
(1962) 01 BOM CK 0012

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 154 of 1961

Sakharam Bagji Narwade

APPELLANT

Vs

Commissioner, Nagpur Division

RESPONDENT

Date of Decision: Jan. 24, 1962

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1962) 64 BOMLR 341

Hon'ble Judges: Kotval, J; Abhyankar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Abhyankar, J.

This petition under Articles 226 and 227 of the Constitution arises under some unusual circumstances.

2. The petitioner Sakharam Bagji Narwade was elected as a chairman of the Public Works Standing Committee of the Janapada Sabha, Pusad, by a resolution dated March 17, 1960, passed by the Public Works Standing Committee. This resolution is at page 14 of the Paper Book. Three members were present at this meeting which elected the petitioner as chairman. After he was so elected, a reference was made by the Chief Executive Officer to the Collector, Yeotmal, for publication of the name of the petitioner as chairman of the Public Works Standing Committee. The Collector was of opinion that no such publication was required in the case of election of a chairman of a Standing Committee of the Sabha. Thereon the Chief Executive Officer informed the petitioner by a letter dated June 4, 1960, that he could work as President of the Public Works Standing Committee. The reference to work as President is inappropriate because the petitioner was, in fact, elected as chairman of the Public Works Standing Committee of the Sabha. Thereafter, respondent No. 1 who is Commissioner, Nagpur Division, inspected the Janapada Sabha, Pusad, and

during the course of his inspection recorded a note on August 26, 1960. A copy of an extract from this note regarding casual vacancies is filed with the petition as annexure No. 5 at page 17 of the Paper Book. The Commissioner found that respondent No. 2 Gulabsing who was previously elected as chairman of the Public Works Standing Committee of this Janapada Sabha was alleged to have resigned his office by a communication bearing the date February 21, 1956, but the resignation was accepted by the chairman of the Janapada Sabha, that is, respondent No. 4, on December 1959. According to the Note the resignation had to be accepted by the Sabha as a whole and not by the chairman, as per Rule 15 of the rules framed u/s 182(2)(x) of the Local Government Act. It was, therefore, noted that the resignation of respondent No. 2 not having been placed before the Sabha for acceptance it was irregular for the chairman to accept the resignation or to fill up the vacancy of the office of the chairman of the Public Works Standing Committee.

3. A copy of this Note seems to have been forwarded to the Janapada Sabha, Pusad. The Janapada Sabha, Pusad, considered this Note at its meeting held on October 27, 1960, and passed resolution No. 10 which is as follows:

Whereas, according to Rule 15 made u/s 182 (2)(x) of the Local Self-Government Act, resignation of the President of the Standing Committee should have been accepted by the Janapada Sabha. But these resignations were never put up before any of the meetings of the Janapada Sabha till today and whereas the matter came up before the meeting on account of the Inspection Note of the Commissioner, now it is decided that it is the opinion of this meeting that those resignations of Shri V. G. Deshmukh, President of the Standing Committee of Education and of Shri Gulabsingh Nabisingh, President of the Standing Committee Pusad should not be accepted. Passed unanimously.

By this resolution, the Janapada Sabha, Pusad, which is impleaded as respondent No. 3 in this petition, resolved that the resignation of Shri Gulabsingh as chairman of the Public Works Standing Committee should not be accepted. This resolution, it has to be noted, was passed unanimously.

4. Thereafter respondent No. 1 seems to have sent another communication to the chairman of the Janapada Sabha with reference to his Inspection Note dated August 26, 1960, and he observed in that communication that the practice of keeping resignation papers for over 4 years is pernicious and is treated as mala, fide. He, therefore, advised that the resignations of councillors should be treated as withdrawn and the members declared as continuing as no show cause notice regarding resignations being reconsidered for acceptance was given to them. The Chief Executive Officer of the Janapada Sabha then sent a communication to respondent No. 2 and one Shri G. V. Deshmukh who was chairman of another Standing Committee informing them that the resignations tendered by both of them cannot be considered to be legally accepted and, therefore, respondent No. 2 will remain chairman of the Public Works Standing Committee as before.

5. Thereafter, the petitioner has filed this petition in this Court on March 24, 1961. In this petition the petitioner has claimed the following reliefs:

(a) A writ of mandamus or certiorari or any other appropriate writ or order or direction be issued quashing the following impugned orders:

(i) Annexure No. 7, order dated November 17, 1960 passed by Commissioner, Nagpur Division, Nagpur.

(ii) Resolution No. 10 dated October 27, 1960 passed by Janapada Sabha, Pusad in its meeting, Annexure 6.

(iii) Annexure No. 8, memo No. 1623 dated December 3, 1960 issued by the Chief Executive Officer, to the petitioner.

(b) A writ of quo warranto or any other writ or direction or order be issued to the respondent No. 2 Gulabsingh directing him to show cause and explain under what right or authority or law he is holding the office of the chairman of the aforesaid Standing Committee of the Janapada Sabha and of the councillor of the said Janapada Sabha.

(c) That the costs of this petition be saddled on: the respondents.

(d) Any other relief to which this petitioner is entitled under the circumstances of the case be granted to him.

6. The principal contention of the petitioner is that respondent No. 2 who was elected as chairman of the Public Works Standing Committee was so elected in exercise of the powers conferred by Section 23 of the Local Government Act, As a result of this election, respondent No. 2 who was not an elected councillor of the Janapada Sabha, Pusad, must be deemed to have acquired the status of a councillor of the Sabha under the provisions of Sub-section (5) of Section 23. Sub-section (3) of Section 23 is as follows:-

Every standing committee shall "have a chairman elected either from the councillors or from other persons residing in the Janapada area and qualified to be a councillor. If a person not being a councillor is elected as chairman, such person shall for all purposes of this Act be deemed to be a councillor, so long as he continues to be such chairman.

7. The contention of the petitioner is that a fiction is introduced by this section under which respondent No. 2, who was not an elected councillor of the Janapada Sabha, is to be deemed to be a councillor for all purposes of the Act so long as he continues to be such chairman. Therefore, as councillor, Gulabsingh had the right to tender the resignation of his office even though he had acquired the status of a councillor of the Janapada Sabha by virtue of the fiction introduced in Section 23(5) of the Act. Now, u/s 16 of the Act. a councillor is entitled to tender his resignation but the resignation is not valid until it is accepted by the chairman. The argument,

therefore, is that respondent No. 2 who must be deemed to be a councillor for all purposes of the Act should also be considered a councillor for the purposes of Section 16 of the Act. Respondent No. 2 as councillor, therefore, would continue as chairman of the Standing Committee only so long as his resignation was not accepted by the chairman of the Janapada Sabha. In the instant case, the resignation tendered by respondent No. 2 as councillor had been accepted by the chairman, i.e. respondent No. 4, on December 10, 1959. On such acceptance, respondent No. 2 ceased to be a councillor and, therefore, also ceased to be a chairman of the Public Works Standing Committee of the Janapada Sabha.

8. As against this, the contention of the respondents who have contested this petition i.e. respondents Nos. 1 and 2 is that not Section 16 of the Act but Rule 15 of the Rules framed by the Government in exercise of the powers for making rules u/s 182(2)(x) read with Sections 23 and 53 of the Act governed the procedure by which and the manner in which the resignation tendered by the chairman or a member of the Standing Committee shall be valid and Rule 15 required that the resignation tendered by a chairman or a member of a standing committee shall not be valid unless it is accepted by the Janapada Sabha. Here by the Sabha what is meant is the general body of members who are councillors, that is, the whole body of the Janapada Sabha. It is contended by Mr. Bobde, learned Counsel appearing for the petitioner, that, Rule 15 has no application in respect of the resignation of a chairman. According to Mr. Bobde a person like respondent No. 2 who was not an elected councillor of the Sabha but was still elected as chairman of the Public Works Standing Committee acquired all the rights of a councillor including the rights of an elected councillor. The fiction which is introduced in Sub-section (3) of Section 23 of the Local Government Act should be given its full import and meaning because of the words used, namely "for all purposes of this Act". One of the purposes of the Act is to decide the manner in which a resignation given by a member is to be effective and that provision is made in Section 16. It is, therefore, urged that not Rule 15 but Section 16 will be the provision by which the resignation tendered by the chairman of the Standing Committee should be governed.

9. Now, we find it difficult to accept this contention of Mr. Bobde. Bare perusal of the scheme would show that the fiction which is introduced in Sub-section (5) of Section 23 which makes a person who is not an elected councillor eligible for election as chairman of a standing committee gives him the status of a councillor but not of an elected councillor. He is given the status of a councillor only so long as he continues to be the chairman. It is not correct to say that Sub-section (5) of Section 23 invests a person in the position of respondent No. 2 with two capacities, one as councillor and another as chairman of the Public Works Standing Committee. The moment such a person who is not an elected councillor is elected a chairman of a standing committee of a Janapada Sabha, primarily he holds that office as chairman. It is only to remove the incongruity of an office bearer of the standing committee not being a councillor of the Sabha as a whole that the fiction is introduced in Sub-section (3) of

Section 23, but the period during which he is to be so considered as councillor is the period during which he continues and validly continues to be a chairman of a particular standing committee. It is not as if he could cease to be a councillor and yet continue as chairman of a particular standing committee. On the other hand, the moment such person ceases to be chairman of the Standing Committee he also ceases to be a councillor. Therefore, what; has to be provided for is the manner in which the person should cease to be chairman of a particular standing committee and the process by which or the manner in which his resignation should be accepted.

10. In our opinion a special provision having been made for this contingency in Rule 15, the process of reasoning on which the learned Counsel appearing for the petitioner wants it to be held that he is a councillor and, therefore, is liable to be put out of the office qua councillor by acceptance of the resignation by the chairman of the Sabha is not correct and tenable. There is another aspect of the matter which may be considered. Just as a non-elected councillor that is any other citizen, who has the qualifications of being elected a councillor but not so elected, is eligible to be elected a chairman of a standing committee, such citizen is also eligible to be elected as chairman or deputy chairman of the whole Sabha. Now, the provision, made in Section 16 is to the effect that no resignation tendered by the chairman or the deputy chairman of a Sabha shall be valid until it has been accepted by the State Government. In the same section a provision is also made for the acceptance of the resignation tendered by a councillor by the chairman of the Sabha. Now, Sub-section (2) of Section 13 provides that the chairman and the deputy chairman shall in all cases be deemed to be councillors under this Act, Therefore, Sub-section (2) of Section 13, just as Sub-section (3) of Section 23, invests the chairman and the deputy chairman of a Sabha with the status of a councillor even though such person may not be elected councillor. Here also, fiction is introduced inasmuch as when a non-member is elected a chairman or a deputy chairman of a Sabha he is still to be treated as a councillor for all purposes of the Act. We do not think that it could by any stretch of reasoning be contended that on proper interpretation of Section 16 of the Act it will be permissible for the chairman of a Sabha to accept the resignation tendered by deputy chairman of the Sabha simply because he is to be deemed a councillor within the meaning of Sub-section (2) of Section 13 of the Act. That will make the provisions of Section 16 which require the resignation tendered by the chairman or the deputy chairman to be accepted by the State Government wholly nugatory. It could not be that provision would be made in the same section for two authorities like the State Government on the one hand and the chairman of the Sabha on the other for the validity of the resignation of the office being made dependent on the exercise of the same powers by both these authorities. In our opinion, therefore, on a proper construction of Section 16 as well as Section 23 and Rule 15 of the Act it must be held that the resignation has to be of the office of a chairman of the standing committee. The person will cease to be a councillor only

when he ceases to be chairman of a standing committee if that person is a person who is not an elected councillor. It is not as if the person in the position of respondent No. 2 can first cease to be a councillor and then cease to be chairman of the Standing Committee. It is because the person in the position of respondent No. 2 who was an elected chairman of the Standing Committee even though he was not elected councillor has to tender his resignation of the office of chairman of the Standing Committee and that resignation has to be accepted by the Sabha as a whole with the consequence that he ceases also to be a councillor. We, therefore, hold that the proper procedure and the proper authority which has to accept the resignation of the chairman of a Standing Committee is the Sabha and not the chairman of a Janapada Sabha.

11. This, therefore, now takes us to a consideration as to what the position of respondent No. 2 is in respect of the resignation alleged to have been tendered by him on December 10, 1959, or as contended by respondent No. 2 on February 21, 1956. We may here notice the contention of respondent No. 2 that his resignation was really taken as far back as February 21, 1956, but that it came to be made use of much later that is in 1959 when there was some change in the alignment of loyalties to parties. It is not necessary to adjudicate in this petition regarding this controversy but we observe that the letter of resignation does bear the date February 21, 1956, and no explanation is offered as to why that date is put on that letter unless that was the date of resignation. The other contention of the petitioner is that the resignation was actually tendered and received in office on December 10, 1959, and on that very day respondent No. 4 accepted the resignation. Be that as it may, as we have come to the conclusion that respondent No. 4 was not the authority competent under the Act to accept the resignation of respondent No. 2, the acceptance of resignation by respondent No. 4 will not have the effect of respondent No. 2 vacating the office of chairman of the Public Works Standing Committee.

12. Considerable arguments were pressed before us as to the part played by respondent No. 1 in focussing the attention of the Janapada Sabha to the irregularities committed in accepting the resignation of respondent No. 2. Even though it was not so specifically stated in the petition the petitioner's counsel has advanced arguments suggesting that the manner in which the attention of the Sabha had been invited to the alleged irregularities in, this matter leaves much to be desired inasmuch as according to the petitioner, respondent No. 1 had no statutory right either to inspect proceedings or record of the Sabha and still less any right to suggest the course that should be pursued by any of the Janapada authorities. With regard to this aspect of the contention raised, learned Assistant Government Pleader, appearing for respondent No. 1, has stated that respondent No. 1 has not purported to exercise any of the revisional powers u/s 159 of the Local Government Act. It is only when revisional powers are sought to be exercised that any question of notice arises, that is, notice to the person against whom any adverse action is proposed to be taken.

13. One complaint made before us was that before respondent No. 1 could come to any conclusion as to validity or otherwise on the election of the chairman of the Public Works Standing Committee by the Committee by resolution dated March 17, 1960, the petitioner should have been heard. We do not find that respondent No. 1 has passed any order or given any direction which has a direct effect of affecting the rights of the petitioner, if any. What respondent No. 1 has done is to point out to the Janapada authorities that an irregularity seems to have been committed in the resignation of respondent No. 2 being considered by respondent No. 4 instead of respondent No. 3, which according to the Commissioner was the appropriate authority which should have considered the matter. It has also been contended on behalf of respondent No. 1 that respondent No. 1 has been delegated the authority of the State Government under Sections 99 and 102 of the Local Government Act and in exercise of that authority, if respondent No. 1 has come across any irregularity in the affairs of the Janapada Sabha then respondent No. 1 cannot be said to be guilty of any improper interference if that irregularity has been brought to the notice of the appropriate authority. We have examined the provisions of Sections 99 and 102 of the Local Government Act on which reliance is placed by the learned Assistant Government Pleader. Now, Section 102 of the Act empowers the State Government, after receiving a report made to it u/s 99 (3) or otherwise, if it is satisfied after such inquiry, that a Sabha has made default in performing any duty imposed on it by or under this Act or any other enactment for the time being in force, it may require the Sabha to perform that duty within a period to be fixed. Sub-section (2) of Section 102 provides that if such duty is not performed within the period so fixed, the State Government may appoint some person to perform it, and may direct that the expense of performing it, including a reasonable remuneration to the person appointed to perform it, shall forthwith be paid by the Sabha.

14. We find it difficult to accept the contention that the action taken by respondent No. 1 in recording the note of inspection or of sending the communication dated November 17, 1960, could be referable to the exercise of his powers u/s 102 of the Local Government Act. We do not find that respondent No. 1 has directed the Janapada Sabha to do a particular thing within a fixed period. What has been done by respondent No. 1 is to point out to the chairman of the Janapada Sabha the irregularity committed in having the resignation of respondent No. 2 accepted by respondent No. 4. It, therefore, could not be said that in recording the note of inspection or sending the communication dated November 17, 1960, respondent No. 1 exercised powers u/s 102 of the Local Government Act. Be that as it may, we are satisfied that there is no order by respondent No. 1 or any direction which is being challenged or impugned in this petition by the petitioner. What the petitioner has canvassed before us in the petition and in the relief clause is for a declaration that respondent No. 2 who is holding the office of chairman of the Public Works Standing Committee as a result of the resolution passed on October 27, 1960, by the Janapada Sabha is not the person entitled to hold that office and has, therefore,

prayed that a writ of quo warranto be issued against him.

15. We have come to the conclusion that respondent No. 4 could not have validly exercised any authority or power in considering or accepting the resignation of respondent No. 2 and the appropriate authority to consider the resignation of respondent No. 2 was respondent No. 3, the Janapada Sabha. It is no doubt true that the attention of the Janapada Sabha to this resignation seems to have been invited by the note recorded by respondent No. 1. After the attention was so invited the Janapada Sabha convened a general meeting and passed resolution No. 10 already quoted above on October 27, 1960. In this resolution, the Sabha has stated that the letters of resignation were never put up before any of the meetings of the Janapada Sabha till that day. The resignations may not have been put before the whole body because the resignations were already dealt with by the chairman in 1959. Whatever may be the reasons for not placing the resignation before the only authority which could consider it i.e. the Sabha, the Sabha had before it the resignation of respondent No. 2 and of another chairman on October 27, 1960. That subject was validly before the Janapada Sabha and the Janapada Sabha has passed a resolution declining to accept the resignation tendered by respondent No. 2. It may also be noted that the resolution was passed unanimously by the Sabha. Therefore, the only subject which was for consideration before the Sabha at its meeting on October 27, 1960, was whether or not to accept the resignation tendered by respondent No. 2. In this connection, a complaint is made before us by Mr. Bobde that before considering this resignation notice should have been issued to the petitioner. "We fail to appreciate the validity of this contention. The resolution before the Sabha was regarding acceptance of the resignation of respondent No. 2. What the effect of that resolution will be in affecting the right to the above claim by the petitioner was not a matter before the Sabha. Therefore, we do not see how any special notice was required to be given to the petitioner on principles of natural justice. It, has to be remembered that the petitioner is a member of the Sabha and he must have received notice of the resolution which was part of the agenda to be considered at the meeting of the Sabha on October 27, 1960. Thus, in our opinion, the petitioner cannot; make a legitimate grievance that he had no opportunity of being heard before the resolution was actually passed regarding the acceptance of the resignation of respondent No. 2. However, what is urged is that the petitioner must be taken to have been dealt with so far as his claim to the office of the chairman of the Public "Works Standing Committee is concerned. That claim is founded on the resolution electing him as chairman of the Public "Works Standing Committee by the members of that Standing Committee on March 17, 1960. There is no provision in the Act which has been placed before us which permits a Janapada Sabha as a whole to sit in judgment on the resolution passed by the various standing committees except in the limited manner in which the matter can be brought before a general Sabha of the Janapada authority u/s 55 of the Local Government Act. This is not one of those kinds of cases which could have been

brought before the general Sabha. We, therefore, do not think that the question of the resolution dated March 17, 1960, passed by the Public Works Standing Committee electing the petitioner as chairman of that Committee on that day was the subject-matter before the meeting of the Sabha on October 27, 1960. On that aspect of the case there is no question of giving any special notice to the petitioner before any action adverse to him is taken. It, however, remains true that respondent No. 2 whose resignation has not been accepted by the Sabha must continue to hold the office to which he was elected prior to his resignation.

16. It is, however, contended before us by Mr. Bobde that the petitioner has been prejudiced inasmuch as he was elected to an elective office as chairman of the Public Works Standing Committee on March 17, 1960, and his right to continue in that office has not been properly adjudicated. He has also faintly argued that the petitioner was entitled to a declaration that he continued in that office because according to him no reasonable opportunity was given to him to contest the position that the resignation was validly accepted by the chairman of the Janapada Sabha. The petitioner has not claimed any such declaration in the petition. What the petitioner has claimed in the petition is issuance of a writ of quo warranto against respondent No. 2. We have held that, no such writ is liable to be issued against respondent No. 2 because the resignation of respondent No. 2 was not validly accepted and by resolution dated October 27, 1960, the only authority which could consider and decide on this resignation has held that it is not going to accept that resignation. The effect of that resolution is that respondent No. 2 continues to hold the office to which he was previously elected as chairman. We are not, therefore, concerned in this petition to decide whether the petitioner has any right to the office of chairman of the Public Works Standing Committee. We do not propose to give any opinion on that question. If the petitioner has any such right he may agitate it before the appropriate authority.

17. The result is that the petition fails, but in the circumstances, there will be no order as to costs.