State Of Gujarat & Another vs Zinabhai Ranchhodji Darji & Ors on 7 December, 1971

Equivalent citations: 1972 AIR 999, 1972 SCR (2) 686, AIR 1972 SUPREME COURT 999

Author: A.N. Grover

Bench: A.N. Grover, K.S. Hegde, A.N. Ray

PETITIONER:
STATE OF GUJARAT & ANOTHER

Vs.

RESPONDENT:
ZINABHAI RANCHHODJI DARJI & ORS.

DATE OF JUDGMENT07/12/1971

BENCH:
GROVER, A.N.
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HEGDE, K.S.
RAY, A.N.

CITATION:
1972 AIR 999 1972 SCR (2) 686
1972 SCC (1) 233

ACT:
Gujarat Panchayats Act 1961--s. 310 A--Sub-section 1 of s. 310A--Its Scope--Bombay Provincial Municipal Corporations Act 1949--S. 3(3) and S. 493--Its Scope and Gujarat Municipalities Act 1963--S.279(2)--Its scope and their interpretation.

HEADNOTE:
In a Taluka Panchayat election in 1968, Respt. No. 1 was elected as a member and he was elected president of the Taluka Panchayat. Thereupon, he became ex-officio member of the Surat district Panchayat under S. 15(i)(A)(i) of the Gujarat Panchayats Act 1961. He was ultimately elected President of the Surat District Panchayat. He ceased to hold his office of President of the Taluka Panchayat. The

district in question consists of several Talukas; one of such Talukas was called 'C' Taluka for which a Taluka Panchayat was constituted under the provisions of the Panchayat Act. Two areas known as 'R' & 'A' were subject to the authority of the District Panchayat and the 'C' Taluka Panchayat 'R' had a Nagar Panchayat and 'A' bad a Gram Panchayat. In 1970, the State Govt. by a notification under S. 3(3),of the Bombay Provincial Municipal Corporations Act, 1949, included the local areas of 'R' & 'A' within the limits of the Surat Municipal Corporation and by this notification, it was declared that the local area of 'R' shall cease to be a Nagar and that of 'A' shall cease to be a Gram. The result was that 'R' & 'A' stood excluded from the limits of 'C' Taluka Panchayat & the Surat District Pan-chayat from January 1971 with a direction that the members of the dissolved Panchayat shall vacate offices and that the Taluka & the District Panchayat shall be reconstituted with members specified in clause 3 of the order read with Schedule 1 and 2. Respondent No. 1 having ceased to hold office as President of the Taluka Panchayat when he was elected Is President of the District Panchayat, could not act as an ex-officio member of reconstituted Surat District Panchayat because he had ceased to be an ex-officio member as such. He was not an elected member of the Surat District Panchayat and was rot appointed a member under S. 310A (2) (b) of the Panchayat Act. He, therefore, ceased to be a member of the Surat District Panchayat as reconstituted. This led to the cessation of his holding the 'office of the President of that Panchayat. He filed a petition under Art. 226 of the Constitution challenging the validity of the order of dissolution and reconstitution made by the Development Commissioner. The High Court allowed the petition on the ground that by reason of' the exception contained in S, 310A(10) of the Panchayats Act. Commissioner had no power to dissolve the panchayat Sub-s. (i) of that section. On appeal the question arose provisions of S. 310A(10) would apply to the Municipal which had been converted into a city with effect from

HELD : (i) The Appellant had no right to dissolve the 'C' Taluka Panchayat under sub-S. (1) because S. 310A(10) of the Panchayat Act provides that nothing in the foregoing provisions of the section shall apply or shall be deemed ever to have applied to the alteration of the limits of a district or a taluka by reason of the inclusion in or exclusion from the district taluka of any area as a result of the alteration of the

687

limits of a municipal borough or conversion of a municipal borough into a Gram or Nagar or the establishment of or the alteration of the limits of a contonement. [693 F]

(ii) The Municipal borough under Sec. 310(10) of the panchayat Act, would have the meaning of the word 'City' within the meaning of para 1 of Appendix IV of the

Corporation Act. Therefore when the 'C' Taluka Panchayat was included into the Municipal borough of Surat which was declared as a city, Sub section (1) of Section 310(A) will have no application. [692 H]

(iii) In the matter of interpretation of enactment which are in force in a particular state, this Court generally attaches a good deal of value to the views of the High Court of that State, particularly, when they have been fully considered by it, because that Court is expected to be sufficiently conversant with the provisions of the various local enactment. [694 G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 405 of 1971. Appeal from the judgment and order dated February 17th 18th 1971 of the Gujarat High Court in Special Civil Application No. 77 of 1971.

M. C. Setalvad and B. D. Sharma, for the Appellant. B. Sen, K. L. Hathi and P. C. Kapur, for Respondent No. 1. The Judgment of the Court was delivered by Grover, J. This is an appeal by certificate from a judgment of the Gujarat High Court in which the legislation which came up for interpretation has been characterized by the High Court as confused and obscure.

The facts may be succinctly stated. In the elections to the Vyara Taluka Panchayat which took place in 1968 respondent No. 1 was elected as a member. At the first meeting of the Taluka Panchayat he was elected as its President. Thereupon he became ex-officio member of the Surat District Panchayat by virtue of S. 15(1)(A)(i) of the Gujarat Panchayats Act 1961, hereinafter called the 'Panchayats Act'. He was ultimately elected as President of the Surat District Panchayat. He ceased to hold his office of President of the Taluka Panchayat. Surat district consists of several Talukas; one of such Talukas is called Chorashi Taluka for which a Taluka Panchayat was constituted under the provisions of the Panchayats Act. Two areas known as Rander and Adajan were subject to the authority of the Surat District Panchayat and the Chorashi Taluka Panchayat. Rander had a Nagar Panchayat and Adajan had a Gram Panchayat. On January 16, 1970 a notification was issued by the State Government under S. 3 (3) of the Bombay Provincial Municipal Corporations-Act 1949, to be referred to as the 'Corporations Act' by-which the local areas of Rander and Adajan were included within the limits of the Surat Municipal Corporation. This was followed by a notification dated January 21, 1970 under S. 9(2) of the Panchayats Act declaring that the local area of Rander shall cease to be a Nagar and that oil Adajan shall cease to be a Gram with effect from February 1, 1970. The net result was that Rander and Adajan stood excluded from he limits of the Chorashi Taluka Panchayat and the Surat District Panchayat. A notification was issued on June 13, 1963 by the Development Commissioner in exercise of the powers conferred on the State Government under s. 31O(A) of the Panchayats Act and delegated to him dissolving the Chorashi Taluka Panchayat and the Surat District Panchayat with effect from January 11, 1971 with a direction that the members of the dissolved Panchayat shall vacate offices and that the Taluka and District Panchayats shall be reconstituted with members specified in clause 3 of the Order-read with Schedules 1 and

2. Respondent No. 1 having ceased to hold office as President of the Vyara Taluka Panchayat when he was elected as President of the Surat District Panchayat could not be an ex-officio member of the reconstituted Surat District Panchayat because he had ceased to be an ex-officio member as such. He was not an elected member of the Surat District Panchayat and was not appointed a member under s. '310A(2)(b) of the, Panchayats Act. He, therefore, ceased to be a member of the Surat District Panchayat as reconstituted. This led to the cessation of his holding the office of the President of that Panchayat. He filed a petition under Art. 226 of the Constitution challenging the validity of the order of dissolution and reconstitution made by the Development Commissioner.

Before the High Court two main grounds were taken on behalf of respondent No. 1. The first was that the Development Com- missioner as a delegate of the State Government had no power to dissolve the Chorashi Taluka Panchayat and the Surat District Panchayat under S. 310A(1) of the Panchayat Act by reason of the provisions contained in sub-s. (10) of that section. The second point was that the order had been made by the Development Commissioner mala fide. The High Court decided the first question against the State and held that by reason of the exception contained in S. 310A(1O) of the Panchayats Act the Development Commissioner had no power to dissolve the Panchayat in question under sub-s. (1) of that section. The second point was not gone into as it was considered unnecessary to decide it.

There are three enactments the provisions of which will have to be considered in order to decide the controversy between the, parties. The first is the Panchayats Act, the second is the Corporation,-, Act and the third is the Gujarat Municipalities Act, 1963, hereinafter referred to as the 'Municipalities Act'. We may first refer to the material provisions of the Panchayats Act. This Act.

according to the preamble, was enacted to consolidate and amend the law relating to village panchayat and district local boards in the State of Gujarat etc. Section 1 provides :

> S. 1 (1) This Act may be called the Gujarat Panchayats Act, 1961.
>
> (2) It extends to the whole of the State of Gujarat.
>
> (3) This section shall come into force at once; and all or any of the remaining provisions of this Act shall come into force (in respect of such class of Panchayats, in such district and on such dates as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed in respect of different districts and different provisions".

By various notifications issued under sub-s. (3) of s. 1 the provisions of the Panchayats Act were brought into force. Section 310A did not exist in the Panchayats Act as enacted. It was subsequently introduced by Gujarat Act 26 of 1962 which came into force on August 18, 1962. By a notification dated February 7, 1963 under s. 1(3), s. 310A was brought into force in all the districts of the State of Gujarat except the district of Dangs. Subsection (1) of s. 310A provides that when on account of the constitution of a new district or Taluka under the Land Revenue Code or for any other reason the limits of a district or a taluka are, during the term of office of the members of the District Panchayat

or the 'Taluka Panchayat altered the State Government may by order dissolve such District Panchayat or Taluka Panchayat from a date specified in the order and direct reconstitution of the District Panchayat or the Taluka Panchayat or the establishment of a District Panchayat or Taluka Panchayat for a new district or a new taluka which has been constituted. Sub-s. (1) which was not to be found in the original section was introduced with retrospective effect by Gujarat Act 7 of 1966. According to sub-s. (10) nothing in the foregoing provisions of the section shall apply or shall be deemed ever to have applied to the alteration of the limits of a district or a taluka by reason of the inclusion in or exclusion from the district or taluka of any area as a result of the alteration of the limits of a municipal borough or conversion of a municipal borough into a Gram or Nagar or the establishment of or the alteration of the limits of a cantonment. An Explanation was added to the sub-section to the following effect "EXPLANATION.-Municipal borough if means a municipal borough constituted or deemed to be constituted under the Gujarat Municipalities Act, 1963".

Section 10 of the Panchayats Act provides for the formation of districts and talukas for the purpose of that Act. According to s. 8(2) a Taluka Panchayat or a District Panchayat shall have no authority over that portion of the area in the taluka or the district which for the time being is within the limits of a city, municipal borough, municipal district, notified area or cantonment.

The Corporations Act was enacted on December 29, 1949. Section 3 (1) provides that the local areas within the limits specified by the State Government by notification shall constitute the city of Ahmedabad. The notification constituting the city and a municipal corporation thereof came into force on July 1, 1950. Section 3(2) empowers the State Government by a notification to constitute any other local area lying within such limits as are specified to be a City. Section 490 provides that the Bombay District Municipalities Act 1901, the Bombay Municipal Boroughs Act 1925 and the Bombay Village Panchayats Act 1923 shall cease to apply except as provided in the Act to any area included in the city. According to s. 493 the, provisions of Appendix IV shall apply to the constitution of the Corporation and other matters specified therein. Para 1 of Part 1 of that Appendix is in the following terms :

> "References in any enactment other than the Bombay District Municipal Act, 1901, the Bombay Municipal Boroughs Act 1925, and the Bombay Local Fund Audit Act 1930 in force on the date immediately preceding the appointed day in a City or in any rule, order, or notification made or issued thereunder and in force on such date in the said City to municipal districts municipal boroughs, municipalities or borough municipalities con- stituted under the Bombay District Municipal Act 1901 or the Bombay Municipal Boroughs Act, 1925, shall, unless a different intention appears, be construed as references to the City or to the Corporation of the said City, as the case may be, and such enactment, rule, order or notification shall apply to the said City or Corporation".

The expression "appointed day" is defined by S. 2(2). It means with reference to any local area the day on which such area is constituted the city of Ahmedabad or any other city under S. 3 It may be mentioned that Surat which was originally a municipal borough was constituted a city with effect from October 1, 1966 by means of a notification issued under s. 3(2) of the Corporations Act. Prior to

the enactment of the Municipalities Act there were in force in the State of Gujarat the Bombay District Municipalities Act 1901 and the Bombay Municipal Boroughs Act 1925. The first enactment provided for the constitution of a municipal district and a municipality for, each such district; the second enactment provided for the constitution of a municipal borough and a borough municipality for each such borough. By s. 279(1) of the Municipalities Act these two statutes were repealed. Section 279(2) of the aforesaid Act made the following provisions :

> "(2) Notwithstanding the repeal of the said Acts,-
>
> (i) any local area declared to be either a municipal borough or municipal district immediately before the date on which this Act comes into force (hereinafter referred to as "the said date") shall be deemed to be a muni- cipal borough under this Act;
>
> (ii) the municipalities constituted under the said Acts immediately before the said date (hereinafter called the old municipalities") shall be deemed to be municipalities of the respective boroughs (hereinafter respectively called "the new municipalities" and "the new boroughs");
>
> (iii).....

As has been pointed out by the High Court if the city of Surat which was originally a municipal borough constituted under the Bombay Municipal Boroughs Act 1925 became a municipal borough under the deeming provisions of the Municipalities Act there would have been no difficulty in applying s. 310A (10) and its provisions would-have excluded the applicability of sub-s. (1) of s. 310A when the limits of Chorashi Taluka and the Surat district were altered by reason of Rander and Adajan having been excluded from. the same and included in the city of Surat as a result of the notification dated January 16, 1970. But the municipal borough of Surat had been converted into a city with effect from October 1, 1966 as noticed before under the provisions of the Corporations Act. This immediately led to the question whether the applicability of s. 310A(10) would be attracted by virtue of s. 493 read with Appendix IV, Para 1 of the Corporations Act.

The approach of the High Court appears to have been that the word 'district' in s. 1(3) must me-an a revenue district and not a district as defined in s. 2(6) of the Panchayats Act. The opening words of the definition section are " unless the context otherwise requires". Section 1(2) of the same Act declares that it extends to the whole of the State of Gujarat. Sub-section (3) provides that s. 1 shall come into force at once. It further provides that all or any of the remaining provisions of the Panchayats Act shall come into force in respect of such class of panchayats in such districts and on such dates as the State Government may by notification appoint. The State Government can appoint different dates in respect of different districts and different provisions From this the High Court concluded that the word "district" in S. 1(3) must mean a revenue district. The main reason which prevailed with the High Court was that the word "district" in that provision could not be construed to refer to a district which was yet to be formed under s. 2(6) of the Panchayats Act particularly when that provision could come into force only when the notification had been Issued under s. 1(3). Thus a district under the Panchayats Act could be formed only if its provisions were brought into

force. It may be useful to give the conclusion of the High Court in its ,own words :-

> "..... how can a notification be issued by the State Government under section 1 sub-s. (3) bringing into force the provisions of the Panchayats Act in a district which can exist legally as well as conceptually only after the provisions of the Act are brought into force ?

Section 1 sub-s. (3) applies at a stage prior to the formation of the district under the Panchayats Act....."

The High Court also referred to the provisions of s. 9 of the Panchayats Act and. illustrated how the State Government could not invoke its provisions for the purpose of declaring a revenue village or group of revenue villages to be a Nagar or a Gram. It was only if S. 9 was in force in the local area comprising such revenue village or group of revenue villages that the State Government could acting under that section declare such local area to be a Nagar or a Gram. Similar would be the case with reference to S. 307 of the Panchayats Act which is to found in Chapter XVI which makes provisions for conversion of municipality into a Panchayat and for amalgamation and division of Panchayats. Section 310A was applied by means of a notification dated February 7, 1963. The High Court construed the notification to mean that it was applied to the revenue district of Surat which would include the municipal borough of Surat. Now Para 1 of Appendix IV in the Corporation Act lays down that reference in any enactment other than the three enactments mentioned therein which were in force on the date preceding the appointed day in a city to municipal boroughs etc. shall, unless a different intention appears, be construed as references to the City. If S. 310A of the Panchayats Act was in force in the revenue district of Surat it applied to the municipal borough of Surat prior to that borough becoming a City with effect from October 1, 1966. The Panchayats Act was thus in force in the municipal borough of Surat immediately preceding October 1, 1966 on which date Surat became a City. It follows that "municipal borough" in S. 310A(10) of the Panchayats Act would have the meaning of the word "City".

Before us no attempt was made on behalf of the State to demolish all the steps in the above process of reasoning and in particular the conclusion of the High Court that s. 310A(10) of the Panchayats Act was applicable to a revenue district which included the borough of Surat before it became a city. It was suggested on behalf of the State that the provisions of the Panchayats Act with the exception of s. 1 (2) were to be applied in respect of' such class of panchayats in such districts and on such dates as the State Government may by notification appoint. The provisions of the Panchayats Act could thus be made applicable only in respect of panchayats. What s. 1(3) however provides is that the provisions of the Act can be brought into force in such districts as the State Government may by notification in the Official Gazette appoint. Indeed the notification dated February 7, 1963 provided that the provisions of s. 310A shall come into force in all the districts of the State of Gujarat except the district of Dangs.

The principal argument that has been addressed to us is that the provisions contained in Appendix IV of the Corporations Act referred to above clearly employ the language "unless a different intention appears". A great deal of emphasis has been laid on the Explanation appearing in s. 310A

in which municipal borough is confined only to a municipal borough constituted or deemed to be constituted under the Municipalities Act. The omission of the word "city" from the Explanation, it is said, is significant and it would be wholly impermeable to travel beyond the Explanation which contains the key to the meaning of the word "municipal borough" as employed in the sub-section. It also shows a contrary intention which rules out the applicability of Para 1 of Appendix IV of the Corporation Act. It has also been urged that the words "conversion of a municipal borough into a Gram or a Nagar" in sub-s. (10) of s. 310A of the Panchayats Act could not possibly take in a city which would ordinarily have a population of more than two lakhs. By reading the word 'city" in place of the word " municipal borough" by applying Para 1 of Appendix IV of the Corporations Act the result would be so absurd that it would be contrary to all, canons of interpretation to do so. It does appear somewhat unusual that the draftsmen of s. 310A and in particular sub-s. (10) of that section should have omitted the word "city" from the principal part of that subsection. as also the Explanation. But it is equally possible that the applicability of Appendix IV (Para 1) of the Corporations Act was kept in view and it was considered unnecessary to expressly mention the word "city" in s. 310A(10) of the Panchayats Act. The High Court was of the opinion with regard to the second limb of the argument on this point that although it would be impossible to conceive of a situation where a city might be converted into a Gram or a Nagar but that would only mean that no occasion would arise to invoke the words "conversion of a municipal borough into a Gram or a Nagar". These words would not be rendered meaningless as they would continue to apply to a situation where a municipal borough (within the meaning of the Municipalities Act) and not a city was converted into a Gram or Nagar. There is a good deal of force in the following reasoning of the High Court with regard to the applicability of paragraph 1 of Appendix IV:

> "The principle underlying Paragraph 1 seems to be that where an enactment was in force in a local area and applied in relation to it, it must continue to apply notwithstanding that the local area is converted from a municipal borough into a City. Here in the present case if the local area of Surat had continu ed to be a municipal borough which it was when sub- section (1 0) of section 310A came into force and the alteration of the limits of Chorashi Taluka and Surat District had taken place as a result of the inclusion of Brander and Adajan in the limits of the Municipal Borough of Surat, sub-section (10) of section 310A would have applied, then is there any reason from the point of view of Section 310A why the Legislature should have intended that a different consequence shall ensue if the same alteration takes place at a time when the Surat Municipal Borough is converted into the City of Surat. There is no conceivable reason why the consequences which would have followed from the alteration of the limits of the local area of Surat when it was a Municipal Borough should not follow when the same alteration takes place in the limits of the same local area of Surat after it is constituted into a City".

After fully considering the contentions raised on behalf of the State we are not satisfied that there is any such infirmity in the judgment of the High Court which makes it erroneous or would justify our taking a different view. It must,be remembered that in the matter of interpretation of enactments which are in force in a particular State this Court generally attaches a good deal of value to the views of the High Court of that State, particularly when they have been fully considered by it, because that

court is expected to be sufficiently conversant with the provisions of the various local enactments.

In the result this appeal fails and it is dismissed with costs S.C. Appeal dismissed.