifying the Petitioners as "stranger", "busybody", "interested person", "aggrieved person". In the case between Jasbhai Motibhai Desai v. Roshan Kumaar, Haji Bashir Ahmed and other (supra) wherein the objection against locus of the Appellant to prefer the petition was raised mainly on the ground that Appellant's rights were not in any manner affected. The High Court dismissed the petition holding that no right vested in the Appellant and Appellant was not aggrieved person. In this backdrop the Apex Court considered the issue as to whether the proprietor who was holding licence to exhibit film was entitled to invoke certiorari jurisdiction ex debito justitiae (to get a "No-objection Certificate" issued in favour of proprietor of Cinema, quashed) on the ground that the order suffered from defect of jurisdiction and having considered the facts the Apex Court in paragraph No. 12, 36, 37 and 38 observed thus:

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the Petitioner should be an "aggrieved person" and, in a case of defect of jurisdiction, such a Petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: Who is an "aggrieved person" And what are the qualifications requisite for such a status ? The expression "aggrieved person" denotes an elastic, and, to an extent,

an elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive definition. At best, its features can be described in a broad, tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the Petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction."

"36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones: a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved".

38. To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered as legal grievance, a person "against whom a decision has been pronounced which

has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute, dealing with private rights of particular individuals?

12.8 In the case of Fertilizer Corporation Kamagar Union (Regd.) Sindri and Ors. v. Union of India and (AIR 1981 SC 344) the Supreme Court has observed that:

When a citizen belongs to an organization which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, a writ petition by such a citizen would have been permissible under Article 226 of the Constitution.

12.9 Thus, in the matter of filing a writ petition the Apex Court recognized the right and locus of a citizen who has "special interest" and some deeper concern" in the subject matter. Likewise when some compelling and conscience disturbing facts or when an order dealing with alleged act or conduct in the nature of moral turpitude rendering a person unfit to continue to hold public office, or when such conduct by a person holding public office is made the ground for preferring writ petition so as to question the Respondent's suitability in the office and to behold the dignity and purity of public office then in such cases, depending on its facts, it may not be proper or justified to allow the ground of locus standi to be an impediment and / or to deny a writ on the ground of lack of locus standi of the person seeking corrective command by the Court. In the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, the Apex Court has observed that:

35. Locus standi to approach by way of grant relief in writ petition and refusal to equity jurisdiction are two different aspects, may be with same result. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in, the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with Public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or

overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. ..

12.10 In the case of *Gadde Venkateshwara Rao v. Govt of A.P.* (AIR 1996 SC 828) the Apex Court that:

..the Petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest: it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof...

12.11 In the case between *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, a bidder in auction of licence of vending foreign liquor within the prescribed range was permitted "by the Excise Commissioner" to shift his domain (from Changanassery excise range to another range called Karukachal) to another range. The hotelier doing business in another range viz. Karukachal (where the bidder was permitted to shift his domain) was distressed by such permission and approached the High Court. Before the learned Single Judge, the hotelier failed, however before the division bench hotelier succeed as the decision of the Excise Commissioner was set aside. The bidder claimed that the Division Bench, in appeal filed by the hotelier, did not seriously address his objection that the hotelier had no locus to challenge the order of the Commissioner as none of his rights was impinged by the order allowing the bidder to shift his domain from one range to another. The Apex Court in paragraph Nos. 10 and 13 observed thus:

10. the right of the third Respondent is not affected by the order passed by the Excise Commissioner as the licence granted to her is only for selling liquor in small quantity and that too only to those persons who visit the hotel and restaurant, whereas the Appellant is not permitted to sell it like that. We too feel that if the business of the third Respondent is to be carried on in accordance with the rules such business cannot affect the business of the Appellant. In that view of the matter Appellant would not be a rival trader or a rival business contender for the third Respondent. Perhaps bearing in mind this aspect the third Respondent maintained the stand in the counter affidavit filed in this Court that her objection against the order of the Excise Commissioner is as a citizen of Karukachal Panchayat and she is entitled to raise such objection.

13. In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion

out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits.

12.12 In the aforesaid decision also the Apex Court, while acknowledging that aspect of locus standi had expanded, approved the decision of the Division Bench of entertaining the petition. The order passed by the excise commissioner was found to have been "passed in violation of law" and therefore, the Apex Court considered it appropriate to not terminate the action in law solely on the ground of locus standi and instead proceeded to consider the contention on merits.

12.13 In the case between Sai Chalchitra v. Commissioner, Meerut Mandal (2005 (3) SCC 683) the Appellant before the Apex Court was running a Cinema Hall. The licence given to Respondent No. 3 to run a video parlor was cancelled by the District Magistrate. The said order was set aside by the Commissioner allowing the video parlor to remain in operation. In his writ petition against the Commissioner's order the Appellant contended before the High Court that the video parlor of Respondent No. 3 was situate within 350 mtrs. from the cinema hall and that therefore such licence could not have been issued in view of the provision under U.P. Cinema (Regulation of Exhibition by Means of Video) Rules, 1988. The writ petition was dismissed by the High Court on the ground of locus standi of the Appellant holding, inter alia, that the Appellant could not raise grievance against his rival in trade and the Appellant had not been denied or deprived of any of his legal right including right to exhibit film. The matter was carried to the Apex Court. The Apex Court, in the appeal preferred by owner of the cinema hall observed that:

5....we are of the opinion that the High Court clearly erred in dismissing the writ petition filed by the Appellant on the ground of locus standi. The Appellant being in the same trade as Respondent No. 3 has a right to seek the cancellation of the licence granted to Respondent No. 3 being in violation of the Act and the Rules.

13. Having regard to the precedents - the above noted decisions - and in light of facts of present case, it emerges that the Petitioner - Respondent No. 1 would not fall into the category of a "complete stranger" and / or a "busybody" as explained by the Apex Court in the case of J.M. Desai (supra).

13.1 When the order impugned in the petition is challenged inter alia on the ground that it is contrary to the decided cases and when the subject matter of the petition concerns or relates to incumbent in public office and his suitability to hold the office, in our view it cannot be said that the petition preferred by present Respondent No. 1 (i.e. the complainant) should not have been entertained by the learned Single Judge or that the Respondent No. 1 (original complainant) had no locus standi to prefer the writ petition under Articles 226

and 227 of the Constitution of India against the order of the Appellate Authority in the appeal proceedings to which he was made/impleaded as party

13.2 Having regard to the facts of present case particularly the fact that subject matter of the petition, inter alia, raises the issue about suitability of incumbent in public office, we are not inclined to accept the Appellant's objections against the locus standi of the Petitioner (i.e. the original complainant) to prefer the writ petition and/or against the decision of the learned Single Judge entertaining the petition and we are not inclined to nip the proceedings on the ground of locus standi of the Petitioner. The objection is, therefore, not accepted and is hereby rejected.

14. We may now turn to the Appellant's challenge against the decision of the learned Single Judge setting aside the Appellate Authority's dated 20.02.2010 and restoring the order dated 25.06.2009 by the Competent Authority.

15. For the purpose of passing the order of suspension dated 25.6.2009 against present Appellant, the Competent Authority took into account the 3 different complaints against the Appellant, alleging commission of criminal offence, under Sections 143, 149, 323, 426 as well as Sections 405, 406, 408, 409, 420 and 120-B etc. of the Indian Penal Code. The Competent Authority recorded that the alleged offence constituted / were in nature of moral turpitude and since the Petitioner was arrested and detained in prison, until he came to be enlarged on bail, there was case for passing order of suspension under Sub-section (1) of Section 59.

16. However, in exercise of his powers conferred by the provision under Sub-section (3) of Section 59 the Appellate Authority, by his order dated 20.02.2010, set aside the order of Competent Authority holding that the charges leveled against present Appellant did not constitute moral turpitude.

16.1 In its order dated 20.2.2010, the Appellate Authority has made reference of the two decisions relied on by the Appellant one being the case between Narabhai Veljibhai Chaudhary Vs. R.S. Vaghela and Others, and another being the case between Bhikhumiya Sarfumiya Malek v. D.D.O., Mehsana (1999 (3) GLR 2693).

16.2 True it is that the learned Single Judge, in the decision in the case of Narabhai Veljibhai Chaudhari (supra) has observed that Sarpanch cannot be suspended merely on institution of criminal case. However, it is also relevant that in the very same decision, the learned Single Judge has also observed that whether the alleged act constitutes offence of moral turpitude or not depends on various factors and there cannot be straight jacket formula and that it would not be desirable to express any opinion regarding the nature of alleged offence as it may prejudice the criminal case. Likewise, in the second decision also i.e. in the case of Bhikhumiya Sarfumiya Malek (supra) the learned Single Judge has observed that "I do not wish to express any opinion about the allegations in the criminal case as the matter is yet before the Criminal Court for purpose of

framing charge.....".

16.3 Despite such observations in the said decisions, the Appellate Authority, without any discussion about the nature of alleged offence and without examining the allegations in the 3 FI Rs (filed against present Appellant) in the context of the post held by the Appellant, quashed the order of the Competent Authority, and without recording any reasons, the appellate authority also concluded that "it was difficult to accept that the allegations constitute offence of moral turpitude". The Appellate Authority failed to consider that in one of the cited cases i.e. in the case of N.V. Chaudhary (*supra*) the learned Single Judge observed, in the backdrop of the facts of that case recorded in para 4 of the decision, that the allegations did not inspire confidence and that the oral version does not find corroboration from medical evidence and emphasized the point that the facts should be carefully scrutinized and the conclusion must be reached upon proper application of mind and not casually and / or mechanically.

17. Thus, even according to the judgments referred to by the Appellate Authority (on which the Appellant relied), it was necessary for the authority to independently examine the allegations and determine, objectively, whether the alleged offence were in nature of moral turpitude and whether it would constitute offence of moral turpitude, or not.

17.1 However, in the impugned order there is no discussion whatsoever about the factual background and/or about the nature of alleged offence. It also does not come out from the Appellate Authority's order that the authority had considered the allegations and the nature and gravity of alleged offence from the perspective of the office and post held by the accused and from the perspective that the case concerns public office and the person holding the office.

17.2 The Appellate Authority has only reproduced the numbers of the sections prescribing penalty for the alleged offence and after merely mentioning the sections stated in the FIR, the Appellate Authority, without any discussion and without recording any reasons, recorded that it was difficult to consider the allegations as offence of moral turpitude. Such approach towards the matter, even according to the decisions referred to by the Appellate Authority in its order, is unjustified and unsustainable, and vitiates the order.

17.3 So as to further appreciate this aspect it would be appropriate to refer to two earlier decisions viz. the decisions in the case between Patel Bhogilal Manohrdas v. Development Commissioner (1976 GLR 724) and R.M. Patel v. Additional Development Commissioner (1992 (1) GLH 197). In the case of Patel Bhogilal Manohardas (*supra*), the learned Single Judge considered the question whether the information lodged with police would amount to institution of criminal proceedings or not and observed that:

..Now the question whether the information lodged with the police amounts to institution of criminal proceedings is not difficult to answer. If the legislature had meant by criminal proceedings in a Court of law or judicial proceedings in a

Criminal Court of Law it would have unmistakably said so. The legislature has not used that language in Sub-section (1) of Section 51. The legislature has used the expression any criminal proceedings which admits of a very wide connotation. Proceedings can be before a Court of law or before a police officer who is competent to entertain them. If such proceedings whether before a Court of law or before a police officer are criminal in nature then their institution enables the District Development Officer to suspend inter alia a Sarpanch from his office provided they are in respect of an offence or offences involving moral turpitude. In my opinion the expression any criminal proceedings is wide enough to include within its sweep proceedings before a police officer in the shape of information of an offence lodged with him...

In another case i.e. in the case of R.M. Patel (supra), another learned Single Judge considered the view in the above referred case of Patel Bhogilal Manohardas (supra) and held that the words "any criminal proceedings" shall have to be given wide meaning so as to include not only the proceedings before the Court of Law but even the stage of investigation before the Police Officer.

17.4 Unfortunately, the aforesaid aspects do not appear to have been given due consideration by the Appellate Authority in the impugned order. Actually without independently examining the allegations and without taking his own independent and objective decision the Appellate Authority could not have reached the conclusion that it was difficult to consider the allegations as constituting offence of moral turpitude. The Appellate Authority's order is, thus, defective and against the decided cases and also against the spirit and object of the provision.

18. It is pertinent that the provision empowering the competent authority to suspend a Sarpanch or Up-Sarpanch in the event of specified contingencies is based on the fundamental principle of public policy viz. maintaining purity in public office. The provision barring a person who is facing charge of offence of moral turpitude, from holding public office e.g. to place the incumbent in the office of Sarpach or Up-Sarpanch under suspension if he is charged with offence of moral turpitude, is incorporated with a view to ensuring fulfillment of the said requirement and object and for realizing the avowed principle of public policy viz. maintaining purity, dignity and standard of public office. It is in light of the said principle behind the provision that the question as to when and how the power can be and should be exercised by the competent authority, can be (and should be) answered.

18.1 The language of the said Sub-section (1) of Section 59 make it clear that the expression "any criminal proceedings is wide enough to include within its fold, the proceedings before a police officer in the shape of information lodged with him (i.e. FIR), as well, and indicates the intention of legislature to allow the authority sufficient room to exercise the power to maintain purity of the public office.

18.2 It is true that every case does not call for drastic action and mere allegation

or charge of involvement of Sarpanch or Up-Sarpanch in petty offence or offence of trivial nature or offence which is not in the nature of moral turpitude may not justify action under Sub-section (1) of Section 57 or even under Sub-section (1) of Section 59. Likewise, in all cases there may not be sufficient information or material or details to satisfy the competent authority to take action under Sub-section (1) of Section 59 and the authority may consider it appropriate, in the facts of the case before him, to wait until investigation, pursuant to the information to the police officer, is over and chargesheet is filed, while in another case the competent authority may find it appropriate to take action under the aforesaid provision, upon detention in prison of the incumbent in the office. There cannot be a straight-jacket formula and any rigid or inflexible rule cannot be laid down as to in which type of cases the power can be and should be exercised and in which type of cases it should not be exercised or in which type of cases the power can be exercised at the stage when the FIR is lodged or chargesheet is filed or charge is framed. Furthermore, while there cannot be a straight-jacket formula, the competent authority must always have regard to, and should always keep in focus, the object and purpose of the provision.

18.3 Having regard to such aspects the legislature has, in its wisdom, conferred the discretion, to take appropriate decisions in light of the facts of each case, on the competent authority. However, the guiding factor or the thumb rule which should act as the fundamental principle and focal point is the object of the said provision viz. the principle of public policy to maintain purity, and dignity of the public office and to bar a person, against whom there is charge of moral turpitude (or in whose case any of the contingencies specified in the section has arisen) from holding the public office.

18.4 Another aspect which also should guide the competent authority in exercising the discretion and the power under Sub-section (1) of Section 59 is that the provision has been made in respect of the office of local body where the person holds the office upon being elected by the electorate who does not have the power to recall the elected members of the local body and that therefore the legislature recognized the requirement to provide a safeguard so that such member who is elected for holding the public office of Sarpanch or Up-Sarpanch in the local body, does not misuse the absence of right of being recalled by the electorate and upon recognizing the said requirement, the legislature made the provision by way of Sections 57 and 59 of the Act. At the same time suspension of elected representative by administrative order ought to be done cautiously and fine balance between the need to maintain purity of public office and tenure of elected member has to be maintained.

18.5 It is trite to say that whether the alleged offence constitutes or involves the question of moral turpitude or not, has to be judged also in light of the post or position or the office held by the person charged with the offence. Diverse factors may have to be kept in mind before deciding as to whether the offence is in the nature of and / or constitutes moral turpitude or not e.g. the person who

committed the offence, the post / position held by him, the person against whom the alleged act was committed, the nature of the alleged act and the manner and circumstances in which it was committed, the circumstances in which the alleged act was committed etc. and for such purpose it may be necessary to take into account the facts and allegations stated in the complaint / FIR or the chargesheet and not merely the provisions. The decision by the competent authority cannot be taken by divorcing the said aspects from the constituents or the ingredients of the alleged offence.

18.6 While taking the decision and exercising the discretion and before passing the order under Sub-section (1) of Section 59, the competent authority has to apply mind to the aforesaid and such other relevant aspects. The fulcrum, for all decisions will, however, be morality or its absence and that is what must act as the beacon light for the authority. In the process of decision making, what applies to and what is true for the competent authority, also applies to and is true for the appellate authority as well, (i.e. also applies to the appellate authority when it examines the order of the competent authority while deciding the appeal).

19. A person who is detained in prison renders himself incapable of discharging duties of the office. When prima facie involvement is shown and the person in the office is found to be under cloud of doubt then the competent authority is required to take appropriate decision. True it is that the probability or possibility of concocted and frivolous complaints, either out of political rivalry or personal enmity, cannot be ignored and that therefore the competent authority has to satisfy himself and exercise the discretion and power judiciously.

19.1 The competent authority also needs to keep in focus that if the person is allowed to hold the office of head of panchayat without any action under the said provision, while he continues to be detained in prison then such inaction may result into and would amount trivializing the system of local authority and it may uproot the very basis of the system viz. the faith, trust and confidence of people electing their representatives.

19.2 A reference of few instances wherein the Court has considered the alleged act by the sarpanch or Up-Sarpanch as moral turpitude, will not be out of place at this stage. In the case of R.M. Patel (supra) the alleged offence was punishable u/s 146, 353 and 506 of IPC wherein the Court dismissed the petition by the sarpanch who made grievance against the order suspending him from the post of sarpanch. In the case between S.P. Shah v. Kavant Gram Panchayat the division bench, while deciding letters patent appeal (LPA No. 680 of 1997 in SCA No. 347 of 1997), considered the alleged offence of misappropriation and the charge u/s 409 of IPC, as an act of moral turpitude. In the case between Mustaq Ahmed Hasanhai Mansuri v. V.C. Trivedi (2003 1 GLH 572), the Full Bench while considering a case in which the sarpanch was removed in exercise of power u/s 57(1) considered the act of encroachment by up Up-Sarpanch as "disgraceful" and observed that:

4.4 A disgraceful conduct is much more grave than a mere misconduct. A disgraceful conduct brings disrepute not only to the Councillor who is guilty of such conduct, but would also cast a stigma upon the institution, namely, the Municipality. Webster gives the word "disgraceful"

meaning as synonymous of "infamous", "detestable", "odious", "scandalous", "base", "vile", "shameful", ignominious"..... President, Vice President or Councillor of a Municipality, as the case may be, is a public figure holding public post and is supposed to conduct himself in such a manner whether in the discharge of his duties or otherwise, that his conduct does not bring shame or dishonour or ignominy to himself or the institution. The decisions taking contrary view on this point stand overruled.

20. The appellate authority has not addressed any of the relevant aspects, discussed above. It is pertinent to note that the appellate authority lost sight of the observations that "the authority is required to scrutinize the cases with more care and caution" made in the judgments referred to by it in the impugned order. It is also pertinent that in present case the appellate authority set aside the order of competent authority on the ground that the competent authority had not considered the relevant aspects and then the appellate authority also committed the same error and without any discussion and without recording reasons to justify and support its conclusion and by merely taking note of the number of the provisions / sections mentioned in the FI Rs recorded the finding or the view that the alleged offence in all the three FIR's (or chargesheet) do not constitute moral turpitude.

20.1 In our view the impugned order cannot be said to be an order passed after addressing the relevant issue. The order merely takes note of the numbers of the provisions / sections mentioned in the FI Rs i.e. Sections 409, 420, 406, 408, 143, 323, 426 etc. and not the facts or allegations against the accused (Appellant herein) and it also does not discuss as to whether in light of the office and the post held by the Appellant the facts / allegations would constitute offence in the nature of moral turpitude. The basis and reasons justifying, and / or in support of, the conclusions are not discernible from the order. On careful consideration, and upon overall view of the facts and on examination of the order impugned in the petition we are of the considered view that the order dated 20.2.2010 is not sustainable and deserves to be set aside. The learned Single Judge is right and justified in setting aside the order dated 20.2.2010.

21. Therefore, we are not inclined to interfere with the order of the learned Single Judge setting aside the appellate authority's order dated 20.2.2010 and we confirm the said part of the judgment dated 13.8.2010 passed by the learned Single Judge by which the learned Single Judge quashed the Appellate Authority's order dated 20.2.2010. The decision of the learned Single Judge to treat the petition by Respondent No. 1, as maintainable, is also confirmed.

21.1 The Appellant has also contended that after setting aside the order of the

appellate authority, the learned Single Judge has restored the order of the competent authority, however, the order of the competent authority also is unsustainable and the said order ought not have been restored. On scrutiny of the order dated 25.6.2009 it comes out that notwithstanding or irrespective of the competent authority's conclusion the said order dated 25.6.2009 by the competent authority suffers from same defects as in the order dated 20.2.2010,.

21.2 In this situation and at this stage the options or alternatives before us, are two. Either we consider the allegations, nature and gravity of the alleged offence, and other relevant aspects and pronounce as to whether they constitute moral turpitude or not; or, we remand the case for fresh consideration and decision. We are conscious that it is advisable and necessary, as far as possible, to avoid remand of the case and we are not very happy in remanding the case.

21.3 However, we are also alive to the possibility that the conclusion by the statutory authority as to whether the alleged acts constitute moral turpitude or not; may not have bearing before the trial Court which would try the case against the Appellant; however even a prima facie view expressed by this Court may probably affect or influence the proceedings before the trial Court.

21.4 Lest it should happen, we do not see, at this stage and in the facts of present case, any other option but to remit the case before the appellate authority (since the learned Single Judge has already set aside the Appellate Authority's order, and we have not disturbed the said part of the order) in view of the inherent defects in the appellate authority's order and also to avoid the above noted eventuality and contingency. We order accordingly. Consequently the said limited part of the judgment dated 13.8.2010 to the extent and by which the learned Single Judge restored the order of the competent authority will not survive.

22. We have noticed at the outset that the appellate authority had, at initial stage, stayed the operation of the order dated 15.7.2009 passed by the DDO. Therefore, also, instead of remanding the case to the competent authority, we deem it proper to remand the case to the appellate authority. Thus, on remand, the said order dated 15.7.2009 and the same status shall stand restored and the case shall be deemed to have been remitted and restored before the Appellate Authority, at that stage. For removal of doubt it is clarified that the proceedings are remitted to the Appellate Authority and shall be deemed to have been restored at the stage when order dated 15.7.2009 staying the Competent Authority's order was passed. In this view of the matter the order by learned Single Judge restoring the order of Competent Authority shall not survive and the Appellate Authority's order dated 15.7.2009 shall stand revived and restored. The Appellate Authority shall be at liberty to pass appropriate order in accordance with law and after hearing all the parties who were treated as party to the proceedings and were heard while deciding the Appeal No. 86 of 2009.

23. We also clarify that we have not expressed any opinion as to whether the

alleged offence constitutes moral turpitude or not and it would be for the appellate authority to pass appropriate order in accordance with law and the precedence on the point.

24. With the aforesaid clarifications and directions the appeal stands disposed. The appellate authority shall, as aforesaid, take fresh decision as early as possible and preferably within 3 months from receipt of the copy of this order. In the facts of the case there shall be no order as to costs.