

(2004) 12 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 1939 of 2003

Pariya Gram Panchayat

APPELLANT

Vs

Development Commissioner

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Panchayats (Amendment) Act, 1993 — Section 116(4), 124, 126, 126(1), 253

Gujarat Panchayats Rules, 1993 — Rule 161

Citation : (2005) 2 GLR 1092

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : N.K. Majmudar, for Petitioner Nos. 1-2, for the Appellant; Manisha Shah, A.G.P. for Respondent No. 1 and H.S. Munshaw, for Respondent Nos. 2-3, for the Respondent

Judgement

K.S. Jhaveri, J.—The petitioners have by way of this petition challenged the order dated 11th June, 2002 passed by the Taluka Development Officer, whereby, respondent no. 1 under the provisions of Section 253 of the Gujarat Panchayat Act, 1993 has passed an order of supersession of the Pariya Gram Panchayat, on the ground that the Panchayat failed to pass the budget for the year 2002-03.

2. The facts of the case as they emerge from the record of the petition are that the meeting was called by the Panchayat for approval of budget for the year 2002-03 on 26th March, 2002. However, the same was not convened and, therefore, the budget was not passed. Subsequently, on 30th March, 2002, an attempt was made to pass the budget, but since eight members were present, the budget could not be passed. The petitioner submitted that thereafter a special meeting was convened, wherein in the presence of the members, who had supported the budget a Resolution dated 30th March, 2003, was passed, whereby the budget for the year 2002-03 came to be approved. The petitioner further submitted that though necessary procedure was followed for approving the budget for the year 2002-03, the Taluka Development Officer, Pardi,

exercised suo motu powers and instead of approving the Resolution, suspended the said Resolution vide order dated 11th June, 2002. Hence, this petition.

3. Mr. Majmudar learned advocate for the petitioners has submitted that before the order could be communicated, budget was passed on 4th February, 2002. He has placed reliance on the decision of this Court in the case of Nathalal Manilal Patel and Another Vs. A.R. Banerjee, wherein in para 8, the Court has held as under :-

"8. In our opinion, the combined reading of Sections 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 the budget after March 31, as it would result in perpetuating the mischief which is sought to be prevented by sub-section (1) of Section 126. No sum can be expended unless such is included in the budget estimate approved u/s 124 or 125 except in case of pressing emergency u/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 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 Sections 124 and 126, word "shall" should be read as "may". In other words, the above provision to approve 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 if, 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 instance case, budget estimate could not be approved on March 31, 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 as 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 Section 124 of the Act and Rule 161 of the Rules."

4. Mr. Majmudar has next placed reliance on the decision of this Court in the case of Thasara Village Panchayat v. V.D. Vaghela and Ors., reported in 2003 (1) p.676, wherein the Court has held as under :-

"11. In view of what is stated above, the petition is allowed. The matter is sent back to the Development Commissioner for reconsideration. The Development Commissioner may consider the facts and circumstances of the case as well as the explanation given by the Panchayat. While considering the aforesaid matter afresh, the Development Commissioner also may take into account the fact that the concerned Panchayat was elected only a few months back and whether in the facts and circumstances of the case, the explanation given by the Panchayat is required to be accepted or not. Since, the Commissioner has not decided the matter on merits, after considering the objections of the Panchayat and has passed the order of dissolution, considering the fact that it is mandatory for the Panchayat to pass budget within the stipulated time, in my view, there is no alternative but to remand the matter to the Development Commissioner for reconsideration of the entire matter afresh. It is clarified that it is for the Development Commissioner, to arrive at a fresh decision on his own. The matter is required to be sent back as the Development Commissioner has not considered the contention of the Panchayat, as he was under the impression that the provision is mandatory. It is also clarified that this Court has not expressed any opinion on the merits of the issue whether there was any justification on the part of the Panchayat for not passing the budget within the stipulated time. All these questions are required to be considered by the Development Commissioner after hearing the present petitioner. Considering the aforesaid aspect of the matter, in my view, the non passing of the budget itself would not, ipso facto, result in supersession of the Panchayat and the provision is directory and not mandatory. Further, in view of the judgment of the learned Single Judge of this Court [Coram : J.M. Panchal, J] and the judgment of the Division Bench of this Court, it cannot be said that the provision is mandatory. As aforesaid, since the Development Commissioner has not examined this aspect on merits, the matter is sent back for reconsideration. The Development Commissioner may pass fresh order in accordance with law expeditiously. Since the order is set aside, the Development Commissioner, will have to pass fresh order under the provisions of Section 253 of the Act and till such decision is taken naturally, the elected body will be entitled to continue to function."

5. I have heard the learned advocates for the respective parties and have gone through the relevant record. On going through the order of the Development Commissioner dated 3rd February, 2003 it appears that the petitioners were given notice and only after hearing and considering the submissions made by the petitioners, pursuant to the notice dated 30th August, 2002, the order with regard to superseding the Panchayat came to be passed. Thus, in my opinion, in view of the provisions of the Panchayat Act, since budget was not passed, the State Government was justified in exercising power u/s 253 of the Panchayat Act.

6. Moreover, the resolution dated 30th March, 2003 which was stayed by Taluka Development Officer was not challenged by the petitioner and, therefore the said order has achieved finality. Subsequently, from the affidavit-in-reply, it is clear that as per the requirement under the Act the State Government has formed opinion that the panchayat is incompetent to perform the duties imposed on it or functions entrusted to it under the provisions of the Act and, therefore, under the provisions of Section 253 of the Act the said Resolution was passed. Further, pursuant to the notice issued to the petitioner and after hearing the husband of the petitioner, the State Government had passed the order on 3rd February, 2002.

7. Moreover the requirement under the law is that budget should be passed atleast before 15th December of the current year. As per Section 116 (4) of the Act, the limit is extended upto 31st March, of the current year. Admittedly, on 26th March, 2002, the budget was not passed and, therefore, petitioners were not conscious about their duties and thereafter they have made attempt to pass Resolution on 30th March, 2003, but that was held to be illegal and was cancelled, which has been accepted by the petitioner. In that view of the matter, it is clear that the budget was not passed on 31st March of the relevant year.

8. Further the decision rendered in the case of Nathalal Manilal Patel and Anr. v. A.R. Banerjee, Development Commissioner (supra), will not apply on the facts of the present case, inasmuch as in the said case, the budget was passed in the month of May of the relevant year and, therefore, the Court had held that the provisions are directory and not mandatory, whereas in the present case, the budget was passed after issuance of notice. Thus, the said decision will not apply to the facts of the present case.

9. In the premises aforesaid, the order passed by the Development Commissioner is just and proper and no interference is called for by this Court. Thus, no case is made out by the petitioners, to exercise the power under Article 226 of the Constitution of India in favour of the petitioners. However, it will be open for the respondents to conduct elections as early as possible. The petition is rejected. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.