

(1979) 06 GUJ CK 0008
In the Gujarat High Court

Chandrakant Mohanlal Thakkar

APPELLANT

Vs

Gadhada Taluka Panchayat

RESPONDENT

Date of Decision : 28-06-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Gujarat Panchayats Act, 1961 — Section 22A, 22A , 22A(2a), 22A(2A)

Citation : (1980) 21 GLR 695

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—One cannot ride two horses at a time, true, but can one become a member of two Panchayats at the same time and retain membership of both? Section 22A of the Gujarat Panchayats Act, 1961, says "no." But what is to happen if one is declared elected uncontested in one, and victorious on counting of votes in another, in case the result of the former is declared later in point of time? Put differently the problem presented by this appeal u/s 100 of the CPC is as to when a person can be said to have become a member of a Panchayat and what would be the legal position if a person is elected to two different Panchayats and the case does not fall under any of the sub-sections of Section 22A which have been designed to meet different situations in order to ensure that no person shall be a member of two Panchayats at the same time.

2. The facts are not in dispute. Elections to the Gadhada "Nagar" Panchayat were scheduled to take place on October 20, 1974. However, on account of a stay order issued by a Court of law, the polling date had to be postponed. Actual polling took place only on February 22, 1976 and the list of elected members was published as enjoined by the relevant provisions of the Act on February 23, 1976. It, however, so transpired that the appellant-plaintiff had filed his nomination paper way back on September 18, 1974 and as no one else had contested the election from that Ward, he had become entitled to be declared as elected uncontested. The declaration however, was made on February 23, 1976 i.e. on the next day after the actual polling. It appears that meanwhile the plaintiff also

contested election for the Gadhada "Tahika " Panchayat. He was declared elected on December 14, 1975. Thus, he was declared as elected to the "Talukd" Panchayat more than two months prior to his being declared as a member of the "Nagar" Panchayat. In the context of this undisputed position, the question arose as to whether Sub-section (2 A) of Section 22 A of the Act was attracted and whether the seat held by him in the "Ja/ufca" Panchayat stood vacated automatically in pursuance to the proviso to Section 22A (2A). The relevant provision requires to be quoted in order to understand the controversy:

22A. (1) No person shall, save as expressly authorised by this Act, be a member of two or more panchayats.

(2) No person while holding office in a panchayat in capacity as ex-officio, elected or co-opted member, shall, save as expressly authorised by this Act, be eligible for holding office in the same panchayat in a capacity other than the capacity in which he is already holding office.

(2A) Where a person while being a member of one panchayat intends to stand as a candidate for membership of another panchayat or while holding office in a panchayat as ex-officio. elected or co-opted member intends to stand as a candidate for membership in the same panchayat in a capacity other than the capacity in which he is already holding office, he may stand as a candidate for such membership, notwithstanding anything contained in Sub-section (1) or (2);

Provided that if he is chosen for the seat for which he stood as a candidate, the seat already held by him shall become vacant on the date on which he is so chosen unless the seat so held is in another panchayat and the term of that panchayat is to expire within a period of four months from the date on which he is so chosen.

(3) If any person is simultaneously chosen as a member of two or more panchayats or as a member in different capacities in the same panchayat, then unless such membership is expressly authorised by this Act, the person shall within ten days from the date or the later of the dates on which he is so chosen intimate to the competent authority one of the panchayats in which or, as the case may be, one of the capacities in which he wishes to serve and thereupon his seat in the panchayat or, as the case may be, the capacity other than the one in which he wishes to serve shall become vacant.

(4) Any intimation given under Sub-section (3) shall be final and irrevocable.

(5) In default of such intimation within the aforesaid period the competent authority shall determine the seat which he shall retain and thereupon the remaining seats from which he was chosen shall become vacant.

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The first question which arises is as to of which Panchayat the appellant became a member in the first instance. This aspect has relevance because if Section

22A(2) is attracted as has been held by both the lower Courts and if it is established that the appellant became member of the Taluka Panchayat first in point of time, the view taken by the lower Courts that his membership of the Taluka Panchayat stood terminated on account of the automatic vacancy of the seat already held by him cannot be taken exception to.

3. So far as this point is concerned, it presents no difficulty. The appellant became a member of the Nagar Panchayat when his result was declared on February 28, 1976. It is futile to contend that he became a member of the Panchayat when he filed his nomination paper on September 18, 1974 for the polling itself took place on February 22, 1976 i.e. some 15 months after the date of the filing of his nomination paper. All that happened on September 18, 1974 was that the appellant became entitled to have his name declared as a member elected uncontested whenever declaration of the result was made after the polling took place. A glance at the Gujarat Gram and Nagar Panchayats Election Rules of 1962 shows that the Returning Officer is empowered to declare the result of the election only "after" the polling and on completion of the statement showing total number of votes recorded at the election (see Rule 34). Thereafter under Rule 35 the result has to be posted at the Panchayat Office at the specified place by the Returning Officer and the publication of the result of the election by the election authority is to be made under Rule 36. Before the Returning Officer declares the results and the results are published, it cannot be said that a person has become a member of the Panchayat. On the date of the filing of the nomination paper, even if there is no contest, a person cannot ipso facto become a member of the Panchayat. Only when the polling takes place and when the result is declared by the Returning Officer, and the election authority publishes his name, one becomes a member. Section 17 of the Act read with Section 45 of the Act leaves no room for doubt on this score. Section 17 provides that the term of a panchayat commences from the date of the first meeting of the panchayat and unless otherwise provided the term of the panchayat so constituted would be five years from the date of such meeting. Section 45 provides that the term of the office of the members of a panchayat will be co-extensive with the term of the panchayat. It would, thus, appear that the term of the office of a member would commence from the date of the first meeting of the panchayat. The panchayat itself would be constituted on the date of the first meeting. No one can become a member of the panchayat before it is constituted. It is, therefore, abundantly clear that the appellant became a member of the Nagar Panchayat only after February 22, 1976 on which date the polling took place. The results were declared on February 23, 1976. But more than two months prior thereto he had already become a member of the "Taluka" Panchayat. Thus, the appellant became a member of the "Taluka" Panchayat first and a member of the "Nagar" Panchayat subsequently. If, therefore, Sub-section (2A) of Section 22A is attracted, the seat as a member in the "Nagar" Panchayat would stand vacated and not the seat as a member in the "Taluka " Panchayat. But then it is evident that Sub-section (2A) of Section 22A is not attracted at all. It will come into play

only when a person who is "already" a member of one panchayat "subsequently" contests the membership in another panchayat. When the appellant contested the membership of the Taluka Panchayat, he was not already a member of the Nagar Panchayat. On the date on which he contested the election of the Nagar Panchayat, he was not already a member of the Taluka Panchayat. Thus, Sub-section (2A) is not attracted at all. Since the first part of the provision is not attracted, the proviso thereto does not come into play either. The view taken by the lower Courts that Sub-section (2A) of Section 22A applies, and under the proviso thereto, the appellant must be deemed to have vacated his membership in the Taluka Panchayat is, therefore, unsustainable. The question then would arise as to what would be the legal position since Sub-section (1) of Section 22A in terms provides that no person can be a member of two or more panchayats at the same time unless it is expressly authorised by the Act. It is not the case of the appellant that there is any other provision in the Act which authorises membership of the Nagar Panchayat along with the membership of the Taluka Panchayat. Till, therefore, he resigns his seat from one of the two Panchayats he would not be entitled to function as a member. But then the appellant has a right to decide which membership he will retain and which membership he will give up.

4. The scheme of Section 22A shows that while all the possible situations were envisioned by the Legislature a situation of the present nature was not contemplated. The central idea reflected in Clause (3) thereof appears to be that when a person who is already a member of one panchayat contests an election subsequently for another panchayat and is declared successful he cannot be permitted to opt for continuing the previous membership. The rationale of the idea is obvious. It would be a mockery of the electorate to permit a newly elected member on the very next day of being elected to say that he does not want to serve the panchayat concerned and would prefer to continue the earlier acquired membership of another panchayat. That is why when a person already holding an office in one panchayat subsequently contests the election for another panchayat, he is obliged to give up the membership acquired by him earlier and is obliged to retain the membership acquired by him at the subsequent election. Of course where one is "simultaneously" elected as a member of two or more panchayats, he is given an option as is evidenced by the provisions contained in Sub-sections (3) and (4). Since Section 22A (2A) is not attracted the appellant has the option to decide which membership should be retained and which should be relinquished.

5. The appeal is, therefore, partly allowed. The decree passed by the lower Courts is reversed and set aside. The suit of the appellant-plaintiff is decreed to the following extent:

(I) It is declared that Sub-section (2A) (and the proviso to the said subsection) of Section 22A of the Gujarat Panchayats Act, 1961 is not attracted and the plaintiff has not vacated his seat as a member in the Gadhada Taluka Panchayat. It is, however, clarified that having regard to the provision contained in Section 22A(1)

the plaintiff is not entitled to remain as a member of the Gadhada Nagar Panchayat as also a member of the Gadhada Taluka Panchayat.

(2) It is declared that the appellant-plaintiff under the law has an option to decide whether he wants to retain the membership of the Gadhada Nagar Panchayat or that of the Gadhada Taluka Panchayat and would have to resign from one or the other depending upon his decision.

There will be no order regarding costs.