
(1964) 06 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 487 of 1964

Popat Ragho Patil

APPELLANT

Vs

Damu Shankar Patil

RESPONDENT

Date of Decision : 17-06-1964

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 49, 72(1)

Citation : (1964) 66 BOMLR 729 : (1964) MhLj 78

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Kotval, J.—We are concerned in this special civil application with a resolution of no-confidence sought to be tabled by two members of the Gram Panchayat of Shirpur in Dhulia District. Of the two members the petitioner is one. A notice necessary u/s 72(1) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, was given on March 2, 1964. It recited several grounds of misconduct on the part both of the chairman and the deputy chairman of the Panchayat Samiti. With these grounds we are not here concerned, because what is in dispute is the subsequent procedure that was followed both by the chairman and by the divisional commissioner. The notice u/s 72(1) was given in the form prescribed by the rules known as Zilla Parishads Presiding Authorities (No-confidence Motion) Rules, 1962, framed u/s 274(2)(x). After reciting the various grounds upon which the signatories desired to move the no-confidence motion, they requested the chairman to convene a meeting for the purpose of considering the no-confidence motion. The chairman is respondent No. 1 before us and the vice-chairman respondent No. 2.

2. On receiving the notice the chairman in his turn issued on March 11, 1964, a notice calling a special meeting to consider the motion of no-confidence against him on April 15, 1964, at 4 p.m. in the office of the Panchayat Samiti. On the same day he also issued another notice calling a separate meeting on April 16,

1964, at 9 a.m. in the office of the Panchayat Samiti to consider the motion of no-confidence against the vice-president. One of the principal points argued in this special civil application is as to the validity of the action of the chairman in issuing notices for April 15 and 16, 1964.

3. It is the case of the petitioner that the chairman of the Samiti should have convened the meeting of the Samiti within 10 days of the receipt of the notice as required by Section 72(2) of the Act and that in issuing a notice convening the meetings on April 15 and 16, 1964, the chairman failed to discharge his duty u/s 72(2) and indeed acted contrary to law. In that view it is submitted on behalf of the petitioner that under Sub-section (4) of Section 72 the Commissioner, who is respondent No. 4 before us, was bound to convene a meeting of the Panchayat Samiti for consideration of the said motion within 10 days of the receipt of a requisition by him to consider the no-confidence motion. The petitioner says that such a requisition was given. The requisition is not before us, but in para. 2 of the Return, the Commissioner, Bombay Division, has admitted as follows:

I say that an application signed by Sarvashri Popat Ragho Patil (the petitioner) and Poulad Tathu Patil was presented to me on 13th March 1964. It was represented therein that on 2nd March 1964 the petitioner along with other 8 members of the Panchayat Samiti, Shirpur had sent to the Block Development Officer and Secretary, Panchayat Samiti, Shirpur requisitions for convening a meeting of the Panchayat Samiti, Shirpur, for consideration of motions of No-confidence in the Chairman as well as Deputy Chairman of the Panchayat Samiti.

The Commissioner has further stated that the petitioner had pointed out to him that the chairman of the Panchayat Samiti had convened two separate meetings on April 15, 1964 and April 16, 1964, for consideration of the said motions but that, those meetings were purposely delayed and that the chairman had thereby misconducted himself. The petitioner had also prayed before the commissioner that the proposed meetings should be declared illegal.

4. It appears, however, that respondent No. 4 considered that the action taken by the chairman was a valid action under law and, therefore, he on his part did not consider it necessary to act under the second part of Sub-section (4) of Section 72. That is also the stand which the commissioner has taken in this Court. He has stated that the action taken by the chairman of the Samiti in convening the two meetings on April 15, 1964, and April 16, 1964, was a valid action. He has stated in para. 7 as follows:

I say that the provisions contained in Sub-section (4) of Section 72 of the M.Z.P. & P.S. Act 1961 empowers the commissioner to convene a special meeting for consideration of a No-confidence motion in cases where the chairman of the Panchayat Samiti fails to comply with the directions issued u/s 72(2) of the said Act. Here in the present case, as the chairman had convened meetings within 10 days from the receipt of the notice, no action u/s 72(4) could be taken.

That is precisely the stand which the petitioner challenges in the present petition.

5. Now, Section 72 provides for the motion of no-confidence against the chairman and deputy chairman of Panchayat Samitis. Sub-section (1) requires that a motion of no-confidence in either of these two officials must be made by a requisition of not less than one-fourth of the total number of the members after giving a notice in the prescribed form. On giving a notice Sub-section (2) requires that the chairman of the Panchayat Samiti shall convene a special meeting of the Panchayat Samiti to consider such motion within 10 days of the receipt of the notice and the crucial question involved in the petition is whether the chairman did comply with Sub-section (2) and whether he convened a special meeting of the Panchayat Samiti as prescribed thereunder. In case the chairman fails to convene a meeting, Sub-section (4) comes into play and Sub-section (4) prescribes that if no such meeting is convened by the chairman within the period specified in Sub-section (2), all or any of the members who have given notice of 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 special meeting of the Panchayat Samiti. The commissioner shall within ten days of the receipt of such communication by him convene a special 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.

6. Now, there is no dispute in the present case that the members or some of the members who had given the notice of motion of no-confidence did move the commissioner to convene a special meeting of the Panchayat Samiti. That, as we have shown, is admitted by the commissioner himself in his return in para. 2. If that be so, and if it be established that the chairman failed to convene a meeting as he was bound to do under Sub-section (2) of Section 72, then the commissioner was bound to act under the latter part of Sub-section (4) and himself convene a special meeting after appointing a time and authorising a person to preside over it. The commissioner says that he did not do this, because in his view the chairman of the Panchayat Samiti had done all that he is required to do under Sub-section (2).

7. On behalf of the petitioner emphasis was laid upon the words used in Sub-section (2) of Section 72, "The Chairman of a Panchayat Samiti shall convene a special meeting...within ten days of the receipt of the notice." It was argued that all that the chairman did within the prescribed ten days was to issue notices of meetings for April 15 and 16, 1964, and that he did not "convene" the special meeting of the Panchayat Samiti as he was required to do under law. On behalf of the chairman Mr. Vaidya has, on the other hand, submitted that by issuing the notices on March 11, 1964, the chairman had convened special meetings of the Panchayat Samiti and he had, therefore, fully complied with the requirement of Sub-section (2) of Section 72.

8. That leads us to a consideration of the meaning of the word "convene" as used in Sub-section (2) as also in Sub-section (4) of Section 72. It is nowhere defined

and obviously, therefore, it must carry the normal connotation that it carries in the English language. In the Oxford Dictionary, Vol. II, the word "convene" has been shown to carry several shades of meaning e.g. (a) to come or bring together (b) of a collective body : to assemble for united action; to meet in a convention. Where it is used as a transitive verb, the meaning is given as "to cause to come together; to convoke" and the illustrations given there are "with all due speed I will convene The Doctors of Theology" and "Fifty Bishops of the neighbouring dioceses were convened". In the case of collective bodies or an assembly or a meeting, the illustration is given, "The Senate was convened by the tribunes." Considering any one or more of these shades of meaning, it is clear that the expression "convene" cannot apply exclusively to the mere giving of a notice to call a body together, but that there is implicit in any shade of meaning of the word "convene" the idea of actually calling together that association or body of individuals. Reference was also made to Stroud "s Judicial Dictionary, Vol. I, page 624. But there, the meaning is not explained, but one aspect of that meaning has been stressed which assists in the construction of the section before us. It has thus been explained,

There is an obvious difference between "convened" and "summoned"... "convened" is applied, properly, not to individuals but, to aggregate bodies. A Board is "convened"; an Assembly is "convened"; a Senate is "convened"; but A. is not "convened," he is "summoned, warned, or noticed".

and reference is made to Rex v. Smith Jebb & 634.

9. It seems to us that when the word "convene" was advisedly used both in Sub-section (2) and Sub-section (4) of Section 72, the legislative draftsman had in mind this connotation of the word "convene" and used it advisedly in the context of a meeting or a special meeting of the Panchayat Samiti. In our opinion, the using of the word "convene" with reference to a meeting or a special meeting of the Panchayat Samiti can only mean the calling together of the members of that Panchayat Samiti. We cannot accept the argument that it only implies the giving of a notice to call a meeting of the Panchayat Samiti and it is here that the distinction which has been drawn in Stroud's Judicial Dictionary becomes important. The word "convened" as pointed out by Stroud can only be with reference to an assembly and not with reference to an individual. Therefore when the expression is used "convene a meeting of the Panchayat Samiti" it can only imply "'convene" a meeting of that assembly which is the Panchayat Samiti." The meaning of the word "convene" is, therefore, in our opinion, clear that the members of the assembly known as the Panchayat Samiti should be called together or "convoked".

10. We are fortified in this view by a consideration of other provisions of the Act itself. Section 111 deals with the procedure for calling a meeting of the Zilla Parishad and Section 118 applies the self-same procedure to meetings of the Panchayat Samitis. In dealing with the power of the President to fix the dates of meetings and his duty to call meetings of the Zilla Parishads, Sub-section (3) of

Section 111 prescribes

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.

The expression here used is not "shall convene a special meeting", but in contradistinction with the words used in Section 72, Sub-sections (2) and (4) "convene a special meeting of the Panchayat Samiti", the words used are "issue notice calling a special meeting". Thus the Act itself draws a distinction between convening a special meeting and issuing a notice calling a special meeting. It would thus appear that the idea of convening a meeting does not stop at merely issuing a notice of that meeting but actually calling it together or convoking it. In *Sukhdeo Narayan and Others Vs. Municipal Commissioners of Arrah, Municipality and Others*, , there came up before the Patna High Court a question of the construction of Section 44 of the Bihar and Orissa Municipal Act (7 of 1922) in which the words used were "call a special meeting". Sub-section (2) of that section was as follows:

(2) If the Chairman or the Vice-Chairman fails to call a special meeting within fifteen days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.

and it was urged before a Division Bench of that Court, as it has been urged before us in the present case, that by the word "call" was intended "announce a meeting to be held" or in other words "give notice of a meeting". Their Lordships answered the point as follows (p. 370):

Mr. S.N. Dutta wants to interpret the word "call" to mean "announce a meeting to be held". According to him, if the Chairman had announced within 15 days of the receipt of the requisition that a meeting was going to be held irrespective of the fact whether that date fell within or without the period of 15 days from date of the receipt of the requisition, he has satisfied the requirements of Section 44 Sub-section (1) and, accordingly, the requisitionists had no jurisdiction to call a meeting....

The word "call" has been given the meaning "summon" in the Oxford English Dictionary which will signify issuing of summons for assembly. It is true that the word "call" and the word "hold" are not exactly synonymous, but, in my opinion, they convey the same meaning. A meeting is "held" by persons attending it and, therefore, the word (hold) could not be used with exact accuracy in the section.

It seems to us that the word "call" as used in that enactment is more expressive than the word "convene" in favour of the argument that it implies only the giving of a notice, but even there, the Patna High Court held that the word implied the calling together of the members. With stronger reason, therefore, it seems to us that where the word used is "convene" it can only mean to bring the assembly

known as Panchayat Samiti together. At any rate, it cannot mean that the mere giving of a notice is sufficient as was contended.

11. It was then argued on behalf of the respondents that if this is the interpretation of the word "convene" as used in Sub-sections (2) and (4) of Section 72, then it would not be possible to implement other provisions of the Act, for instance, Section 49(2) where the same word is used. Section 49 makes similar provisions as Section 72 but for a motion of no-confidence against a president or a vice-president of a Zilla Parishad and Sub-section (2) of. Section 49 provides:

The President shall convene a meeting of the Zilla Parishad to consider the motion within ten days of the receipt of notice.

Mr. Vaidya argues that Section 111(4) prescribes notice of ten clear days for a special meeting of the Zilla Parishad and that provision read along with Sub-section (2) of Section 49 would make it impossible for the President to comply with the latter provision of law, if the interpretation of the word "convene" is to call a meeting of the Zilla Parishad, because the President would not be in a position to give ten clear days" notice after the receipt of the notice of motion of no-confidence.

12. The difficulty pointed out by Mr. Vaidya is undoubtedly there, but it is not, in our opinion, an insuperable difficulty. It does not render the provisions of Sub-section (2) of Section 49 impossible to implement but undoubtedly makes the position of the President somewhat difficult if by the word "convene" is understood the calling of a special meeting within ten days of the receipt of the notice. This is a matter with which we are not, however, directly concerned. It may be that when making the provisions of Sub-section (2) of Section 49 the legislative draftsman over-looked the difficulty that would arise, but for the reason that difficulties would arise in the implementation of the other provisions of the Act, we cannot give to the expression used in Section 72, "convene a special meeting" any meaning other than what the plain English requires and merely to obviate difficulties.

13. In our opinion, the expression, "convene a special meeting of the Panchayat Samiti" in Sub-section (2) and Sub-section (4) of Section 72 clearly implies that the chairman must call that body together before the expiry of ten days from the receipt of a notice, otherwise he is not complying with that requirement of the law. Upon the facts which we have already stated, it is clear beyond doubt that there was a failure on the part of the chairman to convene the meeting as required by law. We must, therefore, hold that respondent No. 1 failed to perform his duty under Sub-section (2) of Section 72. If that be so, then it is not in dispute that the provisions of Sub-section (4) would come into play and Sub-section (4) provides that if no such meeting is convened by the chairman within the period prescribed, then the members who had given the notice of motion of no-confidence may call upon the commissioner to convene a special meeting of

the Panchayat Samiti. It is also not in dispute here that the commissioner was so called upon, but he did not comply with the requisition of the petitioner and others, because of the view which he took that, the chairman had acted within his powers—a view which we have already held was erroneous. In that view, it must also be held that the commissioner failed to perform his duty as required by the latter part of Sub-section (4) of Section 72. That sub-section says that

...The Commissioner shall, within ten days of the receipt of such communication by him, convene the special 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". We think that in the circumstances the commissioner ought to have convened the meeting himself, in accordance with the above provision.

14. The question then arises, what should now be done having regard to the findings which we have given and to the events that have subsequently transpired. On behalf of the petitioner it was urged that the commissioner should now be called upon to convene a meeting as he is enjoined to do by the latter part of Sub-section (4) of Section 72. On behalf of respondents Nos. 1 and 2, however, Mr. Vaidya has pointed out that the duty of the commissioner was to convene the special meeting within ten days of the receipt of "such communication by him", that is to say, within ten days of the receipt of the requisition by the movers of the no-confidence motion to call a meeting. Mr. Vaidya says that in the events that have transpired, this is now impossible. Normally, we should have thought that where an official enjoined to perform a particular duty fails to perform it upon an erroneous view of law, the parties should be remitted to the position which they occupied when that error of law was initially committed. But it is not here necessary to go as far as that, because on behalf of the petitioner Mr. Paranjpe has offered that if necessary the petitioner would be willing to make a fresh request to the commissioner to convene a special meeting of the Panchayat Samiti. We think that that would in the circumstances be not only a proper but a desirable course. Accordingly, we declare that the meetings convened by respondent No. 1 for April 15 and 16, 1964, were illegally convened. It appears that some resolutions were passed at those meetings regarding which also the petitioner has made certain averments and the respondents have controverted them. It is not necessary to go into that controversy, but it must be held that whatever business was transacted at those meetings was illegal and without jurisdiction since the meetings themselves were not validly convened. We now direct the petitioner to make a fresh request to the commissioner to call a special meeting under the provisions of Sub-section (4) of Section 72, and if such a request is made, the commissioner shall proceed in accordance with the provisions of Sub-section (4) of Section 72.

15. A minor issue between the parties still remains to be determined. When the petitioner and others gave notice of the motion of no-confidence, respondent No. 1, as we have said, issued notice on March 11, 1964, convening two meetings,

one on April 15, 1964, to consider the no-confidence motion against himself and the other on April 16, 1964, to consider the no-confidence motion against his colleague the vice-chairman. This action of the chairman has also been challenged in this petition and on behalf of the petitioner it has been urged that it was quite unnecessary to call two meetings and that both the resolutions could have been discussed at one and the same meeting. It has also been alleged by them that this action was taken by the chairman himself with a view to assist his vice-chairman and that they intended and in fact did each preside at the meeting which considered the no-confidence motion against the other. Since we have held those meetings illegal, the same request has been made before us on behalf of the petitioner that we should order that only one meeting should now be held. We do not think that at the present stage we need go into this question, for, as we have said, consequent upon the failure of the chairman to perform his duty, the, commissioner ought to have called the meeting and we have now directed him accordingly. It would, therefore, be in the first instance for the commissioner to decide for himself whether he should in the circumstances order one meeting to be or two meetings to be held as the case maybe. That by the Act is his duty and we do not think that we are called upon to pronounce upon it at the present stage. In any case as soon as the petitioner or other member gives a requisition the commissioner must call one or more meetings as the case may be in compliance with Section 72(4). The petition is allowed subject to the directions given above. There shall be no order as to costs.