

they were wrong in both these contentions. The election is to be made under the statute, and what the defendants asked was that the plaintiffs should not be allowed to postpone the election till the final hearing. I see no reason to depart from the ordinary rule that costs follow the event, and I order the plaintiffs to pay the costs of the defendants of the summons in each suit separately. Costs to be taxed.

Counsel certified.

Attorneys for plaintiffs, Messrs. *Little & Co.*

Attorneys for defendants, Messrs. *Bhaishankar, Kanga & Co.*

*Order accordingly.*

B. K. D.

## APPELLATE CIVIL.

*Before the Honourable Mr. S. S. Rangnekar, Acting Chief Justice, and  
Mr. Justice Tyabji.*

PATEL SAMALBHAI LALLUBHAI (ORIGINAL DEFENDANT NO. 1), APPELLANT  
v. JESANGBHAI RANCHHODDAS AND OTHERS (ORIGINAL PLAINTIFFS  
AND DEFENDANT NO. 2), RESPONDENTS.\*

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July 16

*Bombay Local Boards Act (Bom. Act VI of 1923), section 35—Meeting of Local Board to elect President—Two candidates—Even votes—Chairman's casting vote—Voting to be recorded in a special book—Voting by ballot—Regulation No. 35—Validity.*

Regulation 35 of the Regulations framed by the Taluka Local Board, North Daskroi, under section 35 (1) of the Bombay Local Boards Act, 1923, providing for voting by ballot in the case of election of the President and Vice-President is *ultra vires*, being clearly inconsistent with section 35 (2)(k) of the Act since under the Act there could not be any voting by ballot.

On January 16, 1935, a meeting was held for the election of the President of a Taluka Local Board. Twenty members were present and there were two rival candidates, each of them getting at the election an equal number of votes. The Chairman of the meeting decided to give his casting vote to defendant No. 1, but before he announced the result of the election, a member protested against the open voting as being

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contrary to Regulation No. 35. The objection was overruled and defendant No. 1 was declared to have been elected as the President.

Plaintiffs, two members of the Board, sued to have it declared that the election of defendant No. 1 as President was void and illegal and they further sued to obtain an injunction restraining him from working as the President. The Courts below, relying upon Regulation No. 35, decreed the claim. Defendant No. 1 having appealed :—

*Held*, dismissing the suit, that the Regulation was *ultra vires* the Bombay Local Boards Act, 1923, and was therefore illegal and made without jurisdiction.

SECOND APPEAL from the decision of N. S. Lokur, District Judge, Ahmedabad, confirming the decree passed by C. D. Pandya, First Class Subordinate Judge, Ahmedabad.

Suit for declaration and injunction.

The material facts appear sufficiently from the judgment.

*U. L. Shah*, for the appellant.

*G. N. Thakor*, with *P. A. Dhruva*, for respondent.

RANGNEKAR AG. C. J. This appeal raises a somewhat important question under the Bombay Local Boards Act (Bom. VI of 1923). The question is whether a certain regulation made by the Taluka Local Board of North Daskroi is *ultra vires* the Act. First, as to the facts: There was a meeting of the Local Board on January 16, 1935, for the purpose of electing a President of the Board. Twenty members of the Board were present, and one Dwarkadas was appointed Chairman of the meeting. A resolution was moved and duly seconded by the plaintiffs to the effect that one Maneklal Manilal should be elected as the President. An amendment to the resolution was duly moved and seconded to the effect that defendant No. 1 should be elected as the President. Votes were taken by show of hands, and on a count the Chairman found that there were ten votes in favour of Maneklal and ten in favour of defendant No. 1. Thereupon, as the minutes of the meeting show, the Chairman gave his casting vote in favour of defendant No. 1. Upon that one Haribhai raised a protest that under regulation 35 made by the Board and sanctioned

by the District Local Board, the votes ought to have been taken by ballot and not by a show of hands, and that the procedure followed was illegal. The Chairman overruled the objection. This suit is the result of the proceedings which thus took place at the meeting. It was brought by the respondents who are two members of the Board against defendant No. 1, who, as I have stated, was elected President of the Board, and the Taluka Local Board, North Daskroi, defendant No. 2.

The trial Court accepted the plaintiffs' claim and declared that the election of defendant No. 1 was void and illegal and granted an injunction against defendant No. 1 restraining him from acting as President of the Board. There was an appeal to the District Judge of Ahmedabad, which was dismissed by the learned Judge, and it is from his judgment that this second appeal is made.

The learned advocate on behalf of the appellant has raised four contentions; but in view of the conclusion to which we have come as regards one of them, it is not necessary to express any opinion on the remaining contentions.

The most important contention raised by the learned advocate is that the regulation on which the plaintiffs rely and upon the strength of which the plaintiffs succeeded in both the lower Courts is *ultra vires* the Act and therefore illegal and made without jurisdiction. It is necessary, therefore, to turn to the relevant provisions of the Act as also to some of the regulations made thereunder. Section 5 of the Act relates to the constitution of the Board and it provides, omitting the unnecessary words: Every Taluka Local Board consists of (a) elective members, and (b) nominated members, that is members nominated by Government. The rest of the section is not material. It is clear that, having regard to this section and the other provisions to which our attention has been drawn, the Board comes into existence as soon as it has its members elected

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and members nominated, even though at the time the Board may have no President. Then comes section 22 which refers to the election of the President and it provides that "Every Local Board shall be presided over by a President, elected by the Board from amongst its own members." Section 27 may be referred to as it has some bearing on the scheme of the Act relating to the question which we have to decide. It provides :

"On the expiry of the term of office of a local board the president and vice-president shall continue to carry out the current administrative duties of their offices until such time as a new president and vice-president shall have been elected and shall have taken over charge of their duties: Provided that in the case of the new board constituted under this Act, a meeting for the election of a new president shall be called by the president of the retiring board."

Then it provides that—

"The president or vice-president of the retiring board and, in their absence, the chief officer, if any, shall preside at such meeting, and the new board shall then elect its own chairman for that meeting. . . . The chairman so elected shall then preside at such meeting, and the meeting shall then proceed to elect the new president."

The meeting in question was held in accordance with the provisions of this section. The next section which is relevant is section 35, sub-section (1), which is in these terms :

"A local board shall meet together not less than once in every 3 months and shall from time to time make regulations, consistent with this Act and with any rules or orders made by the Government in this behalf under clause (c) of section 133 with respect to the place, day, hour, notice, management, and adjournment of such meetings, and generally with respect to the transaction of business, as it thinks fit, subject to the provisions of the following sub-sections."

These last words seem to me to be important and it is clear from the judgment under appeal that the learned Judge has omitted to notice them. Then sub-clause (k) of section 35 (2) is in these terms :—

"Minutes shall be kept of the names of the members and of the Government officers, if any, present under the provisions of section 40 and of the proceedings at each meeting of the board, and if any member present at the meeting so desire, of the names of the members voting, respectively, for or against any resolution, in a book to be provided for this purpose, which shall be signed, as soon as practicable, by the president, vice-president or chairman of such meeting and shall at all reasonable times be open to inspection by any member of the board or by any inhabitant of the district."

Sub-clause (l) provides :

“ Every regulation made under this section by a taluka local board shall be subject to the approval of the district local board to which such taluka local board is subordinate.”

It was one of the contentions of defendant No. 1 that this particular regulation which was made under sub-section (I) of section 35 was not approved by the District Local Board, but this contention was negatived by both Courts and has not been pressed before us.

These then are the material sections of the Act.

I now turn to the regulations which it is clear have been made under section 35 (I). Regulation 1 says that a “ Motion ” includes a proposal and an amendment. Then regulation 10 provides : “ Every proposal and amendment except a formal motion such as a motion for adjournment shall be put in writing.” Then regulation 13 and the following regulations lay down the procedure for moving and seconding a motion or resolution and amendments thereto. Then regulation 34 relates to the procedure for taking votes on proposals and amendments at the conclusion of the debate. Then comes the regulation which has been the subject of dispute between the parties. It is in these terms :

“ 35. Votes shall ordinarily be taken by a counting of hands, but may if the presiding authority with the sense of the meeting so decide be taken by ballot. In the case of election of President and Vice-President they shall be taken by ballot.”

The rest of the regulation is not material. Regulation 36 empowers a member to demand a poll. Regulation 37 explains what is meant by voting by ballot. It is as follows :

“ When votes are taken by ballot, the members shall record their votes in writing in such manner as the presiding authority may prescribe. Such writing shall not be signed and shall not be seen by any person except the presiding authority and two scrutinisers to be appointed by him. Such papers shall be destroyed immediately after the result of the voting is declared.”

The appellant, therefore, argues that regulation 35 is *ultra vires* the Act, as the Act in sub-clause (k) of section 35 (2) gives a right to any member to have the names of the

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members present voting for or against any resolution in any meeting recorded in a special book which then has to be signed by the presiding authority. The learned District Judge felt the force of this contention; but he thought that the section did not confer upon a member a right to have the names of members voting for or against a resolution recorded. The learned Judge further observed that "where voting is by ballot, the manner of voting is concealed and no member can demand its disclosure." This, in my opinion, is really begging the question. It is impossible in our opinion to accept this reasoning having regard to the explicit language of sub-clause (k) of section 35 (2). Sub-clause (k) of section 35 (2) clearly confers upon the member the right to have the names of persons who voted for or against a resolution disclosed. The Board can make regulations "consistent with not only the Act and rules or orders made by Government in this behalf" as the Judge points out, but also "subject to the provisions of the following sub-sections", which would include sub-clause (k). Regulation 35 therefore is clearly inconsistent with sub-clause (k), and it is difficult to see how under the Act framed in this manner there could be any voting by ballot. As the learned Judge himself points out it is significant to notice that in an analogous statute, namely, the Municipal Boroughs Act, the corresponding section 35 (9) does not contain a similar provision; nor does the other Act referred to by the Judge, namely, the Bombay District Municipal Act. The learned Judge then refers to a book called the Bombay Local Boards Manual written by Mr. Cumming, and accepted the construction put upon the regulation and its validity by that gentleman. In our opinion it was irregular on the part of the learned Judge to refer to the Manual at all. The question of construction is one which is entirely for the Court, and can only be decided upon the language of the Act and sometimes, if necessary, by reference to analogous statutes. It is argued as it was in the Court below that

section 35 (2) (k) refers only to the manner in which the minutes of a meeting are to be kept. That no doubt is true, but it also provides for the right of a member to have the names of persons who voted for or against a resolution recorded. It is argued that a meeting for electing a President is a special meeting and differs from other meetings held for transacting business. As far as I can see, the Act makes no distinction between a meeting held by the Board for electing a President or any other meeting held to transact any other business. Section 35 would equally apply to both. Nor do the regulations make any such distinction.

I think, therefore, we must allow the appeal, reverse the decree of the lower appellate Court and dismiss the suit with costs throughout.

TYABJI J. I agree that the appeal must be allowed.

The suit is for a declaration that the election of defendant No. 1 as President of the Taluka Local Board of North Daskroi at a meeting held on January 16, 1935, is void and illegal; and for an injunction restraining defendant No. 1 from working as President, and defendant No. 2, the Taluka Local Board, from accepting him as President.

The validity of defendant No. 1's election as President depends upon the validity of regulation 35 for the transaction of business, purporting to be framed by the Local Board under the powers conferred by section 35 (1) of the Bombay Local Boards Act (Bombay Act VI of 1923). The plaintiffs' case was that the disputed election was void as it had taken place at a meeting where "the votes were taken by a counting of hands," whereas regulation 35 provides among other things that in the case of the election of the President "votes shall be taken by ballot." Defendant No. 1 does not deny that regulation 35 was not given effect to at the meeting: but contends that regulation 35, in so far as it provides for the election of the President by ballot, (understanding that expression as it is explained in

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regulation 37), is itself invalid : it being *ultra vires* of the Local Board to frame such a regulation,—inasmuch as the power conferred upon the Local Board under section 35, sub-section (1), of the Bombay Local Boards Act, to make regulations for the transaction of business, is subject to the restrictions that the regulations shall be (1) consistent with the said Act, and (2) subject to the provisions of the sub-sections of section 35 : and it is contended that regulation 35 so explained is inconsistent with section 35, sub-section (2), clause (k), of the Act.

It is provided by clause (k)—with which, as I have stated, regulation 35 is alleged to conflict—that if any member present at any meeting so desires, minutes shall be kept of the names of the members voting, respectively, for or against any resolution, in a book to be provided for the purpose, which shall be signed, as soon as practicable, by the President, Vice-President, or Chairman of such meeting, and shall at all reasonable times be open to inspection by any member of the Board or by any inhabitant of the district. No regulation, it is argued, can therefore be valid which has the effect of taking away the right of any member present at any meeting of the Board to require that the names of the members voting respectively for or against any resolution be entered in the minutes of the proceedings of the Board : and regulation 35 is said to be obnoxious in this respect to the provisions of the clause (k).

The acceptance or rejection of this argument depends upon whether the election of the President must take place by members voting for or against any resolution : and upon the manner in which the regulations require the minutes to be kept of the proceedings for the election of the President.

Dealing first with the form that the proceedings for the election of the President must take, the regulations provide generally for the transaction of business and the conduct of proceedings at meetings of the Board. The business



to the transaction of which the regulations refer fall in the main under three heads: minutes are required to be confirmed and signed (regulations 6-7), questions put to the President must be dealt with by the presiding authority (regulation 9) and proposals or motions and amendments thereto may be made, seconded and discussed (regulations 10-38). I believe that the only other classes of business that are mentioned are: motions for adjournment (regulation 39), points of order (regulations 40-44) and the discussion of budget estimates or appropriation of funds and of rules or bye-laws.

The election of the President must form part of the business to be transacted by the Board. It is enacted by section 22 of the Local Boards Act that every Local Board shall be presided over by a President elected by the Board from amongst its own members; and section 27 provides for a meeting for the election of a new President being called. Putting aside the business of confirming and signing of the minutes and dealing with questions, there is no provision in the Act or the regulations, for any business being transacted except by way of a motion or proposal. Regulations 45 and 47 are hardly exceptions in this respect. They contain specific provisions applicable to particular forms of proposals. But neither these regulations nor any other to which our attention was drawn has any bearing on the election of the President. The election, which is the subject of the present controversy, was itself held through the medium of a proposal and an amendment thereto; and yet no exception has been taken to the adoption of this course, nor is any alternative suggested. All that is objected to is that the votes for and against the proposal and amendment were taken by show of hands and not by ballot.

It may be taken therefore that proceedings for the election of the President must conform with the usual method for the transaction of business, viz., through a proposal made in

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writing, with, if desired, amendments to the proposal. The provisions in section 35, sub-section (2), clause (k), must apply to resolutions for the election of the President as much as to any other resolutions. If, therefore, any member present at the meeting at which the election of the President takes place so desires, the names of the members voting respectively for or against the resolution by which the election of the President takes place, must be entered in the minutes.

Turning now to the form of the minutes regulation 36 is directly concerned with them. It must however be considered with the connected regulations 35 and 37. Regulation 35 provides that "votes shall ordinarily be taken by a counting of hands" but to this general rule two exceptions are introduced: (1) if the presiding authority with the sense of the meeting so decide, "votes may be taken by ballot". (2) The second exception is that "In the case of the election of the President and the Vice-President they (the votes) shall be taken by ballot."

The next two regulations show what, so far as the minutes are concerned, is implied respectively in votes being taken by a counting of hands and by ballot:—

"When votes have been taken by a counting of hands, the presiding authority shall on the demand of any member, cause to be recorded in the minute book the names of the members voting for or against the motion and of those who have declined to vote" (regulation 36).

This gives effect to clause (k) of sub-section (2) of section 35.

Next, regulation 37 deals with the other form of voting, —by ballot—and it is provided that:

"When votes are taken by ballot, the members shall record their votes in writing in such manner as the presiding authority may prescribe. Such writing shall not be signed and shall not be seen by any person except the presiding authority and two scrutinisers to be appointed by him. Such papers shall be destroyed immediately after the result of the voting is declared."

It is clear therefore that on the votes being so taken by ballot, the names of the members voting respectively for

or against the resolution cannot, even if a member so desires, be entered in the minute book as provided by clause (k) of sub-section (2) of section 35.

Only one argument seemed to me to throw any doubt on the question,—the argument that the election of the President was the transaction of a business of so peculiar a nature that proceedings relating to it must stand on a special footing: that consequently the minutes recording such proceedings may reasonably be in a different form from the minutes relating to the ordinary business transacted by the Local Board: and that it is the ordinary business with which clause (k) of sub-section (2) of section 35 deals. There is no justification however for holding that any such cleavage in the two classes of business is to be found in the regulations or the Act, or that the election of the President is put in a class apart from the transaction of the ordinary business. Nor do the regulations 35-37 restrict the taking of votes by ballot to the election of the President.

In my opinion the provision contained in regulation 35 to the effect that on a motion or amendment having reference to the election of the President, votes shall be taken by ballot, understanding that expression as it is explained in regulation 37, is inconsistent with the provisions of clause (k) of sub-section (2) of section 35 of the Local Boards Act; and consequently making a regulation with such a provision was beyond the powers conferred upon the Local Board under section 35, sub-section (1), of the Act.

For these reasons I agree that the appeal must be allowed and the suit dismissed with costs throughout.

*Appeal allowed.*

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