

(1959) 12 MAD CK 0034
In the Madras High Court

The Additional District Panchayat Officer	APPELLANT
Vs	
S. Venkatarama Iyer and Others	RESPONDENT

Date of Decision : 18-12-1959

Acts Referred:

Madras Village Panchayats Act, 1950 — Section 25(3)

Citation : (1960) ILR (Mad) 668 : (1960) 2 MLJ 75

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Judgement

Rajamannar, C.J.—This is an appeal against the judgment of Balakrishna Ayyar, J., in Writ Petition No. 192 of 1959 which was filed in the following circumstances. The term of office of the members of the Kadayannallur Panchayat expired on 18th December, 1958. Anticipatory election of the members to fill up the vacancies which would arise on the expiry of the term of the previous members was completed on 28th November, 1958. The Additional District Panchayat Officer in pursuance of the powers delegated to him by the Inspector of Municipal Councils and Local Boards purported to appoint one Abdul Hameed, one of the newly elected members, as "Temporary" President u/s 25(3) of the Madras Village Panchayats Act, 1950, and he took charge as such on 18th December, 1958. The Regional Inspector of Municipal Councils and Local Boards, Tirunelveli, who is the Election Authority under the relevant rules, appointed the Additional District Panchayat Officer, Tiru-nelveli, as the Election Officer, to convene a special meeting of the Panchayat to conduct the election of the President of the Panchayat. The meeting was fixed on 5th January, 1959. On that day all the fifteen elected members attended the meeting. It was presided over by the Election Officer aforesaid. There was contest between two candidates of whom Muhammad Rowther was declared duly elected as President inasmuch as he had obtained more votes than the other candidate. A notification, was duly published that Muhammad Rowther had been elected President of the Panchayat. Thereupon, one of the members, of the Panchayat filed a writ petition out of which this appeal arises, to call for the records connected with the conduct of the

meeting and election of the President held on 5th January, 1959, at the Panchayat Office, Kadayananallur, and to quash the proceedings electing the new President. The main grounds on which the petitioner alleged the election was illegal and void were the following:

(1) There were no specific rules framed under the Act for the conduct of the election of the President of the Panchayat when the old Panchayat had been dissolved and new members had been elected.

(2) When there was a Temporary President appointed under the provisions of the Act, there was no justification for overlooking and ignoring him.

2. The Additional District Panchayat Officer, Tirunelveli, filed a counter-affidavit in which he supported the validity of the election. According to him, the election was conducted strictly in accordance with the rules and he was the proper person to convene the meeting and preside at it. He further denied that the Temporary President appointed u/s 25(3) of the Act had any right to convene or preside at such a meeting. Balakrishna Ayyar, J., heard and disposed of the petition. He held that there were no rules for the election of a President of the Panchayat in circumstances such as are present in the case before us, that is, when all the members of a Panchayat are newly elected on the expiry of the term of office of the previous set of members. He, therefore, quashed the election held on 5th January, 1959. The Additional District Panchayat Officer, Tirunelveli, has filed this appeal challenging the correctness of the ruling of Balakrishna Ayyar, J.

3. The decision of the question depends upon the interpretation of certain provisions of the Madras Village Panchayats Act and Rules framed thereunder, and so far as this Court is concerned, it is *res Integra*. There can be no doubt as to the importance of the question, because, if the interpretation placed by Balakrishna Ayyar, J., were to prevail, there will be a stalemate in respect of several Panchayats, members of which are newly elected. Though all the members have been elected, it would not be possible to have the President elected validly. Of course, if we are driven to this conclusion, we cannot certainly avoid it, because, it may lead to inconvenience.

4. Before dealing with the reasoning on which the learned Judge, Balakrishna Aiyar, J. came to his conclusion, it will be necessary to refer to material provisions of the Act and the Rules. Section 4(3) provides that every Panchayat will be a body corporate by the name of the village specified in the notification issued u/s 3, and shall have perpetual succession and a common seal. This is an important provision the significance of which was apparently overlooked by the learned Judge. The members of the Panchayat shall be elected in such manner as may be prescribed (Section 7) and admittedly there are rules in force which relate to election of the members of the Panchayat. Section 10 which lays down the term of office of the elected members as five years from the date on which the vacancy occurs, divides vacancies into two broad heads, ordinary vacancies and casual vacancies. Ordinary vacancies shall be filled at ordinary elections

which shall be fixed by the election authority to take place on such day or days within three months before the occurrence of the vacant (Section 10(2)) Under Sub-section (3) (a) and (b) a member elected in a casual vacancy shall hold office only so far as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred. The following are Panchayat.

Section 20.--There shall be a President and Vice-President for every Panchayat.

Section 31--The President and Vice-President shall be elected by the Panchayat from among its members in accordance with such procedure as may be prescribed.

Section 23.--The President or Vice-President shall cease to hold office as such--

(a) in every case, on his election as President or Vice-President of the District Board, or of any other Panchayat in the district;

(b) in the case of the President, on his becoming disqualified for holding the office or on his removal from office or on the expiry of his term of office;

(c) in the case of the Vice-President, on the expiry of his term of office as a member or on his otherwise ceasing to be a member or on his election as President.

The functions of the President are contained in Section 24 and include making arrangements for election of the Vice-President and convening the meeting of the Panchayat Section 25 is of particular importance. It runs thus :

Section 25(1):-When the office of President is vacant the Vice-President shall exercise the functions of the President until a new President is declared elected and assumes office.

(2) If the President has been continuously absent from jurisdiction for more than fifteen days or is incapacitated, his functions during such absence or incapacity shall except in such circumstances as may be prescribed, devolve on the Vice-President.

(3) When the office of President is vacant or the President be continuously absent from jurisdiction for more than fifteen days, or is incapacitated and there is either a vacancy in the office of Vice-President or the Vice-President has been continuously absent from jurisdiction for more than fifteen days or is incapacitated, the functions of the President shall devolve on a member of the Panchayat appointed by the Inspector in this behalf.

The member of the Panchayat so appointed (who shall be styled Temporary President) shall perform the functions of the President subject to such restrictions and conditions as may be prescribed until a new President or Vice-President is declared elected and assumes office, or either the President or the Vice-President returns to jurisdiction or recovers from his incapacity, as the case may be.

(4) Any vacancy in the office of President shall be reported to the election authority, by such person and within such time as may be prescribed, and the election authority shall arrange for the election of the President.

(Sub-sections (5), (6) and (7) are not material).

5. The Rules Relating to the Conduct of Election of Presidents and Vice-Presidents of Panchayats were duly made by the Government and published in the Gazette. They provide (1) for the convening of a meeting for the election and (2) for presiding at such a meeting besides prescribing the procedure for the conduct of the election. The relevant provisions are as follows:

2. (1) The election of the President or Vice-President of a Panchayat shall be held in the office of the Panchayat where there is one, and in case there is no such office in a conspicuous place in the village, by the members at a meeting thereof specially convened for the purpose.

(2)(i) Such meeting shall be convened as soon as possible after the occurrence of the vacancy.

(a) in the case of the election of the President of a Panchayat, by its Vice-President, and if there is either a vacancy in the office of the Vice-President or he has been continuously absent from jurisdiction for more than fifteen days or is incapacitated by the person appointed by the election authority in this behalf; and

(A) in the case of the election of the Vice-President of a Panchayat, by the President of the Panchayat.

(ii) Notice of the day and hour of the meeting shall be given to the members at least five clear days previous to the day of the meeting.

(3) Such meeting shall be presided over:

(a) if held for the election of the President of a Panchayat, in cases falling under Sub-section (3) of Section 25 of the Act by the person appointed by the election authority to convene the meeting and, in other cases by its Vice-President or if such Vice-President himself do stand as a candidate at the election, or in his absence by a member of the Panchayat, not intending to stand as a candidate at the election, chosen by the meeting to preside for the occasion; and

(b) if held for the election of the Vice-President of a Panchayat, by the President of the Panchayat or in his absence, by a member thereof not intending to stand as a candidate at the election chosen by the meeting to preside for the occasion.

The short question which falls for decision in this case is whether Rule 2(2)(i)(a) and Sub-rule (3)(a) apply to the circumstances of this case. According to the learned Judge, in effect, these rules will only apply to casual vacancies.

6. We start with this fundamental notion that a Panchayat constituted for each village is a body corporate having perpetual succession. The Panchayat is constituted for each village u/s 4(1) by the publication of a notification u/s 3(1)

which says that the Inspector may by notification declare any part of a revenue taluk to be a Village Panchayat for the purpose of this Act and specify the name of the village. The Panchayat as a body corporate would continue notwithstanding casual vacancies. When the term of office of one set of members expires by efflux of time, the Panchayat as such is not dissolved. New members come in as a result of new elections. To avoid administrative inconvenience Section 10(2) provides for anticipatory elections, elections which take place within three months before the occurrence of the vacancies. There is no warrant for holding that without a President or Vice-President there can be no Panchayat having a legal existence. Section 20 declares that there shall be a President and Vice-President for every Panchayat. It implies that the Panchayat first exists. Section 21 provides that the President and Vice-President shall be elected by the Panchayat from among its members. This section obviously applies not only to casual vacancies but also to ordinary vacancies. When a President or Vice-President in office ceases to hold office by efflux of time, the election is from among members by the members. It may be mentioned that prior to the Amending Act XXIV of 1957 the President of the Panchayat was being elected not by the members of the Panchayat only but by every voter in the Panchayat area. u/s 21 the President shall be elected by the Panchayat from among its members in accordance with such procedure as may be prescribed. It is this procedure which we find prescribed in the rules mentioned above. The rules were framed under G.O. No. 602, L.A., dated 5th April, 1958, soon after the coming into force of Madras Act XXIV of 1957.

7. We have spent considerable time with the help of arguments by leading counsel including the learned Advocate-General in construing the provisions of Rule 2(2) and (3) of the Election Rules read along with the provisions of the main Act. On a plain reading of the language and giving the terms and expressions their ordinary meaning we are clearly of opinion that the said Sub-rules (2) and (3) of Rule 2 of the Election Rules apply to all vacancies in the office of the President whether they are casual or whether they are ordinary, that is, arising by efflux of time. Rule 2(2)(i)(a) says that in the case of election of the President of a Panchayat the meeting shall be convened by its Vice-President; but if there is a vacancy in the office of the Vice-President, the meeting should be convened by the person appointed by the election authority in this behalf (in the present case by the Additional District Panchayat Officer). Here obviously there is no person filling the office of the Vice-President and therefore there is a vacancy in that office. So the election meeting was properly convened by the person appointed by the election authority as the election officer. Now at such a meeting so convened, who is to preside? Under Sub-rule (3)(a), in cases falling under Sub-section (3) of Section 25 of the Act, the person appointed by the election authority to convene the meeting. The question narrows itself further into this, namely, is the present case a case falling under Sub-section (3) of Section 25 of the Act? Now Sub-section (3) opens with the words "when the office of President is vacant". That is one condition. The other condition is "and there is... a vacancy

in the office of Vice-President.

8. Undoubtedly in the present case both the offices of President and Vice-President are vacant, in the sense that there is no one to fill the office lawfully. The Temporary President appointed under Sub-section (3) is not given the power to convene a meeting for such election.

9. What is a vacancy? The Oxford Dictionary has this:

The fact or condition of an office or post being, becoming, or falling vacant; an occasion or occurrence of this.

A vacant or unoccupied office, post or dignity.

"Vacant" means inter alia a "not filled or occupied, devoid of an occupant". In Anderson's Dictionary of Law we find the following instructive information:

Vacancy is the state of being empty or unfilled.... An old office is vacated by death, resignation or removal. An office newly created is ipso facto vacant at creation.

10. The position therefore is this. The Panchayat of Kadayanallur had been duly constituted by notification u/s 3(1) read with Section 4(1) of the Act. That Panchayat was functioning with members and a President and a Vice-President till 17th December, 1958. u/s 10(2) anticipatory elections had been held to elect members of the Panchayat or to fill the ordinary vacancies in the office of elected members. On and from 18th December, 1958, such elected members were in office but no President or Vice-President had been elected. The previous President and Vice-President had vacated their offices on 17th December, 1958, with the result that there were vacancies in the office of the President and Vice-President. It is because of this circumstance that the Inspector appointed a "Temporary" President. Nothing was said to convince us that the appointment of the Temporary President was invalid or ultra vires. If it was not, then obviously the case fell u/s 25(3). Rule 2(3)(a) expressly provides that a meeting for the election of the President of a Panchayat, in cases falling under Sub-section (3) of Section 25 of the Act shall be presided over by the person appointed by the election authority to convene the meeting. That is what has happened in this case. The election of the President at a meeting convened and presided over in the manner prescribed by the Rules was perfectly valid.

11. Now let us consider the reasoning of Balakrishna Ayyar, J., on which his conclusion that there are no rules which would apply to the election of a Panchayat in such a contingency as that which arose in the present case is based. In the view of the learned Judge Sub-section (3) of Section 25 of the Act can apply only where in a Panchayat which is existing and functioning, a situation arises in which both the President and the Vice-President have ceased to be able to function, but it cannot apply to a case where a Panchayat has yet to be constituted and begin to function. He overruled the contention of the Government Pleader that the expression "vacant" was wide enough to cover

cases where no incumbent had been elected on the ground that the context was repugnant to this argument. In one part of his judgment the learned Judge was willing to concede that there are two kinds of vacancies, ordinary vacancies and casual vacancies, and that the term vacancy could apply to both kinds; but in his opinion Section 25 necessarily postulated the prior existence of a Panchayat. With great respect to the learned Judge we are unable to see any reason why the connotation of the term "vacancy" should be restricted to casual vacancies. Section 25(3) of the Act was presumably enacted in the interests of the continuous administration of the affairs of the Panchayat. As the President of the Panchayat has certain important functions in this behalf, and the Vice-President in certain contingencies, it was thought necessary that there should be some one to carry on such functions when neither of them is available for one reason or another. Section 25(3) of the Act comprehends several possible contingencies, namely, that neither a President nor a Vice-President is available to discharge the functions of the President. There may be a vacancy in the office of the President and also a vacancy in the office of the Vice-President. There may be a vacancy in the office of the President and the Vice-President might have been incapacitated or continuously absent from jurisdiction for more than fifteen days. The President might be incapacitated and the office of the Vice-President might be vacant, or he might have been incapacitated or continuously absent from jurisdiction for more than fifteen days. In all such cases the Inspector is given the power to appoint a member of the Panchayat to perform the functions of the President subject to such restrictions and conditions as may be prescribed until a new President or Vice-President is declared elected and assumes office, or either the President or the Vice-President returns to jurisdiction or recovers from his incapacity as the case may be. It is quite true that as the learned Judge points out, Sub-section (1) of Section 25 contemplates the case where a casual vacancy in the office of the President has occurred. On the other hand, Sub-section (2) does not deal with a case of vacancy at all. It applies when the President is not available to perform his functions either because he is incapacitated or because he has been continuously absent from jurisdiction for more than fifteen days. Sub-section (3), as already explained, is a comprehensive provision to deal with every class of contingency in which neither the President nor the Vice-President is available, and one of the reasons for the President not being available is when the office is vacant. Surely when the Inspector appointed Abdul Hameed as the "Temporary" President on 18th December, 1958, this contingency had occurred. The office of the President was vacant and so was the office of the Vice-President.

12. The learned Judge's view is founded on the basic assumption that Sub-section (3) of Section 25 can apply only when a situation arises in which neither the President nor the Vice-President is able to function and that Sub-section postulates the existence of a Panchayat. We have already pointed out that the existence of a Panchayat does not depend upon the existence of a duly elected President and Vice-President. The Panchayat is a corporate body which has perpetual succession. Its constitution does not depend upon the Election of the

President and the Vice-President. We are clearly of opinion that there is no warrant for this assumption. We cannot agree with the following observations of the learned Judge:

In other words, Sub-section (3) can apply only where in a Panchayat which is existing and functioning a situation arises in which both the President and the Vice-President have ceased to be able to function. It cannot apply to a case like the present where a Panchayat has yet to be constituted and begin to function.

13. Reference was made to the decision of a Division Bench of the Andhra High Court in *Suyanarayanamurthy v. State of Andhra Pradesh* (1957) 2 A. W.R. 176. In that case a person was appointed Temporary President of the Panchayat during the interregnum between the expiry of the period of office of the members of the old Panchayat and the coming into effect of the office of the members elected under the provisions of the amended Act. The appointment was purported to be made under Sub-section (3) of Section 25. A Government Order dated 4th August, 1956 provided that a meeting for the purpose of co-opting a woman member for the said Panchayat should be convened, in cases where no Special Officer has been appointed by the District Panchayat Officer. The contention of the person who had been appointed Temporary President was that it was only he who could convene and conduct that meeting. The learned Judges held that he had no such right for two reasons : (1) that no appointment u/s 25(3) could be validly made by the Inspector of Local Boards because that provision contemplates the existence of a Panchayat actually functioning and (2) that even if he be deemed to be validly appointed Temporary President, he could not convene the meeting as the meeting could not be described as a meeting of the Panchayat. In the result they held that the District Panchayat Officer was competent to conduct the election. With great respect to the learned Judges we are unable to accept their view. We entirely agree with the decision that the person appointed temporary President under Sub-section (3) of Section 25 of the Act had no right to conduct the meeting but not for the reasons given by them. The learned Judges in that case proceeded on the assumption that the appointment of the temporary President was before the coming into effect of the office of the members elected under the provisions of the amended Act. The woman member had not been co-opted. The following observation is significant:

It would seem that there can be no meeting of a " Panchayat" until the Panchayat is properly constituted and the amended Act contemplates the co-option of a woman member to complete the election of the members of the Panchayat.

This is not the position in the case before us. As we have already said, though we entirely agree with the eventual decision in that case, we find that the decision itself has no application to the facts of the case before us. We have already said that we are not in agreement with their construction of Sub-section (3) of Section 25 of the Act.

14. We therefore hold that there was nothing illegal in the election of the President at the meeting of the Panchayat held on 5th January, 1959, convened and presided over by the Additional District Panchayat Officer, Tirunelveli. The appeal is allowed and the Writ Petition by the 1st respondent is dismissed.