

(1968) 07 GUJ CK 0005
In the Gujarat High Court

Mansa Nagar Panchayat and Another APPELLANT
Vs
A.K. Chakravarty Dist. Development Officer and Another RESPONDENT

Date of Decision : 19-07-1968

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 17, 17(1), 17(2), 18(1)

Citation : (1969) 10 GLR 88

Hon'ble Judges : Akbar S. Sarela, J

Bench : Single Bench

Judgement

Akbar S. Sarela, J.—These two Special Civil Applications Nos. 880/68 and 898/68 raise an identical question of law namely what is the effect of the amendment made to Sub-section (1) of Section 17 of the Gujarat Panchayats Act, 1961 (Gujarat Act No. VI of 1962) (hereinafter referred to as the Principal Act) by Section 9 of the Gujarat Act No. I of 1968 (hereinafter referred to as the Amending Act). In substance the question is: does the amendment go to extend for a full period of 5 years the term of a Panchayat the term of which has already been extended, for less than a year, by the State Government in exercise of the powers conferred by Sub-section (2) of Section 17.

2. The facts in both the petitions are similar and it would be enough to state the facts of Special Civil Application No. 880/68. That application concerns the Mansa Nagar Panchayat which is the petitioner No. 1. The petitioner No. 2 is the Chairman of the said Nagar Panchayat. The general elections of that Panchayat took place in November 1963. The term of the Panchayat under Sub-section (1) of Section 17 as it stood before amendment would be four years from the date of its first meeting. The first meeting after the general elections was held on 26-12-1963. The petitioner No. 2, it may be stated, was elected Chairman at that meeting and continues to be the Chairman of the Panchayat. Sub-section (2) of Section 17 empowers the State Government by order in writing and for reasons to be recorded to extend the said term for a period not exceeding in the aggregate one year. The Collector of Mehsana to whom these powers were

delegated issued a notification on 14-12-1967 extending the period of the Panchayat to 30-6-1968. Before the term under this Notification expired a second Notification was issued on 24-5-1968 extending the term further to 15-8-1968. Now Sub-section (3) of Section 17 requires that on the expiry of the term under Sub-section (1) or Sub-section (2) as the case may be the Panchayat shall be reconstituted. Section 18, Sub-section (1) requires an election to be held for a Panchayat to be reconstituted and the proviso to that sub section lays down that in the case of reconstitution of a Panchayat on account of the expiry of the term the date of the election shall not be earlier than two months or later than fifteen days before the expiry of the term except with the sanction of the State Government in that behalf. Accordingly, the District Development Officer (respondent) issued a notification on 3-7-1968 setting out the various stages for the election. Under it the date 19-7-1968 was fixed for acceptance of nomination papers, 20-7-1968 for scrutiny of nomination papers, 5-8-1968 for voting and 6-8-1968 for declaration of the result so that the whole process could be completed before the term expired on 15-8-1968.

3. The facts in Special Civil Application No. 898/68 are similar. There the petitioner No. 1 is the Vadnagar Nagar Panchayat and the petitioner No. 2 is the Chairman of that Panchayat. The respondent is the District Development Officer. There the general election was held in December 1963 and the first meeting took place on 11-1-1964, so the original term was to expire on 10-1-1967 but before that the Collector extended the term by a notification upto 31-7-1968 and again by a notification to 15-8-1968. Thereafter the District Development Officer by a notification dated 3-7-1968 has notified various stages of the election which are identical with the stages of the election set out earlier in respect of the Mansa Nagar Panchayat.

4. Now before turning to the submission made on behalf of the petitioners it would be relevant to refer to the provisions of the Amending Act to which a brief reference has earlier been made. By Gujarat Act No. 1/68 the Principal Act has been extensively amended. Section 1 and Section 6 of the Amending Act came into force on the first of February 1968, Section 12 sometime thereafter, and the remaining provisions came into force on 16th April 1968. Of those remaining provisions we are concerned with Section 9 which reads as under:

In Section 17 of the principal Act, in Sub-section (I), for the words "four years, " the words "five years" shall be substituted,

Section 17 of the Principal Act which was thus amended read as under before amendment:

17(1). The term of a Panchayat as constituted at its first meeting shall, save as otherwise provided in this Act, be four years from the date of such meeting.

(2) The State Government may by order in writing and for reasons recorded therein extend the said term for a period not exceeding in the aggregate one year.

(3) On the expiry of the term under Sub-section (1) or Sub-section (2), as the case may be, the Panchayat shall be reconstituted.

(4) Sub-sections (1) and (2) shall apply mutatis mutandis to a Panchayat so reconstituted.

Therefore, by this amendment the Sub-section (1) of Section 17 was so amended that the term of the Panchayat as constituted at its first meeting was to be 5 years from the date of its first meeting instead of four years as originally stood.

5. The submission of Mr. Vakharia who argued the petitions on behalf of the petitioners is that by reason of this amendment which came into force on 16-4-1968 the term of every Panchayat whose term had not expired by that date became extended by a legislative act to a period of five years from the date of its first meeting and therefore in the case of Mansa Nagar Panchayat its term got extended to 25-12-1968 and in the case of Vadnagar Nagar Panchayat its term got extended to 10-1-1969. That being so, it was argued, the second notification issued by the Collector in both the cases on 24-5-1968 extending the term of the Panchayat to 15-8-1968 was unnecessary because that term already stood extended as above by a legislative act. His further submission is that the term of the Chairman of the Panchayat namely petitioner No. 2 in each case also became automatically co-extensive with the term of the Panchayat by reason of the provisions of Section 45 of the Principal Act. It is, therefore, not permissible, so it is submitted, for the respondent to hold election for the purpose of reconstituting the Panchayat on the date on which these elections are notified because Sub-section (1) of Section 18 of the Principal Act which empowers him to hold such elections contains a proviso providing that in case of the reconstitution of a Panchayat on account of the expiry of its term the date of the election shall not be earlier than two months or later than 15 days before the expiry of the term except with the sanction of the State Government in that behalf. In the present case no sanction of the State Government has been given and therefore the earliest date on which the election can be held in respect of these two Panchayats would be two months before the expiry of the term which means 25-10-1968 in case of Mansa Nagar Panchayat and 10-11-1968 in case of the Vadnagar Nagar Panchayat. The petitioners have therefore prayed that the notification issued by the respondent on 3-7-1968 fixing the various stages of the election in respect of these two Panchayats be quashed and it be declared that the term of the present Panchayats is extended to the dates earlier mentioned namely 25th December 1968 in respect of the Mansa Nagar Panchayat and 10th January, 1969 in respect of the Vadnagar Nagar Panchayat.

6. Mr. Thakar, the learned Assistant Government Pleader who appear on behalf of the respondent submits that the amendment being an amendment of Sub-section (1) of Section 17 of the Principal Act would apply only to those Panchayats whose original term of four years under the said Sub-section (1) had not expired on the date the amendment came into force and would not apply to

those Panchayats whose original term of four years had expired before the date of the amendment and which had continued to function by reason of the extension of the term made in exercise of the powers under Sub-section (2) of Section 17 of the Principal Act.

7. Therefore, the short question for determination is whether on a true construction of the provisions of Sub-section (1) of Section 17 as amended the term of 5 years as provided for is or is not available to a Panchayat which has continued to function under the term extended in exercise of the powers conferred by Sub-section (2) of Section 17. The broad principle applicable to an amendment of a section has been well settled and has been set out by the Supreme Court in the case of *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, to which Mr. Vakharia invited my attention. Their Lordships said:

The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

There is no dispute that this principle applies to the present case and therefore once the amendment comes into effect Sub-section (1) of Section 17 must be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act. That being so on and from 16-4-1968 Sub-section (1) of Section 17 of the Principal Act reads as under:

The term of a Panchayat as constituted at its first meeting shall, save as otherwise provided in the Act, be five years from the date of such meeting.

It has not been contended that the Sub-section (1) so read and construed, that is, as if the altered words had been written in the earlier Act with pen and ink and the old words scored out, would lead to any repugnancy, inconsistency or absurdity and therefore when considering what was the term of a Panchayat which was functioning on 16-4-1968 we must read Sub-section (1) of Section 17 on the footing that the words four years were not there but the words five years were there. Now on that basis it is obvious that the term of the Panchayat has to be calculated from the date of its first meeting and is to end at the end of five years from the date of such constitution. In the present case the first meeting of the Mansa Nagar Panchayat took place, as earlier stated, on 26-12-1963 and the first meeting of the Vadnagar Nagar Panchayat took place on 11-1-1964 and therefore on a plain reading of Sub-section (1) of Section 17 of the Principal Act

as amended, in the light of the accepted canons of construction, the term of these Panchayats would expire on 25-12-1968 and 10-1-1969 respectively.

8. But Mr. Thakar argues that this would be ignoring the fact that the Legislature has amended only Sub-section (1) of Section 17 of the Principal Act and none of the other Sub-sections of that section. His argument is that if we read Section 17 of the Principal Act as a whole it becomes apparent that the term under Sub-section (1) is distinct from the term of extension under Sub-section (2) and they are treated as distinct terms in Sub-section (3) and if that construction is correct namely that the terms under Sub-sections (1) and (2) are distinct then obviously In the absence of any legislative enactment the benefit of amendment was not to go to the term as extended under Sub-section (2), and from the very fact that Sub-section (1) only was amended it was implied that the benefit of the amendment should go to the term as originally laid down in Sub-section (1). If the intention was otherwise, so he argues, the Legislature should have either expressly indicated that intention or amended Sub-section (2). It is not possible to accept this submission. Sub-section (1) speaks of the term of a Panchayat as being of a particular period. When that term is extended by the State Government in exercise of its powers under Sub-section (2) what is extended is "the said term". Therefore, the term which began with the first meeting has not come to an end it having been extended. The said term continues upto the date to which it has been extended in exercise of the powers by the State Government. It is true that Sub-section (3) speaks of "expiry of the term under Sub-section (1) or Sub-section (2) as the case may be" and thereby refers to these terms separately. But this is understandable because that sub-section has reference to the date when the Panchayat shall be reconstituted and in indicating that date It became necessary to cover not only Sub-section (1) but also Sub-section (2). In fact Sub-section (3) itself goes to show that the term whether under Sub-section (1) or under Sub-section (2) is one single term and does not consist of two terms. The reconstitution is to be at the end of this term which again goes to show that the term which began with the first meeting of the Panchayat has not ended till the period under Sub-section (1) or Sub-section (2), as the case may be, has expired. The Panchayat of which the term is to be extended under Sub-section (2) or which is to be reconstituted under Sub-section (3) is not a Panchayat different from the one which was constituted at the first meeting under Sub-section (1) and it is the term of that Panchayat which by legislative enactment has been fixed as five years by reason of the amendment of the Principal Act. Therefore, the provisions of the several subsections of Section 17, not only do not lend support to the argument of the learned Assistant Government Pleader but on the other hand support the construction arising from the plain language of the attended Sub-section (1).

9. If the amended sub-section applies to a Panchayat which has not completed its term of four years as is conceded by the learned Assistant Government Pleader there is no valid reason or logic behind the argument that it cannot apply to a Panchayat whose term by reason of extension had not expired on the date

the Amending Act came into force. The amendment changes the period of the term and therefore the only reasonable test for the applicability of the amendment would be whether the term of the Panchayat had expired on the date the Amending Act came into force and on that test no valid distinction could be made between a Panchayat which was running its term before there was any occasion to extend it and a Panchayat which was running its term by reason of the extension under Sub-section (2) of Section 17.

10. In my opinion, therefore, the submission made on behalf of the petitioners deserves to be accepted. The term of the two Panchayats in these cases must be deemed to run by reason of the amended Sub-section (1) of Section 17 for a period of five years from the date of their first meeting. Therefore, having regard to the proviso to Sub-section (1) of Section 18 the time for the election has not yet arrived. The order of the respondent notifying the election contrary to the proviso to Sub-section (1) of Section 18, must, there fore, be quashed. For these reasons, the rule is made absolute to the extent here inafter stated. The Notification No. V.P.N.P. Election-3/68 dated 3rd July 1968 issued by the respondent fixing the various stages of the election of the Mansa Nagar Panchayat and the Vadnagar Nagar Panchayat is quashed in so far as it relates to these two Panchayats and the respondent is directed not to take further steps in pursuance of this notification in so far as these two Panchayats are concerned. There will be no order as to costs.