

(1998) 07 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 2526 of 1998

Vishnuprasad D. Brahmbhatt

APPELLANT

Vs

M.S. Pathan and Others

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats (Amendment) Act, 1962 — Section 59

Citation : AIR 1999 Guj 79 : (1998) 3 GLR 2672

Hon'ble Judges : J.R. Vora, J

Bench : Single Bench

Advocate : Maganbhai Barot and Y.V. Brahmbhatt, for the Appellant; Anant S. Dave, (for Nos. 1 and 2), Katha Gajjar, Learned A.G.P. (for Nos. 3 and 4), for the Respondent

Final Decision : Dismissed

Judgement

J.R. Vora, J.—Heard learned counsel

2. This petition is filed by the petitioner stating that he is Sarpanch of Matar Gram Panchayat and he has received one notice from D.D.O. which is dated 24-3-98 to the effect that the petitioner is prima facie involved in an offence of moral turpitude and that why the petitioner be not suspended. Against this notice, this petition is filed to quash, and set aside the show cause notice.

3. Mr. Barot, learned advocate, on behalf of the petitioner has vehemently argued that F.I.R., on the basis of which this notice-is issued, does not disclose the name of the petitioner as an accused and that, the F.I.R. does not disclose any offence of moral turpitude. It was urged that the petitioner is not at all involved in any criminal offence as alleged in the notice and, therefore, the notice was bad in law, violative of fundamental rights of the petitioner. On the other hand, Mr. Anant S. Dave urged that at this stage, the stage is interlocutory and it could not be said that any fundamental right of the petitioner is infringed so as to file this petition under Article 226 of the Constitution.

4. Obviously and admittedly, this petition is filed on a show cause notice issued by the D.D.O. which is dated 24-3-98. Notice states that the petitioner prima facie appears, to have been involved in an offence of moral turpitude. The fact constituting the so-called offence is publishing a pamphlet which is also placed on record. It clearly appears that the stage is quite premature. The authority competent to take any action against the petitioner is still to take a decision whether the petitioner is involved in any criminal prosecution which can be labelled as an offence of moral turpitude. At this stage the D.D.O. has issued a show cause notice giving an opportunity to the petitioner to explain certain circumstances. From this fact, it could not be said that the authority concerned has acted mala fide, because a final decision in the matter u/s 59 of the Panchayats Act is neither taken nor the action for suspension of the petitioner is guaranteed to be taken. It may happen that on a representation of the petitioner, the show cause notice may be filed by concerned authority. In this set of circumstances, there is no breach or violation of fundamental rights of the petitioner so as to entitle him to have the extraordinary remedy under Article 226 of the Constitution.

5. The learned advocate for the petitioner has relied on a decision of this Court in the matter of *Thakorbhai Bhagabhai v. D.D.O., Surat* and another as reported in 1980 (1) Guj LR 966, wherein it has been held that in order to attract the provisions, the criminal proceedings involving moral turpitude must have been instituted against the officer of the Gram Panchayat. The other decision is in the matter of *Narabhai Veljibhai Chaudhary v. R. S. Vaghela*, as reported in 1997 (1) Guj LR 589, wherein the Court has observed that whether the act constitutes an offence of moral turpitude there cannot be any straitjacket formula. A Sarpanch cannot be suspended just on institution of criminal case and facts and circumstances had to be seen. In that case the suspension order was not justified. The third decision which was relied on behalf of the petitioner is in the matter of *Ahmedabad Cotton Mfg. Co. Ltd. v. Union of India*, as reported in 1977 (18) Guj LR 714: (AIR 1977 Guj 113) which is a decision of Full Bench wherein the objection raised that existing available remedy was not exhausted was negatived holding that the remedy provided was not efficacious and as, the action of insistence on complying with the Trade Notice is challenged is ex facie without jurisdiction and, therefore, the fetter created under Article 226(3) does not come into operation.

6. Considering the abovementioned three cases, it clearly appears that none of the case helps the present petitioner. In two cases i.e. in the case of *Narabhai v. Chaudhari* (supra) and *Thakorebhai Bhagabhai* (supra) the Government had already passed the orders of suspension and in the third case i.e. in the Full Bench decision in the case of *Ahmedabad Cotton Mfg. Co. Ltd.* (supra) it has been held that there was no alternative efficacious remedy. In the present case, only a show cause notice is issued. The authority competent to take action has yet to take any action. It is yet to be decided that a criminal proceeding against petitioner involving moral turpitude is instituted and efficacious remedy is

available to the petitioner u/s 59(1) and (3) of the Panchayats Act, if such actions are taken against petitioner at all and, therefore, it would not be proper for this Court to interfere at this juncture under the extraordinary powers under An. 226 of the Constitution. The Court is in complete agreement with the argument of the learned counsel for the respondents Nos. 1 and 2 that the petition is premature. It cannot be said that merely because a show cause notice is issued, any fundamental right is violated. Fundamental right is infringed when the competent authority takes action under the Panchayats Act and acts mala fide or allegedly acts against the statutory provisions. In this view of the matter, this petition stands dismissed. Notice is discharged. Interim relief stands vacated. No order as to costs.

7. Mr. Barolon behalf of the petitioner at this stage submits that this Court has granted ad interim relief in terms of para 7(c) vide order dated 31-3-1998 and the same may be continued for some time. In the facts and circumstances of this case, this ad interim relief is extended till 10-7-1998.