

(1965) 08 GUJ CK 0012
In the Gujarat High Court

Jitubha Kalyansang

APPELLANT

Vs

Parmar Ranubha Narsangji and Others

RESPONDENT

Date of Decision : 06-08-1965

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1962 — Section 14(1)(B)(iii), 14(1)(B)(iii) ,
22A(2)

Citation : (1966) 7 GLR 480

Hon'ble Judges : J.M. Shelat, C.J;A.S. Sarela, J

Bench : Division Bench

Judgement

J.M. Shelat, C.J.—Can a member of a Taluka Panchayat elected u/s 14(1)(B)(iii) of the Gujarat Panchayats Act, VI of 1962, offer himself for co-optation as a member of that Panchayat and be co-opted, and furthermore, after such co-optation, can be in exercise of his right to vote cast two votes in an election for the office of the President of that body under Sub-section (2) of Section 14? These are the two questions arising in this petition.

2. The petitioner was elected Sarpanch of the Pandevra Gram Panchayat in Muli Taluka in District Surendranagar, and as such became an ex-officio member of the Muli Taluka Panchayat u/s 14(1)(A)(i) of the Act. Respondent No. 1 was elected as a member of the Muli Taluka Panchayat, respondent No. 3 herein. He having been elected by and from amongst the Chairmen of the co-operative societies operating within the taluka, was declared elected on March 2, 1963 u/s 14(1)(B)(iii) of the Act. Respondent No. 2 is a co-opted member of the third respondent, co-opted u/s 14(1)(C)(vii) from amongst the social workers residing in the taluka. On March 12, 1963, respondent No. 4, as the Block Development Officer, called a preliminary meeting for choosing co-opted members. Respondents Nos. 1 and 2 were the only candidates from the category of persons as provided in Section 14(1)(C)(vii) and as they were the only candidates from that category, they were declared co-opted by respondent No. 5 who. 9 was the presiding officer, The result was that respondent No. 1 held membership of the third respondent panchayat in two capacities, (1) as an elected member elected

by and from amongst the Chairmen of the co-operative societies, and (2) as a co-opted member. Therefore his tenure as an elected member would expire on his ceasing to be the Chairman of his co-operative society but his tenure of office as a co-opted member would be co-terminus with the term of the third respondent panchayat. Thereafter on March 12, 1963, respondent No. 5 issued a notice convening a meeting of all the members, i.e. ex officio, elected and co-opted members, for the election of the President. Respondents 1 and 2 were the rival candidates for the post of the President. At the end of the election, respondent No. 5 declared respondent No. 1 as having been elected President. In that election, respondent No. 1 received one vote more than respondent No. 2. As respondent No. 1 held membership in the third respondent panchayat in more than one capacity, one as an elected member and the other as a co-opted member, he was given two ballot papers, and it is an admitted fact that he cast two votes for himself and it was thus only that he got one more vote than respondent 2 and was declared elected. If he was allowed only one ballot paper and had cast only one vote, there would have been a tie between him and the second respondent, and respondent No. 5 in that event would have had to cast lots under the provisions of Section 55 and the result would have then depended on the casting of such lots.

3. In fairness to the fifth respondent, it must be stated that he allowed two ballot papers to respondent 1, and permitted him to cast two votes relying on a circular issued by the Government of Gujarat in the Rural Development Department, dated March 8, 1963. The circular, however, was issued to clarify the question whether a Sarpanch of a village panchayat, if he was also a Chairman of a co-operative society and was elected from amongst and by the Chairmen of the co-operative societies in the taluka, could become a member of the taluka panchayat in two capacities, namely, as an ex officio member and as an elected member and whether such a person could record two votes in an election for co-opted members, and lastly whether such a person could record two votes in an election for the office of the President or the Vice President. The circular, after considering Section 43 and the Gujarat Taluka/District Panchayats (Co-optation of Members) Rules, 1962, and the Gujarat Taluka and District Panchayats (President and Vice President) Election Rules, 1962, stated that at a meeting for co-optation, ex officio and elected members were eligible to vote, and at a meeting for election of a President and a Vice President, ex officio and also co-opted members were voters. It further stated that since a person could become a member of a taluka panchayat in two capacities, as an ex officio and as an elected member, he could vote twice both at the meeting for co-optation and at the meeting for election of a President and a Vice President in his capacity as an ex officio member and in his capacity as an elected member. The ground given for this opinion was that there was nothing in the Act or the rules to prevent him from voting twice at the co-optation meeting as well as at the meeting for the election of a President or a Vice President, once in his capacity as an ex officio member and secondly in his capacity as an elected member. It will be observed

that this circular dealt with the case of a person who held the office of a member in two capacities (1) because of his being a Sarpanch of a Gram Panchayat and therefore an ex officio member, and (2) because of his having been elected by and from amongst the chairmen of co-operative societies. Since respondent No. 1 was not such a person, as he was an elected member and a co-opted member, the circular would not apply to him as it did not deal with the case of the dual capacity held by him as an elected and a co-opted member. At best, however, the circular was an opinion of the Government which would not be binding.

4. The petition raises various contentions, but as they were not pressed before us we need not linger on them. The questions that have been pressed and determination whereof has been called for are, as stated above, two questions, (1) whether u/s 14(1)(C)(vii) a person who is already a member of a taluka panchayat by reason of his being elected by the Chairmen of co-operative societies, can be co-opted, and (2) even if he can be so co-opted, whether he can record two votes in an election for the office of the President or the Vice President, one in his capacity as an elected member and another in his capacity as a co-opted member. If the answer to the first question was to be in the negative, the answer to the second question would also be in the negative, for then such a person cannot held the office of a co-opted member and cannot, in that event, vote as such co-opted member. Therefore, we must first address ourselves to the question whether the first respondent was validly chosen as a co-opted member when he was already a sitting member, that is to say as one elected by and from amongst the Chairmen of co-operative societies. The answer to this question must depend upon the true construction of Section 14(1)(C)(vii) of the Act and the true meaning of the expression "co-opted member" used therein.

5. Mr. Raval on behalf of the petitioner contended that on a proper interpretation of Section 14(1)(C)(vii) which deals with co-opted members, co-optation has to be made in addition to and not from sitting members, either ex officio under part (A) or elected under part (B) of Section 14(1) and therefore a member, whether he falls in the category of an ex officio or an elected member, cannot offer himself for election as a co-opted member or be chosen as such. He argued that such an event was prohibited by the very inherent nature of the process of co-option and, therefore, Section 14 by necessary implication prohibits the election of a co-opted member from amongst either of the two categories of members, ex officio or elected. He also argued that since the Act did not furnish definition of a "co-opted member" or "co-option" or "co-optation", it necessarily meant that the Legislature has not given any technical or artificial meaning to these expressions and, therefore, while construing this part of the section, the Court must give to these expressions their literary or dictionary meanings. He therefore contended that if the expression "co-opted member" in Section 14 were to be so interpreted, the expression must mean persons chosen by ex officio and elected members from outside their ranks and in addition to themselves. The process of co-optation according to him inherently carried with it a prohibition of one or

more of the sitting members being elected or nominated, as the case may be, as a co-opted member or members. That being so, an ex officio or an elected member could not hold the office of a member of a taluka panchayat in two capacities, (1) as an ex officio or an elected member, and (2) as a co-opted member, much less could he exercise the ballot twice in two capacities in an election for the office of a President or a Vice President.

6. The contentions raised by Mr. Nanavati as also by the learned Assistant Government Pleader, on the other hand, were that there was no prohibition or disqualification u/s 14 read with the Gujarat Taluka and District Panchayats (Co-optation of Members) Rules, 1962, to a sitting member, whether ex officio or elected, to file his nomination for the purpose of being co-opted as a member. There was also no such prohibition to his being chosen as a co-opted member. There being, therefore, no such prohibition or disqualification, an election of a sitting member as a co-opted member cannot be held to be invalid. The second contention was that Section 14 itself contemplated a person holding the office of a member in different capacities and therefore though the section provided for co-optation and for co-opted members, the expression "co-opted member" cannot be construed in the light of its dictionary meaning. The argument was that the Legislature has on the contrary, impliedly given a meaning to that expression different from its ordinary or literary meaning. In support of that argument, it was pointed out that the Legislature has, by Gujarat Act LIII of 1963, inserted Section 22A after Section 22 and, by Act VII of 1965 inserted a further provision by adding Sub-section (2A) in Section 22A prohibiting holding offices in dual capacity, thus indicating that such prohibition became necessary because as the Act stood prior to its amendment it was possible and even permissible for a person to hold office of a member of a taluka panchayat in more than one capacity and to hold such office in more than one taluka panchayat. Therefore, Section 14, as it stood at the relevant time, must be construed to mean that inspite of the dictionary meaning of the expression "co-opted member", Section 14 permitted, or at least did not prevent, an ex officio or an elected member from being chosen as a co-opted member and such member could exercise his vote in more than one capacity. They also relied on Section 57 of the Act which provides that the term of office of a member of a panchayat shall be coextensive with the term of the panchayat. A person who was co-opted would be, therefore, entitled to hold the office of a member for four years, where as if he was an elected member, he could hold such office only for the period that he was the chairman of a co-operative society. It was argued that there was no provision in Section 14 to prevent an elected member from being a co-opted member and to enable himself thus to sit in the panchayat for its full period of term. Mr. Nanavati, therefore, submitted that the first respondent was entitled to co-opted as a member though he was an elected member and, if he was so co-opted, he would hold the office of a member in a taluka panchayat in two capacities and therefore could exercise two votes in the election for the office of a President or a Vice President.

7. To appreciate these contentions, it is necessary to briefly examine the scheme of the Act. The Act seeks to establish panchayat organisation and sets up for that purpose panchayat bodies of different tiers. Section 3 provides that there shall be in each district a gram panchayat for each gram, a nagar panchayat for each nagar, a taluka panchayat for each taluka, and a district panchayat for each district. Section 8 provides for the subordination of panchayats amongst themselves, and provides that a gram panchayat or nagar panchayat shall, subject to the authority of the taluka panchayat and the district panchayat, have authority for the purposes of this Act over the area for which it is constituted, and subject to the control of the State Government and the competent authority, a gram or nagar panchayat shall be subordinate to the taluka panchayat and the district panchayat, and a taluka panchayat shall be subordinate to the district panchayat. Section 11 provides that the gram panchayats, nagar panchayats, taluka panchayats, district panchayats, gram sabhas, Nyaya panchayats and conciliation panchas shall constitute the panchayat Organisation of the State of Gujarat, Section 12 deals with the constitution of gram panchayats, and provides that a gram panchayat shall consist of such number of members not less than nine, and not more than, fifteen as the district panchayat may determine, elected from amongst the qualified voters of the gram. Section 13 deals with the constitution of nagar panchayats, and inter alia, provides that a nagar panchayat consist of such number of members not less than fifteen and not more than thirty-one as the district panchayat may determine, elected from amongst the qualified voters of the nagar. Section 14, with which we are mainly concerned in this petition, provides for the constitution of taluka panchayats. Sub-section (1) provides that a taluka panchayat shall consist of ex officio, elected, co-opted and associate members. Part (A) of Sub-section (1) deals with ex officio members, and provides that the Sarpanchas of all the gram panchayats the Chairmen of all the nagar panchayats within the taluka, shall be ex officio members. Part (B) deals with elected members, and provides that members elected by the Chairmen of all the co-operative societies situate within the taluka from amongst themselves shall be the elected members. The number of members to be so elected shall be as nearly as may be one-tenth of the total number of ex officio members as may be determined by the district panchayat. Part (C) deals with co-opted members, and provides that two women who may be interested in the welfare activities pertaining to women and children, two representatives of the Scheduled Castes in the taluka, two representatives of the Scheduled Tribes in the taluka, if the population of the Scheduled Tribes in taluka is not less than five per cent of the total population of the taluka, and two persons from amongst social workers residing in the taluka and having practical experience in respect of matters pertaining to rural development, shall be co-opted. Part (D) deals with associate members, but we do not propose to recite the provisions of that part as we are not concerned in this petition with associate members. Section 15 deals with the constitution of district panchayats, and provides that a district panchayat shall consist of ex officio, elected, co-opted and associate members. Section 43 provides for co-option of members and provides that a taluka

panchayat or a district panchayat, as the case may be, shall choose its co-opted members in the prescribed manner. Sub-section (2) of that section provides that when members of a taluka panchayat or district panchayat are to be co-opted at the first constitution of the taluka panchayat or district panchayat or the reconstitution thereof u/s 17 there shall be held on such day before the first meeting of the relevant panchayat as the competent authority may fix, a preliminary meeting thereof for choosing its co-opted members. Sub-section (3) provides that the preliminary meeting shall consist of (a) the ex officio members of the panchayat, and (b) the members elected at the general election. The expression "general election" as defined in Section 2(10) means "the election held under this Act for the constitution or the reconstitution of a panchayat after the expiry of its term or otherwise. "Rule 2 of the Gujarat Taluka and District Panchayats (Co-optation of members) Rules, 1962 contains definitions, and Clause (8) thereof defines a "voter" to mean (a) for the purpose of co-optation of a member at the preliminary meeting of a panchayat (i) who is an ex officio member thereof, or (ii) who is a member elected at the general election, and (b) in any other case, any member of the panchayat not being an. associate member. Rule 6 provides for the nomination of candidates and states that on the date Immediately preceding the date of the meeting between the hours of 11-00 o'clock in the forenoon and 2-00 o'clock in the afternoon each candidate or his proposer shall personally deliver to the designated officer at his office the nomination paper dully completed in Form A. Form A requires inter alia furnishing certain particulars set out therein and, in the Case of a social worker, the information whether he is such a social worker residing in the taluka and has practical experience in matters pertaining to rural development. These are all the relevant provisions of the Act and the rules as they stood at the material time, i.e. at the time of the election of the first respondent as a co-opted member and as the President of the third respondent panchayat.

8. As already stated, Section 14 provides the four classes of members ex officio, elected, co-opted and associate, representing different elements and interests in the local area who constitute the taluka panchayat. It is true that the section does not lay down any ban against an ex officio member offering himself as a candidate for being elected by the chairmen of cooperative societies, provided of course he is the chairman of one of such societies. It is, therefore, possible for a person, who is the Sarpanch of a gram panchayat, not only to be an ex officio member in a taluka panchayat but, if he happened to be the chairman of a co-operative society, to be elected as an elected member by and from amongst the Chairmen of such co-operative societies. Thus, as Section 14 stood prior to the amendment Act LIU of 1963, it was possible for a person to hold office of a member in two different capacities in the same taluka panchayat. Similarly, it would be possible for a person, who is the Sarpanch Of a gram panchayat, to be an ex officio member of one taluka panchayat and if he also happens to be the chairman of a co-operative society operating in another taluka, to be elected as a member in that other taluka panchayat from amongst the chairmen of the co-

operative societies in that taluka, and thus to be a member in two different taluka panchayats. It may be that such a position might not have been actually contemplated by the Legislature, but as the section stood, that was the position and therefore, realising that such a result would, and did in fact, occur, the Legislature sought to prevent such a result by enacting Section 22A by Act LIII of 1963 and further amending Section 22A by Act VII of 1965. That such a result did in fact occur can be seen from the fact that the Government issued the aforesaid circular thereby recognising that it was possible that a person would held office of a member in two different capacities and would, in that event, claim to be entitled to cast his vote twice in two capacities and that therefore where such a position occurred, no objection was permissible under the Act as it stood then.

9. But the point to consider is whether holding the office of a member in such double capacity as in the case of an ex officio and an elected member can also hold good in the case of a co-opted member. If it is held that a person can be both an ex officio and/or an elected member, and at the same time can also be a co-opted member, such a constitution would lead to a surprising result, as can be seen from the following case. As already seen, the Sarpanch of a gram panchayat is an ex officio member of a taluka panchayat. The same person can also become an elected member if he were to be the chairman of a co-operative society and is elected from amongst the chairmen of co-operative societies, operating in that area. If he can also be co-opted, he can hold the office of a member as a co-opted member that is to say, in a third capacity, and thus enjoy the right to vote three times. If such a person happens to be a woman and a social worker, she can be co-opted both as a woman interested in the welfare activities pertaining to woman and children and also as a social worker having practical experience in respect of matters pertaining to rural development. It is impossible, however to think that the Legislature could have contemplated a person being a member in such multiple capacities and having a right of multiple votes and thus give undue weight age to a single person in the deliberations of a taluka panchayat. The conclusion, therefore, is inevitable that the Legislature, while providing for co-opted members, used that expression in the well-accepted sense of that expression and being aware of that sense did not think it necessary to furnish any definition of the expression "co-opted-member."

10. The ordinary meaning attached to the expression "co-opted member" in choosing or nominating a person by a body of persons from outside its ranks and adding to its numbers by the pocess of co-optation. The Encyclopaedia Britanica, 14th Edition, Volume 6 at page 390 defines "co-optation" as meaning "the election to vacancies on a legislative, administrative or other body by the votes of the existing members of the body instead of by an outside constituency. Such bodies may be purely co-operative like the Royal Academy, or elective with power to add to the numbers by co-optation. An example of the latter are the municipal corporations in England. "The Shorter Oxford English Dictionary at page 390 defines the word "co-opt" as meaning "to elect into a body by votes of

its existing members" and "co-optation" as meaning "Election into a body by votes of its existing members; formerly, election, choice, adoption. "Webster"s New Twentieth Century Dictionary, (Second Edition) Volume I page 402, defines the word "co-opt" to mean "to add (a person) to a board, committee, etc., by vote of those already members; also written co-opt." In Corpus Juris Secundum, Volume XVIII, page 127, "co-optation" has been defined as "a concurring chose; also the election, by the members of a close corporation, of a person to fill a vacancy. "Jowitt"s Dictionary of English Law, Volume I, page 483, defines the word "co-opt" as meaning "to choose or select persons to be members of a deliberative body by those who have been elected or appointed as members of that body with power to add to their number. "These meanings make it clear that when a provision confers power to a body of persons to co-opt, the election, or selection, as the case may be, would be not from amongst themselves but from outside and in addition to themselves. This meaning must be attributed in the case of Section 14 as it is manifest from the section itself that since the elected members were to come from a limited source, namely, the chairmen of co-operative societies, the Legislature wanted as comprehensive a representation as possible of other interests and elements and therefore provided for co-optation of members from women workers, representatives of scheduled castes and tribes and social workers with practical experience in matters pertaining to rural development. The dictionary meaning of the words "co-opt" and "co-optation" being so clear, it was not possible for Mr. Nanavati to contend that there could be any other meaning which could be given to the expression "co-opted member" in Part C of Section 14(1). Therefore he had to argue that Section 14 has not given to these expressions their dictionary meanings and has not therefore expressly or by implication prohibited sitting member from being co-opted, just as an ex officio member can hold and is permitted membership as an elected member. In support of this contention, he submitted (that after the Act had been worked, the Legislature realised that there was this loop-hole and sought to plug such loop-hole by amending the Act in 1963 and again in 1965. Let us, therefore, examine whether this argument is correct by considering the amendments and by ascertaining what the Legislature has actually done thereby. As already stated by Act LIII of 1963, the Legislature inserted Section 22A in the Act. Sub-section (1) of Section 22A provides that no person shall, save as expressly authorised by this Act, be a member of two or more panchayats. Sub-section (2) provides that no person while holding office in a panchayat in capacity as an ex officio, elected or a co-opted member, shall, save as expressly authorised by this Act, be eligible for holding the office as a member in the same panchayat in a capacity other than the one in which he is already holding office. Sub-section (2) provides that if any person is simultaneously chosen as a member of two or more panchayats or as a member in different capacities in the same panchayat, then unless such membership is expressly authorised by this Act, the person shall within ten days from the date or the later of the dates on which he is so chosen, intimate to the competent authority one of the panchayats in which or, as the case may be, one of the capacities in which he wishes to serve and thereupon his seat in the

panchayat or, as the case may be the capacity other than the one in which he wishes to serve shall become vacant. Sub-section (6)(a) provides that any person who holds on the date of the commencement of the Gujarat Panchayats (Second Amendment) Act, 1963 more offices than one simultaneously and the holding of such office is not consistent with Sub-section (1), such person shall within a period of thirty days from the said date intimate to the competent authority one of the panchayats in which or, as the case may be, one of the capacities in which, he wishes to serve and thereupon his seat in the panchayat or, as the case may be, the capacity other than the one in which he wishes to serve shall become vacant. Section 22A is admittedly a prospective and not a retrospective legislation, though it deals with both the future and the past happenings. Sub-section (1), as already seen, lays down a ban, unless authorised by the Act, against a person being a member of two or more panchayats. Sub-section (2) similarly lays down a ban, unless authorised by the Act, from being eligible to hold office in the same panchayat while holding office in that panchayat in the capacity of an ex officio, elected or co-opted member other than the capacity in which he is already holding office.

11. The contention of Mr. Nanavati was that since the Legislature has in Sub-section (2) laid down a prohibition against any one of the three categories of members, including a co-opted member, it is clear that an ex officio member or an elected member could stand as a candidate for being elected as a co-opted member, that a co-opted member also could so far, hold the office of a member in more than one capacity and that on being realised that this was possible, the legislature cured the mischief by inserting in the Act Section 22A. It was argued that therefore as the Act stood prior to its amendment, it was not only possible but there was also no bar against an ex officio or an elected member from being also a co-opted member and thus hold the office of a member in both the capacities. This, in our view, is not a correct construction of Section 22A. Sub-sections (1) and (2) lay down bans against being a member in two panchayats and against holding membership in the same panchayat in more than one capacity. It is true that in Sub-section (2) the draftman has mentioned all the three categories of members, including a co-opted member, but that does not mean that Mr. Nanavati's construction of Sub-section (2) is correct. While construing Sub-section (2) and the ban it has placed, one must first ascertain what it is that is banned. The ban must necessarily be against something that was possible u/s 14 and which the Legislature by this amendment wanted to prevent. If we are right in our construction of Section 14, namely, that an ex officio or an elected member could not be chosen as a co-opted member, there was nothing to place a ban against and therefore Section 22A cannot be construed in the manner suggested by Mr. Nanavati. The mischief thus sought to be remedied by the Legislature was the possibility of a person becoming a member in two panchayats at the same time and one and the same person holding membership in the same panchayat in more than one capacity. That was the mischief which the Legislature had to remedy. Even in the case of a co-opted

member, though he had to be elected from outside the sitting members, i.e. ex officio and elected members, it was possible for such a co-opted member to be a member in two capacities if after being chosen as a co-opted member, he were to choose to seek membership either in the capacity of an elected member or an ex officio member. In such a case, the ban laid down in Sub-section (2) of Section 22A would also apply to a co-opted member. It was therefore that a co-opted member was also included in Sub-section (2). The ban thus was against an ex officio, elected or a co-opted member, once being a member in any one of these three capacities, seeking to hold the office of a member in a capacity other than the one in which he was already a member. Thus, what Sub-section (2) of Section 22A provides is that if once a person holds office as a member, either as an ex officio or an elected member or a co-opted member, he cannot also be a member of the same panchayat in any other capacity. A person who is co-opted cannot therefore stand as a candidate for being elected from amongst the chairmen of co-operative societies, nor can he aspire to get elected as a Sarpanch of a gram panchayat and thereby become an ex officio member. Sub-section (6)(a) deals with the past and provides against a person holding at the commencement of the Amendment Act membership in two capacities and has, under that sub-section to intimate within the prescribed time to the competent authority one of the capacities in which he wishes to serve and thereupon his capacity other than the one in which he wishes to serve shall become vacant. It seems, however, to have been later on realised that Sub-sections (1) and (2) of Section 22A went too far in laying down an absolute embargo against the eligibility of a person from being a member in a capacity other than the one in which he is a member. As Section 22A stood, a person who was elected from amongst the chairmen of co-operative societies could not aspire to be a member in any other capacity, that is to say, he could not stand as a candidate for the office of the Sarpanch of a gram panchayat and be an ex officio member or be co-opted. That meant that an elected member would not be eligible to become an ex officio member by becoming the Sarpanch of a given panchayat and serve the Taluka Panchayat for the full term. Similarly, person who was a co-opted member would not be eligible to stand for membership in a Taluka panchayat as an ex officio or an elected member. It was to remedy this hardship that the Legislature presumably introduced Sub-section (2A) in Section 22A whereby it permitted any one of the three classes of members to stand as a candidate for the membership in the same panchayat in a capacity other than the one in which he already held the office. But he has to vacate the seat held by him in the original capacity if he were to be so chosen for the seat in another capacity. Sub-section (2A) thus does nothing more than remove the hardship permitting a co-opted member to be eligible for membership in a capacity other than the one in which he holds membership, and if he is chosen in the latter capacity, he has to vacate his membership as a co-opted member. This again does not mean that u/s 14 a member could be co-opted from amongst the ex officio or elected members. In this view, the co-option of the first respondent, while he was holding the office of membership as an elected member, was not in consonance with the provisions of

Section 14 and was, therefore, invalid. He being thus not eligible to stand as a candidate for being chosen as a co-opted member and his co-option being contrary to the provisions of Section 14, he was clearly not entitled to vote twice in the election of the office of the President u/s 14(2).

11.1 Mr. Nanavati, however, argued that assuming that the expression "co-optation" meant choosing a person in addition to the number of the existing members, the ex officio members nevertheless could select from social workers and even if such a co-opted member was already an elected member, that would be an addition to the number of the ex officio members. This argument was based upon the premise that u/s 43 as also under Rule 2(8) which defines the expression "voter", it would be only the ex officio members who are the voters. In this connection, Mr. Nanavati argued that under Sub-section (3) of Section 43, the preliminary meeting at which co-option is to be made, is to consist of (a) the ex officio members of the panchayat, and (b) the members elected at "the general election." He also relied upon the definition of "voter" in Clause (8) of Rule 2 which defines a "voter" for the purpose of co-optation of a member at the preliminary meeting of the panchayat a member of the panchayat who is an ex officio member thereof or who is a member elected at the "general election." The contention of Mr. Nanavati was that members elected by and from amongst the chairmen of co-operative societies cannot be said to be members elected at "the general election", therefore the right to co-opt was exclusively with the ex officio members and that when such ex officio members co-opted a member from amongst the elected members, it could be legitimately said that they were adding to their number. Consequently, there was no objection to ex officio members co-opting members from amongst the elected members elected under Part B of Section 14(1). The reasoning of Mr. Nanavati for this argument is obviously erroneous, for, it rests on the premise that in the matter of co-option the only persons who can vote and are voters are the ex officio members and not the elected members, as they are not elected at "a general election." As already pointed out, the Legislature has in Section 2(10) given an artificial meaning to the expression "general election". According to that definition, "a general election" means the election held under the Act for the constitution or the reconstitution of a panchayat after the expiry of its term or otherwise. Therefore, u/s 2(10), an election held under the Act for the constitution or the reconstitution of a panchayat would be "a general election." When, therefore, persons are elected from amongst the chairmen of co-operative societies under Part B of Section 14(1) or under part (B) of Section 15(1), there would be election for the purpose of the constitution of a taluka panchayat or a district panchayat, as the case may be, and, therefore, such an election for the purposes of the Act would be "a general election" within the meaning of Section 2(10). That being so, it would not be correct to say that it is only the ex officio members who are voters for the purpose of co-option of members and that the elected members would not be entitled to vote at such co-option. The basis of the argument advanced by Mr. Nanavati thus disappears on this construction of the

definition of the expression "general election."

11.2 The next contention urged by Mr. Nanavati was that what Section 14 required was to see that certain special interests within the taluka were represented and therefore, if there was a member who represented a special interest, even though he was already an ex officio or an elected member, there could be no objection to his being co-opted. This is again the same argument which Mr. Nanavati advanced on the construction of Section 14, though framed in a somewhat different language. As already stated, co-optation being choosing or selecting by members of a body from outside its ranks and adding to its number, a person holding the office of a member in his capacity, either as an ex officio member or an elected member, could not offer himself as a candidate for being a co-opted member, such a position being an anti-thesis to the very nature of the process of co-optation. In our view, this contention also suffers from the same infirmity which the construction of Section 14 suggested by Mr. Nanavati suffered from.

12. In the view that we take of Section 14, Section 88A and Sub-section (2A) of Section 22A, it is not possible to uphold the election of the first respondent as a co-opted member, while he was at that stage already an elected member of the Taluka panchayat, such co-option being, in our opinion, in contravention of the provisions of Section 14(1)(c) and the meaning of co-option or co-optation. The result, therefore, is that the election of the first respondent as a co-opted member was not valid. It follows from that conclusion that he could not be said to have validly held the position of a member in the third respondent panchayat in two capacities, as an elected member and as a co-opted member. That being so, he was obviously not entitled to two votes, and his casting two votes at the election of the office of the President in his favour was obviously illegal and invalid. We, therefore, set aside and quash the first respondent's election as a co-opted member and also his election as the President of the third respondent panchayat. The respondents will pay to the petitioner the costs of this petition.