

Karnataka High Court

Shekar Bandu Prabhat vs Prescribed Officer on 23 June, 1994

Equivalent citations: ILR 1994 KAR 1985, 1994 (3) KarLJ 1

Author: Majmudar

Bench: S Majmudar, T S Thakur

JUDGMENT Majmudar, C.J.

1. These two Appeals arise out of common Judgment by which the learned Single Judge has dismissed the Writ Petition filed by the present appellant and has granted relief to the second respondent, whose Writ Petition is also disposed off in that order.

2. The grievance of the appellant in these two Appeals centres round the election of Adhyaksha of Ekamba Gram Panchayat, after that Grama Panchayat was reconstituted under the provisions of the Karnataka Panchayat Raj Act, 1993, in the first meeting when the Panchayat was convened by the Prescribed Authority for the purpose of election of Adhyaksha and Upadhyaksha that was done as per provisions of Section 44 and 45 of the Karnataka Panchayat Raj Act, 1993 (for short the Act). Procedure for election of Adhyaksha and Upadhyaksha on the establishment of Grama Panchayat is found at Section 45 of the Act. Sub-section (1) of Section 45 of the Act provides that on the establishment of Grama Panchayat for the first time under this Act, or on its reconstitution or establishment under Section 302 or on its reconstitution on the expiry of the term of the members of Gram Panchayat, a meeting of the Grama Panchayat shall be called immediately by the Prescribed Officer who shall himself preside over the meeting, but shall have no right to vote, and in such meeting Adhyaksha and Upadhyaksha shall be elected. It is not in dispute that the Prescribed Officer had called such a meeting of the aforesaid Panchayat on 11 -3-1994. There are, in all, 32 elected members in this Panchayat and if any quorum was required for the meeting, it would require 1/3rd of the total number to be present, meaning thereby at least 11 elected members to be present. The Prescribed Authority waited for half an hour for quorum before adjourning the meeting in the first instance for the arrival of other members. Thereafter, as there was only 4 members were present, the meeting was adjourned to 25-3-1994. It is the case of the appellant, who has filed his nomination for being elected as Adhyaksha, that no quorum is prescribed in respect of the first meeting of the members of the Gram Panchayat convened for electing Adhyaksha and Upadhyaksha and his was the only nomination which was duly proposed and seconded by two other members. The presence of four members was sufficient to conduct the meeting and it could not have been postponed for alleged want of quorum. For this reliance was placed on Rule 4 of the Karnataka Mandal Panchayats (Election of Pradhana and Upapradhana) Rules 1987 (for short the Rules 1987) and the learned Counsel submitted that these are the Rules which are applicable to the election of Adhyaksha and Upadhyaksha. Under the Act, no new Rules are framed. As per Section 4(5) of the Rules 1987, the motions, which have been moved and duly seconded shall be put to vote one by one in the order in which they have been moved and decided if necessary by division. It was, therefore, contended that as there was no one else in the contest and the motion of the appellant was in the meeting duly proposed and seconded, he should have been declared elected instead of adjourning the meeting. But, that was not done and meeting was adjourned. Therefore the appellant came to this Court by way of Writ Petition.

3. Respondent-2, on the other hand, filed cross-objections stating that her nomination was moved for being elected as Adhyaksha and she also belonged to the Scheduled Caste for which category, this post of Adhyaksha is reserved. But, on 11-3-1994 as her proposer and seconder did not remain present, her motion could not be put to vote on that day. Therefore, she was entitled to contest on the adjourned date of hearing i.e., on 25-3-1994 and that process should not be interfered with.

4. The learned Single Judge, after hearing the contesting parties, came to the conclusion that the quorum for every meeting is provided for under Section 53 of the Act. It lays down that quorum for a meeting of the Grama Panchayat shall be one-third of the total number of members. If at the time appointed for the meeting a quorum is not present, the Presiding Authority shall wait for thirty minutes, and if within such period there is no quorum, the Presiding Authority shall adjourn the meeting to such time on the following day or such future day as he may fix. It virtually means that the provision for quorum covers any meeting of the Grama Panchayat and does not exclude the first meeting convened for the election of Adhyaksha or Upadhyaksha as is submitted by the learned Counsel for the appellant. However Section 53(2) of the Act says that under the Act every meeting of Grama Panchayat, the Adhyaksha or in his absence the Upadhyaksha shall preside, and in the absence of both, the members present shall choose one- from amongst themselves to preside over the meeting. Learned Counsel submitted that this sub-section clearly indicates that there must be available an Adhyaksha or Upadhyaksha already elected who can preside over such meeting and this necessarily refers to the subsequent meeting and not to the first meeting held under Section 44 read with Section 45 of the Act for electing Adhyaksha or Upadhyaksha, as it would be physically impossible for the prospective Adhyaksha or Upadhyaksha to preside over the first meeting on the anvil. It is no doubt true that Section 53(2) of the Act will operate at the subsequent meeting but it does not mean that the requirement of quorum as laid down in Section 53(1) of the Act is cut down by such provisions. Section 53(2) of the Act does not carve out any exception in connection with quorum of any first meeting of Panchayat. On the contrary, that sub-section opens with the Saving Clause meaning thereby that if otherwise provisions are made about presiding over a meeting under any other provisions of the Act, they will operate. That would save what is provided under Section 45(1) of the Act where the Prescribed Officer has to preside over the meeting without a right to vote.

Therefore, on a conjoint reading of Section 53(1) & (2) and Section 45(1) of the Act, it clearly emerges that on the first meeting of the Grama Panchayat where Adhyaksha or Upadhyaksha is to be elected, the Prescribed Officer will preside while in subsequent meetings where there is already an Adhyaksha duly elected he will preside over it. So far as quorum is concerned, the quorum must be 1/3rd members for all meetings. Under these circumstances, no fault could be found with the decision rendered by the Prescribed Officer on 11-3-1994 when he found that out of 32 members only 4 were present while the quorum required was 11, being 1/3rd. Therefore, he waited for half an hour and then adjourned the meeting to 25-3-1994. It is no doubt that the adjourned meeting was rightly called on 25-3-1994. At that meeting respondent-2 whose nomination was directed to be accepted did contest the election and she polled more votes and hence she is declared elected as Adhyaksha of this Panchayat. No fault could be found with Prescribed Officer with the procedure adopted in the meeting held on 11-3-1994 which was a non-quorum meeting. So far as meeting convened on 11-3-1994 is concerned Rule 4(5) will have no operation as it was an invalid non-quorum meeting. At such a meeting no transaction could legally go through. Therefore, the

Prescribed Officer rightly adjourned the meeting to 25-3-1994. Consequently, the eventuality of appellant being declared elected in such a non-quorum meeting will not arise.

For all these reasons, there are no reasons to interfere in the present Appeal with the Order passed by the learned Single Judge who has taken the same view which we have taken on the scheme of the relevant provisions of the Act. Appeals are, therefore, dismissed.