Shobha Haribhau Jadhav and Others Vs Tanaji Barku Jagade and Others

Writ Petition No. 2396 of 1979

Court: Bombay High Court

Date of Decision: Jan. 10, 1980

Acts Referred:
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 â€" Section 2, 27, 27(1), 57, 57(1)

Hon'ble Judges: V.S. Deshpande, J; A.N. Mody, J

Bench: Division Bench

Advocate: Navin B. Shah, for T.K. Patil, for the Appellant; Vasant R. Bhandare, for respondents 1 to 6, for the Respondent

Judgement

V.S. Deshpande, J.
This petition raises an important question as to whether the words ""election of a Councilor"" in section 27(1) of the

Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, hereinafter referred to is the ""act"" include the process of co-option of members to

the Panchayat Samiti constituted under the Act, hereinafter referred to as ""the Samiti"". The answer to this would determine whether the District

Judge or the Assistant Judge can have any jurisdiction to entertain and decide any dispute as to the validity of the co-option, under this section 27.

2. The Act provides for the Constitution of (1) a Zilla Parishad for the area of each District as delimited u/s 4 and (2) a Panchayat Samiti for the

area of each block within such District as delimited u/s 5 thereof. Every Zilla Parishad is to consist of ""Councilor"" elected u/s 9(1)(a) of the Act and

co-opted, ex officio or associated "Councilors" under Clauses (b) of (e) thereof, while every Samiti of a block is to consist of the same elected and

Co-opted Councilor from the said block under clauses (a) and (b) of section 57(1), other co-opted ex officio ""members"" under clauses (c) to (e)

and a few directly elected ""members"" under clauses (f) thereof.

3. The election of Councilor of the Poona Zilla Parishad was held in the month of May, 1979. Respondent No. 4 Sow. Shendkar was co-opted as

its woman member u/s 9(1)(b) of the Act being a resident of one of the blocks in the District. The names of the members of the Panchayat Samiti,

Velhe Block, also were notified thereafter in due course by the Collector of Poona u/s 57(3)(b) of the Act. Sow Shendkar was notified therein to

be one such member of the Samiti on the hypothesis of her being the resident of the block Velhe in terms of the address contained in the records.

Every co-opted member of Zilla Parishad residing in the block area of the Samiti becomes its ex officio member u/s 57(1)(b) of the Act.

3-A. A meeting of the Samiti was convened on 9th July, 1979, for purposes amongst others, to co-opt members for it u/s 57(1)(d) and (c) of the

Act to which Sow, Shendkar also was invited. The Samiti was divided into two groups and each group has sponsored candidates for such co-

option. Petitioner No. 4 raised an objection to her membership of the Samiti and participation in the meeting alleging that she was not the resident

of Velhe block. A ration card and extract of the electoral-roll of Pune showing her to be the resident of Pune was produced by him at the meeting.

The Chairman of the Samiti, petitioner No. 3, relied on the same and ruled that Sow Shendkar, not being the resident of Velhe could not be such

as ex officio member of the Samiti u/s 57(1)(b) and as such was not entitled to take part in the meeting and vote. The respondents, i.e. the other

members of the rival group, protested against this ruling and insisted on in adjournment and walked out of the meeting along with Sow Shendkar,

when the same war refused. The Chairman proceeded with the meeting and declared the petitioners Nos. 1 and 2 to have been co-opted

respectively under Clauses (d) and (e) of section 57(1) of the Act.

4. Respondents thereupon challenged the Validity of this co-option by an election petition to the District Court of Pune, u/s 27(1) of the Act. The

same was tried by the Third Extra Assistant Judge, Pune. A preliminary point was raised by the petitioners herein as to his jurisdiction and

maintainability of the petition contended that the process of the co-option of the members by the Samiti did not amount to "election of the

Councilors" to attract the provisions u/s 27. The learned Judge over-ruled the same and allowed the election petition holding against the

Chairman"s competency to decide the legality of its membership. Validity of this judgment is challenged in this petition.

5. Mr. Shah, the learned Advocate for the petitioners, contends that section 27(1) contemplates trial of the validity of ""election"" of the ""Councilors

and not of the ""co-option"" of the ""members"" and, other before the district Judge or the Assistant Judge does not have any jurisdiction to go into the

points raised before him. This contention appears to us to be formidable and well founded.

6. Section 27(1) reads as follows :

27(1) If the validity of any election of a Councilor or the legality of any order made or proceedings held u/s 26 is brought in question by any

candidate at such election or by any person qualified to vote at the election to which such question refers, such candidate or person may, at any

time within fifteen days after the date of the declaration of the result of the election or the date of the order or proceeding, apply to the District

Judge of the district within which the election has been held, for the determination of such question.

7. This provision obviously can have no application unless so elected person happens to be a ""Councilor"" and attack is aimed at his ""election"". We

are not concerned in this case with any legality of an order or proceedings u/s 26 of the Act. The question therefore, is whether a member of the

Samiti co-opted under Clauses (d) and (e) of section 57(1) of the Act is a ""Councilor"" and, secondly, whether process of co-option contemplated

under the Act amounts to an ""Election""?

8. A close examination of the relevant sections 2, 9 and 57 of the Act makes it clear that the act makes a distinction between a ""Councilor"" and a

member"". Section 2(9) defines ""Councilor"" to mean ""a member of a Zilla Parishad"", while section 2(18) defines the word ""member"" to mean ""a

member of any Panchayat Samiti or Committee constituted under this Act."" Thus every member of the Zilla Parishad without regard to whether he

is elected or co-opted or enlisted otherwise can claim to be a councilor but no member of the Samiti can so claim to be a councilor under this

definition.

9. Section 57(1) of the act providing for the Constitution of the Samiti indicates the process of its composition. The councillors of the Zilla Parishad

(1) elected from the electoral division of the concerned block and (2) co-operated and residing in the block become ex officio members of the

Samiti of the said block. Clauses (c) to (f) of the said sub-section indicates how the Samiti is to consist of still more ex officio, co-opted and

elected members. The councillors on becoming such ex officio members of the Samiti function as such members and not as Councilors. The co-

opted members of the Samiti, such as the petitioners 1 and 2 cannot even claim to be councillors on any basis whatsoever. Even if the process of

election is held to include the process of co-option, it still does not happen to be the co-option of a ""Councilors"" to attract section 27(1) and

jurisdiction of the District or Assistant Judge to decide its legality.

10. We have already seen how Clause (f) of sub-section (1) contemplates direct election of a few members from electoral colleges provided

thereunder, apart from its ex officio and co-opted members. Section 58(2) expressly makes section 27, amongst a few other sections, applicable

to the election disputes in relation to the election of such members under Clause (f). Such express provision would have been necessary to attract

section 27, had contemplated election of the ""members"" under Clause (f) been the election of the ""Councilor"" in Clause (f) of section 57(1) itself is

not without some import and significance in this context and is almost decisive of the controversy.

11. Mr. Shah is also right in contending that the process of co-option u/s 57 cannot amount to ""election"". It is true that some element of election is

implicit even in the process of co-option, when the choice depends on the votes of the members present at any Samiti meeting. The possibility of

this process being equated or identified with ""election"" in a given context cannot be ruled out altogether. The scheme of sections 9 and 57 of the

Act, however, makes express distinction between ""election"" and ""co-option"" and section 27 restricts the jurisdiction of the District Judge to decide

the legality of ""election"" and not of the co-option, even though some members are contemplated to be enlisted to the Zilla Parishad and the Samiti

by this process of co-option. If the legislature in its wisdom, thought it proper to restrict the scope of the election petition to the legality of

election"", it will not be open to the courts to extend its scope without any basis.

12. We have already seen, how express application of section 27 u/s 58(2) to the dispute arising out of election of ""members"" of the Samiti, u/s

57(1)(f), demonstrates that section 27 was intended to cover disputes as to election of ""Councilors"" contemplated u/s 9(1) only, Restricting such

application of section 27 to the election process covered by Clause (f) and excluding thereby the disputes arising under other processes of enlisting

the members of the Samiti under Clauses (a) to (e) of section 57(1) including the process of co-option; plainly implies that the process of ""election

is not intended to include the process of ""co-option"" under the scheme of the Act. Ramifications of the election process and complexities involved

therein may account for this distinctive approach. This, however, fortifies our conclusion to this effect.

13. Mr. Bhandare, the learned Advocate appearing for the respondents, however, contends that this Court should not exercise its extra-ordinary

and equitable jurisdiction under Article 226 of the Constitution to support unjust claim and disturb the just decision on such purely technical

grounds.

14. This assumes that material before us is conclusive enough to hold against the co-option of petitioners Nos. 1 and 2 which in turn depends

essentially on respondent No. 4''s claim to be, ex officio member of the Samiti as the co-opted councilor residing in the block, and exercise her

vote as such. Even if the competency of the Chairman to give any ruling on this point and propriety of the walk out staged by respondents are

dismissed as mere side issues; the material on record as to the residence of respondent No. 4 in Velhe is far from clinching. Her residence of any

block in Pune District may justify her being co-opted as councilor u/s 9(1)(b) but she cannot become ex officio member of the Samiti or such

councilor u/s 57(1)(b), unless she is found to be a resident of Velhe block as defined u/s 2(27) of the Act. Respondent No. 4 has not even cared

to file any affidavit before us to explain the documents relied on by the petitioners against her and their averments in this writ petition. Inclusion of

her name in the Collector''s Notification u/s 57(3)(b) on her address of Velhe in the record, cannot be enough to meet the above material against

her. The objection as to her membership obviously requires investigation under sections 267-A or 272 or any other provision. Suffice it to note

that the material before us is far too inadequate to justify any conclusion of respondent''s claim being just.

15. Result is that the petition succeeds and rule is liable to be made absolute.

16. We accordingly make rule absolute and set aside the order of the Assistant Judge.

17. In the circumstances of this case, there will be no order as to costs.

18. This judgment not to be effective for eight days from today.