

(1965) 04 BOM CK 0020

In the Bombay High Court

Case No : Special Civil Application No's. 1102 and 1177 of 1964

Chirak Chandu Khatik

APPELLANT

Vs

G.V. Kshirsagar

RESPONDENT

Date of Decision : 22-04-1965

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 40(1)(b)

Citation : (1965) 67 BOMLR 657 : (1965) MhLj 805

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

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—The two petitioners and respondents Nos. 3 and 4 are members of the Village Panchayat of Akkalkuwa. On June 15, 1964, an election was held for electing the Sarpanch. There were two candidates at this election, petitioner No. 1 and respondent No. 4. Each of them received five votes. Lots were then drawn and petitioner No. 1 was declared as duly elected. One of the persons, who had voted in favour of petitioner No. 1, was Bajubai petitioner No. 2. On June 23, 1964, respondents Nos. 3 and 4 made applications to tie Collector evidently under Sub-section (5) of Section 33 of the Village Panchayats Act and requested the Collector to set aside the election of petitioner No. 1 on the ground that petitioner No. 2, who had voted in favour of petitioner No. 1, had ceased to be a member of the Panchayat on April 29, 1964, under Clause (6) in Sub-section (1) of Section 40 of the Act. On July 21, 1964, the President, Zilla Parishad, passed an order stating that as petitioner No. 2 Bajubai had remained absent for more than six consecutive months from the meetings of the Panchayat without any leave from the Panchayat, a vacancy had occurred on April 29, 1964, and that from the date petitioner No. 2 could not continue to be a member of the Village Panchayat of Akkalkuwa. This order was made under Sub-section (2) of Section 40 of the Act. In view of this order the Collector held that petitioner No. 2 was not qualified to vote at the election of the Sarpanch. He, therefore, set aside the election of petitioner No. 1 as the Sarpanch of the Panchayat and directed that a fresh election should be held. The Collector rejected the prayer

made on behalf of respondent No. 4 that he should be declared to have been duly elected as the Sarpanch of the Panchayat. Against the order made by the Collector the petitioners have filed the present special civil application No. 1102 of 1964. The other application No. 1177 of; 1964 has been filed by respondent No, 4, in which he has prayed that he should be declared to have been duly elected "as the Sarpanch of the Panchayat at the meeting held on June 15, 1964.

2. The main question which arises for determination in these applications is whether petitioner No. 2 Bajubai was disqualified from continuing to be a member of the Village Panchayat under Clause (b) in Sub-section (I) of Section 40 of the Act. This sub-section provides:

(1) Any member of a panchayat who, during his term of office?...

(b) absents himself for six consecutive months from the meetings of the panchayat without the leave of the said Panchayat,

shall cease to be a member and his office shall be vacant.

Sub-section (2) of this section states that any dispute as to whether a vacancy has or has not occurred under this section shall be referred for decision of the President of the Zilla Parishad, whose decision shall be final. Petitioner No. 2. attended the meeting of the Village Panchayat on October 27, 1963. She remained (absent at the next meeting held on November 19, 1963. She also did not attend the subsequent five meetings held on November 28, 1963, December 29, 1963, January 31, 1964, February 29 1964; and March 31, 1964. She, however, was present at the next meeting held on April 30, 1964, It has been contended by Mr. Patil that the period of six months must be counted from November 19, 1963, the date on which she (absented herself for the first time after attending the previous meeting held on October 27, 1963. Mr. Adik has, on the other hand, urged that petitioner No. 2 should be held to have been disqualified, as she did not attend any meeting of the Panchayat held during the period of six months from October 28, 1963. The disqualification, under the above provisions would be incurred if member absents himself from meetings of the Village Panchayat for six consecutive months. The absence must, therefore, be from a meeting. Until a meeting is held, no question of absence can arise. Six months of absence cannot, therefore, begin to run unless a member is absent and he cannot be absent until a meeting is held. It follows that the period of six months must be reckoned from the date of the meeting at which the member remained absent and not from the date of the meeting at which he was: last present.

3. This view is in accordance with that taken in *Kershaw v. Shoredith Corporation* (1906) 95 L.T. 55. Sub-section (6) of Section 46 of the Local Government Act, 1894, provided that if a member of a council was absent from the meetings of the council for more than six months consecutively, his office shall on the expiration of those months become vacant. It was held that the period of six months began to run from the first meeting when he was absent and not from

the last meeting at which he was present.

4. In the case of petitioner No. 2, the period of six months therefore began on November 19, 1963, when she was absent for the first time from the meetings of the Panchayat, Six months from this date expired on May 19, 1964. Before the expiry of this period she attended the meeting held on April 30, 1964. Consequently, she had not incurred the disqualification under Clause (b) in Sub-section (1) of Section 40 of the Act. She was consequently entitled to vote at the election for the office of the Sarpanch held on June 15, 1964.

5. The order made by the President of the Zilla Parishad holding that petitioner No. 2 was disqualified from continuing to be a member u/s 40 of the Act and that a vacancy had consequently occurred, must therefore be set aside. We also set aside the order of the Collector, by which he has held the election of petitioner No. 1 as the Sarpanch to be invalid.

6. As the election of petitioner No. 1 was valid, special civil application No. 1177 does not survive. The rule in that application will be discharged.

7. The petitioners in application No. 1102 should get their costs from respondents Nos. 3 and 4. No order as to costs in application No. 1177.