

Messrs. Gulab
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in dispute in these cases to a college for its income, or alternatively that the landlord-trust is negotiating to sell the property to the Corporation at a price made higher by the fact that the tenants will have been removed. In neither of these cases should there possibly be said to be a case made out that the premises were *bona fide* required by the trust for the purpose of establishing a school in them.

For these reasons I accept the revision petitions and setting aside the orders of the learned District Judge restore the orders of the trial Court dismissing the landlord's petitions for the ejectment of the tenants. The parties will bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before J. S. Bidi and Shamsher Bahadur, JJ.

RANJIT SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1665 of 1963.

1964
March, 17th

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Proviso to S. 18(1)—“Total number of members”—Computation of—Associate and ex-officio members—Whether to be reckoned—Ss. 102 and 121—Removal of chairman by no-confidence motion—Whether can be challenged by means of an election petition—Resolution removing chairman not validly passed—Whether can be cancelled by Government.

Held, that the vacation of office by chairman or vice-chairman, which must follow as a result of no-confidence motion being a serious matter, the Legislature must be intended to have meant what the first proviso to sub-section (1) of section 18 of the Punjab Panchayat Samitis and

Zila Parishads Act, 1961, states unequivocally that two-thirds of the total number of its members would be required for a resolution passed in this behalf. The term "total number of members" obviously includes the associate and *ex-officio* members and not only the voting members. The associate and *ex-officio* members are not barred from attending the meeting convened to consider a resolution requiring the chairman and the vice-chairman or both to vacate the office. The only operative interdict against them is that they will have no right to vote.

Held, that a resolution removing a chairman of a Samiti from his office cannot be challenged by way of an election petition under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act. The resolution not passed in conformity with the provisions of the Act can be cancelled by the Government under sub-section (1) of section 102 of the Act even though it may lead consequently to the resulting election being made ineffective.

Case referred by Hon'ble Mr. Justice Shamsher Bahadur on 18th December, 1963, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a larger Bench, consisting of Hon'ble Mr. Justice J. S. Bedi and Hon'ble Mr. Justice Shamsher Bahadur on 17th March, 1964.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of Government and show cause notice on 5th September, 1963 and 14th August, 1963, respectively.

G. C. MITTAL, N. C. JAIN, ADVOCATE for the Petitioner.

H. S. DOABA, ADDITIONAL ADVOCATE-GENERAL, WITH B. S. Bindra, Advocate, for the State and H. L. Sarin, H. S. Sawhney, & R. N. Narula, Advocates for the Respondents.

ORDER.

SHAMSHER BAHADUR, J.—This petition under Article 226 of the Constitution of India, has been referred to a larger Bench for decision in

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pursuance of the order passed by me on December 18, 1963.

The facts giving rise to this petition which are not in issue may be briefly set out to appreciate the points of law which arise therefrom. The Panchayat Samiti of Shahbad Block was constituted in 1961, under the provisions of sub-section (2) of section 5 of the Punjab Panchayat Samities and Zila Parishads Act, 1961 (hereinafter called the Act). A substantial portion of the Samiti consisting of 19 primary members is chosen by election, 16 of whom are to be elected by the Panches and Sarpanches of the Gram Panchayats, two members to represent the Co-operative Societies within the jurisdiction of the Panchayat Samiti and one member to represent the Market Committee in the Bolck. The second category of the Panchayat Samiti consists of Associate Members who under clause (b) of sub-section (2) of section 5 are to be composed of—

“(i) every Member of the Punjab Legislative Assembly representing the constituency of which the block forms part; provided he is not a Primary Member of the Panchayat Samiti; and

(ii) such Member or Members of the Punjab Legislative Council as the Government may, by order, specify.”

Under this category there are three members of the Shahabad Block. The third type of members of the Panchayat Samiti consists of co-opted members who are to be co-opted, under clause (c) of sub-section (2) in accordance with the provisions of section 16, comprising—

“(i) two women interested in social work among women and children, if no woman is elected under clause (a):

* * *

(ii) four persons belonging to Scheduled Castes and Scheduled Tribes if no such person is elected under clause (a).

* * *

Six members were co-opted to the Block in pursuance of the provisions of clause (e) of sub-section (2) of section 5. The last category of members consists of *ex-officio* members who, according to clause (d) consist of the Sub-Divisional Officer, having jurisdiction in the block and the Block Development Officer of the block. The total strength of the Samiti of the Shahabad Block comes to 30, but it is common ground that there are only 29 members in the block. Under the proviso to clause (b) of sub-section (2), “an Associate Member shall not be entitled to vote at, but shall have the right to speak in and otherwise take part in the proceedings of, any meeting of the Panchayat Samiti or its Committees”, while under the second proviso to clause (d) of sub-section (2), “an *ex officio* member shall not be entitled to vote at any meeting of the Panchayat Samiti”. The voting strength, therefore, of the Panchayat Samiti consists of twenty-five, nineteen being of primary members and six of co-opted members.

The third respondent Puran Chand was elected a Chairman of the Panchayat Samiti. Subsequently, in a meeting duly requisitioned for the purpose, the third respondent vacated this office as a result of vote of no-confidence passed against him under the proviso to sub-section (1)

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of section 18 of the Act which may be reproduced below :—

“18. (1) The term of office of the Chairman and Vice-Chairman of a Panchayat Samiti shall be three years;

Provided that the Chairman or Vice-Chairman shall cease to be the Chairman or Vice-Chairman if he ceases to be a Member of the Panchayat Samiti or if by a resolution passed by not less than two-third of the total number of its Members the Panchayat Samiti decides at a meeting convened in the manner prescribed, that he shall vacate his office. In such case the Panchayat Samiti shall elect a new Chairman or Vice-Chairman at the same meeting at which the aforesaid resolution is passed.”

In the meeting held on 2nd of August, 1963, at 11 a.m., 18 primary members, 4 co-opted members and two *ex-officio* members were present. Out of the voting strength of 22, consisting of 18 primary members and 4 co-opted, 18 voted in favour of the resolution of no-confidence and 4 against. In the same meeting on the same day, the petitioner Ranjit Singh who is a primary member, was proposed for Chairmanship and though the four members who had voted in favour of the third respondent took no part in the proceedings of the election of the new Chairman having walked out of the meeting, the other voting members supported the resolution and the petitioner was elected Chairman on the voting strength of 18 members who had cast votes in his favour. It is not disputed that the two *ex-officio* members were present at the meeting throughout

the proceedings, both at the time of 'no-confidence' motion against the third respondent and the election of the petitioner as new Chairman in his stead.

The election of the petitioner as a new Chairman was duly notified in the gazette of 9th August, 1963. The petitioner, however, received a notice from the Punjab Government (annexure 'A') a week later on 14th August, 1963, that the resolution calling upon the third respondent to vacate the office of Chairman was not passed on 2nd August, 1963, in accordance with the proviso to section 18(1) of the Act. The petitioner was accordingly required to show cause why the resolution passed in contravention of the legal provision on 2nd August, 1963, should not be rescinded. In response to this notice the petitioner sent a reply taking up all the points which have now been taken in this petition that the resolution removing the third respondent was validly passed and the consequential election of the petitioner embodied in the second resolution could not be effected. The Governor of the Punjab, however, cancelled the resolution passed on 2nd August, 1963, under the provisions of sub-section (1) of section 102 of the Act on the ground that it was passed "in excess of the powers conferred on the Panchayat Samiti by the Act *ibid* as only eighteen out of the total thirty members of the Panchayat Samiti voted in favour of the motion for the removal of Shri Puran Chand, Chairman."

Before dealing with the arguments addressed to us, sub-section (1) of section 102, may be reproduced—

"102. *Power to cancel or suspend resolutions of Panchayat Samitis and Zila Parishads.* (1) The Government may, by order in writing cancel any resolution passed by a Panchayat Samiti or

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Zila Parishad or any standing Committee thereof if, in their opinion, such resolution—

- (a) is not legally passed; or
- (b) is in excess or abuse of the powers conferred by or under this Act or any other law; or
- (c) its execution is likely to cause danger to human life, health or safety or is likely to lead to a riot or affray.”

* * * * *

On behalf of the petitioner two points have been raised by his learned counsel Mr. Gokal Chand Mittal. It is contended, firstly, that the effective voting strength of the Samiti being only 25, 18 represented the requisite two-thirds majority, neither the nominated members nor the *ex-officio* members having a right to vote in any meeting of the Samiti. Secondly, Mr. Mittal contends that the election of the petitioner cannot in any event be set aside by an order of the Government passed under sub-section (1) of section 102, there being a special provision for setting aside an election under section 121 of the Act which says that—

“121. *Election petition*.—(1) Any person who is a voter for the election of a member may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the

election of any person as a member, vice-chairman or chairman of the Panchayat Samiti or Zila parishad concerned."

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In support of his argument on the first point Mr. Mittal submits that a "member" under the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, published as appendix No. 3 to the Act has been defined to mean, under clause (c) of rule 2, "(i) in respect of the election of Chairman and Vice-Chairman of a Panchayat Samiti, a Primary or Co-opted member of that Samiti;.....". Under section 5 of the Act it is specifically mentioned in proviso (i) to clause (b) of sub-section (1) that an associate member shall not be entitled to vote though he has a right to speak in a meeting of the Panchayat Samiti, and likewise an *ex-officio* member under the second proviso to clause (d) of sub-section (1) of that section is interdicted from exercising his vote in a meeting of the Samiti and he has not even been given a right to speak. In his ensuing argument on this aspect Mr. Mittal says that it would be futile to take into reckoning the associate and *ex-officio* members while computing the total strength of the Samiti because when no right at all is given to these two classes of members to vote they cannot justifiably be permitted to exercise their vote as members in computing the total strength of the Samiti. The role of these members is advisory and only the associate members have the right even of guiding the deliberations of the Samiti by making speeches. If in such circumstances, the total strength of the Samiti is to include the associate and *ex-officio* members it would in effect, according to the learned counsel,

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give in an oblique manner to associate and *ex-officio* members voting rights which have been specifically denied to them by statute. The voice which is to remain silent in the removal of Chairman would in other words become vocal and effective indirectly.

On behalf of the State it is urged that a "member" under sub-section (9) of section 2 and the Act is defined to mean "a member of the Panchayat Samiti or Zila Parishad as the case may be" and in section 5 also where different categories of membership are described, the persons falling under clauses (b) and (d) are described as associate "members" and *ex-officio* "members" and there is nothing in the context to indicate that those who have been so chosen to form a Panchayat Samiti are to be denied their right to be called members by which nomenclature they are described in the statute. It is stressed that the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, cannot be pressed into service to import a definition of a "member" which is in direct conflict with the concept as specifically defined in sub-section (9) of section 2 of the Act. So far as the rules relating to the election of Chairman and Vice-Chairman are concerned, associate and *ex-officio* members have to be excluded as they have no right to vote and the definition in the context can only be applicable to the particular situation. So far as the present situation is concerned, we are not left much in doubt about the intention of the Legislature as there are specific rules dealing with the subject embodied in appendix No. 10 styled as Punjab Panchayat Samitis (Vacation of office by Chairman and Vice-Chairman) Rules, 1963. The restrictive scope given to the term "member" in the election rules does not find place in the definition clause of these rules. It cannot

be disputed, and Mr. Mittal has frankly conceded, that Punjab Panchayat Samitis (Vacation of office by Chairman and Vice-Chairman) Rules, 1963, would govern the procedure with regard to the first resolution which was passed by a meeting of the Samiti on 2nd August, 1963. The definition of "member" given in Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, cannot be transplanted in the rules relating to the vacation of office by Chairman and Vice-Chairman. It is argued that the vacation of office by Chairman or Vice-Chairman which must follow as a result of no confidence motion being a serious matter, the Legislature must be intended to have meant what the first proviso to sub-section (1) of section 18 states unequivocally that two-thirds of the total number of its members would be required for a resolution passed in this behalf. It is not the task of the Courts to rewrite the provisions of an enactment in accordance with its own sense of reason or rightness in a particular matter. It would have been a matter of no difficulty for the draftsman to convey the intention of the legislature if two-thirds of the total strength of the voting members was in fact required to form the requisite majority. If such were the intention, instead of the words "not less than two-thirds of the total number of its members" the draftsman could have said "not less than two-thirds of the voting strength of its members". The total strength of the members of the Panchayat Samiti of Shahbad Block is at the moment 29 and not 30. As I have said in the referring order, this is a matter of no consequence as two-thirds number of either 29 or 30 would be 20. Of course if the contention of the petitioner is accepted that the total strength means the total voting strength then the two-thirds of 25 members, which constitute the voting members, would be 17, and the

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resolution passed on 2nd August, 1963, would be quite legal and valid.

In the Punjab Panchayat Samitis (Vacation of Office by Chairman and Vice-Chairman) Rules, 1963, a "meeting" has been defined "a meeting convened to consider a resolution requiring the Chairman or the Vice-Chairman or both to vacate office", and under clause (f) of rule 2 "words and expressions used but not defined in these rules shall have the meaning assigned to them in the Act". Thus the concept of "member" under the rules is to be assigned the same meaning as is given to this term under the Act. Under rule 3, a notice of intention to move a resolution requiring the Chairman or Vice-Chairman or both to vacate office shall be signed by not less than one-third of the total number of members of the Panchayat Samiti. Rule 9 prescribes the mode in which the person residing at the meeting has to draw up the proceedings and, *inter alia*, clause (e) requires it to be mentioned what the "total number of members of the Panchayat Samiti" is. The associate and *ex-officio* members are not barred from attending the meeting and the only operative interdict is that they will have no right to vote. The words "total number of members" has been repeatedly used in these rules and the rules relating to vacation of office by Chairman and Vice-Chairman have in no way circumscribed the concept of membership as envisaged in the Act itself.

The cardinal principle of construction is that the words should be given their plain meaning unless the result would lead to absurd or unintended results. It cannot possibly be said that the result of construing the plain meaning of the words "total number of members" to mean the total number of all the members of the Panchayat Samiti would lead to the rules relating to vacation of office of Chairman or Vice-Chairman becoming

unworkable. All that is required according to the simple construction of the words is that a motion for removal would require the votes of 20 out of the total 25 voting members. The resolution in the instant case having been passed by a number which is short by two cannot, therefore, be regarded as a resolution passed in pursuance of sub-section (1) of section 18. It may be of interest that before the amendment introduced by Punjab Act No. 20 of 1963 the requisite majority was five-eighths instead of two-thirds and it is argued that the Legislature in its wisdom has thought fit to increase the weightage which is required to support a motion for the vacation of office by a Chairman or Vice-Chairman.

The second submission of the learned counsel for the petitioner can be disposed of shortly. The impugned order of the Governor (annexure 'C') has not set aside the election of the petitioner. All that has been done is that the resolution which was passed on 2nd August, 1963, has been cancelled. It cannot be said that the first resolution removing the third respondent from the office of the Chairman can be challenged by way of an election petition under section 121 and there is nothing to suggest that the power of the Government does not extend under sub-section (1) of section 102 of the Act to cancel a resolution which is not passed in conformity with the provisions of the Act even though it may lead consequentially to the resulting election being made ineffective. Indeed no election of the petitioner as a new Chairman could have taken place unless the third respondent had been validly removed under the first proviso of sub-section (1) of section 18 of the Act. If it were a matter of the election of the petitioner as a Chairman it could have been challenged only by way of an election petition. The first resolution removing the third respondent from his office not

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being such a matter can certainly be cancelled by the Government under sub-section (1) of section 102 and nothing has been said about the second resolution in the impugned order.

In the result, there is no force in this petition which fails and is dismissed. As the question is not free from difficulty and has been referred to a Division Bench, there would be no order as to costs.

Bedi, J.

J. S. BEDI, J.—I agree.

K.S.K.

APPELLATE CRIMINAL

Before J. S. Bedi and Shamsher Bahadur, JJ.

THE STATE,—Appellant.

Versus

OM PARKASH—Respondent.

Criminal Appeal No. 285 of 1963.

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March, 19th.

Code of Criminal Procedure (V of 1898)—First Proviso to S. 188—Sanction under—Whether imperative—Absence of—Whether vitiates a trial—S. 531—Local area—Meaning of—Wrong exercise of jurisdiction—Whether condoned—S. 537—Want of prior sanction for prosecution—Whether curable.

Held that the obtaining of prior sanction of the Political Agent or the State Government under first proviso to section 188, Code of Criminal Procedure, is imperative and the omission to do so vitiates the trial. The proviso is not controlled by any of the preceding sections of the Chapter and, therefore, an Indian Court has no jurisdiction to try an accused without a certificate from the authority prescribed in the proviso.