

(1964) 10 GUJ CK 0017
In the Gujarat High Court

Satubha K. Vaghela

APPELLANT

Vs

Sayla Taluka Panchayat and Others

RESPONDENT

Date of Decision : 06-10-1964

Acts Referred:

Dentists Act, 1921 — Section 16(4)

Gram Panchayats Act, 1961 — Section 111(1), 50, 50(2), 60, 60

Citation : (1965) 6 GLR 409

Hon'ble Judges : N.M. Miabhoy, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—In this petition under Article 226 of the Constitution the petitioner prays for a writ of mandamus or certiorari or other

appropriate writ order or direction to set aside the resolution of respondent No. 1 dated 27th December 1963 at Annexure H and also to set

aside the order dated 30th April 1964 of respondent No. 2 and to quash the proceedings pending in Misc. matter No. 1/64-65 and to prohibit

respondent No. 2 from proceeding further with the said matter.

2. The petitioner is the Sar-Panch of Sayla Gram Panchayat hereinafter referred to as the Gram Panchayat. Respondent No. 1 is the Sayla Taluka

Panchayat hereinafter referred to as the Taluka Panchayat. Respondent No. 2 is the Taluka Development Officer and respondent No. 3 is an

elected member of the Gram Panchayat. u/s 60 of the Gram Panchayats Act 1961 Act No. VI of 1962 hereinafter referred to as the Act any

member of a Gram Panchayat who is absent for more than three consecutive months from the Gram shall cease to be a member and his office shall

be vacant. u/s 50 Clause (2) any dispute as to whether a vacancy has or has not occurred under that section shall be referred for decision to the

competent authority. It is not in dispute that the Taluka Panchayat was appointed as a competent authority by the Government u/s 2 Clause (5) of

the Act. The Taluka Panchayat had by a resolution dated 15th November 1963 hereinafter referred to as the first resolution assigned the powers

of the competent authority u/s 50 to the executive committee of the Taluka Panchayat and by another resolution hereinafter referred to as the

second resolution or the impugned resolution dated 27th December 1963 delegated the powers of the competent authority u/s 50 to respondent

No. 2 u/s 321 Clause (4)(iii) of the Act. Now respondent No. 3 was on account of his alleged absence from the Gram for a period of more than

three consecutive months by a resolution of respondent No. 1 dated 26th March 1964 removed from membership of the Gram Panchayat in

accordance with Section 50(1)(a) of the Act and respondents Nos. 2 and 3 were accordingly informed. Respondent No. 3 on the 2nd April 1964

therefore applied to respondent No. 1 to refer the dispute u/s 50(2) of the Act as to whether a vacancy had occurred. By another application

dated 13th April 1964 respondent No. 3 asked respondent No. 1 to treat his application as an application to the competent authority. The said

application was entertained by respondent No. 2 as Miscellaneous Application No. 1 of 1964-65. The petitioner raised two preliminary

objections:

(1) that the application was incompetent as it was not addressed to the proper authority and

(2) that it was time barred as it was not made within 15 days as required by the newly added proviso to Section 50 as per the Amending Act 53 of

1963.

Both these objections were overruled by respondent No. 2 and he came to the conclusion that according to the second resolution he was entitled

to act as the competent authority by virtue of delegation made in his favour and he therefore ordered that the matter should be further proceeded

with. The petitioner has therefore filed the present petition to challenge the second resolution and for quashing the proceedings before respondent

No. 2. Respondent No. 2 has filed the affidavit in reply to the petition and he has contended that the first resolution amounted to an illegal

delegation and the second resolution was not by way of an amendment and it

was legal and proper and he had therefore jurisdiction to deal with the matter.

3. Mr. Rawal for the petitioner challenges the jurisdiction of respondent No. 2 on the ground that the second resolution delegating the functions of the competent authority to respondent No. 2 was illegal and ultra vires on the following grounds:

(1) That it was not passed with the 2/3rd majority as required u/s 116 for cancelling or amending the first resolution

(2) that such a function could not be delegated u/s 321(4)(iii) and

(3) that the notice of the meeting was illegal as it did not comply with the mandatory requirements of Rule 14.

It is not disputed before us that the second resolution was not passed with the 2/3rd majority as required u/s 116. But the contention of Mr. Daru

is that no such quasi-judicial function could be assigned to a committee or in any case no such resolution was necessary for assigning the function

u/s 50 to the executive committee and the first resolution was therefore entirely unnecessary and a mere surplusage and further that in any event

such a delegation of a quasi-judicial function of a competent authority to an executive committee which was not officer sub-ordinate to the Taluka

Panchayat as contemplated by Section 321(4)(iii) would be illegal and therefore it could not affect the validity of the second resolution which duly

empowered respondent No. 2 to decide the dispute u/s 50(2) of the Act.

4. In order to appreciate the rival contentions it would be proper to consider the scheme of the relevant sections at the outset. Section 50(1)(a)

provides that any member of a gram panchayat...who is absent for more than three consecutive months from the gram unless leave not exceeding

four months so as to absent himself has been granted by the gram panchayat shall cease to be a member and his office shall be vacant and

thereupon the panchayat shall as soon as may be inform him that the vacancy has occurred. u/s 60 Clause (2) any such dispute as to whether a

vacancy has or has not occurred under the said section shall be referred for decision to the competent authority whose decision shall be final. The

proviso added by Amending Act 53 of 1963 enacts that such reference shall not be entertained if it is made after the expiry of fifteen days from the

date on which panchayat informs under Sub-section (1) the member as to the

vacancy. Section 2 Clause (5) defines a competent authority to mean any Government Officer panchayat or authority as the State Government may by notification appoint to perform the functions of a competent authority under such provisions of the Act and in respect of such panchayats as may be specified in the said notification. By the notification dated 11th June 1963 published in 1963 Gujarat Government Gazette Part I A page 495 respondent No. 1 the Taluka Panchayat was appointed by the State Government as the competent authority for the purpose of Section 50 and other sections mentioned therein. Section 8 Clause (4) provides that a Taluka Panchayat...shall exercise such powers perform such functions and duties and shall have such responsibilities and authority as are provided by or under the Act or any other law for the time being in force. Section III Sub-clause (1) provides that for the performance of its functions a Taluka Panchayat shall constitute the seven committees of which under Sub-clause (vii) an executive committee shall perform functions pertaining to finance homeguards and village defence and such other functions and duties of the panchayat as are not assigned to any other committee. So the executive committee is a residuary committee which by its very constitution is invested with all the functions of respondent No. 1 which are not assigned to any other committee and such functions would inhere in that committee and no specific resolution would be necessary to empower it with any such residuary functions. Section 112 Sub-clause (1) provides that the Education Committee shall in performing its functions exercise the powers of the Panchayat. Sub-clause (2) however provides that other committees constituted u/s III shall in the performance of their functions exercise such powers and discharge such duties of the Taluka Panchayat as may be assigned to them by the Panchayat. Sub-clause (3) then provides that a Taluka Panchayat may at any time withdraw from any committee other than the Education Committee any of the powers functions and duties assigned to it and assign the same to any other committee. Section 115 provides that all questions before a meeting of a Taluka Panchayat or committee thereof shall be decided by a majority of votes of the members present unless otherwise provided in the Act.

Section 116 which is material runs as under:

No resolution of a Taluka Panchayat shall be modified amended varied or

cancelled by a Panchayat within a period of three months from the date of the passing thereof except by a resolution supported by two-thirds of the total number of members of such Panchayat.

Mr. Rawal's contention is that Section III Sub-clause (1) refers to ordinary functions of respondent No. 1 Taluka Panchayat for performance of

which various committees are to be constituted but for such special functions as of a competent authority which do not inhere in the Panchayat but

which it obtained by virtue of its appointment u/s 2(5) by the State Government the executive committee would have no residuary jurisdiction by

reason of its constitution itself. That is why u/s 112 the executive committee had to be specially empowered for exercising the powers u/s 50 by the

first resolution and the said resolution having been amended or cancelled by the second or impugned resolution within three months and without

2/3rd majority as required u/s 116 the second resolution was ultra vires and illegal. There are three steps in this argument and Mr. Rawal in order

to succeed must establish all the three points:

(1) that the functions u/s 50 as a competent authority were not by its very constitution invested in the executive committee

(2) that it was necessary by a resolution to assign to the executive committee the functions of a competent authority which were vested in the

panchayat by its appointment u/s 2(5) and

(3) that the second resolution which was passed within three months and without the requisite majority u/s 116 was a resolution amending or

cancelling the previous resolution.

5. Now Section III enacts that a Taluka Panchayat shall constitute seven committees for the performance of its functions which would mean not

only the administrative affairs of the Panchayat as specified u/s 117 under the heading administrative powers and duties. An obligatory duty is cast

under that section on the Taluka Panchayat to make reasonable provision in regard to all matters specified in Schedule II in the various spheres of

health education etc. u/s 118 certain discretionary functions are also specified as functions of the Taluka Panchayat and in addition u/s 118(7) a

Taluka Panchayat is required to perform such other duties and functions as are entrusted to it by or under any law for the time being in force. Thus

not only the administrative functions but also the functions entrusted by or under

any other law are also included in the functions of the Taluka Panchayat. Chapter VI specifies certain provisions as to transfer of certain functions under various enactments to the Panchayat. Under Sections 149 to 151 the State Government can entrust the Panchayat with the functions and duties relating to collection of land revenue including cesses and other duties and by a notification it can confer powers of a revenue officer for that purpose. u/s 155 functions of the District School Board can be entrusted by the State Government under the Primary Education Act 1947 and the powers exercised by the District School Board could be similarly conferred on the Panchayat. Section 156 provides for delegation of powers functions and duties of the Registrar of the Co-operative Societies. u/s 2(5) the functions of the competent authority can be conferred by appointing the Taluka Panchayat as a competent authority by a notification issued by the Government in respect of such of the provisions as may be mentioned in the notification. That is why Section 8 Clause (4) in terms provides that a Taluka Panchayat shall exercise such powers perform such functions and duties and shall have such responsibilities as are provided by or under the Act or any other law for the time being in force. Therefore whatever functions are entrusted to the Taluka Panchayat would become part and parcel of the Taluka Panchayat and they would become its functions within the meaning of Section 111(1). A function as meaning any activity may be of various kinds. It may be administrative or quasi-judicial as in the case of a competent authority deciding a dispute or of levy of taxes or collection of land revenue or cesses or even of subordinate legislation or making bye-laws as in Section 321. But all of them would be the functions of the Taluka or District Panchayat specified. The sources of these functions may be of a varied character because the Taluka Panchayat is to perform functions not only specified by the Act but even functions specified by any other law or even functions not specified by any direct provision of this law but then under any provision of this law. The functions of a competent authority which the Taluka Panchayat has to perform by virtue of its appointment u/s 2(5) would also be a function which it has to exercise by virtue of an appointment made under a provision of the Act and which it has to perform as provided under the Act. Mr. Daru vehemently argued that such functions which are of a quasi-

judicial nature or which are legislative in character like making the bye-laws or the taxation function would always have to be performed by the Panchayat itself and in the absence of any express provision could not be exercised by any committee and could not be delegated to any committee of such a Panchayat. Mr. Daru asked us to restrict the wide meaning of the term its functions in Section 111(1) by arguing that a function of a quasi-judicial nature which is entrusted by reason of the confidence and trust reposed in the named authority would not be capable of being assigned to any committee of the Panchayat and such functions should necessarily be exercised by the Panchayat itself. Now Mr. Daru also could not dispute that the term its functions was of the widest amplitude but he argued that on general principles such a function of a quasi-judicial nature could not be included in the wide ambit of this provision which really contemplated the carrying on only of the day to-day administration with the aid of the committees of the parent body. Mr. Daru argued that such a committee may not be an exact microcosm of the parent body and therefore the functions which are entrusted by virtue of confidence reposed in the named authority could not have been intended to be assigned to the committees of the main body. In this connection Mr. Daru relied upon a decision in *General Council of Medical Education and Registration of the United Kingdom v. The Dental Board of the United Kingdom* (1936) I Ch. D. 41. In that case Section 16(4) of the Dentists Act 1921 which laid down that for the purpose of the exercise of their functions under the Act and the Dentists Act 1878 the General Medical Council can act by an executive committee of the Council including at least one additional member was construed to mean that it did not enable them to delegate to any such committee the disciplinary powers over dental practitioners conferred on the General Medical Council. That case was not decided on any general principle which Mr. Daru invokes but it seems to have been decided in the context of the scheme of the Act in question. Besides Section 16(4) there was Section 16(1) which provided that the General Council shall for the purposes of the exercise of its functions under the Dentists Act 1878 and 1921 Act consist of the ordinary members of the Council and of three additional members to be appointed by the Privy Council. At page 48 it was observed that:

It is quite true that Sub-section 4 of Section 16 if considered by itself is in its terms wide enough to admit of the construction that the General

Council may delegate all its powers and duties under the Acts of 1878 and 1921 to an executive committee.

But it was held that having regard to the object with which the 1921 Act was passed and to the position before its passing Section 16(4) ought not

to be construed in the widest sense of the words used in it but as conferring power on the General Council to act by an executive committee only in

respect of those matters in which the General Council was not required to act itself. This conclusion was arrived at on the ground that otherwise

Section 16(1) would to a large extent be redundant. Thus it is clear that this decision did not proceed on any general principle but was based on

the harmonious construction of Section 16(1) and Section 16 and in that context a restricted meaning was given to the wide power in Section

16(4). Mr. Daru therefore concentrated his attack on the ground that there is intrinsic evidence in this Act to show that the Panchayat must act by

itself in the cases of such quasi-judicial functions and not through its committees. For this purpose he relied on the word its functions in Section

111(1). He distinguished these functions from the functions of the competent authority which came to be entrusted to the Taluka Panchayat by

virtue of its appointment as the named authority u/s 2(5) of the Act. Mr. Daru therefore argued that these are functions of a competent authority

which are entrusted to the Taluka Panchayat and which it is bound to perform by reason of Section 8 Clause (6) but they still remained the

functions of the competent authority and they do not become the functions of the Taluka Panchayat. It is difficult to agree with Mr. Daru in this

submission. Section 8(4) in terms provides that Taluka Panchayat shall not only perform the functions entrusted to it by the Act directly but it

further provides that it shall also perform all functions entrusted to it under some provision of the Act which includes Section 2(5) and further it is

also to perform the functions entrusted even by or under any other law. As we have already said the sources from which these functions may be

derived may be many but once the function is derived it becomes part and parcel of the function of the Taluka Panchayat and while the Taluka

Panchayat is acting in the course of discharging that function all the powers and duties which are exercised would be the powers and duties of the

Taluka Panchayat itself. Mr. Daru argued that in that event such a small body like a committee would be able to decide such an important dispute

which the legislature in its wisdom left to the entire parent body. We are not concerned with the policy of the legislature but with what the

legislature in terms provides by enacting sections like Section 111 that for the performance of all its functions a Taluka Panchayat shall constitute

Committees. There is no rule of construction applicable to such a case which would justify us in restricting the wide amplitude of the words its

functions to only day-to-day or administrative functions referred to in Sections 117 or 118. The very nature of these bodies is such that such a body

must act through its committees as otherwise there would be a great time lag. If with this end in view the legislature in terms provides working

through its committees we must hold that such a Clause would cover even such quasijudicial functions unless the Act in terms or by necessary

implication excluded such functions from their ambit. Therefore the term its functions must be construed to mean all the functions which are

entrusted to the Taluka Panchayat by or under the Act or under other provision of law as contemplated by Section 8(4) of the Act. Once we come

to that conclusion u/s 111(1)(vii) the executive committee by its very constitution could perform all residuary functions which are not assigned to

any other committees and there would be no necessary or rather no scope to assign any such residuary function to the executive committee. We

cannot agree with Mr. Rawal that a function of the competent authority was not a function which formed part and parcel of the functions of the

Taluka Panchayat so as to vest it in the executive committee by its very constitution as a residuary function. Section 112 contemplates the

assignment or withdrawal of such powers and duties of the Taluka Panchayat which were necessary for the performance of the functions of the

various committees other than the education committee. This Section would come into operation when assignment has to be made to some other

committee than the residuary executive committee or when certain additional powers of the Taluka Panchayat have got to be conferred for

performance of such functions as are found in sections similar to Section 151 viz. a power to recover cesses in performance of functions relating to

the collection of land revenue or cesses. If some other committee than the residuary executive committee had to be invested a resolution of the

Taluka Panchayat assigning such functions and power would be necessary. In the present case the executive committee by its very constitution got

this functions u/s 50 as a residuary function when the Taluka Panchayat was appointed as a competent authority. No additional power was

necessary for performance of such a function by the executive committee. By reason of its constitution u/s 111 Clause (vii) the statute itself

conferred this residuary function on the executive committee and it was only when a departure was imported from this statutory position that a

resolution would be required u/s 112. Therefore the first resolution was obviously misconceived and was unnecessary and superfluous for investing

the executive committee with the power to decide such a dispute u/s 50 which inhered in that committee not by reason of any such resolution but

by its very constitution because of the statutory provision u/s 111 (vii) of the Act.

6. We cannot however agree with Mr. Dam that such an assignment to an executive committee would have amounted to a delegation. The two

questions are totally different in nature and effect and are in exercise of two distinct statutory powers u/s 112 and Section 321(4)(iii) of the Act. In

one case the parent body assigns functions to its limb or organ and does not part with any function in favour of an outsider while in the other case it

delegates its powers to an outsider. Section 321(4) covers cases of delegation to an officer subordinate to the Taluka Panchayat appointed as a

competent authority and it cannot apply to a case of an assignment of function to a committee of the parent body itself which exercises functions by

virtue of the assignment u/s 112 and not by virtue of any delegation. If we had agreed with Mr. Rawal in holding that u/s 111 the functions

entrusted to a Taluka Panchayat as an appointee were not covered in its scope a resolution would have been necessary u/s 112 and it would not

have been illegal as contravening Section 321(4) as such assignment u/s 112 would not involve any question of delegation which is dealt with by

Section 321(4). But in our view as this was also a function of the Taluka Panchayat it inhered in the executive committee by its very constitution as

a residuary function as soon as a Taluka Panchayat was appointed as a competent authority and therefore any resolution which was passed for

empowering the executive authority to discharge this function of the competent authority was wholly misconceived unnecessary and a mere

surplusage.

7. We also cannot agree with Mr. Rawal that the second resolution was by way of an amendment to the first resolution as for we have already said

the nature scope and effect of both these resolutions were totally different. At the time of the first resolution the only question was a proposal of the

executive committee to be entrusted with the functions of the competent authority u/s 50 and other five sections and there was no question of any

delegation to an outside body. No such question of delegation could have been gone into on this kind of proposal. The second resolution could not

therefore be said to be one by way of an amendment to the first resolution as both the resolutions operate in totally distinct fields. Even though the

second resolution is not by way of an amendment Mr. Rawal argued that the second resolution still in terms cancels the first resolution as it states

that the Taluka Panchayat had hereinbefore given to the executive committee powers u/s 50 and other sections under the Act and that after taking

into consideration the letter dated 3rd December 1963 of the Agricultural and Rural Development Department Sachivalaya Ahmedabad it was

resolved that the powers u/s 50 and other five sections of the Act which were hereinbefore given to the executive committee were in its place then

delegated to the Taluka Development Officer Respondent No. 2. Such a resolution would have been hit by Section 116 as it was cancelling the

first resolution but we are of the view that the first resolution was unnecessary misconceived and the purported cancellation was therefore

ineffective in the eye of law. The power still inhered in the executive committee by virtue of its very constitution and it could not be cancelled as it

could never be conferred by any resolution but it flowed from the statute itself. It was only at the second occasion that any question of delegation

arose and by the second resolution the powers u/s 50 were delegated to respondent No. 2. Therefore of the first resolution was misconceived and

ineffective no question of its cancellation could legally arise.

8. Therefore Mr. Rawal having failed to establish that the first resolution was necessary to empower the executive committee or that such function

had not inhered in the executive committee by its very constitution he cannot succeed in challenging the second resolution which was the only legal

and effective resolution in exercise of the powers u/s 321(4)(iii).

9. So also Mr. Rawals objection as regards Rule 14 having not been complied with must also fail. Rule 14 provides for the notice of amendment of

a resolution. It states that:

Subject to the provisions of Section 116...the notice of motion for modification amendment variation or cancellation of any resolution of a

Panchayat shall be given to the members in accordance with the provisions of Rule 7 and the notice shall set forth fully the resolution which is

proposed to be modified amended varied or cancelled at the meeting and also the motion for the modification amendment variation or cancellation

of such resolution.

As we have already held that the second resolution was the only legal and effective resolution there was no question of any amendment or

cancellation of the first resolution for passing a valid second resolution and therefore Rule 14 would have no application whatsoever.

10. As regards the third point Mr. Rawals contention is that u/s 321(4)(iii) of the Act only a power simpliciter could be delegated and not a function

like this u/s 50 which is of a quasi-judicial nature. For this purpose he took us through a number of sections in the Act relating to the competent

authority. Sections like Sections 70 and 58 provide for power to accept a resignation of the President of a Panchayat. Sections 63 and 75 give a

power to suspend the President or Vice-President. Section 119(2) deals with the power to sanction transfer or Immoveable properties. Section

145 146 and 148 provide for receipts of budget estimates and annual reports and Section 43(2) Section 55(2) and Section 67 deal with power to

fix dates of election. These sections were relied upon as instances of mere enabling powers while Sections 44(6) and 50 were relied upon on the

other hand as instances of quasi-judicial functions for deciding disputes regarding the elections or regarding vacancies. We cannot agree with Mr.

Rawal that power simpliciter alone can be delegated and not other powers which have got to be exercised in discharge of the various functions.

Once we interpret Section 111(1) as covering all the functions of the Taluka Panchayat all the functions of the competent authority would become

functions of the Taluka Panchayat. While discharging those functions various powers or duties may have to be exercised or performed. There is

nothing in the context of Section 321(4)(iii) to indicate that only power

simpliciter was contemplated as a proper subject of delegation. From the very fact that the competent authority's functions are of such a varied character it is implicit in it that for all the functions the power of delegation must have been intended by the legislature. Whatever are the functions of the competent authority could always be delegated u/s 321(4)(iii) of the Act. Mr. Rawal's attack on this ground also must therefore fail.

In the result it is not shown that the second resolution was illegal and ultra-vires and that respondent No. 2 had no jurisdiction to deal with the

dispute in question. The petition therefore fails and is dismissed. The Rule is discharged with costs.