

(1989) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Spl. Civil Application No. 1454 of 1989

Patel Manubhai Khodidas

APPELLANT

Vs

Sonara and Others

RESPONDENT

Date of Decision : 01-05-1989

Acts Referred:

Constitution of India, 1950 — Article 164, 75

Gujarat Panchayats (Amendment) Act, 1962 — Section 60

Gujarat Taluka and District Panchayats (Procedure) Rules, 1963 — Rule 17

Citation : AIR 1990 Guj 186 : (1989) 2 GLR 493

Hon'ble Judges : G.T. Nanavati, J

Bench : Single Bench

Advocate : K.G. Vakharia, for the Appellant; S.K. Jhaveri and M.S. Shah, for the Respondent

Judgement

1. The petitioner is an elected member of Mehsana Taluka Panchayat. Respondent No, 3 is the President of that Panchayat. It is the case of the

petitioner that a large number of members of the Panchayat have lost confidence in respondent No. 3 as they have found that he is lethargic in

performance of his duties. For that reason, Sagrambbai Chaudhari, another elected member of the Panchayat, had given a notice of his intention to

move a no-confidence motion against respondent No. 3 on 15-12-1988. Respondent No. 3 was duty bound to convene a meeting for considering

the motion of no confidence pursuant to the said notice but he did not do so in collusion with respondent No. 1, who is the Secretary-cum-Project

Officer-cum-Taluka Development Officer of that Panchayat. Both of them in collusion filed the said notice on the ground that the same was not in

the prescribed form. Again, on 31-1-1989 the petitioner, along with 21 other members, gave a notice of their intention to move a no-confidence

motion against respondent No. 3. The aid notice was handed over to respondent No. 1. Again, in collusion with each other, respondent No. 3 the

President by his order dated 10-2-1989 directed that the same may be filed on the ground that , it does not contain reasons for moving the non-

confidence motion and, therefore, is not in accordance with law. It is the petitioners case that the said order passed by One third respondent is

illegal being contrary to the provisions of Section 60 of the Gujarat Panchayats Act, 1961 read with Rule 17 of the Gujarat Taluka & District

Panchayats (Procedure) Rules, 17963. It is also his case that respondent No. I ought to have made a report to the District Development Officer-

respondent No. 2 as respondent No. 3 the, President had failed to call a meeting for considering the motion of no-confidence. In doing so he has

also acted contrary to the provisions of law.

2. After Rule was issued and respondent No. 1 filed his reply pointing out that he had made a report on 14-2-1989 to the 2nd respondent, the

petitioner has amended the petition and has raised further contention that it was the duty of respondent No. 2 to call a meeting within 15 days from

the date of the receipt of the said report, and as he has not done so, his inaction is also illegal. The petitioner has, therefore, prayed for a writ of

Mandamus directing 2nd respondent to call a meeting of Mehsana Taluka Panchayat for considering the no-confidence motion proposed to be

moved by the petitioner.

3. Respondent No.3 has defended his order by stating that the same is not illegal. All the other respondents have supported the order passed by

respondent No. 3. Respondent No. 1 in his reply affidavit has denied the allegation of collusion with respondent No. 3 and further pointed out that

he had earlier forwarded one copy of the notice to the District Development Officer and had also made a report to him, as required by law.

Respondent No. 2 has not filed any reply but it was submitted, on his behalf that he had received the said report of the first respondent on 15-2-

1989 and as the petition was filed before the expiry of 15 days from the date of receipt of the said report, he had not thought it fit to convene a

meeting for the purpose of consideration of the proposed no-confidence motion.

4. With respect to the allegation that earlier on 15-12-1988 one Sagrambhai Chaudhari had given a notice indicating his intention to move a no-

confidence motion against respondent No. 3, both respondents Nos. 1 and 3 have stated in their reply that that allegation is not correct as no such notice was received by either of them. As stated earlier, both of them have denied the allegation of collusion between them. As I am inclined to allow this petition on another ground, it is not necessary to inquire into the allegation as to whether there was any collusion between respondents Nos. 1 and 3 as alleged.

5. What is submitted by the learned counsel for the petitioner is that the notice, which the petitioner had given, expressing his desire to move a no-confidence motion against the President, complies with the requirements of Rule 17 and merely because it does not contain further details of the ground, it cannot be said to be either vague or not in accordance with the Rules. He further submitted that respondent No. 3 was not justified in passing an order to file the same and not taking any Action thereon on the ground that the said notice is not in accordance with the Rules. He also invited my attention to Section 60 of the Act and Rule 17 of the Rules, which read as under:

Section 60:

(1) Any member (other than an associate member) who intends to move a motion of no-confidence against the President or Vice President may give a notice thereof in the prescribed form to the Panchayat. If, the notice is supported by such number of members (other than associate members) as may be prescribed, the motion may be moved.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then members of the Panchayat (other than associate members), the President or the Vice President, as the case may be, shall cease to hold office after a period of three days from the date on which the motion was carried, unless he has resigned earlier; and thereupon the office held by such President or Vice President shall be deemed to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made there under a President or Vice President shall not preside over a meeting in which a motion of no confidence is discussed against him; but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote).

(4) When the offices of both the President and Vice-President become vacant simultaneously, the District Development Officer or such other

Officer as he may authorise in this behalf shall, pending the election of the President, exercise all the powers and perform all the functions and

duties of the President but shall not have the right to vote in any meeting of the Panchayat.

(5) (a) Notwithstanding anything contained in Section 110, a meeting of the Panchayat for dealing with a- motion of no-confidence, under this

section shall be called within a period of fifteen days from the date on which a notice of such motion is received by the panchayat.

(b) If the President of the panchayat fails to call such meeting, the Secretary of the Panchayat shall make a report thereof to the competent

authority and thereupon the competent authority shall call a meeting of the panchayat within a period of fifteen days from the date of the receipt of

the report.

Rule 17: Notice of no-confidence motion --

(1) Any member of a panchayat who desires to move a motion of no-confidence against the President or Vice President of the Panchayat shall

give notice thereof, to the Secretary in Form A. Where the motion of no-confidence is to be moved against the President as well as Vice President

two separate notices shall be given. If the notice is given jointly by more than one member the motion may be moved by any of the members who

have signed the notice. Every such notice shall be supported by at least one half of the total number of members of the Panchayat.

(2) The member giving any notice under sub-rule (1) shall forward therewith three additional copies thereof to the Secretary who shall deliver one

copy to the President, one copy to the Vice President and one copy, --

(i) to the "District Development Officer where the motion relates to the President or Vice President of a taluka Panchayat or;

(ii) to officer authorised in this behalf by the State Government, where the motion relates to the President or Vice President of a district panchayat.

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Explanations : For the purposes of this rule, if the total number of members of a panchayat is odd, then, in calculating the number for the purpose of

this rule a fraction shall be counted as one, that is to say, if the number of"

members is thirty one, the members required for supporting the notice so that a motion may be moved shall be sixteen and so on

6. What Section 60 requires is giving of a notice in the prescribed form to the Panchayat by a member who intends to move a motion of no-

confidence against the President or Vice President. Sub-section (5) requires the President to call a meeting of the Panchayat for dealing with a

motion of no-confidence within 15 days from the date on which the notice is received by the Panchayat. If the President fails to call such meeting,

then it becomes obligatory on the part of the Secretary of the Panchayat to make a report thereof to the competent authority and there upon it

becomes the obligatory duty of the competent authority to call a meeting of the Panchayat within a period of 15 days from the date of the receipt of

the report. What sub-sec.

(1) of S. 60 provides is that the notice which is required to be given should be in, the prescribed form. Rule 17 further provides that the notice

should be in form A. The said rule itself does not provide that in the notice ground should be mentioned for the purpose of moving a motion of no-

confidence but when we turn to form A, which is set out below we find that the ground on which the motion of no-confidence is to be moved is

required to be stated:

FORM

(See Rule 17)

Form of Notice of Motion of no-confidence.

I/We member/ members of the ... taluka/district panchayat proose- to move a no confidence motion against the President/Vice President

Shri..... in the meeting of the ... taluka/district Panchayat for the following reasons:- (here specify the reasons)

2. I/we declare that the facts stated above are true to the best of my/our information and knowledge.

Signature/ Signatures.

7. In this case, it is not in dispute that the petitioner gave a notice to the Panchayat on 31-1-89. The same was received by respondent No. 1, who

is the Secretary of the Panchayat and who is authorised to receive such notices. It is also not in dispute that respondent No. 1 placed the said

notice before the President respondent No. 3 for taking appropriate action thereon. As stated above, respondent No. 3 passed an order to file the said notice on the ground that the same is not in accordance with the Rules. The only reason given for taking that view is that it does not contain particulars as to why and which acts of administration done by respondent No. 3 have created no-confidence in him. What is required to be considered in this petition is the correctness of this view taken by respondent No. 3. Bearing in mind the relevant provisions of law and the object of the requirement of stating the ground it will have to be decided whether merely stating in the notice that, "there is no-confidence in the administration", is sufficient, or that further particulars and reasons are also required to be stated. The learned counsel for the petitioner has submitted that no-confidence in the administration is itself a good ground, and if large number of members of the Panchayat feel that way, then, that itself should be regarded a good ground for moving a no confidence motion. It is submitted that it is not necessary that particular acts of mal-administration should be stated in the notice, or that the person giving such a notice should give reasons why persons, who have signed such a notice, have lost confidence in the President. On the other hand, relying upon the decision of Bombay High Court in Ganeshsinha Domansingha v. Commissioner, Nagpur Division (1963) 65 Bom LR 722, it was submitted by the learned counsel for the respondents that particulars as to the ground are required to be stated in the notice in order to see that the discussion at the meeting is not "at large". It was further submitted that the, "universe of discourse" would necessarily be limited if the grounds are stated in the notice. It was also contended that the persons who are going to take part in the discussion should also know in advance what is alleged against the President or Vice President, as the case may be, so as to enable them in advance to apply their mind to the charges. Though I find some force in the contention raised on behalf of the respondents, it is not possible for me to accept the same in view of the Division Bench judgment in Letters Patent Appeal No. 223/ 88 decided on 21-6-1988. Though not a direct decision in the sense that the Division Bench was in that case not concerned with the relevant provisions of the Gujarat Panchayats Act but was interpreting Section 36 of the Gujarat Municipalities Act, 1963 and the form prescribed under that Act for giving a notice of intention to

move a motion of no confidence against the President of a Municipality, the provisions being in pari materia, the same view has to be taken while

interpreting the word, "ground" as contained in the prescribed form. Section 36 of the Gujarat Municipalities Act reads as under:

36. (1) Any councillor of a municipality who intends to move a motion of no-confidence against its President or vice president may give a notice

thereof, in such form as may be prescribed by the State Government, to the municipality. If the notice is supported by not less than one-third of the

total number of the then councillors of the municipality, the motion may be moved.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then councillors of the municipality, the president or,

as the case may be, the vice-president shall cease to hold office after a period of three days from the date on which the motion is carried unless he

has earlier resigned; and there upon the office held by him shall be declared to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made there under, the president, or as the case may be, the vice-president shall not

preside over a meeting in which a motion of no confidence against him is discussed; but he shall have the right to speak in or otherwise take part in

the proceedings of such meeting (including the right to vote).

In exercise of the powers conferred upon the Government by the said section, the Government prescribed the following form for giving a notice of

intention to move no-confidence against the President or the Vice President:

Notice of intention to move motion of no-confidence.

To

Municipality.....

Please take notice that I/We Councillor/ Councillors of the.....Municipality,propose to move a motion of no-confidence against the

President/ Vice-President Shri....in the meeting of the.....Municipality on the following grounds, namely:(here specify the grounds)

Place:

Date:

Signature/ Signatures.

Reading the said provisions and the form, it becomes clear that the requirement of stating, the ground is similar in both the Acts. The Division

Bench, after referring to the decision of the Supreme Court in Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, and the

observations of the learned single Judge against whose order the Letters Patent Appeal was filed, observed as under:

It is obvious from the above observations that when the notice of motion does not spell out a ground other than stating that the members signing

the notice of motion have lost confidence that is sufficient for the purpose of Section 36 of the Act. We, therefore, do not see any merit in the first

submission made before us." -

The observations of the learned single Judge, which are approved by the Division Bench, are as under:

Although a ground may be mentioned when passing a motion of no-confidence, the existence of a ground is not a prerequisite of a motion of no-

confidence. There is no legal bar to the passing of a motion of no-confidence against an authority in the absence of any charge of impropriety or

lapse on the part of that authority. The essential connotation of a no-confidence motion is that the party against whom such motion is passed has

ceased to enjoy the confidence of the requisite majority of members.

Thus, the Division Bench approved the view taken by the learned single Judge that the essence of a notice of no-confidence motion is that the party

against whom such motion is moved has ceased to enjoy the confidence of the requisite majority of members and for that reason when a notice of

motion does not spell out a ground other than stating that the members signing the notice of motion have lost confidence then that should be

regarded as sufficient for the purpose of the Act. Following the view expressed by the Division Bench in the above Letters Patent Appeal, I hold

that the notice which was given by the petitioner and others stating that he and those who have signed the same have no confidence in the

administration of the President is quite sufficient and, therefore, in accordance with law and for that reason the third respondent was not justified in

passing the order for filing the same.

8. In the result, this petition is allowed. The order dated 10-02-1999 at Annexure ""A"" to the petition passed by the third respondent is quashed

and set aside. A writ of mandamus shall issue directing respondent No. 2 to convene a meeting pursuant to the notice given by the petitioner within

the prescribed time and to take such other steps as required by law. Rule is made absolute accordingly with no order as to costs.

9. [x xx xx]

10. Petition allowed.