

(1976) 08 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 3280 of 1976

Kisan Baban Raut

APPELLANT

Vs

The Collector, Akola and Others

RESPONDENT

Date of Decision : 26-08-1976

Acts Referred:

District Municipalities Act — Section 27(17)
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 10(1), 11(2),
49, 57(1), 64

Citation : AIR 1977 Bom 85 : (1976) MhLj 747

Hon'ble Judges : Dighe, J; Dharmadhikari, J

Bench : Division Bench

Advocate : B.R. Mandlekar, M.N. Ingle, for the Appellant; V.P. Salve, Asstt. Govt. Pleader, for the Respondent

Judgement

Dharmadhikari, J.—The petitioner in this case was elected as a Chairman of the Panchayat Samiti, Balapur, in an election held in the meeting of the Panchayat Samiti on 4th April, 1975. One Shri J. H. Sarap, who was the Chairman of the Panchayat Samiti, tendered his resignation on 6-3-1975 and Vice-Chairman Shri Idhol also tendered his resignation on 5-3-1975. On account of these resignations vacancies in the offices of Chairman and Vice-Chairman were declared and thereafter the Chief Executive Officer, Zilla Parishad, Akola by exercising his powers under Sub-section (1) of Sec, 75 of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, referred to hereinafter as the Act, had chosen one Shri G. P. Patil, who was then working as the Chairman of the subject committee of the Zilla Parishad, to exercise the powers and perform the duties of the Chairman of the Panchayat Samiti. till the election of the Chairman takes place. Thereafter it appears from the record that the Chief Executive Officer directed the Block Development Officer, Panchayat Samiti, Balapur, to convene a meeting to fill in the vacancy of the Chairman of the Panchayat Samiti. According to the petitioner, this was done by the Chief Executive Officer by virtue of the power vested in him u/s 75 read with Section 64 of the Act. In pursuance

of this notice issued by the Block Development Officer a meeting took place on 4th April, 1975. All the members of the Panchayat Samiti participated and voted in the said meeting and the petitioner was declared elected as the Chairman of the Panchayat Samiti, as he obtained majority of votes. According to the petitioner, none of the members objected to the validity of convening of the meeting, nor they raised any dispute in this behalf. After the election was over, the Block Development Officer, Balapur requested the Collector, Akola to notify the name of the petitioner as per provisions of Section 9 of the Act. However, the Collector raised a dispute in this behalf and ultimately made a reference to the Commissioner, Nagpur Division, Nagpur u/s 68-A of the Act. The Commissioner, Nagpur Division, Nagpur, vide his order dated 11-12-1975 came to the conclusion that the meeting held was illegal and consequently the election of the petitioner as the Chairman of the Panchayat Samiti held in the said meeting is also illegal. He, therefore, set aside the said election and directed the Chief Executive Officer, Akola to report the vacancy in the office of the Chairman of the Panchayat Samiti, Balapur, to the Collector, Akola.

2. Being aggrieved by this order passed by the Commissioner, Nagpur Division, Nagpur, the petitioner filed an appeal before the State Government u/s 68-A of the Act. The said appeal was dismissed by the State Government vide its order dated 1st June, 1976. Against these orders the present writ petition has been filed by the petitioner.

3. Shri Mandlekar, the learned counsel for the petitioner, contended before us that the order passed by the Commissioner, Nagpur Division, is without jurisdiction as nobody has raised a dispute challenging the election of the petitioner and the Collector had no power, authority or jurisdiction to raise such a dispute suo motu. He also contended that the meeting convened by the Chief Executive Officer by virtue of the power vested in him u/s 75 (1) of the Act is perfectly legal and valid. Even otherwise, even if it is assumed that there was any defect or irregularity in convening of the meeting then also the said defect or irregularity cannot vitiate the proceedings of the meeting in which the petitioner was elected as the Chairman of the Panchayat Samiti, in view of the provisions of Section 112 read with Section 118 of Act. According to Shri Mandlekar, the said defect or irregularity in convening the meeting had not affected the merits of the case, because all the members eligible to participate and vote at the meeting were present and the petitioner was elected by majority. Nobody had ever raised any objection in this behalf. Therefore, according to the learned counsel, both the authorities below have committed an error in setting aside the election of the petitioner as the Chairman of the Panchayat Samiti.

4. So far as the first contention raised on behalf of the petitioner is concerned, it is quite obvious from the bare reading of Section 68-A of the Act that in the event of a dispute as to the validity of the election of a Chairman or Deputy Chairman of Panchayat Samiti, not only any member of the Panchayat Samiti, but even the Collector or any officer authorised by him in this behalf can refer

the said dispute within 30 days from the date of election to the Commissioner for decision. Therefore, in terms this section confers a power upon the Collector to refer a dispute in this behalf to the Commissioner. This is what has been done by the Collector, Akola in the present case. On a reference being made by the Collector, Akola, raising a dispute in this behalf the Commissioner has decided the question. Therefore, in our opinion, the Commissioner was perfectly justified in entertaining the dispute referred to him by the Collector and deciding the same. In this view of the matter, there is no substance in the first contention raised by Shri Mandlekar.

5. So far as the second contention raised by Shri Mandlekar is concerned, for properly understanding the object and the scheme of the Act, it will be useful to make a reference to the relevant provision of the Act. Section 75 deals with the question as to how casual vacancies in the office of Chairman and Deputy Chairman are to be filled in Section 75 of Act, as it read at the relevant time, was as under:

"75. Casual vacancies in office of Chairman and Deputy Chairman to be filled up--

(1) In the event of a vacancy in the office of the Chairman or Deputy Chairman by reason of death, resignation, removal or otherwise, the vacancy shall, subject to the provisions of Sections 64 and 73, be filled as conveniently as may be by election of a new Chairman or Deputy Chairman;

Provided that, if for any reason the offices of the Chairman and Deputy Chairman become vacant simultaneously, the Chairman of a Subject Committee chosen by lot drawn by the Chief Executive Officer in such manner as he deems fit shall, pending the election of the Chairman exercise the powers and perform the duties of the Chairman.

(2) Where on account of any of the reasons aforesaid, the office of the Chairman becomes vacant or the offices of the Chairman and the Deputy Chairman become vacant simultaneously, the provisions of Section 67 shall be applicable, so far as may be, to the calling of a meeting and the procedure to be followed at such meeting for the election of a chairman; and after the election of a Chairman, in the next meeting of the Panchayat Samiti, the Deputy Chairman shall be elected." In the present case we are mainly concerned with Sub-section (2) of Section 75 of the Act, which lays down that where on account of any of the reasons stated in Sub-section (1) of Section 75 the offices of the Chairman and the Deputy Chairman become vacant simultaneously then the provisions of Section 67 shall be applicable so far as may be, to the calling of a meeting and the procedure to be followed at such meeting for the election of a chairman. In the present case also the offices of Chairman and Deputy Chairman became vacant simultaneously as both of them tendered resignations. Therefore, obviously the present case is governed by Section 75 (2) read with Section 67 of the Act. Therefore, the meeting for electing the Chairman could have been called u/s 67 of the Act alone. Section 67 of Act reads as under:

"67 (1) After a general election under Sub-section (1) of Section 10 and clause (f) of Sub-section (1) of Section 57, the Collector or any officer authorised by him by general or special order, shall, at least three days before the date fixed for the first meeting of the Parishad under Subsection (2) of Section 11, call upon the person falling under clauses (a) and (f) of Sub-section (1) of Section 57, to elect a Chairman of the Panchayat Samiti.

(2) The chairman elected under Subsection (1) shall be entitled to attend the first meeting of the Parishad called under Sub-section (2) of Section 11 as ex officio Councillor, and as soon thereafter as possible take charge of office of Chairman of the Panchayat Samiti from the outgoing Chairman.

(3) The meeting called under Sub-section (1) shall be presided over by the Collector or the officer authorised by him as aforesaid. The Collector or such officer shall, when presiding over meeting have the same powers as the chairman of a Panchayat Samiti, when presiding over a meeting of the Panchayat Samiti has. but shall not have the right to vote:

Provided that, notwithstanding anything contained in Section 118, the Collector or such officer may, for reasons recorded in writing which in his opinion are sufficient, refuse to adjourn such meeting, or as the case may be, adjourn such meeting.

(4) If in the election of the Chairman there is an equality of votes, the result of the election shall be decided by lot to be drawn in the presence of the Collector or officer presiding in such manner as he may determine."

Section 67 confers a power of convening a meeting for this purpose upon the Collector. Sub-section (3) of Section 67 then lays down that the meeting called under Sub-section (1) of Section 67 shall be presided over by the Collector or the officer authorised by him in that behalf. It further lays down that the Collector or such officer shall, when presiding over such meeting, have the same powers as the Chairman of a Panchayat Samiti when presiding over a meeting of the Panchayat Samiti has, but shall not have the right to vote. The proviso to Sub-section (3) of Section 67 then lays down that notwithstanding anything contained in Section 118, the Collector or such officer may, for reasons recorded in writing which in his opinion are sufficient, refuse to adjourn such meeting, or as the case may be, adjourn such meeting. Therefore, it is quite obvious from the bare reading of the various provisions of the Act that to the meeting convened for the purpose of electing a Chairman of the Panchayat Samiti, it is the provisions of Section 67 which shall apply and not the provisions of the Section 75 (1) of the Act.

6. The question as to what is the scheme of the Act in this behalf came for consideration before a Division Bench of this Court in *Awantikabai v. V. T. Jagtap*, 1964 Man LJ 536. After making a reference to the relevant provisions of the Act, in para. 7 of the said decision this Court observed as under:

"Sub-section (2) of Section 75 states that where on account of any of the reasons aforesaid, the offices of the Chairman and the Deputy Chairman become vacant simultaneously, the provisions of Section 67 shall be applicable, so far as may be, to the calling of a meeting and the procedure to be followed at such meeting for the election of a Chairman, and after the election of the Chairman, at the next meeting of the Panchayat Samiti, the Deputy Chairman shall be elected. This Sub-section, therefore, provides for the procedure to be followed when the offices of the Chairman and Deputy Chairman are both vacant. In such a case the provisions of Section 67 shall apply, so far as may be, to the calling of a meeting for the election of the Chairman, u/s 67 only the persons falling under clauses (a), (c) and (f) of Section 57 (1) can be called upon to elect the Chairman of the Samiti. It has therefore, been urged on behalf of opponents Nos. 4 to 7 and 10 to 13 that only the persons who fall under clauses (a), (c) and (f) of Section 57 (1), can be summoned to attend the meeting convened to elect a Chairman under Sub-section (2) of Section 75. A co-opted member does not fall under these clauses and it has, therefore, been contended that a co-opted member cannot be called to attend a meeting held to elect the Chairman, when both the offices of the Chairman and the Deputy Chairman are vacant. As pointed out above, a co-opted member can take part in and vote at a meeting held to elect a Chairman, when the office of Chairman only is vacant. He can also exercise the right of vote when a motion of no-confidence in the Chairman is moved. It could not have been intended by the legislature that while a co-opted member should be able to participate in the election of a Chairman when there is a casual vacancy in the office of Chairman and also in his removal, he should not have this right when in addition to the office of Chairman the office of Deputy Chairman is also vacant. No logical reason for making such a distinction has been suggested. The words "the calling of a meeting" in Subsection (2) of Section 75 will, therefore, have to be so construed as to avoid a result which could not have been contemplated by the legislature. We must so read the various provisions of the Act as to bring about harmony between them. Although, therefore, having regard to the language used in Sub-section (2) of Section 75, there may at first sight appear to be some force in the arguments advanced on behalf of the opponents, a careful consideration of the various provisions of the Act shows that there is not much merit in them. Neither the Chairman nor the Vice-Chairman can call a meeting when both these offices are vacant. It is consequently necessary to authorise some other authority to convene a meeting for electing a new Chairman. If this object is borne in mind along with the fact that unlike an associate member a co-opted member enjoys a right to vote at the meeting of the Samiti, it will be clear that the words "the calling of a meeting" in Sub-section (2) of Section 75 have reference only to the manner in which and the person by whom the meeting is to be called. The fact that the meeting is to be called in the manner provided in Section 67 would not, therefore, justify the exclusion from the meeting of members who are otherwise entitled to take part in it. In our opinion, therefore, a co-opted member is entitled to attend and vote at a meeting called by the Collector or the officer authorised by him to elect the

Chairman, when the offices of the Chairman and the Deputy Chairman are both vacant."

Therefore, it is quite obvious that it is Section 67 of the Act which will apply to such a meeting and as per said provisions it is the Collector or the Officer authorised by him, who alone can convene the meeting. It is an admitted position that in the present case the meeting was not convened by the Collector or the Officer authorised by him, but it was convened by the Block Development Officer, who had acted under the direction of the Chief Executive Officer, of the Zilla Parishad. The Chief Executive Officer of the Zilla Parishad is not a Collector of the district. Therefore, obviously the meeting was not called by the person authorised to call the meeting, namely, the Collector or the Officer authorised by him.

7. However, it is contended by Shri Mandlekar that this defect or irregularity in convening the meeting will not invalidate the proceedings, namely, the election held in the said meeting. By virtue of the provisions of Section 118, Sections 111, 112 and 115 are made applicable to meetings of panchayat Samiti. Section 112 of the Act reads as under:

"112 (1) During any vacancy in a Zilla Parishad, the continuing Councillors may act as if no vacancy had occurred.

(2) The Zilla Parishad shall have power to act notwithstanding any vacancy in the Councillorship, or any defect in the constitution, thereof; and such proceedings of the Parishad shall be valid notwithstanding that it is discovered Subsequently that some person who was not entitled to do so sat or voted or otherwise took part in the proceedings.

(3) No act or proceeding of a Zilla Parishad shall be deemed to be invalid on account of any defect or irregularity in any such act or proceeding not affecting the merits of the case or on account of any irregularity in the service of notice upon any Councillor or for mere informality,"

Shri Mandlekar is strongly relying upon Sub-section (3) of Section 112 of the Act and according to him this is a case of mere defect or irregularity in convening the meeting and it cannot invalidate the election in view of the said provision. It is not possible for us to accept this contention.

8. It is well-settled principle that to constitute a valid meeting, it must be properly convened. If the Statute designates the authority who is competent to call a meeting, then that authority alone can convene the meeting. Generally the power to call the meeting rests with the Chairman or the President of the Body Corporate and convening of a meeting is always regarded as a statutory function. The statutory provision in this regard must be strictly followed as it is mandatory provision and any illegality in convening or calling the meeting would normally vitiate the decision taken at such a meeting as the transactions which take place in such a meeting are liable to be declared as ultra vires or illegal. In this context

a reference could be made to a decision of this Court in *Abaji Sitaram v. The Trimbak Municipality* ILR(1904) Bom 66 wherein it was observed by a Division Bench of this Court that if the meeting is not called by the person authorised, then the defect is not cured by Section 27 (17) of the District Municipal Act. The said provision was somewhat similar to the provision of Section 112 of the present Act.

9. Rajasthan High Court had also an occasion to consider such a question in *Vishwanath v. Pt. Jhamanlal* ILR (1957) Raj 1041. Somewhat similar contention was raised before Rajasthan High Court. Negating that contention, Rajasthan High Court observed in the judgment as under:

"It was urged on behalf of the opposite parties that this was merely an irregularity and that as all the members were present at 4 p. m. on the 25th of July, we should hold that the proceedings of the meeting were valid in fact. It is urged that Rule 3 is merely directory and not mandatory and as all members were present when the meeting was held, there has been no prejudice to the applicants. All that we need say in this connection is that we are of the view that Rule 3 is mandatory and it is the duty of the District Magistrate to follow it strictly. There must be reasons which led the Legislature or its delegate to give this power only to the District Magistrate and some of these reasons are well known and need not be mentioned here by us. It seems to us in these circumstances that the Legislature meant that Rule 3 should be strictly followed, and that a meeting for the election of Chairman should be called by the District Magistrate and District Magistrate only and by nobody else. If a meeting of this kind is called by anybody else, it is not in accordance with Rule 3 and no election of Chairman can take place at a meeting called by anybody other than the District Magistrate. Rule 3 provides that the District Magistrate may preside at such a meeting himself or may nominate someone else to preside for him, but it does not provide that a District Magistrate, if he does not call such a meeting himself, may authorise somebody else to call it. Obviously, therefore, Rule 3 contemplates that only the District Magistrate will call such a meeting. It must, therefore, be held to be mandatory and if a meeting is not called in accordance with Rule 3, it is not meeting at which the election of Chairman can be held."

10. Somewhat similar view was taken by the Madhya Pradesh High Court in *Tejral v. Nandkishore*, 1966 MPLJ 1014 . Before the Madhya Pradesh High Court also a contention was raised in the above referred case that mere irregularity in the convening of the meeting cannot vitiate the meeting itself. Negative this contention a Division Bench of the Madhya Pradesh High Court held that the provisions in that behalf, namely, the provisions of Section 47 (2) of the M. P. Municipalities Act, being mandatory, their strict compliance is necessary. The Madhya Pradesh High Court further relied upon the observations of the Supreme Court in the case of *The Vice-Chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, and ultimately held that when the statute lays down the manner in which a meeting should be called for deciding any specific

question, the meeting must be called in that manner and in no other.

11. From the various provisions of the Act it is quite obvious that the power to convene the meeting is conferred by the Act on the various authorities. Normally u/s 111 it is the President of the Zilla Parishad or the Chairman of the Panchayat Samiti, who is authorised to convene the meeting. u/s 72, which deals with moving of motion of no-confidence against Chairman or Deputy Chairman of Panchayat Samiti it is the Collector who is authorised to convene a meeting similar is the provision relating to motion of no-confidence against President or Vice-President of Zilla parishad, namely, Section 49 of the Act, u/s 67 also a power to convene a meeting is conferred upon the Collector or the officer authorised by him. It seems to be the intention of the legislature that so far as these matters are concerned, an independent and impartial authority should be given the power to convene a meeting and to preside over it, The Collector is the head of the district, but is not concerned with Zilla Parishad or its administration. In that sense he is an independent authority. There are obvious reasons for choosing such an independent authority. This is one of the methods carved out by the Legislature for achieving the goal of free and fair election. It is the Collector or such officer authorised by him, who alone can preside over such a meeting,

12. Maharashtra Zilla Parishads (President and Vice-president) and Panchayat Samitis (Chairman and Deputy Chairman) (Election) (Amendment) Rules, 1965 lays down the definition of the term "Officer Presiding" which reads as under

"2 (b) "Officer Presiding" means, in relation to any meeting of a Zilla Parishad or a Panchayat Samiti, the person empowered or competent to preside over such meeting as provided by or under the Act."

Then Section 67 (3) of the Act lays down that while presiding over such a meeting he has all the powers of the Chairman of the Panchayat Samiti, except the right of vote. A meeting cannot be validly constituted unless it is presided over by proper authority. Normally the person entitled to preside over the meeting derives his authority under the concerned enactment or from the meeting itself. The Collector or the officer authorised by him derive their authority in this behalf u/s 67 of the Act. He has to carry out a statutory function. Therefore, the meeting contemplated by Section 67 of Act is special in nature.

13. In this case we are not dealing with the normal meetings of Panchayat Samiti, but with the statutory meeting. The meeting contemplated is for a special and specific purpose, namely, the election of Chairman. The members can validly act in a meeting which is duly convened. The power conferred upon the Collector or person authorised by him regarding calling of meeting and presiding over it is in terms imperative. The said power is conferred upon a public authority which is coupled with duty. The requirement that a proper authority must convene the statutory meeting is normally held to be mandatory. When the

statute itself indicates the authority which must call such a statutory meeting then that authority alone is competent to convene the meeting. The election of the Chairman as per Section 67 of the Act can be held only in a meeting which is duly convened by Collector or person authorised by him. In a given case the authority competent to call the meeting might ratify the act of somebody else, before the meeting takes place. But in the case before us, Collector has not ratified the act of Chief Executive Officer, but on the contrary has himself raised a dispute about its validity by making a reference u/s 68-A of the Act. It is well-settled general rule that an absolute enactment must be obeyed or fulfilled exactly. If the meeting is not convened by the competent authority then it is not merely a defect or irregularity in calling the meeting but is an illegality which goes to the root of the matter. It involves a question of authority, power and jurisdiction. If the person calling the meeting has no jurisdiction to call it, then the meeting called by him is illegal ab initio. In our opinion such an illegality is not covered by Section 112 of the Act.

14. Therefore, having regard to the object of the Act as well as the intention of the Legislation, it is quite obvious that the provisions in this behalf are mandatory. If this is so, then, in our opinion, it was the Collector or the officer authorised by him in that behalf alone, who could have convened the meeting. The Block Development Officer, who was acting under the directions of the Chief Executive Officer of Zilla Parishad had no authority, power or jurisdiction to convene the meeting for electing the Chairman of the Panchayat Samiti. He had also no authority to preside over the said meeting. Therefore, the meeting convened by the Block Development Officer being wholly illegal and void ab initio, the election of the petitioner which took place in the said meeting was also illegal. Therefore, it was rightly set aside by the Commissioner, Nagpur Division, Nagpur,

15. Even otherwise from the copy of the proceedings produced before us, it appears that the Block Development Officer who was also the Secretary of the Panchayat Samiti had taken some decisions in the matter of rejection and acceptance of ballot papers. A grievance is also made on behalf of the respondent No. 3 that he had wrongly issued second ballot paper to one of the voters. Thus while presiding over the said meeting, the Block Development Officer had taken certain decisions, which had some effect on the voting pattern. Therefore, obviously having regard to the facts and circumstances of this case, it will have to be held that the convening of the meeting by the Block Development Officer and his pre-finding over the same has materially affected the merits of the case.

16. In this view of the matter, in our opinion, the orders passed by both the authorities below are perfectly legal. Therefore, there is no substance in this writ petition. The petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

17. Petition dismissed.