

(1978) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 627 of 1978

Maganlal Lalbha Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-05-1978

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1962 — Section 294(1), 294(4), 294(5), 305

Citation : AIR 1979 Guj 43

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

Bench : Single Bench

Advocate : D.D. Vyas, for the Appellant; C.K. Takwani, Asstt. Govt. Pleader, instructed by Purnanand and Co., M.M. Dave and P.M. Raval, for the Respondent

Judgement

1-7. xx xx xx xx xx

8. So far as the first contention raised by Mr. Vyas is concerned, it requires the examination of subsection (5) of S. 294 and S. 305. Subsection (5) of S. 294 provides as follows:

"An officer authorised by the State Government in this behalf by general or special order, shall in respect of a district panchayat, have the same powers as the District Development Officer has in respect of a taluka Panchayat under this section".

It is, therefore, necessary to see what powers the District Development Officer has in respect of a taluka Panchayat under S. 294. Sub-section (4) of Section 294 which deals with this question provides as follows:

"The District Development Officer in respect of a Taluka Panchayat or Nagar Panchayat shall have the same powers as Taluka Development Officer has in respect of a gram panchayat under sub-secs. (1), (2) and (3) subject to the modification that he shall submit a report under subsection (3) to the State Government. The State Government may pass such order thereon as it may deem fit."

Whereas under sub-section (5) the powers of an officer authorized by the State Government in respect of a district panchayat have reference to the powers of a District Development Officer in respect of a taluka panchayat, the powers conferred upon the District Development Officer in respect of a Taluka panchayat have reference to the powers of the Taluka Development Officer in respect of a gram panchayat. It is therefore necessary to see the scope of the power of the Taluka Development Officer laid down by sub-section (1) of S. 294 which provides as follows:

"If, in the opinion of the Taluka Development Officer the execution of any order or resolution of a panchayat subordinate to the taluka Panchayat or the doing of anything which is about to be done, or is being done by or on behalf of such panchayat is unlawful, he may by order in writing suspend the execution or prohibit the doing thereof."

When these sub-sections are read together, it is very clear that under sub-section (5) of S. 294 an officer authorized by the State Government has in respect of a District Panchayat the power to suspend the execution of any order or resolution of a District Panchayat, as also the power to direct the District Panchayat to prohibit from doing something which is unlawful. In the context of sub-secs. (4) and (5), it is also necessary to note that whereas under sub-section (4) the District Development Officer exercises his power subject to the obligation that he is required to submit a report to the State Government, there is no such obligation which has been cast under sub-sec. (5) on the officer authorized by the State Government. What the officer authorized by the State Government therefore does under sub-sec. (5) is to exercise the power without the obligation which has been laid down under sub-section (4) in respect of the District Development Officer. The contention which Mr. Vyas has raised is that the power which Development Commissioner exercises under sub-section (5) of S. 294 is the power of the State Government because he is the delegate of the State Government. If it is so, then, according to him, the State Government cannot exercise under S. 305 the power of revising the order of his delegate which is equivalent to its own order.

9. Section 305, inter alia, empowers the State Government to call for and examine the record of proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed by him and may revise or modify the order as it may deem just. The order made by the Development Commissioner under S. 294 (5) is an order made by an officer subordinate to the State Government. In fact, it is an order made by "an officer authorized by the State Government in this behalf by general or special order" (to quote the expression used in sub-sec. (5) of S. 294). Therefore, under S. 305 it was within the competence of the State Government to revise the order of the Development Commissioner.

10. It has next been argued by Mr. Vyas that the power which was exercised by the Development Commissioner under sub-sec. (5) of S. 294 was the power

conferred upon the State Government and that, therefore, the State Government cannot revise its own order. I am not impressed by this argument because sub-gee. (5) of Section 294 does not confer any power on the State Government. It confers power upon the officer authorized by the State Government. The power which has been conferred upon the State Government is the power of authorizing an officer to act under sub-section (5) of S. 294. Once the State Government authorizes a particular officer, the power conferred under sub-section (5) of S. 294 belongs to that officer. When such an officer exercises power under sub-section (5) of S. 294, it is within the competence of the State Government to revise his order under sub-section (5). It may be noted in the context that sub-see. (5) of S. 294 and S. 305 are two independent sources of power exercisable by two different bodies. In my opinion, therefore, the first contention raised by Mr. Vyas is without any substance and is rejected.

11-15. xx xx xx xx xx xx

16. Rule made absolute.