HIGH COURT OF GUJARAT *(D.B.)*

MOHANLAL NATHUBHAI
V/S
R M DESAI DEVELOPMENT COMMISSIONER, STATE OF GUJARAT

Date of Decision: 22 September 1967

Citation: 1967 LawSuit(Guj) 96

Hon'ble Judges: P N Bhagwati, N K Vakil

Eq. Citations: 1968 GLR 991

Case Type: Special Civil Application

Case No: 155 of 1967

Head Note:

Gujarat Panchayats Act(VI of 1961) - S.47,S.297 - Development Commissioner sent a show cause notice to Panchayat that why it should not be superseded - Without informing the members of Panchayat about the notice the Sarpanch replied the show cause notice - If such reply can be considered as reply of the panchayat - Panchayat was superseded by the development Commissioner - In the order Commissioner marked the reason that panchayat had not offered any explanation such order whether valid.
Having regard to the nature of the proceeding under sec. 297 and the purpose of the statute that the electorate of the Gram should have the right to have its affairs administered through their elected representatives in the Panchayat as a unit of self Government an intention so unreasonable to make the Sarpanch the sole authority under sec. 47 to decide the fate of the Panchayat and the elected members by rendering any explanation that he chooses and without the knowledge or concurrence of the Panchayat as a body or not rendering any explanation cannot be attributed to the Legislature. The contention that the

Sarpanch is the sole authority to take the decision and rendering explanation without even putting the matter before the Panchayat is not only unreasonable but one which would give rise to consequences and effect that would defeat the very object of the statute and particularly the purpose of the two provisions viz. sec. 297 and sec 47. The purpose of the provision of sec. 297 in providing the giving of opportunity to render explanation is to bring the fact alleged to the notice of the Panchayat as a body and consequently to its members and not only to the Sarpanch. (Para 11) Held that in the instant case the reply given by the petitioner Sarpanch without putting the show cause notice before the Panchayat in its general meeting is without authority of law and was not a reply of the Panchayat rendering the explanation of the Panchayat in respect of the various charges mentioned in the show cause notice. Under the circumstances the respondent was entitled not to take it to be an explanation of the Panchayat and proceed to decide the question of superseding the Panchayat on that basis. (Para 11)

Acts Referred:
Gujarat Panchayats Act, 1961 Sec 297, Sec 47

Final Decision: Petition dismissed

Advocates: K S Nanavati, I M Nanavati, B R Shah, R M Gandhi

Reference Cases:
Cases Cited in (+): **2**
Cases Referred in (+): **1**

Judgement Text:-

Vakil J

[1] This petition challenges the order of the Development Commissioner, Gujarat State, dated the 9th of November 1966 whereby the Chalala Gram Panchayat of District Amreli had been superseded for a period of two years. The said order is made by the Development Commissioner in the purported exercise of the powers under sub-sec. (1) of sec. 297 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as 'the Act').

[2] The first election of the Chalala Gram Panchayat (hereafter referred to as 'the Panchayat') was held in 1964 and it originally consisted of fifteen elected members. One Nagjibhai Jivraj was elected as the Sarpanch. It appears that he was later disqualified and thereafter petitioner No. 1 was the Sarpanch of the said Panchayat and the other petitioners were the sitting members thereof. It is the allegation of the petitioners that there are two major political groups in the village of Chalala. One is the Nagrik Mandal of which the petitioners are the members and the other is the Gram Seva Mandal. It is further alleged that this second group has the support of the Indian National Congress, the party which is in power in the Government. Some time before the filing of the petition, three members of the said Gram Panchayat were declared to be disqualified as members of the said Panchayat. Two of them belonged to Gram Seva Mandal and one of them belonged to the group of the petitioners viz. Nagrik Mandal. All the three of them it appears, have filed an appeal before the Development Commissioner challenging the order of their disqualification and that they were pending at the date of the filing of this petition.

[3] The petitioners have averred that on the 18th of August 1966, a notice was addressed to petitioner No. 1 as the Sarpanch of the said Panchayat under sec. 297 of the Gujarat Panchayats Act to show cause as to why the Panchayat should not be superseded In the said notice, various illegal acts of commission and omission were alleged and the following three grounds were mentioned therein in respect whereof the notice called upon the Sarpanch to show cause :

> (1) abused the powers entrusted to it under the Gujarat Panchayats Act, 1961;
>
> (2) made persistent default in the performance of duties imposed on it under the Act;
>
> (3) failed to obey from time to time the orders made under the said Act, by authorities superior to it.
>
> It may be mentioned that in the said show cause notice details of all the allegations were mentioned. A reply was given to the said notice by petitioner No. 1 in his capacity as the Sarpanch on the 27th of August 1966 in which, according to the petitioners, all the allegations that were made in

the show cause notice were refuted and explained However, the Development Commissioner passed the impugned order on November 9, 1966 and superseded the Panchayat. It is stated in this order that in the opinion of the Development Commissioner, the Panchayat has (i) abused the powers entrusted to it (ii) made persistent default in the performance of duties imposed and (iii) failed to obey orders made by authorities superior to it. It is further stated therein that though opportunity was given to the Panchayat to render explanation as to why action should not be taken against it under sec. 297, the Panchayat has not rendered any explanation against the proposed action. The order then proceeds to state that in exercise of the powers under sec. 297 of the Act delegated to the Development Commissioner by the State Government and after giving adequate time to the District Panchayat, Amreli, to be consulted, the Development Commissioner, hereby supersedes the Panchayat for a period of two years.

[4] The Development Commissioner is respondent No. 1. Respondent No. 2 is the State Government and the Mamlatdar of Dhari is joined as respondent No. 3 as he had been appointed the Administrator to administer the affairs of the Panchayat till the Panchayat was reconstituted according to law. The stand of the respondents need not be stated in details at this stage and if and when required while discussing the actual point of controversy raised before us, we shall refer to it but it may be mentioned here generally that in the affidavit in reply which is filed by the Development Commissioner himself, he has denied all the allegations made in the petition on the ground whereof the reliefs have been sought in this Court. It is their case that all the requirements of sec. 297 were fulfilled and there are no other grounds on which the order of supersession could be interfered with by the Court.

[5] The impugned order is challenged by the petitioners as being illegal and without jurisdiction on various grounds including the vires of the sub-sec. (1)(ii) of sec. 297 of the Act. But Mr. K. S. Nanavaty, the learned Advocate appearing for the petitioners has only pressed before us the following grounds and has given up the others :

I. The impugned order is illegal because the first respondent has passed the order without applying his mind to relevant materials on record and without taking into consideration the explanation given by the Panchayat;

IT. That the order is bad because it was passed without holding a a quasi-judicial inquiry and without following the principles of natural justice;

III. Even if the order is of an administrative character, the principles of natural justice should have been followed and since they are not followed, the order is bad;

IV. Since the order is passed without giving an opportunity to the individual member of the Panchayat, the order is bad.

[6] In order to appreciate the submissions made by the parties before us, it would be necessary to Sec the provisions of sec. 297 of the Act at this stage. The part of the section relevant for our purpose is as follows : -

"297(1) If, in the opinion of the State Government, a panchayat exceeds or abuses its powers or is incompetent to perform or makes persistent default in the performance of, the duties imposed on it or functions entrusted to it under any provision of this Act or by or under any other law for the time being in force, or fails to obey an Older made under this Act by the panchayat superior thereto or by the State Government or any officer authorised by it, under this Act or persistently disobeys any of such orders, the State Government may, after consultation with the district panchayat in the case of a panchayat subordinate to it and after giving the panchayat an opportunity of rendering an explanation, by order in the Official Gazette,

(i) dissolve such panchayat, or

(ii) supersede such panchayat for the period specified in the order, such period may be longer than the terms for which the members of the panchayat would have held office under sec. 17 if the panchayat had not been superseded under this section.

(2) xx xx xx xx xx xx

(3) xx xx xx xx xx xx

(4) xx xx xx xx xx xx"

It is clear on a plain reading of this section that the Panchayat can be superseded by making an order by the State Government or its duly authorised delegate if three requirements are fulfilled viz. (i) if in the opinion of the State Government or its delegate, any one or more of the acts mentioned in the section have been committed by the Panchayat; (ii) an opportunity is given to the Panchayat to render explanation, if any and (iii) consultation has been made with the District Panchayat to which the gram panchayat is subordinate.

[7] We may mention here that at the outset an effort was made by Mr. Nanavaty to contend that the third condition precedent was not complied with as sufficient time was not given to the District Panchayat to enable it to consider the matter in its general meeting and give its views on the subject therefore, the order was made without consultation with the District Panchayat. But this contention was also not pressed before us.

[8] Turning then to the first ground, the submission of Mr. Nanavaty is that it is an admitted fact that the explanation given by the petitioner No. 1 as Sarpanch was not treated by respondent No. 1 as an explana tion rendered on behalf of the Panchayat and the order was made on the basis that there was no explanation of the Panchayat. Respondent No. 1 had proceeded on the assumption that the Panchayat had no explanation to render in respect of the allegations made, as it had failed to reply to the show cause notice. It was argued by Mr. Nanavaty that had the officer taken the explanation sent by petitioner No. 1 at all into account, he would have given reasons for not accepting the various explanations given at length on all the allegations made in the show cause notice or at least would have observed that they were not satisfactory. Therefore, the order shows ex facie that even otherwise, he bad not taken into account at all the explanation sent by the petitioner No. 1. Giving of reasonable opportunity to the Panchayat and consideration of the explanation given by the Panchayat is one of the conditions precedent before exercising the power under sec. 297 of the Act and that having not been done, the impugned order is invalid and ineffective. It is further argued

by Mr. Nanavaty that this being a matter where subjective satisfaction is a condition precedent normally the competent authority is expected to record his opinion on the face of the order that the explanation rendered is not satisfactory. He however conceded that even if such a statement is not made in the order, it may be open to the authority to establish by filing an affidavit that he had ipso facto arrived at the subjective satisfaction and thus the condition precedent was fulfilled. Buthere, that course is not open and should not be left open to the respondent No. 1 in view of the specific assertion in the order itself that the Panchayat had not rendered any explanation. It is not now open to respondent No. 1 to say that if the explanation given has to be considered as an explanation in the eye of law as that of the Panchayat, then as a matter of fact, he had taken into consideration that explanation, though not as the explanation of the Panchayat. It was submitted by Mr. Nanavaty that if this is allowed, then it would be allowing a public authority to contradict his own statement made in a public order which cannot be done under law. For this part of his submission, he placed reliance on the decision of Commissioner of Police, Bombay v. Gordhandas Bhanji 1952 Supreme Court Reports p. 135, wherein it was decided that public orders, publicly made in exercise of a statutory cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or what was in his mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed, they must be construed objectively with reference to the language used in the order itself.

[9] For deciding the contentions raised by the first ground of challenge, the first and important question that arises for consideration is whether the reply or explanation given by the petitioner No. 1 was a reply in the eye of law of the Panchayat. Mr. Nanavaty submitted that this reply was given by the petitioner No. 1 not in his individual capacity but it was given as the Sarpanch and therefore it must be considered as a reply of the Panchayat itself. He further urged that the notice that was given by the respondent No. 1 was addressed to the petitioner No. 1 as the Sarpanch and not in his individual capacity.

> So there is no manner of doubt that the notice was addressed to the petitioner No. 1 in his capacity as the Sarpanch of the Panchayat and that the Panchayat being a body corporate, it has to be held that it was given to the Panchayat through its executive officer. It is also true that the reply that was given by the petitioner No. 1 was given by him not in his individual capacity but was given as the Sarpanch of the Chalala Village Panchayat.

But the important question that arises is, can this reply given by the Sarpanch as a Sarpanch but without consulting or without taking the matter before the general meeting of the Panchayat, be considered to be a reply of the Panchayat. The respondent No. 1 has taken up the stand that this reply, in the eye of law, though it purports to have been signed and sent by the Petitioner No. 1 as a Sarpanch, was not a reply by the Panchayat and therefore he was justified in coming to the conclusion that though opportunity was given to the Panchayat, it has not though fit to render any explanation to the show cause notice. This controversy leads us to the question as to what exactly is the position of the Sarpanch in this set up of the Gram Panchayat and what are his powers and functions. This query takes us to some of the relevant provisions of the Act. Sec. 7 provides that the Gram Panchayat shall be a body corporate by the name of "The .....Gram Panchayat."That this Panchayat shall have perpetual succession and common seal and will sue and be sued in its corporate name and subject to the provisions of the Act, shall be competent to acquire and hold property, both movable and immovable, whether within or without the limits of the area over which it has authority,.....to raise loans upon the security of its fund in the manner and subject to the limits and other requirements including guarantees prescribed by rules, and to contract and do all other things necessary for the purposes of the Act. Sec. 12 provides for the constitution of the Gram Panchayats. The only material fact to be noted therein is that the Gram Panchayat shall subject to the provisions of sub-sec. (3) consist of such number of members not less than 9 and not more than 15 as the District Panchayat may determine, elected from amongst the qualified voters of the gram. So it is an elected body and they represent a specified electorate. Sec. 44 which appears in Chapter IV which has the heading: "Provisions relating to presiding officers of panchayats and members of panchayats. " Part 1 thereof deals with Gram Panchayats and Nagar Panchayats. Sec. 44 lays down that on the constitution of a Gram or Nagar Panchayat or on its reconstitution under sec. 17 or under any other provision of this Act, there shall be called the first meeting thereof for the election of its Sarpanch and Upa-Sarpanch. The other details of the said section need not be noted for our purpose. The most material section, however, with which we are concerned is sec. 47 and it will be convenient to reproduce that part of the section which has a bearing on the present case.

"47. (I) 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 gram panchayat or nagar panchayat vests in the Sarpanch or, as the case may be, the Chairman thereof who shall be directly responsible for the due fulfilment of the duties imposed upon the panchayat by or under this Act. In the absence of the Sarpanch or as the case may be, the Chairman, his powers and duties shall, save as may be otherwise prescribed by rules, be exercised and performed by the Upa-Sarpanch or as the case may be, the Vice-chairman.

(2) xx xx xx xx xx xx

(3) xx xx xx xx xx xx"

It may at the same time be noted that by sub-sec. (2) it is provided that without prejudice to the generality of the foregoing provisions, in the case of a Gram Panchayat, its Sarpanch shall have the specific powers mentioned therein. Much depends in this case upon the true construction of the provisions of sec. 47. Mr. Nanavaty urged that sec. 47 authorises the Sarpanch to perform all the executive functions of the Panchayat save and except those which are taken away from him by the provisions of the Act or the rules made thereunder. He submitted that functions of any authority can be divided into three categories viz. judicial, executive and legislative. The giving of reply to the show cause notice under sec. 297 is neither a judicial nor a legislative function. Therefore, it is an executive function. There is no other provision in the Act or rules framed thereunder which expressly provides that this function will be performed by the Panchayat as a body in its general meeting or by any other committee or officers. Sec. 297 is a provision of the Act and it creates a right in favour of the Panchayat to receive a show cause notice and have an opportunity of rendering an explanation before an order is made to supersede or dissolve it. Therefore, when the reply is given to the show cause notice by the Sarpanch, he exercised the executive powers for the purpose of carrying out the provisions of the Act within the meaning of sec. 47. The reply given by petitioner No. 1 therefore was in exercise of the executive powers as the Sarpanch under

sec. 47 of the Act. Argued Mr. Nanavaty that there is no provision of law which requires that the reply to the show cause notice given under sec. 297 can be given only by the Panchayat as a body by passing a resolution in its general meeting. Therefore the only authority which can give the reply is the Sarpanch as the executive head of the Panchayat and the respondent No. 1 was not right in refusing to treat the reply given by the petitioner No. 1 as the Sarpanch as the reply of the Panchayat. The order of supersession that proceeded on the basis that no reply was given by the Panchayat and without taking the reply given by the petitioner No. 1 into consideration as a reply of the Panchayat, is therefore, made without applying his mind to the most material fact on the record and therefore the competent authority has failed to comply with a very important condition precedent and consequently the order is illegal and ineffective. We find it difficult to agree with Mr. Nanavaty, plausible though the reasoning of Mr. Nanavaty appears at first sight, for reasons which we shall presently give.

[10] The basis of the whole structure of the submission of Mr. Nanavaty is the construction that he has placed on the provision of sub-sec. (1) of sec. 47 and particularly the expression "the executive power for the purpose of carrying out the provisions of this Act". According to Mr. Nanavaty, as we have Secn, the Sarpanch is the executive Lead and all executive powers save as otherwise expressly provided by or under the Act, for the purpose of carrying out the provisions of the Act, vest in the Sarpanch. So far it is not possible to say that there is any material flaw in the submission made. It is also true that Mr. B. K. Shah, the learned Advocate appearing for the respondents has not been able to point out to us that there is any other express provision either in the Act or under the Rules made thereunder, which can be said to curtail this power of the Sarpanch vested under the provisions of sec. 47 in respect of the giving of a reply to the show cause notice given under sec. 297 of the Act by the State Government or its delegate. But that by itself does not solve the problem before us. The moot question is, does the right given by sec. 297 of having an opportunity of rendering an explanation to a show cause notice fall within the ambit of the expression "the executive power for the purpose of carrying out the provisions of this Act". If it does, then Mr. Nanavaty's reasoning and submission has to be accepted but if it does not, then the submission itself disintegrates and cannot stand. The construction canvassed for by Mr. Nanavaty is that the right of rendering explanation to the show cause notice given is by a provision of the Act, namely sec. 297 and therefore when a reply is given

by the Sarpanch, he does so in exercise of the executive power vested in him under sec. 47 for the purpose of carrying out the said provision of the Act viz. that which is contained in sec. 297. But this interpretation put by Mr. Nanavaty is not correct in our view. Whether a particular act falls within the ambit and meaning of "the executive act for the purpose of carrying out the provisions of the Act," necessarily depends upon the nature of the act concerned. The act with which we are concerned is not merely the ministerial act of replying to the show cause notice but it is the act of taking the decision as to how to repel the threat to the very existence of the Panchayat. The act of taking this decision is not the process of exercising any executive power for the purpose of carrying out the provisions of the Act. It is something ab extra to save the Panchayat as a corporate body from extinction. This is not an executive function of the Panchayat for the purpose of the carrying out of the provisions of the Act. This is an act done to preserve its existence to enable itself as a corporate body to perform its functions executive or otherwise for the purpose of carrying out the provisions of the Act. The expression "executive power" has not to be construed in isolation but has to be construed in context of the expression "for the purpose of carrying out the provisions of the Act" and also with regard to the nature of the act performed. In that light, the words "executive power" cannot the activity or act of the Panchayat for carrying out the provisions of the Act and not any Act or activity which is required for the very preservation of its corporate existence.

[11] But we may approach this problem of construction of this provision of law from another angle also. Assuming that this provision is also capable of being construed the way Mr. Nanavaty would like us to construe, then this provision of law is capable of two constructions. The question then is, which is more reasonable and appropriate construction to be adopted having regard to the legislative intent, the purpose of the statute and the provision concerned, the setting in which this provision is to be found in the statute and the nature of the proceeding concerned. Mr. Nanavaty urged that when the language of a statutory provision is unambiguous, whatever the resulting unreasonableness or hardship may be, the Court has to give the ordinary meaning that the language connotes and it has not then to substitute its judgment as regards reasonableness or otherwise of the statutory provision. As the bare principle enunciated, there may not be much to say. But as we have observed, the meaning, in our view, is not the one which Mr. Nanavati would like to give to the language of the statute with which we are concerned. In any case the language cannot be said to be plain and admitting of but one meaning and we are now examining the question from that angle. The power vested in the State Government or its delegate under sec. 297 of

supersession or dissolution is a drastic power inasmuch as it puts an end not only to the very corporate existence of the Panchayat but it also snatches away the valuable right of the individual elected member thereof to represent the electorate and participate in the functions of the local Self-government of the 'Gram'. It was conceded by Mr. Nanavaty that the duty cast on the authority under sec. 297 to give the show cause notice is to give notice to the Panchayat and therefore meant to reach the individual members also to give them the opportunity to render explanation. But he urged that when the notice is sent to the Sarpanch who is the executive head, the intent and purpose of the provision is carried into effect. That is true, bat the condition precedent prescribed by sec. 297 is not merely giving of the notice but it also necessarily implies the condition of taking into consideration the explanation that may be rendered by the Panchayat. The question that then arises is, is it the intention of the Legislature to vest this right of rendering that explanation to persuade the authority from taking action that may put an end to the very existence of the Panchayat and also the right of the individual members, in the Sarpanch alone under sec. 47. The argument of Mr. Nanavaty would necessarily mean that the Sarpanch is the sole authority to take that decision and render the explanation without even putting the matter before the Panchayat in its general meeting or bringing in any manner the fact of the notice to the knowledge of the members of the Panchayat. If the right, as Mr. Nanavaty claims, is the executive power solely vested under sec. 47 of the Act in the Sarpanch, then in a given case he may capriciously decide not to render any explanation and the members may not come to know about it at all. The fact that the Sarpanch in his discretion may in practice consult or put the matter before the Panchayat before replying to such a show cause notice, cannot be the criteria to determine the question before us. We are not at all in two minds that the Legislature could never have intended to make the Sarpanch the sole repository of the right to take the decision so vital to the very existence of the Panchayat as a corporate body and the interest of the individual members to continue to enjoy their right as the elected representatives of the people of the Gram. Having regard to the nature of the proceeding under sec. 297 and the purpose of the statute that the electorate of the Gram should have the right to have its affairs administered through their elected representatives in the Panchayat as a unit of Self Government, an intention so unreasonable to make the Sar. panch the sole authority under sec. 47 to decide the fate of the Panchayat and the elected members by rendering any explanation that he chooses and without the knowledge or concurrence of the Panchayat as a body or not rendering any explanation, cannot be attributed to the Legislature. In our view, to agree with Mr. Nanavaty would not only amount to accepting a construction which is unreasonable but one which would give rise to consequences and effect that would

defeat the very object of the statute and particularly the purpose of the two provisions with which we are concerned viz. sec. 297 and sec. 47. As we have pointed out, the purpose of the provision of sec. 297 in providing the giving of opportunity to render explanation, is to bring the fact alleged, to the notice of the Panchayat as a body and consequently to its members and not only to the Sarpanch. Therefore, the construction if adopted is very likely to defeat the very purpose of the provision. Then again the purpose of sec. 47 is only to enable the Sarpanch as the Chief Executive Authority to exercise powers that may be necessary to carry on from day to day the functions for carrying out the provisions of the Act not to vest the exercise of powers so vast and vital so as to enable him to decide matters which affect the very existence of the Panchayat and the right of the individual members, without the consent of the corporate body. Again, the expression "executive power, for the purpose of carrying out the provisions of this Act" have also to be read with the connected expression "and the resolutions passed by a Gram Panchayat ..... vests in the Sarpanch". This also helps us to correctly gauge the extent and limitation of the power intended to be vested in the Sarpanch. It is obvious to us that Legislature would never have intended to include the power claimed by Mr. Nanavaty to vest in the Sarpanch within the meaning of the above stated expression. We are therefore not prepared to accept the submission of Mr. Nanavaty, even if it were correct to say that the primary and literal meaning or rules of grammatical construction of the said expression admit of one meaning as claimed by him. It Secms to us highly improbable that these words in their wide or grammatical meaning actually express the real intention of the Legislature. Having carefully considered the question from all its aspects and particularly the purpose of the statute, the purpose of the two provisions of sec. 297 and sec. 47 which have to be read in juxtaposition in this case, and also the consequent effect of the construction canvassed for, to ascertain the intent of the Legislature, we are satisfied that the construction canvassed for by Mr. Nanavaty of the relevant words in sec 47 cannot be sustained. In the view that we are taking, support is received from the following passage in Maxwell on Interpretation of Statutes, Eleventh Edition, Page 78 :

> "Before adopting any proposed construction of a passage susceptible of more than one meaning, it Is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words. There are certain objects which the Legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words),

and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction in cases where it Secms highly improbable that the words in their wide primary or grammatical meaning actually express the real intention of the Legislature. It is regarded as more reasonable to hold that the Legislature expressed its intention in a slovenly manner, than that a meaning should be given to them which could not have been intended."

The result is that the reply given by the petitioner No. 1 without putting the show cause notice before the Panchayat in its general meeting is without authority of law and was not a reply of the Panchayat rendering the explanation of the Panchayat in respect of the various charges mentioned in the show cause notice. The competent authority under sec. 297 was bound to give an opportunity to the Panchayat as a condition precedent to the act of superseding by giving a notice to the Panchayat which the respondent No. 1 as the competent authority did give. He was also bound to take into consideration, as observed above, the explanation rendered by the Panchayat. But as pointed out, the explanation rendered by the petitioner No. 1 on his own showing and on admitted facts, on the construction we have placed on his powers under sec. 47, was not an explanation of the Panchayat. Therefore respondent No. 1 was entitled not to take it to be an explanation of the Panchayat and proceed to decide the question of superseding the Panchayat on that basis. Under these circumstances and position of law, it cannot be said that be did not apply his mind to the facts of the case or to the explanation given by the Panchayat and therefore he failed to comply with the condition precedent to the exercise of the power under sec. 297. In the light of this conclusion of ours, the second part of the first submission of Mr. Nanavaty that the respondent No. 1 cannot be allowed to contradict the statement made by him as a competent authority in his public order, by stating in his affidavit that if it is a reply of the Panchayat then he had ipso facto taken it into consideration, does not arise for our consideration at all. The first and the main submission of Mr. Nanavaty, therefore, is rejected.

[12] In the view that we have taken, very little remains for us to discuss about the other submissions of Mr. Nanavaty. The second and the third submissions cannot obviously

now survive because even assuming that the inquiry to be made under sec. 297 is in the nature of a quasi judicial inquiry, the rules of natural justice were complied with when the show cause notice was given by the respondent No. 1 to the Panchayat. But if the Panchayat failed to reply to it, nothing further remains to be done by respondent No. 1. If the charges made in the show cause notice were challenged or refuted by the Panchayat by giving a reply, then only the question of giving further opportunity of leading evidence submitting arguments etc. may arise. Mr. Nanavaty fairly conceded that in the light of the view taken by us on the first submission of his the second and third submissions do not survive.

[13] As regards the fourth submission, Mr. Nanavaty only urged that as the intention of the Legislature is to give an opportunity to the Panchayat that opportunity must be given to the individual member of the Panchayat. That is true but as we have pointed out and on the argument of Mr. Nanavaty himself, the notice which was given was sent to the petitioner No. 1 as the Sarpanch of the Panchayat in his official capacity as the executive head. Therefore the notice was meant to be put before individual members of the Panchayat in any manner that may be provided by law and to bring the facts of the notice to the knowledge of the members of the Panchayat. If the Sarpanch however took into his head not to put it before them, it cannot be said that the competent authority under sec. 297 did not carry out the condition precedent of giving an opportunity to the Panchayat or its members. So this contention also has to be rejected.

[14] As a last throw in an effort to salvage the case of the petitioners Mr. Nanavaty urged that here in this case, as disclosed by the affidavit of the respondents themselves, the respondent No. 1 had definitely come to know that the reply sent to him was not of the Panchayat but was given by the petitioner No. 1, without bringing the facts to the notice of the members of the Panchayat. Therefore, having regard to this admitted fact, it cannot be said that an opportunity was given by the. competent authority to the members of the Panchayat and therefore in any ease, the order is bad and ineffective. We are however unable to accept this submis sion of Mr. Nanavaty, also. In the first place no ground has been made out in the petition that no reasonable opportunity at all had been given to the Panchayat or its members. If such a ground had been raised, the respondents may have been able to show that though the notice was not actually placed before the members in a meeting, they all actually knew about it and under the machinery of law could have insisted on a meeting being called on a requisition. Therefore, this contention cannot now be allowed to be agitated. Again, under the facts of the present case, we do not find much substance in this submission. The fact is that

seven members had actually come to know about the fact of the show cause notice and they on the contrary desired that the Panchayat be suspended for reasons almost analogous to those mentioned in the charges mentioned in the show cause notice. The other fact is that on the petitioner's own showing, the other members were of his own group and there is nothing to show that they had not come to know about the show cause notice. If then the members did not take care to have a meeting called and take a decision thereon as regards reply to be given, it is hardly the fault of respondent No. 1. Not only that but the facts as disclosed cannot justify at all either under law or in the enforcement of the principles of natural justice and fair play any interference by this Court under its writ jurisdiction. We may make it clear that for the decision of the first submission of Mr. Nanavaty, we have not allowed our mind to be influenced by the last mentioned facts and It is only to meet the last submission of Mr. Nanavaty that we have found it necessary to refer to them. These were all the submissions made on behalf of the petitioners before us, and none of them can be sustained. The petition is, therefore, dismissed with costs.

Petition dismissed.