(2002) 10 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 9038 of 2002

Shrimati Shantaben Popatbhai Makwana and Another APPELLANT

Vs

Development Commissioner and Another RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1993 — Section 116, 253, 253

Citation : (2003) 23 GLH 239

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : S.V. Parmar and Ms. Preeti S. Parmar, for the Appellant; M.K. Dagli, Assistant Government Pleader for Respondent No. 1 and Mr. H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmupar, J.—The petitioners have challenged the order passed by the Development Commissioner, by which Lilapur Village Panchayat is ordered to be dissolved u/s 253 of the Gujarat Panchayats Act, 1993 for not passing the budget within the stipulated time, i.e. 31st March, 2002, as required by Section 116 of the Act. The Development Commissioner came to the conclusion that provision of passing budget by 31st, March of the current year is a mandatory provision, mandated by the provisions of Section 116 of the Gujarat Panchayats Act and since Lilapur Gram Panchayat failed to pass the budget within the aforesaid time, the Development Commissioner has passed order u/s 253 of the Act, dissolving the Panchayat and the said decision is impugned in the present petition. Lilapur Gram Panchayat was constituted in the last week of December, 2001 and the petitioner No. 1 was elected as Sarpanch on 18-12-2001 and the petitioner No. 2 was elected as a Member of the Gram Panchayat on the same date. After the said election, the first meeting of the Gram Panchayat was held on 24-1-2002. The petitioner No, 2 was elected as Up-Sarpanch in the said meeting. As per the averment in the petition, the second meeting of the Gram Panchayat was held on

30-1-2002. In the said meeting, Budget proposals were formulated for the year 2002-''03 and the same were sent for approval to the Taluka Panchayat as provided u/s 116 of the Act. It is the say of the petitioners that the third meeting of the Panchayat was held on 13-3-2002 and till that date, the Gram Panchayat had not received, the Budget estimates, duly scrutinised from the Taluka Panchayat, Lakhtai; Subsequently, the Secretary of the Gram Panchayat informed the petitioners on 28-3-2002 that the duly scrutinised Budget estimates were received from the Taluka Panchayat on 25-3-2002 and, according to the petitioners, since only three days were left for passing the budget; it was decided to approve the budget by Circular Resolution. A copy of the Circular Resolution, dated 28th March, 2002, is annexed at Annexure ''A''. Thereafter, in the next meeting dated 16-4-2002, a Resolution, being Resolution No. 4(2), was passed, confirming the Circular Resolution. However, since the budget was not passed by 31st of March, 2002, the Development Commissioner issued a notice u/s 253 of the Act, calling upon the petitioner to show cause as to why the Panchayat be not dissolved for not passing the Budget within the stipulated time. Thereafter, after hearing the petitioners, the Development Commissioner passed an order, dissolving the Panchayat, as, according to the Development Commissioner, the Panchayat has failed to pass Budget by 31st, March, 2002 and, accordingly, passed an order of dissolution of the Panchayat on the ground that the provisions of Section 116(3) are mandatory and, therefore, the Panchayat is required to be dissolved u/s 253 of the Act.

2. At the time of hearing of this matter, it was strenuously argued by Mr. Parmar, for the petitioners, that the Development Commissioner has not considered the facts and circumstances of the case. He further submitted that by Circular Resolution, Budget was passed by the Panchayat. Budget estimates were approved by the Panchayat on 28th March, 2002. It is submitted that at the time when show cause notice was issued, Panchayat had already approved budget and, therefore, there was no question of passing any further order u/s 253 of the Act. He further submitted that the provision of Section 116(3) is not mandatory and it is directory.

3. On behalf of the State Government, the petition is opposed by Mr. Dagli, learned AGP. Mr. Munshaw appears on behalf of the Taluka Development Commissioner, who has filed affidavit-in-reply. So far as the State Government is governed, no affidavit-in-reply is filed.

4. Section 116 of the Gujarat Panchayat Act, 1993 provides as under :

116. Annual Budget Estimates. - (1) Every Village Panchayat shall have prepared annually on or before the 15th December of the current year or such date not later than 31st December of the current year as may be approved by the taluka Panchayat, 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 the budget estimate to the taluka Panchayat on or before -

(a) the 31st December, of the current year where the budget estimate is prepared on or before the 15th December of the current year, or

(b) the 15th January of the current year where the budget estimate is prepared on or before the approved date :

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 taluka Panchayat shall scrutinise the budget estimates and return 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 Panchayat shall thereupon approve the budget estimate on or before the 31st March of the current year with such modifications as it may think fit having regard to the observations and recommendations made by the taluka Panchayat under sub-Section (2).

....

It is required to be noted that till the elected body took charge, the Administrator was in charge of the affairs of the Panchayat. It is not in dispute that so far as the first part of Section 116 of the Act is concerned, it deals with preparing the Budget Estimate of its income and expenditure for the next year and such estimate is to be prepared by 31st December of the current year. In the instant case, it is not in dispute that upto middle of January, 2002, i.e. till the first meeting was held, the affairs of the Panchayat was in the hands of the Administrator and that the Administrator had not prepared any budget estimate, as stipulated in the first part of Section 116 of the Act. This fact, as such, is not in dispute at all. Under these circumstances, in my view, when the Administrator himself has not taken care for preparing the budget estimate by the aforesaid stipulated date, it is difficult to appreciate as to how the elected body was expected to prepare all these things of preparing budget estimates, etc., within a short period. Considering the Scheme of Section 116, even the first part is also equally important regarding preparing budget estimates by 31st December of a particular year. There is a complete time table provided u/s 116. In fact, when the elected body took charge, at that stage, the deadline regarding the first part of the procedure in connection with preparing the budget estimate was already-over. Since the Administrator himself has failed to carry out the said procedure, in my view, no blame is required to be thrown on the Panchayat, as, naturally the Elected Body was not given adequate time and even for preparing the budget estimate, the period was already over. It would have been a different situation if budget estimate was already sent by the Administrator within the stipulated time u/s 116 and thereafter, the Panchayat had remained idle after receiving the budget estimate after due scrutiny from the Taluka Panchayat. But, if the time limit prescribed in the first part regarding preparing of estimate of budget, etc., is not complied with, for which the Panchayat cannot be blamed, in my view, the

Panchayat could not have been blamed for not passing the budget by 31st March, because there is already a breach of the time limit prescribed u/s 116 before even the Elected Body took charge.

5. Even on merits, it is submitted by Mr. Parmar that on 28th March, 2002, the budget was passed by the Panchayat by way of Circular Resolution, as, according to Mr. Parmar, after receiving the proposal from the Taluka Panchayat, there were hardly three days left and it was not possible for convening the meeting and, therefore, by way of Circular Resolution, the same was passed, which was, ultimately, approved even in the subsequent meeting held on 16th April, 2002, by way of Resolution No. 4(2). This factual aspect is, of course, denied by the Taluka Panchayat.

The Development Commissioner, however, found that even if it is presumed that the budget is passed on 28-3-2002 by way of Circular Resolution, then also, as per the statement of Talati-cum-Mantri dated 9-4-2002, the Talati has not given any particulars about such Circular Resolution dated 28-3-2002 and that he has not given any particulars regarding passing of budget by 31st March, 2002. In my view, the Development Commissioner has not given any positive finding on this aspect whether budget was really passed by way of Circular Resolution. Mr. Parmar pointed out that even the statement of the Secretary was not made available to the Panchayat. If then, there was no question of taking any proceedings u/s 253 of the Act.

Even assuming that it is passed later on, then also, in my view, it is not mandatory that budget is required to be passed by 31st March and the said provision is directory and discretion is still available with the State Government whether to form an opinion or not, as contemplated by Section 116(4) of the Act.

I have already observed in Special Civil Application No. 6968 of 2002 that discretion is still available with the State Government for forming an opinion whether any valid reasons are given by the Panchayat for not passing the budget within the stipulated time and it is not a sine qua non that moment budget is not passed by 31st March, there is no option for the State Government, but to dissolve the said Panchayat. In the instant case, it is not in dispute that even budget estimate was not prepared by the Administrator and first part of the provision, i.e. forwarding budget estimate on or before 31st December, is, admittedly, not followed by the Administrator, for which the Panchayat cannot be blamed. Here, the Panchayat was required to carry out the entire exercise as the time limit prescribed under the Act is not complied with at the earlier point of time by the Administrator, who was in charge. In my view, therefore, it is too much to dissolve the Panchayat, even though the time limit prescribed under the act is breached even from the first stage and, admittedly, the Panchayat is not at fault. Since the Development Commissioner has not considered the merits of the case, whether the budget was passed by way of Circular Resolution or even for not passing the budget within the stipulated time, whether there was any justification on the part of the Panchayat, as well as the effect of not preparing the budget estimate by 31st December, in my view, the matter is required to be sent back to the Development Commissioner for reconsideration. It is not expected from a Panchayat to immediately prepare budget estimate without even application of mind. Even as per the Scheme of the Act, reasonable time is provided for preparing and sending the budget estimate. Panchayat is, therefore, required to apply its mind even for the purpose of preparing budget estimate for the village and it is not expected to prepare the same mechanically without giving appropriate thought in the matter. In view of the aforesaid fact that the first part of Section 116 has not been complied with by the Administrator and since the budgetary provisions were not sanctioned or approved upto 31st December, 2001 the entire blame should not have thrown on the Panchayat for not passing the budget within the stipulated time. The Panchayat has clearly asserted the factual aspect that by way of Circular Resolution, the budget was also passed on 28th March, 2002. Even otherwise, thereafter, by Resolution dated 16th April, 2002, the same was again approved. So, in any case, when the notice was issued by the Development Commissioner, budget was already passed. Under these circumstances, it cannot be said that the Panchayat is not in a position to perform its obligation. The Development Commissioner has not examined this case from the aforesaid angle. In that view of the matter, the order passed by the Development Commissioner is set aside, the order appointing the Administrator is also set aside, and the matter is remanded for passing a fresh order in accordance with law after hearing the petitioners. The elected body will now be entitled to function since the order is set aside.

The petition is, therefore, allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

