

(1990) 12 GUJ CK 0008
In the Gujarat High Court

Surat District Panchayat and Another	APPELLANT
Vs	
Development Commissioner and Another	RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 2 GLR 1004

Hon'ble Judges : C.K.Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker, J.—This petition is filed by Surat District Panchayat and the President of that Panchayat for an appropriate writ, direction or order quashing the order passed by the Development Commissioner, respondent No. 1 herein on July 21, 1990, Annexure "D" to the petition.

2. The petitioner No. 1 is the District Panchayat constituted under the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Act"), while the petitioner No. 2 is the President of the said Panchayat. It is the case of the petitioners that in exercise of the powers u/s 131 of the Act, certain committees were constituted by the District Panchayat. It is also their case that the over and above the statutory committees envisaged by Sub-section (1) of Section 131, certain temporary committees for execution of works or scheme can be constituted by the Panchayat and accordingly certain additional committees have been constituted by the District Panchayat. Even though the said action was in accordance with law, the respondent No. 1 in the purported exercise of his powers u/s 294 of the Act, suspended the execution of the said resolution passed by the District Panchayat, prohibiting it from implementing the said resolution. It is against this order passed by the first respondent that the petitioners have approached this Court by filing the present petition under Article 226 of the Constitution of India.

3. I have heard the arguments of Mr. S.V. Parmar, the learned Counsel for the petitioners. He has contended that the order passed by the first respondent is

arbitrary, capricious, null and void, without jurisdiction and de hors the provisions of Section 294(5) of the Act. He submitted that the resolution passed by the petitioner-Panchayat cannot be said to be unlawful and, therefore, the provisions of Section 294 of the Act cannot be pressed into service by the first respondent and there is inherent lack of jurisdiction on the part of the first respondent in taking the impugned action u/s 294 of the Act. He has further contended that there is an error apparent on the face of the record committed by the first respondent in not properly considering the ambit and scope of Section 131 of the Act which authorises and empowers the District Panchayat to constitute committees and the said power cannot be curtailed by the first respondent. He has submitted that even if it is assumed for the sake of argument that the first respondent has such power, it can be exercised when conditions laid down in Sub-section (6) of Section 294 of the Act are satisfied, namely, that the action of the Panchayat must be causing or likely to cause injury or annoyance to the public or to lead to a breach of peace. Since none of the conditions laid down in Section 294(6) is satisfied, the first respondent cannot exercise power. Mr. Parmar further submitted that constitution of committees is a legislative power and the legislature has conferred the said power on the Panchayat concerned which cannot be obstructed by the executive, that is, officer of the State Government. According to Mr. Parmar, Section 131 is directory and not mandatory in nature and even if it is not fully complied with, the action cannot be said to be vitiated on that ground. Mr. Parmar also contended that the impugned order is mala fide, and has been passed in colourable exercise of power at the instance of the State Government, with a view to oblige the opposite group than the party in power in the District Panchayat. In this connection, Mr. Parmar has invited my attention to an earlier order passed by the officer of the first respondent in the year 1983 when the action of the District Panchayat of constitution of certain additional committees was approved by the then Development Commissioner.

4. I am unable to accept any of the contentions raised by Mr. Parmar. It is no doubt true that the District Panchayat is a statutory body constituted and established under the provisions of the Act. But as a statutory body, it is also bound to act in accordance with the provisions of the Act and the Rules framed thereunder. Section 131(1) enacts that the District Panchayat shall constitute certain committees enumerated therein. Sub-section (2) of Section 131 of the Act reads as under:

131 (2). In addition to the committees referred to in Sub-section (1) a District Panchayat may constitute a committee or committees to execute any work or scheme decided upon by the District Panchayat or to inquire into and report to the District Panchayat on matters which the Panchayat may refer to such committee or committees. The District Panchayat may make regulations for the procedure to be followed by any such committee.

5. From conjoint reading of Sub-sections (1) and (2) of Section 131, it is clear that the legislative intent behind above provision appears to be that every

District Panchayat must have statutory committees enumerated in Sub-section (1). But over and above those committees, an enabling provision is made in Sub-section (2), empowering the District Panchayat to constitute committee or committees to execute any work or scheme decided upon by the District Panchayat or to inquire into and report to the District Panchayat on the matter which the District Panchayat may refer to such committee or committees. I fail to appreciate the contention of Mr. Parmar that the provisions of Section 131(1) of the Act should be treated as directory. This contention would have some relevance had the District Panchayat not constituted even the committees contemplated by Sub-section (1) and there is default on the part of the Panchayat in doing so. In the instant case, however, that is not the situation. Apart from the statutory committees referred to in Sub-section (1), the petitioner-Panchayat has constituted additional ten committees and the first respondent in the exercise of the powers u/s 294 of the Act has held that even though ten statutory committees contemplated by Sub-section (1) of Section 131 of the Act were already in existence, ten additional committees were also constituted, which was not in accordance with law. The first respondent has also taken into account relevant and germane considerations, such as, making provisions for separate chambers, telephones, vehicles. T.A./D.A. allowance to the Chairman as well as the members of the committees etc. Since these committees were not under Sub-section (1) of Section 131, that their duration would be as per the wishes of the District Panchayat and, therefore, it would affect administration also. He was also of the opinion that since the statutory committees were already there, it would not be necessary and in the interest of administration to have additional committees and only in certain circumstances specified in Sub-section (2) of Section 131, that the additional committees can be constituted for specific purpose and the maximum period is also provided. In these circumstances, after satisfying about illegality, the first respondent suspended the resolution passed by the District Panchayat and by the impugned order has confirmed his earlier order after hearing the petitioner-Panchayat and the Panchayat was prevented from executing the resolution regarding constitution of additional committees. I am of the opinion that the order passed by the first respondent is in conformity with law and cannot be interfered with by this Court.

6. Section 294 of the Act provides for suspension of the execution of certain orders. It reads as under:

294 Suspension of execution of order:

(1) If, in the opinion of the Taluka Development Officer, the execution of any order or resolution of a Panchayat subordinate to the Taluka Panchayat or the doing of anything which is about to be done, or is being done by or on behalf of such Panchayat, is unlawful, he may by order in writing suspend the execution or prohibit the doing thereof.

(2) When the Taluka Development Officer makes as order under Sub-section (1),

he shall forthwith send to the Panchayat affected thereby a copy of the order; with a statement of the reasons therefore.

(3) The Taluka Development Officer shall forthwith submit to the District Development Officer a report of every case occurring under this section and the District Development Officer may revise or modify any order made therein and make in respect thereof any other order which the Taluka Development Officer could have made.

(4) The District Development Officer in respect of a Taluka Panchayat or Nagar Panchayat shall have the same powers as Taluka Development Officer has in respect of a Gram Panchayat under Sub-sections (1), and (3) subject to the modification that he shall submit a report under Sub-section (3) to the State Government. The State Government may pass such order thereon as it may deem fit.

(5) An officer authorised by the State Government in this behalf by general or special order, shall in respect of a District Panchayat have the same powers as the District Development Officer has in respect of a Taluka Panchayat under this section:

(6) If in the opinion of the Collector the execution of any order or resolution of any Panchayat or the doing of anything which is about to be done or is being done by or on behalf of such Panchayat is causing or is likely to cause injury or annoyance to the public or to lead to a breach of peace, the Collector may by order in writing suspend the execution or prohibit the doing thereof and shall forthwith.

(a) send to the Panchayat, affected thereby a copy of the order, with a statement of the reasons therefore, and

(b) submit to the State Government a report thereof.

7. I do not find any substance in the arguments of the learned Counsel for the petitioners that the first respondent has no power, authority or jurisdiction to pass the impugned order u/s 294 of the Act. After appreciating the facts and circumstances of the case and after taking into consideration the provisions of Sub-sections. (1) and (2) of Section 131, if the first respondent has passed the impugned order, it cannot be said that he has no jurisdiction to pass such an order. I am not exercising appellate jurisdiction over the order passed by the first respondent.

8. I am of the opinion that the first respondent has taken into account the relevant and germane factors such as additional expenses to the District Panchayat in view of the constitution of the additional committees headed by the Chairman as well as Members and incidental expenses in connection with the constitution of additional committees, including providing of chambers, telephones, staff vehicles, etc. The legislature has after considering the administration at the District level has made a provision for the constitution of

certain committees under Sub-section (1) of Section 131. After making such provision, in special circumstances enumerated in Sub-section (2) that for specified purposes or schemes that enabling provision is made for constitution of the additional committees with a view to see that there should not be permanent additional financial burden on the Panchayat. In fact, the first respondent has kept in mind the above legislative intent and has exercised his power u/s 294 of the Act after hearing the District Panchayat. He has also rightly observed that since the duration of the additional committees would be as per sweet-will of the Panchayat, it may adversely affect the administration of the Panchayat. How can it be said that the first respondent has no power, authority or jurisdiction to pass such order or that the reasons recorded by him are arbitrary, capricious or unreasonable? It also cannot be forgotten that the first respondent is an officer authorised by the State Government under the Act and is exercising statutory power over District Panchayat. In other words, he is a superior authority under the Act. It is, therefore, not only his power but his duty to see that all District Panchayats must act within four corners of the law and there should not be abuse of power on their part. It is expected of him to prevent the District Panchayat from proceeding with any act which is illegal or unlawful. It, therefore, cannot be said that either the first respondent has no jurisdiction or that his order is arbitrary and unreasonable.

9. In view of the above discussion, there is no question of mala fide or colourable exercise of the power on the part of the first respondent. It is only after taking into consideration merits of the matter that the first respondent has suspended implementation and operation of the resolution passed by the District Panchayat and that the said action is in conformity with the statute.

10. So far as reliance on Sub-section (6) Section 294 of the Act is concerned, it is thoroughly misconceived. It is no doubt true that before Sub-section (6) of Section 294 can be invoked, the condition precedent regarding the injury or annoyance to the public or breach of peace must be established. However, the impugned order is not passed under Sub-section (6) of Section 294. Again, it should not be forgotten that such condition is treated by the legislature as condition precedent in view of the fact that the said power is conferred on an authority not directly connected under the Act, namely, the Collector in case of emergency by imposing an obligation on him to forthwith seal a copy of the order passed by him with the reason recorded by him in support of such order to the Panchayat affected thereby and also to submit a report thereof to the State Government. The said power cannot be equated with the power exercisable by an officer authorised by the State Government under Sub-section (5) of Section 294. At the cost of repetition, I may say that it is not only the power but the duty of the officer authorised by the State Government (first respondent-Development Commissioner in the instant case) that the District Panchayat acts in accordance with the provisions of the Gujarat Panchayats Act and in view of the fact that he was satisfied that the petitioner-Panchayat was not acting in accordance with law that he has rightly exercised the said power by preventing and prohibiting the

petitioner-Panchayat from implementing and executing the resolution passed by it.

11. In this view of the matter, in my opinion, there is no substance in any of the arguments advanced, contentions raised and submissions made on behalf of the learned Counsel for the petitioners and the petition is, therefore, summarily rejected.