
(1978) 09 KAR CK 0016
In the Karnataka High Court
Case No : MFA 958/74

Shivanna and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-09-1978

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 5 (6)

Citation : (1979) 1 KarLJ 261

Hon'ble Judges : Rama Jois, J

Judgement

1. The petitioners, who are the candidates for election as members of Honnudike village Panchayat in respect of ward No. 3, have presented this writ petition questioning the legality of the notification issued by the Election Officer for purposes of holding election to the offices of the chairman and vice-chairman of the Panchayat under the provisions of the Karnataka Village Panchayats and Local Boards Act, 1959 (hereinafter referred to as the Act).

2.Facts: General election in the village panchayat of Honnudike village was scheduled to take place 8-7-78. The total strength of the panchayat, as fixed by the Deputy Commissioner in exercise of the powers under sub-section (1) of Sec 5 of the Act, is thirteen. In respect of Ward No. 3 the number of members required to be elected is three. Election for the panchayat in respect of other constituencies, except Ward No. 3, has taken place on 8-7-1978. Ten persons have been declared elected by the Election Officer. The Deputy Commissioner has also published the names of the aforesaid ten persons as having been elected as members of the panchayat under sub-section (7) of Section 5 of the Act read with Rule 47 of the rules framed under the Act. Election for the office of three members from ward no 3 has not taken place on account of some defect in the printing of ballot papers. After the names of ten persons who have been elected from the other wards of the panchayat was notified by the Deputy Commissioner, the Election Officer issued the notice dated 14-8-1978 (Ex. A) fixing 23-8-1978 as the date for the election of the chairman and the vice-chairman. The petitioners, who are the candidates in respect of Ward No. 3 for which no election

has taken place, have challenged the legality of the notice so issued on the ground that in accordance with the provisions of the Act, the panchayat has not yet been constituted and therefore, no election of the Chairman and the vice-chairman could take place.

3. Sri B.V. Balaji, learned counsel for the petitioners placed reliance on Sub-sec. (6) of Sec. 5 of the Act and submitted that until at least eleven members were declared elected out of thirteen, there is no valid constitution of the panchayat and consequently, no notice for purposes of election of chairman and vice-chairman can be issued under Sec. 30 of the Act.

4. Sub-sections (1) and (6) of Sec. 5 of the Act, which are relevant, read as follows:

"5. 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.

* * * *

(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."

Sub-section (1) of Sec. 5 of the Act empowers the Deputy Commissioner of the concerned district to determine the total number of membership of each panchayat. According to the said provision, the minimum number which can be fixed is eleven and the maximum is nineteen. In exercise of the said power the Deputy Commissioner has fixed the total membership of the panchayat concerned in this case at thirteen. Sub-section (6) of Sec. 5 states that in cases where the number of elected members of a panchayat is fixed more than eleven, failure to elect more than eleven members shall not affect the constitution of the panchayat. Though the wording of sub-sec. (6) of Sec. 5 is in the negative, the clear meaning of the said provision is that in respect of a panchayat whose total membership is more than eleven, for valid constitution of such panchayat, at least eleven members should be elected. Or, in other words in such a case, if eleven or more members are declared elected, then only the Panchayat can be said to be validly constituted or reconstituted, as the case may be.

5. The above question is covered by a Division Bench decision of this Court in *Siddalingappa Hanumappa v. Election Officer*, (1960)1 Mys LJ. 397 and also a Full Bench decision of this Court in *Shivamma v. Shivanna*, AIR. 1972 Mys. 167.

6. In view of the said decisions, it should be held that as the total membership of the panchayat in question is thirteen and only ten members have been declared elected, the Panchayat is not validly re-constituted. If the Panchayat is not validly re-constituted then under S. 30 of the Act no action can be taken to hold the election of chairman and vice-chairman; because, such action can be taken only

after the panchayat is validly constituted or re-constituted.

7. Shri V.K. Govindarajulu, learned counsel for the respondents, however, invited my attention to S. 25 of the Act, which provides for the commencement of the term of office. According to the said section the term of office of members commences from the date of publication of their names in the prescribed manner if by that date the term of office of outgoing members has already expired, He therefore contended that the term of office of the ten members has already commenced from 5-8-1978 on which date their election was notified by the Deputy Commissioner as required by sub-sec. (7) of Sec. 5 of the Act read with rule 47 of the Rules, and consequently they are entitled to elect the chairman and the vice-chairman.

8. In the two decisions referred to earlier, it is clearly held that for a valid constitution of a panchayat, whose total strength is more than eleven, publication of the result of election of at least eleven members, is a must. Therefore, it is not possible to accede to the contention urged for the respondents, that even without valid constitution of the Panchayat, the ten members whose election has been notified by the Deputy Commissioner can consider themselves as a validly constituted panchayat and proceed to elect the chairman or the vice-chairman. It is no doubt true that according to the wording of S. 25 of the Act, the term of office of the members elected at a general election or appointed under S. 5 commences on the date immediately after the expiry of the term of office of the out going members of the Panchayat or on the date of publication of their names under sub-sec. (7) of S. 5, whichever is later. In this case there is no dispute that the term of office of the former members had already expired. Therefore, if we go by the wording of S. 25, the term of office of the ten members commenced from the date of publication of their names by the Deputy Commissioner i.e., 5-8-1978. But in my opinion, S. 25 cannot be considered in isolation S. 25 of the Act must be interpreted harmoniously with the other provisions of the Act viz., S. 30 and sub-sec. (6) of Section 5 of the Act. As stated earlier, on the basis of the wording of sub-sec. (6) of S. 5, this Court has held in the aforesaid two decisions that in respect of a panchayat, whose membership is more than eleven, the Panchayat gets validly constituted only on the date when at least the election of 11 persons are notified. Though S. 30 of the Act also speaks of calling of a meeting for the election of chairman and vice-chairman within four weeks from the date of the commencement of the term of office of the members of the panchayat under S. 25, it also pre-supposes the valid constitution or reconstitution of the panchayat. Therefore, it must be held that the date of publication of the names of such number of members elected, sufficient to constitute a valid panchayat, must also be considered as the date of commencement of the term of office of the members. In other words, in the case of a panchayat. if in the first instance, there is only the publication of names of some of the members elected which number is not sufficient to constitute a valid panchayat and subsequently the names of other elected members is published on one or more dates, the date on

which the publication of the names of such number required for the valid constitution or reconstitution of the concerned panchayat, is fulfilled must be taken as the date of commencement of the term of office of members of panchayat under S. 25 and S. 30 of the Act; because, the first essential requisite for the panchayat to function is its valid constitution or re-constitution and without such constitution or reconstitution the commencement of the term of office of members is impossible In other words the date of commencement of term of office of members and the date of constitution or reconstitution of a panchayat has to be one and the same. In the present case, the requisite number of members required to constitute a valid panchayat has not yet been declared elected and published and, therefore, the ten persons, whose names were notified by the Deputy Commissioner as having been elected to the panchayat in question on 5-8-1978, are not entitled to hold the first meeting to elect the chairman and the vice-chairman, as there is no valid reconstitution of the panchayat.

9. For the reasons stated above, I make the following order: Rule made absolute. A direction in the nature of mandamus shall issue to respondent-15 not to hold election to the offices of the chairman and the vice-chairman of Honnudiike Village Panchayat pursuant to the notice dated 14-8-1978 (Ex. A). No costs.