
(1968) 02 GUJ CK 0013
In the Gujarat High Court

Chhatrasingh Rupsingh Bhalavat

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 09-02-1968

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 14, 14, 15, 22A(1), 22A(2A)

Citation : (1968) 9 GLR 860

Hon'ble Judges : P.N. Bhagwati, C.J.;A.R. Bakshi, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—These two petitions raise identical questions of law and it would, therefore, be convenient to dispose them of by a single judgment. The facts giving rise to these two petitions are also similar but it is necessary to set out the facts of each petition separately in order to avoid confusion as to facts in the two petitions. So far as petition No. 686 of 1965 is concerned, the facts may be briefly stated as follows: The Gram Panchayat of village Tundav situate in Savli Taluka of Baroda District was constituted in 1961 and the petitioner who was elected as a member of the Tundav Gram Panchayat was elected its Sarpanch some-time in 1961. The petitioner by virtue of his office as Sarpanch of Tundav Gram Panchayat became an ex officio member of the Savli Taluka Panchayat u/s 14 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the Act) and when the Baroda District Panchayat was constituted in the end of January 1964, he was elected as a member of the Baroda District Panchayat by the Savli Taluka Panchayat from amongst its members u/s 15 of the Act. The petitioner was elected as a member of the Education Committee of the Baroda District Panchayat. The terms of the Baroda District Panchayat was due to expire in February 1968 but before that, on 3rd April 1965, the term of Tundav Gram Panchayat came to an end and it was reconstituted by holding fresh elections. The petitioner was again elected as a member of the Tundav Gram Panchayat and the choice of the members again fell upon him and he was elected Sarpanch of the reconstituted Tundav Gram Panchayat. On these facts, the question arose whether the petitioner ceased to be a member of the Baroda District Panchayat.

The District Development Officer took the view that the petitioner had ceased to be a member of the Baroda District Panchayat and he accordingly prevented the petitioner from attending the meetings of the Baroda District Panchayat. The petitioner thereupon filed Petition No. 686 of 1965, in this Court claiming an appropriate writ directing the District Development Officer and the Baroda District Panchayat to treat the petitioner as continuing to be a member of the Baroda District Panchayat and restraining them from interfering with the right of the petitioner to act as a member of the Baroda District Panchayat. So far as Petition No. 783 of 1965 is concerned, the petitioner was a member of and Sarpanch of Jambughoda Gram Panchayat and by virtue of his office as Sarpanch of Jambughoda Gram Panchayat he became an ex officio member of Jambughoda Taluka Panchayat on 1st April 1963. Thereafter he was elected as a member of Panchmahal District Panchayat by the Jambughoda Taluka Panchayat from amongst its members in March 1964. The term of Jambughoda Gram Panchayat came to an end on 30th June 1965 and at the fresh election held for electing members of the reconstituted Jambughoda Gram Panchayat, the petitioner was again elected as a member and at the first meeting of the reconstituted Jambughoda Gram Panchayat held on 8th July 1966, he was again elected Sarpanch of Jambughoda Gram Panchayat. The District Development Officer in this case also contended that by reason of the expiration of the term of Jambughoda Gram Panchayat, the petitioner ceased to be a member of the Panchmahal District Panchayat and was, therefore, not entitled to attend the meetings of the Panchmahal District Panchayat. The petitioner, therefore, filed Petition No. 783 of 1965 claiming the same reliefs as claimed in Petition No. 686 of 1965.

2. Before we set out the questions which arise for consideration in these two petitions, it will be convenient to refer to a few relevant sections of the Act which have a bearing on the determination of the controversy between the parties. The Act provides for different classes of Panchayats with a view to democratic decentralisation of powers relating to Local Government. Section 3 says that there shall be a Gram Panchayat for each Gram, a Taluka Panchayat for each Taluka and a District Panchayat for each District. Section 12 provides for the constitution of the Gram Panchayat. Sub-section (1) says that the Gram Panchayat shall consist wholly of members elected from amongst the qualified voters of the Gram and Sub-section (2) provides that every Gram Panchayat shall have a Sarpanch and an Upa-Sarpanch elected by its members from amongst themselves. Section 14 provides for the constitution of the Taluka Panchayat and according to that section, the Taluka Panchayat shall consist of four classes of members. Class A of ex officio members shall include inter alia the Sarpanchas of all the Gram Panchayats within the Taluka; Class B of elected members shall consist of members elected by the Chairmen of all the cooperative societies situate within the Taluka or the area of operation of which includes the whole or a part of the area of the Taluka from amongst themselves; Class C of co-opted members shall consist of women interested in welfare activities pertaining

to women and children and representatives of Scheduled Castes and Scheduled Tribes and Class D of associate members shall consist of members of the Legislative Assembly elected from any constituency in the Taluka, the Mamlatdar of the Taluka, the Presidents of all the municipalities situate within the Taluka and the elected members of the District Panchayat ordinarily residing in the Taluka. The constitution of the District Panchayat is dealt with in Section 15 and according to that section, the District Panchayat shall also consist of four classes of members. The Presidents of all the Taluka Panchayats in the district, are to be the ex officio members of the District Panchayat. Then there are elected members of the District Panchayat and they are divided into two categories. The first category consists of:

15(1)(B)(ii). One member elected by each taluka panchayat in the district from amongst its own members other than associate members

The other category comprises members directly elected to District Panchayat. Two persons having practical experience in respect of matters pertaining to education and residing in the district are to be co-opted members and the members of the House of the People and the Legislative Assembly elected from the area within the jurisdiction of the District Panchayat, the members of the Council of States residing in the District, the Collector of District and the President of all municipalities situate within the district are to be associate members. Section 22A provides for imposition of restrictions on simultaneous or double membership of Panchayats and, omitting portions immaterial, it says:

22-A. (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 ahead 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.

.. . . .

Sub-section (2A) of Section 22A was subsequently introduced by Gujarat Act VII of 1965 with effect from 1st April 1965 but it was in force at the relevant time and it will, therefore, have to be taken into account in determining the question

in controversy between the parties. Section 57 says that the term of office of members, President and Vice-President of the Taluka Panchayat shall be as under:

57. (1) Save as otherwise provided in this Act, the term of office of members, President and Vice-President of a taluka Panchayat shall be coextensive with the term of the Panchayat:

Provided that where any person in his capacity as a Chairman of a cooperative society has been elected as a member of the panchayat he shall cease to be a member on the expiry of his term as such Chairman unless he is reelected as a Chairman of the cooperative society or if he otherwise ceases to be such Chairman.

Section 69 provides for the term of office of members, President and Vice-President of the District Panchayat and it reads as follows:

69. (1) Save as otherwise provided in this Act, the term of office of members, President and Vice-President of a District Panchayat shall be coextensive with the term of the Panchayat:

Provided that where any person being a member of a Taluka Panchayat in his capacity as a chairman of a cooperative society has been elected as a member of the District Panchayat, he shall cease to be such member if he ceases to be such chairman.

The question is whether on a true interpretation of these sections the petitioner ceased to be a member of the District Panchayat when the term of the Gram Panchayat came to an end.

3. Now it can hardly be disputed that when the term of the Gram Panchayat came to an end, the petitioner ceased to be a member and Sarpanch of the Gram Panchayat and since his office of Sarpanch in the Gram Panchayat came to an end, he also ceased to be an ex officio member of the Taluka Panchayat. Vide the decision of a Division Bench of this Court in Special Civil Applications Nos. 1006 of 1965 and 1295 of 1967 given on 31st January 1968. But the question is whether on his ceasing to be an ex officio member of the Taluka Panchayat, the petitioner also ceased to be a member of the District Panchayat. The petitioner contended relying on Section 69(1) that his term of office as a member of the District Panchayat was coextensive with the term of the District Panchayat and his ceasing to be a member of the Taluka Panchayat had, therefore, no effect on his membership of the District Panchayat. This contention is clearly supported by the language of Section 69(1) which provides that the term of office of a member of the District Panchayat shall be coextensive with the term of the District Panchayat but there is an excepting clause at the commencement of Section 69(1) which qualifies the provision enacted in that section, and according to the excepting clause the provision enacted in Section 69(1) cannot operate if it is otherwise provided in the Act. The respondents, therefore, with a view to

repelling the applicability of the provision enacted in Section 69(1) urged that it was otherwise provided in the Act, namely, that a person who was elected by the Taluka Panchayat as a member of the District Panchayat u/s 15(1)(B)(ii) shall cease to be such member when he ceases to be a member of the Taluka Panchayat. When we asked the respondents as to where this provision was to be found in the Act, the respondents pointed out Section 15(1)(B)(ii) and contended that it was implicit in this provision that a member of the Taluka Panchayat who was elected as a member of the District Panchayat should continue to be a member of the Taluka Panchayat. We do not agree with this contention of the respondents. What Section 15(1)(B)(ii) provides is that the District Panchayat shall consist inter alia of one member elected by each Taluka Panchayat in the district from amongst its own members other than associate members. The members of the Taluka Panchayat other than associate members constitute the electoral college for the election of one of them to the District Panchayat and, therefore, the person elected must be a member of the Taluka Panchayat at the date of the election, but Section 15(1)(B)(ii) does not say that such person after being properly elected shall continue to be a member of the Taluka Panchayat and if he does not do so he shall cease to be a member of the District Panchayat. The qualification of being a member of the Taluka Panchayat must be satisfied at the date of the election for Section 15(1)(B)(ii) says that one member shall be elected by the Taluka Panchayat from amongst its own members; there is no further requirement that the person elected shall continue to be a member of the Taluka Panchayat. If the legislative intent was that a person elected to the District Panchayat u/s 15(1)(B)(ii) should cease to be a member of the District Panchayat when he ceases to be a member of the Taluka Panchayat, we should have expected the Legislature to express itself clearly to that effect as it has done in the case of a member of the Taluka Panchayat elected by the Chairmen of all the cooperative societies situate within the Taluka from amongst themselves. Section 57(1) proviso says in so many terms that where any person in his capacity as Chairman of a cooperative society has been elected a member of the Taluka Panchayat, he shall cease to be a member on the expiry of his term as such Chairman or if he otherwise ceases to be such Chairman and where he ceases to be a member of the Taluka Panchayat u/s 57(1) proviso, Section 69(1) proviso provides that he shall also cease to be a member of the District Panchayat if he has been elected by the Taluka Panchayat as a member of the District Panchayat u/s 15(1)(B)(ii). If there was implicit in Section 15(1)(B)(ii) a provision that a member elected by the Taluka Panchayat from amongst its own members shall cease to be a member of the District Panchayat if he ceases to be a member of the Taluka Panchayat, it was unnecessary to enact the proviso to Section 69(1) providing that where any person who is a member of the Taluka Panchayat in his capacity as Chairman of a cooperative society has been elected a member of the District Panchayat, he shall cease to be such member if he ceases to be such Chairman. When such a person ceases to be the Chairman of a cooperative society, he would cease to be a member of the Taluka Panchayat u/s 57(1) proviso and on the construction of Section 15(1)(B)(ii) contended for on

behalf of the respondents, as soon as his membership of the Taluka Panchayat comes to an end, he would straightaway cease to be a member of the District Panchayat. On this view, Section 69(1) proviso would be rendered superfluous and otiose. Now it is a well settled rule of interpretation that the Court should always lean against a construction which has the effect of rendering any part of a statute unnecessary or superfluous. That construction should be preferred which harmonises the different parts of the statute and gives full force and effect to every part. We are, therefore, of the view that Section 15(1)(B)(ii) does not provide either expressly or by necessary implication that a member of the Taluka Panchayat elected to the District Panchayat under that provision must continue to be a member of the Taluka Panchayat and if he ceases to be a member of the Taluka Panchayat, he would likewise cease to be a member of the District Panchayat. Once a member of the Taluka Panchayat is validly elected as a member of the District Panchayat u/s 15(1)(B)(ii), it is not necessary that he should continue to be a member of the District Panchayat. His membership of the District Panchayat, though it owed its origin to his membership of the Taluka Panchayat, does not rest on the continued existence of his membership of the Taluka Panchayat and even if he ceases to be a member of the Taluka Panchayat, his membership of the District Panchayat does not come to an end.

4. The respondents then contended that In any event the petitioner ceased to be a member of the District Panchayat when he was elected as a member of the reconstituted Gram Panchayat and in support of this contention, the respondents relied on Section 22A(2A). The respondents urged that Section 22A(2A) provided an exception to the provision as to the term of office of a member of the District Panchayat enacted in Section 69(1) and by reason of the opening part of Section 69(1), Section 22A(2A) prevailed over Section 69(1). The argument of the respondents was that it was not open to the petitioner to be a member of two Panchayats and, therefore, as soon as the petitioner was elected as a member of the reconstituted Gram Panchayat, the seat already held by him as a member of the District Panchayat became vacant and he ceased to be a member of the District Panchayat u/s 22A(2A). Now Section 22A, Sub-section (1) provides that no person shall, save as expressly authorised by the Act, be a member of two or more Panchayats. It would, therefore, appear to follow that if a person is already a member of one Panchayat, he cannot be permitted to stand as a candidate for another Panchayat: to permit him to do so would be to go contrary to Section 22A(1). The Legislature realising that this consequence would work hardship and deprive a person of an opportunity of choosing which of two Panchayats he would like to serve as a member, enacted Sub-section (2A) in Section 22 A providing that a person who is already a member of one Panchayat may stand as a candidate for membership of another Panchayat but if he is chosen for the seat for which he stands as a candidate, the seat already held by him shall become vacant on the date on which he is so chosen. The fact that he stands as a candidate for membership of another Panchayat would show that in case he is elected he does not wish to continue as a member of the first Panchayat and his

membership of the first Panchayat must, therefore, come to an end as soon as he is elected as a member of the other Panchayat. But this consequence which is a necessary corollary flowing from the principle enacted in Section 22A(1) would not ensue if simultaneous membership of the two Panchayats is expressly authorised by the Act. Section 22A(1) specifically says that a person can be a member of two or more Panchayats if such membership is expressly authorised by the Act and where such is the position, Section 22A(2A) cannot apply and the membership of one Panchayat would not be vacated by the election of a member to the other Panchayat as contemplated in Section 22A(2A). The question in controversy between the parties, therefore, resolves itself into a narrow one, namely, whether there is any express provision in the Act which authorises the petitioner to be a member of the reconstituted Gram Panchayat when he is already a member of the District Panchayat. No such express provision could be pointed out on behalf of the petitioner. The petitioner relied upon the scheme of the Act and pointed out that the Act clearly contemplates simultaneous membership of two or more Panchayats in the pyramid consisting of Gram Panchayats at the base, Taluka Panchayats in the middle and the District Panchayat at the apex. If a member of a Gram Panchayat is elected as Sarpanch, he would simultaneously be a member of the Gram Panchayat as also an ex officio member of the Taluka Panchayat and if being an ex officio member of the Taluka Panchayat he is elected as a member of the District Panchayat, he can simultaneously be a member of all the three Panchayats, namely, the Gram Panchayat, the Taluka Panchayat and the District Panchayat. Similarly a member of the Taluka Panchayat if elected as President can simultaneously be a member of the Taluka Panchayat as also an ex officio member of the District Panchayat and he can also in the same way be a member of both the Taluka Panchayat and the District Panchayat if being a member of the Taluka Panchayat he is elected as a member of the District Panchayat. There is, therefore, express authority in the Act, argued the petitioner, for a person being simultaneously a member of the Gram Panchayat as also a member of the District Panchayat and the election of the petitioner as a member of the reconstituted Gram Panchayat accordingly did not invite the applicability of Section 22A(2A). This contention is, in our view, futile and must be rejected. It is undoubtedly true that in the class of cases given by the petitioner, there can be simultaneous membership of two or more Panchayats and if the case of the petitioner falls within such class, Section 22A, Sub-section (1) or (2A) would not stand in the way of the petitioner continuing as a member of the District Panchayat along with his membership of the reconstituted Gram Panchayat. But the case of the petitioner does not fall within this class which is expressly authorised by the Act. It is not as if the petitioner is already a member of the Gram Panchayat and he becomes an ex officio member of the Taluka Panchayat by virtue of being elected to the office of the Sarpanch of the Gram Panchayat or being already an ex officio member of the Taluka Panchayat he becomes either an ex officio member of the District Panchayat by virtue of being elected to the office of President of the Taluka Panchayat or an elected member of the District Panchayat by virtue of being elected as such

member by the Taluka Panchayat. Here the petitioner is already a member of the District Panchayat and in addition to being such member he is elected as a member of the reconstituted Gram Panchayat. Such simultaneous membership of the District Panchayat and the Gram Panchayat is not expressly authorised by the Act. Section 22A(2A) must, therefore, be held to apply and the consequence set out in Section 22A(2A) must follow and it must be held that on the petitioner being elected as a member of the reconstituted Gram Panchayat, the seat held by him as a member of the District Panchayat became vacant and he ceased to be a member of the District Panchayat.

The petitions, therefore, fail and the rule in each petition will "" stand discharged with no order as to costs.