

The Tehsildar, Hinganghat and Another

Vs

Deorao and Others

Civil Appeal No. 916 of 1968

(K. K. Mathew, P. K. Goswami, N. L. Untwalia JJ)

24.11.1975

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave from the judgment and order of the Bombay High Court dated July 28, 1967 allowing a writ application filed by the respondents. Nobody appeared to oppose this appeal on their behalf. Therefore, its hearing proceeded ex parte.
2. The respondents were members of the village panchayat of village Tas which is included in the electoral division called Samudrapur-Kandhli. New elections for this division for electing to the Panchayat Samiti in accordance with Maharashtra Zila Parishads and Panchayat Samities Act, 1961 were to be held on July 31, 1967. The respondents claimed that they were members of the village panchayat and were entitled to vote at the election. Their names, therefore, ought to have been included in the list of voters entitled to vote at the election for the Panchayat Samiti. The appellant by taking an erroneous view of the law made an order on July 12, 1967 rejecting the respondents' prayer for inclusion of their names in the voters' list. The High Court has allowed their application, quashed the order of the appellant and directed the inclusion of their names in the list of voters.
3. This appeal has remained pending in this Court for about 7 years and by this time elections must have been held to the Panchayat Samiti or fresh elections must have been held to fill up the office of the members of the village panchayat. Since the other side has not appeared, we could not be sure as to whether this appeal has become infructuous or not. In any event it has to fail as being without any merit.
4. Admittedly, the respondents were members of the Tas Gram Panchayat since the year 1960. Fresh election was held in the Gram Panchayat aforesaid in the year 1966. This election was set aside by the Civil Judge, Junior Division Hinganghat and, therefore the new members could not take their office. In such a situation the appellant took the view that the term of the office of the respondents had expired under Section 27 of the Bombay Village Panchayats Act, 1958, Bombay Act III of 1959 - hereinafter referred to as the Act. The High Court has taken the view that the term of the office of the respondent stood extended under sub-section (2) of Section 28 of the Act. In our Opinion the High Court is right in its view.
5. Section 27 as stood at the relevant time read as follows :

27 (1) The members of a panchayat shall save as otherwise provided in this Act, hold office for a term of four years.

(2) The State Government may, after consulting the Standing Committee by order in writing and for reasons recorded therein, extend the said term for a period not exceeding in the aggregate five years. Any order shall be notified in such manner as the State Government may approve.

It would be useful to quote Section 28 also in full :

28 (1) The term of office of the members elected at a general election including the Chairman of Chairmen of the co-operative society or societies, as the case may be, referred to in clause (a) of sub-section (1) of Section 10 or appointed under sub-section (3) of Section 10 shall be deemed to commence on the date of the first meeting of the panchayat. The first meeting of the panchayat shall be held on a day fixed by the Collector within four weeks from the date on which the names of elected members are published under Section 10 :

Provided that, if such day fixed for the first meeting falls prior to the date on which the term of office of the retiring members expires under Section 27 or prior to the expiry of the period for which the panchayat has been superseded under Section 145, the first meeting shall be held on a date not exceeding ten days from such expiry of the term of office of the members or the expiry of the period of supersession.

(2) The term of office of the outgoing members shall be deemed to extend to, and expire with the day before such meeting

It would thus be seen that the scheme of the Act is that ordinarily and generally fresh election for filling up the office of the members of the panchayat should be held before the expiry of their term as provided in sub-section (1) of Section 27 or within the term extended under sub-section (2). The proviso to sub-section (1) of Section 28 also lends support to this view. But the term of office of members under Section 27 in express language is subject to the other provisions of the Act because the expression used in sub-section (1) is "save as otherwise provided in this Act". The office of the members of the panchayat is not to remain vacant and, therefore, sub-section (2) of Section 28 by a deeming provision extends the term of the outgoing members to the day before the meeting called and held in accordance with sub-section (1). Since the fresh election held in 1966 was set aside and no meeting was held, the term of the office of the respondents the outgoing members, stood extended and did not expire until the day before the holding of the meeting of the duly elected members.

6. For the reasons stated above, this appeal fails and is dismissed. No order as to costs.

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