
(1975) 07 MAD CK 0009
In the Madras High Court

Revenue Divisional Officer

APPELLANT

Vs

Pushpam and Others

RESPONDENT

Date of Decision : 15-07-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Panchayats Act, 1994 — Section 14, 147, 15, 15(4), 178

Citation : AIR 1976 Mad 252 : (1975) ILR (Mad) 183 : (1976) 89 LW 167 :
(1976) 1 MLJ 276

Hon'ble Judges : K. Veeraswami, C.J

Bench : Single Bench

Judgement

K. Veeraswami, C.J.—This appeal is directed against an order of Ramaprasada Rao, J., who held that co-option of a woman member to a

Panchayat under the provisions of the Tamil Nadu Panchayats Act (XXXV of 1958) is an election, though it took the form of a resolution of the

Panchayat. On that view, he held that the Inspector of Panchayats acted in excess of his jurisdiction u/s 147 of the Act in rescinding the resolution.

We find, ourselves in agreement with this decision of the learned Judge.

2. This case relates to Pechikulam Panchayat, Madurai District. The Panchayat had a strength of seven, each, of whom was elected. But there was

no woman among them. In accordance with Section 15 (4), the first respondent was by a majority resolution of the Panchayat at a meeting held on

25th September, 1970 co-opted. On a complaint made by one of the members of the panchayat, the Inspector, in exercise of his powers u/s 147

cancelled the resolution on 29th December, 1970. The ground was that there was a fraudulent counting of the votes on the resolution. We are not

at the moment concerned, with this aspect. The aggrieved co-opted member

successfully petitioned to this Court under Article 226 of the Constitution, Ramaprasada Rao, J., holding that the proper remedy for any aggrieved member against a resolution was to file an election petition and not to have it rescinded by the Inspector u/s 147.

3. On the character of such co-option, We find a degree of divergence of opinion in this Court. In *Govindaswamy v. Palaniswamy* (1964) 77

L.W. 56, U.K.N. Raju v. Nacharammal (1964) 77 L.W. 452. and *Manammal v. Sesha Mudaliar* (1963) 1 M.L.J. 94 which was a decision of

Ramaprasada Rao, J., himself, the view taken was that because there is no positive indication in Section 15 (4) co-option did not involve a process

of election and it was therefore competent for the Inspector to rescind it as any other resolution of a panchayat. In the first of these cases,

Anantanarayanan, J., as he then was partly derived support from an old Government Order, which was not statutory. Srinivasan, J., in the second

case, contented himself by merely confining himself to the language of Sub-section (4) of Section 15. He thought that whereas the other provisions

in the Act indicated election of members, Sub-section (4) of Section 15 did not necessarily connote the elective process. Ramaprasada Rao, J., in

the third case merely followed the earlier decisions. Gokulakrishnan, J., in *Shanmugavadivu Ammal v. K.V. Subramanian and Ors.* C.R.P. No.

1119 of 1971, reviewed these cases, but, considered that in view of the rules framed u/s 178 (1) relating to corporation, he should think that co-

option amounted to an election. Ramaprasada Rao, J., in the instant order on which the appeal before us arises concurred with him.

4. As we indicated, in our opinion, the later view is the correct one and we would be prepared to hold so even without the rules. Section 14

contemplates a panchayat to be an elected body, for it says the members of the panchayat shall be elected in the manner prescribed. The proviso

to this section is rather significant because a co-opted member for purposes of this section is also regarded as one among the elected members.

The statutory understanding through Section 14 itself is that co-option involves election and the member co-opted is an elected member of the

panchayat. Nowhere in the Act do we find any justification that a panchayat member is ushered into the Panchayat otherwise than by election

which need not necessarily be always by the same kind of process. Section 15

deals with a variety of matters which include reservation of seats for members of the Scheduled Castes, Scheduled Tribes and co-option of women. The last item to wit, co-option of women would arise only if the panchayat elected does not happen to have a woman member. In that case, the panchayat is enjoined, it is indeed entitled to co-opt to itself one qualified woman. When it speaks of panchayat's entitlement to co-opt, to our mind, it at once implies the consensus of the members in their entirety, or of the majority of those members, which is ascertained by a process of vote taking. That is what precisely the word "co-option" means ordinarily. For instance the Concise Oxford Dictionary says that co-opt means elect in to a body by votes of existing members. The word is derived from optare which means choose and the choice necessarily involves ascertaining the wishes of each of the members of the panchayat already elected into the body politic. In this respect, we have, therefore, to differ from the view expressed by Srinivasan, J., who, as we said was unable to find any elective process in the contemplation of Sub-section (4) of Section 15.

5. Quite apart, the Government have in exercise of their powers conferred by Sections 178 and 179 (1) of the Act framed rules for election of presidents and vice-presidents of panchayats. An examination of these rules leaves no room for doubt that presidents and vice-presidents are elected by the ordinary process of election with all its trappings. By G.O.No. 1553, Rural Development and Local Administration Department, dated 21st June, 1966 the Government have directed that co-option of a woman member to a panchayat shall be made after the election of the president and the vice-president of the panchayat and that the procedure prescribed for the election of a vice-president of a panchayat shall apply to the co-option of a woman member to the panchayat. This direction has the force of law because it was done in exercise of the powers u/s 178 (1). In our opinion, this rule merely brings out what the statutory provisions themselves imply.

6. To reiterate, we hold that co-option in this case did involve election in its full sense and the result of the election can be called in question only through an election petition. Though co-option is done by a resolution of the panchayat, in the context of the statutory provisions and the rules we

have referred to, it is not within the power of the inspector u/s 147 to review or rescind the resolution of co-option.

7. The appeal is therefore dismissed No costs.