
(1985) 03 GUJ CK 0024
In the Gujarat High Court

Liladharbhai Khodaji Vaghela

APPELLANT

Vs

S. Jagdishan and Others

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1962 — Section 15, 15(2), 15(5), 15(5A)

Citation : AIR 1986 Guj 59 : (1985) 2 GLR 1001

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Advocate : K.G. Vakharia, for the Appellant; S.K. Zaveri and S.P. Dave, Asstt. Government Pleader, for the Respondent

Judgement

1. The short but interesting question which arises for my consideration in this Special Civil Application is whether the petitioner who has ceased to be an elected member of the Banaskantha District Panchayat (hereinafter referred to as the "Panchayat") can continue as President of the Panchayat.

2. u/s 17 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the "Act"), the term of a panchayat as constituted at its first meeting shall, save as otherwise provided in the Act, be 5 years from the date of such meeting. First meeting of the Panchayat after the election was held on February 28, 1981 and consequently as provided in Section 17, its terms of five years would expire on February 27, 1986. On account of death of the person who was holding office of the President, fresh election of the President was held and petitioner was elected as the President of the Panchayat in October 1984, as provided in Section 15(2) of the Act. Petitioner was elected as Member of the Gujarat Legislative Assembly on March 6, 1985, and as a result there of he ceased to be elected Member of the-panchayat and became its associate member. Petitioner's contention is that although he became associate member, he continues to be President of the panchayat, that his term as President is co-extensive with the term of the Panchayat and that his term would expire on February 27, 1986. The District Development Officer, respondent No. 1 herein, however, by his letter Annexure

"A" dated March 13, 1985, informed the petitioner to hand over charge of his office as the President to the Vice-President of the panchayat respondent No. 2 herein. It is in the background of the above facts that question arises whether the petitioner continues to be President of the Panchayat.

3. Section 15(2) provides as under: -

" 15(2). A district panchayat shall have a President and a Vice-President elected by its elected members from amongst themselves".

There are two categories of members in a panchayat-elected members and associate members. Sub-section (B) of Section 15 provides as, to who shall be the associate member of a district panchayat and it lays down as under;

"15(5) The following,, shall be associate members of a district panchayat, namely;

(i) members of the House of the People elected from the areas within the jurisdiction of the district panchayat or part thereof;

(ii) members of the Council of States residing in the revenue district;

(iii) members of the Gujarat Legislative Assembly elected from the area within the jurisdiction of the district panchayat or part thereof;

(iv) the Collector of the revenue district;

(v) the President of all taluka panchayats within the district, and where an officer has been appointed under sub-section (2) of Section 57 to carry on the current duties of the office of the President, such officer, or where a person has been appointed under Clause (a) of sub-section (4) of Section 297 to exercise the powers and perform the duties of any such taluka panchayat, such person, or where an office is empowered u/s 303-C to exercise the powers and perform the duties of the President "of any such taluka panchayat, such officer."

4. It is under the aforesaid provision of sub-section (5) of Section 15 that petitioner on his being elected as member of the, Gujarat Legislative Assembly became an associate member of the panchayat. Sub-section (5A) of Section 15 reads as follows: -

"15(5A). Where any elected member of a district panchayat is elected as a member of the House of the People, the Council of States or the Gujarat Legislative Assembly and thereby becomes an associate member of the district panchayat under sub-section (5), he shall cease to be an elected member of the panchayat but shall continue as an associate member of the panchayat.

5. Petitioner contends that, there is no provision in the Act, which lays down that the President of the panchayat shall cease to hold the office of the President on his ceasing to be an and becoming an associate member of the panchayat as provided in sub section (5) of Section 15. It is pointed out that there are only four days in which a person holding the office of the President of the panchayat

will cease to hold such office and they are: (1) resignation (Section 70), (2) by passing of motion of no confidence against him (Section 72), (3) removal (Section 73) and (4) suspension (Section 75). However, there is no provision which lays down that on the President ceasing to be an elected member, President's office would fall vacant. It was further urged that whenever Legislature wanted to make a provision for vacation of any office or removal of any person from the office, it has done so specifically. In this connection attention was drawn to the provisions of Articles 89, 90, 94, 170, 179 and 191 of the Constitution and Section 14(1) of the Gujarat Agricultural Produce Markets Act. It was further urged that an identical question had come up for consideration before a Division Bench of this Court in *Raising v. Wankaner Taluka Panchayat Spl. Civil Appln. No. 849 of 1964* decided on November 13, 1964, and in the context of the provisions of the Act as they stood then, the Court held that a person elected as a President of the Taluka Panchayat would continue to hold office of the President, although he ceased to be a Sarpanch of a village panchayat in which capacity he was ex officio member of the panchayat. It is submitted that on a parity of reasoning; petitioner would continue to be the President of the panchayat.

6. Provision of Section 15(2), as pointed out above, lays down that a district panchayat shall have a President and a Vice-President elected by its elected members from amongst themselves. Therefore, the President of a district panchayat has to be a person who is elected by its elected members from amongst themselves. The phrase "shall have" clearly indicates the intention of the legislature that for all throughout the term of the panchayat it must have a President and Vice-President who are elected by its elected members from amongst themselves. Therefore, in order to be a President of the panchayat, the person must be (1) an elected member of the Panchayat and (2) he must be elected by the elected members. Sub-section (5) of S. 15 in terms provides that where any elected member of a district panchayat is elected as a member of the House of the People, the Council of States or the Gujarat Legislative Assembly and thereby becomes an associate member of the district panchayat under sub-section (5), he shall cease to be an elected member of the panchayat but shall continue as an associate member of the panchayat. It is under this provision of sub-section (5A) that the petitioner on his being elected as a Member of the Legislative Assembly ceased to be elected member of the panchayat. He no doubt became an associate member of the panchayat under sub-section (5), but it cannot be gainsaid that he was no longer an elected member of the panchayat. In order to hold or continue to hold the office of President of a panchayat, as pointed out above, two conditions are required to be satisfied, namely: (1) that he should be elected by the elected members. Petitioner is no longer elected member of the panchayat and, therefore one of the above two conditions is not satisfied. It is true that when he was elected as the President of the panchayat, he was an elected member of the panchayat and therefore, eligible to become President and he was also elected by elected members; but in order to continue

as President he has to continue to be elected member of the panchayat. If a person holding the office of the President at any time ceases to be the elected member, he would not continue as the President as u/s 15(2) a panchayat has to have a President who is elected by the elected members from amongst themselves, throughout the term of the panchayat. In my opinion, this is the only way in which sub-section (2) of Section 15 can be interpreted. It is true that there is no specific provision in the Act which lays down that the President of a Panchayat shall cease to hold office of the President on his ceasing to be an elected member; but such a consequence or result is implied in the provision of Section 15(2). It was in view of the clear language of Section 15(2) that it was not considered necessary to make any specific provision as urged on behalf of the petitioner. In my opinion therefore, merely because there are provisions in the Constitution of India and other Acts, specifically providing for vacation of office on a person ceasing to hold certain office is of no relevance.

7. Decision of the Division Bench of this Court in *Raising v. Wankaner Taluka Panchayat* (supra) which was followed in *Laxmanbhai v. K.V.T.Panchayat* (1969) 10 Guj LR 8, is of no assistance to the petitioner. That was a case in which the question which came up for consideration before the Division Bench was whether the President of the Taluka Panchayat, who was ex officio member of the Taluka Panchayat, because of his being Sarpanch of Gram Panchayat, would cease to hold office of the President on expiry of the term of Gram Panchayat. Petitioner in that petition was Sarpanch of a gram panchayat and in his capacity as Sarpanch of the Gram Panchayat he was ex officio member of the Taluka Panchayat. S. 14 of the Act as it stood then provided as under:

"14(I) A taluka panchayat shall consist of the following ex officio, elected, co-opted and associate members, namely: -

(A) Ex-officio members.

(i) The Sarpanch of all the gram panchayat within the taluka.

xxx xxx xxx xxx

(2) A taluka panchayat shall have a President and a Vice-President elected by its ex officio, elected, appointed and co-opted members from amongst themselves.

(3) A Sarpanch of a gram panchayat or a Chairman of a nagar panchayat if elected as the President of the taluka panchayat of which he is an ex officio member, shall cease to hold the office of Sarpanch or Chairman, as the case may be, but shall continue to be an ex officio member of the taluka panchayat.

(4) Where any ex officio, elected or co-opted member of a taluka panchayat is also a member of the Gujarat Legislative Assembly he shall cease to be such member but shall continue only as an associate member of the panchayat

(5) Where any ex officio, elected, appointed or co-opted member of a taluka panchayat is also a member of Parliament, he shall cease to be such member."

It was under the aforesaid provision that the petitioner was an ex officio member of the taluka panchayat. It will also be seen that under sub-section (3) of Section 14, a Sarpanch of the gram panchayat, if elected as President of the Taluka Panchayat, of which he is an ex officio member, shall cease to hold office of the Sarpanch, but shall continue to be an ex officio member of the Taluka Panchayat. It was having regard to the aforesaid provision of Section 14 and Section 57 of the Act as they stood then, that the Division Bench of this Court held that petitioner in that petition would continue to hold office of the President till expiry of the term of the Taluka Panchayat. It is pertinent to note that under the relevant provisions of the Act as they stood then, the President of Taluka Panchayat could be elected from amongst four categories of members, namely, (1) ex officio, (2) elected, (3) co-opted and (4) associated members. Since the petitioner continued to be ex officio member of the Taluka Panchayat under subsection (3) of Section 14, he continued to belong to one of the categories of the members from whom President was to be elected. The Division Bench also considered sub-section (1) of Section 57 of the Act and pointed out that a taluka panchayat was co-extensive with the term of the Taluka Panchayat itself and no proviso was inserted to this clause as was done in the case of the Chairman of a Co-operative Society. It was, therefore, held that the term of office of the President of Taluka Panchayat must be held to be co-extensive with the term of panchayat itself. No provision corresponding to Section 15(2) of the Act came up for consideration before the Division Bench. As, already discussed above, Section 15(2) of the Act in terms provides that only elected members can hold the office of the President. Consequently, if a person ceased to be an elected member, he would cease to hold the office of the President. Decisions of this Court in *Raising v. Wankaner Taluka Panchayat* (supra) and *Laxmanbhai v. K.V.T. Panchayat* (supra) which were not tendered in the context of the provisions of Section 15(2) cannot be of any assistance to the petitioner. Section 15(2) did not come up for interpretation of the Court in the said two decisions. In my opinion, therefore, on the petitioner being elected as a Member of the Legislative Assembly, he ceased to be elected member of the panchayat and became associate member of the panchayat under sub-sections (5) and (5A) of Section 15 of the Act and on his ceasing to be elected member, petitioner ceased to be President of the Panchayat. In the view which I am taking this petition must fail.

8. Result, therefore, is that the petition fails and is dismissed. Rule discharged with no order as to costs.

9. Petition dismissed.