(1990) 11 GUJ CK 0006

In the Gujarat High Court

Case No : L.P.A. No. 225 of 1990

Nathalal Manilal Patel and Another — APPELLANT

Vs

A.R. Banerjee — RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:
Gujarat Panchayats (Amendment) Act, 1962 — Section 124, 126, 126(1)
Gujarat Taluka and District Panchayats Financial, Accounts and Budget Rules, 1963 — Rule 161

Citation : AIR 1992 Guj 5 : (1991) 2 GLR 811

Hon'ble Judges : R.C. Mankad, Acting C.J.;C.K.Thakker, J

Bench : Division Bench

Advocate : K.G. Vakharia, for G.R. Udhwani, for the Appellant; B.D. Desai, Asstt. Govt. Pleader, for the Respondent

Judgement

Mankad, Actg. C.J.

1. Appellants original petitioners have filed this appeal under Clause 15 of the Letters Patent, challenging the judgment and order dt. July 19, 1990, passed by the learned single Judge, rejecting their petition being Special Civil Appln. No. 4247 of 1990, under Art. 226 of the Constitution.

2. Appellants were members of Chanasma Taluka Panchayat (''Panchayat'' for short), which is constituted under the provisions of the Gujarat Panchayats Act, 1961 (''Act'' for short). The general election at which the appellants were elected as members of the Panchayat was held in February 1987. The term of the members of the Panchayat is for a period of five years and, therefore, the appellants were entitled to continue as members of the Panchayat till February 1992. Budge estimate of income and expenditure of the Panchayat, for the year 1990-91, was prepared and sent to the District Panchayat of Mehsana for scrutiny as required by S. 124(1) of the Act. The District Panchayat scrutinized the budget estimate and returned it to the Panchayat. Meeting of the Panchayat was convened on March 31, 1990 to approve the budget estimate, as required by

S. 124(3) of the Act. However, budget estimate could not be approved on March 31, 1990 as the Taluka Development Officer detected some mistakes in the budget estimate and sought time to correct the same. The meeting of the Panchayat was, therefore, adjourned to April 17, 1990. On April 17, a suit being Civil Suit No. 10 of 1990 was filed in the court of Civil Judge (J.D.), Chanasma, and in this suit, an ad-interim relief was granted by the learned Civil Judge, restraining the Panchayat from approving the budget estimate up to April 25, Being aggrieved by the ad-interim relief granted by the learned Civil Judge, the Panchayat preferred an appeal to the District Court on April 18 and sought the stay of the operation of the order of the learned Civil Judge. This appeal was heard on May 2 and the learned District Judge, who heard the appeal, directed the Panchayat not to approve the budget estimate till May 8, the date on which the judgment in the appeal was-to be pronounced. On May 8, the learned District Judge pronounced the judgment allowing the Panchayat''s appeal and vacated the ad interim relief granted by the learned Civil Judge. Meeting of the Panchayat was convened on May 17 after giving the prescribed notice for convening such meeting. The budget estimate was approved at the meeting of the Panchayat on May 17.

3. On April 24, the Development Commissioner issued notice (dated April 24, 1990), calling upon the Panchayat to show cause as to why it should not be superseded for a period of one year, u/ S. 297 of the Act, for having failed to approve the budget estimate within the prescribed time. The Panchayat, by its reply dated May 5, submitted its explanation as to why the budget estimate could not be approved by March 31, The Development Commissioner, however, by his order dated May 21, held to the effect that it was obligatory on the Panchayat to pass budget estimate before March 31, 1990. There was no provision in either the Act or the Rules made thereunder, under which the approval of the budget estimate could have been postponed beyond March 31. According to the Development Commissioner, Provision to approve the budget estimate before March 31 was mandatory. The Panchayat, having failed to approve the budget estimate before March 31, it was incompetent to perform its functions. The Development Commissioner, therefore, directed supersession of the Panchayat for a period of one year u/ S. 297 of the Act. The order passed by the Development Commissioner superseding the Panchayat was challenged by the appellants by filing Special Civil Appln. No. 4247 of 1990, referred to above. The learned single Judge, who heard the Special Civil Appln. by the impugned order, held that once the date by which the Panchayat was required to approve the budget estimate had expired and the budget estimate was not approved by that date, the Panchayat had become incompetent to perform its functions. In reaching this conclusion, the learned single Judge placed reliance on decision of another learned single Judge of this Court in Naranbhai Khemdas Patel Vs. State of Gujarat and Another, . In the result, the learned single Judge rejected the appellant''s petition. Being aggrieved by the order passed by the learned single Judge, the, appellants have preferred this appeal.

4. In order to appreciate the rival contentions, it is necessary to read Ss. 124, 126 and sub-section (1) of S. 297 of the Act, which are as under:

" 124. (1) Every taluka panchayat shall have prepared annually on or before such date and in such form and manner as may be prescribed in this behalf a budget estimate of its income and expenditure for the next year and forward it to the district panchayat on or before such date as may be prescribed:

Provided that the budget estimate shall be so prepared that at the end of the year the panchayat shall have at its credit a balance of not less than such minimum amount as may be prescribed in that behalf.

(2) The district panchayat shall scrutinise the budget estimate and return it to the panchayat within two months of its receipt with such observations and recommendations as it may make in respect of the budget estimate.

(3) The taluka panchayat shall thereupon approve the budget estimate with such modifications as it may think fit having regard to the observations and recommendations made by the panchayat under sub-section (2)."

"126. (1) Save in the case of a pressing emergency no sum shall be expended by or on behalf of a taluka panchayat unless such sum is included in some budget estimate approved u/S. 124 or 125 and in force at the time of incurring the expenditure.

(2) If on a pressing emergency any sum is expended otherwise than in accordance with sub-section (1) the circumstances shall be forthwith communicated in writing by the President of the panchayat to the competent authority with an explanation of the way in which it is proposed by the panchayat to cover such extra expenditure."

"297 (1). If, in the opinion of the State Government, a panchayat exceeds or abuses its powers or is incompetent to perform or makes persistent default in the performance of, the duties imposed on it or functions entrusted to it under any provision of this Act or by or under any other law for the time being in force, or fails to obey an order made under ''this -Act by the panchayat superior thereto or by the State Government or any officer authorised by it, under this Act or persistently disobeys any of such orders the State Government may, after consultation with the district panchayat in the case of a panchayat subordinate to it and after giving the panchayat an opportunity of rendering an explanation, by order in the Official Gazette,

(i) dissolve such panchayat, or

(ii) supersede such panchayat for the period specified in the order; such period may be longer than the term for which the members of the panchayat would have held officer u/ S. 17 if the Panchayat had not been superseded under this section:

(Provided that the State Government may from time to time after making such inquiry as it may consider necessary by an order published in the Official Gazette extend the period of supersession of such panchayat until such date as may be specified in the order or by like order curtail the period of supersession.)"

4-1. It is also necessary to read clause (b) of Rule 161 of the Gujarat Taluka and District Panchayats Financial, Accounts and Budget Rules, 1963 (''Rules'' for short), which reads as under:

"161(b). The taluka panchayat shall prepare its budget estimates for the next year in form No. 33 and shall submit it to the district panchayat before 10th March every year. On return of such budget Estimates from the district panchayat after scrutiny, the taluka panchayat shall approve the budget estimates before 31st March every year."

5. The Development Commissioner has taken the view to the effect that combined reading of S. 124 of the Act and Rule 161 of the Rules shows that the Panchayat is required to approve the budget estimate before March 31 every year and this requirement is mandatory. Therefore, according to the Development Commissioner, if the budget estimate is not approved before March 31, there is breach of mandatory provision contained in the Act and Rules and, consequently, the Panchayat must be held to be incompetent to perform its functions. Therefore, the question which arises for our consideration is whether the provision to approve budget on or before March 31, is mandatory.

6. It would be seen that sub-section (1) of S. 124 requires the Panchayat to prepare annually the budget estimate of income and expenditure and forward it to the District Panchayat on or before such date as may be prescribed. Clause (b) of Rule 161 lays down that Panchayat shall prepare its budget and shall submit it to the District Panchayat on or before March 10 every year. Therefore, under the said provision, the Taluka Panchayat was required to prepare and submit its budget estimte on or before March 10. It is not disputed that the instant case, the above requirement is complied with inasmuch as, the appellant panchayat has prepared the budget estimate of income and expenditure and forwarded it to the District Panchayat on February 22, 1990; i.e. before the prescribed date of March 10. Now sub-section (2) of S. 124 allows two month''s time to the District Panchayat to scrutinize the budget estimate and return it to the Panchayat with observations and recommendations as it may make in respect of the budget estimate. Therefore, in case where the District Panchayat receives budget estimate on March 10, which is permissible under clause (b) of Rule 16 1, the District Panchayat is required to scrutinize the budget estimate and return it to the Panchayat on or before May 9 with its observations and recommendations under sub-section (2) of S. 124. However, clause (b) of Rule 161 provides that on return of the budget estimate from the District Panchayat after scrutiny, the Panchayat shall approve the same before March 31. Under this rule, if the District Panchayat, in the example given above, has returned the budget estimate after March 31 but before May 9, within the prescribed time, the Panchayat cannot approve the budget estimate before March 31 as laid down by clause (b) of R. 16

1. We have given the above example or illustration to demonstrate that clause (b) of Rule 161 is not consistent with sub section (2) of S. 124 of the Act. This factor has to be borne in mind while considering the question whether or not the provision contained in Rule 161 to approve the budget estimate on or before March 31 is mandatory or directory.

7. Section 126(1) of the Act provides that, save in case of pressing emergency no sum shall be expended by or on behalf of a taluka panchayat unless such sum is included in some budget estimate approved u/ Ss. 124 or 125 and in force at the time of incurring the expenditure. We are not concerned with S. 125, which deals '' with revised or supplementary budget and reappropriation of funds. It is not disputed that, ordinarily budget estimate of income and expenditure of a taluka panchayat is for a period commencing from April I and ending on March 31, The budget estimate approved by the Panchayat for the year 1989-90 was for the period from April 1, 1989 to March 31, 1990. After March 31, 1990, the Panchayat could not have, except in case of pressing emergency, expended any sum unless budget estimate for the year 1990-91 commencing from April I was approved as provided in S. 126(1) of the Act. It, therefore, cannot be gainsaid that even apart from the provisions contained under R. 161, the Panchayat was required to approve the budget estimate for the year 1990-91 before March 31, 1990 for otherwise it could not have expended any sum on and from April 1, 1990. Sub-section (3) of S. 124 does not lay down that the budget estimate is required to be approved on or before particular date or such date as may be prescribed. It may be recalled that sub-section (1) of the said Section provides for preparation of the budget estimate and forwarding of the same to the District Panchayat on or before such date as may be prescribed. In contrast, sub section (3) does not provide for approval of the budget estimate on or before the date that may be prescribed. However, as observed above, from the combined reading of sub-section (3) of S. 124 and sub-section (1) of S. 126, there is no escape from the conclusion that the Panchayat is required to approve the budget estimate before the commencement of the next financial year. The question, however, still remains whether the provision for approving the budget estimate before March 31 contained in clause (b) of R. 161 is mandatory and failure to approve budget by that date would lead to the consequence that the Panchayat is incompetent to perform its functions.

8. In our opinion, the combined reading of Ss. 124, 126 and Rule 161 clearly indicates that the provision for approving the budget estimate before March 31 is not mandatory but directory. No consequence is provided for failure to approve budget estimate before March 31. The argument is that the Panchayat could not have approved budget after March 31 as it would result in perpetuating the mischief which is sought to be prevented by sub-section (1) of S. 126. No sum can be expended unless such sum is included in the budget estimate approved u/ S. 124 or 125 except in case of pressing emergency under S. 126(1). Now, if the above argument that the Panchayat is incompetent to approve the budget estimate after March 31 is accepted, all the functions of the Panchayat, which

require incurring of expenditure would come to a stand-still. There is hardly any function which the Panchayat could perform without incurring any expenditure. Therefore, once the Panchayat fails to approve the budget estimate on March 31, it cannot perform any of its functions, if the above argument is, accepted. It is true that, ordinarily the Panchayat should approve the budget estimate of the next year before the commencement of that year. But there may be circumstances under which it may not be possible for the Panchayat to do so and if that happens, would it not be open to the Panchayat to approve the budget estimate ''on subsequent date is the question which we have to answer. In our opinion, even if it. is permissible to do so, it would be a hyper technical view to hold that provision to approve budget estimate before March 31 every year contained in clause (b) of Rule 161 of the Rules is mandatory so as to require strict compliance. It is true that the said provision does lay down that the Panchayat shall approve the budget estimate before March 31 every year. But having regard to the provisions of Ss. 124 and 126, word "shall" should be read as "may". In other words, the above provision to approve the budget estimate before March 31 is directory provision requiring no strict compliance, but substantial compliance. Ordinarily, as already observed above, budget estimate has to be approved before the commencement of the next financial year; but, it, for some reason, it is not possible to do so, mere fact that the, budget estimate has been approved after the commencement of the next year would not render the action of approving the budget illegal or contrary to the provisions of the Act and the Rules. If the budget estimate is not approved before March 31 for some valid reason, such estimate can be approved within reasonable time thereafter depending *upon the facts and circumstances of the case. In the instant case, budget estimate could not be approved on March31, 1990, although the meeting of the Panchayat was convened for that purpose on that date, because of some glaring mistakes noticed by the Taluka Development Officer, which required to be corrected. The meeting for approval of the budget was, therefore, postponed to April 17, 1990. But before the budget estimate could be approved on that day, there was an order of the Civil Court restraining the Panchayat from approving the budget. It was only after the order of the Civil Court was vacated by the District Court that the budget estimate could be approved on May 17, 1990. Under these circumstances, it must be held that the Panchayat had, within reasonable time, approved the estimate of budget and that there was substantial compliance with the provisions of S. 124 of the Act and Rule 161 of the Rules.

9. When the Development Commissioner passed order on May 21, 1990, holding that the Panchayat was incompetent to perform its function, the budget estimate was already approved. Since the budget estimate was approved, we fail to see how it could be held that the Panchayat was incompetent to perform its duties or functions. On the date on which the Development Commissioner passed the order, there was nothing to prevent the Panchayat from incurring expenditure which was included in the budget estimate for discharging its duties and functions. Mere fact that the budget estimate was not approved before March 31,

1990 would not necessarily lead to the conclusion that the Panchayat was incompetent to perform its functions. There is no other ground on which the Panchayat has been held to be incompetent to perform its functions. Therefore, in our opinion, considering all the facts and circumstances of the case, the Development Commissioner was not justified in holding that the Panchayat was incompetent to perform its functions.

10. In the case of Naranbhai Khemdas Patel Vs. State of Gujarat and Another, , on which reliance was placed -by the learned single Judge, the facts were entirely different. In that case, the Gram Panchayt concerned had not approved the budget estimate at all. Therefore, there was no question of the Gram Panchayat approving the budget estimate after the due date, i.e. March 31. The question whether the provisions contained in Rule 161 are directory or mandatory did not arise before the court for consideration. In other words, the court did not decide whether the provisions of Rule 161(b) are mandatory requiring strict compliance and that, as the said provisions were not strictly complied with, the Gram Panchayat was incompetent to perform its functions. Fact situation in the instant case is entirely different. In the instant case, as pointed out above, the Panchayat has, in fact, approved the budget estimate though it did so after March 3 1. Since, in our opinion, the Panchayat has substantially complied with the provisions of Rule 161(b), it could not be held that it was incompetent to perform its functions. In the case of Naranbhai Khemdas Patel Vs. State of Gujarat and Another, , the Gram Panchayat, as pointed out above, had not approved the budget at all and it indeed could not be disputed that without approving the budget estimate, the Panchayat could not have discharged its functions. In our opinion, therefore, the above case cannot be treated as an authority for the proposition that Rule 161(b) is a mandatory provision and, if the budget estimate is not approved by March 3 1, the Panchayat will be incompetent to perform its functions.

11. In the light of the above discussion, it must be held that the order Annexure-A, dated May 21, 1990 passed by the Development Commissioner is illegal and without authority, and it deserves to be quashed and set aside. In the result, we allow this appeal and quash and set aside the order passed by the learned single Judge. The order Annexure-A dated May 21, 1990 is also quashed and set aside. The Chansma Taluka Panchayat will, therefore, not stand superseded as directed in the said order.

12. Petition allowed.