

**(2008) 07 GUJ CK 0008**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 25888 of 2007**

Maniben Gagaji Thakore

APPELLANT

Vs

(The) State of Gujarat and Another

RESPONDENT

**Date of Decision : 29-07-2008**

**Acts Referred:**

Income Tax Act, 1961 — Section 271

**Citation : (2008) 3 GLH 204**

**Hon'ble Judges : Akil Abdul Hamid Kureshi, J**

**Bench : Single Bench**

**Advocate : Prakash K. Jani, for the Appellant; J.K. Shah, AGP For Respondent(S) 1 and Mr. H.S. Munshaw For Respondent(S) 2, for the Respondent**

**Final Decision : Allowed**

## Judgement

Akil Kureshi, J.—Rule. Learned AGP, Shri J.K. Shah, waives service of rule on behalf of respondent No. 1. Learned advocate Shri H.S. Munshaw waives service of rule on behalf of respondent No. 2. With the consent of the parties, this petition was taken up for final disposal today. The petitioner has challenged an order dated 30th July, 2007 passed by District Development Officer (D.D.O. for short) as upheld by an order dated 27th September, 2007 passed by Additional Development Commissioner.

2. The petitioner was elected as Sarpanch of Village, Charadu, Tal. Mehsana. A show cause notice dated 10th April, 2007 came to be issued making allegations with respect to alleged irregularities committed by the petitioner regarding motor pump and iron pipes of the Panchayat's Tube Well. The petitioner was called upon to show cause why she should not be removed as Sarpanch. By her reply dated 27th April, 2007, the petitioner denied the charges.

2.1 On 3.7.2007, D.D.O. though found that the charges were proved, observing that the term of the petitioner as a Sarpanch was over on 14.1.2007 and therefore, no further proceedings under Sub-Section (1) of Section 57 of the

Gujarat Panchayats Act (the Act for short) (for removal as Sarpanch) were possible, he directed that notice under Sub-section (2) of Section 57 (for disqualification) be issued against her.

2.2 Such a notice was issued on 5.7.2007 calling upon the petitioner to show cause why action under Sub-section (2) of Section 57 of the Act not be taken against her. To this show cause notice, petitioner replied under her letter dated 13.07.2007. Further detailed reply was sent; also in July, 2007.

2.3 D.D.O., however, by his impugned order dated 30th July, 2007, ordered that in terms of Sub-Section (2) of Section 57 of the Act, petitioner be disqualified for a period of five years.

2.4 Petitioner unsuccessfully appealed against the order of the D.D.O. and the Additional Development Commissioner by his order dated 27th September, 2007 rejected the appeal. Petitioner is, therefore, before this Court in the present petition.

3. Appearing for the petitioner learned advocate, Shri P.K. Jani, pressed the petition mainly on two grounds.

3.1 Firstly, it was contended that the petitioner cannot be disqualified under Sub-Section (2) of Section 57 of the Act without first passing an order of her removal. It was contended that only after removing the petitioner as a Sarpanch, the authorities can undertake further steps for disqualifying her.

3.2 Second contention though not specifically taken in the petition, was that any such action under Sub-Section (2) of Section 57 of the Act cannot be beyond the period of six months after the petitioner having ceased to hold such office. From the material on record, it was pointed out that the term of the petitioner as a Sarpanch was over on 14th January, 2007, the show-cause notice was issued on 5th July, 2007 and final order under Sub-Section (2) of Section 57 was passed on 30th July, 2007.

4. On the other hand learned AGP, Shri J.K. Shah as well as learned advocate, Shri H.S. Munshaw, submitted that Sub-Section (2) of Section 57 of the Act empowers the authority to disqualify a Sarpanch, Upa-Sarpanch, or a member, even after he ceases to hold such office and his removal is not a precondition to exercise of such powers.

4.1 It was also contended that period of limitation of six months prescribed in proviso to Sub-Section (2) of Section 57 of the Act is for initiation of the action and not for passing final order of disqualification.

5. Having thus heard learned advocates appearing for the parties, I find that the first contention of learned advocate, Shri P.K. Jani, cannot be accepted. Section 57 of the Act reads as follows:

Section : 57

(1) The competent authority may remove from office any member of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act, or has become incapable of performing his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat.

(2) The competent authority may, after following the procedure laid down in subsection (1) disqualify for a period not exceeding five years any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch, or otherwise ceased to hold any such office and has been guilty of misconduct specified in subsection (1) or has been incapable of performing his duties and functions:

Provided that an action under this subsection shall be taken within six months from the date on which the person resigns or ceases to hold any such office.

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

6. From the above provision, it can be seen that under Sub-Section (1) of Section 57 of the Act, competent authority has power to remove from office any member of the Panchayat, Sarpanch or Upa-Sarpanch after following the procedure laid down therein, if such member, Sarpanch or Upa-Sarpanch has been guilty of misconduct in discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under the Act or has become incapable of performing his duties and functions. Thus powers under Sub-Section (1) of Section 57 are for removal of a member, Sarpanch or Upa-Sarpanch of Panchayat under certain circumstances noted above.

7. On the other hand, Sub-Section (2) of Section 57 of the Act empowers the competent authority to disqualify for a period not exceeding five years any person who has resigned from his office as a member, Sarpanch or Upa-Sarpanch or otherwise ceased to hold any such office and has been guilty of misconduct specified in Sub-Section (1) or has been incapable of performing his duties and functions.

8. Thus, Sub-Section (1) of Section 57 pertains to removal of member, Sarpanch or Upa-Sarpanch of a Panchayat whereas Sub-Section (2) of Section 57 refers to disqualification of any such person. Removal necessarily would relate to current term of a member, Sarpanch or Upa-Sarpanch whereas disqualification would affect in future for the period that may be prescribed in the order passed by the

competent authority.

9. Requirement of Sub-Section (2) of Section 57 is that the authority has to follow the procedure laid down in Sub-Section (1) of Section 57 and thereafter only, such order of disqualification can be passed against the person who has resigned from his office as a member, Sarpanch or Upa-Sarpanch or who otherwise has ceased to hold any such office. Such disqualification can be ordered, if such member is found guilty of misconduct as specified in Sub-Section (1) of Section 57 or if is found to be incapable of performing his duties and functions.

10. Nothing stated in Sub-Section (1) of Section 57 indicates that such disqualification cannot be ordered without first ordering removal of a member, Sarpanch or Upa-Sarpanch. In-fact it is specifically provided that disqualification can be passed with respect to a person who has resigned from his office or ceased to hold the office. Obviously, resignation presupposes that there was no removal of such a member. Even otherwise, cessation of his term can be through his removal or for any other reason including upon completion of the term of the office for which the member may have been elected. It is, therefore, not possible to hold that action of disqualification under Sub-Section (2) of Section 57 must in all cases be preceded by an order of removal under Sub-Section (1) of Section 57 of the Act. A case of a member, Sarpanch or Upa-Sarpanch removed by the competent authority would be governed by Section 30(1)(d) of the Act which provides that no person shall be a member of a Panchayat or continue as such who has been removed from any office held by him under any Panchayat under any provision of the Act and a period of five years has not elapsed from the date of such removal, unless he has been by an order of the State Government relieved from the disqualification arising out of such removal. However, where the member ceases to hold office on account of resignation or for reasons other than his removal, if other ingredients are satisfied, after following due procedure, it is always open for competent authority to order his disqualification.

11. Second contention of learned advocate, Shri P.K. Jani, requires closer scrutiny. As noted, though this contention has not been taken in the petition or even before the authorities, the same is based on admitted facts. Being purely a legal contention, I have examined the same on the basis of undisputed facts.

11.1 Sub-Section (2) of Section 57 provides that an action under this Sub-Section shall be taken within a period of six months from the date on which the person resigns or ceases to hold such office. Action referred to herein has to be one of disqualifying the member, Sarpanch or Upa-Sarpanch as the case may be. Sub-Section (2) of Section 57 refers to only one action, that of disqualifying the member, Sarpanch or Upa-Sarpanch. The proviso specifically provides that such action shall be taken within six months from the date on which such person resigns or ceases to hold his office. Therefore, in my view no order under Sub-Section (2) of Section 57 of disqualifying a member, Sarpanch or Upa-Sarpanch can be passed after six months of such member resigning or otherwise ceasing

to hold his office.

12. As noted, learned advocates for respondents strenuously urged that it would be sufficient compliance to the proviso of Sub-Section (2) of Section 57, if action is initiated by issuance of show cause notice within the period of six months of time frame provided. Such a contention cannot be accepted. Proviso to Sub-Section (2) of Section 57, as noted, speaks of action under that sub-section and the sub-section speaks of only one action i.e. of disqualification of a member, Sarpanch or Upa-Sarpanch of a Panchayat. Such action is to be taken within six months of the person resigning or ceasing to hold office. Initiation of the proceedings of issuance of show cause notice cannot be equated with the action taken. It is well settled that penal provisions must be interpreted strictly.

13. In case of Dilip N. Shroff Karta of N.D. Shroff Vs. Joint Commissioner of Income Tax, Special Range Mumbai and Another, , the Apex Court while dealing with Section 271 of the Income Tax Act, 1961 pertaining to penalty to be imposed on an assessee upon concealment of income, observed that being a penal provision it must be construed strictly. In case of Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi-I, , also same view was taken. In a case of State of Kerala and Others Vs. Unni and Another, , the Apex Court stated that a penal statute must receive strict construction. Only in exceptional cases the principles of purposive construction shall apply to a penal statute.

14. The very purpose of the proviso to Sub-Section (2) of Section 57 is that an elected member, Sarpanch or Upa-Sarpanch of a Panchayat may not be held liable for his past action, for his future candidature or that his subsequent election may not be rendered void, inconsequential and ineffective, upon an action taken by the authorities after indefinite period of time. Such provision must be construed strictly. Permitting the authorities to pass order of disqualification after indefinite period of time of the member having ceased to hold the office only upon initiation of the proceedings within six months thereof would destroy the very purpose for which the proviso is enacted.

15. While maintaining the powers of the competent authority to remove or disqualify a member, Sarpanch or Upa-Sarpanch of a Panchayat for proved misconduct in discharge of his duties or for any disgraceful conduct, or for abusing his powers etc., sacrosanctity of the process of election of a member, Sarpanch or Upa-Sarpanch who may have been elected and re-elected through a democratic process, must also be preserved. Thus, in my view, proviso to sub-section (2) of Section 57 cannot be extended through liberal interpretation so as to permit the authority to pass order of disqualification at any point of time only upon initiation of the proceedings within six months from resignation or cessation of office. In the result, since disqualification of petitioner was passed after more than six months of her term being over, on this ground, this petition is required to be allowed. Impugned order dated 30.07.2007 passed by D.D.O. as well as Additional Development Commissioner dated 27.9.2007 are quashed. Petition is disposed of. Rule made absolute accordingly.