J.B. Petit Vs The Municipal Corporation of Bombay

Court: Bombay High Court

Date of Decision: June 1, 1927

Acts Referred: City of Bombay Municipal Council Act, 1988 â€" Section 36(q), 37

Citation: AIR 1927 Bom 622 : (1927) 29 BOMLR 1430

Hon'ble Judges: Blackwell, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Blackwell, J.
This is a suit to question the validity of the election of the second defendant to the office of President of the Municipal

Corporation of Bombay. The issues raised are as follows:-

(1) Whether the regulations for the appointment of the President of the Corporation made on March 28, 1927, are ultra vires ?

(2) Whether, after announcing the result of the drawing of lots the Chairman said that he gave his casting vote for the second defendant ?

(3) Whether, if the last issue is answered in the affirmative, the Chairman thereby can be deemed to have given a valid casting vote ?

(4) Whether the appointment of the second defendant as President of the Corporation is valid ?

(5) Whether, if issue No. 1 is answered in the affirmative, or issue No. 2 in the negative, the plaintiff is entitled to the relief claimed in paragraph (6)

of the plaint.

2. The appointment of President of the Corporation is governed by Section 37 of Bombay Act III of 1888. Sub-s. (1) of that section is in the

following terms:

The corporation shall, at their first meeting in each official year, appoint one of their own number to be president until the first meeting of the

corporation in the next following official year, unless the councillors in the meantime retire from office, and then until the day for retirement.

3. Section 36 of that Act provides :

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 as they think fit, subject to the following conditions :-

4. The only condition to which it is necessary to refer is condition (q), which reads as follows :-

Every question other than the question whether the standing-committee or the Commissioner shall be permitted to bring urgent business before the

meeting without notice, shall be decided by a majority of votes of the councillors present and voting on that question, the presiding authority having

a second or casting vote when there is an equality of votes.

5. The facts not in dispute are as follows, On April 1, 1927, a meeting of the first defendant Corporation was held to elect a President. Mr. R.M.

Chinoy was elected Chairman under the provisions of Section 36(g) of the above-mentioned Act. There were four candidates for election, namely,

the plaintiff, the second defendant, Mr. J.B. Boman Behram, and Mr. L.R. Tairsee. Mr. Tairsee withdrew his candidature. In the first ballot taken

the three other candidates obtained votes as follows : the plaintiff 36, the second defendant 31, Mr. Boman-Behram 30. In accordance with

certain regulations (presently referred to), which had been passed by the defendant Corporation on March 28, 1927, Mr. Boman-Behram''s name

was then eliminated, and a second ballot was taken. In that ballot the plaintiff and the second defendant each obtained 49 votes.

6. From this point there is an acute controversy as to what happened. According to the evidence of the plaintiff himself Mr. Chinoy said that

he found great difficulty in giving his casting vote because both the candidates had a very useful career and that he had therefore decided to draw

lots. He then requested Mrs. Mackenzie to proceed to pick up one envelope from the box in which he had placed the two envelopes containing

the names of the two candidates, Mrs. Mackenzie picked up one envelope, handed it to the Chairman, and he read out the name of Dr. Batliwalla.

He then said, '' Dr. Batliwalla is elected.'' There was a certain amount of commotion and cheering. Then he beckoned him to come over and take

the chair. The Chairman did not say that be did not propose to give his casting vote off-hand. After reading the name of Dr. Batliwalla from the

slip, the Chairman did not say that he gave his easting vote in favour of Dr. Batliwalla.

7. On the other hand, according to the evidence of Mr. Chinoy, when he found that there was a tie he sent for the records of the two candidates,

and ascertained that they had both been members of the Corporation for about the same period, namely, about twenty-three years. He then put

aside all party feeling, and considered the candidates on their merits, and formed the opinion that either of them was equally fit to fill the position of

President. Ho thereupon told the meeting that as both candidates were eminent members of the Corporation and had each rendered valuable

services, he found it difficult to make any distinction between them, that he did not propose to give his casting vote off hand, but would draw lots

and would give his casting vote according to the result of the drawing. He then asked Mrs. Mackenzie to draw lots, and when the lots were drawn,

and the name of the second defendant came up, he shouted ""Dr. Batliwalla"", ""Then"", he said, (to quote his exact words)

there was a lot of cheering and clapping and applause from all sides. I stopped for a couple of seconds to see if the noise would subside. Then the

Secretary just reminded me that : ''Sir, you have got to give your casting vote as usual,'' He said so to me in a whisper. In the meanwhile Dr.

Batliwalla was congratulated and garlanded, and I had to say and I did say that '' I give toy casting vote to Dr. Batliwalla.'' I had to any it although

the noise was going on, and I did say it.

8. In this dispute upon the facts I have no hesitation whatever in accepting the evidence of Mr. Chinoy. He is the person who knows best what he

said upon that occasion. He impressed me as an absolutely fair-minded man. In a position of difficulty, (it being, as he said, perfectly well-known

that he belonged to Dr. Batliwalla''s party), I am satisfied that he did his best to decide between two candidates, and finding himself unable to draw

any distinction between them on merits, he drew lots in order to enable him to give his casting vote impartially. I have no reason to suppose that he

would give me any account of what he said other than a true account. I am satisfied that he remembered accurately what he said, I find as a fact

that he stated that he did not propose to give his casting vote off-hand, but would draw lots and would give his casting vote according to the result

of the drawing. I also find as a fact that after the lots were drawn, and he had announced Dr. Batliwalla''s name, he said that he gave bis casting

vote to Dr. Batliwalla, and declared him elected. [At this point his Lordship discussed the evidence and proceeded,] I answer the second issue in

the affirmative.

9. It was, however, contended that even if the second issue were answered in the affirmative the Chairman cannot thereby be deemed to have

given a valid casting vote. It was argued that the giving of a casting vote involves the exercise of judgment, and that a casting vote given according

to the result of the drawing of lots was an election by chance, and not by vote, and was therefore invalid. No authority was cited in support of this

contention, and I do not agree with it. In Webster''s Dictionary the word ""vote"" is thus defined:-

A wish, choice, or opinion, of a person or a body of persons, expressed in some received and authorized way, as by a ballot or viva voce; the

formal expression of a wish, desire, will, preference, or choice, in regard to any measure proposed, esp. where the person voting has an interest in

common with others, either in electing a person to office, or in passing laws, rules, regulations etc.; a suffrage; also, the right to such a wish, choice,

or expression of will.

10. In Murray''s New Oxford Dictionary it is defined as :-

An indication, by some approved method, of one''s opinion or choice on a matter under discussion; an intimation that one approves or

disapproves, accepts or rejects, a proposal, motion, candidate for office, or the like.

11. In Wharton''s Law Lexicon it is defined as :-

Suffrage, voice given.

12. In my opinion the giving of a vote does not necessarily involve the exercise of judgment at all; it involves merely the expression or intimation of

a wish or choice, That wish or choice may indeed be actuated by judgment; but it may also, as it seems to me, be actuated by mere whim or

caprice. The method by which the wish or choice is arrived at is in my judgment wholly immaterial, so long as the person upon whom the duty of

giving the vote is cast expresses or intimates his wish or choice, however arrived at. It was pointed out on behalf of the plaintiff that in certain cases

of equality of votes, where the addition of a vote would enable a candidate to be declared to be elected, the Legislature has laid down (as in

Section 23(h) of Bombay Act III of 1883) that the determination of the person to whom such additional vote shall be deemed to have been given

shall be made by lot. That is quite true. It was argued from this that where the Legislature intends a decision to be by lot it says so, and that where

a Chairman is entrusted with the duty of giving a casting vote, he must exercise his judgment, and not allow his choice to be determined by the

drawing of lots. It was contended that the giving of a casting vote presupposes the exercise of volition, and that the leaving of a decision to chance

negatives volition. In my judgment this argument is entirely fallacious. Inability to leave a decision to chance, if a man so wills, seems to me to be the

negation of freedom of choice. I therefore decline to hold that the Legislature has in Section 36(q) of the Act in any way fettered the presiding

authority as to the means by which he may make up his mind, whether by exercising his judgment, consulting a friend, spinning a coin, drawing lots,

or otherwise, before intimating his preference for or choice of one candidate or another.

13. If, contrary to my opinion, the giving of a casting vote does involve the exercise of judgment, then I hold upon the evidence that Mr, Chinoy did

exercise his judgment in considering the respective merits of the two candidates, and by reason of their equality of merit according to his judgment

found himself unable to choose between them. In these circumstances I am of opinion that he was entitled to assist himself in choosing between

them by drawing lots. In this connection I think that reference may usefully be made to the position which has sometimes arisen where two

arbitrators, upon whom is cast the duty of naming an umpire, have each agreed that the umpire named by the other was a fit person, but not being

able to agree as to which of their respective nominees should be appointed, they have decided the choice by lot. It has been held that the

appointment of an umpire by such means in such circumstances was valid. See Be Hopper (1867) L.R. 2 Q.B. 367, where the cases are

reviewed. I answer the third issue in the affirmative.

14. It was further contended on behalf of the plaintiff that the regulations for the appointment of the President of the Corporation made on March

28, 1927, are ultra vires. Those regulations are to be found in Exhibit B, and the relevant paragraphs are 9-12, Those paragraphs are in the

following terms :-

(9) If there are only two candidates, then the one who gets the larger number of votes shall be declared elected

(10) If there are more than two candidates, the candidate who gets the least number of votes shall be eliminated and votes taken again for the

remaining candidates. This process shall be continued until there are two candidates left and then the one who gets more votes shall be declared

elected.

(11) If at any ballot, the number of votes obtained by a candidate, including the casting vote of the Chairman, exceeds the total of the votes

obtained by all the other candidates, he shall be declared elected.

(12) If at any ballot, the total of the votes secured by two or more candidates is less than the number of votes of a candidate immediately above

them, they shall be eliminated before the next ballot is taken.

15. It was argued that, inasmuch as Section 37 of the Act requires the Corporation to appoint one of their number to be President, the

appointment was a question falling within Section 36(q); that Section 36(7) provides that every question (with certain immaterial exceptions) ""shall

be decided by a majority of votes of the councillors present and voting on that question""; that majority means bare majority; that the appointment is

one question; ""that that question cannot legally be split up into a series of preliminary questions involving the elimination of candidates; and that

where there are more than two candidates the only legal method of appointment is one ballot, and that the candidate polling the largest number of

votes is entitled to be declared elected, though he may not receive an absolute majority of votes of the councillors present and voting on that

question I do not agree with this argument. Section 37(1) of the Act provides that ""the Corporation shall, at their first meeting in each official year,

appoint one of their own number to be president."" The section does not prescribe the method of appointment or in any way fetter the decision of

the members of the Corporation upon this question. The method of appointment would, it seems to me, be a question to he ""decided by a majority

of votes of the councillors present and voting on that question,"" as provided by Section 36(q). The method of appointment was, in fact, a question

decided by a majority of votes of the councillors present and voting on that question, as appears from Exh. 1 to the written statement of the

defendant Corporation, at a meeting of the Corporation held on March 28, 1927, when the regulations in question were passed. The method of

appointment having been so decided, namely, in accordance with the regulations, the regulations themselves seem to me to be mere machinery for

giving effect to the decision of the Corporation to appoint in accordance with the regulations. It was argued that u/s 36 of the Act the Corporation

can only make regulations with respect to the mode of transacting and managing the business of the Corporation, subject to the conditions therein

laid down, and therefore subject to the condition (q); and that if the Corporation purported to pass regulations which enabled the question of the

appointment of the President to be determined except as one indivisible question by a bare majority upon a ballot between candidates however

numerous, those regulations would be ultra vires. In my judgment this contention is unsound. The Corporation having decided the question of the

method of appointment by the requisite majority, namely, in accordance with certain regulations, I hold that those regulations are mere machinery

for giving effect to the decision of the Corporation upon that question, and that the regulations are intra vires. I answer the first issue in the negative.

16. I am also of opinion that the word ""majority"" in Section 36(q) of the Act means absolute majority, having regard to the fact that the words used

are ""a majority of votes of the councillors present and voting on that question"". In Webster''s Dictionary ""majority"" is thus defined :-

The greater of two numbers that are regarded as parts of a whole or total; the number greater than half; more than half of any total; also, the excess

of this greater number, as of votes, over the remainder of the total. Sometimes majority is used to designate what is more properly called plurality.

Thus, if in a total of 95,000 votes, A receives 50,000, B 30,000, and C 15,000; then A receives a majority of all (that is, an absolute majority),

and his majority over his competitors is 5,000 votes (that is, the excess over the total votes of C and B), But, if in a total of 95,000 votes, A

receives 45,000, B 30,000, and C 20,000; then A receives a plurality (that is, a total larger than any competitor), while his plurality over his

competitors is 15,000 (that is, his excess over B, his highest competitor). In this latter case A does not receive a majority, properly speaking.

17. A distinction is here drawn between ""majority"" in a strict sense, and ""plurality"". In Murray''s Dictionary ""majority"" is defined as:-

The greater number or part; a number which is more than half the whole number; spec, the larger party voting together in a deliberative assembly

or electoral body.

and ""absolute majority"" as :-

A number of votes received by one candidate which is more than half the total number polled, or than half the number of electors.

18. I do not myself think that when the Legislature enacted Sub-section (q) of Section 3d it contemplated a ballot between several candidates, and

a bare majority. If the Legislature had contemplated such a case, and had intended the word ""majority"" to mean ""bare majority"", I think it would

have used appropriate words such as the ""largest number of votes"". In my opinion, the Legislature having used the words ""a majority of votes of

the Councillors present and voting on that question,"" these words must be construed as meaning an absolute majority. If this be the right

construction of sub-s. (q), then if the regulations are not mere machinery, but in themselves involve questions within the meaning of sub-s. (q), I still

think that the Corporation have complied with the Act. The effect of paragraphs 9-12 of the regulations is this, that whenever one of a number of

candidates for the appointment of President obtains an absolute majority, he shall be declared elected; but that until that result is arrived at, there

shall be a process of elimination, the question of elimination itself being in each case decided by a majority of votes of the councillors present and

voting on that question. Upon this ground also I answer the first issue in the negative.

19. In view of my answers to issues 1 and 2, the fifth issue does not arise.

20. After giving my best consideration to the matters in controversy I am of opinion that this suit fails, and I dismiss it with costs.