

State of Gujarat

Vs

Jamnadas G. Pabri and Others

Civil Appeals Nos. 1356-1357 of 1974

(Y. V. Chndrachud, R. S. Sarkaria JJ)

03.10.1974

JUDGMENT

SARKARIA, J. -

1. The main question that arises in these two appeals directed against the common judgment, dated June 26, 1974 of the High Court of Gujarat, is, whether the notification dated March 31, 1974 (for short, the impugned notification) issued by the State Government is invalid on the ground that the condition precedent to the exercise of the power under Section 303A of the Gujarat Panchayats Act, 1961 (for short, the Panchayats Act) is not satisfied.

2. The Panchayats Act provided for three tiers of Panchayats. They were, in the descending order : District Panchayats, Taluka Panchayats and Gram Panchayats. The Act provided for indirect election to Taluka Panchayats and partly indirect and partly direct election to the District Panchayats on the basis of adult franchise. Under Section 17(2) as amended by Gujarat Act 1 of 1968, the normal term of a Panchayat was five years from the date of its first meeting. This term could be extended by the State Government by a period not exceeding an aggregate of one year.

3. The last election to Taluka Panchayats took place in February, 1968 and the Panchayats were constituted on February 28, 1968. Their term was due to expire on February 28, 1973. Similarly, the five year term of the District Panchayats was due to expire on March 31, 1973. By a Resolution dated April 12, 1973, the State Government appointed a high level Committee headed by Jhinabhai Darji to suggest basic reforms in the Panchayati Raj set up. On the interim recommendation of this Committee, the State Government extended the terms of Taluka Panchayats upto August 31, 1973 and those of District Panchayats upto September 30, 1973. The Jhinabhai Darji Committee submitted its final report on September 30, 1973. Thereupon, the Gujarat (Amending) Act 9 of 1973 was passed. It came into force on April 23, 1973. This Amending Act made far-reaching changes in the original Act. The indirect elections to the Taluka Panchayats were abolished and provision was made for direct elections to all the Panchayats. As it was not possible for administrative reasons to hold elections in accordance with the amended Act, the State Government by an order dated June 21, 1973, extended the term of Taluka Panchayats and District Panchayats till August 31, 1973 and September 30, 1973, respectively. By another order, dated October 3, 1973, the terms of both these Panchayats were again extended upto February 28, 1974. Thus the power of the State Government to extend the term of the Taluka Panchayats under Section 17(2) of the Act had exhausted itself.

4. In the first week of January, 1974, widespread disturbances broke out in the State of Gujarat. There was public agitation against the State Government demanding its resignation and the dissolution of the Gujarat Assembly.

5. On January 25, 1974, the Governor of Gujarat Promulgated Ordinance 1 of 1974. It substituted in sub-section (2) of Section 17 of the Act the words "two years" for the words "one year". Under the amended provision the Government got the power to extend the term of a Panchayat by two years in the aggregate beyond its normal term of five years.

6. As a result of the mounting public agitation, the State Ministry tendered its resignation on February 9, 1974. On the same date, the President of India by a proclamation under Article 356 of the Constitution assumed all the functions of the State Government.

7. By an order dated February 27, 1974, issued under Section 17(2) as amended by Ordinance 1 of 1974, the terms of the Taluka Panchayats and District Panchayats were again extended upto March 31, 1974.

8. The State Legislature was dissolved on March 15, 1974. Parliament thereafter passed the Gujarat State Legislature (Delegation of Powers) Act, 11 of 1974 which vested with effect from March 27, 1974 powers of the State Legislature in the President of India. In exercise of his powers under Section 3 of this Act, the President enacted Gujarat Panchayats (Amendment) Act 8 of 1974 which came into force on March 31, 1974. In inserted Section 303A in the Panchayat Act which provides :

303A. (1) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, if at any time, the State Government is satisfied that a situation exists by reason of . . . disturbances in the whole or any part of the State of Gujarat, whereby -

#(i) . . .##

(ii) it is not possible or expedient to hold elections for the reconstitution of a Panchayat on the expiry of its term,

the State Government may, by notification in the Official Gazette, make a declaration to that effect.

(2) A notification issued under sub-section (1) in relation to any Panchayat shall remain in force for such period, not exceeding six months, as may be specified therein :

Provided that if the State Government is of the opinion that it is necessary so to do, it may, by order and for reasons to be mentioned therein, extend, from time to time, the period so specified; so, however, that the notification shall not in any case remain in force for more than one year in the aggregate.

(3) On the issue of a notification under sub-section (1) in relation to any Panchayat, -

(a) all the members of such Panchayat shall vacate their office as such members;

(b) all the powers and duties of such Panchayat shall, during the period when such notification is in force, be exercised and performed by such officer of the State Government as it may, by order, specify in that behalf.

(4) The State Government shall, before the expiry of the period specified in the notification issued under sub-section (1) or extended under the proviso to sub-section (2), as the case may be, take steps for the purpose of reconstituting the Panchayat in the manner provided in this Act.

9. Purporting to act under Section 303A, the Government issued on March 31, 1974, the impugned notification :

No. KP/74-81/PRN (HLC) /4-JHI. - Whereas the terms of all Taluka and District Panchayats in the State of Gujarat except that of the Dangs District Panchayat expire on March 31, 1974;

And Whereas the Government of Gujarat is satisfied that a situation exists by reason of disturbances in the whole of the State of Gujarat whereby it is not expedient to hold elections for the reconstitution of any of the Taluka and District Panchayats whose term expires on the aforesaid date;

Now, therefore, in exercise of the powers conferred by Section 303A of the Gujarat Panchayats Act, 1961 (Guj. VI of 1962), the Government of Gujarat hereby -

(1) makes a declaration that a situation exists by reason of disturbances in the whole of the State of Gujarat whereby it is not expedient to hold elections for the reconstitution of any of the Taluka and District Panchayats whose term expires on March 31, 1974 on the expiry of their term;

(2) directs that the declaration made as aforesaid shall remain in force for a period of six months; and

(3) orders that all the powers and duties of each of the Taluka and District Panchayats whose term expires on March 31, 1974, shall, with effect from the expiry of their term till this notification is in force, be exercised and performed, -

(i) in relation to a taluka over which the Taluka Panchayat concerned had authority immediately before the expiry of its term, by the Taluka Development Officer posted under the Taluka Panchayat concerned; and

(ii) In relation to a district over which the District Panchayat concerned had authority immediately before the expiry of its term, by the District Development Officer posted under the District Panchayat concerned.

# By order and in the name of the Governor of Gujarat R. B. Shukla, Secretary to Government.##

10. Two writ petitions under Article 226 of the Constitution were filed in the High Court of Gujarat to challenge the aforesaid notification. One of these was filed by the President of Baroda District Panchayat, Baroda etc. and the other by the President of Jamnagar District Panchayat and others. The petitions were heard by a Division Bench which by a common judgment accepted the same holding that the impugned notification "was illegal, invalid and bad in law because the condition precedent to the exercise of the power under Section 303A viz., holding elections for the reconstitution of the Panchayats on the expiry of their terms has not been satisfied". Against that judgment, the State of Gujarat has preferred these appeals on the strength of a certificate granted by the High court.

11. The High Court held that "election" within the contemplation of Section 303A (1) is restricted to the process of the actual conduct of the election, commencing with the issue of the notification calling the election and terminating with the declaration of the result of the election. In its view, the

delimitation of constituencies or wards, preparation of electoral rolls, and framing of rules for conducting elections, being stages prior to the election, do not form part of the process of holding election. With this narrow construction of the phrase "to hold elections", the High Court approached the problem thus :

A reading of Section 303A makes it clear that the two objective facts are (1) the factum of disturbances in the State by reason of which a situation exists and (2) holding of elections for reconstitution of Panchayats. Both these factors are open to judicial review. The satisfaction of the Government with regard to the existence of a situation by reason of the disturbances or in respect of non-possibility or inexpediency of holding elections is subjective and not open to judicial review. The holding of elections for the reconstitution of Panchayats is an objective fact . The constitution of the Panchayats is not only the objective fact but holding of election thereto is also objective matter. The State Government has to establish both these points to justify invocation of power under Section 303A and to justify the legality of the impugned notification. In the instant case the condition precedent of holding elections for the reconstitution of the Panchayats is not fulfilled. The stage of holding elections for the reconstitution of the Panchayats had not reached at the time when the impugned notification was issued. On that date it was not possible to hold elections because preliminary stages in connection with elections were not completed. Constitution of wards, reservation of seats for women, scheduled castes and scheduled tribes and voters' lists were not formed or made or prepared. In absence of all these preliminary matters, the question of holding of elections cannot arise.

12. We are unable to agree with this reasoning. An analysis of Section 303A (1) would show that before a declaration referred to in that sub-section can be made, two requirements must be fulfilled : (1) existence of a situation by reason of disturbances in the whole or any part of the State; (2) the satisfaction of the State Government relatable to such a situation, that it is not expedient to hold elections for the reconstitution of a Panchayat on the expiry of its term. The first requirement is an objective fact and the second is an opinion or inference drawn from that fact. The first requirement, if disputed, must be established objectively as a condition precedent to the exercise of the power. The second is a matter of subjective satisfaction of the Government and is not justiciable. Once a reasonable nexus between such satisfaction and the facts constituting the first requirement is shown, the exercise of the power by the Government, not being colourable or motivated by extraneous considerations, is not open to judicial review. Thus the question that could be objectively considered by the Court in this case was : Did a situation arising out of disturbances exist in the State of Gujarat on the date of the impugned notification ?

13. The fact that there were serious disturbances through the State of Gujarat in January and in the first fortnight of March, 1974, has not been seriously disputed by the learned Counsel for the respondents. From the counter-affidavit filed on behalf of the State, it appears that these disturbances continued throughout March, 1974. Shri Satyendra Shah, Joint Secretary to Government of Gujarat has sworn that

disturbances on a wide scale occurred in all parts of the State - both in the urban as well as in the rural areas - resulting in loss of human life and considerable damage to property. This ultimately resulted in the resignation of the Ministry on February 9, 1974 and the issuance by the President of India of a Proclamation under Article 356 of the Constitution assuming to himself all the functions of the State government . . . . The disturbances continued also in March, 1974.

14. In a further affidavit it is stated that an agitation for dissolution of the Panchayats, whose normal

terms of office had expired, continued even in the last days of March, 1974. An instance of Kutch Panchayat which on account of such agitation, was unable to assemble for the budget meeting at Bhuj has been cited. Even Shri Jamnadas Pabri, one of the writ petitioners, who was the President of the Panchayat, was not able to attend his office, on account of these abnormal conditions in February and March 1974, except for one day.

15. In view of these particulars stated in the counter-affidavit it is clear that the disturbances in the State of Gujarat continued throughout March, 1974, and even on the date of issue of the impugned notification the situation in the State was anything but normal.

16. Assuming that the disturbances had abated after the dissolution of the State Assembly on March 15, 1974, the abnormal situation in the State, which was the direct product of the disturbances, continued to exist throughout March, 1974. Sufficient time was therefore, required for the situation to limp back to normalcy. It is to be noted that Section 303A (1), speaks of the existence of a situation "by reason of" disturbances. The expression "by reason of" indicates that the 'disturbances' and the 'situation' must be proximately connected as cause and effect. The 'situation' envisaged by this sub-section, therefore, may not necessarily be coterminous with the disturbances. It is sufficient if the situation is the immediate outcome of the disturbances, and it subsists. The situation after such massive and violent disturbances would continue to be 'disturbed' for some time even after the abatement or overt cessation of the disturbances.

17. Mr. Phadke, learned Counsel for the appellant-State contends that since the satisfaction of the Government as to the inexpediency of holding elections was not a justiciable matter, the giving of a wide or narrow meaning to the phrase "to hold elections" in Section 303A would not affect the point at issue. The High Court, it is contended erred, in treating the completion of the preliminaries, such as compilation of electoral rolls and formation of constituencies, virtually as a condition precedent to the exercise of the power, though the only condition precedent laid down by the statute which could be tested by objective standards was the existence of the situation created by the disturbances.

18. Mr. Nanawati, learned Counsel for the respondents (whose arguments have been adopted by Mr. Bhandare, appearing for respondents Nos. 1 and 9), submitted that the High Court was right in holding that the preliminaries such as delimitation of constituencies, etc. belong to a stage anterior to the conduct of elections and therefore do not fall within the ambit of the phrase "to hold elections". The point pressed into argument, is that Section 303A presupposed that the election machinery was read and all the preliminary steps for holding the elections, such as compilation of the voters' lists and formation of wards etc., had been completed but the process of election had not yet started when disturbances supervened. Since that stage had not yet reached, the power could not be exercised.

19. It may be remembered that Section 303A is in the nature of an emergency provision. It was designed to tide over a crisis of unprecedented magnitude. Reasons for the Enactment' issued by the Government run as follows :

The extended terms of the Taluka and District Panchayats in the State of Gujarat expire on March 31, 1974. These Panchayats have been functioning for more than one year after the expiry of their normal term of five years. However, the recent disturbances in the State have created an atmosphere which is congenial neither to the continuance of these Panchayats for a further period nor for holding elections for their reconstitution. It is, therefore, considered necessary to entrust the administration of these Panchayats temporarily to officers appointed by the State Government . . . .

The present measure seeks to . . . . empower the State Government . . . for carrying on the administration of the affairs of Panchayats in certain special circumstances . . .

20. Now it is well-settled that if the language of a statute is susceptible of two constructions, the one which fulfils its object is to be preferred to the alternative which frustrates it. This canon is of particular significance while interpreting an emergency measure of the kind before us. In a recent English case *Cannon Street Ltd. v. Singer & Friedlander Ltd.* ((1974) 2 WLR 646 (Ch D) while considering the uncertain language in a statutory instrument made under an Act with the long title "An Act to authorise measures to counter inflation", Meggry, J. refused to put on it a construction which would make the countering of inflation "so capricious and easily escapable".

21. In the provisions under consideration the phrase "to hold elections" can be understood both in a wide and a narrow sense. Its wide connotation will include all steps such as the delimitation of constituencies, the compilation of electoral rolls, etc. which are a necessary preliminary to the actual conduct of elections. In the restricted sense, this phrase would cover only the actual holding of elections. Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient"; "politic"; "profitable"; "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right" (see Webster's New International Dictionary).

22. Since Section 303A has been designed to enable the Government to get over a difficult situation surcharged with dangerous potentialities, the Court must construe the aforesaid phrases in keeping with the context and object of this provision, in their widest amplitude. Under the provision the Legislature has given to the Government a discretionary power to meet the challenge of an extraordinary situation arising out of the disturbances. The Court therefore would eschew an interpretation which attenuates that power or impairs its efficacy.

23. Nor would the Court sit in appeal over the opinion of the State Government as to the "inexpediency of holding elections". The statute has made that matter the sole preserve of the Government. All that the Court could enquire was, whether the condition precedent which is an objective fact to the exercise of this power, existed. By no stretch of imagination could it be said that the power under Section 303A is exercisable only after the completion of preparatory steps preliminary to the holding of holding of an election. The statute places no such fetter on the discretion of the Government to the exercise of the power. We, therefore, negative the contentions canvassed by Mr. Nanawati.

24. Learned Counsel for the respondent next contended that it has been the positive case of the State that the preliminaries to the holding of elections required substantial time and that was why ordinance 1 of 1974 promulgated on January 25, 1974, had conferred power on the State Government to extend the terms of District and Taluka Panchayats by one year more with effect from March 31, 1974 and February 28, 1974, respectively. With reference to the first preamble of the impugned notification, it is contended, that it shows that the power was exercised not because of any situation arising out of the disturbances but for an extraneous reason, namely, that the terms of all Taluka and District Panchayats were expiring on March 31, 1974. In this view of the matter, says the Counsel, the impugned notification is not relatable to the situation existing by reason of the disturbances.

25. This contention also is devoid of force. In the first place, the opening paragraph of the impugned notification is a recital of a fact which constituted another facet of the situation arising out of the disturbances. Secondly, the real and dominant reason for the exercise of the power is contained in the second paragraph of the notification (reproduced earlier in the judgment). The circumstances and reasons which weighed with the Government in issuing the impugned notification have been set out in the counter-affidavits of the Joint Secretary, Mr. Shah. We have referred to the same earlier. We will however like to point out that although it was stated therein that Government, on being so advised, was of the view that after March 31, 1974, the Government on account of the cessation of the operation of Ordinance 1 of 1974, would have no power to extend the terms of the Panchayats further, it was pleaded that as "the disturbances continued also in March, 1974, it was felt by the Government that it was not expedient in the then circumstances to hold elections to the Taluka and District Panchayats".

26. In para 6C of the counter, the Joint Secretary has explained how the efforts made by the Government to hold the elections were thwarted by the supervention of the disturbances. Avers he :

I deny that no efforts were at all made to hold elections of the Taluka Panchayats or the District Panchayats before March 31, 1974. In fact the process of holding elections was initiated as early as in August, 1973, when the Development Commissioner called for the proposals for the delimitation of constituencies from the Collectors. The Development Commissioner had also instructed Collectors to consult Taluka Panchayats and District panchayats while formulating the proposals of delimitation of the constituencies. An Assistant Development Commissioner visited most of the districts to expedite the formulation of those proposals. In the meantime, the terms of Taluka Panchayats and District panchayats was first extended up to February 28, 1974 and then extended up to March 31, 1974 as set out hereinabove. However, due to widespread disturbances throughout the State of Gujarat, the situation was such that it was not expedient to hold elections for the reconstitution of any of the Taluka and District Panchayats.

27. In the counter it is also stated that one of the demands of the agitators was that the terms of the Panchayats, who had served more than their normal terms, should not be extended further. That weighed with the Government in deciding that it was not politic in the then prevailing conditions to extend the terms of the Panchayats which on account of the extensions had already been continued for a period of about seven years. The Joint Secretary made this point in the counter by citing illustration of Baroda Corporation thus :

The example of Baroda Municipal Corporation where the term of that body was extended for the seventh year and where corporators had to resign per pressure was also in the mind of the Government. The Government accordingly decided in the overall interest of the State and the Panchayati Raj not to extend the terms of Taluka and District Panchayats.

28. The averments in paragraphs 2 and 6C (quoted above) in the counter-affidavit of the Joint Secretary between themselves furnish a complete answer to the contention advanced on behalf of the respondents.

29. The further point canvassed by Mr. Nanawati is that even assuming there were two powers with the Government in a situation where election could not be held, in whatever sense the word election is construed, resort to a more drastic and undemocratic provision itself exhibits malice in law. This argument was advanced before the High Court, also, and was negative. We also do not find any merit in it.

30. The constitutional validity of the provisions of Section 303A and Section 17(2) has not been assailed before us. As rightly pointed out by Mr. Phadke, Sections 17(2) and 303A operate in separate filed. Their objects are also different. Whereas the purpose of Section 17(2) is to ensure the continuity of the Panchayats, the object of Section 303A is to confer powers regarding dissolution of Panchayats, in the special situation created by the disturbances and to enable the Government to carry on the administration of the affairs of the Panchayats through State officers, pending their reconstitution. It has been repeatedly averred in categorical terms in the counters that the Government exercised its power under Section 303A in view of the peculiar situation arising out of the disturbances. Even if the Government had the power under Section 17(2) to extend the terms of the Panchayats beyond March 31, 1974, it could not be said in the circumstances of the case, that in choosing to act under Section 303A, it had acted maliciously, the operational fields of these two provisions being so different and divergent. We would, therefore, overrule this contention, also.

31. These, then, are the reasons in support of our order, announced on September 27, 1974, whereby we had allowed these appeals and set aside the judgment of the High Court, leaving the parties to bear their own costs throughout.

32. We hope that the Government will take prompt measures to hold the elections expeditiously and will not use this judgment as an excuse to postpone the elections indefinitely. On September 27, 1974, when we declared our order, we had asked Counsel for the State Government to impress upon his clients the need, especially in the present climate, to preserve the democratic processes.

</html