

(1965) 03 BOM CK 0036

In the Bombay High Court

Case No : Civil Application No. 939 of 1964

Chaitram Dagadu Sonavane

APPELLANT

Vs

The Malegaon Panchayat Samiti

RESPONDENT

Date of Decision : 25-03-1965

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 72(2)

Citation : (1965) 67 BOMLR 516 : (1965) MhLj 663

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

Bench : Full Bench

Final Decision : Dismissed

Judgement

H.K. Chainani, C.J.—The petitioner and respondents Nos. 2 to 4 are the members of the Panchayat Samiti of Malegaon. Respondent No. 2 was the Chairman of the Panchayat Samiti. On May 7, 1964, respondents Nos. 3 and 4 and 12 other members of the Panchayat Samiti gave a notice of a motion of no-confidence in respondent No. 2 under Sub-section (1) of Section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act. This notice was received by respondent No. 2 on May 7, 1964. On May 16, 1964, he issued a notice calling a meeting of the Samiti for the purpose of considering the motion of. no-confidence on June 27, 1964. A meeting was accordingly held on June 27, 1964, in which the motion of no-confidence in respondent No. 2 was carried by a majority of 14 to 9. The petitioner thereafter filed the present special civil application, in which he has contended that the meeting, which was held on June 27, 1964, at which the motion of no-confidence was passed, was illegal, as it was not held within ten days from the date on which the notice of no-confidence motion was received by respondent No. 2. The petitioner has, therefore, prayed for a writ of mandamus or any other suitable writ or direction to be issued to the Panchayat Samiti respondent No. 1 not to give effect to the motion of no-confidence passed in the meeting held on June 27, 1964. The Division Bench before which the application came up for hearing decided to refer it to a larger Bench in view of what it

regarded to be conflicting decisions, in Haribhau Govindrao and Others Vs. Maharashtra State, Bombay and Others, and Popat Ragho Patil Vs. Damu Shankar Patil, .

2. The question, which arises for our consideration, may be formulated as under:

Whether under Sub-section (2) of Section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, as this section stood before it was amended by the Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 1964, it was necessary to hold a meeting of the Panchayat Samiti for the consideration of a motion of no-confidence of which notice had been given under Sub-section (1), within ten days of the receipt of the notice or whether this sub-section only required that a notice calling a meeting of the Panchayat Samiti should be issued within ten days of the receipt of the notice of no-confidence motion?

3. In order to consider this question, it is necessary to refer to the relevant provisions of the Act. Sub-section (1) of Section 72 stated that a motion of no-confidence in the Chairman of a Panchayat Samiti should be made by a requisition from not less than one-fourth of the total number of the members after giving a notice thereof in such manner as might be prescribed. Sub-section (2) of this section provided that the Chairman of a Panchayat Samiti shall convene a special meeting of the Panchayat Samiti to consider such motion within ten days of the receipt of the notice. Sub-section (4) provided that if no such meeting was convened by the Chairman of a Panchayat Samiti within the period specified in Sub-section (2), all or any of the members who have given notice of motion of no-confidence, might forward to the Commissioner a copy of the notice and request him to convene a special meeting of the Panchayat Samiti and that the Commissioner shall notwithstanding anything contained in Section 118 read with Sub-section (5) of Section 111 within ten days of the receipt of such communication by him convene the special meeting of the Panchayat Samiti for the consideration of the motion. The words "a special meeting" and "the special meeting" were substituted for the words "a meeting" and "the meeting" in Sub-sections (2) and (4) by Maharashtra Act XXXV of 1963. Sub-section (5) lays down that the meeting convened for the purpose of considering a motion under this section shall not, for any reason, be adjourned. Sub-section (4) of Section 111 provides that fifteen clear days' notice of an ordinary meeting, and ten clear days' notice of a special meeting, specifying the time and place at which such meeting is to be held and the business to be transacted thereat, shall be circulated to the Councillors. Under this sub-section, therefore, fifteen clear days' notice for an ordinary meeting and ten clear days' notice for a special meeting¹ must be given. The provisions of Section 111 apply to Zilla Parishads, but they have been made applicable with some modifications to meetings of a Panchayat Samiti by Section 118. Originally Sub-section (4) of Section 111 applied without any modification to the meetings of a Panchayat Samiti and the period of notice required for calling an ordinary or a special meeting was the

same. But by Maharashtra Act XXXV of 1963 the period for an ordinary meeting of a Samiti was reduced from fifteen days to ten days and for a special meeting of a Samiti from ten days to seven days. Section 49 prescribes the procedure to be followed when notice of no-confidence motion in the President of a Zilla Parishad is given. Sub-section (2) of Section 49 provided that the President shall convene a special meeting of the Zilla Parishad to consider the motion within ten days of the receipt of notice.

4. In *Haribhau v. State*, a Division Bench of this Court held that a meeting of the Panehayat Samiti convened by the Commissioner under Sub-section (4) of Section 72 of the Maharashtra Zilla Parishads and Panehayat Samitis Act is either an ordinary meeting or a special meeting and that notice of such meeting must, therefore, be given in accordance with the provisions of Sub-section (4) of Section 111 of the Act. In that case the Commissioner had convened a meeting of the Samiti after two days' notice. It was held that the notice was bad and that the meeting held in pursuance of it was illegal. This decision led to the amendment of Sub-section (2) of Section 49, Sub-section (2) and (4) of Section 72 and Section 118 by Maharashtra Act XXXV of 1963, as mentioned above. In the meantime another Division Bench of this Court at Nagpur in *Bhimrao Narcyam, Deshmukh v. Chief Executive Officer, Zilla Parishad, Yeotmal* (1903) Special Civil Application No. 4 decided by Abhyankar and Wagle JJ., on September 27, 1965. (Unrep.). of 1903, held that the word "convene" in Sub-section (2) of Section 72 only meant "call", that what was required by Sub-section (2) was that the Chairman shall call a meeting or issue a notice of the meeting for consideration of the no-confidence motion within ten days of the receipt of the requisition and that it did not require that the meeting shall be held within ten days of the receipt of the motion of no-confidence. A contrary view has, however, been taken in *Popat Ragho v. Damu Shankar*, in which it has been held that the expression "convene a special meeting of the Panehayat Samiti" in Sub-section (2) and (4) of Section 72 of the Act implied that the Chairman of the Panehayat Samiti should have called the body together and held the meeting before the expiry of ten days from the receipt of the notice. Evidently on account of these decisions the Legislature has again amended the above sections by Maharashtra Act XLIII of 1964 and the word "convene" has been replaced by the word "call" in Sections 49 and 72.

5. We have, however, to construe Sub-sections (2) of Section 72 as it stood before the Act was amended in 1964. The word "convene" according to the Oxford English Dictionary means, to come together; to assemble or meet for a common purpose or for united action; to cause to come together; to summon (a person) before a tribunal. As the word has more than one meaning, the question as to what meaning it bears in a particular provision must be decided by reference to the context in which it has been used.

6. Sub-section (2) of Section 49 was almost in the same terms as Sub-section (2) of Section 72. This required the President to convene a special meeting of the

Zilla Parishad to consider the motion of no-confidence within ten days of its receipt. Under ?Sub-section (4) of Section 111, ten days" notice of a special meeting- has to be given. If, therefore, the word "convene" implied that the meeting must be held within ten days, then it would have not been possible to hold any meeting for-considering a motion of no-confidence, for if the meeting was to be held within ten days, ten clear days" notice of it could not have been given and if notice of a shorter period was given, the meeting would have been illegal, see *Haribhau v. State*. The above meaning did not, therefore, fit in the context, for it would have made Section 49(2) ineffective and nugatory. On the other hand, if "convene" in this provision meant call or summon, then it was possible to hold the special meeting after giving the requisite notice. The Legislature could not have used this word in a sense in which it would have made the section unworkable. It follows that in Section 49(2) "convene" meant call or summon; and it must bear the same meaning in Sub-sections (2) and (4) of Section 72, because the same word cannot have two different meanings in two provisions of the same Act almost identical in terms and enacted for the same purpose. Moreover, before the Act was amended in 1963, ten clear days" notice was also necessary for a special meeting of a, Panchayat Samiti. The word "convene" was, therefore, used in Section 72 in the sense indicated above before the Act was amended in 1963. It cannot change its meaning merely because by the amendment the period of notice for a special meeting was subsequently reduced.

7. Mr. Adik has pointed out the other provisions of the Act, which indicate that the same words have not always been employed to express the same intention. The proviso to Sub-section (4) of Section 111 refers to a meeting being "called". Sub-section (14) of Section 111 states that a Minister who desires to discuss with the Zilla Parishad any matter relating to the work of the Parishad may request the President to call a meeting- of the Zilla Parishad and that the President shall summon the meeting accordingly. Sub-section (1) of Section 113 states that a President may convene a meeting of the Zilla Parishad to enable such dignitaries as the State Government may specify to address the Councillors. The word "convene" in this sub-section, therefore, appears to have been used in the same sense in which the words "call" and "summon" have been used in Sub-section (14) of Section 111. Section 122 provides that when a Minister requests the President of a Zilla Parishad to arrange a meeting with the Standing Committee or any Subjects Committee, the President shall take steps to summon such meeting. The words used in this section are "arrange" and "summon". It will, therefore, be seen that different words have been used in the same sense in different provisions of the Act. Mr. Phadke has urged that as another word "convene" has been employed in Sub-sections (2) and (4) of Section 72 it should be given a different meaning of "call together or assemble together". This word "convene" is also used in other provisions of the Act, such as Sections 76(1)(a), 111(8), 113(1) and 115(1). As stated above, in Section 113(1) it appears to have been used in the sense of call or summon. Sub-section (8) of Section 111

states that except with the permission of the presiding authority, no business shall be transacted and. no proposition shall be discussed at any ordinary meeting, unless it has been entered in the notice convening such meeting. The meaning of the-word "convene" in this sub-section obviously is "call" or "summon". It is, therefore, clear that this word has not always been used in the Act in the sense of assembling or bringing together.

8. It has been contended that the object of the Legislature in specifying a time limit within which a meeting has to be convened is that a motion of no-confidence should be treated as a matter of urgency and should be disposed of within a short time after notice of it has been given. If it is held that Sub-section (2) of Section 72 only required that a notice calling a meeting should be issued within: ten days, the Chairman, who had lost the confidence of the majority of the members of the Samiti, might have complied with the requirements of Sub-section (2) by issuing a notice summoning the meeting within ten days, but might actually have called the meeting at a very much later date, so- as to enable him to continue in office for a long period against the desire of the majority of the members. There is some force in this argument. But on the other hand, we-must not so interpret the provisions of the Act as to defeat the intention of the Legislature that a person who had lost the confidence of the members should not continue in office. As I have pointed out, unless the word "convene" is held to mean "call or summon", no meeting of the Zilla Parishad could lawfully have been held for consideration of the motion of no-confidence in the President or Vice-President. Ten clear days" notice of such a meeting had to be given and the meeting could not, therefore, have been held within ten days of the receipt of the notice of motion of no confidence. It. would, therefore, have been impossible to carry out the provisions of Sub-section (2) of Section 49. Similarly, before the Act was amended in 1963, it would not have been possible to hold any lawful meeting of the Panchayat Samiti for consideration of the no-confidence motion against its Chairman or Deputy Chairman. Since one of the dictionary meanings of the word "convene" is summon,, it seems to us that the word "convene" in Sections 49 and 72 must be held to have this meaning, for otherwise Sub-section (2) of Section 49 and Sub-sections (2) and (4) of Section 72 before the Act was amended in 1963 could not have been given effect to and would have become unworkable.

9. Mr Phadke has relied on the decision in Popat Ragho v. Damu Shankar., The judgment shows that the learned Judges were aware of the difficulties which have been pointed out above. At p. 733 it has been observed:

...It may be that when making the provisions of Sub-section (2) of Section 49 the legislative draftsman overlooked the difficulty that would arise, but for the reason that difficulties would arise in the implementation of the other provisions of the Act, we cannot give to the expression used in Section 72 "convene a special meeting" any meaning other than what the plain English requires and merely to obviate difficulties.

With respect, it seems to us that the Court should, if possible, so construe a provision in an Act as will make it and the other provisions of the Act workable and as will not render any of them ineffective or incapable of being carried out. The intention of the Legislature should not be allowed to be defeated merely because the draftsman has used a word in a sense in which it is not ordinarily used. With respect, we do not, therefore, agree with the view taken in *Popat Bagho v. Damu Shankar*. We agree with the view taken in Special Civil Application No. 4 of 1963. In our opinion, all that Sub-section (2) of Section 72 required was that the notice summoning the meeting for consideration of the motion of no confidence, in respect of which a requisition had been received under Sub-section (1), should be issued within ten days from the date of the receipt of the requisition and that it was not necessary to hold the meeting within ten days of the receipt of the notice. The reply to the first part of the question formulated for our consideration is, therefore, in the negative and to the second part in the affirmative.

10. In this view the present application must fail.

11. Rule discharged. No order as to costs.