

(1962) 08 BOM CK 0038

In the Bombay High Court

Case No : Special Civil Application No. 1227 of 1962

Vinayak Sitaram Patil

APPELLANT

Vs

Navnitrai Bhogilal Shah

RESPONDENT

Date of Decision : 21-08-1962

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 57

Citation : (1963) 65 BOMLR 6 : (1963) MhLj 244

Hon'ble Judges : H.K. Chainani, C.J;K.K. Desai, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—Petitioner No. 1 was elected as a Councillor of the Palghar Panchayat Samiti constituted u/s 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act. Petitioner No. 2 was nominated as an associate member of this Samiti under Clause (c) in Sub-section (1) of Section 57 of the Act. As required by Sub-section (1) of Section 67, a meeting for electing a Chairman of the Samiti was convened on August 7, 1962. The petitioner and opponent No. 1. hereinafter referred to as the opponent, stood as candidates at this election. Petitioner No. 2 was not allowed to vote on the ground that he being an associate member of the Samiti had no right of vote. Petitioner No. 1 and the opponent secured equal number of votes, 12 each. Lots were then drawn and the opponent was declared to have been duly elected. Thereafter the present special civil application was filed.

2. Mr. Paranjpe, who appears on behalf of the petitioners, has relied on Sub-section (1) of Section 67 of the Act and has contended that this section gives a right to elect or to make a choice to persons, who are associate councillors under Clause (c) in Sub-section (1) of Section 57 and that consequently petitioner No. 2 was also qualified to vote at the election held on August 7. He has relied on the fact that whereas Clause (c) in Sub-section (1) of Section 57 is not mentioned in Sub-section (1) of Section 64, it is specifically mentioned in Sub-section (1) of Section 67. He has, therefore, contended that the person, who is an associate

councillor under Clause (c) in Sub-section (1) of Section 57, is also entitled to vote at the election of the Chairman at the meeting convened under Sub-section (1) of Section 67. The learned Government Pleader, who has also appeared in this matter, and Mr. Sanghvi, have on the other hand contended that petitioner No. 2 was rightly not allowed to vote at the Chairman's election. The learned Government Pleader has relied on other provisions of the Act, to which I will presently refer, and has urged that Sub-section (1) of Section 67 cannot be regarded as an express provision giving an associate councillor a right to vote.

3. In order to decide which of these two views is correct, it is necessary to refer to the relevant provisions of the Act. Clause (1) in Section 2 of the Act states that an associate councillor means a Councillor, who is entitled to attend and to take part in the deliberations of a Parishad, Samiti or Committee, but shall (unless expressly provided) have no right of vote, and shall not be eligible to hold the office of presiding authority of such Parishad, Samiti or Committee. An associate councillor has therefore no right to vote, unless this right is expressly conferred by some other provision of the Act. Sub-section (1) of Section 57 provides that every Panchayat Samiti shall consist of the persons referred to in Clauses (a) to (f) of this sub-section. Clauses (a), (c) and (f) are in the following terms:

(a) all Councillors who are elected to the Council from the electoral divisions included in the Block,

(c) the chairman of such co-operative society conducting the business of purchase and sale of agricultural products in the Block, as the State Government may by order specify in this behalf (to be an associate member),

(f) Sarpanchas elected by members of panchayats in accordance with the provisions of Sub-section (2).

Clauses (b), (d) and (e) specify persons who are to be co-opted by the Panchayat Samiti. The Samiti can co-opt a councillor, only after it has been constituted. There can, therefore, be no co-opted Councillors before the first meeting of the Samiti is held. Sub-section (1) of Section 64 states that every Panchayat Samiti shall be presided over by the Chairman, who shall be elected by the Panchayat Samiti from amongst members falling under Clauses (a) and (f) of Sub-section (1) of Section 57. Only Councillors, who fall under Clauses. (a) and (f), are therefore eligible to stand for election to the post of Chairman. Sub-section (1) of Section 67 provides that after a general election, the Collector or any officer authorised by him, shall, at least three days before the date fixed for the first meeting of the Parishad under Sub-section (2) of Section 11, call upon the persons falling under Clauses (a), (c) and (f) of Sub-section (1) of Section 57, to elect a Chairman of the Panchayat Samiti. Sub-section (3) provides that the meeting called under Sub-section (1) shall be presided over by the Collector or the officer authorised by him as aforesaid. Sub-section (4) states that if in the election of the Chairman there is an equality of votes, the result of the election

shall be decided by lot to be drawn in the presence of the Collector or officer presiding in such manner as he may determine. Section 68 states that in the first meeting of the Panchayat Samiti called by the Chairman, members required to be co-opted u/s 57 shall be co-opted and in the next meeting of the Panchayat Samiti held thereafter, the Deputy Chairman shall be elected. There is no provision in this section or any other section that at the election of the Deputy Chairman the associate Councillors shall have a right of vote. In the absence of such a provision, associate Councillors will not be entitled to vote under Clause (1) in Section 2 of the Act. Section 73 provides for the removal of a Chairman or Deputy Chairman of a Panchayat Samiti from office and states that the Chairman or Deputy Chairman so removed shall not be eligible for re-election as Chairman or Deputy Chairman during the remainder of the term of office of the members of the Panchayat Samiti. Sub-section (1) of Section 75 provides that in the event of a vacancy in the office of the Chairman or Deputy Chairman, by reason of death, resignation, removal or otherwise, the vacancy shall, subject to the provisions of Sections 64 and 73, be filled as conveniently as may be by election of a new Chairman or Deputy Chairman. Sub-section (2) states that where on account of any of the reasons aforesaid, the offices of the Chairman and the Deputy Chairman become vacant simultaneously, the provisions of Section 67 shall be applicable, so far as may be, to the calling of a meeting and the procedure to be followed at such meeting for the election of a Chairman and Deputy Chairman. Sub-section (1) of Section 75 does not contain any provision that at the election of the Chairman or the Deputy Chairman in a casual vacancy, an associate Councillor shall be entitled to vote. Sub-section (2) of Section 75 does not also confer the right of vote on an associate Councillor. The other two sections, which are relevant, are Sections 79 and 80. The proviso to Clause (c) in Sub-section (f) of Section 79 states that an associate Councillor elected to the Standing Committee by the Zilla Parishad shall have the right to vote. Sub-clause (ii) in Clause (a) in Sub-section (1) of Section 80 states that the Co-operative Committee shall consist of five associate Councillors, who shall have the right to vote. The proviso to Sub-clause (i) in Clause (b) in Sub-section (1) of Section 80 states that an associate Councillor, if any, so elected to the Subjects Committee shall have the right to vote.

4. It is in the light of these provisions that we have to interpret the words "call upon...to elect" used in Sub-section (1) of Section 67. The persons called upon to elect are those mentioned in Clauses (a), (c) and (f) of Sub-section (1) of Section 57. The person mentioned Clause (c) is an associate Councillor. The petitioner has been nominated under this clause. Mr. Paranjpe has referred us to the meaning of the word "to elect", which is "to choose, to select, to make a choice." The choice or selection can only be made by giving a vote to the person preferred. Mr. Paranjpe has, therefore, urged that as an associate Councillor is also called upon to elect or to make a choice, the right to vote must be held to have been conferred upon him. He has argued that Section 67(1) is consequently an express provision in the Act conferring the right to vote on the person falling

under Clause (c) in Sub-section (1) of Section 57. The Government Pleader has, on the other hand, contended that as an associate Councillor is entitled to take part in the deliberations of the Panchayat Samiti, all Councillors, including the associate Councillor falling under Clause (c), are asked to attend the first meeting of the Samiti held for the purpose of electing the Chairman. This according to him does not entitle the associate Councillor to vote at the meeting. He has urged that the words "called upon to elect" in the context mean "called upon to meet to elect." In support of this argument, he has pointed out that whereas Sub-section (1) of Section 67 does not refer to any meeting and only says that the Collector shall call upon the persons concerned to elect, Sub-section (3) begins with the words "The meeting called under Sub-section (7)....

5. It seems to us that apart from the question whether Sub-section (1) of Section 67 can be regarded as an express provision conferring a right of vote on an associate Councillor, there are other difficulties in accepting Mr. Paranjpe's arguments. Under Clause (1) in Section 2, an associate Councillor has no right to vote, unless this right is expressly conferred. Section 68, which provides for the election of a Deputy Chairman after the Panchayat Samiti is constituted, does not confer this right on an associate Councillor. Consequently an associate Councillor cannot vote at the election held to select a Deputy Chairman. No right to vote has also been conferred, expressly or impliedly, in regard to the election held to fill a vacancy in the office of the Chairman or Deputy Chairman arising by reason of death, resignation, removal or otherwise, referred to in the Act as a casual vacancy. Sub-section (2) of Section 75 provides for cases, in which the offices of the Chairman and the Deputy Chairman become vacant simultaneously. This sub-section states that in such a case the provisions of Section 67 shall be applicable, so far as may be, to the calling of a meeting for filling the vacancies. As an associate Councillor has no right to vote, when there is a casual vacancy in the office of the Chairman or Deputy Chairman, it will not be reasonable to hold that he possesses this right, when instead of one of these offices being vacant, both the offices of the Chairman and the Deputy Chairman are vacant. Consequently, even though the provisions of Section 67 apply in cases falling under Sub-section (2) of Section 75, that is, when both the offices of the Chairman and Deputy Chairman become vacant simultaneously, it must be held that the associate Councillor has no right to vote at the election held to fill the vacancies in these offices. The position, therefore, is that an associate Councillor has no right to vote at the election held to elect a Deputy Chairman after a new Panchayat Samiti is constituted. He cannot also vote when a casual vacancy in the office of the Chairman or Deputy Chairman is to be filled. The Legislature could not have intended that even though an associate Councillor has no right to vote, when an election is held in order to fill a casual vacancy in the office of the Chairman, he should possess this right when the first Chairman of a new Panchayat Samiti is to be elected.

6. Sections 79 and 80 also indicate that when the Legislature wanted to confer the right of vote on an associate Councillor, it has expressly said so. In more

than one place in these sections it has been specifically stated that the associate Councillors shall have a right to vote. No similar words are to be found in Sub-section (1) of Section 67. The necessary inference, therefore, is that the Legislature did not intend to confer the right of vote on the associate Councillor, when the Chairman of the new Samiti constituted u/s 57 is to be elected under Sub-section (1) of Section 67.

7. Mr. Paranjpe has laid considerable stress on the fact that whereas Sub-section (1) of Section 64 refers to only persons falling under Clauses (a) and (f) in Sub-section (1) of Section 57, Sub-section (1) of Section 67 mentions persons falling under Clauses (a), (c) and (f). The two provisions deal with different matters. Sub-section (1) of Section 64 specifies the persons who alone are eligible to stand for election. Sub-section (1) of Section 67 mentions the persons who are called upon to attend the meeting convened to elect the Chairman. When this meeting is held, the persons falling under Clauses (b), (d) and (e) in Sub-section (1) of Section 57, who are to be co-opted subsequently, are not members of the Panchayat Samiti. The only Councillors, who are then available, are those falling under Clauses (a), (c) and (f). All of them are, therefore, called upon to attend the meeting under Sub-section (1) of Section 67. But from the mere fact that an associate Councillor is also asked to attend the meeting, it does not follow that he has also a right of vote. No express words conferring this right are used by the Legislature in Sub-section (1) of Section 67, unlike what it has done in Sections 79 and 80. It would also be anomalous to hold that whereas an associate Councillor cannot vote when a casual vacancy in the office of the Chairman is to be filled, he can exercise such right when the Chairman is to be elected at the first meeting of the new Samiti held under Sub-section (1) of Section 67.

8. We are, accordingly, of the opinion that an associate Councillor has no right to vote at the meeting held under Sub-section (1) of Section 67 of the Act, in order to elect the Chairman of the Panchayat Samiti. Petitioner No. 2 was, therefore, rightly debarred from voting at the election held on August 7, 1962.

9. Rule discharged. No order as to costs.