

(1958) 07 BOM CK 0030

Bombay High Court

Case No: Miscellaneous Petition No. 364 of 1958

Ramchandra Laxman Belosay

APPELLANT

Vs

The Bombay Municipal
Corporation

RESPONDENT

Date of Decision: July 31, 1958

Acts Referred:

- Constitution of India, 1950 - Article 12, 226, 36, 48, 51

Citation: (1958) 60 BOMLR 1256

Hon'ble Judges: K.T. Desai, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K.T. Desai

1. The petition before me raises a very important question relating to the powers and functions of the Bombay Municipal Corporation. The petitioner is a councillor from Ward No. 10. He claims that he is a taxpayer and contributes to the municipal fund of the Corporation. At a meeting of the Corporation held on July 10, 1958, Dr. R.N. Kulkarni, a Municipal Councillor, proposed a resolution which ran as follows:

That the Municipal Corporation of Greater Bombay have learnt with deep regret about the execution of Mr. Imre Nagy, a former Prime Minister of Hungary and his three associates contrary to the doctrine of "Panchshila" enunciated by our beloved Prime Minister and practised by our country and accepted by other countries of the world. The Corporation hereby express their horror at the execution under peculiar conditions of those fighters for freedom of their motherland who, by displaying great courage and steadfastness even at the cost of their lives in the cause of their country's freedom have upheld the dignity of man and rendered great service to the highest value of life, viz. "Freedom". That the Mayor be requested to forward the Resolution through the State Government to the Union Government with a request

to communicate the same to the Government of Hungary through the proper channels for being communicated to the families of the late Mr. Imre Nagy and his associates, with an expression of the Corporation's sympathy in their sad bereavement.

2. As soon as the above resolution was proposed, a point of order was raised on the ground that the resolution was of a political nature and related to international affairs and that it had nothing to do with the civic duties which, it was said, must necessarily relate to the life and welfare of the citizens as such. The second respondent, who presided at the meeting, gave a considered and reasoned ruling on that proposition, holding that the resolution was not out of order. Thereafter the meeting of the Corporation was adjourned. The said resolution remains to be discussed at an adjourned meeting of the Corporation. On July 18, 1958, the petition herein was filed by the petitioner, contending that the action of the Corporation in discussing and passing the said resolution would be ultra vires the Corporation and that it had no right to discuss or pass that resolution. He asked for the issue of a writ of mandamus or prohibition or any other appropriate writ, direction or order under Article 226 of the Constitution of India against the respondents for restraining the Corporation from discussing or endorsing the said resolution.

3. The principal contention urged in this case by the learned Advocate General on behalf of the respondents is that the Corporation has every right and power to discuss and pass the said resolution and that the Corporation would not be engaging in any ultra vires activity in discussing or passing the same. It is strongly urged that the Bombay Municipal Corporation is entrusted with the municipal government of Greater Bombay, that it is a metropolitan Corporation, that it is a self-governing body and that it has every right to discuss all matters which it considers proper and pass resolutions in connection therewith. It is further urged that the Corporation has all the powers of a natural person except such as are expressly taken away by statute. It is urged that subject to the restrictions imposed by statute or statutory rules the Corporation is entitled to exercise all the powers which it considers proper. It is urged that a self-governing body like the Corporation cannot be restrained from discussing any resolution and passing it if it thought proper.

4. Corporations are of two types : (1) Chartered Corporations and (2) Statutory Corporations. The powers of Chartered Corporations have been, briefly summarized in Halsbury's Laws of England, Third Ed., Vol. IX, p. 62. Paragraph 128 appearing in that volume runs as follows:

Chartered Corporations : A Corporation created by charter has at common law power to deal with its property and to incur liabilities in the same way as an ordinary individual. Even if the charter expressly prohibits a particular act the corporation can do the act, but if it does that which is prohibited or is not authorised by its charter, its charter may be recalled by the Crown by proceedings on a scire facias. Further, a

member is entitled to ask for an injunction to restrain the commission by the corporation of acts which are outside the scope of the charter and which may result in its forfeiture.

It is not disputed that the Bombay Municipal Corporation is not a chartered corporation. It is not entitled to exercise the powers which can be exercised by a chartered corporation.

5. The Bombay Municipal Corporation is a statutory corporation. In connection with statutory corporations, it has been stated in the same volume of Halsbury's Laws of England in para. 129 as follows (p. 62):

Statutory Corporations: The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.

6. The Bombay Municipal Corporation is the creature of an Act of the Legislature. The above observations relating to statutory corporations are applicable to the Bombay Municipal Corporation. The same correctly state the law on the subject. What I have, in the present case, to consider is what the Bombay Municipal Corporation is expressly or impliedly authorised to do by the Bombay Municipal Corporation Act by which it has been created. The preamble to the Bombay Municipal Corporation Act runs as follows:

Whereas it is expedient to consolidate and amend the law relating to the municipal government of Greater Bombay; It is enacted as follows:...

It is clear from the preamble that the law which has been enacted by the said Act is the law relating to municipal government. Section 4 of the Act constitutes several municipal authorities. It provides that the municipal authorities charged with carrying out the provisions of the Act are:

- (a) a Corporation;
- (b) a Standing Committee;
- (c) an Improvements Committee;
- (d) a Bombay Electric Supply and Transport Committee;
- (e) an Education Committee;
- (f) a Municipal Commissioner;
- (g) a General Manager of the Bombay Electric Supply and Transport Undertaking.

The Corporation is one of the several municipal authorities charged with carrying out the provisions of the Act. There are various provisions in the Act dealing with the powers, duties and functions of these various municipal authorities, By Section 5(1) it is provided that the Corporation shall consist of one hundred and thirty one councillors elected at the ward elections. Section 5(2) of the Act provides as follows:

5(2). The Corporation shall, by the name of "The Municipal Corporation of Greater Bombay", be a body corporate and have perpetual succession and a common seal and by such name may sue and be sued.

The result of these provisions is that the Corporation is constituted into a body corporate and is distinct and separate from the Councillors who constitute the Corporation. Section 36 of the Act, in so far as it is relevant, runs as follows:

36. The Corporation shall meet for the despatch of business and shall from time to time make such regulations with respect to the summoning, notice, place, management and adjournment of such meetings, and generally with respect to the mode of transacting and managing the business of the corporation (including the submission, asking and answering of questions u/s 66A) as they think fit, subject to the following conditions:...

(k) any councillor who desires at any meeting to bring forward any business, (other than any questions u/s 66A) or to make any substantive proposition, which is not already specified in the notice of such meeting, shall give written notice of the same to the municipal secretary at least three clear days before the day fixed for the meeting; and a supplementary announcement of the business or propositions, of which notice has been so given, shall be given by the said secretary in not less than one local daily newspaper not later than the day previous to the meeting;

Strong reliance has been placed on the provisions quoted above. It is urged that the provisions contained in this section enable the Corporation to discuss any business at a meeting of the Corporation. It is urged that the expression "business" must be given a wide meaning and that whatever business a councillor desires to bring forward at a meeting of the Corporation can be transacted at a meeting of the Corporation and would constitute the business of the Corporation. It is urged that even if the Corporation as a self-governing body is not entitled to discuss and pass any resolution it likes merely by virtue of the fact that it is a self-governing body entrusted with the municipal government of Greater Bombay, an express power to do so has been conferred upon it by virtue of the provisions contained in this section. It is said that if a councillor gives notice of any business or of any "substantive proposition", he is entitled to have that business transacted and to have that proposition discussed and voted upon at a meeting of the Corporation, provided he has given written notice of the same as required by Section 36(k). It is urged that the Act provides no machinery whereunder such business and such substantive propositions can be stopped from coming before a meeting of the

Corporation, and that apart from a point of order which can be raised and which may be allowed, there is no way in which discussion in regard to such business or such substantive proposition can be stopped. It is further urged that such a proposition is liable to be put to vote and that if such a proposition is passed as required by the Act, then it would constitute the corporate act of the Corporation.

7. This section is relied upon as conferring on the Corporation an absolute power of discussion of anything and everything under the sun and passing a resolution in connection therewith. In my view, the word "business" as used in that section would not cover anything and everything that may be sought to be discussed or moved by a councillor at a meeting of the Corporation. It will include only that which constitutes or relates to the business of the Corporation viz. municipal government of Greater Bombay. The ambit and scope of the business of the Corporation is not enlarged by virtue of the provisions contained in Section 36. Section 36 itself is headed "Proceedings of the Corporation". It relates to the mode and manner in which the Corporation is to transact its business. It is not a section to which reference can be made for the purpose of determining what is the business of the Corporation or for the purpose of determining the scope, powers and functions of the Corporation. The expression "business" refers to that which can be legitimately called the business of the Corporation and it refers to that which the Corporation may legitimately do. It does not empower the Corporation to do that which cannot be regarded by any stretch of reasoning as the business of the Corporation, or to do that which cannot be regarded as forming part of the municipal government of Greater Bombay.

8. It is then urged that Section 36(k) refers not merely to the bringing forward of any business, but relates to the making of any substantive proposition and that when these two matters are separately provided for, they must cover different fields and that even if the expression "business" referred to the business of the Corporation, the right to make any substantive proposition is a right which is not restricted to the business of the Corporation. In my view, this argument is erroneous and is not warranted by the section. In connection with the business before a meeting of the Corporation, it is provided by Rule 9 of the Procedure Rules and Regulations framed by the Corporation as follows:

9. Items of business shall be arranged by the Municipal Secretary in the following order:

(a) Confirmation of the minutes of the last ordinary meeting or meetings and of the minutes of any special meeting or meetings since the last ordinary meeting.

(aa) All Elections by the Corporation.

(aaa) Interpellations.

(b) Petitions.

(c) Resolutions of the Standing Committee, the Improvements Committee, the Education Committee and the Special Committees.

(cc) Communications from the B.E.S. & T. Committee.

(d) Letters from the Commissioner and business from the Commissioner.

(e) Letters from Government and others.

(f) Reports of Committees (including Schools Committee's Reports).

(g) Notices of motions.

As this Rule indicates, the business that may be transacted at a meeting of the Corporation may be of at least 10 different varieties. The making of any "substantive proposition" is one of the items of business which can be transacted at a meeting of the Corporation. The words appearing in Section 36(k) viz. "any councillor who desires at any meeting to bring forward any business" refer to the several varieties of businesses that may be brought forward at a meeting of the Corporation. The business need not be a business by way of a notice of motion i.e. by moving a substantive proposition by means of a resolution. The words "or to make any substantive proposition" in Section 36(k) merely refer to that business before a meeting of the Corporation which is transacted by moving a substantive resolution. By the use of the expression "any substantive proposition" it is not intended to convey any substantive proposition on any subject under the sun whether germane to municipal government or not. The words "any substantive proposition" must necessarily mean any proposition which relates to the business of the Corporation. They are not intended to confer an unlimited jurisdiction on the Corporation to pass any resolution in respect of any subject matter whether it is germane to municipal government or not. The section is really a procedural section and is not intended to confer an unfettered and absolute right of discussion to the councillors at a meeting of the Corporation or of enabling them to pass any resolution they like on any matter of their choice.

9. It was urged that what is thought to an individual is discussion to a Corporation and that as an individual has freedom of thought, so the Corporation must have freedom of discussion and that this section was intended to confer that freedom of discussion. It is true no doubt that a Corporation must have complete power of discussion in respect of matters which appertain to the Corporation. A Corporation is a creature of statute and is created for certain purposes only and its range of discussion must be confined within the ambit of the purposes for which the Corporation is created. Unless an absolute power of discussion on any subject under the sun is expressly conferred upon a legal person, which is the creature of a statute, I cannot infer that such legal person is invested with such absolute power of discussion.

10. Chapter III of the Act refers to duties and powers of the municipal authorities. Section 61 refers to the obligatory duties of the Corporation. It is provided by that section that it shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for the matters therein set out. The matters include the construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, the construction and maintenance of works and means of providing a supply of water for public and private purposes, scavenging and the removal and disposal of excrementitious and other filthy matters and of all ashes, refuse and rubbish. There are several other matters referred to in the section. It is not necessary to set them out here. One of the matters therein referred to in item (q) is the maintaining, aiding and suitably accommodating schools for primary education, subject always to the grant of building grants by the State Government, in accordance with the Government Grant-in-aid Code for the time being in force. The discussion and the passing of a resolution of the type which is now before the Corporation is not one of the obligatory duties of the Corporation within the meaning of Section 61. There are other sections which lay down the obligatory duties of the Corporation, but they are not material for the purpose of this case. Section 63 provides that "the Corporation may, in their discretion, provide from time to time, either wholly or partly, for all or any" of the matters referred to therein. Some of the matters so referred to are as under:

(b) the furtherance of educational objects other than those mentioned in Clause (q) of Section 61;...

(j) preparation and presentation of addresses to persons of distinction;...

(k) any measure not hereinbefore specifically named, likely to promote public safety, health, convenience or instruction.

And with the previous sanction of the State Government the Corporation may make-

(l) such contribution as they think fit towards any public ceremony or entertainment in Greater Bombay.

Section 64(1) provides that the respective functions of the several municipal authorities and of any committee appointed under the sections therein mentioned shall be such as are specifically prescribed in or under the Act. Section 64(2) provides that except as in the Act otherwise expressly provided, the municipal government of Greater Bombay vests in the corporation. Section 66A provides that subject to any regulations made in that behalf u/s 36, a councillor may question the Commissioner who shall answer any question concerning or connected with the administration of the Act or the municipal government of Greater Bombay, subject as therein provided. Under Sub-clause (b)(i) of Section 66A(1) no question can be asked which calls for an expression of opinion or for the solution of an abstract legal question or of a hypothetical proposition. Under Sub-clause (b)(iv) no question can be asked

which is or by implication may be, defamatory of or which makes or implies a charge of a personal character against any person or section of any community. Section 111 of the Act provides for the constitution of the municipal fund. That section runs as follows:

111. Subject to the provisions of Sections 120, 120A and 460Z, all moneys received by or on behalf of the Corporation under the provisions of this Act or of any other enactment at the time in force, or under any contract,

all proceeds of the disposal of property by, or on behalf of, the corporation,

all rents accruing from any property of the corporation,

all moneys raised by any tax, levied for the purposes of this Act,

all fees and fines payable and levied under this Act or under any rule, regulation or by-law in force thereunder other than fines imposed by a Court,

the balance, after all necessary contingent expenses have been defrayed, of all fees for licences for public conveyances granted by the Police Commissioner under the Bombay Public Conveyances Act, 1920,

the balance, after all necessary contingent expenses have been defrayed, of all fees for licences for the playing of music in streets and public places granted under paragraph (ii) of Clause (f) of Section 22 of the City of Bombay Police Act, 1902,

all moneys received by or on behalf of the corporation from any Government or private individuals by way of grant or gift or deposit, and

all interest and profits arising from any investment of, or from any transaction in connection with, any money belonging to the corporation, including loans advanced u/s 354W, 354WA or 354WB,

shall be credited to a fund, which shall be called "the municipal fund", and which shall be held by the Corporation in trust for the purposes of this Act, subject to the provisions herein contained:

Section 118 provides that the moneys from time to time credited to the municipal fund shall be applied in payment of all sums, charges and costs necessary for the purposes specified in Sections 61, 62, 62D, 62E and 63, or for otherwise carrying the Act into effect, or of which the payment shall be duly directed or sanctioned under any of the provisions of the Act inclusive of the various items referred to in that section. Section 118A provides that expenditure by the Corporation out of the municipal fund shall, save as otherwise provided by the Act, be made within Greater Bombay only, but may by a resolution of the corporation supported by at least half the total number of councillors, be made outside the City for any of the purposes of the Act. The effect of these provisions is that a municipal fund is created and that fund has to be held in trust for the purposes specified in Section 118. Under that

section, provision is made for the expenditure incurred for the purposes specified in Sections 61, 62, 62D, 62E and 63 and for all expenses necessary for otherwise carrying the Act into effect. It is rightly urged that if any activity of the Corporation is covered by the provisions of Section 61 or Section 63, it is an activity for which the funds of the Corporation may be expended and that it could not possibly be said that any such activity is an activity which is not within the competence of the Corporation. As a matter of fact, the activities referred to in Section 61 are enjoined upon the Corporation and the Corporation would be committing a breach of its obligation in not carrying out the same. Section 63 provides for what the Corporation may do at its discretion. It has been strongly urged that the resolution which is before the Corporation relates to a matter which is covered by the express provisions of Section 63(k). It is argued that the resolution is a measure likely to promote public convenience or public instruction and that the Corporation has every right to discuss that resolution and to pass it.

11. On behalf of the petitioner it has been urged that the measure that is contemplated by Section 63(k) is a measure of the type referred to in the earlier provisions of Section 63. The earlier provisions provide for the furtherance of educational objects, the establishment, aiding or maintaining of libraries, museums, art-galleries, botanical or zoological collections, the laying out or the maintenance of public parks, gardens or recreation grounds etc. It is urged that by the mere act of discussing or passing the aforesaid resolution the Corporation does not provide for a measure within the meaning of Section 63(k). It is urged that what Section 63 contemplates is the making of a monetary provision in connection with any measure which is likely to promote public safety, health, convenience or instruction. Section 63(k) refers to what may be provided for by the Corporation by means of any measure. Any expenditure incurred in connection with such measure is an expenditure expressly authorised by the Act. If the expenditure on any measure likely to promote public convenience or instruction is authorised by the Act, it cannot be said that an activity which is likely to promote public convenience or instruction which does not involve the expenditure of any money out of the funds of the Corporation is outside the authority of the Corporation. What I have really to consider is whether the resolution is one which is likely to promote public convenience or instruction within the meaning of the said section. If it is likely to promote public convenience or instruction within the meaning of Section 63(k), then it cannot be said that that resolution is a resolution which is ultra vires the Corporation. Even so far as the expenditure of money is concerned, when notice of any resolution is given, that resolution under the rules has to be advertised and it costs money. That resolution comes before a meeting of the Corporation. The holding of that meeting involves the expenditure of money. Every councillor is entitled to be paid a sum of Rs. 10 for attending a meeting of the Corporation, subject to the limitation that the total amount of such moneys receivable by him should not exceed Rs. 50 in a month. The holding of the meeting involves the use of

the property of the Corporation for the purpose of the meeting. If the resolution is one which is permissible under the Act, then the expenditure incidental to the holding of the meeting is an expenditure expressly authorised by the provisions of the Act. Whether any expenditure of money is involved or not, if the resolution is one which promotes public convenience or instruction within the meaning of the said Section 63(k), it cannot be ruled out as being an ultra vires resolution.

12. The only reported judgment in connection with a question somewhat similar to the one which is before me is the judgment of the Court of the Judicial Commissioner of Sind in the case of *Daily Gazette v. Karachi Municipality* AIR [1930] Sind 287. In that case a rate-payer of the Karachi Municipality instituted a suit against the Municipality for an injunction restraining it from discussing four resolutions of which due notice was given under the Bombay District Municipal Act. A temporary injunction had been issued when the plaint was presented, but was subsequently discharged by the Additional Judicial Commissioner. The plaintiff appealed from the order of discharge and the matter came up before the appellate Court consisting of Wild, J.C. and Rupchand, A.J.C. The resolutions sought to be moved were as follows (p. 288):

(1) Resolved that this Corporation view with regret the arrest and conviction of one of its prominent members, Mr. R.K. Sidhva, who by his civic services extending over a number of years had established his claim to be considered a prominent citizen of Karachi, and deplore his classification under "B" class of prisoners, and strongly feel that his position in the city is sufficiently prominent to ensure his better treatment in jail such as is accorded to "A" class political prisoners.

This Corporation also condemns the action of the authorities in not placing Prof. N.R. Malkani, Messrs. Narsinglal, Dhamanmal Lokram Naina Ram and Prof. Ghanshyam in the "A" class of prisoners. Their position in life is sufficiently high to entitle them to better treatment. Resolved further that the President do arrange to communicate this resolution to Government.

(2) This Corporation emphatically protests against the restraint and imprisonment of Mahatma Gandhi by the Government under Regulation 25 of 1827 and brings to the notice of the Government that his detention will, in the opinion of the Corporation, be not only prejudicial to the interests of the Government and the nation, but is likely to result in serious consequences.

(3) That this Corporation is of opinion that the Press Ordinance promulgated by the Viceroy is detrimental to the interests of India inasmuch as it interferes with the liberty of the Press in restricting the free expression of opinion and requests the Viceroy to withdraw it.

(4) That this Municipality resolves that municipal employees who are arrested and convicted for any political offence not involving moral turpitude, shall be granted such leave as may be due to them under the Municipal rules.

Judicial Commissioner Wild in the course of his judgment observes as follows (p. 296):

The counsel for the plaintiff argues that the municipality is a creature of the Legislature and can only exercise powers which are given to it expressly or impliedly by the Act which created it. He points out that there is nothing in the Bombay District Municipal Act which empowers a municipality to discuss at its meetings anything besides municipal business. He argues that it cannot have been the intention of the legislature that the Municipal Committee should turn itself into a debating society to discuss matters which do not concern the municipality.

For the defendant Municipality, on the other hand, it is argued that u/s 56, Clause (1) of the Act, Municipalities may at their discretion provide out of the said property and fund for any other measure not specified in Section 54 likely to promote the public safety, health, convenience or education, and argues that the resolutions objected to by the plaintiff concern public safety and public convenience. I am not prepared to accept this argument for, in my opinion, the resolutions are not shown to have any connexion with public safety or public convenience....

The argument advanced by the learned Counsel for the plaintiff is no doubt a logical one and entitled to weight. It could hardly have been the intention of the legislature that the municipalities created by the Bombay District Municipal Act and previous Acts should debate matters other than municipal matters. The Act itself, as the preamble shows, is merely to consolidate and amend the law relating to the management of municipal affairs. Moreover Section 26 of the Act provides that there shall be municipal meetings for the disposal of business and it would seem by business is meant municipal business. But though this argument of the learned Counsel for the plaintiff is not without substance I should not go so far as to say that he has made out a *prima facie* case that the Municipality is not entitled to discuss matters which are not municipal matters. The question appears to be *res Integra* and there is no decided case of the present kind, in which it has been held that the powers of the Municipality must be so restricted. Moreover the first (partly) and the fourth resolution (wholly) appears to me to be such that they might well be considered as municipal matters.

At page 297 he further observes as follows:

...In this case if the plaintiff proves that the action of the municipality in holding its meeting to discuss the four resolutions is *ultra vires* there will be a misapplication of the municipal funds due to the use of electric lights and fans.

He further held that there was no *prima facie* case on the merits and that there was no balance of convenience in favour of granting the injunction and the appeal was dismissed.

13. In that case the question whether any of the resolutions promoted public instruction was not canvassed. The resolutions were sought to be covered by the expression "public safety and public convenience", and the learned Judicial Commissioner stated that he was, not prepared to accept that argument for, in his opinion, the resolutions were not shown to have any connection with public safety or public convenience. That decision was a decision in an appeal from an interlocutory order. What the Court had to consider was whether a prima facie case had been made out and whether the balance of convenience required that an injunction should be given. In that case no doubt the learned Judicial Commissioner has stated that he would not go so far as to say that the plaintiff had made out a prima facie case that the municipality is not entitled to discuss matters which are not municipal matters.

14. The other judgment in that case was delivered by Rupchand A.J.C. In the course of his judgment he observes that the learned Counsel for the appellant had frankly admitted that the case before him was the first of its kind and that he could point to no precedent in support of his contention that discussion of political subjects relating to internal affairs of the State at the floor of a Municipal Corporation is not permissible under the statute. He further observes that it was somewhat difficult to see how the express mention of certain obligatory and discretional duties of a Municipal Corporation or of the powers which might be exercised by it could be said to be exhaustive of its manifold functions or the objects for which it existed. He further observes that the chief gravamen of the complaint of the plaintiffs' counsel was that if the defendants were permitted to discuss political subjects in the Municipal hall, it would mean a breach of trust on their part in consequence of the misuse of the property vested in them for purposes of the Act, namely, chairs, tables, fans, lights and electric current, such use not being permissible under Chap. 6. He further observes that the Act viz. the Bombay District Municipal Act is instituted "an Act for the better management of municipal affairs in mofussil towns and cities" and what those affairs were had been purposely left undefined. He further observes as follows (p. 295):

...In its wider sense municipal affairs would mean affairs pertaining to the well-being of the citizens living in a municipal district as distinguished of course from affairs of State.

There is no doubt in my mind that the main object for which powers of Local Self-Government are transferred to Municipal Corporations under this Act is that the city fathers should look after the health of the city and the comfort and well-being of its residents. But I am not prepared to hold that for the attainment of public objects it may not in certain instances be necessary or in any case be not proper for them to discuss political subjects or that the discussion of such subjects is ultra vires. I think that where a Corporation wastes its time by dabbling in politics instead of devoting its attention to the main objects for which it exists it is incumbent on the

Government to set matters right by virtue of the extraordinary powers reserved under the Act. But I am entirely doubtful if it is within the competence of any citizen, except perhaps in the three favoured presidencies proper, to prevent such abuse by resort to a Court of law such as this Court u/s 54, Specific Relief Act.

He further observes at page 295 as follows:

...But to say that the powers of local administration which are intended to be exercised for public purposes do not permit discussion of subjects which are merely of a political nature is something that is difficult for me to accept.

Later on he observes that so far as Resolutions Nos. 2 and 3 were concerned, it would appear that it was difficult to distinguish between what are purely political subjects which may not appropriately be discussed at the meetings of the Corporation and those incidentally or indirectly connected with their powers.

15. This decision does not lay down any principle which would afford me any guidance in determining what is within and what is not within the competence of the Corporation. A Corporation being a creature of statute is entitled to exercise all powers necessary for carrying out the purposes for which it is constituted. The law embodied in the Bombay Municipal Corporation Act is the law relating to the municipal government of Greater Bombay and the Corporation has power to discuss every matter pertaining to the municipal government of Greater Bombay or for carrying out the purposes and objects of the Act.

16. It has been urged that the discussion of any matter of public interest at a meeting of the Corporation, which is open to the public, is itself a measure of public convenience. In my view, the discussion of a resolution and the passing of it could not be regarded as a measure of public convenience. It is, however, very strongly urged that it is a measure of public instruction. The Corporation is enjoined u/s 61(q) to maintain, aid and suitably accommodate schools for primary education subject to the grant therein mentioned. The Corporation is permitted u/s 63(b) to provide for furtherance of educational objects and u/s 63(k) is permitted to take measures: to promote public instruction. It is urged that the public discussion of a resolution of the type which is before the Corporation will by itself promote public education and public instruction. So far as the meetings of the Corporation are concerned, discussion and debate in connection with a resolution is not an end in itself. The debate itself may be educative, but that is not the object and purpose of a discussion at a municipal meeting. It may be that an incidental benefit may accrue as a result of public discussion on a matter pertaining to the business of the Corporation viz. municipal government. The question that I have to consider is whether the object of the resolution is educative or the promotion of public instruction. If the object is political, merely because public instruction may incidentally result there from will not bring it within the sphere of municipal government. Since the time the Police Theory of the State has given way to the

theory of a Welfare State, it may sometimes be difficult to draw the line between politics and education. Politics has a tendency these days to overshadow education. If the main object of the resolution is political and not educational, it would be outside the ambit of municipal government. It may be difficult in some cases to draw the line, but that does not mean that there should be no demarcation.

17. What I have to consider is what is the object of the resolution under consideration. Is the object of the resolution political or is it to impart instruction? Reading the resolution as a whole, the object of the resolution seems to be to condemn the action of certain authorities outside India. Its object is to commit the Corporation to an expression of its corporate views on a matter not pertaining to the municipal government, a matter on which the Corporation is incapable of having any corporate views. However laudable may be the object of the resolution from the point of view of its sponsors, the question that I have to consider is whether it relates to a matter on which the Corporation can have a corporate opinion. The Corporation which is a creature of statute is constituted for certain objects. The Corporation can have corporate views on matters pertaining to the sphere of its activities and may give expression to it by measures and resolutions. But outside its sphere it is incapable of having any corporate views, and the views expressed in a resolution outside its sphere would only be the views of the majority of the members of the Corporation who passed it, and not those of the Corporation. A meeting of the Corporation can only be called to discuss a resolution which would give expression to the corporate view of the Corporation and not to the personal views of the individual councillors. The resolution is a condemnatory resolution of political nature. The name of the Prime Minister of India has been pressed into service and the doctrine of "Panchshila" has been invoked to give greater effect to the condemnation sought to be expressed by the Corporation. The doctrine of freedom is invoked for the same purpose. The matter referred to in the resolution is a matter which occurred in a foreign State after the intervention by another foreign State into the affairs of the former foreign State. It is not within the scope of the functions of the Bombay Municipal Corporation to express its opinion on a matter pertaining to relations between two foreign States and as regards what one State may have done to its citizen, however wrongful such act may be considered. The Corporation has powers to take measures promoting public convenience or instruction within the ambit of its sphere of municipal government. If the primary object of a resolution is a public instruction or convenience within the sphere of municipal government, then it cannot be ruled out merely because that resolution may trespass upon the field of politics. But if the primary object of the resolution is not public instruction, but political, it would be outside the ambit of the municipal government and it would be outside the powers of the Corporation, and the Corporation would not be entitled to have or to express any corporate opinion upon it. If the Corporation is not entitled to express any corporate opinion upon a subject, then the resolution on such subject, even if it is passed unanimously by all the

councillors at a meeting of the Corporation, would not result in the expression of the opinion of the Corporation, but would merely amount to the expression of opinion of the individual councillors. It is not one of the purposes for which the Corporation is established that the Corporation should lend its name to the expression of such individual opinion in respect of a matter not pertaining to municipal government.

18. General words have been used in Section 63(k). They are intended no doubt to refer to matters other than those appearing before them in the same section. In connection with the construction of general words, I may well refer to the observations of Lord Justice Lindley appearing in the case of *In re German Date Coffee Company* (1882) 20 Ch. D. 169:

...General words construed literally may mean anything; but they must be taken in connection with what are shewn by the context to be the dominant or main objects. It will not do under general words to turn a company for manufacturing one thing into a company for importing something else, however general the words are.

In my view, the words "any measure likely to promote public convenience or instruction" are words which have not been intended to enlarge the scope of municipal government. I consider the resolution that is proposed as beyond the ambit and powers of the Corporation.

19. By consent of the parties, a compilation was put in as exh. No. 1 showing some of the resolutions passed by the Corporation and the business transacted at some of its meetings. It is urged, having regard to the contents of that exhibit, that the Corporation has in the past exercised powers of discussion and of passing resolutions over a field which may be sufficiently large to cover the resolution in question before me. I have not applied my mind to the question whether all or any of the resolutions passed and the business transacted by the Corporation are or are not ultra vires the Corporation. No discussion thereon has taken place before me. If there is any resolution within the field of municipal government which is likely to promote public convenience or instruction, it would be within the ambit of the powers of the Corporation even though it may incidentally involve discussion of a political matter. What has to be seen in each case is the object of the resolution. If the object of the resolution falls outside the ambit of municipal government, then it cannot be brought within its ambit merely because there would be incidental instruction resulting therefrom.

20. It is urged that Article 51 of the Constitution of India lays down the directive principles of State Policy and that the expression "State" having regard to Articles 12 and 36 of the Constitution would include a local authority like the Bombay Municipal Corporation. Article 51 provides that the State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the

dealings of organised peoples with one another; and (d) encourage settlement of international disputes by arbitration. The directive principles laid down in Article 51 do not in any way enlarge the ambit of the powers and functions of a statutory corporation. The directive principles of State Policy embodied in Article 51 require the Corporation, within the ambit of its sphere of activities as laid down by any Act to promote, maintain, foster and encourage what is referred to therein.

21. It has been strongly urged on behalf of the petitioner that the resolution would not fall within the ambit of Article 51. It has been, with equal, if not greater force, argued on behalf of the respondents that the resolution does fall within the ambit of Article 51. It is not necessary for me, having regard to the view which I take of the matter, to determine whether it does or does not fall within its ambit. But assuming that the resolution falls within the ambit of Article 51, if the passing of such resolution is not expressly or impliedly authorised by the Act constituting the Corporation, Article 51 of the Constitution will not enable, it to do so. In this connection, I may refer to the decision in the case of [Mangru Meya and Others Vs. Commissioners of the Budge Budge Municipality and Others](#), . In that case the provisions invoked were those contained in Article 48 of the Constitution. Mr. Justice Bose, before whom the matter came up, held that the municipality could not travel beyond the statute and take shelter under Article 48 of the Constitution for the purpose of justifying the resolution or the notice complained of in that case. At page 334, in para. 8 the learned Judge observes as follows:

He points out that the word "State" in this Article includes the local authority such as the respondent Municipality and reference is made for this purpose to Articles 36 and 12 of the Constitution. It is argued on behalf of the respondents relying on these Articles that the resolution passed by the Municipality was a valid one and was within the competence of the commissioners to pass it. It may be noted that Article 48 is one of the directive principles of State Policy. These are only fundamental principles for the governance of the country and they are not enforceable by any Court but such principles are to be applied in making laws of the State (Article 37). There has been no law enacted for general closing down of the slaughter houses or forbidding the carrying on of the business of sale of beef in the State or in the Indian Union. The Bengal Municipal Act is an existing law which has continued in force even after the commencement of the Constitution. The Commissioners of the respondent Municipality must act within the four corners of this statute and they cannot travel beyond the statute and take shelter under Article 48 for the purpose of justifying the resolution or the notice complained of in this application.

22. It is next urged that an ultra vires act must be a corporate act before it can be restrained, and that even if the resolution when passed may be ultra vires the Corporation, the discussion in connection with it can never be ultra vires. Reliance has been placed upon the decision of the Supreme Court in [The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others](#), . Mr. Justice Bose, who

delivered the judgment of the Court, expresses himself as follows at page 888:

...an incorporated body like an University is a legal entity, it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views.

It is urged that the act of discussion by councillors is not an act of the Corporation. It is further urged that the only corporate act would be the act resulting on a resolution being passed and that though the Court may have power to declare such a resolution ultra vires when passed, it cannot interfere in respect of a discussion which by itself is not ultra vires. It is urged that by the petition the petitioner has sought to restrain the Corporation from discussing a resolution of which due notice has been given and which has been duly placed before the Corporation for discussion. As I have already observed, discussion at a meeting of the Corporation on a resolution is not an end in itself. It is a discussion intended to express the corporate view of the Corporation in respect of a matter which is before the Corporation. A meeting of the Corporation is liable to be called only in respect of a matter which is ultra vires the Corporation. A meeting of the Corporation is not liable to be called for considering a resolution, which is ultra vires the Corporation. It may be that there is no internal machinery provided by the Act by which a meeting can be prevented from being called for the purpose of considering such a resolution. But the absence of a provision of internal regulation provided by the Act does not make an ultra vires matter which is sought to be brought before the Corporation the business of the Corporation. If the business or resolution is ultra vires the Corporation, a meeting of the Corporation is not liable to be called in connection therewith. If there is no internal machinery provided by the Act for preventing such a meeting being called, then it is open to a party to come to the Court for restraining the holding of such a meeting. Where there is no remedy provided by the Act, if there is a violation of any right or the breach of any duty, the person aggrieved has his remedy before a Court of law, unless such remedy has been expressly barred by any Act, There is no provision in the Bombay Municipal Act which precludes the Court from giving relief. The only restriction placed by the Act is that of giving notice u/s 527. That section does not preclude the Court from giving relief on a petition for the issue of a writ. If the passing of a resolution would be ultra vires the Corporation, then the discussion of such a resolution would not constitute the valid business of the Corporation. Anything which does not constitute in law the valid business of the Corporation is one which is not liable to be transacted at a meeting of the Corporation. No meeting of the Corporation is liable to be called for the purpose of considering such a resolution.

23. It is then urged that even if the action of the Corporation in considering the resolution, voting thereon and passing the same may be ultra vires the Corporation, the Court should not interfere unless the act is one which is expressly prohibited by the Act itself. It has been stated in the passage from Halsbury (Vol. IX, p. 63) in respect of a statutory corporation, which has already been cited by me, that what the statute does not expressly or impliedly authorise is taken to be prohibited. Various authorities have been cited in support of that proposition. The passing of such a resolution is neither expressly nor impliedly authorised by any Act. It cannot be said that the passing of such a resolution is necessarily or properly required for carrying into effect the purposes of the incorporation of the Corporation or may fairly be regarded as incidental to or consequential upon those things which the Legislature has authorised the Corporation to do. In my view, the doing of an ultra vires act should be taken to be prohibited and where such an act is sought to be done, the Court has a right to intervene and grant relief.

24. It is said that the Court should not lightly interfere in the matter of municipal government. That no doubt is true. It is urged that the question of public convenience should be considered before interfering. I consider that public convenience and public purpose are served better by preventing the Corporation from indulging in an activity which is ultra vires the Corporation than by not doing so. The Corporation would stultify itself in embarking upon a sphere of activity which is not within the legitimate field of municipal government and which is not expressly or impliedly authorised by any Act. Members of the public may offer themselves to be elected as councillors in order to give their time, intelligence and services for the benefit of the City having regard to the nature of the powers, functions and duties of the Corporation. Those who may not like to indulge or take part in active politics may still be willing to render public service by serving on the Corporation. In my view, public convenience itself requires that if some members of the Corporation seek to make the Corporation travel on a path not expressly or impliedly authorised by any Act, then it should be prevented from doing so.

25. At this stage, the learned Advocate General on behalf of the respondents made the following statement:

For the purpose of this petition only and for no other purpose and in order to obtain a decision on the merits, the respondents admit that the petitioner is a ratepayer.

On the above admission being made by the learned Advocate General, the right of the petitioner to maintain the petition is established so far as this Court is concerned. It has been laid down in the case of *Vaman v. Municipality of Sholapur* ILR (1897) 22. Bom. 646 that a suit would lie at the instance of individual taxpayers for an injunction restraining a municipality from expending any sum of money out of municipal funds on the purchase of a band of music, on the ground that the resolution in favour of such purchase was ultra vires the municipality. That is a decision of a Division Bench of this Court, consisting of Mr. Justice Parsons and Mr.

Justice Tyabji. I am in respectful agreement with that decision. That decision is binding on me. In view of that decision, the learned Advocate General does not, in this Court, dispute the right of the petitioner to maintain the petition, reserving his right in another Court, which may not be bound by that decision, to do so. In that case Mr. Justice Tyabji has also observed at page 648 as follows:

...it is now clearly settled that any individual member of a corporation may file a suit for the purpose of restraining the corporation from doing any act which may be illegal or ultra vires of the corporation.

The petitioner contends that even if he is not a rate-payer, he is entitled as a councillor to maintain the petition. The learned Advocate General disputes the said proposition. It is not necessary for me for the purpose of this petition to decide the said question.

26. In the result, the petitioner is entitled to succeed. I direct the issue of a writ of mandamus requiring the Corporation to forbear from discussing the resolution complained of at a meeting of the Corporation or passing the same. The case before me is a test case and the matter has been argued at considerable length as important questions regarding the Corporation, its powers and functions are involved. There has been no authoritative decision on the point. Both the sides are agreed that the matter has been agitated before me as a matter of considerable public importance, In that view of the matter, there should be really no order as regards costs. The learned Counsel for the petitioner, however, states that he has been made to pay a sum of Rs. 90 by way of, costs on a previous occasion when he applied for the amendment of the petition. The learned Advocate General agrees that the said order for costs should be vacated. By consent, the order for payment of costs passed by me on July 21, 1958, is hereby vacated. There will be no order as to costs. The drawing up of the Rule Nisi is directed to be expedited.