

(2014) 12 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 13685 of 2014

Suvarnaben Chetanbhai Raval

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 12 GUJ CK 0036

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Mehul Sharad Shah, Advocate for the Appellant; Shruti Pathak, Learned Assistant Government Pleader, Advocate for the Respondent

Judgement

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Abhilasha Kumari, J.—Rule. Ms. Shruti Pathak, learned Assistant Government Pleader, waives service of notice of Rule for respondent No. 1-State of Gujarat and Mr. H.S. Munshaw, learned advocate, waives service of notices of Rule for respondents Nos. 2 and 3. On the facts and in the circumstances of the case, and with the consent of the learned counsel for the respective parties, the petition is being heard and decided finally.

2. The petitioner, who was elected as the Sarpanch of Kothara Group Gram Panchayat, has filed this petition under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus or any other appropriate direction, quashing and setting aside the resolution/proceedings dated 04.09.2014, of Kothara Group Gram Panchayat, accepting the no confidence motion against the petitioner.

3. Briefly stated, the facts of the case are that the petitioner was elected as the Sarpanch of Kothara Group Gram Panchayat on 17.01.2012. Since then, she was performing the functions and discharging the duties of that office until the passing of the above-mentioned no confidence motion. A meeting of the Gram

Panchayat was convened on 14.03.2014, to discuss the no confidence motion against the petitioner. However, on that date, not a single member remained present in the meeting. The petitioner was the only one present, therefore, the no confidence motion could not be passed. Thereafter, a meeting of the Gram Panchayat was convened on 04.09.2014, at the office of Kothara Group Gram Panchayat, wherein a total number of eleven members, including the petitioner, remained present out of thirteen members, to discuss the no confidence motion against the petitioner. The Upa-sarpanch presided over the said meeting. After the commencement of the proceedings, straightway, the Upa-sarpanch asked for the voting to take place by asking the members to raise their hands either in favour of, or against the no confidence motion. In short, the no confidence motion was put to vote without any discussion and the petitioner was not granted an opportunity to address the house. Ten members cast their votes in favour of the no confidence motion, one member voted against it, whereas two members remained absent. The no confidence motion against the petitioner was thus passed and signed by the Upa-sarpanch and Talati-cum-Mantri, as well as the Officer of the Taluka Development Office. The grievance of the petitioner is that under the provisions of Section 56(3) of the Gujarat Panchayats Act, 1993 ("the Act" for short), a Sarpanch against whom a motion of no confidence is proposed to be passed, shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote). As per the judgment in the case of Geetaben Bharatbhai Patel Vs. State of Gujarat and Others , the said provision of law is mandatory in nature. On this short ground, the petitioner challenges the no confidence motion passed against her, by way of the present petition.

4. Mr. Mehul Sharad Shah, learned advocate for the petitioner, has submitted that the resolution dated 04.09.2014 passing the no confidence motion against the petitioner, makes it clear that the petitioner has not been granted an opportunity of speaking before the no confidence motion was passed. The petitioner was not allowed to address the house before the no confidence motion was put to vote in the meeting held on 04.09.2014, resulting in a serious miscarriage of justice. That the right to address a meeting convened to discuss a no confidence motion is a statutory right available to the petitioner. The interest of justice demanded that the petitioner be permitted to put forth her case before the Gram Panchayat, prior to the voting.

5. Learned advocate for the petitioner has relied upon the judgment in the case of Geetaben Bharatbhai Patel Vs. State of Gujarat and others(supra) in support of the above submissions, as also on the provisions of Section 56(3) of the Act.

6. An affidavit-in-reply has been filed on behalf of respondent No. 3-Talati-cum-Mantri, Kothara Group Gram Panchayat, Taluka Abdasa, District Kutch, affirmed on 07.10.2014. It is stated in paragraphs-7, 8 and 11 of the said affidavit-in-reply, that the petitioner was granted an opportunity of addressing the house at the time when the no confidence motion was being discussed, but she did not

accept the opportunity and failed to address the house.

7. Respondent No. 2-Taluka Development Officer has also filed an affidavit-in-reply affirmed on 17.11.2014 opposing the petition. However, the said affidavit does not speak of an opportunity of hearing being granted to the petitioner, though it does mention in paragraph-4, that the entire proceedings of the meeting were videographed and compact discs are available with the Talati-cum-Mantri of the Gram Panchayat.

8. Thereafter, a further affidavit-in-reply has been filed on behalf of respondent No. 2-Taluka Development Officer, Abdasa, affirmed on 19.12.2014, stating that he has viewed the compact disc of the meeting and it is clear therefrom, that the petitioner was not offered an opportunity of addressing the house by the Upa-sarpanch, who was presiding over the meeting in which the no confidence motion was passed against her. It is further stated that the Extension Officer of Abdasa Taluka Panchayat had attended the meeting as an observer, while the Talati-cum-Mantri was present in the meeting as the Secretary of the Gram Panchayat.

9. Respondent No. 3-Jitendra S. Prajapati, Talati-cum-Mantri of Kothara Group Gram Panchayat, has also filed a further affidavit, affirmed on 19.12.2014. The contents of the said affidavit make interesting reading, and are reproduced hereinbelow:

"I, Jitendra S. Prajapati, Talati-cum-Mantri, Kothara Group Gram Panchayat, Abdasa Taluka Panchayat, District Kutch, do hereby solemnly affirm and state on oath that I have already filed Affidavit-in-reply in the present proceedings and thereupon crave leave to file Further Affidavit-in-reply as under:

1. The Respondent No. 3 humbly submits that in Affidavit-in-reply he has mentioned that the Petitioner was offered an opportunity to address the House as no confidence motion was moved against her. The Deponent has also stated that the proceedings of the meeting were videographed and compact disc is available.

2. The Respondent No. 3 most respectfully submits that as such the on perusal of the compact disc it is clear that the Upsarpanch of the Gram Panchayat, who was presiding over the meeting, has not informed the Petitioner that it was open to her to address the House before the said no confidence motion was put to vote.

The Deponent most respectfully tenders unconditional apology for stating on oath that the petitioner was offered an opportunity to address the House. The Deponent submits that the said statement was not made with any ulterior motive or to mislead the Hon"ble Court. The Deponent submits that he has joined the service on 15/11/2011 and considering his age, inexperience and long carrier ahead of him, Hon"ble Court is most respectfully prayed to accept the unconditional apology and pardon the Deponent by way of passing appropriate orders in the interest of justice."

10. After bringing the further affidavits filed by respondents Nos. 2 and 3 to the

notice of this Court, Mr. H.S. Munshaw, learned advocate for the said respondents, has submitted that the unconditional apologies tendered by the respondents may be accepted, and as it is found after viewing the compact disc, that no opportunity of hearing was granted to the petitioner, appropriate orders, in accordance with law, may be passed.

11. Ms. Shruti Pathak, learned Assistant Government Pleader, submits that the State Government is not a contesting respondent and has no submissions to offer.

12. The position of law regarding the right of a Sarpanch against whom a no confidence motion is being put to vote, has been clearly stated by this Court in the judgment of Geetaben Bharatbhai Patel Vs. State of Gujarat and others(supra), in the following terms:

"14. Based on the above judicial pronouncements, it is necessary to examine whether the provisions of section 56(3) of the said Act which provide that a Sarpanch, or as the case may be, an Upa-Sarpanch though shall not preside over a meeting in which a motion of no confidence is discussed against him, shall have a right to speak or otherwise to take part in the proceedings of the no confidence motion including right to vote; is a mandatory requirement of law or is merely directory so that the proceedings of no confidence motion would not vitiate even if the requirement is not strictly fulfilled.

15. From the above recording of the relevant provisions of the said Act and the said Rules and in particular rules 29 to 35, it can be seen that even in the capacity of a member of the Panchayat, Sarpanch against whom no confidence motion is being conducted would have a right to participate and to speak subject, of course, to the provisions contained in rules 29 to 35 of the said Rules. Section 56(3) of the said Act not only preserves this right, but highlights the aspect that a Sarpanch, or as the case may be, an Up-Sarpanch who is facing no confidence motion though shall not preside over such a meeting, but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting as also shall have a right to vote. The words shall have a right to speak or otherwise to take part in the proceedings of such a meeting have been used by the Legislature advisedly and unless it is found from the attending provisions of the statute that the Legislature intended that such provision should not be mandatory, it is not possible to hold that the requirement is merely directory in nature. A right to address a meeting or otherwise to take part in the proceedings including to vote are statutory rights vested in the Sarpanch or Upa-Sarpanch who is facing a no confidence motion. A no confidence motion has to be tabled and debated before the same can be put to vote. A Sarpanch whose position and reputation are at stake definitely has a right to speak at such a meeting and when denied such a right, prejudice would be caused to him or her, as the case may be. In a democracy when an elected Sarpanch or, as the case may be, an Up-Sarpanch is being sought to be removed through a motion of no confidence and when the provisions of section 56(3) of the said Act specifically provide that a Sarpanch or, as the case may be, Up-Sarpanch who is facing such a no

confidence motion shall have a right to speak, it is not possible to hold that such a requirement is merely directory in nature. The Sarpanch or, as the case may be, Up-Sarpanch, through his persuasive power or logical arguments may be able to prevail upon some of the members present at the meeting to change their mind and persuade them to oppose the no confidence motion. By denying the Sarpanch or, as the case may be, Up-Sarpanch an audience altogether, this statutory right is being violated. It is not possible to judge the prejudice that may be caused in an individual case by the denial of such a right. It is also not possible to interpret the provisions of section 56(3) of the said Act keeping in mind an individual fact situation in a given case. It is, therefore, not possible to accept the contention of the learned advocate Shri Raval for respondent No. 6 that in the present case when as many as 14 out of 17 members voted in favour of no-confidence motion, no prejudice was caused to the petitioner even if she was denied the right to speak at the meeting and that eventually what matters is the opinion of two-third members of the Panchayat that no confidence motion should be adopted. What would have been the position if the petitioner was permitted to speak and participate in the said meeting is not possible to predict. Before a no confidence motion could be put to vote, the petitioner had a statutory right to address the meeting. When such a mandatory requirement of law was not followed, all consequential steps of putting the motion to vote and counting of votes and adoption of resolution would automatically fail having no effect or validity.

16. In view of the conclusion that I have reached, namely, that the requirement of section 56(3) of the said Act is mandatory in nature and not merely directory, all consequential steps from the stage of voting of no confidence motion and its adoption by the meeting would be rendered non est and ineffective, since it is factually concluded in the earlier portion of the judgment that the petitioner was not given an opportunity to speak at the meeting or in any other manner to participate except to vote."

13. Letters Patent Appeal No. 1677 of 2005 was filed against the above-mentioned judgment but was dismissed by the Division Bench, vide order dated 08.12.2005. The principles of law enunciated in the above judgment have, therefore, attained finality. The provisions of Section 56(3) of the Act are mandatory in nature and not merely directory. It was, therefore, incumbent upon respondents Nos. 2 and 3 to have granted an opportunity of addressing the house to the petitioner, before the passing of the no confidence motion against her. It may be true that the petitioner herself may not have demanded an opportunity of speaking. However, when a right accrues to the petitioner by law, by way of Section 56(3) of the Act, such right would not get eroded merely on the ground that the petitioner did not demand an opportunity of hearing. Respondents Nos. 2 and 3 are responsible authorities, whose duty it is to enforce the provisions of law and follow the judgments of this Court in letter and spirit. By not granting the petitioner an opportunity of addressing the house during the meeting dated 04.09.2014, respondents Nos. 2 and 3 have failed to discharge

the duties enjoined upon them by the statute, thereby, causing grave prejudice and injustice to the petitioner.

14. It has now come to light from the further affidavits filed on behalf of respondents Nos. 2 and 3 respectively that, in fact, the petitioner was not granted any opportunity of addressing the house before the no confidence motion was passed against her. As per the statements made in the further affidavits, this position is clear from the compact disc of the videographed proceedings, as admitted by the said respondents, themselves.

15. It, therefore, transpires that respondent No. 3-Talati-cum-Mantri, has made a false statement on oath before this Court in the affidavit-in-reply filed by him, affirmed on 07.10.2014, to the effect that the petitioner was granted an opportunity of speaking but did not avail of it. The same respondent has now admitted in the further affidavit that the petitioner was not granted an opportunity of hearing at all. The compact disc of the videographed proceedings was available with respondent No. 3 even when the first affidavit was filed. In spite of this, a false statement was made before this Court in the said affidavit. Though an unconditional apology has been offered by respondent No. 3, it is clear that respondent No. 3, being the Talati-cum-Mantri and the person who has recorded the entire proceedings of the meeting dated 04.09.2014, was very much aware that no opportunity of hearing had been granted to the petitioner. The written proceedings recorded by him also do not state that any opportunity of hearing was granted to the petitioner. However, for reasons best known to himself, respondent No. 3 has made a false statement on oath before this Court in the affidavit-in-reply affirmed on 07.10.2014. Later on, having developed cold feet, respondent No. 3 has now come out with an unconditional apology. In the view of this Court, an apology cannot compensate for deliberately misleading the Court and depriving the petitioner of her just legal rights.

16. This Court does not appreciate conduct such as that displayed by respondent No. 3, in making a false statement on oath before the Court. This conduct of respondent No. 3 reveals a reckless, careless and casual attitude towards the legal rights of a democratically elected representative, on the part of a Talati-cum-Mantri, who is duty-bound to record all the proceedings of the said Panchayat correctly and meticulously. Apart from this, the conduct of respondent No. 3 displays a tendency to play fast and loose with the Court. Hence, appropriate costs deserve to be imposed on respondent No. 3.

17. In view of the above discussion, it is clear that the mandatory provisions of Section 56(3) of the Act have been violated by respondents Nos. 2 and 3, during the meeting dated 04.09.2014, which resulted in the no confidence motion being passed against the petitioner, de hors the provisions of law. The entire proceedings dated 04.09.2014, having been conducted in violation of the mandatory provisions of Section 56(3) of the Act, deserve to be quashed and set aside.

18. Accordingly, the following order is passed.

The resolution and proceedings of the no confidence motion dated 04.09.2014, passed by the Kothara Group Gram Panchayat against the petitioner, are hereby quashed and set aside. Consequently, the petitioner shall be reinstated as the Sarpanch of the said Gram Panchayat, forthwith.

Respondent No. 3-Jitendra S. Prajapati, who is present in-person in the Court today, has agreed to personally pay costs of Rs. 5,000/- (Rupees Five Thousand Only) to the petitioner. He shall do so, within a period of two weeks from today.

19. The petition is allowed, in the above terms. Rule is made absolute, accordingly.

Direct Service is permitted.