

(1972) 02 AP CK 0007
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 40 of 1972

B. Jangi Reddy

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 15-02-1972

Acts Referred:

Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 — Section 33(12), 4
Constitution of India, 1950 — Article 226

Citation : AIR 1972 AP 307

Hon'ble Judges : K.V.L. Narasimham, C.J.; Ramachandra Rao, J

Bench : Division Bench

Advocate : P. Babulu Reddy, K. Sarala Devi and M. Srinivasa Rao, for the Appellant; Govt. Pleader and B.P. Jivan Reddy, for the Respondent

Judgement

Ramachandra Rao, J.—In this Writ appeal against the judgment of our learned brother Krishna Rao, J., in W. P. No. 127./72 a short question arises as to the interpretation of the expression "total number of members of the Panchayat Samithi" occurring in Section 33 (12) of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959, hereinafter referred to as the Act.

2. The appellants who filed the said Writ Petitions the President of the Panchayat Samithi. Nagarkurnool, Mahaboobnagar District, which had a strength of 45 members. A notice of no-confidence motion was issued on 7-12-1971 by 27 members and at the meeting held on 31-12-1971. 26 members supported the no-confidence motion and it was declared carried by the Revenue Divisional Officer. By 31-12-1971 when the no-confidence motion was considered. four members had become disqualified or had ceased to be Sarpanchas on account of no-confidence motions being passed against them, thereby reducing the effective strength of the members of the Panchayat Divisional Officer declared the motion carried as three-fifths of the majority of the effective strength voted in favour of the no-confidence motion. He overruled the objection of the appellant-petitioner that a three fifths majority of the total strength of the Samithi was necessary.

The appellant then filed the writ petition out of which this appeal arises for the issue of a writ of mandamus directing the Government to forbear from implementing the said Resolution dated 31-12-1971 of the Samithi and for declaring the same as null and void.

The writ petition was dismissed by our learned brother Krishna Rao, J., holding that u/s 33 (12) of the Act, it was sufficient if the motion of no-confidence was passed by not less than three-fifths of the effective members of the Panchayat Samithi and that the expression "total number of members of the Panchayat Samithi" should be construed as referable to the effective members and not the entire strength of the Samithi. The learned Judge thought that the question is covered by the decision of the two Division Benches of this Court in *Medide Ramiah v. District Collector Khammam*, (1963) 2 Andh WR 129 and *T. Seshadri v. The Deputy Collector, Khammam*, W. P. No. 633/1960, D/- 12-7y-1961 (Andh Pra) . The first of the aforesaid cases confirmed the decision of *Basi Reddi, J.*, in *Medide Ramaiah v. District Collector, Khammam*, (W. P. No. 111/62, dated 5-2-1963 (Andh Pra)). Before the learned Judge the petitioner relied upon another decision of *Basi Reddy, J.*, as he then was in *K. Narayana Rao v. The State of Andhra Pradesh*. (W. P. 691061, dt. 17-1-1962 (Andh Pra)) and a decision of the Bombay High Court reported in *Vishwarasaro Dajibarao Ghuge Vs. Vallabhdas Sheonarayan Sharam and Others*, . But the learned Judge felt bound by the two decisions of the Division Benches referred to supra, and in that view, rejected the contention of the petitioner-appellant and dismissed the writ petition. Hence the appeal.

3. The question for consideration is. what is the meaning of the expression "Total number of members of the Panchayat Samithi."

4. Section 33 (12) reads as follows:

"If the motion is carried with the support of not less than three-fifths of the total number of members of the Panchayat Samithi, the Government shall, by notification remove the President or the Vice-President, as the case may be, and the resulting vacancy in the office of the President or Vice-President shall be filled in the manner specified in S. 7 within the prescribed time."

5. *Sri P. Babulu Reddy*, the learned counsel for the appellant contends that the expression "total number of members of the Panchayat Samithi" occurring in this sub-section means the entire members of the Samithi and not merely the members who were actually on the rolls of the Samithi on the date of the meeting at which the no-confidence motion was considered. But *Sri B. P. Jivan Reddy*, the learned counsel for the respondents submits that the said expression refers only to the actual members who were available for participation at the meeting.

6. In order to determine the question. It is necessary to notice the language employed in the section itself. The section refers to the total number of members of the Panchayat Samithi and not the members of the Panchayat Samithi. The

word "total" which precedes the expression "number of members of the Panchayat Samithi" is significant. If really it was intended that only the effective members of the Panchayat should be taken into consideration for the purpose of determining the quorum or the three-fifths majority, appropriate words in that regard would have been employed. The word, "total" gives a clue to the meaning of that expression and it refers to the totality of the members of the panchayat Samithi and not merely those who were on the rolls of the Samithi. Similar expression occurs in sub-sections (2) and (4) of Section 33 of the Act.

7. Sri B. P. Jevan Reddy, contends that the number of members of the Panchayat Samithi is likely to vary by some of the Sarpanches going out of office or some of them being newly elected on additional Gram Panchayats coming into existence within the Block and therefore the said expression refers to the effective members of the Panchayat Samithi. No doubt there may be fluctuations or variations in the total strength of the Panchayat Samithi, but we do not think that such a variation in the strength of the Panchayat Samithi would affect the meaning to be given to the expression. "the total number of members of the Panchayat Samithi." Even the effective members of the Samithi may also be subject to variations and fluctuations. The possibility of variations or fluctuations in the membership cannot lend much assistance in arriving at the meaning of the said expression.

8. Section 4 of the Act which provides for the composition of the Samithi save that the Samithi shall consist of the Sarpanch of every Panchayat and the President of every town committee in the Block, ex-officio; (2) the member of the Legislative Assembly of the State representing a constituency which comprises the Block; (3) the member of the Legislative Council of the State specified in clause (iv) of sub-section (3) of S. 36 of the Act, and the members to be elected in accordance with clause (v) of S. 4. It is to this total number of members of which the Samithi is composed that the expression "total number of members of the Panchayat Samithi" refers to in Section 22, sub-sections (2), (4) and (12) of the Act and not to the effective members. Otherwise we will be failing in giving a meaning to the word "total" occurring in the said expression. Further the provisions of Section 33 provides for removal of a Sarpanch by moving a no-confidence motion and there should not be any ambiguity or vagueness with regard to the quorum required for passing of a no-confidence motion. If variations in the strength of the Panchayat Samithi are to be taken into consideration for fixing the 3/5ths majority, it will result in confusion and will defeat the very purpose of the said provision. By construing the expression as referable to the totality of the membership of the Samithi, we will be giving a definite content to that expression and thereby removing any scope for ambiguity or vagueness. We are therefore of the opinion that on a plain reading of the expression and the language of the sub-sections in which the said expression occurs, that the "total number of members of the Panchayat Samithi" refers to the totality of the membership as contemplated by Section 4 of the Act.

9. In (W. P. No. 691/61, dt. 17-1-1962 (Andh Pra)), Basi Reddy, J., as he then was construed the expression as meaning the total strength of the Samithi and not the actual number available at a given point of time by reason of a vacancy arising by resignation, removal or death.

10. In 1963 2 AWR 129 the meaning of the expression, "the total number of panchas" occurring in sub-section (2) of the Section 28 of the Andhra Pradesh (Telengana Area) Gram Panchayats Act, fell to be considered. Basi Reddy, J., was inclined to accept the contention that the said expression means the total sanctioned strength of the panchayat and not the effective number at a given time, but the learned Judge felt that a different view was taken by a Division Bench of this Court consisting of Chandra Reddy C. J., and Jaganmohan Reddy. J. as he then was in (W. P. No. 633-1960 dated 12-7-1961 Andh Pra) and that the said decision was binding on him. In that view the learned Judge rejected the contention urged for the petitioner therein, that "the total number of Panchas" refers to the total sanctioned strength and not to the effective number, and accordingly dismissed the writ petition.

But on a perusal of the Judgment in (W. P. No. 633/60 dated 12-7-1961, (Andh Pra)), we find that the question as to what constitutes "the total number of panchas" was not considered or decided therein. The said decision arose under a different enactment viz. the Andhra Pradesh (Telangana Area) Gram Panchayats Act, and the expression construed there was the "the total number of panchas". In the said case, there were eight Panchas of whom one, the 4th respondent, therein, had resigned and the no confidence motion was passed by six members including the 4th respondent. The requisite majority required for passing of the non-confidence motion was two-thirds of the majority of the panchas. It was contended that as the total number of panchas was eight, two-thirds would be six, and excluding the 4th respondent who had resigned, only five members must be deemed to have voted in favour of the no-confidence motion and therefore there was no requisite majority. But this contention was negated by the learned Judges holding that if the 4th respondent was to be excluded, there would be only seven members, and two-thirds of seven, would be five the five members having voted in favour of its motion, there was the requisite two-thirds majority. Here it has to be noticed that the learned Judges did not decide expressly or by implication as to what constitutes "the total number of panchas" on the relevant date. Therefore this decision does not support the contention of the respondents.

11. The decision in 1963 (2) AWR 129 which confirmed the decision of Basi Reddy J., in (W. P. No. 1111/62 dated 5-2-1963 (Andh Pra)) does not also render assistance to the argument of the learned counsel for the respondents. In that case, the total number of members of the panchayat was eight. One of them had resigned and a no-confidence motion was passed by five panchas. It was contended that two-thirds majority should be computed with reference to the total number of members of the panchayat. The learned Judges held that even

assuming that the total strength would be taken as the sanctioned strength of eight members, still two-thirds of 8, would be $5\frac{1}{3}$, but not authority was shown in support of the contention that this $\frac{1}{3}$ should be rounded off into one, and that the motion carried by five panchas had the requisite majority of two-thirds. The question as to what constitute "the total number of panchas" was not considered or decided. The aforesaid two Division Bench decision of this Court cannot be treated as having laid down that "the total number of members" should be construed as referable to the effective members and not the total sanctioned strength of the Panchayat Samithi.

12. In *Shyamapada Ganguly Vs. Abani Mohan Mukherjee*, Bose, J., held that the words "whole number of the Commissioners" in Section 61 (2) of the Bengal Municipal Act, had reference to the total number of elected seats in a municipality and the fact that a seat was declared vacant by the Government did not matter.

13. The Maharashtra Zilla Parishads and Panchayat Samithis Act, 1961 contains a similar provision in sub-section (7) of S. 72 which reads as follows:

"If the motion is carried by a majority of the total number of members of the Panchayat Samithi (other than associate members), the Chairman, or as the case may be, the Deputy Chairman of the Panchayat Samithi shall cease to hold office forthwith; and the office held by such Chairman or Deputy Chairman shall be deemed to be vacant".

14. Construing the said provisions, the learned Judges Kotval, J., (as he then was) and Wagle, J. (in *Vishwarasaro Dajibarao Ghuge Vs. Vallabhdas Sheonarayan Sharam and Others*,), held that "the number of members actually sitting in the Samithi on a particular day is not the criterion so far as sub-section (7) of S. 72 is concerned, but the only criterion is the totality of the possible membership of the Samithi". In coming to the said conclusion, the learned Judges made the following observations:

"The provisions for the moving of no-confidence motions against the Chairman and Deputy Chairman of the Zilla Parishads and the Sarpanch and Upa Sarpanch of the Panchayat Samithi are, somewhat unique in a legislation of Local Self-Government, and the Legislature thought that the extraordinary right given to the members of these bodies to throw out the Chairman of the Sarpanch should be exercised carefully and only in extreme cases and so it appears the law deliberately imposed more stringent limitations upon the exercise of that right than the limitation imposed for decisions on other subjects."

15. Their Lordships further observed that the said Act envisages some members going out of office, and being replaced by others, and thus enlarging the number of persons who could be present and vote, and that there might be a conceivable case where a large number of members might become sitting members of the Panchayat Samithi after the notice of no-confidence motion was given, and in that event the question would arise whether the no-confidence motion was

sponsored by one-fourth of the total number of members. In that context their Lordships made the following observations:

"Thus on the date on which it was given the requisition though valid would be rendered invalid before the meeting to be called ten days after. Such a state of affairs could not have been in the contemplation of the legislature and indeed that is why the law expressly mentions the total number of members of the Panchayat Samithi, that is to say the totality of the possible members comprising the Samithi, and not the actual members for the time being. That total membership is always a fixed membership before each meeting".

16. With respect, we agree with the observations made by the learned Judges, and we think the reasoning contained in the above observations should be applied to the same expression occurring in this Act.

17. Further, the Act itself draws a clear distinction between an ordinary business meeting of the Samithi and a meeting convened for consideration of a no-confidence motion. While S. 33 (12) of the Act requires that the motion of no-confidence should be carried with the support of not less than three-fifths of the total number of members of the Samithi, no such stringent provisions is made with respect to the conduct of business at the ordinary meetings of the Samithi. Section 17 of the Act lays down, that every Panchayat Samithi or a Standing Committee thereof shall, in regard to the conduct of business at its meeting, follow such rules "as may be prescribed". The rules in G. O. Ms. No. 986 Planning and Development dated 22-10-1959, for the conduct of business at the meeting of a panchayat samithi. Zilla Parishads or a Standing Committee thereof, have not prescribed any special majority as in the case of meeting convened for consideration of a no-confidence motion. This difference in the two provisions lends support to our view, that in the case of no-confidence motions, the provisions are more stringent and the Legislature intended that a motion of no-confidence should be passed not be a simple majority, but a majority of three-fifths of the total number. As the provisions of Section 33 confer a valuable right on the members of the Samithi to remove an elected president, these provisions should be construed so as to effectuate the object and purpose of the Act in general, and the section in particular. For the reasons, stated above, we hold that the expression "total number of members of the Panchayat Samithi" occurring in Section 23 (12) means and refers to the totality of the membership of the Samithi as contemplated by Section 4 of the Act.

18. Coming to the facts of the present case, it is conceded that the Panchayat Samithi was composed of 45 members at the relevant time and 26 members voted for the motion of no-confidence, and therefore the motion was not supported by three-fifths majority of the total number of members of the Panchayat Samithi as required by S. 33 (12) of the Act. Hence the no-confidence motion was not carried by the requisite majority. If so the respondents 1 and 2 have no power to implement the said Resolution of the Samithi dated 31-12-1971.

19. It is contended by Sri Jeevan Reddy, the learned counsel for the respondents that inasmuch as the motion of no-confidence was supported by a substantial majority of the members of the Samithi, this Court should not exercise the discretion under Art. 226 of the Constitution at the instance of the Appellant, the president of the Samithi. But we are unable to agree with this submission. It is not disputed, that this Court has jurisdiction under Art. 226 of the Constitution to issue a writ, but what the learned counsel for the respondents contends is that this Court should not exercise its discretion and interfere in view of the facts of the present case. Sri Jeevan Reddy, has invited our attention to a number of decisions where relief was refused when the no-confidence motion was supported by a substantial majority, though not by a special majority as required by the relevant statute, but we are unable to agree with this submission. When the statutory requirement is not satisfied, the motion of no-confidence cannot be said to be carried not does the Government get jurisdiction to remove the president on the basis of a motion which has not been carried by the requisite statutory majority. If the contention of the respondents is to be accepted, a president of a panchayat samithi can be removed even by a simple or bare majority and the provisions of Section 33 (12) of the Act would be rendered ineffective or useless. In the case of election disputes a remedy is provided by way of an election petition, but so far as removal of a president by no-confidence motion is concerned, the Statute or the Rules do not seem to provide any further remedy. In the circumstance, the only remedy open to the aggrieved president is under Art. 226 of the Constitution and therefore in appropriate cases where it is established that the statutory requirements with regard to the passing of no-confidence motions against presidents have not been satisfied, relief can be granted by issuing an appropriate writ under Art. 226 of the constitution.

20. For the foregoing reasons, the writ appeal is allowed and the order dismissing the writ petition is set aside, and a writ of mandamus will issue to the respondents 1 and 2 to forbear from implementing the Resolution dated 31-12-1971 of the Panchayat Samithi of Nagarkurnool. Mahaboobnagar District expressing no-confidence against the appellant. The appellant will have his costs in this appeal and in the Writ Petition Advocate's fee Rs. 100/- each in the Writ Appeal and in the Writ Petition.

Appeal allowed.
