
(1964) 02 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 96 of 1964

Awantikabai Dinkar Ujagare

APPELLANT

Vs

V.T. Jagtap

RESPONDENT

Date of Decision : 11-02-1964

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 9(1)(b)

Citation : (1964) 66 BOMLR 442 : (1964) MhLj 536

Hon'ble Judges : H.K. Chainani, C.J;Gokhale, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—The petitioner was co-opted as a councillor of the Zilla Parishad, Ahmednagar, u/s 9(1)(b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, hereinafter referred to as the Act. Under Clause (b) in Sub-section (1) of Section 57 of the Act she became a member of the Panchayat Samiti, Corrigenda .Opponents Nos. 4 to 7 are elected councillors of the Zilla Parishad. They are, therefore, members of the Panchayat Samiti under Clause (a) in Section 57(1). Opponents Nos. 8 to 15 have been elected as members of the Panchayat Samiti under Clause (f) in Section 57(1). Opponent No. 16 was co-opted as a member of the Samiti under Clause (e) of Section 57(1) On November 14, 1963, motions of no-confidence in the Chairman and the Deputy Chairman of the Panchayat Samiti were passed. At the same meeting a new Chairman and a new Deputy Chairman were elected. Their elections were set aside by the Commissioner on December 19, 1963. Thereafter the Collector authorised the Mamlatdar, Shrigonda, to summon a meeting u/s 67 of the Act, for the purpose of electing the Chairman and the Deputy Chairman of the Panchayat Samiti, Corrigenda .The Mamlatdar did not issue notices of the meeting to the petitioner and opponent No. 16. The petitioner has, therefore, filed this petition, in which she has prayed for a declaration that the petitioner and opponent No. 16 are entitled to attend the meeting to be held for the purpose of electing the Chairman and the Deputy Chairman of the Panchayat Samiti and for a direction to the Collector, the Mamlatdar and the Panchayat

Samiti to invite the petitioner and opponent No. 16 to attend the meeting and exercise all their rights as members at the meeting to be held for the purpose of electing the Chairman and the Deputy Chairman. Sub-section (1) of Section 57 states that every Panchayat Samiti shall consist of-

(a) all councillors who are elected to the Zilla Parishad from the electoral divisions included in the Block,

(b) the co-opted councillor, (if any) residing in the Block,

(c) ...

(d) ...

(e) (i) if the members of a Panchayat Samiti falling under Clauses (a) and (f) do not include a woman, one woman residing in the Block co-opted by the Panchayat Samiti;

(ii) if the members of a Panchayat Samiti falling under Clauses (a) and (f) of such Block as the State Government may specify in this behalf do not include a person belonging to the Scheduled Castes or Scheduled Tribes, a member co-opted by the Panchayat Samiti being a member of the Scheduled Castes or Scheduled Tribes, as the case may be, from amongst persons residing in the Block:

Provided that a person so co-opted shall, subject to the provisions of this Act, continue to be a member, even if subsequent to the date of such co-option, a woman is co-opted by a Zilla Parishad under this Act or a person belonging to the Scheduled Castes or Scheduled Tribes is elected at any by-election, as a councillor or member, as the case may be, under this Act, and

(f) Sarpanch as elected by members of panchayats in accordance with the provisions of Sub-section (2).

Clauses (c) and (d) refer to associate members, with whom we are not concerned in the present case. Under this section, therefore, a Panchayat Samiti consists (1) of members, who have been elected, (2) of members, who have been co-opted either as councillors or as members of the Panchayat Samiti, and (3) of associate members. The expression "associate member" has been defined in Clause (1) of Section 2 of the Act as a member who is entitled to attend and to take part in the deliberations of a Panchayat Samiti, but shall (unless expressly provided) have no right to vote and shall not be eligible to hold the office of presiding authority of such Samiti. Associate members have, therefore, no right to vote. There is no similar provision taking away the right of vote from co-opted members. Sub-section (6) of Section 111 states that at a meeting of a Zilla Parishad all questions shall be decided by a majority of votes of the councillors, present and voting. u/s 118 these provisions apply in relation to meetings of a Panchayat Samiti. Consequently at a meeting of a Panchayat Samiti all questions are to be decided by a majority of votes of the members

present and voting. A co-opted member is also a member of the Samiti. Consequently, a co-opted member will also have a right of vote at an ordinary meeting of the Samiti.

2. Sub-section (1) of Section 64 provides that every Panchayat Samiti shall be presided over by the Chairman, who shall be elected by the Panchayat Samiti from amongst members falling under Clauses (a) and (f) of Sub-section (1) of Section 57. The Chairman is, therefore, to be elected by the Panchayat Samiti, that is, by all the members of the Samiti except associate members, who have no right to vote. It may also be noted that the words used are "from amongst members falling under Clauses (a) and (f)" and not "by members falling under Clauses (b) and (e)". The members falling under Clauses (a) and (f) of Section 57(1) are members, who have been elected either as councillors or as members of the Samiti. While, therefore, only a person, who has been elected as a councillor or as a member of the Samiti, can be the Chairman of the Samiti, the election is to be made by all the members of the Samiti including the co-opted members, but excluding associate members. Consequently, a co-opted member may also take part in and vote at the election of the Chairman. Sub-section (2) of Section 64 states that the Panchayat Samiti shall elect one of its members, excluding its associate members, to be the Deputy Chairman. A co-opted member, can, therefore, also be elected as the Deputy Chairman. u/s 64, therefore, a co-opted member can vote at the election held for electing the Chairman or the Deputy Chairman, as the case may be.

3. Sub-section (1) of Section 67 states that after a general election, the Collector or any officer authorised by him shall, at least three days before the date fixed for the first meeting of the Parishad, call upon the persons falling under Clauses (a), (c) and (f) of Sub-section (1) of Section 57 to elect the Chairman of the Panchayat Samiti. This section applies to the election of the Chairman after a general election and it empowers the Collector or the officer authorised by him to call a meeting for the purpose. Only persons falling under Clauses (a), (c) and (f) of Section 57(1) can be called to attend this meeting. The members of the Samiti, who are not called to attend this meeting, are those falling under Clauses (b), (d) and (e). Clause (b) refers to co-opted councillors. Under Sub-section (5) of Section 45 the Zilla Parishad has to co-opt its members after its President and Vice-President have been elected. u/s 67 the first meeting of the Panchayat Samiti is to be convened at least three days before the date fixed for the first meeting of the Parishad. At the date of the first meeting of the Samiti convened u/s 67, no co-opted councillor could, therefore, be in existence. Clause (d) refers to the Chairman of a cooperative society conducting business relating to agriculture in the Block co-opted by the Panchayat Samiti. Clause (e) also refers to co-opted members. The members are co-opted by the Samiti in the first meeting of the Panchayat Samiti called by the Chairman u/s 68. It is, therefore, obvious that at the first meeting of the Samiti called by the Collector u/s 67, co-opted councillors or co-opted members do not exist. This seems to be the reason why members falling in Clauses (b), (d) and (e) of Section 57(1) are not referred

to in Sub-section (1) of Section 67. As these persons do not then exist, the question of summoning them to attend the meeting convened under Sub-section (1) of Section 67 does not arise.

4. Section 75 contains provisions regarding a motion of no-confidence against the Chairman and the Deputy Chairman of the Panchayat Samiti. Sub-section (1) of this section states that if the motion is carried by a majority of the total number of members of the Panchayat Samiti (other than associate members), the Chairman, or as the case may be, the Deputy Chairman of the Panchayat Samiti shall cease to hold office forthwith. This sub-section refers to the total number of members of the Panchayat Samiti other than associate members. The expression "total number-of members" must necessarily include co-opted members. Consequently, a co-opted member has also a right to vote at the meeting held to consider a motion of no-confidence in the Chairman.

5. Section 75 contains provisions in regard to the manner in which casual vacancies in the offices of Chairman and Deputy Chairman are to be filled up. Sub-section (1) of this section states that in the event of a vacancy in the office of the Chairman or Deputy Chairman by reason of death, resignation, removal or otherwise, the vacancy shall, subject to the provisions of Sections 64 and 73, be filled as conveniently as may be by election of a new Chairman or Deputy Chairman. Section 73 has no application in the present case and it is not necessary to refer to it. u/s 64, a co-opted member can take part in the election of the Chairman, the only restriction imposed by this section being that the Chairman must be from amongst members, who fall under Clauses (a) and (f) of Section 57(1).

6. Sub-section (2) of Section 75 states that where on account of any of the reasons aforesaid, the offices of the Chairman and the Deputy Chairman become vacant simultaneously, the provisions of Section 67 shall be applicable, so far as may be, to the calling of a meeting and the procedure to be followed at such meeting for the election of a Chairman, and after the election of the Chairman, at the next meeting of the Panchayat Samiti, the Deputy Chairman shall be elected. This sub-section, therefore, provides for the procedure to be followed when the offices of the Chairman and Deputy Chairman are both vacant. In such a case the provisions of Section 67 shall apply, so far as may be, to the calling of a meeting for the election of the Chairman. u/s 67 only the persons falling under Clauses (a), (c) and (f) of Section 57(1) can be called upon to elect the Chairman of the Samiti. It has, therefore, been urged on behalf of opponents Nos. 4 to 7 and 10 to 13 that only the persons who fall under Clauses (a), (c) and (f) of Section 57(1), can be summoned to attend the meeting convened to elect a Chairman under Sub-section (2) of Section 75. A co-opted member does not fall under these clauses and it has, there fore, been contended that a co-opted member cannot be called to attend a meeting held to elect the Chairman, when both the offices of the Chairman and the Deputy Chairman are vacant. As pointed out above, a co-opted member can take part in and vote at a meeting

held to elect a Chairman, when the office of Chairman only is vacant. He can also exercise the right of vote when a motion of no-confidence in the Chairman is moved. It could not have been intended by the Legislature that while a co-opted member should be able to participate in the election of a Chairman when there is a casual vacancy in the office of Chairman and also in his removal, he should not have this right when in addition to the office of Chairman, the office of Deputy Chairman is also vacant. No logical reason for making¹ such a distinction has been suggested. The words "the calling of a meeting" in Sub-section (2) of Section 75 will, therefore, have to be so construed as to avoid a result which could not have been contemplated by the Legislature. We must so read the various provisions of the Act as to bring about harmony between them. Although, therefore, having regard to the language used in Sub-section (2) of Section 75, there may at first sight appear to be some force in the arguments advanced on behalf of the opponents, a careful consideration of the various provisions of the Act shows that there is not much merit in them. Neither the Chairman nor the Vice-Chairman can call a meeting when both these offices are vacant. It is consequently necessary to authorise some other authority to convene a meeting for electing a new Chairman. If this object is borne in mind along with the fact that unlike an associate member a co-opted member enjoys a right to vote at the meetings of the Samiti, it will be clear that the words "the calling of a meeting" in Sub-section (2) of Section 75 have reference only to the manner in which and the person by whom the meeting is to be called. The fact that the meeting is to be called in the manner provided in Section 67 would not, therefore, justify the exclusion from the meeting of members who are otherwise entitled to take part in it. In our opinion, therefore, a co-opted member is entitled to attend and vote at a meeting called by the Collector or the officer authorised by him to elect the Chairman, when the offices of the Chairman and the Deputy Chairman are both vacant.

7. The learned Additional Government Pleader has stated that Government have issued instructions to the Collector to invite the co-opted members of the Panchayat Samiti also to attend the meeting to be held for electing the Chairman and that the co-opted members will be allowed to vote at that meeting. These instructions are in accordance with the view which we are taking in this case. No further orders on this petition are, therefore, necessary. No order as to costs.