

(2016) 10 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 14564 of 2014

Nathabhai Markhibhai Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Gujarat Panchayats Act, 1993 — Section 57

Citation : (2016) 10 GUJ CK 0014

Hon'ble Judges : Mr. Mohinder Pal, J.

Bench : Single Bench

Advocate : Mr. B.M. Mangukiya and Ms. Bela A. Prajapati, Advocates, for the Petitioner No. 1; Mr. Rohan Yagnik, AGP, for the Respondent Nos. 1 - 2; Ms. Khyati P. Hathi, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Mr. Mohinder Pal, J. (Oral)—Petitioner, by way of this petition, has challenged the legality and validity of the order passed by respondent No.2 herein dated 17/9/2014 in Appeal No.55 of 2014 whereby respondent No.2 has rejected the appeal preferred by the petitioner and affirmed the order passed by respondent No.3 dated 13.8.2014 whereby respondent No.3, in purported exercise of powers conferred under section 57 of the Gujarat Panchayats Act, 1993 ("the Act" for short), ordered to remove the petitioner from the post of Sarpanch of Sakrana Gram Panchayat on the ground that the petitioner has assisted his brother in getting interim injunction from the Court, though he was directed to file a caveat application by the Taluka Development Officer.

2. Brief facts of this case are that the petitioner got elected as Sarpanch of Sakrana Gram Panchayat in the election held on 03.02.2013 by defeating the candidate of another political party who was being elected as Sarpanch for the last 20 years.

3. After election, proceedings under sub-section (1) of section 57 of the Act were

sought to be initiated against the petitioner on the ground of his failure to file a caveat application in the Court. It is further pleaded that brother of the petitioner has encroached upon a gaucher land of the village and on 17.10.2013 Taluka Development Officer directed the petitioner to file a caveat application in the Court. As brother of the petitioner succeeded in getting stay from the Court on 22.01.2014, a show cause notice came to be issued to the petitioner on 13.5.2014 (Annexure-A to the petition). In pursuance to this notice, petitioner submitted his reply. However, it is say of the petitioner that without considering his reply, he has been removed from the post of Sarpanch of the village. Thereafter, appeal preferred by the petitioner also came to be dismissed on 17.9.2014. Aggrieved from this decision, present petition has been filed.

4. Learned counsel for the petitioner has submitted that the petitioner was elected as Sarpanch of the village for the first time and the action of the respondent was nothing but out of political rivalry as the complainant in this case was the previous Sarpanch of the village who was holding the post of Sarpanch for the last 20 years. During his tenure, he has not initiated any action for getting vacated the alleged gaucher land of the village, however, after the petitioner has been elected as Sarpanch, he moved the present application on the basis of which the petitioner has been removed. Learned counsel has further argued that the petitioner could not have been removed simply on the basis of a show cause notice without affording him with an opportunity to explain his innocence.

5. On the other hand, learned counsel representing respondent No.3 District Development Officer, Junagadh has submitted that despite repeated reminders, the petitioner failed to file caveat in the Court and thereafter a show cause notice has been served upon the petitioner. After considering his reply, he has been removed vide order dated 13.8.2014 and this order has been further affirmed by the Additional Development Commissioner vide order dated 17.9.2014. Under these circumstances, present petition was liable to be dismissed.

6. This Court has considered the submissions made by both sides. It is not in dispute that the complainant in this case is the previous Sarpanch who has been holding the post for the last 20 years. It is also not disputed that during his tenure of 20 years, he has not taken any steps for getting vacated the alleged gaucher land which was under unauthorized possession of the brother of the petitioner. It is true that respondent No.3 has instructed the petitioner for filing of caveat on 17.10.2013 but the petitioner could comply with the same only after the Gram Panchayat passes a resolution in his favour which seems to have been passed after 24.02.2014 when stay has been granted by the Court.

7. Removal of the petitioner as Sarpanch on the ground that he has failed to file caveat in the Court is too trifling charge. There is no other allegation against the petitioner, who belongs to weaker section of the society and was duly elected by the people of that area. This Court time and again has held that persons duly elected by democratic process cannot be removed on the ground of abuse of

their power or habitual failure to perform their duties when there are minor procedural mistakes in discharge of their duties. Removing a person duly elected is a serious matter. Grave charges of misconduct are required to be proved before removing the person so elected as such removal casts its stigma on the person which may affect his subsequent career. Case for removal must be clearly made out before the action is justified as holding and enjoying office and discharging related duties is a valuable statutory right of not only the person concerned but also the constituency from which he has been elected. The Apex Court in case of *Tarlochan Dev Sharma v. State of Punjab and Ors.* reported in (2001) 6 SCC 260 has held that elected president of a local body cannot be removed on the ground of abuse of his power or habitual failure to perform his duties when there are procedural mistakes. The Apex Court, therefore, held that a case that grounds under a particular provision for removal are applicable must be specifically made out.

8. This Court in another case *Vakatar Bhagvanjibhai Devabhai v. Additional Development Commissioner* reported in 2011 (0) GLHEL-HC 225191 has held that, "mere irregularity or even an illegality in discharge of duties or causing loss to the Gram Panchayat did not by itself empower the State or its delegates to remove a Sarpanch from the elected office. There must be a finding supported by evidence to show that the concerned Sarpanch was guilty of misconduct in his duties under the Act persistently. On the basis of the material on record and findings recorded by the authorities under the Act and the findings recorded by the learned single Judge in his order, it is not possible to hold that case of appellant/original petitioner falls within the ambit of section 57 of the Act and the order of removal, therefore, was set aside".

9. This Court has considered the submissions made by both sides and also gone through the aforementioned law laid down by the Apex Court. This Court further reiterates the view expressed by the aforementioned judgments that removal without following proper procedure of law and without holding an inquiry was nothing but due to political rivalry because of defeat of the complainant in the elections.

10. Resultantly, present petition is allowed. The impugned order passed by respondent No.3 dated 13.8.2014 as affirmed by the appellate Court dated 17.9.2014 are hereby set aside. Petitioner is directed to be reinstated back as Sarpanch of the Gram Panchayat within a period of seven days from the date of receipt of this order. Rule is accordingly made absolute. Direct service is permitted.