

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3329 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 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?

MAHENDRABHAI MANIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3329 of 2004
MR PY DIVYESHVAR for Petitioner No. 1
Mr. KD Pandya, AGP for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/07/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of Rule on behalf of respondent No.1 and SHri HS Munshaw, learned advocate waives service of Rule on behalf of respondent No.2. With the consent of the parties, the matter is taken up for final hearing today.

2. The petitioner, who was Sarpanch of Saima Gram Panchayat, has filed the present Special Civil Application under Article 226/227 of the Constitution of India challenging the legality and validity of the order passed by the Additional Development Commissioner, State of Gujarat, Gandhinagar, dated 8.3.2004 in Appeal No. 5 of 2004 in dismissing the same and confirming the order passed by the respondent No.2 District Development Officer, Anand dated 23rd January 2004 in suspending the petitioner under Section 59(1) of the Gujarat Panchayats Act as Sarpanch of Saima Gram Panchayat.

3. Shri PY Divyeshvar, learned advocate appearing for the petitioner has submitted that the first order, i.e. the order passed by the District Development Officer, Anand is against the principles of natural justice and no notice was served upon the petitioner to show cause why the petitioner should not be suspended under Section 59(1) of the Gujarat Panchayat Act (hereinafter referred to as "the Act"). He has submitted that in fact the petitioner was in judicial custody and therefore no notice was served upon the petitioner and instead of that an order came to be passed which is confirmed by the appellate authority.

4. Shri HS Munshaw, learned advocate appearing on behalf of respondent No.2 has submitted that in view of the that there are serious charges against the petitioner he cannot be continued as Sarpanch and therefore the order under Section 59(1) of the Act is rightly passed by the authority. He has submitted that the petitioner is charged for the offences punishable under Sections 408, 467 and 468 of the Indian Penal Code which involve moral turpitude and therefore he is rightly suspended by the District Development Officer.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that at the relevant time when show cause notice came to be issued by the District Development Officer under Section 59 of the Act the petitioner was in judicial custody. Even in the order passed by the District Development Officer itself it is specifically observed that notice was issued on 20th October 2003, however, it could not be served upon the petitioner because the petitioner was in judicial custody. It is also borne out from the order passed by the District Development Officer that thereafter proceedings were adjourned to 28th October 2003. However, as the petitioner was in judicial custody the petitioner could not be served and he could not remain present. Under the circumstances, the impugned order

dated 23rd January 2004 passed by the District Development Officer, Anand is in violation of principles of natural justice as the petitioner was not given an opportunity of being heard to submit his case and the impugned order came to be passed in his absence. Under the circumstances, on that ground alone the impugned order dated 23rd January 2004 passed by the District Development Officer, Anand, in suspending the petitioner as Sarpanch of Saima Gram Panchayat is quashed and set aside. The matter is accordingly remanded to the District Development Officer, Anand for deciding the show cause notice afresh in accordance with law and on merits and after giving an opportunity of hearing to the petitioner. Such an exercise should be done by the District Development Officer within a period of six weeks from the date of receipt of this order. Shri PY Divyeshwar, learned advocate appearing on behalf of the petitioner states that in the meantime the petitioner will not insist for return of charge of Sarpanch to him.

6. For the reasons stated hereinabove, the order passed by the Additional Development Commissioner dated 8.3.2004 in dismissing the appeal and confirming the order passed by the District Development Officer, Anand dated 23rd January 2004 and also the order passed by the District Development Officer in suspending the petitioner under Section 59(1) of the Act are hereby quashed and set aside. The matter is accordingly remanded to the District Development Officer, Anand for deciding and disposing of the show cause notice against the petitioner afresh in accordance with law and on merits uninfluenced by the earlier orders passed. The District Development Officer is directed to complete the proceedings and pass an appropriate order after giving opportunity of being heard to the petitioner and other concerned parties within a period of six weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.