

(2011) 05 GUJ CK 0161
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2593 of 2010

Vakatar Bhagvanjibhai Devabhai

APPELLANT

Vs

Additional Development Commissioner and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Panchayats (Amendment) Act, 1993 — Section 105, 41, 41(A), 57(1), 57(3)

Citation : AIR 2011 Guj 159

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Bharat T. Rao, for the Appellant; Manisha L. Shah, AGP and H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

J. B. Pardiwala, J.—The appellant-original petitioner has preferred this Appeal under Clause 15 of the Letters Patent, calling in question the legality, validity and propriety of the judgment and order dated 15th September, 2010 passed by the learned Single Judge in Special Civil Application No. 10991/2010, whereby the learned single Judge dismissed the writ petition preferred by the appellant, confirming the orders passed by the competent authorities under the Gujarat Panchayats Act, 1993 (hereinafter referred to as, "the Act") removing the appellant as Sarpanch of the village, in exercise of powers u/s 57(1) of the Act.

2. Brief facts relevant for the purpose of deciding this Appeal can be summarised as under:

(1) The appellant- original petitioner was elected as Sarpanch of Bandra Gram Panchayat, Taluka Gondal, District Rajkot, and assumed post of Sarpanch on 28th January, 2007.

(2) While holding the office of Sarpanch, he came to be served with a show-cause notice issued by the District Development Officer, Rajkot u/s 57(1) of the

Act, calling upon the appellant to explain certain charges of misconduct in discharge of his duties as Sarpanch.

(3) It appears that detailed explanation at the ends of the-appellant - original petitioner was not found satisfactory and the District Development Officer, Rajkot, vide his order dated 15th February, 2010 in exercise of powers u/s 57(1) of the Act, ordered removal of the appellant from the office of Sarpanch, Bandra Gram Panchayat.

(4) The appellant preferred appeal to the State Government under the provisions of Section 57(3) of the Act. The appellate authority, namely, the Additional Development Commissioner, State of Gujarat, vide order dated 20th July, 2010, dismissed the appeal, confirming the order of removal of the appellant from the post of Sarpanch passed by the District Development Officer, Rajkot.

(5) The orders passed by the authorities under the Act were subject-matter of challenge before the learned single Judge in a writ petition being Special Civil Application No. 10991/2010. The learned Single Judge came to the conclusion that as both the authorities, namely, the District Development Officer, Rajkot and the appellate authority -the Additional Development Commissioner, State of Gujarat, have concurrently held that the appellant is guilty of misconduct, declined and refused to grant relief to the appellant - original petitioner and accordingly dismissed the petition.

3. We have heard learned counsel Mr. B.T. Rao for the appellant, Mr. H. S. Munshaw for respondent Nos. 2 & 3, and learned AGP Mrs. Manisha Shah for the respondent - State, and perused the record.

4. The order of removal u/s 57 of the Act came to be passed against the appellant on the grounds as indicated below:

(1) The first charge is with regard to the implementation of SGRY Scheme. It is alleged that as per the guidelines of SGRY Scheme, the necessary work has to be undertaken through the laborers of the same village. It is alleged that the laborers were brought from another place and persons residing in the village were deprived of employment. The sum and substance of this charge is that the appellant as a Sarpanch ought to have taken care to see that the SGRY Scheme is implemented properly and all the guidelines are strictly adhered to.

(2) The second charge is to the effect that u/s 105 of the Act, it is the responsibility of the Gram Panchayat to maintain Government land and "gauchar" land and see to it that there is no encroachment or any obstruction created by any other person in this regard. The charge is that the appellant, in his capacity as Sarpanch, has been negligent in removing such encroachments made upon Government land and "gauchar" land. (3) The third charge is to the effect that one Mr. Jagdish D. Makwana, a member of the Gram Panchayat was also employed as a daily wager and was paid in all Rs. 1,300.00 towards labour charges for doing labour work on repairs of water supply pipelines.

5. Learned counsel for the appellant has invited our attention to the provisions of S. 57(1) of the Act and submitted that a person can be removed from the office of Sarpanch only if the State Government or its delegate is of the opinion that the Sarpanch has been guilty of:--

- (i) Misconduct in the discharge of his duties, or
- (ii) He is guilty of any disgraceful conduct, or
- (iii) He has abused his power, or
- (iv) Makes persistent defaults, or
- (v) Has become incapable of performing his duties and functions under the Act.

6. Learned counsel for the appellant would submit that none of the aforesaid five conditions indicated in the statutory provision is satisfied and therefore the impugned order dated 15th February, 2010 passed by the District Development Officer, Rajkot and order dated 20th July, 2010 confirmed by the Additional Development Commissioner as an appellate authority are not only contrary to the provisions of the Act, but also destructive of democracy at the grass-root level.

7. Learned counsels for the respondents defended the orders by submitting that both the authorities viz. District Development Officer and the Additional Development Commissioner have come to the conclusion that the appellant is guilty of misconduct and abuse of powers and the findings have been confirmed by the learned single Judge in exercise of the powers under Art. 227 of the Constitution of India and therefore the appeal before us deserves to be dismissed.

8. Section 57 of the Act, which mandates five conditions for removal from office reads as under :--

57. Removal from office.

The competent authority may remove from office any member of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch, or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat.

9. On close reading of the provisions of S. 57, it appears that a mere irregularity or even an illegality in discharge of duties or causing loss to the Gram Panchayat does not by itself empower the State Government or its delegate to remove a Sarpanch from the elected office. There must be a finding supported by evidence

to show that the concerned Sarpanch has been guilty of misconduct in discharge of his duties or of his disgraceful conduct or is incapable of performing his duties under the Act persistently. We take notice of the fact, more particularly, considering the nature of the charges levelled against the appellant that the authorities are equating misconduct or disgraceful conduct or persistent defaults to that with dereliction of duty. There is a vast difference between "misconduct in the discharge of duties" and "dereliction of duty". Again, at the cost of repetition, we say that the charges as levelled against the appellant and said to have been proved are not of such a nature which can be termed as misconduct in the discharge of duties or disgraceful conduct. Apparently, it is not a case of persistent default in the performance of duties.

10. Section 57 does not speak about dereliction of duty. Misconduct is a violation of definite law. Dereliction of duty or carelessness is an abuse of discretion under a definite law. Misconduct is a forbidden act whereas dereliction of duty is forbidden quality of an act and is necessarily indefinite. However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a public post or office like Sarpanch would not by themselves constitute misconduct. Person may be negligent in performance of duty and a lapse in performance of duty or error of judgment in evaluating a developing situation, may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to the negligence would be such as to the repairable or so heavy that the degree of culpability would be very high.

11. In a recent pronouncement of the Hon'ble Supreme Court in the matter of Sharda Kailash Mittal Vs. State of M.P. and Others, while considering the analogous provision under the Madhya Pradesh Municipalities Act where the case was of removal of President, the Hon'ble Supreme Court in paragraphs 18 and 19 has observed as under :--

18. For taking action u/s 41 A for removal of President, Vice-President or Chairman of any Committee, power, is conferred on the State Government with no provision of any appeal. The action of removal casts a serious stigma on the personal and public life of the concerned office-bearer and may result in his/her disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office bearer. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

19. In the present case, the actions of the appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s 41.

12. In the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, the Hon"ble Supreme Court while dealing with the removal of a President of the Council under Punjab Municipal Act, 1911, held in Paragraph 6 as under :

6. In a democracy governed by rule of law; once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his elections set aside by a prescribed procedure known to law.....Removal from such an office is a serious matter. It curtails the statutory term of them holder of the office, a stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held.

13. In Paragraph 11 the Hon"ble Supreme Court has further observed as under :

11. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is.....The legislature could not have intended the occupant by an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

14. We are of the view that on the basis of the material on record and the findings recorded by the authorities under the Act and the findings recorded by the learned single Judge in his order dated 15th September, 2010, it is not possible to hold that the case of the appellant-original petitioner falls within the ambit of Section 57 of the Act. So far as order of the learned single Judge is concerned, the learned single Judge has proceeded solely on the footing that as both the authorities under the Act have found the appellant guilty of misconduct, no interference was necessary. Except this, there is no other independent finding in this regard by the learned single Judge. We have also noticed that the learned single Judge, in its judgment and order, has observed that the charges include misappropriation of funds of the Gram Panchayat. We do not find any such charge of misappropriation in the show-cause notice. Even the affidavit-in-reply filed by the District Development Officer-respondent No. 2 does not speak about any misappropriation. All that has been stated in the affidavit-in-reply is that certain written complaints were received against the appellant from the villagers, alleging certain irregularities and financial misappropriation. Besides, we are of the view that all the charges which have been levelled and said to have been established concern the entire body of the Gram Panchayat. For example, to say that the Sarpanch has been negligent in not removing the encroachments made upon the Government land or "gauchar" land or has been negligent in proper implementation of any Government scheme, then it is to say that as if the Sarpanch, as the head of the Gram Panchayat, is the only person responsible, in such matters. If at all any liability has to be fastened, it has to be fastened on

the body as a whole, which includes other members of the Panchayat also. Powers u/s 57(1) of the Act cannot be exercised in such an arbitrary manner and that too on such accusations.

15. For the reasons recorded above, we are left with no other option but to disturb the order dated 15th September, 2010 passed by the learned single Judge in Special Civil Application No. 10991/2010.

16. The order dated 15th Feb, 2010 passed by respondent No. 2-District Development Officer, Rajkot, and the order dated 20th July, 2010 passed in appeal by the Additional Development Commissioner are quashed and set aside. The order dated 15th September, 2010 passed by the learned single Judge in Special Civil Application No. 10991/2010 is also quashed and set aside and we allow Special Civil Application No. 10991/2010. The appellant-original petitioner is allowed to resume his office of Sarpanch.

17. The Appeal is allowed with no order as to costs.