

(2001) 12 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 4985 of 2001

Trivedi Amthalal Laljibhai

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision : 18-12-2001

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 258, 258(1)

Citation : (2001) 12 GUJ CK 0031

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Dilip B Rana, for the Appellant; Shraddha Trivedi, AGP for Respondent No. 1 and A.H. Shah, for M.H. Rathod, for the Respondent

Judgement

H.K. Rathod, J.—Rule, service of which is waived by Ms. Trivedi, learned AGP for respondent NO. 1 and Ms. Shah, learned advocate

appearing for Mr. Rathod for respondent No.2. In the facts and circumstances of the case and also with the consent of the learned advocates for

the respective parties, the matter is taken up for final hearing today.

2. By way of this petition, the petitioner has challenged the impugned order dated 6.6.2001 whereby the respondent No.1 has cancelled the

resolution No. 6/11 dated 19.8.2000 passed by the respondent No.2 has been favour of the petitioner. Learned advocate Mr. Rana appearing for

the petitioner has submitted that the said resolution dated 19.8.2000 passed by the respondent No.2 in favour of the petitioner has been cancelled

by the respondent No.1 without affording any opportunity of hearing whatsoever and, therefore, same is contrary to the principles of natural justice

and is liable to be quashed and set aside on that ground alone. He has placed reliance on the decision of this court in case of Vasantlal Ramanlal

Kansara versus Viramgam Municipality and others reported in 1995 (2) GLH 436 and has submitted that in the said decision also, beneficiary of

the resolution passed by the Municipality concerned was not heard by the Collector before cancelling the resolution passed by the Municipality

and, therefore, following the ratio of the decision in case of H.H. Parmar v. Collector, Rajkot and Another reported in (2) GLR 97, the order

passed by the Collector was set aside on that ground alone. According to him, in this case also, the beneficiary of the resolution passed by the

Respondent No.2 has not been heard by the Collector before cancelling the resolution dated 19th August, 2000 whereby the beneficiary namely

petitioner herein was promoted to the post of Overseer. He has submitted that as a result of the order dated 6th June, 2001 passed by the

Collector, the petitioner has been reverted to the post of Technical Assistant and, therefore, the petitioner ought to have been heard by the

respondent Collector before passing the order dated 6th June, 2001 and, therefore, this petition is required to be allowed by quashing and setting

the said order dated 6th June, 2001 on that ground alone.

3. On the other hand, Ms. Trivedi, the learned AGP appearing for respondent No.1 Collector has submitted that the impugned order dated 6th

June, 2001 was passed by the Collector in exercise of the powers under sec. 258 of the Gujarat Municipalities Act and under Sec. 258 of the Act,

the only party which the Collector is bound to hear is the Municipality and, therefore, this Court should not entertain this petition.

4. Considering the submissions made by the learned advocates for the parties and also considering the averments made by the petitioner in the

memo of petition, I am of the view that it is clear that the petitioner who is the beneficiary of the resolution dated 19th August, 2000 was not heard

by the Collector before cancelling the said resolution by order dated 6th June, 2001. In light of these facts, the observations made by this Court in

case of Vasantilal Ramanlal Kansara (supra) are material. Following the ratio of the decision in case of H.H. Parmar v. Collector, Rajkot reported

in (2) GLR 97, this Court has held as under :

3. The only contention which was canvassed at the hearing of this petition was that though the Resolution of the Municipality which was passed in

favour of the petitioner was set aside, the petitioner was not heard by the

Collector in the matter.

5A. The aforesaid ratio of the decision of the learned Single Judge in special civil application no. 548 of 1972 is in clear conflict with the ratio of

the decision of the Division Bench rendered in the case of H.H. Parmar (supra) which lays down that in the case where the benefit is given to a

third party under the Resolution of the Municipality, it was incumbent on the part of the authority to give a reasonable opportunity of being heard to

such a beneficiary. In this view of the matter, the decision of the learned Single Judge in Special Civil Application No. 548 of 1972 in the case of

Pratapsing (supra) is no longer a good law.

6. As the petitioner was entitled to be heard before the Collector could make an order u/s 258(1) of the said Act suspending the resolution under

which the petitioner was a beneficiary, the impugned order of the Collector having been passed without hearing the petitioner cannot be sustained.

The impugned order is, therefore, set aside and the Collector is directed to decide the matter afresh in accordance with law u/s 258(1) of the Act

after giving an opportunity of hearing to the petitioner. The Collector shall take a decision as expeditiously as possible. Rule is made absolute

accordingly with no order as to costs.

5. Therefore, considering the decision of this Court in case of Vasantilal Ramanlal Kansara (supra), since the petitioner herein has also not been

heard by the Collector before passing the order dated 6th June, 2001, the order dated 6th June, 2001 passed by the Collector is required to be

quashed and set aside on that ground alone with a liberty to the Collector to pass the appropriate order in accordance with law u/s 258(1) of the

Act after giving reasonable opportunity to the petitioner.

6. The impugned order dated 6th June, 2001 passed by respondent No. 1 Collector is, therefore, quashed and set aside and the Collector is

directed to decide the matter afresh in accordance with law u/s 258(1) of the Act after giving an opportunity of hearing to the petitioner. The

Collector shall take a decision as expeditiously as possible but not later than three months from the date of receipt of copy of this order. Rule is

made absolute accordingly with no order as to costs.