

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1627 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN NAVABHAI

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioners

Mr S.K.Patel, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 31/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioners against an order passed by the Collector, Banaskantha, respondent No.2 on February 22, 1989 suspending the resolution

passed by Deesa Municipality, respondent No.3 in exercise of power under Section 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'Act').

The case of the petitioners was that they were Safai Kamdar (sweepers) of class IV. They were appointed by respondent No.3 Municipality. They were working since about ten years and hence they were required to be regularised. General Body of respondent No.3 Municipality passed resolution No. 56 on 31st January, 1989 and resolved to regularise services of the petitioners. When respondent No.2 came to know about the said resolution and in exercise of power under Section 258, he suspended the said resolution. However, before suspending the said resolution, no notice was issued to the petitioners, no explanation was sought and no opportunity of hearing was afforded to them.

In my opinion, the point is concluded by a decision of this Court in H.H.Parmar vs. Collector, Rajkot and another, 1979 (2) GLR 97. In that case, almost a similar question arose before the Division Bench. An appointment was made by the municipality and the petitioner was serving. The Collector was of the view that decision taken by the municipality was not in accordance with law and he, therefore, suspended the said resolution in exercise of power under Section 258 of the Act. Before suspending the resolution, however, no notice was issued and principles of natural justice were not observed so far as the petitioner who was to be affected by suspension of the resolution was concerned. The Division Bench held that the action of the Collector was contrary to law and violative of principles of natural justice. It was, therefore, set aside.

In my view, the point is directly covered by the decision in H.H.Parmar. No doubt, H.H.Parmar was overruled by a Full Bench in P.G. Chavda vs. State, 1998 (2) GLR 1048 but on a different point.

In view of the above position, in my opinion, the petition deserves to be allowed and is accordingly allowed. The order passed by the Collector is quashed and set aside being violative of principles of natural justice. It is, however, clarified that it is open to the Collector to take appropriate proceedings and to pass an appropriate order in accordance with law after observing principles of natural justice and the law laid down by this Court in H.H.Parmar.

For the foregoing reasons, petition is allowed. Order

passed by the Collector under Section 258 dated 21st February, 1989 is quashed and set aside. Since I am setting aside the order only on the ground of non-observance of principles of natural justice, I do not wish to make any observations on the merits of the case and disposal of this petition will not come in the way of the Collector in taking appropriate action in accordance with law. Rule is made absolute. No order as to costs.

--

parekh