

(1965) 09 BOM CK 0026

In the Bombay High Court

Case No : Special Civil Application No. 604 of 1964

Ramkrishna Yeshwant Gore and Another	APPELLANT
Vs	
Secretary, Village Panchayat, Borjai and Others	RESPONDENT

Date of Decision : 21-09-1965

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 35(2), 43

Citation : AIR 1967 Bom 334 : (1966) 68 BOMLR 726 : (1966) ILR (Bom) 931 : (1966) MhLj 937

Hon'ble Judges : Padhye, J; Abhyankar, J

Bench : Division Bench

Advocate : C.S. Dharmadhikari, for the Appellant; B.R. Mandlekar, for the Respondent

Judgement

Abhyankar, J.

(1) By this petition under Articles 226 and 227 of the constitution the Sarpanch and Upasarpanch of Village Panchayat, Borjai, in Darwha taluq of Yeotmal district, invoke the jurisdiction of this Court to quash proceedings of the meeting of Village Panchayat of that village at its meeting held on 4-8-1964, in which a motion of no confidence is alleged to have been passed against them and also to quash a memorandum issued by the Administrative Officer of the Zilla Parishad, Yeotmal, directing the Secretary to send a notice in prescribed form to the Collector. Yeotmal, regarding the vacancies that were created in the posts of Sarpanch and Upasarpanch of that village. The facts in this case are of considerable importance to point out the erroneous interpretation that seems to have been put on some of the provisions of the Bombay Village Panchayats Act in the functioning of the Panchayats and the powers of the Zilla Parishad and the Panchayat Samiti in supervising their work.

2. The Village Panchayat of Borjai originally comprised of seven members. It is an admitted position that out of these seven members one Ganpat Krishan left the village and therefore ceased to be a member. Thus, at the relevant time

there were only six members of the Village Panchayat of Borjai. Three members of the Village Panchayat gave a notice of no-confidence motion, against the Sarpanch and Upasarch. In compliance with this notice a meeting was convened for consideration of this motion of no-confidence and was actually held on 4th of August 1964. Out of the six members of the Panchayat, five members attended this meeting, the absent member being Shrimati Shembdi wife of Buza. As the motion of no-confidence was against the petitioners 1 and 2, one being Sarpanch and the other Upasarch respectively, respondent No. 4 Nathu Laxman Yewale was elected as a Chairman of this meeting. The petitioner's grievance is that the Chairman did not allow them to sit at the meeting or to explain the charges against them. After the motion was moved, votes were taken and the three members i.e. respondents 4, 5 and 6 voted in favour of the resolution and two members viz. the petitioners, cast their votes against the resolution. The petitioners have filed a copy of the proceeding book of that meeting (Annexure B). The copy shows that the resolution was moved votes were taken and the voting was done as indicated above. Names of members who voted for the resolution are noted in column 6 of the Proceeding book and the names of the petitioners who voted against the resolution are shown in column 7 thereof. The result is noted in column 8 and it shows "Passed by 3 votes".

3. One Sopan, who is a patwari, was also the Secretary of this Village Panchayat., He has been impleaded as respondent No, 1 to this petition, but he has made neither appearance nor has filed any return. The petitioners have alleged that respondent No. 1 in his capacity as Secretary of the Village Panchayat, sent a report and a copy of the proceedings to the Zilla Parishad and the Panchayat Samiti. He intimated that the resolution was passed by three votes. On receipt of this intimation from the Secretary, it appears, respondent No.2 through the Administrative Officer, acting for the Chief Executive Officer, sent a memorandum dated 10th September 1964, to respondent No. 1 directing him to send a notice in the prescribed form to the Collector, Yeotmal, regarding the vacancies that have been created in the offices of Sarpanch and Upasarch, if such notices were not already sent. By sheer fortuitous circumstances this memorandum was noticed by the petitioners from which they came to know that the Secretary had intimated to respondent No. 2 about the passing of the resolution and the action required to be taken. This memorandum was received in the office of the Village Panchayat on 19th September 1964, and immediately thereafter the petitioners made an application to the Chief Executive Officer explaining the true position. This application is alleged to have been received by the Chief Executive Officer on 25th September 1964, but that officer did not take any steps regarding the grievance made in that application. As no reply was received from the Zilla Parishad, the petitioners filed another application before the Block Development Officer of the Panchayat Samiti, Ner, explaining the same position. It is averred in paragraph 6 of the petition that the Block Development Officer submitted his report to the Zilla Parishad that the vote of no-confidence was not passed as required by the provisions of the Act, but

there is nothing on the record of the proceedings before us to know exactly what were the contents of this report to the Zilla Parishad. As no reply was received from the Zilla Parishad, the petitioners filed another application on 7-10-64 and also saw the Panchayat Officer along with their legal adviser. It is alleged in paragraph 8 of the petition that the Panchayat Officer informed the petitioners and their counsel that the zilla Parishad could not do anything in the matter because the Secretary of the Village Panchayat i.e. respondent No. 1, had informed them that a vote of no-confidence has been passed. As the petitioners were unable to obtain any relief, they have come to this Court seeking its extraordinary jurisdiction.

4. As to the merits of the contention of the petitioners, there is no doubt that the resolution of no-confidence passed at the meeting of the Village Panchayat on 4-8-1964, supported by three members. does not result in unseating either of the petitioners. u/s 35(2) of the Bombay Village Panchayats Act, unless a motion of no-confidence is carried by majority of not less than two-thirds of the total number of the then members of the Panchayat, the Sarpanch and Upsarpanch do not cease to hold office. Thus, the condition precedent for an office-bearer like the Sarpanch and Upasarpanch ceasing to be a member is that the meeting of the Panchayat must pass the motion of no-confidence supported by a majority of not less than two-thirds of the total number of the members of the Panchayat at the relevant time. It is not disputed in this case that the total number of members of the Panchayat on 4-8-1964 was six, and the motion of no-confidence supported by only three members could not validly result in unseating either the Sarpanch or the Upasarpanch from their office. There is no doubt therefore that neither of the petitioners ceased to hold office as a result of the passing of the motion of no-confidence by a simple majority of three against two on 4-8-1964. The petitioners have asked for quashing of this resolution also on the ground that they were not given an opportunity of being heard. This allegation is disputed by the respondents and as we are not disposed to probe any further into this disputed question of fact, we will assume that a motion of no-confidence was passed on 4-8-64 three voting in favour of the resolution and two against, the total number of the members of the Panchayat being six at the relevant time.

5. What has transpired thereafter, however, is a matter of serious notice. Under Rule 1 of the rules made by the Government under clause (ix) of sub-section (2) of S. 176 of the Bombay Village Panchayats Act, regulating the manner in which notice of a vacancy in the office of a Sarpanch, deputy Sarpanch or members of a Panchayat is to be given under S. 43 of the Act . It is provided that notice of a vacancy in the office of the Sarpanch shall be given to the Collector within 7 days of the vacancy by the Secretary of the Panchayat. If the Secretary is absent, then provision is made empowering Upasarpanch in the case of the vacancy in the office of the Sarpanch, and by the Sarpanch or in his absence by the Upasarpanch in the case of a vacancy in the office of a member. The duty of the recipient of this notice, namely the Collector, is provided for in S. 43 of the Act.

That section is as follows:

"43 (1) Any vacancy of which notice has been given to the Collector in the prescribed manner due to the disablement, death, resignation, disqualification, absence without leave or removal of a Sarpanch or Upasарpanch or member, shall be filled by the election of a Sarpanch or Upa-Sarpanch or member who shall hold office so long only as the Sarpanch or Upa-Sarpanch or member in whose place he has been elected, would have held office if the vacancy had not occurred;

Provided that if no member is so elected within two months from the date on which notice of the vacancy is given to the Collector. the Standing Committee shall as soon as possible appoint a person who is qualified to be elected, and the person so appointed shall be deemed to have been duly elected under this sub-section;

Provided further that notwithstanding anything contained in S. 10, if the vacancy occurs within four months preceding the date on which the term of office of the members of the panchayat expires under S. 27, the vacancy shall not be filled.

2. The meeting for the election of a Sarpanch under Sub-section (1) shall be convened by the Collector in the manner described in sub-section (1) of section 33."

It may be mentioned that by Maharashtra Act 43 of 1962 the word "Collector" was substituted for the words "Chief Executive Officer". In other words, whereas previously the Secretary was required to give notice to the Chief Executive Officer, now the notice is required to be given to the Collector in the prescribed manner. On receipt of this notice, the vacancy in the office of the Sarpanch, or Upasарpanch, or member, is to be filled by holding a fresh election for the office of Sarpanch or Upasарpanch or member as the case may be. There is a further requirement under the proviso which gives power to the Standing Committee to appoint a person who is qualified to be elected to the office which has fallen vacant if a member is not elected within two months from the date on which notice of vacancy is given to the Collector. It will thus be seen that the function of the Collector is not a mere mechanical function. The Legislature seems to have advisedly chosen the highest Revenue Officer in the district to whom a notice of vacancy is required to be given, and on such receipt of notice the Collector takes steps to hold elections to fill in vacancies in the offices of which notice has been given.

6. There is no provision in the Act under which the validity of a motion of no-confidence, alleged to have been passed against an office-bearer, or a member of the Village Panchayat can be challenged as is possible when an election to an office is challengeable by an election petition. In our opinion, however, the provisions of S. 43 itself postulate that the authority to whom notice of vacancy is required to be given by the Secretary is invested with the power to determine whether the notice that is given to him is a valid notice and is in respect of a

valid vacancy having been caused. It is difficult to construe the provisions of S. 43 of the Act as if the Collector is merely required to work as a machine or post office to hold election to an office purported to have fallen vacant the moment he receives a communication to that effect from the Secretary. In numerous cases that have come to this Court it is obvious that allegations are frequently made about the validity of the meeting at which a motion of no-confidence is alleged to have been passed about the sanctity of the proceedings themselves, about signatures of members who are alleged to have recorded their votes, about the presence of the members, about giving and not giving adequate opportunity to the person concerned to explain the charges brought against him in the motion of no-confidence, and further questions of fact which would invalidate the proceedings, and consequently the efficacy of the motion of no-confidence on the basis of which a notice is required to be given by the Secretary of the occurrence of the vacancy to the Collector. The Legislature, in our opinion, having admittedly chosen Collector as the person to whom notice of the vacancy has to be given and as the authority which should take steps to hold fresh elections for filling the vacancy if validly occurred, must be intended to invest the Collector with all the implied powers in determining about the validity of the notice and also the validity of the resolution which occasioned the giving of such a notice. We are fortified in this view not only because there is no other provision in the Act whereby a person against whom a notice of no-confidence is alleged to have been passed, can seek redress, but also because under the proviso the Standing Committee of the Panchayat is empowered to make an appointment to office of a member which is alleged to have fallen vacant if an election is not held within two months from the date of the notice of vacancy given to the Collector. Cases have sometimes come before this Court where the Secretary either by design or by mistake failed to give notice, and in that contingency the Standing Committee is empowered to fill in the post by appointment.

7. Normally, this Court is extremely reluctant to adjudicate on questions of fact which are in dispute between the parties. In our opinion, therefore, the Bombay Village Panchayats Act, purporting to establish democratic institutions at the lowest level, must be construed as a self contained piece of legislation, in which provision has been made for most of the contingencies, ensuring smooth working of this primary institution. It could not have been intended by the Legislature of the State that results of motions of no-confidence and their effect should be adjudged only in the High Court without the parties having a remedy adequate and sufficiently speedy by having recourse to the district authority namely, the Collector who is enjoined to hold a fresh election in case a notice of a vacancy is received by him from the Secretary. Considering all aspects of the matter, therefore, we have come to the conclusion that on a proper construction as to the powers of the Collector under S. 43 of the Act it must be held that the Collector is required to apply his mind to all the circumstances and decide whether in law a vacancy has occurred of which a valid notice has been given to him before ordering fresh election. Unless a vacancy has occurred there is no

power in the Collector to order a fresh election, and a vacancy cannot be said to have occurred in law unless a motion of no-confidence, properly moved after following the requisite procedure, can be said to have been validly passed by the panchas. Mere passing of a no-confidence motion does not automatically result in the office-bearers of members ceasing to hold office. This may result in a serious conflict and it is necessary that the conflict should be resolved before a person holding a public office can be held to cease to hold that office. In our opinion, that duty is cast on the Collector in case any grievance is made before him about the passing of a no-confidence motion which affects the status of the person holding office as Sarpanch, Upasarpanch or a member of the Village Panchayat.

8. In view of this position in the law, we would have normally declined to entertain the petition to give relief to the petitioners in this case as, in our opinion, persons like the petitioners have an adequate remedy under the Act; but we have been informed that, in view of the large number of petitions that have been filed in this Court against motions of no-confidence by the Village Panchayats, the district authorities do not entertain such complaints or give relief to the complainants. In our opinion failure to exercise his jurisdiction by the Collector when a legitimate and proper grievance is made that no vacancy has occurred, would be failure to abide by the provisions of the Act. The Act seems to have made adequate provision when the authority which is required to hold a fresh election ought to decide in the first instance, whether it has been asked to hold a fresh election by a notice which is valid and in respect of a vacancy which can be said to have validly occurred.

9. We are also surprised in this case at the attitude of the Administrative Officer of the Zilla Parishad. The Administrative Officer seems to have acted mechanically without applying his mind when a specific grievance was made by a written application before him that under the law no vacancy could be said to have occurred because the resolution was passed by three members against two i.e. by a majority falling short of the requisite majority provided by S. 35 (2) of the Act. The Secretary as well as the Zilla Parishad have been impleaded as parties to this petition and when specific allegations were made against the Secretary of the Panchayat as well as a responsible officer of the Zilla Parishad, it was expected that each would enter appearance and explain the position if they could. Their failure to appear, therefore, must lead to the conclusion that all the averments made against each of them are incontrovertible so far as the facts are concerned. We must therefore hold that in spite of a legitimate complaint having been made to the Zilla Parishad, the Administrative Officer, without caring to apply his mind to the grievance, put in jeopardy the offices held by each of the petitioners by directing the Secretary to send notice of the vacancy to the Collector. It appears however the Secretary himself was in doubt whether a vacancy had occurred as the resolution was supported by three persons whereas the law required that such resolution must have the support of two-thirds of the members of the Panchayat, which would be four in this case. We have not before us the communication sent by the Secy. of the Panchayat to the Zilla Parishad,

but the Administrative Officer of the Zilla Parishad seems to have taken no trouble to find for himself whether the grievance of the petitioner was not correct and whether he could not have directed the Secretary to send any notice of vacancy under R. 1 to the Collector. It seems further action to the detriment of the interest of the petitioners was not taken because the petition was filed immediately in this court by the petitioners on 13-10-1964 and a stay was secured. We must observe that this indifference on the part of the Administrative Officer of the Zilla Parishad has unnecessarily involved the parties before this court in this litigation putting them to expenses and delay in a matter which could have been set right and ought to have been set right at the district level.

10. Thus the result is that the direction given by respondent No. 2 to the Secretary i.e. respondent No. 1 to send notice of vacancy to the Collector is hereby quashed and it is declared that neither of the petitioners ceases to hold office as a result of the resolution that was passed by the Panchayat on 4-8-1964. As the petitioners have been driven to file this petition on account of the action of respondent No. 2, we direct that costs of the petition shall be borne by respondent No. 2.

11. The petition is allowed with costs.

(12) Petition allowed.