

(2009) 08 GUJ CK 0010

In the Gujarat High Court

Case No : Spl. Civil Application No. 6632 of 2009

Vishnubhai Joitaram Rathod

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1993 — Section 30(1), 32, 57

Citation : AIR 2009 Guj 190 : (2009) 3 GLH 308 : (2010) 8 RCR(Civil) 2599

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : N.K. Majmudar, for the Appellant; Jirga Jhaveri, AGP, for the Respondent

Judgement

D.A. Mehta, J.—Learned Advocate for the petitioner orally seeks permission to place on record order dated 31.3.2009 made by Revisional Authority as Annexure "G". Permission granted. Amendment to be carried out during course of the day. The petition is taken up for hearing on the footing that the amendment has taken place.

2. This petition challenges orders dated 1.9.2008 made by Taluka Development Officer, 7.2.2009 made by District Development Officer and order dated 31.3.2009 made by Deputy Secretary (Inquiry), Panchayat Gram Gruhnirman and Gram Vikas Vibhag, Sachivalaya, Gandhinagar, in the backdrop of following facts and circumstances of the case.

3. The petitioner was elected as Sarpanch of Kharadharva Gram Panchayat at election held in April, 2007. The Taluka Development Officer initiated proceedings under the provisions of Section 32 read with Section 30(1)(m) of The Gujarat Panchayats Act, 1993 (the Act). Taluka Development Officer held that the petitioner was having more than two children at the time of contesting the election of Sarpanch and thus was disqualified in, light of provisions of Section 30(1)(m) of the Act in light of the Gujarat Local Authorities Laws (Amendment) Act, 2005 (the Amending Act). The Taluka Development Officer passed an order

on 1.9.2008 removing the petitioner as Sarpanch.

4. The petitioner carried the matter by way of an Appeal before the District Development Officer who confirmed the order of Taluka Development Officer vide order dated 7.2.2009.

5. The petitioner did not succeed in the Revision Application filed before the State Government.

6. The principal thrust of the submission made on behalf of the petitioner is that third child was born on 9.12.2006. and therefore, Clause (m) of Section 30(1) of the Act, could not have been made applicable and the Authorities were not Justified in exercising powers u/s 32 of the Act. It was submitted that the Amending Act was made effective from 4.8.2005 and therefore within a period of one year therefrom, if a child was conceived, but born later than the period of one year, no disqualification would be incurred. It was submitted that the provision uses the word "born" which would take within its sweep the point of time when a foetus is conceived as that would be the point when one can term that a child is born. The learned Advocate therefore submitted that if this act takes place within the stipulated period of one year it cannot be stated that the petitioner had incurred any disqualification and therefore the orders made by the respondent-Authorities were liable to be struck down.

7. Alternatively it was submitted that for removing the petitioner from the post of Sarpanch, action has to be taken under the provisions of Section 57 of the Act but the Authorities have only ordered removal of the petitioner from the post of Sarpanch under the provisions of Section 32 on, the ground that disqualification in terms of Section 30(1)(m) of the Act had been incurred. That the said provision pertains to disqualification as a Member and therefore on this count the orders were liable to be struck down.

8. The principal contention appears to be attractive at first blush but when one reads relevant provision it becomes clear that the contention is based on a fallacious premise. The relevant provision of Section 30 as is material for the present reads as under:

30(1) No person shall be a member of a panchayat or continue as such who:

xxx xxx xxx

(m) has more than two children:

Provided that a person having more than two children on the date of commencement of the Gujarat Local Authorities Laws (Amendment) Act, 2005 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be

taken into consideration for the purpose of disqualification under this clause.

Explanation : For the purpose of this clause, (i) where a couple has only one child on or after the date of such commencement, any number of children born out of single subsequent delivery shall be deemed to be one entity;

(ii) "child" does not include an adopted child or children.

9. A plain reading indicates that no person shall be a Member of the Panchayat or continue as such a Member of the Panchayat if he incurs any of the disqualifications set out in Clauses (a) to (m) under Sub-section (1) of Section 30 of the Act. Clause (m) stipulates that a Member who has more than two children shall not be entitled to be a Member of the Panchayat. In other words, the disqualification is at both stages, namely, when a person contests the election and secondly during continuance of a membership. If it is found that person has more than two children. However, the two Provisos under Clause (m) carve out an exception in the contingencies specified in each of the Provisos.

10. The First Proviso stipulates that a person having more than two children on the date of commencement of the Amending Act shall not be disqualified under Clause (m) so long as the number of children the person had on the date of such commencement does not increase. The Second Proviso stipulates further that within a period of one year from the date of such commencement, if a child or more than one child is born in a single delivery the same shall not be taken into consideration for the purpose of disqualification under Clause (m). For the present, it is not necessary to refer to the provisions of the Explanation.

11. A plain reading of the Second Proviso indicates that a person incurs disqualification the moment any child/children in excess of existing two children on the date of commencement of the Amending Act is born in a single delivery within the period of one year from the date of such commencement. In other words, to put it simply, any child conceived prior to the date of commencement of the amendment, namely 4.8.2005, but born before 3.8.2006 would not be considered for the purpose of disqualification,

12. The contention that the term "born" appearing in Second Proviso be considered to be equivalent to the term "conceived" does not merit acceptance on a plain reading of the provisions. The period of one year from the date of such commencement is preceded by phrase "born in a single delivery within". The plain language employed by legislature is indicative of the fact that the birth has to take place within a period of one year from the date of commencement which is 4.8.2005. It is not as if legislature has excepted that a child born beyond the period of one year from the date of commencement but conceived during the period of one year shall not be considered for the purpose of disqualification. Reading the provision in such a manner would defeat the intent and purpose of the amendment. The amendment is to ensure that persons in public life should set-up an example by limiting the strength of the family in consonance with the policy of the State in public interest. Any other meaning would defeat the object

of the legislation. This becomes clear when one reads the First Proviso which permits a person to contest election or continue as a Member where prior to the date of commencement of the amendment the person was already having more than two children, subject to the stipulation that such number of children on the date of commencement of the provision does not increase subsequently.

13. The word "born" cannot be equated with "conceived" as suggested by the learned Counsel as the said term is followed by the phrase "any single delivery". This makes it more than abundantly clear that it is the point of time of birth because the concept of delivery would take within its sweep the physical act of giving birth and cannot mean the point of time when the foetus is conceived. The word "foetus" means an unborn human more than eight weeks after conception, the emphasis being on unborn. Thus the same would be absolutely contrary/opposite to the word "born".

14. Thus considering the issue from any angle the petition does not merit acceptance on this count. The respondent-Authorities have not committed any legal error so as to warrant interference.

15. In relation to the alternative contention that for removing a Sarpanch, action can be initiated only u/s 57 of the Act, suffice it to state that the factum of birth of a child on 9.12.2006 is not in dispute. The Show Cause Notice issued to the petitioner does not level any charge of misconduct in discharge of duty or any of the other charges stipulated by Section 57 of the Act. Therefore, the import of the Order has to be gathered by reading an order as a whole and if the Authorities have merely stipulated removal of the petitioner from the post of Sarpanch while referring to provision of Section 30(1)(m) of the Act in exercise of powers u/s 32 of the Act. one has to understand that the action is for removing the petitioner from the membership of the Panchayat and not only from the post of Sarpanch, Which he would otherwise also lose, once the membership is lost. Alternative contention, therefore, cannot be accepted.

16. In the result, for the reasons recorded herein-before, the petition being devoid of merits is rejected.