
(2002) 07 GUJ CK 0128

In the Gujarat High Court

Case No : Special Civil Application No. 6202 of 2001

Pratapbhai Punjabhai Chaudhary

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Constitution of India, 1950 — Article 310
Gujarat Panchayats Act, 1961 — Section 57

Citation : (2002) 07 GUJ CK 0128

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Mehul H. Rathod, for the Appellant; Government Pleader for Respondent No. 1, P.K. Jani and H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The short facts of the case are that the petitioner came to be elected as Sarpanch of Khanduson Gram Panchayat. On 12-6-1997, the Gram Panchayat passed the resolution of removal of "chora" and to construct a class room on the said place since as per the Gram Panchayat the present accommodation of the students was not sufficient. On 23-6-1997, upon the request made by the Gram Panchayat permission was granted by the Taluka Development Officer (TDO) for the purpose of sale of debris (material after demolition) of "chora".

2. After a period of about two years, somewhere in February, 1999, one Mr.Pahadji made a complaint to the District Development Officer (DDO) that the "chora" is demolished without permission etc. Upon the said complaint, the DDO had asked the TDO to inquire into the matter and ultimately on 1-6-1999 the TDO reported to the DDO after holding inquiry that there is no illegality committed in demolition of "chora" etc. Thereafter, once again on 1-7-1999, the same person, Mr.Pahadji, submitted an application by way of complaint and the DDO once again instructed the Deputy Taluka Development Officer (DTDO) to

hold an inquiry. It has been contended that in the said report of the DTDO it was reported that certain irregularities are committed, which resulted into issuance of show-cause notice dated 27-12-1999 by DDO to the petitioner as Sarpanch of the Gram Panchayat for removal u/s 57 of the Gujarat Panchayats Act (hereinafter referred to as "the Act"). After the show-cause notice, on 6-1-2000 the General Body of the Gram Panchayat, in its meeting, once again considered the matter and resolved that there is no malafide intention on the part of anyone and the decision is taken for the larger interest of the school of the Gram Panchayat. It was also resolved that the old bricks have been used for the purpose of construction of verandah of the primary school and the expense for such construction is not debited in the account of the Gram Panchayat. All the members of the Gram Panchayat after considering the show-cause notice reposed the confidence on the Sarpanch, the petitioner herein. The petitioner thereafter submitted his reply to the show-cause notice and contended, inter alia, that there is no misconduct committed by him and he has acted pursuant to the resolution of the Gram Panchayat. It was also submitted by him that the decision was taken in the larger public interest of the Gram Panchayat and there is no misuse of power. It was submitted by him that the old "chora" was in absolute dilapidated condition and it was on the verge of collapse and if it gets collapsed, the children who were studying in the nearby school were likely to suffer and as against this in the existing school there was necessity of construction of two rooms and, therefore, ultimately the matter was considered in the General Body meeting of the Gram Panchayat and it was resolved for demolition of the "chora". It was also contended that the debris, except the old bricks which could be used for construction is sold pursuant to the permission granted by TDO and in any case the old bricks of "chora" are used for construction of verandah of the school and as a result thereof, there is surplus of nine thousand bricks. It was submitted that the action is taken in bonafide and, therefore, it does not call for the action of removal u/s 57 of the Act. The DDO considered the matter and ultimately passed the order on 20th April, 2000, whereby the petitioner is removed as Sarpanch of Khanduson Gram Panchayat. The petitioner carried the matter in appeal before the Additional Development Commissioner (ADC) and ultimately the ADC also as per the order dated 23-7-2001 dismissed his appeal and confirmed the order passed by the DDO. Under these circumstances, the present petition is preferred.

3. On behalf of the petitioner, Mr.Rathod, learned Counsel, has submitted that all irregularities cannot be said to be misconduct and there is absolutely nothing which goes to shows that the petitioner has committed any misconduct or misuse of his position as a Sarpanch. He relied upon the judgement of this Court, in the case of "Kamlaben Rohitbhai Patel v. Additional Development Commissioner", reported in 2000(2) GLR, 1174. Mr.Rathod also submitted that when the petitioner acted pursuant to the resolution of the Gram Panchayat, it was his duty to implement the resolution of the Gram Panchayat and, therefore, it cannot be said that, in his capacity as a Sarpanch, the petitioner had committed any

misconduct. Mr.Rathod also relied upon the judgements in the case of Laladhar Pragji and Others Vs. State of Gujarat and Others, and in the case of Udaysinh Shankersinh Zala Vs. S.D. Vadera Additional Development Commissioner and Others, .

4. On behalf of respondents, Mr.Munshaw and Mr.Dabhi, learned AGP appearing for the DDO and Addl. Development Commissioner respectively have supported the order and have contended, inter alia, that there is a finding of fact that the petitioner has suppressed the availability of old bricks of chora and had submitted the estimate as if the construction is to be made from the new material and it was contended that as a result thereof it can be said that the Panchayat has suffered financial loss. Mr.Jani has adopted the same contention as sought to be canvassed on behalf of the DDO and Addl. Development Commissioner. However, he further submitted that since there is a finding of fact regarding the suppression of availability of old bricks and since it can be said that on account of the said suppression, the estimate was wrongly prepared, such person should not be allowed to continue and this Court should not interfere or exercise equitable jurisdiction for the purpose of giving protection to a person, who himself is a party to such illegality and more particularly in the public life.

5. Before considering the contention raised on behalf of the petitioners, it is necessary to consider the last contention raised on behalf of the DDO as well as on behalf of the Addl. Development Commissioner and by Mr.Jani that there is a suppression of fact on the part of the petitioner regarding the availability of old bricks from the chora and, therefore it can be said that the Gram Panchayat has suffered financial loss.

The perusal of the show-cause notice, a copy whereof is produced at Annexure "B" to the petition, dated 27-12-1999 shows that there were only two allegations in the show-cause notice; one was that prior to demolition of chora, permission of the competent authority is not obtained and second was that for the use of the old bricks for the construction of rooms of the school, permission is also not obtained. Therefore, there was no allegation in the show-cause notice that the petitioner has suppressed the availability of old bricks at the time when the estimate was prepared and, therefore, when such allegation was not made in the show-cause notice, the same can hardly be said to be a valid basis for the purpose of taking final decision u/s 57. That apart, the perusal of the resolution passed by the Gram Panchayat dated 6-1-2000, copy whereof is produced at Annexure "C" to the petition shows that the said aspect of utilisation of old bricks is considered by the Gram Panchayat and it has been recorded that the expenses for utilisation of the old bricks are not debited for the purpose of construction of verandah since the old bricks are used in the construction of verandah. Therefore, in any case, the aforesaid resolution of the Gram Panchayat is totally lost sight of by both the authorities. In any case, it cannot be said that the Gram Panchayat or revenue of the Gram Panchayat has suffered on account of the utilisation of old bricks in the construction of verandah of the School since the

expenses for such purpose are not debited. Therefore, the said contention raised on behalf of the respondents fails.

6. Mr.Rathod is right in submitting that all irregularities would not attract the power u/s 57 of the Act for the purpose of removal of an elected representative. At this stage, it would be worthwhile to refer to the judgement by this Court reported in the case of "Kamlaben Rohitbhai Patel v. Additional Development Commissioner, Gandhinagar & Ors.", reported 2001(1) GLH 109. At para 6 of the said judgement, it has been observed as under:

"The guilt or misconduct of the Sarpanch in discharge of duties or any disgraceful conduct or abuse of power or making persistent default in performance of duties and functions under the Act, etc. has to do with a related blemish on the part of the person concerned and not in the matter of the accounting procedure with regard to the budgets, etc. in different development projects undertaken by the Panchayat for the welfare."

7. The perusal of the allegations made in the show-cause notice and the order passed by both the authorities clearly goes to show that the basis of the order is of not obtaining prior permission for the purpose of demolition of verandah and of not obtaining prior permission for utilisation of old bricks for construction of the rooms for school. There is no allegation whatsoever that due to the said default committed by the petitioner, the Gram Panchayat or revenue of the Gram Panchayat has suffered in any manner, nor there is any allegation that the action is with a view to have any personal gain or otherwise and, therefore, it cannot be said that the irregularities in the present case is such which would attract the power of removal u/s 57 of the Act.

8. Apart from the above, it is also come on record that the decision of demolition of chora and the utilisation of the old bricks are not taken by the petitioner in his individual capacity as the Sarpanch of the Gram Panchayat. It is on account of the resolution of the General Body of the Gram Panchayat the action is taken and the Sarpanch being the executive head of the Gram Panchayat has implemented the said resolution. Therefore, when the decision is taken by the Sarpanch on account of the resolution passed by the Gram Panchayat, it cannot be said that the Sarpanch is only the individual responsible or in any case it cannot be said that the Sarpanch has committed any misconduct, which would attract power of removal u/s 57 of the Act. In my view, the said aspect is covered by the decisions of this Court in the case of Laladhar Pragji and Others Vs. State of Gujarat and Others, and in the case of Udaysinh Shankersinh Zala Vs. S.D. Vadera Additional Development Commissioner and Others, . Therefore, since the issue is covered by the aforesaid judgement, I do not find it necessary to discuss the said aspect, more particularly when there is no dispute that the action of the petitioner is pursuant to the decision of the Gram Panchayat.

9. Before concluding, it would be worthwhile to refer to the observation of this Court in the case of "Kamlaben Rohitbhai Patel v. Additional Development

Commissioner" (supra), at para 11 of the said judgement it has been observed as under:

"11. For the purpose of removing a Sarpanch from holding the elective office, the officers who are charged with the statutory duties under the Act cannot act in such a cursory manner with casual approach so as to curtail or truncate the tenure of the holder of an elective office. The elected representatives for the purpose of removal can't be treated like Govt. servants whose services are controlled at the pleasure of the President or Governor under article 310 of the Constitution. The officer charged with the power for removal u/s 57 does not enjoy any such pleasure. The pleasure doctrine is alien in case of elected representatives. If the elected persons are allowed to be removed on such jejune grounds, it would simply mean throttling down the principles of democracy in the local self-bodies and the elected representatives of the people like the petitioner would be made to lose their tenure at the altar of the arbitrary exercise of powers by the officers who have been charged with the duty under the Act to at least address themselves to the real object behind such provision besides the grounds and procedure. While such powers are given to the functionaries of the State under the statute, the officers are charged with a very important duty of determining the rights of the elected persons and such rights cannot be lightly interfered with merely on the basis of the procedural errors in carrying out the development projects for which no single individual like the petitioner could be held responsible simply because she held the office of Sarpanch."

10. In view of the above, I find that both the authorities have not considered the aforesaid important and crucial aspects of the case and as a result thereof, the orders passed by the DDO as well as by the Development Commissioner would be rendered illegal and will have to be quashed and set aside. In the result, the order dated 20-4-2000 at annexure "D" and the order dated 23-7-2001 at Annexure "G" passed by the DDO and the Additional Development Officer respectively are quashed and set aside. The petition stands allowed. Rule is made absolute accordingly. There shall be no order as to costs.