

**Solanki Kalabhai Gagabhai and anr. Vs. the State of Gujarat and ors.**

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**Court :** Gujarat

**Decided On :** Aug-03-1965

**Reported in :** (1966)7GLR351

**Judge :** J.M. Shelat, C.J. and; Akbar S. Sarela, J.

**Appellant :** Solanki Kalabhai Gagabhai and anr.

**Respondent :** The State of Gujarat and ors.

**Judgement :**

J.M. Shelat, C.J.

1. This is a petition for an appropriate writ, direction or order setting aside the notification dated February 7, 1961, issued by the Collector, Kaira, declaring nine persons as constituting the Village Panchayat of village Masra in Thasara Taluka. It appears that on March 14, 1956, the State Government declared by a notification under Section 4 of the Bombay Village Panchayats Act, 1958, the village Masra to be a village within the meaning of that section. The village thereafter was divided into three wards, and each ward was to have three members, the total thus of the panchayat's members being nine. Two of the nine seats were reserved for women. Under the Village Panchayats Election Rules, 1959, the Mamlatdar issued a notification declaring therein the various stages of the election which was to be held on November 9, 1960. For our purposes, it is sufficient to state that under the notification the date of filing nomination papers was October 25, 1960 and the nomination papers were to be submitted between 11-00 a.m. to 2-00 p.m. on that day at the office of the Mamlatdar at Thasara. The scrutiny of the nomination papers was fixed on the next day, i.e., October 26, 1960. It is an admitted fact that no one came to file the nomination papers upto 2-00 p.m. on October 25, 1960. The result, therefore, was that there were no valid nomination papers filed for the purpose of the election and obviously the further stages of that election notified by the Mamlatdar could not be proceeded with.

2. The petitioners, however, allege that on account of the fact that no one filed the nomination papers, the Block Development Officer accepted an application said to have been filed by nine persons alleging that they had been selected by the village people and therefore should be nominated as members of the panchayat, and that the Block Development Officer thereupon accepted these nine names and nominated them as members of the panchayat. It is further alleged that though the Block Development Officer accepted the said list of nine persons, he issued a notification on February 7, 1961, setting out therein the list of nine persons, some of whom at least were different from those whose names were set out in the aforesaid application accepted by him. The petitioners then allege that the Block Development Officer, after

following the illegal procedure as stated above allowed the said nine persons to hold the first meeting on July 14, 1961 and that at that meeting, one Fatesing Sadabhai and Shanabhai Hemabhai were elected Sarpanch and Up-Sarpanch respectively. It is stated that a representation thereafter was made by the village people in which two objections were taken, (1) about the illegal manner in which the Block Development Officer had nominated the aforesaid nine persons as members of the panchayat, and (2) that those members in any event were not qualified to act as members of the panchayat as they had committed default in payment of the village taxes and were thus disqualified under Section 14(h) of the Act. In reply to this representation made by the village people, the Collector by his reply dated March 30, 1962, informed the representationists that it was not the Block Development Officer who had nominated the aforesaid nine persons but that those members were nominated by the Government. As regards the second objection, the Collector stated that there was no question of the said nine members being defaulters or being disqualified under Section 14(h) of the Act, as the Village Secretary had not issued or served upon them the requisite bills for the taxes. Since those bills were not served upon the members, the members could not be said to have been disqualified under Section 14(h) of the Act.

3. It appears from the affidavit in reply of Indravadan K. Patel, the Village Panchayat Aval Karkun of Kaira District, that neither the facts stated in the petition nor in the Collector's letter were correct and that there was no question either of the Block Development Officer having nominated the said nine persons to be the members of the panchayat or of the Government having nominated those persons as members of the panchayat. From that affidavit, it appears that no nomination papers were actually filed until 2-00 p.m. on October 25, 1960. However, at about 4-00 p.m. on that day, an application signed by nine persons was handed over to the Block Development Officer stating that the signatories to that application had gone to the office of that officer to file nominations, but when they reached that office, they found that the time for filing the nomination papers had expired. That application also stated that those nine persons had been chosen by the village people, that their nominations therefore should be accepted and that they should be treated as candidates for the election. The Block Development Officer informed them that such a thing could not be done as nomination papers had not been filed within the time prescribed by the Mamlatdar's notification, and further informed them that steps would be taken to constitute the village panchayat, by having members nominated in accordance with the provisions of the Act. On or about November 9, 1960, a member of the District Village Panchayat Mandal, elected from amongst the Sarpanchas of the panchayats in Thasara Taluka, went to this village, accompanied by the Block Development Officer, and selected nine persons fit for being nominated as members of the village panchayat. On November 11, 1960, the Block Development Officer made a report to the Collector, Kaira, who under the Act, was the ex-officio Chairman of the District Village Panchayat Mandal, and submitted along with his report the list of the said nine persons selected by the said member. The Collector thereafter directed that the matter should be placed before the District Panchayat Mandal and accordingly the matter was placed before that Mandal which passed a resolution, on that day to the effect that '...the following vacancies for the members of the village panchayat which were to be filled up by nomination under Section 10(3) and Section 43(1) of the Bombay Village Panchayats Act, 1958 are hereby filled up by nominating the following persons.' The resolution in all nominated nine persons including two women to be the members of the village panchayat. It is thus clear that the allegation in the petition that it was the Block Development Officer who had nominated these

nine persons as members of the aforesaid panchayat is not correct, nor is it correct, as stated in the Collector's letter, that these nine persons were nominated by the Government. It also appears that the Collector, in pursuance of the representations made to him, held an enquiry into the allegation that these nine members were disqualified under Section 14(h). Before the Collector, a statement was made by the Secretary of the Village Panchayat in which the said Secretary admitted that he had never served any bills for taxes upon these nine members. That being so, there was no question of these nine members being defaulters or being disqualified under Section 14(h) of the Act. The Collector, therefore, was right in rejecting the representation made by the village people protesting against these nine members acting as members of the panchayat.

4. Mr. Pathak, however, has raised before us a point on the construction of Section 10(3) and has sought to contend that even the nomination made by the District Panchayat Mandal was contrary to the provisions of Section 10(3). Mr. Pathak argued that the words in Sub-section (3) of Section 10, namely, 'If for any reason an election does not result in the return of the required number of qualified persons willing to take office' mean that the Panchayat Mandal would only be entitled to nominate under that sub-section provided that some at least of the members of the panchayat are elected but not the full required number and that it is only in such an event that the sub-section empowers the District Panchayat Mandal to nominate members in respect of seats to which members are not returned in the election. He argued that where no election has taken place at all and none of the members has been elected, the provisions of Sub-section (3) of Section 10 would not come into play and therefore the resolution dated February 7, 1961 was contrary to Sub-section (3) and was invalid. He contended that therefore the instant panchayat cannot be said to have been validly constituted and a fortiori the election of the Sarpanch and Up-Sarpanch was also invalid.

5. In our view, the limited construction sought to be placed upon the aforesaid words in Sub-section (3) by Mr. Pathak is not warranted by the words of that sub-section as also the scheme of Section 10. Section 4 of the Act empowers the State Government to declare any local area comprising a revenue village, or a group of revenue villages etc. to be a village. Once such a village is declared, Section 5 directs that there must be a panchayat in every such village declared under Section 4. Section 10 deals with the constitution of a panchayat. Sub-section (1) of Section 10 provides that a panchayat shall consist of such number of members, not being less than seven and more than fifteen, as the Collector may determine. It also provides that each village shall be divided such number of wards, and the number of members of a panchayat to be elected from each ward shall be such, as may be determined by the Collector. Sub-section (2) provides for the reservation of seats with which for the time being we are not concerned. Sub-section (3) provides that if for any reason an election does not result in the return of the required number of qualified persons willing to take office, the panchayat mandal shall, as soon as possible, appoint from persons qualified to be elected, such persons as are necessary to make up the required number, and the persons so appointed shall be deemed to have been duly elected under Sub-section (1). The names of elected members and also members appointed as aforesaid have to be published by the Collector in the prescribed manner. Lastly, Sub-section (4) provides that notwithstanding anything in Sub-section (1), where two-thirds or more of the total number of members required to be elected are elected, failure to elect the remaining members shall not effect the constitution of the panchayat. As aforesaid, the contention of Mr. Pathak was that the opening words of Sub-section (3) pre-

suppose that there are at least some of the members who have been elected and the power of nomination has been conferred upon the District Panchayat Mandal only for the purpose of filling up the deficiency. That, as already stated, does not appear to us to be a correct interpretation the provisions of Section 10 clearly show that two methods have been provided for constituting a panchayat. The first one is furnished by Sub-section (1), namely, by election, and the second one is furnished by Sub-section (3), namely, by nomination, by the District Panchayat Mandal. Reading together Sub-section (1) and Sub-section (3), it seems to us fairly clear that the object of the Legislature was to see that in every local area which has been declared to be a village under Section 4, there should be a properly constituted panchayat. The Legislature apparently seems to have envisaged a situation where a village might not be able to return the required number of elected persons. If such an event happens, it would not be possible for such a village to have a properly constituted panchayat. In order to provide a remedy for such an event, the Legislature advisedly provided in Sub-section (3) that if for any reason an election which has taken place under Sub-section (1) does not result in the return of the required number of qualified persons willing to take office, the District Panchayat Mandal should have the power to nominate the required number of persons to constitute the panchayat. The expression 'required number of qualified persons willing to take office' does not necessarily mean that there has been a certain number of elected persons in the election envisaged under Sub-section (1). If the election has resulted in the return of an insufficient number of elected persons, obviously the District Panchayat Mandal under Sub-section (3) would have the power to nominate persons in the remaining seats. But that does not mean that if an election has been infructuous there should be no panchayat at all for such a village. In such an event, the District Panchayat Mandal would, under Sub-section (3), have the right to nominate persons for all the seats. There is nothing in Sub-section (3) to justify the narrow interpretation sought to be placed by Mr. Pathak. If the Panchayat Mandal had no power to nominate, there would be a stale-mate in the case suggested by us and there would be therefore a breakdown of Section 5. Mr. Pathak however suggested that if the village people were not to elect a single individual, the State Government would be at liberty to have another notification issued by the Mamlatdar setting out therein the various stages for a fresh election. But Mr. Pathak could not furnish us any solution to the question, viz., that if the village were again to fail to elect any one, whether there was any remedy under the Act. The only thing that Mr. Pathak could suggest to us was that in such an event the State Government could exercise its power under Section 145 and appoint a person or persons to administer the Panchayat. Under Section 145, the State Government can appoint an administrator or administrators in the event only of a panchayat exceeding or abusing its powers or being held to be incompetent to perform its functions or making persistent defaults in performance of the duties entrusted to it under sub Section (1) of Section 45 or any other provision of the Act. Section 145 thus contemplates that there is already a panchayat in existence and such a panchayat having made default in the performance of its duties the State Government supersedes such a panchayat and appoints an administrator or administrators to discharge its functions. Obviously, the provisions of Section 145 would be no answer to the query we put to Mr. Pathak. It would, therefore, appear that the construction of Sub-section (3) of Section 10 to which we are inclined to come to is a correct construction, for, it is that construction only which can fulfill the purpose both of Sections 4 and 5 of the Act. If, therefore, there has been a failure in an election by the village to elect either some of the required number or the whole of the required number, the District Panchayat Mandal would have the power to nominate persons to fill in the offices of the members of the panchayat and on such

nomination such persons would be deemed to have been elected under Sub-section (1). It is true that Sub-section (4) provides that where two-thirds or more of the total number of members required to be elected are elected, failure to elect the remaining members shall not affect the constitution of the panchayat. Sub-section (4), however, does not mean that two-thirds of the members must be persons elected at an election. The only thing that Sub-section (4) provides is that in order that a panchayat can be said to have been validly constituted, there must be elected at least two-thirds of the total number of members required to be elected, and the failure to elect the remaining members would not vitiate the constitution of the panchayat. Therefore, What Sub-section (4) requires is that even if the entire number of the members of the panchayat are not elected, the panchayat would not be invalid provided that at least two-thirds of the required number are elected. The word 'elected' in Sub-section (4) must be read in the context of the provisions of Sub-section (1) and Sub-section (3) of Section 10. Two-thirds of such members can either be elected as provided for in Sub-section (1) or can be persons who are deemed to be elected under Sub-section (3). The only condition prescribed by Sub-section (4) therefore is that in order to validly constitute a panchayat, there must be two-thirds of the required number elected or deemed to be elected under Sub-section (1) or Sub-section (3) of Section 10. In our view, therefore, the interpretation suggested by Mr. Pathak cannot be accepted, and the contention raised by him founded on such interpretation also cannot be accepted.

6. As regards the second objection to the members of the panchayat, as already stated, there was evidence before the Collector to come to the conclusion that the members could not be said to be defaulters as there was evidence before him of the Village Secretary himself that no tax bills were furnished or served to the aforesaid members. That being so, even if they had not paid the village taxes, they could not be deemed to be defaulters and therefore could not be said to be disqualified under Section 14(h) of the Act.

In our view, neither of the two contentions can be sustained and the petition must, therefore, be dismissed. Rules discharged. The petitioners will pay to the respondents the costs of this petition.