

(1970) 04 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 918 of 1969

Shivamma and Others

APPELLANT

Vs

A.B. Shivanna and Others

RESPONDENT

Date of Decision : 01-04-1970

Acts Referred:

Mysore Village Panchayats and Local Boards Act, 1959 — Section 5 (2), 5 (5), 5 (6)
Mysore Village Panchayats and Local Boards Rules — Rule 3, 4

Citation : AIR 1972 Kar 167

Hon'ble Judges : M. Santhosh, J;G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Full Bench

Advocate : B.S. Keshava Iyengar, for the Appellant; K.S. Puttaswamy and T.R. Subbanna, for the Respondent

Judgement

Santhosh, J.—The question of law referred to the Full Bench for opinion is:--

"Whether the expression: "required number" occurring in Sub-section (5) of Section 5 of the Act has reference to the number fixed by the Deputy Commissioner under Sub-section (1) or to number eleven referred to in Sub-section (6) of that section?"

To enable us to decide the question of law it is necessary to refer to a few facts of the case. u/s 5(1) of the Mysore Village Panchayats and Local Boards Act, 1959 (which will be hereinafter referred to as the Act), the Deputy Commissioner Mysore, determined that the Village Panchayat of Have shall consist of 13 members. Of these, nine were general seats, while two seats each under Sub-section (2) of Section 5 of the Act read with Rules 3 and 4 of the Mysore Village Panchayat Rules, were reserved for women and scheduled castes. At the elections held in March 1968, nominations were filed for the 9 general seats and one seat reserved for women. Ten candidates were duly elected in the said elections. Thereafter, the Deputy Commissioner, under Sub-section (5) of Section 5 of the Act, appointed the first petitioner in the Writ Petition for the remaining reserved seat for women, and the other 2 petitioners for the 2 seats which were

reserved for the representatives of the scheduled castes, thus bringing the total number of members to 13.

The first respondent filed an appeal against the said order of nomination of the 3 petitioners and the Divisional Commissioner allowed the appeal following the decision of this Court in *D. Kemparaja Ura v. Bomrnegowda*. (1962) 40 Mys LJ 141 and *Guruswamy Setty v. State of Mysore*. (1969) 1 Mys LJ 69. These two decisions have laid down that Sub-section (5) is controlled by Sub-section (6) of Section 5 of the Act and that the expression "required number" occurring in Sub-section (5) has reference to the number "eleven" referred to in Sub-section (6) and that the Deputy Commissioner can appoint only such number of members as will bring the total to eleven.

2. The petitioners challenged the said order passed by the Divisional Commissioner, in Writ Petition No. 918/69. When the said writ petition came up for hearing before Tukol and Honniah. JJ.. their Lordships were of opinion that Sub-Section (6) does not control Sub-section (5) and that the harmonious interpretation of the entire section requires a reading of the two Sub-sections independently of one another. The view expressed by the two decisions of this court not only abridges the power of the Deputy Commissioner under Sub-section (5) but also abridges the ambit of Sub-section (1) leading, in the present case to a denial of the right of representation to reserved classes under Sub-section (2). Their Lordships were also of the opinion that Sub-section. (6) lays down a general proposition as regards the constitution of a valid Panchayat. Since Sub-section (6) of that section does not control any of the other Sub-sections, their Lordships thought, the two decisions of this court referred to above, required reconsideration by a larger Bench, and accordingly referred the question of law to a Full Bench.

3. The relevant provisions of Section 5 of the Act, read as follows:--

"Constitution of Panchayats:--

(1) Subject to the provisions of this Act a Panchayat shall consist of such number of members, not being less than eleven or more than nineteen in number,

as the Deputy Commissioner may determine, all of whom shall be elected.

(2) In any Panchayat such number of seats shall be reserved for the representatives of Scheduled Castes and Women as may be prescribed, and the reservation of seats in the case of women shall not be less than two:

xx xx xx xx xx xx (5) If for any reason the election results in the return of less than the required number of members, then the Deputy Commissioner shall appoint such number of persons, as will make up the required number, being persons who would have been qualified to be elected.

(6) Where the Deputy Commissioner determines that the number of elected members of a Panchayat shall exceed eleven, failure to elect more than eleven

members shall not affect the constitution of the Panchayat".

4. It is not necessary to set out the provides to Sub-section (21 of Section 5 nor sub-Clauses (3) and (4) of the Section as they are not relevant for our purpose.

5. We will now refer to the two decisions of this court mentioned in the reference. In (1962) 40 Mys LJ 141 Somnath Iyer. J. speaking for the Bench observed that the "required number" referred to in Sub-section (5) is not the number determined by the Deputy Commissioner under Sub-section (1) but has reference to eleven members required under Sub-section (6). Their Lordships were of the opinion, that Sub-section (6) is in the nature of a provides to Sub-section (5) and the Deputy Commissioner could appoint only eleven members though the strength determined under Sub-section (1) was that the Panchayat shall consist of 13 members. The effect of Sub-section (6) is that when at least eleven members are elected to a Panchayat the panchayat is fully and validly constituted.

6. In (1969) 1 Mys LJ 69, their Lordships have followed the earlier Bench Decision of (1962) 40 Mys LJ 141. Their Lordships have laid down, that the "required number" of members of which Sub-section (5) speaks of is the number necessary to bring into being a properly constituted panchayat and that number is the number specified in Sub-section (6) and not Sub-section (1). The clear implication in Sub-section (6) was that when eleven members were elected the panchayat stands properly constituted, and so could function, even if there is no election to the remaining seats.

7. Sri Keshava Iyengar learned counsel appearing on behalf of the petitioners, has argued that Sub-section (6) does not control Sub-section (5). The "re-quired number*" referred to in Sub-section (5) has reference to the number determined by the Deputy Commissioner under Subsection (1) of Section 5. He contends that Sub-section (6) is a general provision applicable to all Panchayats and has an independent purpose. It only refers to the proper constitution of the Panchayat. In the elections held if the requisite number of members are not elected, as the nomination by the Deputy Commissioner under Sub-section (5) is bound to take some time, and if 11 members are duly elected, the Panchayat would be properly constituted and could function and discharge the duties of the Panchayat until the requisite number determined under Sub-section (1) of Section 5 are nominated by the Deputy Commissioner.

The contention of Mr. Keshava Iyengar is. that the words "required number" have reference to the earlier antecedent clause, namely, sub-section (1). and not to subsequent clause, i. e., Subsection (6). He argued that if Sub-section (6) is held to control Sub-section (5). it would lead to anomalous situations and would result in iniustice. If subsection (5) is interpreted as referring to Sub-section (1). no such complications would arise Mr. Keshava Iyengar has also relied on Clause (i) of Section 8(1) of the Act. where, in a case of failure to elect members to the Panchayat. power is given to the Deputy Commissioner to appoint an

Administrative Committee, the total number of members of the committee being the same as that fixed by him under Sub-section (1) of Section 5. From this it is argued that the Deputy Commissioner has similar power to nominate under Sub-section (5) the number of members determined by him under sub-section (1).

8. Sri Subbanna learned counsel appearing on behalf of the respondent, has contended that the two decisions of this Court referred to above have been rightly decided and that Sub-section (5) is controlled by Sub-section (6). The expression "required number" occurring in Sub-section (5) has reference to number eleven referred to in Sub-section (6). He argued that if the intention of the legislature was that the words "required number" mentioned in Sub-section (5) referred to Sub-section (1) of Section 5. the Legislature would have used the words to that effect in Sub-section (5). In Subsection (1) of Section 8, the Legislature has clearly stated that the Deputy Commissioner shall appoint an administrative committee the number of such persons being equal to the number of members determined in Sub-section (1) of Section 5. Sri Subbanna has relied on a decision reported in *Annandayya Shankarayya Salimath v. Dy. Commr. Dharwar*. (1969) 1 Mys LJ 71.

9. The above decision relied on by the learned counsel for respondent 1 is of no assistance to him. The said decision lays down that where no election was held as no one filed any nomination for any of the seats, the case is not one in which the power u/s 5(5) of the Act to appoint members to the Panchayat could be exercised. We are of opinion that in considering Section 5 there is no need to interpret or rely on other sections of the Act which have no direct bearing on the construction of the said section.

10. Section 5 of the Act provides for constitution of Panchayats. Sub-section (1) of that section provides for determination of the number of members which a Panchayat shall consist of. by the Deputy Commissioner. The number to be so determined shall not be less than eleven or more than nineteen, all of them to be electable (elected?). Sub-section (2) provides for reservation of seats in favour of women and scheduled castes, and in so far as women are concerned, it shall not be less than two. It is unnecessary to refer to the provisions therein which relate to the conditions regarding the reservation in favour of scheduled castes. Subsection (3) provides for determination of constituencies the extent thereof and the number of seats allotted to each of such constituencies including those reserved in favour of Scheduled castes and women.

Sub-section (4) provides for the norms to be observed in regard to allotment of the number of seats in a constituency. With reference to the population as observed in the last preceding census. Sub-section (5) provides for appointment by the Deputy Commissioner of the required number of members in the event of an election resulting in the return of less than the required number. Sub-section (6) provides that in cases where the Deputy Commissioner has determined the number of elected members of a Panchayat shall exceed eleven, failure to elect more than eleven members shall not affect the constitution of the Panchayat.

Sub-section (7) provides for the publication of the names of the members elected as well as those appointed by the Deputy Commissioner.

11. Having regard to the above provisions of Section 5 of the Act. we are of the opinion that Sub-section (6) of Section 5. does not control Sub-section (5), in any manner. Sub-section (6) is a general Provision as regards the minimum number of members required for the constitution of a valid Panchayat. The language of the said Sub-section is in the negative and it says that "failure to elect more than eleven members shall not affect the constitution of the Panchayat". To our minds. The purpose of Sub-section (6) seems to be that if for any reason, the election results in the return of eleven or more members, but fails short of the number determined by the Deputy Commissioner under Sub-section (j), the Panchayat can commence functioning and for that limited purpose, it must be deemed to have been validly constituted.

By saying this, it does not mean that the vacancies to make up the required number as determined as per Sub-section (1) should remain unfilled by the Deputy Commissioner in exercise of his power under Sub-section (5) of that section. It is also our view that Sub-section (6) is intended for the purpose of enabling the Panchayat to commence functioning as duly constituted Panchayat with a view to provide against any delay that may be caused in the making of the appointments to the seats unfilled by elections by the Deputy Commissioner under Sub-section (5) of that section. It is also indicative of the fact that the Legislature thought that a minimum of eleven members would be sufficient for the purpose of effective functioning of the Panchayat. Beyond this, in our opinion, it is not intended to serve any other purpose.

Otherwise it would render ineffective any determination of the strength of the Panchayat by the Deputy Commissioner under Sub-section (1) which is intended for the purpose of providing effective representation to the constituents of a Panchayat area, and which in the opinion of the Deputy Commissioner should be represented by the number determined by him under that Sub-section. Further we are of the opinion that there is force in the contention of Sri Keshava Iyengar that the words "required number" occurring in Sub-section (5) have reference to a clause antecedent to that Sub-section, namely, Sub-section (1) of Section 5 and not to a subsequent clause, such as Sub-section (6). The words "required number" occurring in Sub-section (5) are words which must be taken to be referring to the last sensible antecedents occurring in the statutory provisions.

In this connection, we refer to the observations of Blackburn. J. in *Eastern Countries and London and Blackwell Rly, Cos. v. Marriage*. (1800) 11 ER 639. (See Bindra on Interpretation of Statutes at page 95). The passage reads thus:

"It is an ordinary rule, not so much of law as of grammatical construction of English language, that words of relative *prima facie* refer to the nearest antecedent".

12. If the "required number" occurring in Sub-section (5) refers to Sub-section

(6) several anomalies would arise. For example, as in the instant case, if ten members were elected to the Panchayat and one of them was a woman, then the Deputy Commissioner can only appoint one more person. But under Sub-section (2) of Section 5, read with Rules 3 and 4 of the Mysore Village Panchayat Rules, the number of seats reserved for women is two, and two more seats are also reserved for Scheduled Castes. If the Deputy Commissioner could appoint only one more person, the purpose of the prescribed reservation in favour of women and scheduled castes would be defeated, and it would result in the denial of the right of representation to the aforesaid classes for whom seats are expressly reserved. Further, such a view would, in effect, defeat the mandatory provisions of Subsection (2).

The Legislature could not have intended such an anomalous result, while enacting Section 5. On the other hand if the expression "required number" occurring in Sub-section (5) is construed as referring to the number fixed by the Deputy Commissioner under Sub-section (1), the anomalies pointed out above would not arise.

13. It is also well settled that if there are in an enactment, two provisions which could not be reconciled with each other, they should be so interpreted, that effect could be given to both. In this view, by adopting the interpretation suggested by us, it is possible to give full effect to all the provisions of Section 5.

14. For the above reasons with great respect, we do not find it possible to agree with the opinion expressed by the learned Judges who decided the cases (1962) 40 Mys LJ 141 and (1969) 1 Mys LJ 69. We are clearly of the opinion that Sub-section (6) of Section 5 does not control Sub-section (5) of that section. A harmonious interpretation of the entire section requires reading of the two subsections independently of one another. Therefore, our answer to the question referred is as follows:--

"The expression "required number" in Sub-section (5) of Section 5 of the Act has reference to the number fixed by the Deputy Commissioner under Sub-section (1) and it does not relate to number eleven occurring in Sub-section (6) of that section".

15. Reference answered accordingly.