

(1973) 12 GUJ CK 0007
In the Gujarat High Court

Khatana Sankalabhai Dosabhai

APPELLANT

Vs

Jesingbhai Devram Thakkar and Others

RESPONDENT

Date of Decision : 15-12-1973

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 55(6), 55(6)

Citation : (1975) 16 GLR 379

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—On 1st March 1968 the petitioner was elected President of Kankrej Taluka Panchayat in Banaskantha District. The respondent No. 1 was his rival candidate. The petitioner got 26 votes and the respondent No. 1 got 25 votes. The petitioner was, therefore, elected by majority of one vote.

2. The respondent No. 2 had lodged information with police on 7th March 1968 that he had been abducted by the petitioner and others and that, therefore, he could not remain present at the time of voting at that election. The police found that the complaint was false and applied to the Magistrate for "B" Summary. The Magistrate rejected the application for "B" Summary and granted "A" Summary. The respondent No. 2 had also filed a private complaint about it. On 17th March 1969 the Magistrate dismissed it. While doing so he observed that abduction had taken place but it was not proved who had done it.

3. Meanwhile the respondents No. 1 and 2 made an application to the District Development Officer u/s 55(6) of the Gujarat Panchayats Act, 1961 in order to have the election of the petitioner set aside and to have a fresh election ordered. The District Development Officer found that the respondent No. 2 had been abducted and that, therefore, there was no free and fair election. In that view of the matter he set aside the election of the petitioner and ordered a fresh election to be held.

4. The petitioner challenged that order in a revision application which he filed

before the State Government u/s 305 of the said Act. The Development Commissioner, Gujarat State, by his impugned order replied to him that no revision application u/s 305 was competent against an order made by the District Development Officer under Sub-section (6) of Section 55.

5. It is this order of the Development Commissioner which is challenged by the petitioner in this petition.

6. Mr. Daru, appearing for the petitioner, has contended before me that the jurisdiction of the State Government u/s 305 is not barred by Sub-section (6) of Section 55 and that, therefore, the Development Commissioner was in error in refusing to entertain the Revision Application.

7. In order to examine the contention raised by Mr. Daru it is necessary to turn to Sub-section (6) of Section 55 which provides as under:

In the event of a dispute arising as to the validity of an election under the foregoing provisions of this section, the dispute shall be referred within a period of thirty days from the date of the declaration of the result of the election to the competent authority for decision. The decision of the competent authority shall be final and no suit or other proceeding shall lie against it in any court.

It is not in dispute that the District Development Officer is the competent authority contemplated by Sub-section (6) of Section 55.

8. Let me now turn to Section 305 which confers upon the State Government power to call for proceedings. It provides as under:

The State Government may call for and examine the record of proceedings of any panchayat or of any officer (except any proceedings of the Nyaya Panchayat or of the District or the Sessions Court in judicial proceedings in revision or reference from the proceedings of a Nyaya Panchayat) for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as it shall deem just.

The question which been canvassed before me is whether the exercise of power which has been conferred upon the State Government u/s 305 is barred by the expression "the decision of the competent authority shall be final and no suit or other proceeding shall lie against it in any court" used in Sub-section (6) of Section 55. The aforesaid expression used in Sub-section (6) makes the order of the District Development Officer final and bars a suit or other proceeding in any court. An application to the State Government u/s 305 against an order made by the District Development Officer under Sub-section (6) of Section 55 is not a suit. Secondly, the State Government while exercising its power u/s 305 is not a Court. An application which is made to the State Government u/s 305 for the revision of an order made under Sub-section (6) of Section 55 is a proceeding in continuation of the proceedings of the District Development Officer under Sub-section (6) of Section 55 and is not "other proceeding" within the meaning of Sub-section (6) of Section 55. It is, therefore, clear that since the State

Government when it exercises its power u/s 305 is not a Court and since an application made to it for revision of an order made under Sub-section (6) of Section 55 is not a suit or "other proceeding", the second part of the aforesaid expression does not bar a revision application u/s 305.

9. The next question which I am required to consider is whether the finality accorded to the order made by the District Development Officer under Sub-section (6) of Section 55 bars further proceedings u/s 305. In *Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others*, a similar question arose in the context of Sub-section (3) of Section 23 of the Maharashtra Cooperative Societies Act, 1960 which accorded finality to orders contemplated by that section. However, Section 154 of the said Maharashtra Act conferred upon the State Government power analogous to the power which Section 305 of the Gujarat Panchayats Act, 1961 confers upon the State Government. Construing the effect of finality accorded by Sub-section (3) of Section 23 to the orders contemplated thereby on the exercise of power by the State Government u/s 154, the "Supreme Court has laid down that the word "final" in the aforesaid context means that the order is not subject to an ordinary appeal or revision but it does not touch the special power legislatively conferred on Government. It has been further observed by the Supreme Court in that decision that the Government is not compelled to take action in exercise of that power of its unless it thinks fit and that, therefore, the party who moves the Government cannot claim that he has a right of appeal or revision. However, it has been further observed by the Supreme Court that the Government should welcome such applications because they draw the attention of the Government to cases in some of which the Government may be interested to intervene, In that case, the Supreme Court recorded the conclusion that the Government had denied to itself the jurisdiction which it undoubtedly possessed u/s 154 by considering that the finality of the order u/s 23(3) precluded action u/s 154. Applying the principle laid down by the Supreme Court in that decision I am of the opinion that the finality accorded by Sub-section (6) of Section 55 to the orders made thereunder indeed precludes an ordinary appeal or revision but it does not operate as a bar to the exercise of power by the State Government which has been legislatively conferred upon it by Section 305. It is a special power which has been conferred upon the State Government and which enables the State Government to take into account and to correct the irregularities which may have been made by the subordinate officers in making orders under the Gujarat Panchayats Act, 1961.

In this view of the matter, I am of the opinion that the Development Commissioner who has been exercising the powers on behalf of the State Government u/s 305 was in error in refusing to exercise jurisdiction thereunder. The impugned order made by him on 26th August 1969 (Annexure "B" to the petition) is, therefore, liable to be quashed and set aside.

10. I, therefore, allow the petition, issue a writ of certiorari quashing and setting

aside the impugned order of the Development Commissioner and direct the Development Commissioner to hear and decide petitioner's application on merits and according to law. Rule is made absolute with no order as to costs. Until the Development Commissioner decides the Revision Application which I am sending back to him, the status quo shall be maintained.