

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1268 of 2003
IN
SPECIAL CIVIL APPLICATION No 14317 of 2003
WITH
CIVIL APPLICATION No 8577 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

- =====
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

GAUTAMBHAI DEVSHANKAR DAVE

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 1268 of 2003
MR KS JHAVERI for Appellant No.
..... for Respondent No. 1-6
-

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 26/12/2003

CAV. JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA FOR THE COURT)

1 This Letters Patent Appeal has been preferred against the order dated 17/10/2003 & 7/11/2003 made in Special Civil Application No. 14317 of 2003 by the learned Single Judge dismissing the petition.

2 It appears that the appellants who are original petitioners (hereinafter referred to as 'the petitioners') are members of the Siddhpur Agriculture Produce Market Committee (hereinafter referred to as 'the Market Committee') constituted under Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as 'the Act'). On 7/8/2003 a show-cause notice came to be issued by the State Government as to why the Market Committee should not be superseded on the stated grounds. The said show cause notice was challenged by way of Special Civil Application No. 12258 of 2003. On 19/8/2003 the petition was rejected by the learned Single Judge of this Court and the petitioners preferred Letters Patent Appeal against the same and the same came to be dismissed on 28/8/2003.

3 On 26/9/2003 the State Government in exercise of powers under Section 46 of the Act superseded the Market Committee and appointed an Administrator. The said decision was challenged by way of a petition being Special Civil Application No.14317 of 2003. As the said petition was rejected the original petitioners have preferred this Letters Patent Appeal.

4 Mr.S.K.Jhaveri, learned Senior Advocate appearing on behalf of the petitioners contended that the order of the learned Single Judge confirming the order of the State Government superseding the Market Committee was bad in law as the learned Single Judge had failed to take into consideration that the State Government, while passing the order of supersession dated 26/9/2003, had not appreciated that :

[a] The entire proceedings were in violation of principles of natural justice;

[b] The proceedings were ab initio void as they were tainted with malafides;

[c] The State Government while passing the order on 26/9/2003 has not appreciated and dealt with all

the points raised by the petitioners in their written as well as oral submissions;

[d] The order dated 26/9/2003 is stated to have been passed because the Market Committee had abused its powers but the concept of 'abuse of powers' requires that an act/omission has to be coupled with dishonest intent, and all actions taken in pursuance of powers available under the statute cannot be termed to be abuse of powers merely because another person has a different perception in relation to a particular act or omission; and,

[e] Before exercising powers under Section 46 of the Act, the State Government ought to have taken action under Sections 44, 45 & 47 of the Act, if at all it was necessary to take any action against the Market Committee.

5. Mr.Jhaveri laid great emphasis on the first two grounds, viz. violation of principles of natural justice and the action being tainted with malafides. It was submitted that the entire action was politically motivated and at the behest of respondent nos. 5 & 6 who were political rivals of the petitioners. That respondent no.5 was an Ex.Minister while respondent no.6 was a sitting Minister. That at the behest of the said two respondents, the competent authority conducting the proceedings for and on behalf of the State Government did not grant full and proper opportunity to the petitioners to meet with the charges levelled against the Market Committee resulting in order dated 26/9/2003 being passed. It is stated that respondent no.3 - Director issued various directions under Section 47 of the Act to the Market Committee vide order dated 30/6/2003. However, even as the Market Committee was in the process of taking corrective steps one Shri Ajitkumar Dharmendra Thakkar preferred Revision Application No.114 of 2003 against the aforesaid decision dated 30/6/2003 and even before the Market Committee could hold its meeting for taking corrective steps it was prevented by a stay order issued by the revisional authority. That said Shri Ajitkumar Dharmendra Thakkar was a relative of respondent no.5. Therefore, it was urged that the action of the State Government to supersede the Market Committee under Section 46 of the Act was malafide because instead of permitting the Market Committee to take remedial measures against the defaults pointed out by the Director in his order dated 30/6/2003, the said order of the Director was stayed in the revisional proceedings.

6 It was also urged that in the backdrop of such malafides the petitioners were not granted adequate opportunity to make their submissions in response to show cause notice dated 7/8/2003. The matter was fixed on 22/8/2003. The petitioners asked for certain documents on the said day and accordingly the hearing was fixed on 6.9.2003 with a stipulation that the petitioners would file their reply on that day. That, the petitioners received certain documents on 27/8/2003 along with a letter stating that hearing was pre-poned to 29/8/2003 at 3.45 p.m. from 6.9.2003. Therefore, on 29.8.2003 the petitioners asked for time to prepare the reply. Thereafter, vide letter dated 10.9.2003 the petitioners were informed that the next hearing would take place on 17/9/2003 but the said letter was received by the petitioners only on 16th September 2003 because it appears from the record that the letter dated 10.9.2003 was erroneously dispatched to the Market Committee, Patan instead of Market Committee, Siddhpur. The petitioners therefore sought time on 17.9.2003 and also at the same time submitted detailed written submissions. The authority did not grant time on 17.9.2003 and proceeded with the hearing and ultimately an order came to be passed on 26.9.2003. From the aforesaid chain of events it was submitted that the petitioners were denied proper and reasonable opportunity to meet with the case put-up in the show cause notice and hence there being violation of principles of natural justice the entire proceedings stood vitiated. It was also urged that the authority acted in this manner at the behest of respondent no.6. In support of this contention reference was made to the factum of preponing the hearing from 6.9.2003 to 29.8.2003.

7 On behalf of the petitioners it was contended that though an elaborate pointwise reply was submitted the authority has failed to appreciate the same in proper perspective while dealing with various grounds in the written submissions. That, though the entire case against the Market Committee was in relation to so called abuse of powers, the authority had failed to appreciate that the so called violations could not be termed as abuse of powers, in the legal sense because such acts had to be coupled with dishonest intention.

8 Provisions of Sections 44, 45 & 47 of the Act were pointed out to submit that the Director had power to hold inquiry or to provide for performance of duties in default by a Market Committee and also to call for proceedings etc. and issue necessary direction in

relation to any objection etc. It was therefore urged that in light of the aforesaid statutory provisions, recourse to Section 46 of the Act had to be as a last resort and Section 46 of the Act cannot be invoked as a matter of course. That, as a result of making of an order of supersession serious consequences follow and having regard to such consequences provision of Section 46 of the Act should be resorted to only in very exceptional circumstances. Reference was made to the case of Apexa Co.op.Bank Ltd. Vs. District Registrar and others, 1993(2) GLH 861 in support.

9. It was therefore urged that in case of supersession the Court was empowered to interfere in its writ jurisdiction, if the order was malafide, arbitrary, without jurisdiction, or in utter violation of the provisions of law or the principles of natural justice. That, though it was not open to the Court to consider the sufficiency or adequacy of the material upon which the charges are based, yet, the Court can examine the reasons for supersession so as to find out whether they had nexus with the conditions stipulated in the provisions and were sufficient for the exercise of the power conferred on the State Government. In other words, the Court will not examine the reasons as if sitting in appeal, but, will certainly examine the same so as to test their relevancy and sufficiency required for the legitimate exercise of the powers under the statute. The Full Bench decision of Madhya Pradesh High Court in case of Municipal Committee, Kareli and Another Vs. State of Madhya Pradesh, AIR 1958 (M.P.) 323 (F.B.) was relied upon in support.

10 Inviting attention to provision of Section 46 of the Act, it was submitted that the State Government was required to form an opinion that a Market Committee was not competent to perform, or persistently makes default in performing the duties imposed on it by or under the Act, or abuses its powers. That, only if one or more of the aforesaid three conditions could be shown to have been satisfied the State Government would be empowered to supersede a Market Committee. That, in the present case according to the learned Counsel, the entire order of the State Government was based only on one ground viz. abuse of powers. In this connection it was submitted that the expression 'abuse of powers' has to be understood in the context and setting in which it has been used. That, it should therefore be a wilful abuse or an intentional wrong. An honest, though erroneous, exercise of power is not an abuse of power. That, a singular or casual aberrations or failure is not enough, but, the conduct should show plurality of aberrations or failures while

exercising powers and that too with dishonesty of intention. Reliance was placed on the decision of the Supreme Court in the case of Tarlochan Dev Sharma Vs. State of Punjab, AIR 2001 SC 2524.

11. It was further submitted that a Court will not interfere if an Authority/Tribunal arrives at its own conclusion of fact after due consideration of the evidence before it, but, it was necessary, that every fact for and against must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pros and cons in regard to each one of them and what were the findings reached on the evidence on record before it. That, the conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice. The case of Omar Salay Mohamed Sait Vs. Commissioner of Income-tax, Madras, reported in AIR 1959 SC 1238 was relied upon in this context.

12. It was also submitted that when an order is based on several grounds, some of which are irrelevant then, if there is nothing to show that the authority would have passed the order on the basis of relevant and existing grounds that order cannot be sustained. The case of The State of Maharashtra Vs. Babulal Kriparam Takkamore and others, AIR 1967 SC 1353 was relied upon for this proposition.

13 The learned Counsel for the petitioners read extensively from the order of the State Government as well as written submissions filed by the appellants before the authority to contend that each of the ground was not sufficient to warrant the drastic step of supersession; that, on the one hand recovery proceedings were initiated under Section 50 of the Act even while revision under Section 48 of the Act was pending before the State Government, and on the other hand, on the same grounds coupled with some more grounds the impugned order of supersession came to be passed. In relation to the charge that the shops, open plots etc., were allotted without public auction reference was made to the decision of the Apex Court in the case of M/s. Labha Ram and Sons and others Vs. State of Punjab and others, AIR 1998 SC 2086 to contend that it was permissible to give preference to existing traders.

14 It is necessary to bear in mind that what is in appeal before the Division Bench is the order of the learned Single Judge made on 17.10.2003 and 7.11.2003.

Therefore, primarily whether it is necessary to interfere with the same or not has to be examined. It is not necessary to go behind the order of the learned Single Judge and examine the order of the authority having regard to the evidence available on record, if the order of the learned Single Judge is a self speaking one. The Division Bench is required to determine the question whether the learned Single Judge was justified in arriving at the decision that he did having regard to the material on record before him. It is only for this limited purpose that it may become necessary, in a given case, to examine in detail the order of the authority and the evidence on record. In the present case we have been taken through the entire impugned order of the authority and the relevant material by the learned Counsel.

15 In relation to the contention regarding violation of principles of natural justice it is necessary to note that the learned Single Judge has rightly held that non-compliance will not per se be sufficient for holding that the order is invalid and striking it down, but, the person alleging such violation has to show whether any prejudice has resulted as a consequence of such violation. In the present case, the petitioners were served with a show cause notice dated 7.8.2003 seeking compliance on 22.8.2003. Petitioner No.1 appeared for himself as well as on behalf of the remaining petitioners on 22.8.2003 and requested that the petitioners be supplied various documents mentioned therein. On the said day the matter was adjourned to 6.9.2003. However, the record shows that next date of hearing, in fact, came to be fixed on 29.8.2003 and accordingly intimation dated 26.8.2003 came to be served personally on the petitioners. Along with the said intimation dated 26.8.2003 various documents were supplied to the petitioners. On 29.8.2003 petitioner no.1 along with Secretary of the Market Committee personally remained present and they submitted two applications, both dated 29.8.2003 seeking time. In the application filed by petitioner no.1 adjournment was requested on the ground that since the hearing was to be fixed on 6.9.2003 the Advocate of the Market Committee was to prepare reply on 30/31-8-2003 and that the documents had been received only on 27.8.2003. Therefore, 15 days time was requested. Whereas, in the adjournment application of even date made by the Secretary, adjournment was sought on the ground that the Advocate of the petitioners was suffering from some eye ailment and hence was not in a position to make submission. It appears that predecessor in office of the Deputy Secretary (Cooperation), who was to adjudicate upon the show cause notice, made a noting

on the file that as he was to retire on 31.8.2003 the hearing be fixed on 10.9.2003. Such a noting was made on 30.8.2003. When the file was placed before the officer who ultimately passed the order, the said authority fixed the next date of hearing on 17.9.2003. Accordingly, intimation dated 10.9.2003 was forwarded to the petitioners regarding fixation of the matter on 17.9.2003. It is an admitted position that the communication dated 10.9.2003 fixing hearing on 17.9.2003 was initially erroneously sent to Patan Market Committee and after return of the same was served on the petitioners on 16.9.2003. However, what is important to note is that a copy of the said intimation had also been endorsed to the Advocate of the petitioners at his address, and there is no dispute by the petitioners that the same had not been received by the concerned Advocate. In the aforesaid backdrop, on 17.9.2003 petitioner no.1 presented himself and submitted a detailed reply along with annexures running into 336 pages which are on record of the petition at pages 161 onwards; but the petitioners also tried to seek an adjournment on the ground that the notice has been received by them only on 16.9.2003. It is in these circumstances that the authority rejected the request for an adjournment and proceeded with the hearing. Considering the entire sequence of events as available on record it is apparent that it cannot be stated for a moment that the petitioners have suffered any prejudice in any manner whatsoever. In fact no prejudice is shown to have been caused to the petitioners and hence the technical plea of violation of principles of natural justice has rightly been rejected by the learned Single Judge.

16. In relation to the submission that the proceedings were actuated by malafide due to intervention of respondent no.6 who was a sitting Minister of the Government, the learned Single Judge has taken into consideration the averment made by respondent no.6 in the affidavit-in-reply dated 16.10.2003. In paragraph no.2 this is what has been stated :

"2. I, at the outset, respectfully say and submit that, the order dated 26.09.2003 passed by the Respondent No.2 under Section 46 of the Act is competent officer's independent decision on merits and is not, in any manner, influenced by me. I hereby categorically deny that the aforesaid order is passed under political

pressure, as alleged or otherwise, or that any alleged association of mine with the respondent no.5 has in any manner, affected the outcome in the aforesaid order".

Hence even on this count it is not possible to accept the grievance made by the petitioners. In fact, the authority who has passed the order dated 26.9.2003 has also categorically stated in its affidavit-in-reply that the same has been passed independently and in accordance with law and that too after having taken into consideration the oral and written submissions of the petitioners as well as legal aspects. In these circumstances, the learned Single Judge has rightly dismissed the contention regarding malafides.

17. The grievance of the petitioners that the written submissions made by them have not been considered point-wise requires to be stated only to be rejected. Not only has the authority dealt with each of the points individually but has considered the reply of the petitioners point-wise. This is borne out from the order of the authority and requires no elaboration. Further grievance in this regard was that the learned Single Judge has also not undertaken this exercise nor has assigned reasons as to why and how the point wise explanation of the petitioners is incorrect or not acceptable. The Court is required to examine the decision making process of the authority in the totality of the facts, circumstances and evidence on record and the Court is not expected to examine the reasons of the authority as if sitting in appeal. This position in law is well settled.

18. The law is settled that the powers conferred on the High Court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary as distinguished from ordinary statutory powers. This is not a case where this jurisdiction is required to be exercised in favour of the petitioners. There is no jurisdictional error in the order of the Tribunal. It is not a case where the Tribunal has assumed not conferred on its jurisdiction or where it has failed to exercise the jurisdiction vested in it. Nor is there any error apparent on the record of its decision. The High Court does not sit as an appellate Court and interference with pure findings of fact and appreciation of evidence is not permissible. Reappreciation of evidence cannot be undertaken. Even if on same set of facts, circumstances

and evidence on record, a different view may be possible, that by itself is not enough to permit the High Court to intervene. A mere wrong decision does not clothe the High Court with jurisdiction, unless it is shown that the Tribunal has reached a decision without any evidence in support of same, or that it has considered evidence which is partly relevant and partly irrelevant or that it arrived at a decision no reasonable person would have reached. None of the aforesaid factors exist in the present case so as to warrant any interference.

19. Though it was submitted that the entire order was based and finalized only on ground of abuse of powers as stipulated in Section 46 of the Act, on a plain reading of the order dated 26.9.2003 it is apparent that the authority has found that the Market Committee has persistently defaulted in performing the duties imposed on it by the Act or under the Act and also by not following due procedure coupled with administrative improprieties abused its powers to entail financial loss. Therefore, if any one of the three conditions laid down in Section 46(1) of the Act is shown to have been fulfilled the State Government would have jurisdiction to act against such Market Committee and supersede the same.

20. It is also necessary to note that present is not a case wherein a single aberration is the basis for taking action against Market Committee but there are series of acts of commission and omission (12 in all) which cumulatively go to establish that the Market Committee has not only failed to perform its duties but it has abused its powers. As can be seen from the charges regarding misuse of the vehicle of the Market Committee, claim of allowances which an office bearer is entitled to claim provided a personal vehicle is used, while in the present case it has come on record that though the official car of the Market Committee was used vehicle allowances were claimed by the Chairman of the Market Committee; appointment of various persons closely related to the office bearers or members of the Market Committee in utter disregard of established norms for such appointments; placing of surplus funds in deposit with a Cooperative Bank, admittedly declared to be a weak bank, wherein some of the members of the Market Committee are also on the Board of such bank and then obtaining personal loans against such deposits of the Market Committee. These are but a few instances out of the 12 charges and the authority has given cogent reasons for each and every charge along with specific details including names of persons, amounts involved, dates of

such act etc. Not only that, the authority while passing order dated 26.9.2003 has dealt with detailed submission made by the Market Committee. In these circumstances, it is not possible to accept the contention that the authority had failed to deal with various submissions placed on record on behalf of the Market Committee.

21. The reliance by the learned Advocate of the petitioners on the decision of Omar Salay Mohamed Sait (supra) is misplaced. In a subsequent decision in the case of Homi Jehangir Gheesta Vs. Commissioner of Income Tax, Bombay City, (1961) 41 ITR 135 the Supreme Court has explained its aforesaid decision in the following terms:

"We must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, has been considered fairly and with due care; whether the evidence pro and con has been considered in reaching the final conclusion; and whether the conclusion reached by the Tribunal has been coloured by irrelevant considerations or matters of prejudice. Learned Counsel for the appellant has taken us through the entire order of the Tribunal as also the relevant materials on which it is based. Having examined the order of the Tribunal and those materials, we are unable to agree with learned Counsel for the appellant that the order of the Tribunal is vitiated by any of the defects adverted to in Dhirajlal Girdharilal V. Commissioner of Income-tax or Omar Salay Mohamed Sait V. Commissioner of Income-tax. We must make it clear that we do not think that those decisions require that the order of the Tribunal must be examined sentence by sentence, through a microscope as it were, so as to discover a minor lapse here or an incautious opinion there to be used as a peg on which to hang an issue of law. In view of the arguments advanced before us it is perhaps necessary to add that in considering probabilities properly arising from the facts alleged or proved, the Tribunal does not indulge in conjectures, surmises or suspicions."

Applying the aforesaid tests if the order of the authority is read as a whole it becomes clear that the authority had considered every material fact for and against the petitioners; and the pros and cons of the evidence have been considered; and the authority has not taken into consideration any irrelevant matters nor is

the order based on any conjectures, surmises or suspicions. In the circumstances, it would not be permissible to examine the order of the authority sentence by sentence so as to discover a minor lapse or an incautious observation on which an issue of law can be hanged.

22. Similarly, reliance on the decision of The State of Maharashtra Vs. Babulal Kriparam (supra) is also misplaced. The ratio of the decision is available at page 1359 in the following words :

"The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant, can be sustained if the court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision".

23 Thus, it can be seen that if an order is based on several grounds some of which are not in existence or irrelevant, even then it can be sustained if the Court is satisfied that the authority would have passed the order on the basis of other relevant and existing grounds , and the exclusion of the irrelevant and non-existent grounds could not have affected the final outcome. In the present case, it is not possible to find out any ground which can be stated to be non-existent or irrelevant and hence even on facts the aforesaid decision cannot come to the aid of the petitioners.

24. The decision of the Bombay High Court in case of Narayandas Jaskaranji Rathi and others Vs. The State of Maharashtra and Another (1981) (Bom.) CR 508 was also cited. It is apparent that the same is not applicable on facts of the case. The principle laid down in the said case cannot be made applicable to the facts of the present case because on demurrer, the High Court

proceeded to consider the averments made in the show cause notice which was impugned in the said case. Whereas, in the case before this Court the petitioners have submitted a detailed reply and the same has been taken into consideration. The contents of the notice impugned before the Bombay High Court are quite different from the contents of the order made against the petitioners. The Bombay High Court had on the basis of the material available, held that the action did not constitute any default in performance of duties within the meaning of Section 452(1) of the Bombay Provincial Municipal Corporations Act 1949; that though the contents of the notice challenged therein constituted defaults committed by the petitioners therein but they were not satisfying the requirement of Section 452 of the Act.

25 In light of the foregoing settled legal position the appellants have failed to make out any case for intervention in the order of the learned Single Judge. The appeal is therefore, summarily dismissed.

26. As the Letters Patent Appeal is summarily dismissed, the Civil Application for stay will not survive and is rejected.

Sd/-

(R.K.Abichandani ,J)

Sd/-

(D.A.Mehta, J)

m.m.bhatt