

(1973) 01 KL CK 0038
In the High Court Of Kerala
Case No : O.P. No. 2227 of 1972

Maniyar Panchayat

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-01-1973

Acts Referred:

Kerala Panchayat Act, 1960 — Section 55

Citation : AIR 1974 Ker 98 : (1973) KLJ 306

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : M.M. Pareed Pillay, for the Appellant;

Final Decision : Allowed

Judgement

G. Viswanatha Iyer, J.—This Original Petition is filed by the Maniyar Panchayat represented by its acting President against the order of supersession Ext. P3 passed by the Government on 16-12-1972. At the time when the O.P. was filed the Government had issued Ext. P-1 notice calling upon the Panchayat to show cause why it shall not be superseded. The Panchayat had submitted an explanation Ext. P-2 dated 10-4-1972 mentioning that the notice does not disclose the necessary facts on the basis of which the action is proposed to be taken and in the absence of a disclosure of these facts it is not possible for the Panchayat to submit a proper explanation and that there are no grounds to supersede it. Subsequently, pending this Original Petition the Government issued Ext. P-3 order of supersession; and therefore the Original Petition was amended by including a prayer for cancellation of Ext. P-3 also. The sanctioned strength of the Panchayat is 11. Some time back two of the elected members were disqualified and three resigned. The President of the Panchayat tendered his resignation from Presidentship with effect from 15-9-1971. That was accepted by the authorities on 17-9-1971. Thereafter on 24-9-1971 Sri T.K. Narayanan, one of the members of the Panchayat, was elected as the acting President under S. 28 (3) of the Panchayats Act, 1960 and the Panchayat is functioning under his

Presidentship. The District Panchayat Officer convened a meeting on 28-10-1971 for the election of a President under S. 24 of the Panchayats Act. For an election of a President the quorum fixed under R. 4 of the Kerala Panchayats (Election of President and Vice President) Rules, 1963 is one half of the sanctioned strength of the Panchayat. As stated earlier, the total strength of the Panchayat is 11. In order that the election of a President may be held there must be at least six members present at the meeting. The meeting on 28-10-1971 only five members attended and therefore for want of quorum a President could not be elected. Another meeting for election of a President was held on 17-11-1971. On that day also only five members attended the meeting and therefore a President could not be elected. Thereafter, there was no meeting for an election of a President and the Panchayat was functioning under the Presidentship of the acting President. On 23-3-1972 the Government issued a notice under S. 55(2) of the Panchayats Act to the Panchayat to show cause why it should not be superseded. Explanation or objection to the said proposal was directed to be submitted before 15th April, 1972. In the notice it was stated that the Panchayat is functioning under an acting President and two meetings convened for the purpose of electing a President could not elect a President for want of quorum and that it is not proper for the Panchayat to function with an acting President indefinitely and therefore the Government are of opinion that the Panchayat has persistently made default in performing the duties imposed on it by the Kerala Panchayats Act 1960. To this notice the Panchayat submitted an explanation on 10-4-72 wherein the allegations were refuted, and it was also mentioned that the duties imposed on the Panchayat under the various provisions of the Panchayats Act are being attended to without default and no reasons are made out to supersede the Panchayat. It was also stated that in spite of the repeated requests to the authorities the casual vacancies that have arisen have not been filled up and it is not possible to accuse the Panchayat in not electing a President. On account of some other proceedings the Government did not take up the matter for consideration and final orders were passed by the Government only on 16-12-1972 superseding the Panchayat. That order, as I stated earlier, is filed as Ext. P3. This Ext. P3 is challenged in this writ petition.

2. The main ground of attack is that there is no ground to supersede the Panchayat. Under S. 55 of the Panchayats Act in order that a Panchayat may be superseded there must be one or more of the three grounds mentioned in that section. The three grounds are: (1) the Panchayat is not competent to perform the duties (2) the Panchayat persistently makes default in performing the duties imposed on it by law and (3) exceeds or abuses its powers under the Panchayats Act. The respondents do not rely on grounds 1 and 3. They rely only on ground No. 2, namely, the Panchayat has persistently defaulted in performing the duties imposed on it by law. The explanatory note to Ext. P3 published in the Gazette gave the reasons which weighed with the Government to supersede the Panchayat. The reason given in that explanatory note is that two meetings were held for electing a President but election could not take place for want of a

required quorum and the Panchayat is functioning under an acting President and therefore the Panchayat must be superseded. So. it has to be taken that the only ground which has weighed with the Government to supersede the Panchayat is that given in the explanatory note to Ext. P3. The question is how far this ground is made out to supersede the Panchayat. In this connection one more fact has to be stated. On 20-12-1971 the Panchayat passed a resolution stating that the ex-president of the Panchayat, who continued to be a member after vacating his office of Presidentship, did not attend the meetings of the Panchayat for three months and therefore he became disqualified from being a member of the Panchayat. So, after 20-12-1971 the Panchayat had only 5 active members and with this 5 active members an election of a President is not possible and no attempt was made to convene a meeting for the election of a President after that date by the authorities. But the absence of or the failure to elect, a President did not in any way interfere with the functioning of the Panchayat. The quorum for an ordinary meeting is only 4 and 5 active members were there in the Panchayat and all the active members, it is stated in the petition were attending all the meetings of the Panchayat. When a vacancy arises in the Panchayat by a member resigning or becoming disqualified to continue as a member under the Act there are provisions for conducting a bye election and filling up the vacancies. That has to be done not by the Panchayat but by other authorities constituted under the Act, and those authorities are perfectly aware of the resignation and disqualification that have occurred in this Panchayat. No steps were taken to conduct a bye election and to fill up the vacancies. Without filling up those vacancies and asking the Panchayat to elect a President, the Panchayat cannot be accused of not electing a President because as earlier stated, after 20-12-1971 there were only 5 active members and at least 6 members must be present for the election of the President. It is the duty of the authorities concerned to fill up the vacancy and then call upon the Panchayat to elect a President as required under S. 24 of the Panchayats Act. It is said that for election of a member certain other formalities have to be complied with. That may be. But the Panchayat cannot be found fault with for not performing its duties without the authorities taking steps to conduct an election and to fill up the vacancies that have arisen so that it cannot be said that there is any basis for the stand taken in Ext. P1 or in Ext. P3 that the President has not been elected by the Panchayat.

3. Again, in order that there may be a persistent default it must be shown that the Panchayat has been informed of the default and warning or protest and an opposition should have been communicated to the Panchayat if they persisted in the default. In this case, there has not been any warning or protest or opposition given by the authorities to the Panchayat about the alleged default that it has committed in the performance of its duties. If any default is committed by the Panchayat or its President or Executive Authority, under S. 52 of the Panchayats Act the Director can call upon the Panchayat to perform its duty within a period specified in the notice. No such step has been taken in this case. That further

shows that the Panchayat has not been told about its alleged default in performing any of its duties and an opportunity given to it to perform it. This shows that no warning or protest has been communicated to the Panchayat by the authorities concerned. In such circumstances, it cannot be said that there is a persistent default in the performance of the duties by Panchayat. A similar question arose for decision in a Calcutta case reported in *Promode Kumar Bhattacharya Vs. A. Jaman, Jt. Secy. to the Govt. of West Bengal*, . There, persistent default has been held to mean successive default in spite of warning or protest and opposition. Here without taking steps to fill up the vacancies and then asking it to elect a President the Panchayat cannot be accused of not performing its duty of electing a President. In such circumstances, I hold that no grounds have been made out for superseding the Panchayat. The Government acted illegally in the exercise of its jurisdiction. I set aside Ext. P-3 on the ground that it is invalid and unsustainable. The original petition is allowed to this extent. There will be no order as to costs.