
Nagraj Pukhraj Sheth Vs Tahsildar, Uran Dist., Raigad and Others

Writ Petition No"s. 1979 and 2035 of 1985

Court: Bombay High Court

Date of Decision: June 11, 1985

Acts Referred:

Maharashtra Municipalities Act, 1965 – Section 51(6), 63, 65

Citation: AIR 1986 Bom 132 : (1985) 2 BomCR 717 : (1985) 87 BOMLR 309 : (1985) MhLj 576

Hon'ble Judges: Kantharia, J; Dharmadhikari, J

Bench: Division Bench

Advocate: V.T. Walavalkar and N.V. Walavalkar, for the Appellant; D.L. Patil, Addl. Govt. Pleader and C.J. Sawant, Navin B. Shah and T.K. Patil, for the Respondent

Judgement

Dharmadhikari, J.

The petitioner is the Councillor of the Municipal Council, Uran in Raigad District elected in the general elections held on

25th April 1985. After the general elections were held and the names of the Councillors were duly notified in the Official Gazette on 27th April

1985, respondent 2 the Collector of Raigad issued a notice on 3rd May 1985 informing the Councillors that a special meeting will be held on 15th

May 1985 at 11a.m. in the office of the Municipal Council for electing the President and for co-opting Councillors on the Council, as per the

provisions of section 51 of the Act. It is this notice issued by the Collector which is challenged in this writ petition by the petitioner.

2. While admitting the Writ Petition and issuing the Rule, Kotwal J. passed the following order:-

Heard Ld. Counsel - for petitioner and the respondents. Rule. To be heard on 11-5-1985. Parties agree. High on board. Regarding the interim

relief, Heard parties.

It is not necessary to adjourn the scheduled meeting at least for the purpose of electing the President, since there is no controversy in that behalf

nor it is inconsistent with the provisions of the Act. However, the other part relating to co-option requires to be stayed till the main petition is

disposed of. These two items in the transaction are quite separable and distinct and one does not affect the other. Further items on the agenda

regarding co-option can be adjourned so it can be done even in the subsequent meeting. Hence no prejudice would be caused to either side by

adopting this procedure. The scheduled meeting of the 15th May may be held wherein only the item of election of President be transacted. The other

item of co-option, however, it stayed until further orders.

Thus the learned Judge only stayed the co-option of the Councillors which was to be held in the meeting dt. 15th May 1985. As a result of this

order, on 15th May 1985 the President of the Municipal Council was duly elected. After the President was elected, by virtue of the obligation cast

upon the Collector under S. 65(4) of the Act, the Collector called a meeting of the Councillors for electing the various Subject Committees. By

filing Writ petition No. 2035/1985 the petitioner sought the stay of the said elections. But such a stay was not granted and we are informed that in

the meeting held on 28th May 1985, elections to the Subjects Committees were also completed and the petitioner also participated in the said

elections. Writ Petition No. 2035 of 1985 is placed before us along with the main petition No. 1979 of 1985 for admission. Since both the Writ

Petitions were heard together, they are being disposed of by this common Judgment.

3. Shri Walavalkar, the learned counsel appearing for the petitioner, contended before us that the present general elections were held for

reconstituting the Municipal Council which stood superseded. Therefore, the democratic process of reconstituting the Municipal Council was

followed by holding general elections. According to the learned Counsel, the provisions of S. 51 will have to be construed in the context of the

democratic process which is the basis of reconstitution of the Municipal Council. As part of the decentralisation of power, the present legislation

was enacted by the State legislature. After the general elections were held, the elected Municipal Councillors, in the first meeting concerned by the

Collector, are obliged to elect their President. The President is the Head of the Municipal Council and is entitled to convene the meeting of the

Council and to preside over it. Therefore, once the President of the Municipal Council is elected, nobody else has a right to preside over the

meeting of the Municipal Council. Mere deletion of the words over which the President shall preside"" from sub-sec. (6) of S. 51 cannot mean that

the Collector or his nominee can preside over the meeting even after the election of the President. According to Shri Walavalkar, the said words

were wholly redundant and by mere deleting the said words, power cannot be conferred upon a foreigner to preside over a meeting of the

Municipal Council after the election of the President. He also contended that the provisions of Ss. 51, 63 and 65, as amended, will have to be

read together and construed harmoniously. So construed, it is clear that after the President of the Council is elected, he alone has a right to preside

over the meeting and, therefore, the notice issued by the Collector authorising the Tahsildar, his nominee, to preside over the meeting even after the

election of the President is wholly illegal.

4. On the other hand, it is contended by Shri Sawant, the learned Counsel appearing for respondents 4 to 6 that the amendment to sub-sec. (6) of

S. 51 is not inadvertent but is deliberate. With a specific intention the legislature has deleted the words ""over which the President shall preside"". It

will not be correct to say that these words were redundant and their deletion will not change the colour of the provision. The intention of the

legislature is very clear from this amendment, that the initial meeting called by the Collector is to continue even after the election of the President

and in this meeting co-option of the Councillors is to take place. It is the mandate of the legislature that even in this continued meeting the Collector

or his nominee will preside and the newly elected President will have no right to preside over the said meeting which was concerned by the

Collector. This is further clear from the amendment to S. 65. sub-sec. (4) and the newly added sub-secs. (4A) and (4B) to S. 65 of the Act and,

therefore, the notice issued was perfectly legal and valid. He also contended that under the Act, the particularly under S. 65(4) as amended, the

Collector has no option but to convene the meeting within 7 days of the election of the President for electing the Subject s Committees.

Accordingly the Collector has concerned the meeting and the Subjects Committees are also duly constituted. In this election of the Subjects

Committees the petitioner actively participated. Therefore it cannot be said that the election to the Subject Committees is any way illegal.

5. For properly appreciating the controversy raised before us, it will be worthwhile if a detailed reference is made to S. 51 of the Act. Section 51

as amended by Maharashtra Act No. XI of 1983 reads as under :-

51. (1) Every Council shall have a President, who shall be elected from amongst the Councillors who are elected or deemed to be elected.

(2) Within twenty-five days from the date on which the names of Councillors elected to a Council are published or, as the case may be, first

published, under sub-sec. (1) of S.19, in the Official Gazette, the Collector shall convene a special meeting of the Councillors for election of a

President :

Provided that such meeting shall not be held before the expiry of the term of office of outgoing Councillors as determined u/s 40.

(3) The meeting called under sub-sec. (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint

in this behalf. The Collector or such officer shall ,when presiding over such meeting, have the same powers as the President of a Council when

presiding over a meeting of the Council has, but shall not have the right to vote :

Provided that, notwithstanding anything contained in this Act for regulating the procedure at meetings (including the quorum required thereat), the

Collector or the officer presiding over the meeting may, for reasons which in his opinion are sufficient, refuse to adjourn such meeting.

(3A) Any Councillor aggrieved by any decision of the Collector or such officer, accepting or rejecting any nomination paper may, within forty-

eight hours from intimation of such decision, present an appeal to the Regional Director of Municipal Administration concerned and simultaneously

give notice of such appeal to the Collector or such officer. Such appeal shall be disposed of by the Regional Director, as expeditiously as possible,

after giving a reasonable opportunity of being heard to the parties concerned. The decision of the Regional Director on such appeal, and subject

only to such decision (if any), the decision of the Collector or such officer, as the case may be, accepting or rejecting the nomination of a

candidate, shall be final and conclusive and shall not be called in question in any Court.

(4) If, in the election of the President, there is an equality of votes, the result of the election shall be decided by lots to be drawn in the presence of

the Collector or the officer presiding, in such manner as he may determine.

(5) any dispute regarding election of the President shall be referred to the State Government, whose decision in that behalf shall be final.

(6) After election of the President, the Council shall continue its meeting for the purpose of co-opting Councillors.

(7) The co-option of the Councillors shall be made in the prescribed manner, in accordance with the system of proportional representation by

means of the single transferable vote.

(Sub-sec. (8) is not relevant to the controversy raised in this Writ Petition).

6. Prior to the amendment by Act No. XI of 1983, the old sub-sec. (6) read as under :-

(6) After election of the President, the Council shall continue its meeting, over which the President shall preside for the purpose of co-opting

Councillors

By Act No. XI of 1983 the words "" over which the president shall preside"" in sub-sec. (6) of S. 51 were deleted. This deletion is intentional. From

the Statement of Objects and Reasons appended to the Bill, it is clear that to avoid the mischief which was noticed by the legislature, the provision

came to be amended. The relevant portion of the Statement of Objects and Reasons for amending Ss. 51, 63 and 65 reads as under :-

At present the meetings for the purpose of co-opting councillors and constituting Subjects Committees etc. are presided over by the President of

the Municipal Council and the nomination papers are scrutinised by him. It has come to the notice of Government that the nomination papers of

Councillors contesting the elections are rejected by some of the Presiding Authorities on flimsy grounds and Government has no powers to

interfere at any stage of the elections. The only remedy available to an aggrieved party against any partiality shown by the Presiding Authority is to

approach the Court, which is a costly and lengthy procedure. It is, therefore, proposed that all these meetings should be concerned and presided

over by the Collector or any officer authorised by him and if any Councillor is aggrieved by the decision of the Collector or such officer accepting

or rejecting any nomination paper, he should present an appeal to the Regional Director of Municipal Administration whose decision shall be final.

From this Statement of Objects and Reasons, it is quite obvious that the amendment to Ss. 51, 63 and 65 is intentional. Unless the Court is forced

to do so, none of the words used in an enactment can be described as redundant. The normal presumption is that the use of the words and

expressions in an enactment is intentional. Similarly, deletion of the words from sub-sec. (6) viz. "" over which the President shall preside"" is also a

deliberate and intentional act of the legislature which clearly shows its intention. This is further clear from the Statement of Objects and Reasons.

the earlier law as it stood before the amendment clearly laid down that after the election of the President, the meeting was to continue for the

purpose of co-opting the Councillors and the President was to preside over this continued meeting. this right of the President to preside over the

meeting is taken away by the amendment to sub-sec. (6) of S. 51. In this context it is pertinent to note that the meeting in which co-option is held is

to be concerned by the Collector. Sub-sec. (3) of S. 51 further lays down that such a meeting shall be presided over by the Collector or such

officer as the Collector may appoint in that behalf. The Presiding officer has the same powers as the President of the Council viz. to preside over

the meeting of the Council, but shall not have the right to vote. Since the procedure followed for co-option of the Councillors is akin to the election,

the legislature in its wisdom thought it fit to confer the right of presiding over the meeting and scrutiny of the nomination papers etc. upon an

impartial person who is not personally interested in the process of election or is not a party to it. This is the reason why sub-sec. (6) of S. 51 came

to be amended. As a matter of fact, impartial scrutiny of the nomination papers is necessary to preserve the purity of election process. If the

scrutiny of the nomination papers is left to a partisan person, the very election process can get polluted. This is the reason why the legislature in

terms amended sub-sec. (6) of S. 51. In our view, the said amendment is in tune with the well-established principles of democracy which ensures

impartiality in the process of election of the President as well as co-option of the Councillors. The said provision is also in tune with the amended

provisions of Ss. 63 and 65 of the Act. By the same enactment i.e. Maharashtra Act No. XI of 1983, sub-sec. (4) of S. 65 came to be amended

and sub-sec. (4A) and (4B) were added to it, which read as under :-

(4A) the meeting called under sub-sec. (4) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint

in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council, when

presiding over a meeting of the Council has, but shall not have the right to vote.

(4B) Any Councillor aggrieved by any decision of the Collector or such officer, accepting or rejecting any nomination paper, may, within forty-

eight hours from intimation of such decision, present an appeal to the Regional Director of Municipal Administration concerned and simultaneously

give notice of such appeal to the Collector or such officer. Such appeal shall be disposed of by the Regional Director, as expeditiously as possible,

after giving reasonable opportunity of being heard to the parties concerned. The decision of the Regional Director on such appeal, the subject only

to such decision (if any), the decision of the Collector or such officer, as the case may be, accepting or rejecting the nomination of a candidate, shall

be final and conclusive and shall not be called in question in any Court.

Therefore, if Ss. 51 and 65, as amended, are read together and harmoniously, it is quite obvious that it is the Collector or his nominee who alone

can preside over the continued meeting. the competency of the legislature to enact the said provision is not challenged before us. The substantive

provision is also not challenged on any other count. We do not think that the provision is contrary to any basic or fundamental principle of

democracy. In this context it cannot be forgotten that right to preside over a meeting is neither a fundamental right nor a civil right, but is a creature

of the statute or special law and, therefore, must be subject to the limitations imposed by it. In the result, therefore, there is no substance in this

Writ Petition. the petition fails and the Rule is discharged in Writ Petition No. 1979 of 1985.

7. So far as Writ petition No. 2035 of 1985 is concerned, it is placed before us for admission and interim relief. Since this Court permitted holding

of the election of the President, the Collector had no other alternative but to convene a meeting for holding the elections to the Subjects

Committees in view of the amendment to sub-sec. (4) of S. 65 of the Act. Accordingly a meeting was held and elections to the subjects

Committees are also completed. In the elections of the Subjects Committees held on 28-5-1985 the petitioner actively participated. This is not a

petition by a person who was a candidate for co-option or his seconder. Therefore, in our view, the petitioner has no locus standi to challenge the

elections held to the Subjects Committees. More so, when he had actively participated in the said elections. Therefore, no interference is called for

with the said elections at the instance of the petitioner. This is more so when the Councillors who are elected to the various subjects Committees

are not made parties to the Writ Petition. Therefore, Writ Petition No. 2035 of 1985 stands rejected. However, in the circumstances of the case,

there will be no order as to costs.

8. Order accordingly.