

(1963) 04 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 433 of 1962

Haribhau Govindrao and Others

APPELLANT

Vs

Maharashtra State, Bombay and Others

RESPONDENT

Date of Decision : 11-04-1963

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 111, 111(4), 118, 49(4), 72

Citation : AIR 1967 Bom 186 : (1963) 65 BOMLR 529 : (1963) ILR (Bom) 528 : (1963) MhLj 503

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

Bench : Division Bench

Advocate : B.R. Mandlekar, for the Appellant; B.R. Mandlekar, Asst. Govt. Pleader and C.S. Dharmadhikari, for the Respondent

Judgement

Kotval, J.—After the last general elections to the Zilla Parishads and Panchayat Samitis, the Panchayat Samiti for Achalpur Taluq came to be constituted on 7-8-1962 for a period of five years. The petitioner Haribhau Govindrao Bobde was elected the Chairman of the Panchayat Samiti on that date. About two months later, on 9th of October 1962, four members of the Samiti gave notice of a no-confidence motion against the petitioner. That notice of the motion of no-confidence is at Annexure A, and the grounds annexed thereto, indicate that the members felt that the petitioner was misusing his powers and was not able to perform his duties. The Chairman, it appears, took no action upon this notice as prescribed by sub-section (2) of S. 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. By that sub-section, he was bound to convene a meeting of the Panchayat Samiti to consider such motion within ten days of the receipt of the notice. In this petition he states that the meeting was not convened by him, because it was, in the first place, orally communicated to him by the General Secretary of the Maharashtra Pradesh Congress Committee and later confirmed by an express delivery letter dated 19th of October 1962 that the resolution of no-confidence should not be considered. He has filed a copy of that

letter at Annexure (b).

2. Consequent upon his failure to convene the meeting under sub-section (2) of S. 72, the four members moved the Commissioner, Nagpur Division, to exercise his powers under sub-section (4) of S. 72. The request was received by the Commissioner, as admitted in his Return, on the 18th of October 1962. The Commissioner passed an order upon this requisition on 2-11-1962. That order is at Annexure R-1. He sent a copy of the order to the Block Development Officer, Achalpur, and directed him to issue immediately notices for the meetings as requested by the members of the Panchayat Samiti and make necessary arrangements for the meeting. It appears that the Tahsildar, Achalpur, who was to preside over the said meeting by the order of the Commissioner, ordered notice to issue as directed "immediately" and convened the meeting for the 5th of November, 1962. The notice is at Annexure (G) and is dated 3-11-1962. What transpired at that meeting on 5-11-1962 is in dispute. But it is not necessary to go into the events that took place at that meeting on 5-11-1962; suffice it to say that the allegations made and the facts disclosed in respect of that meeting by the Tahsildar to the Commissioner, Nagpur Division and filed by the petitioner at Annexure D-a disclose a most unsavoury state of affairs. The point taken in this petition is that the action taken by the Commissioner was not in compliance with S. 72 (4) nor was the notice issued for the meeting, in compliance with that section or S. 111 (4) of the Act.

3. The provisions relating to the motion of no-confidence against the Chairman or Deputy Chairman of a Panchayat Samiti are contained in S. 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, and the relevant provisions are in sub-sections (1), (2) and (4) which are as follows;

"72 (1) A motion of no-confidence in the Chairman or Deputy Chairman of a Panchayat Samiti may be made by a requisition from not less than one-fourth of the total number of the members (other than associate members) after giving a notice thereof in such form and in such manner as may be prescribed by the State Government.

"(2) The Chairman of a Panchayat Samiti shall convene a meeting of the Panchayat Samiti to consider such motion within ten days of the receipt of the notice."

"(4) If no such meeting is 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 no-confidence, may forward to the Commissioner a copy of the notice (together with a copy of the motion) and request him to convene a meeting of the Panchayat Samiti. The Commissioner shall within ten days of the receipt of such communication by him, convene the meeting of the Panchayat Samiti for the consideration of the motion at the office of the Panchayat Samiti at a time appointed by him, and shall authorise such person as he deems fit to preside over such meeting."

4. On behalf of the petitioner Mr. B.R. Mandlekar points out that the notice of the meeting ordered to be convened by the Commissioner by his order dated 2-11-1962 was issued on 3-11-1962 and the meeting was actually convened by the Tahsildar on 5-11-1962, that is to say, only two days after the notice. Actually the notice given by the Secretary, who is the Block Development Officer, is dated 3-11-1962. Thus, the members got notice of the meeting only two days before the meeting. Mr. Mandlekar says that this is unjustified and illegal having regard to the provisions of sub-section (4) of S. 72 read with Ss. 111 and 118 of the Act.

5. Sub-section (4) of S. 72 gives the power to the Commissioner to convene the meeting at which the notice of motion of no-confidence is to be considered in case of the Chairman to whom the requisition for calling such a meeting is handed over fails to call it within ten days from the receipt of the notice. In this case, admittedly, the Chairman did not convene the meeting within ten days of the receipt of the notice as required by S. 72 (2). Therefore, the Commissioner would have the power to act under sub-section (4) of S. 72. The power of the Commissioner however is circumscribed by certain conditions one of them being that the Commissioner shall convene the meeting within ten days of the receipt of the communication by him from the members that the Chairman has failed to act under sub-section (2) of S. 72 of the Act. This is one of the points argued in the petition. It has been pointed out that the request or requisition was received by the Commissioner in the instant case on 18-10-1962 but the order passed by him is dated 2-11-1962. Therefore the Commissioner passed orders after 14 days whereas he was bound by the express words of S. 72 (4) to convene the meeting within 10 days of the receipt of the communication by him.

6. Sub-section 4 of S. 72 does not itself indicate what should be the period of notice for the meeting after the Commissioner decides to convene it, but for this purpose reliance has been placed on S. 111 of the Act. Now, S. 111 deals with "Meetings of Zilla Parishads", but, by virtue of the provisions of S. 118, however the words "Zilla Parishad" occur in the section, the words "Panchayat Samiti" will have to be read whenever the question arises as to the meeting of the Panchayat Samiti. So far, there appears to be no doubt or difficulty as to the law. But it has been argued that the provisions of S. 111 should be considered in this context and they will not apply where the power of the Commissioner to convene a meeting under sub-section (4) of S. 72 of the Act, is concerned.

7. Now, the provisions of sub-sections (1), (3) and (4) of S. 111 which are relevant for our purpose are as follows:

"111 (1) A Zilla Parishad may meet as often as may be necessary, but three months shall not intervene between its last meeting, and the date of its next meeting."

"(3) The President shall fix the dates for meetings, and may whenever he thinks fit and shall, upon the written request of not less than one-fifth of the

Councillors, and within seven days from the receipt of such request, issue notice calling a special meeting."

"(4) 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 and posted up at the office of the Zilla Parishad. Such notice shall, in the case of a special meeting, include a motion or proposition, if any mentioned in the written request made for such meeting.

xx xx xx xx xx."

It will be noticed that a distinction is made in sub-section (4) between " a special meeting" and " and ordinary meeting". Unfortunately, nowhere in the Act, are those expressions defined. But sub-section (1) prescribes that a Zilla Parishad may meet as often as may be necessary, but three months shall not intervene between the two meetings; in other words, they are bound to meet within three months of the last meeting. In sub-section (3) a species of special meeting is referred to, that is where a meeting is called by the President upon a written request of not less than one-fifth of the Councillors. In the light of these two sub-sections of S. 111, it is possible to glean some meaning from the words used in sub-section (4) viz "an ordinary meeting" and "a special meeting". However in the instant case, it is not necessary to come to any finding upon the question whether the meeting called on 5-11-1962 was a special meeting or an ordinary meeting, because sub-section (4) requires notice of fifteen clear days for an ordinary meeting and ten clear days for a special meeting; and if the provisions of S. 111 apply to the meeting in question, then., admittedly, notice was not given of either fifteen days or ten days, but notice was only given of two days. In that view, we need not determine whether the meeting in the instant case was an ordinary meeting or a special meeting of the Samiti.

8. On the question as to the applicability of S. 111 (4) to the meeting in question , it is clear upon the provisions of sub-section (4) read with S. 118 that it is a general provision regarding all meetings of the Panchayat Samiti. In fact, it occurs at the head of the Chapter "Conduct of Business". Section 72 , sub-section (4) also speaks of the Commissioner convening the meeting of the Panchayat Samiti for consideration of the motion of the no-confidence. Therefore it would be such a meeting as would be governed by the provisions of sub-section (4) of S. 111, unless we can find within the provisions of the Act or the rules an express exception, or implied exclusion. On behalf of the respondents it was conceded that there is no express exclusion of the applicability of S. 111, sub-section (4), so far as the meeting contemplated in S. 72, sub-section (4), is concerned. But what both Mr. Palshikar on behalf of the State and official respondents as well as Mr. Dharmadhikari on behalf of the remaining respondents urged was that, having regard to the provisions of S. 72 (4) and the other provisions of the Act, there is sufficient indication that sub-section (4) of S. 111 would not apply to a meeting to be convened by the Commissioner under S.

72 (4). In other words, what is argued is that there is an exclusion of S. 111 (4) by necessary implication.

9. Sub-section (4) of S. 72, undoubtedly says that the Commissioner shall within ten days of the receipt of the communication informing him that the Chairman has failed in act under S. 72 (2), convene the meeting of the Panchayat Samiti for consideration of the motion of no-confidence. The ordinary acceptation of the word "convene" is "call together" and when, therefore, the Commissioner convenes the meeting of the Panchayat Samiti, it is in all respects truly a meeting of that Samiti and would fall within the words "ordinary Meeting" or the "special meeting", as the case may be. We cannot see any reason whatsoever why the provisions of S. 111 (4) should not apply to the meeting to be convened by the Commissioner. In fact, a reference to other provisions of the statute indicates that S. 111 would apply. There is no express exclusion in sub-section (4) of S. 72, nor is there anything to be found in that sub-section, or, indeed, in the whole of S. 72, to suggest that S. 111 or any of its provisions would not apply.

10. These provisions of no-confidence motions are somewhat unique so far as the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, is concerned, for so far as we are aware, this is a first time that office bearers of Zilla Parishads and Panchayat Samitis can be removed by a decision of a simple majority of the members thereof. In the Act similar provision is to be found, so far as the President or vice-President of the Zilla Parishad is concerned in S. 49 of the Act and there too, the provision is that a notice of motion of no-confidence should first be given and the President has to convene a meeting of the Zilla Parishad to consider the motion within ten days of the receipt of the notice. The provisions are analogous to Sub-sections (1) and (2) of S. 72. Similarly, the provisions in sub-section (4) of S. 49 are analogous to the provisions of sub-section (4) of S. 72. If the President does not convene the meetings as specified in sub-section (2) of S. 49, all or any of the Councillors who have given notice of the motion of no-confidence may forward to the Commissioner a copy of the notice together with a copy of the motion and request him to convene a meeting of the Zilla Parishad. The wording is identical with sub-section (4) of S. 72. Once that happens, according to sub-section (4) of S. 49. "The Commissioner shall, notwithstanding anything contained in Sub-section (3) of S. 111, within ten days of the receipt of such communication by him, convene the meeting of the Zilla Parishad for the consideration of the motion at the office of the Zilla Parishad at a time appointed by him, and shall authorise such person as he deems fit to preside over such meeting" It will be noticed that the provisions of sub-section (4) of S. 49 are identical with the provision of sub-section (4) of S. 72, except for the fact that the Zilla Parishads are referred to in sub-section (4) of S. 49, while the Panchayat Samitis are referred to in sub-section (4) of S. 72 (and here lies the crucial difference), but the words are added in sub-Section (4) of S. 49 "notwithstanding anything contained in sub-section (3) of S. 111".

11. There was considerable controversy as to the exact scope of these words and as to the reason why they find place in sub-s. (4) of Section 49. In fact, Mr. Dharmadhikari on behalf of the respondents urged that they were really unnecessary and otiose. He urged that sub-section (3) of S. 111 could never apply by its very terms to the Commissioner convening a meeting and, therefore, it makes no sense to put down a reference S. 111 (3) when dealing with the subject of the Commissioner convening a meeting of the Zilla Parishad. We do not think that it is necessary for us to probe into the meaning of those words or the reasons why they find place in sub-section (4) of S. 49. At any rate, that is not necessary for the purposes of this case. But we cannot also hold, as contended by Mr. Dharmadhikari, that those words are redundant and carry no meaning in the context in which they are used. The question, however, does arise "why were these words included in sub-section (4) of S. 49 and yet when conferring identical power upon the Commissioner in the case of Panchayat Samities in sub-s. (4) of S. 72, why were they deliberately excluded". Surely the deliberate legislative exclusion of those words must carry some meaning. We have already said that, in our opinion, S. 111 read with S. 118 is a general provision which must apply to all meetings of the Panchayat Samiti unless there is an express exclusion, which is not the case here, or an exclusion by necessary implication. In S. 49 (4) there is an express exclusion of S. 111, but none in S. 72 (4). That in itself would indicate that the Legislature intended that the general provisions of S. 111 should apply in the case of meetings convened by the Commissioner under S. 72 (4).

12. We may also remark upon the peculiar difference in the language used in sub-section (3) of S. 111 which deals with notice of a special meeting to be convened by the President and of sub-section (4) which deals with notice of ordinary and special meetings to be otherwise convened. In sub-section (3) it is provided that the President shall fix the dates for meetings and within seven days from the receipt of the request for such meeting, issue the notice calling a special meeting. In making the provisions of sub-section (4), however, the passive voice has been used throughout and the subject, who is to do the particular acts specified is not specified. In other words, every meeting, if it be an ordinary meeting, would require fifteen days' clear notice or, if a special meeting, ten days' clear notice, by whomsoever it is called. Therefore, the section would equally apply to the President or the Commissioner. We can see absolutely no reason clear, upon the law, why the power of the Commissioner to call a meeting under sub-section (4) of S. 72 should be excluded from the operation of sub-section (4) of S. 111 of the Act.

13. Upon that view, it is clear that the notice of the meeting of the Achalpur Panchayat Samiti given on 3-11-1962 convening the meeting on 5-11-1962 is not in compliance with law. If the notice convening the meeting is bad, in our opinion, the meeting itself would be illegal, for sub-section (4) of S. 111 is, in our opinion, mandatory. It expressly used the words "shall be circulated". We may also point out that any other construction would be difficult of acceptance, when

we consider that in sub-section (2) of S. 72, the Chairman has the power to convene a meeting to consider no-confidence motion within ten days of the receipt of the notice. If the provisions of sub-section (4) of S. 111 really were to be held to be directory, then the Chairman himself against whom a no-confidence motion is proposed and who receives notice would be enabled to give wither a very short notice, may be of a few hours, to get the no-confidence motion considered, and thereby may be enabled to get an advantage for himself in the consideration of a motion in which he is himself vitally interested. In our opinion, the provisions of sub-section (4) of S. 111 apply in the instant case and, since the notice was not in accordance with that section, the meeting called on 5-11-1962 to consider the no-confidence motion against the petitioner itself was illegal and could not be held. In that view we need not consider the other point raised in this petition.

14. The petition is allowed and it is declared that the notice dated 3-11-9162 at Annexure (g) was illegal. It is quashed. It is also declared that the meeting convened on 5-11-1962 was an illegal meeting and the proceedings taken thereat were illegal. They are quashed. The respondents shall pay the costs of the petitioner No. 1 as follows: The respondents 1, 2, 3 and 5 shall pay half the costs and the respondents 6 to 11 shall pay half the costs.

15. Petition allowed.