

(1958) 05 MAD CK 0007

In the Madras High Court

In Re: M.K. Ravutha Gounder

Date of Decision : 20-05-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1958) ILR (Mad) 1100 : (1958) 71 LW 632 : (1958) 2 MLJ 414

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

Ramachandra Iyer, J.—This is an application for the issue of a writ of prohibition restraining the respondent, the Regional Inspector of

Municipal Councils and Local Boards, Coimbatore, from conducting the election to the office of the President of the Panchayat at Mylambadi

Village, Coimbatore district, which was fixed to take place on 15th May, 1958. Mylambadi village has been notified as a Panchayat under the

provisions of Madras Act X of 1950. The petitioner is an elector therein. The appropriate authority under the Act has fixed that the Panchayat is to

be composed of 15 members. Elections of members to the Panchayat were held on 19th April, 1958, but only twelve out of the fifteen seats were

filled up, there having been no valid nominations in respect of the remaining three. The election authority under the Act thereupon notified that fresh

elections would be held for these three seats and fixed 21st May, 1958, for such fresh elections. In the meanwhile steps were taken to enable the

Panchayat to function and a meeting of the twelve elected members was convened for 15th May, 1958, to elect a President from among them.

2. Petitioner, a defeated candidate in the election, held on 19th April, 1958, and a prospective one in the coming elections claims to have an

interest in the election of the President as he hopes to become a member of the Panchayat either by succeeding in the election petition which he

intends to file in respect of the election in which he lost or by succeeding in the election to be held on 21st May, 1958. He challenges the

jurisdiction of the respondent to convene a meeting of the existing members before the three members are elected and prays for the issue of a writ

under Article 226 of the Constitution prohibiting the election of the President.

3. Mr. Mohan Kumaramangalam, appearing for the petitioner, contended that there could be no valid or effective constitution of the Panchayat till

all the fifteen members were elected and that the Panchayat being still at the stage of its formation, could not function and proceed to elect a

President. He referred in this connection to Sections 6, 7 and 10 of the Act which prescribe the strength, election and term of the members of the

Panchayat. I cannot accept this contention. Under Act X of 1950 the Panchayat is constituted a corporation. As such it has a persona independent

of its members who represent, act for and transact its business. The Panchayat is not a mere joint office of the members, but a separate legal entity

created by the statute. Its affairs are regulated by the provisions of the Act and the Rules framed thereunder and its capacity to function with or

without all its members in existence has to be decided by reference to them. Section 2(16) of the Act defines a Panchayat as a body constituted for

the local administration of a village. Section 3 vests a power in the Inspector to constitute or alter villages for the purposes of the Act and to specify

the names of the villages by means of a notification and Section 4(1) directs the constitution of a Panchayat for each of such villages. Section 4(3)

enacts that every Panchayat shall be a body corporate by the name of the village specified in the notification issued u/s 3, having perpetual

succession and common seal. Section 6 authorises the Inspector to fix or to vary from time to time the number of members of the corporation

subject to a minimum of five and maximum of fifteen. Section 7 prescribes that the election of the members should be in accordance with the Rules

made in that behalf. The provisions of Section 11(2) and Section 18(2) recognise the competency of some members to act for the Panchayat, the

former giving a right to the existing members to co-opt and elect members in certain circumstances and the latter to restore a member after he lost

his seat by continuous absence for a period of three months. Rule 7 of the Rules framed u/s 112 for the conduct of the proceedings of the

Panchayat allows the business to be transacted at a meeting with one third of the number of members then on the panchayat. Section 41 validates

all acts of the Panchayat even though there is a defect in the establishment thereof, in the election of a member or President, or by reason of the

existence of a vacancy therein. There being thus no prohibition in the Act or the Rules against the Panchayat commencing its functions before all its

members are elected, the rules which govern a corporation under the general law in so far as they are not inconsistent with the Act would apply.

4. In Salmond's "Jurisprudence" (Tenth Edition), at page 328, reference is made to Savigny's System, Section 90 for the proposition:

that the aggregate of the members who compose a corporation differs essentially from the corporation itself.

5. The learned author states that a company (or corporation) is capable of surviving the last of its members. In Halsbury's Laws of England

(Simonds Edition) Volume 9, it is stated at page 9:

The nature of a corporation may be shown by contrasting it, as a legal conception, with the individuals in which it resides. In law the individual

corporation or members of which it is composed are something wholly different from the corporation itself for a corporation is a legal persona just

as much as an individual.

6. Subject to such regulations that may govern the constitution of a corporation, the absence of individual members or the existence of vacancies

cannot on principle affect the validity of its acts. It was so held in the case of temple committees appointed under Act XX of 1863 in Raghunandan

Ramanuja Doss v. Bibuthi Bushan Mukerjee (1911) 39 Cal. 304 and in Sitaram Chetty v. Sir Section Subramanya Iyer (1915) 30 M.L.J. 29 :

ILR Mad. 39 In Venkataram Iyer v. Janab Hamid Sultan Maracair (1922) 44 M.L.J. 161, a Taluk Board was constituted under Madras Act XIV

of 1920. The Board was to consist of twenty members. The appointing authority appointed in the first instance only 19 members and before the

twentieth member was appointed a meeting of the Board took place in which the President of the Board was elected. That election was challenged

on precisely the same ground as in the present case. The learned Judges negated the objection and upheld the validity of the election on the

ground that the Board was constituted by the statute and the notification

thereunder and not by the presence of the entire body of the members.

The principle of that decision was followed in *The Crown v. Sidhy Mal* I.L.R. (1933) Lah. 461. In that case the validity of a prosecution under the

Punjab Small Towns Act was contested on the ground that there was no validly constituted authority to initiate it. Under the Act the Small Towns

Committee which was given certain powers in regard to local administration was to consist of five members four to be elected and the fifth to be

nominated by the Government. At the time when the prosecution was launched the four elected members alone were functioning as the nominated

member had not taken charge. It was held that the existence of a vacancy in the committee did not make its constitution invalid and that the

prosecution was properly launched. Thus whether the matter is viewed in the light of the principle that a corporation is distinct from the members or

on the ground of convenience the remaining members of the corporation, particularly when they constitute the majority, can act during the

subsistence of a vacancy or vacancies in its personnel. The Panchayat as at present constituted can therefore validly proceed to elect its President

u/s 21 of the Act.

7. The next contention on behalf of the petitioner was that his contingent right as a member of the Panchayat or at least the right of the three

members who may be elected ultimately would be prejudiced if the election of the President is to take place in advance of the filling up of the three

seats. It is rather difficult to appreciate this contention. The right to stand or to contest an election is neither a fundamental nor a Common Law right

but one which depends for its origin and exercise on the statute. I have held already that the Panchayat Board as at present constituted has a right

to function ; a fortiori it can elect its President u/s 21 from amongst its members. The petitioner is not yet a member and neither he nor the three

members who may come in later can have any present right to stand for the election for the office of the President. There is therefore no

deprivation of any right of the petitioner or of the persons who may be elected later.

8. Mr. Mohan Kumaramangalam next contended that there was no proper authority to conduct the election or rules to regulate it. To appreciate

this contention it is necessary to refer to the history of Section 21. In its original

form, as enacted in 1950, Section 21 provided for the election of the President directly by all the electors in the village. Rules were also framed in 1951 for the conduct of such election. By Act XXIV of 1957, Section 21 was repealed and re-enacted. Under the re-enacted provision the election to the office of the President is to be by the members of the Panchayat from among themselves and not by the general-body of electors. The contention of the learned advocate for the petitioner was that no Rules have been framed in conformity with the new Section 21 and that the Rules framed in 1951 could not govern or regulate an election by the members from among themselves. This is based on an averment in paragraph 5 of the affidavit filed in support of the application. That states:

In addition there is also the circumstance that no rule or procedure has been prescribed for the conduct of the President's election after the amendment of the section. The old rules related to the election by the entire body of electors and are inapplicable after the amendment.

9. The factual basis of the statement is wrong. The Government have framed Rules in accordance with the provisions of the new Section 21 in

G.O.Ms. No. 602, L.A., dated 5th April, 1958, which has been published in the Fort St. George Gazette, Part I-A, dated 9th April, 1958. These

Rules provide for the election of a President and Vice-President from among the members and Rule (2) therein provides the authority to convene

the meeting. It is not even suggested that there has been an infringement of these rules. This contention also fails.

10. In this view it is unnecessary to consider whether the petitioner has sufficient interest to maintain the application for the issue of a writ. The petition therefore fails and is dismissed.