

(1964) 02 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 375 of 1962

Deolal Sitaram Thakre

APPELLANT

Vs

K.M. Galat Patil

RESPONDENT

Date of Decision : 12-02-1964

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 57, 68

Citation : (1964) 66 BOMLR 595 : (1964) MhLj 553

Hon'ble Judges : Wagle, J;Abhyankar, J

Bench : Division Bench

Judgement

Abhyankar, J.—This order will govern the disposal of both these petitions.

2. Special Civil Application No. 375 of 1962 is filed by three persons Deolal, Pralhad and Smt. Kalindibai, in which they seek quashing of a notice issued on September 19, 1962, by the Block Development Officer and Secretary of the Barshitakli Panchayat Samiti calling a meeting of the elected members of the Panchayat Samiti for co-option of certain persons u/s 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. They also desire a writ of mandamus requiring the Collector of Akola, directing him to publish the names of the petitioners as duly co-opted members u/s 57(1)(d) and (c) of the same Act. These petitioners had asked for an ad interim writ while the petition was admitted against holding of the proposed meeting fixed for September 30, 1962. We had directed such an ad interim writ to issue in terms of the prayer Clause (c) of the petition. At that time Shri Jakatdar had appeared for respondent No. 1 to this petition, viz. the Chairman of the Barshitakli Panchayat Samiti, and he had undertaken to abide by that order. Therefore, the meeting fixed for September 30, 1962, has not been held.

3. Special Civil Application No. 420 of 1962 is filed by three other petitioners, viz. Smt. Kashibai, Shri Dashrath and Shri Vithal. Their grievance is that each of them was a candidate for co-option at the meeting of the Panchayat Samiti of Barshitakli held on September 3, 1962. At this meeting the petitioners in Special

Civil Application No. 375 of 1962 were also proposed for co-option under different clauses of Sub-section (1) of Section 57 of the Act. As a result of votes taken, the petitioners in Special Civil Application No. 375, of 1962 and the petitioners in Special Civil Application No. 420 of 1962 received equal support. In view of the equal support received by each candidate proposed for co-option for different categories, the presiding authority, who is also the Chairman of the Panchayat Samiti of Barshitakli, decided that the final choice may be made by casting of lots. Accordingly, lots were drawn and the petitioners in Special Civil Application No. 375 of 1962 were favoured at this drawing of lots.

4. Thereafter, as directed by the Chairman, the Secretary of the Panchayat Samiti, who is impleaded as respondent No. 2 in Special Civil Application No. 375 of 1962 had called a meeting for September 25, 1962, for election of a Deputy Chairman. The petitioners who were declared co-opted as a result of casting of lots had also received notice of this meeting. But before this meeting could be held, the impugned notice dated September 19, 1962, was issued by the Secretary at the instance of the Chairman, calling a fresh meeting of the elected councillors for a fresh co-option of members required to be co-opted under Clauses (d), (e) and (c) of Section 57(1) of the Act. When the petitioners, who were declared co-opted by lot, came to know of this fresh notice, they made an application to the Collector of Akola to intervene and suspend action at the instance of the Chairman and the Secretary. The Collector declined to take any action as he took the view that no such application could be entertained by the Collector. The petitioners who were declared co-opted by lot, therefore, filed their petitions in this Court and claimed reliefs mentioned in Special Civil Application No. 357 of 1962. Soon thereafter, the petitioners, who were unlucky in the lot, but who had secured equal support from the members at the meeting held on September 3, 1962, filed their petition which is numbered as Special Civil Application No. 420 of 1962. The contention of the petitioners in that petition is that the Chairman of the meeting could not decide the question of co-option of members u/s 57 by drawing of lots if there was an equal support to candidates proposed for co-option. Their case is that the meeting should have proceeded to conduct its business of co-opting members by the procedure laid down for "Conduct of Business". That procedure is laid down u/s 111 of the Act. Sub-section (6) of Section 111 provides that all questions shall be decided by a majority of votes of the councillors present and voting, the presiding authority having a second or casting vote in all cases of equality of votes. These petitioners, therefore, contend that the proper procedure to be followed by the presiding officer, who was a Chairman in the instant case, was to decide the question of co-option by casting his own vote in addition, and it was necessary to do so in view of the equal support obtained by rival claimants. The petitioners in Special Civil Application No. 420 of 1962, therefore, have asked for a writ of certiorari or other appropriate writ to be issued directing the Chairman and the Secretary of the Samiti to quash the proceedings of the meeting held on September 3, 1962, and to prohibit the Collector, Akola, from publishing the

names of the petitioners in Special Civil Application No. 375 of 1962 as co-opted members.

5. The petitioners in Special Civil Application No. 375 of 1962 have been impleaded as respondents to the Special Civil Application No. 420 of 1962. They have resisted the petition filed by Shrimati Kashibai and others on the grounds identical with their contentions raised in their own petitions. It will, therefore, now be necessary to examine the respective contentions of the rival parties.

6. According to petitioners Deolal and others in Special Civil Application No. 375 of 1962, the persons required to be co-opted under Clauses (c), (d) and (e) of Section 57(1) are as a matter of fact and law, required to be elected. This election is by members of the Panchayat Samiti who are elected under Clauses (a) and (f) of Sub-section (1) of Section 57. If as a result of election of the persons required to be co-opted there is an equality of votes, the only and proper method of resolving the impasse is by drawing of lots. Provision has been made in other parts of the Act or of the Rules in the case of equality of votes at an election of a Chairman of a Panchayat Samiti or a president or a vice president of a Zilla Parishad by drawing of such lots. Even in case of election of Sarpanch as elected to the Panchayat Samiti, if there is an equality of votes, Sub-section (4) of Section 57 provides that the addition of one vote will entitle any of those candidates to be declared elected and such additional vote shall be cast by such officer as the Collector may empower in this behalf by drawing of lots. These petitioners challenged the claim made on behalf of the petitioners in Special Civil Application No. 420 of 1962 that any provisions of Section 111 would apply to the meeting required to be called by the Chairman of the Panchayat Samiti for co-option u/s 57. According to them, the Panchayat Samiti must mean, a Panchayat Samiti as constituted u/s 57. Such a Samiti could not be said to be constituted at the first meeting of the Panchayat Samiti required to be called u/s 68, because at that date, persons required to be co-opted cannot be said to have become members of the Panchayat Samiti. Pursuing the same line of reasoning, they contend that Section 111, which provides procedure for the meetings of Zilla Parishads and conduct of business and has been made applicable mutatis mutandis u/s 118 of the Act to the conduct of business in meetings of the Panchayat Samitis as well, cannot possibly govern the conduct of business for the first meeting of the Panchayat Samiti required to be convened by the statute u/s 68, and this is because, the Panchayat Samiti has not been duly constituted. It is also urged that even assuming that Sub-section (6) of Section 111 is called in action because of equality of support earned by rival nominations, there is nothing in that sub-section which would disentitle or prohibit the presiding officer from exercising any second or casting vote by resort to drawing of lots. In other words, what is urged is that if the presiding authority finding that there is an equality of votes, decides to lend his support to that candidate whose name appears by drawing of lots, that should be considered as a substantial compliance with the provisions of Sub-section (6) of Section 111, even if that section applied. It is also urged that in case a literal interpretation

were to be put on Section 111(6) requiring the presiding authority to cast a second or an additional vote, it would amount to a double franchise being given to one of the members of the Panchayat Samiti for which there is no warrant in any other provisions of the Act.

7. In our opinion, none of these contentions can be sustained. A careful scrutiny of the provisions of Sections 57, 64 and 68 of the Maharashtra Zilla Parishads and Panchayat Samitis Act would show that the Act makes well-understood and well-defined distinction between a person to be elected and a person to be co-opted. Whereas persons of the categories mentioned in Clauses (c), (d) and (e) of Sub-section (1) of Section 57 are required to be co-opted, those mentioned in Clauses (a) and (f) of that sub-section are required to be elected. The manner in which those elections have to be held has been given in sufficient details in the section and the rules. It is difficult to uphold the contention that a process of co-option is to all intents and purposes similar, if not the same, as the process of election. In an election a certain procedure is required to be followed. There has to be previously given a notice sufficiently wide that there shall be an election so that persons who are entitled to vote and eligible to contest may know about it. This is followed by inviting nomination of candidates for the post or the office to be filled by election. Then there is a scrutiny of the nomination or the nomination paper. In some cases a withdrawal of the nomination, i.e. withdrawal from the contest, is permitted within the prescribed time. Then follows generally a provision for declaration of a person as elected if the number of nominations received is equal or less than the number of seats to be filled. If more persons' names are nominated than the seats required to be filled, then there has to be a poll or a voting. There are various methods of voting; generally by ballot, if not, by some other method is prescribed. Then this is followed by counting of votes cast in favour of each candidate and generally a candidate who obtains a majority of votes is declared elected. Thus the important feature that distinguishes the process of election from the process of co-option is that a person, who is eligible to fill a particular office by election, has a right to be nominated and has a right to be elected. This cannot possibly be contended in the case of an office to be filled by co-option. Nobody can claim that he or she has a right to be co-opted. Another distinguishing feature is that in an office to be filled by co-option, even if a person's name is suggested for co-option and no other name is suggested, it does not follow that, that person automatically gets co-opted; the matter has to be put to vote and if the majority decides against the proposal, the person whose name is proposed for co-option does not become a co-opted person or a co-opted member. The person who is not co-opted has no further right of challenging, except in very limited circumstances, as in the present case. We must, therefore, reject the contention that the process by which persons are required to be selected or chosen as co-opted members under Clauses (c), (d) or (e) of Sub-section (1) of Section 57 can at all be equated to a process of election or that a co-opted person can be called an elected person. In our opinion, the provision made for co-option of the different categories of

persons enumerated in Clauses (c), (d) and (e) of Sub-section (1) of Section 57 is nothing but a method of appointing persons described in those categories as members by choice of majority of the elected members.

8. We are also unable to accept the contention that the Panchayat Samiti is not fully constituted because certain persons are yet to be co-opted. Sub-section (3) of Section 57, as now amended, in explicit terms states that the names of members falling under Clause (f) of Sub-section (1) together with their permanent addresses shall be published by the Collector at such time and in such manner, as may be prescribed and upon such publication the Panchayat Samiti shall be deemed to have been duly constituted. Whatever may have been the position before this sub-section was amended, it is now crystal clear that a Panchayat Samiti gets constituted into a legal entity capable of functioning as a Samiti the moment the names of two types of elected members after their election, are published by the Collector. Thus there is no difficulty in applying the provisions of the Act to a Panchayat Samiti in which only elected members have been elected.

9. The next question is what procedure is contemplated by the Act which a Panchayat Samiti should follow at the first meeting which is a statutory meeting to be convened u/s 68 for co-option of persons u/s 57. The language of Section 68 clearly indicates not only that the Chairman shall call the first meeting, but it also lays down the business to be transacted at such meeting and that business, which is the first business to be transacted, is the co-option of persons required to be co-opted u/s 57. If this is a meeting of the Panchayat Samiti which the statute required the Chairman to convene for this purpose, we fail to see why the provisions of Section 111 should not apply for the conduct of the business at such a meeting. This has been so held by a Division Bench of this Court in *Gangabai Vishwasrao Charjan v. Vatsalabai Gopalrao Waghmare* (1963) Special Civil Application No. 366 of 1962. The learned Counsel for the petitioners in Special Civil Application No. 375 of 1962 wanted this decision to be reconsidered mainly in view of this contention that the procedure of co-option of members under Clauses (c), (d) and (e) of Sub-section (1) of Section 57 is analogous to an election process and, therefore, distinction should be made between the procedure to be followed at a meeting convened u/s 68 and other ordinary or extraordinary meetings that may be convened for transacting normal business of the Panchayat Samiti. As we have rejected the contention of Deolal and others that there is any analogy or similarity in procedure for co-option of a person as distinguished from election of a member, we must hold that the provisions of Section 111 must apply to the meeting convened u/s 68. It is also not possible to accept the alternative contention of Mr. Manohar that the presiding authority should be deemed to have exercised his casting or second, vote as there was equality of support by its resort to drawing of lots. It would appear that there is a legislative mandate to the meeting and to all persons attending the meeting including the presiding authority that all questions and business of the meeting must be decided by a majority of votes. We put it to Mr. Manohar as to what

should happen if the presiding authority declined to exercise his right of a casting or second vote and left the matter high and dry. Surely, it could not be contended that the presiding authority merely by refusing to cast a second or an additional vote could leave the matter as it were at a standstill in respect of every question for which there was an equality of votes. On the contrary, the language of Sub-section (6) of Section 111 shows that all questions shall be decided by a majority of votes, which means that every one eligible to vote must vote one way or the other or, at any rate, the decision must be taken by a majority of votes. If there is an equality of votes, then such majority can be arrived at by the presiding authority casting his second vote. In our opinion, this is one of those classes of cases where the power given to the presiding authority to have a second or casting vote is coupled with a duty to make use of that power and to cast a vote in cases where there is an equality of votes. Otherwise, the whole business of the meeting, and in consequence, of the Samiti, will come to a standstill. We do not think that the Legislature contemplated any such result on account of a volitional inaction on the part of the presiding authority by refusing to cast a second vote. We also do not find it possible to accept the contention that by drawing of lot the presiding authority can at all be said to have exercised his power of casting a second vote. Casting of a vote is a conscious act. By that the presiding authority indicates as to which of the two rival candidates or nominations or proposals is acceptable to the presiding authority. It can hardly be contended that the decision how the vote should tilt the balance in favour of one choice or the other can be said to have been consciously made if that is left to the uncertain result of drawing of a lot. We do not think that the Legislature intended any such result to follow. We must, therefore, hold that in case of equality of votes the presiding authority has not only the power but also a duty to resolve the impasse by making use of his power to cast a second vote.

10. In view of this position it must follow that the procedure followed by the Chairman in the instant case in deciding about the persons to be co-opted by drawing of lots was wholly unwarranted and against the provisions of the Act. The declaration of the petitioners Deolal, Pralhad and Smt. Kalindibai as respectively co-opted under Clauses (c), (d) and (e) of Section 57(1) because of drawing of lots must, therefore, be declared invalid and of no effect. It must, therefore, follow that these petitioners are not entitled to have their names published as duly co-opted members of this Panchayat Samiti. We, therefore, set aside that decision of the Panchayat Samiti declaring Deolal, Pralhad and Smt. Kalindibai as co-opted members of the Panchayat Samiti. We do not feel any other directions are necessary as the elected members of the Panchayat Samiti will have to take the necessary steps to do their duty u/s 68 of the Act of having a meeting convened for co-option of the persons under Clauses (c), (d) and (e) of Section 57(1) of the Act. We direct accordingly.

11. The result is that the petition in Special Civil Application No. 375 of 1962 is rejected, while the petition in Special Civil Application No. 420 of 1962 is allowed,

but in the circumstances there will be no order as to costs in either of these cases.