

SUPREME COURT OF INDIA

Ahmedabad Municipal Corporation

Vs.

Rajubhai Somabhai Bharwad & Anr.

C.A.No.10310-10311of 2014

(Dipak Misra and Uday Umesh Lalit,JJ.,)

01.07.2015

JUDGMENT

Dipak Misra,J.,

1. The present appeals, by special leave, assail the judgment and order dated 17.7.2013 in LPA No. 1070/1998 whereby the Division Bench of the High Court has opined that against the order of the learned Single Judge under Article 227 of the Constitution of India, an intra-court appeal is not maintainable, and also question the defensibility of judgment and order dated 30.7.1998 passed by the learned Single Judge in Special Civil Application No. 7469 of 1997 whereunder he has concurred with the award passed by the Labour Court which had, on the strength of a compromise entered into by the Sarpanch of Nava Naroda Gram Panchayat, the 2nd respondent with the workman and on that basis had directed his reinstatement in service on the post of a clerk with full back wages.

2. At the outset, it is necessary to clarify that we are not disposed to dwell upon the maintainability of the letters patent appeal before the Division Bench as that issue would be addressed separately in other cases. It is also apposite to mention here that the orders have been assailed by the Gram Panchayat as well as by the Ahmedabad Municipal Corporation (for short, 'the Corporation'), for both had preferred the intra-court appeal assailing the award of the Labour Court as well as the judgment and order of the learned Single Judge. Be that as it may, as the Panchayat has preferred the appeal, it requires to be addressed on merits.

3. The factual score which is necessary to be depicted are that the 1st respondent was appointed as a 'Mukadam' with the Gram Panchayat vide order dated 21.5.1995. He was dismissed from service by oral order dated 23.1.1996. The said order of dismissal constrained the first respondent to raise an industrial dispute vide Reference No. 531 of 1996 before the Labour Court, Ahmedabad. No written statement was filed before the Labour Court, but a compromise was entered into between the workman and the Sarpanch stating, inter alia, that the workman was working as a clerk in the Gram Panchayat and he would be reinstated in service on the post of Clerk with continuous service and would be entitled to get

all future benefits and further whatever amount is payable towards the post of Clerk, would be paid in three monthly instalments and his service would be continuous.

4. The legal acceptability of the award was assailed by the Gram Panchayat on the ground that the Sarpanch had entered into a compromise with the workman without any authority from the Gram Panchayat and, therefore, the award passed by the Labour Court was null and void. It was urged that in the absence of any resolution by the Gram Panchayat, the compromise and the consequent award were absolutely unsustainable and deserved to be axed in exercise of writ jurisdiction by the High Court. The learned Single Judge by the impugned order dated 30.7.1998 considering the submission opined that there was no mention in the writ petition that the said compromise was entered into by the village Sarpanch on account of any fraud or misrepresentation or undue influence; that when the Gram Panchayat was made a party and the Sarpanch was representing the said Panchayat, the Sarpanch was entitled under Section 55 of the Gujarat Panchayats Act, 1993 (for brevity, "the Act"), to sign the compromise; that the Sarpanch being the Chief Officer is the employer of the workman as per sub-clause 2 to Section 2(g) of the Industrial Disputes Act, 1947 and hence, the compromise executed between him and the workman was valid and legally enforceable; that while interpreting the award on the strength of compromise, it was open to the Panchayat to reinstate him on the post of Mukadam, the post which he was holding at the time of his retrenchment and that when there was admission in respect of the compromise before the Labour Court, there was no illegality in the award passed by the Labour Court. Being of this view, the learned Single Judge dismissed the writ petition.

5. The Gram Panchayat and the Corporation preferred the intra-court appeal and as has been stated hereinbefore, the Division Bench relying on a Full Bench decision of the High Court in *Revaben wd/o Ambalal Motibhai and Ors. vs. Vinubhai Purshottambhai Patel and others*[1], ruled that the appeal was not maintainable. Hence, an appeal has been preferred against the order passed by the Division Bench and another appeal questioning the justifiability of the order passed by the Labour Court that has been affirmed by the learned Single Judge.

6. As has been clarified earlier, we are not delving into the issue whether the intra-court appeal was maintainable or not. We shall only address to the correctness of the award passed by the Labour Court and the soundness of the judgment and order passed by the learned Single Judge concurring with the same. There is no cavil over the fact that the award has been passed by the Labour Court on the basis of a compromise entered into between the Sarpanch of the Gram Panchayat and the workman. Ms. Hemantika Wahi, learned counsel appearing for the appellant has raised a singular contention that the Sarpanch could not have entered into a compromise without the authority, that is, a resolution passed by the Gram Panchayat.

7. We have heard Ms. Hemantika Wahi, learned counsel for the appellant and Mr. O.P. Bhadani learned counsel for the respondent.

8. The singular question that emerges for consideration is whether the Sarpanch while representing the concerned Gram Panchayat could have entered into a compromise on behalf of the Gram Panchayat without a proper resolution of the Gram Panchayat. The said issue has to be appreciated in the backdrop of the provisions of the Act. Section 55 of the Act enumerates the executive functions of Sarpanch and Upa-Sarpanch. The relevant part of the said provision is reproduced below:-

“55. Executive functions of Sarpanch and Upa-Sarpanch.-(1) Save as otherwise expressly provided by or under this Act, the executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a village panchayat shall vest in the Sarpanch thereof who shall be directly responsible for the due fulfillment of the duties imposed upon the panchayat by or under this Act. In the absence of the Sarpanch his powers and duties shall, save as may be otherwise prescribed by rules, be exercised and performed by the Upa-Sarpanch.

(2) Without prejudice to the generality of the foregoing provision:-

(a) the Sarpanch shall-

(i) preside over and regulate the meetings of the panchayat;

(ii) exercise supervision and control over the acts done and actions taken by all officers and servants of the panchayat; incur contingent expenditure upto fifty rupees at any one occasion; operate on the fund of the panchayat including authorization of payment, issue of cheques and refunds; be responsible for the safe custody of the fund of the panchayat; cause to prepare all statements and reports required by or under this Act; exercise such other powers and discharge such other functions as may be conferred or imposed upon him by this Act or rules made thereunder.” The aforesaid provision, as is perceptible, confers certain powers on the Sarpanch for carrying out the purpose of provisions of the Act and the resolutions passed by village Panchayat and he shall be directly responsible for the due fulfillment of the duties imposed upon the Panchayat by or under the Act. That apart, the powers that have been mentioned in sub-Section (1) is qualified by the words “Save as otherwise expressly provided by or under this Act”. Sub-section (2) stipulates that without prejudice to the generality of the provision contained in sub- Section (1), the Sarpanch has been given certain powers.

9. Having mentioned the powers of the Sarpanch, it is necessary to appreciate how a Village Panchayat functions under the Act. Section 2(14) defines “Panchayat” which means a village panchayat, taluka panchayat or district panchayat. Section 3 deals with establishment of Panchayats on different tiers. The said provision reads as follows:-

“3. Establishment of Panchayats of different tiers.- For the purpose of this Act, there shall be in each district- a village panchayat for each village. A taluka panchayat for each taluka. A district panchayat for each district.”

10. Section 4 provides for a Gram Sabha for a village performing such functions as provided by or under the Act. Section 5 stipulates that a village panchayat shall be a body corporate. Chapter V of the Act provides for conduct of business, administrative powers and duties, property and fund Accounts, etc. of Panchayat. Part I pertains to provisions relating to Village Panchayat. Under the heading (A) conduct of business finds mention. Section 96 deals with questions to be decided by majority of votes. It reads as follows:-

“96. Questions to be decided by majority of votes.- All questions before a meeting of a panchayat or committee thereof or of a gram sabha shall be decided by a majority of votes of the members present and unless otherwise provided in this Act, the presiding officer of the meeting shall have a second or casting vote in all cases of equality of votes: Provided that in such circumstances and subject to such conditions as may be prescribed, a decision on any question before a panchayat or committee thereof may be taken by circulating the propositions therefore for the vote of members.” Under Caption (B) administrative powers and duties have been prescribed. Section 99 which deals with administrative powers of Panchayat reads as follows:-

“Administrative powers of panchayats.- Subject to the provisions of this Act it shall be the duty of each panchayat to make in the area within its jurisdiction, and so far as the fund at its disposal will allow, reasonable provisions in regard to all or any of the matters specified in Schedule I.”Section 100 provides for other functions of Panchayat. It is as follows:- “100. Other functions of panchayats.- (1) A Panchayat may with the previous sanction of the district panchayat, incur expenditure on education or medical relief outside its jurisdiction if its finances permit.

(2) A panchayat may also make provision for carrying out in the areas, within the limits of its jurisdiction any other work or measure which is likely to promote.-

(a) the health, safety, comfort or convenience,

(b) social, economic or cultural well being; and

(c) education including secondary education of the inhabitants of the areas.

(3) A panchayat may, by resolution passed at its meeting and supported by two-thirds of the whole number of members make provisions for any public reception, ceremony or entertainment in the area within its jurisdiction or may make contribution towards an annual gathering or such other gathering of panchayats in the district or the State or towards the fund of any institution which is established with the object of promoting the spirit of community, self-help and mutual aid among village folk and suggesting ways and means for the efficient administration of panchayats and which is recognized by the State Government: Provided that except with the previous sanction of the panchayat to which it is subordinate undersection 6, the panchayat shall not incur expenditure exceeding one hundred rupees on any such reception, ceremony, entertainment or gathering.

(4) If in respect of any land it comes to the notice of a panchayat that on account of the neglect of the occupant or superior holder thereof or dispute between him and his tenant, the cultivation of the land has seriously suffered the panchayat may bring such fact to the notice of the competent authority.

(5) A panchayat shall, in regard to the measures for the amelioration of the condition of Scheduled Castes and Scheduled Tribes and other backward classes, and in particular, in the removal of untouchability, carry out the directions of orders given or issued in this regard from time to time by the State government or the competent authority and in case the panchayat fails to carry out any direction or order so given or issued, it shall be lawful for the State Government to withhold the payment to the panchayat of all or any of the grants payable under Chapter XI after the panchayat has been given a reasonable opportunity of being heard.

(6) A panchayat shall perform other duties and functions as are entrusted to it by or under any other law for the time being in force.

(7) It shall be lawful for a panchayat to render financial or other assistance to any person for carrying on in the village panchayat any activity which is related to any of the matters specified in Schedule I.”

11. We have referred to the aforesaid provisions to show the nature of powers conferred upon the authorities and how they are to be exercised. Section 101 specifically deals with the power to compromise which is extracted below:-

“101. Power to compromise (1) A village panchayat may compromise in respect of any suit instituted by or against it, or in respect of any claim or demand arising out of any contract entered into by it under this Act, for such sum of money or other compensation as it shall deem sufficient: Provided that if any sanction in the making of any contract is required by this Act, the like previous sanction shall be obtained for compromising any claim or demand arising out of such contract. The panchayat may give compensation out of its fund to any person sustaining any damage by reason of the exercise of any of the powers vested in it and its officers and servants under this Act.”

12. On a plain reading of the aforesaid provision it is graphically clear that specific power has been given to enter into a compromise in respect of suits and certain claims but the said power is to some extent curbed by the proviso. Be that as it may, the power is conferred for entering into any compromise on the village Panchayat.

13. In this context Section 227 occurring in Chapter XIII that deals with provisions relating to services is significant to be taken note of. Section 227 deals with Panchayat service to be regulated by rules. To appreciate the controversy we think it apposite to reproduce Section 227:-

“227. Panchayat service to be regulated by rules.- (1) For the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a panchayat service in connection with the affairs of panchayats. Such service shall be distinct from the State service.

(2) The panchayat service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such, as the State Government may, by order from time to time determine :

Provided that nothing in this sub-section shall prevent a district panchayat from altering, with the previous approval of the State Government any class, cadre or number of posts so determined by the State Government.

(3)(a) The cadres referred to in sub-section (2) may consists of district cadres, taluka cadres and local cadres.

(b) A servant belonging to a district cadre shall be liable to be posted whether by promotion or transfer to any post in any taluka in the district.

(c) A servant belonging to a taluka cadre shall be liable to be posted whether by promotion or transfer to any post in any village in the same taluka.

(d) A servant belonging to a local cadre shall be liable to be posted whether by promotion or transfer to any post in the same village.

(4) In addition to the posts in the cadres referred to in sub-section (3), a panchayat may have such other posts of such classes as the State Government may by general or special order determine. Such posts shall be called “deputation posts” and shall be filled in accordance with the provisions of section 231.

(5) Subject to the provisions of this Act, the State Government may make rules regulating the mode or recruitment either by holding examinations or otherwise and conditions of service or persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the panchayts service and disciplinary action against any such officers or servants.

(6) Rules made under sub-section (5) shall in particular contain-

(a) a provision entitling servants of such cadres in the panchayat service to promotion to such cadres in the State service as may be prescribed;

(b) a provision specifying the classes of posts recruitment to which shall be made through the District Panchayat Service Selection Committee and the classes of posts,

recruitment to which shall be made by the Gujarat Panchayat Service Selection Board, and

(c) a provision regarding the percentage of vacancies to be reserved for the members of Scheduled Castes, Scheduled Tribes and Other Backward Classes in the panchayat service.

(7) Such rules may provide for inter-district transfers of servants belonging to the panchayat service and the circumstances in which and the conditions subject to which such transfers may be made.

(8) The promotion of servant in a cadre in the panchayat service to a cadre in the State service in accordance with rules made under clause (a) of sub-section (6) shall not affect-

(a) any obligation or liability incurred or default committed by such servant during the period of his service in a cadre in the panchayat service while acting or purporting to act in the discharge of his duties as such servant, or

(b) any investigation, disciplinary action or remedy in respect of such obligation, liability or default, and any such investigation, disciplinary action or remedy may be instituted, continued or enforced in accordance with the law applicable thereto during the said period of service by such authority as the State Government may be general or special order specify in this behalf.” On a scrutiny of the aforesaid provision it is vivid that the services of employees of Panchayat are regulated by rules. That apart, it is also luminous that it also includes the services in a Panchayat in a Village. Be it noted, the State Government has framed a set of rules namely, Gujarat Panchayat Services (Conduct) Rules, 1998. It is also noticeable there are various rules like Mali (Class IV) (Panchayat Service) Recruitment Rules, 1998, Mazdoors (Class IV) (Panchayat Service) Recruitment Rules, 1999, Plumber (Class IV) (Panchayat Service) Recruitment Rules, 1999, the Post of Cleaner (Class IV) (Panchayat Service) Recruitment Rules, 1998 etc. We need not dwell upon the facet who would be the competent authority to remove an employee from service, for that is not the controversy involved in the instant case. The purpose of referring to various provisions and rules is only to highlight the fact that conditions of service are controlled and governed by rules and certain powers are conferred on the Sarpanch. As the provisions would show he has to act in accordance with the provisions of the Act and the resolutions passed by the village panchayat. As we may notice from Section 55, the Sarpanch has been conferred certain executive functions under sub-Section 55(2) of the Act but the said power does not enable him to enter into a compromise. The said power has been specifically postulated in Section 101 of the Act and it is significant to note that the said power has been conferred on the village panchayat.”

14. Section 5 of the Act, as we have stated earlier, clearly lays down that a village panchayat is a body corporate. *In Daman Singh and others v. State of Punjab and others*² while dealing with validity of various cooperative societies Act, the Court referred to Section 30 of Punjab Cooperative Societies Act, 1961 which provided that the registration of cooperative societies

shall make it a body corporate. While dealing the concept of corporation the larger Bench stated:-

“What is a corporation? In Halsbury’s Laws of England, 4th Edition., Volume 9, paragraph 1201, it is said:

“A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question.” A corporation aggregate has been defined in para 1204 as, “[A] collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence” Thereafter the court referred to another Constitution Bench decision in *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi*³. In the said case the Constitution Bench had reproduced statements contained in Halsbury’s Laws of England a part of which was referred to in Daman Singh (supra) and added:-

“A corporation aggregate has therefore only one capacity, namely, its corporate capacity. A corporation aggregate may be [pic]a trading corporation or a non-trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special Acts of Parliament, (3) companies registered under the Companies Act, etc. Non-trading corporations are illustrated by (1) municipal corporations, (2) district boards, (3) benevolent institutions, (4) universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors are one. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself; for a corporation is a legal persona just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient.” The purpose of referring to the same is that the village panchayat by a specific provision of the Act is regarded as a body corporate. A body corporate as has been held can sue or be sued in its name. Section 101, which we have already

reproduced, confers power on the village panchayat to enter into a compromise. As the factual matrix has been uncurtained, the village panchayat represented itself through the Sarpanch. Nothing has been brought on record that the Panchayat had conferred any authority on the Sarpanch to enter into any kind of settlement with the workman, the first respondent herein. In the absence of any authority and in the absence of any statutory permissibility it is absolutely inconceivable in law that a Sarpanch can enter into settlement with a workman.

15. Another material aspect which is required to be taken note of is that the learned Single Judge has referred to Section 2(g) of Industrial Disputes Act, 1947. It defines the term “employer”. We are disposed to think that by no stretch of imagination it can be held that the Sarpanch is the employer of the workman. He belongs to the village panchayat services if he had properly been appointed. It is the village panchayat which is the employer. The laconic analysis on the part of the learned Single Judge in this regard does not commend acceptance and we are unable to agree with the same.

16. In the obtaining factual score, we are impelled to observe that a Sarpanch is required to look after the interest of the Gram Panchayat. The Legislature has given certain executive powers under Section 55 of the Act. We repeat at the cost of repetition that it has its limitations. He should not rush into an area where angels fear to tread. Part IX of the Constitution has been inserted by the Constitution 73rd (Amendment) Act, 1992. Article 243 is the dictionary clause. Article 243(d) defines “Panchayat” to mean an institution (by whatever name called) of self- government constituted under article 243B, for the rural areas. 243B deals with the constitution of Panchayats. 243C provides for composition of Panchayats. 243G deals with powers, authority and responsibilities of Panchayats. The said article is as follows:-

“243G. Powers, authority and responsibilities of Panchayats - Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

17. The purpose of our referring to the same is that the parliament by the Constitutional amendment required the State Legislature to bring their State laws in conformity with Part IX of the Constitution. Power has been conferred on the Panchayats so that they are able to function as an institution of self-Government. The State Legislature has also been empowered to make provisions by which powers are given to the Gram Panchayats. Once

responsibility is given they are to be carried out with sanguine responsibility. A Sarpanch, as we perceive in this case, by entering into a settlement has not only acted contrary to the provisions of the Act and but also the spirit of the responsibility cast on the local self-Government.

18. In this context, we cannot be oblivious of a very significant facet. The Labour Court as we find in a single line order has accepted the settlement and has not made any endeavour to even find out whether the Sarpanch was authorised with any kind of resolution to enter into compromise/settlement by the village panchayat. He should have borne in mind that it is not the Sarpanch who was the employer; that much of scrutiny was required on the part of the Labour Court. It will not be a hyperbole if it is said that it is the bounden duty on the part of the presiding officer of the Labour Court to do so and we say so without any hesitation, for court has a sacred duty to scrutinize whether a valid compromise has been entered into or not. He has to be satisfied that the compromise is lawful.

19. In view of the aforesaid analysis, we allow the appeals set aside the order passed by the learned Single Judge and that of the Labour Court and remit the matter to the Labour Court for fresh adjudication. We may hasten to clarify that we have not expressed any opinion on the merits of the case. As indicated earlier we have not dwelt upon as regards the maintainability of the intra court appeal and we have not expressed any opinion on that score. Be it clarified, the judgment of the Division Bench barring maintainability has not dealt with the issue of merits. Regard being had to the peculiar facts and circumstances of the case there shall be no order as to costs.

Judgment

¹(2013) 1 GLH 0440

²AIR 1985 SC 0973

³(1962) Suppl (1) SCR 0156: AIR 1962 SC 458