

A.N. Tendulkar Vs C.F. Mathias and Another

Court: Bombay High Court

Date of Decision: Aug. 27, 1964

Acts Referred: Bombay District Municipal Act, 1901 " Section 23(7), 24(1), 46
Constitution of India, 1950 " Article 226, 227

Citation: AIR 1965 Bom 187 : (1965) 67 BOMLR 11 : (1965) ILR (Bom) 280 : (1965) MhLj 477

Hon'ble Judges: Tambe, J; Naik, J

Bench: Division Bench

Advocate: Y.S. Chitale, for the Appellant; M.S. Sanghavi, i.b. Little and Co., for the Respondent

Judgement

Tambe, J.

(1) By this petition under Articles 226 and 227 of the Constitution, the petitioner, who was the President of the Bhore Municipality, seeks to get

quashed the order dated 10th July 1964 made by the State Government, in exercise of its powers u/s 28(7) of the Bombay District Municipal Act,

1901 (hereinafter referred to as the Act,) removing the petitioner from the office of President.

(2) The facts giving rise to this petition in brief are : As already stated, the petitioner was an elected president of the Bhore Municipality. In his

capacity as the President, he presided over the meetings of the Municipality on 30th January 1963. In that meeting, the Municipality passed a

resolution to the effect that Sarvashri B. S. Bapat and R.D. Patil of the Bhore Municipality should not be allowed to sit in the house till they

apologised for having published mischievous news in the two newspapers i.e. "Tarun Bharat" and "Sakal" against the President. The effect of

passing that resolution was that the aforesaid two councillors were prevented from participating in the deliberations of the meeting. On these facts

being brought to the notice of Government, it appears that the State Government took the view that the failure or omission on the part of the

petitioner in disallowing the said resolution amounted to neglect and showed incapacity to perform his duty properly. Further it appears that

Government took the view that the President had taken the law in his own hand and had prevented the councillors from attending the said meeting.

It appears that the view taken by Government is that the right of a Municipal Councillor to attend the meeting of the Municipality is a councillor's

Fundamental right", and preventing a municipal councillor from attending the meeting amounted to misconduct. A show cause notice was,

therefore, issued to the petitioner, and the order of 16th July 1964 indicates that Govt. found that the explanation of the petitioner was not

satisfactory. The State Govt. came to the conclusion that the action of the petitioner amounted to negligence in the performance of his duty and

showed his incapacity to perform his duty as President properly. On these findings, the State Government made the following operative order:-

In exercise of the powers conferred by section 23(7) of the Bombay District Municipal Act, 1901, Government hereby removes Dr. A.N.

Tendulkar, President Bhore Municipality, from the Office of President, Bhore Municipality for neglect and of incapacity to perform his duty as

President".

It is this order that the petitioner seeks to get quashed by this petition. So, at the commencement of the hearing, at a loss to know as to what

was meant by the clause. Further, he (petitioner) "took the law in his own hand and prevented the Councillors from attending the said meeting". It

was not clear whether the petitioner (President) had by any physical act prevented the Councillors from attending the meeting, or what was the

manner or mode in which the petitioner had taken the law in his own hand in preventing the Councillors from attending the said meeting. Mr.

Sanghavi, learned Counsel for the respondents told us that the only act of the petitioner of which complaint is made is omission or failure on the

part of the petitioner to disallow the aforesaid resolution at the meeting of the Bhore Municipality on 30th January 1963. It is thus clear that what

prevented or what came in the way of the two Councillors from further participating in the meeting was the passing of the resolution by the

municipality the only fact on which the finding of neglect and incapacity to perform his duty is founded. There was an ambiguity in the order made

by Govt. In the preamble, it appears that the view taken by Govt. was that on the aforesaid facts the petitioner was guilty of misconduct. However,

the operative part of the order did not indicate that the petitioner had been removed for misconduct on his part. We, therefore, again asked Mr.

Sanghavi to make the position clear, and the learned Counsel has stated at the Bar that the petitioner has not been removed for any misconduct,

but the ground on which the petitioner has been removed is neglect of and incapacity to perform his duty as President properly.

(3) Before we proceed to consider the contentions raised by Counsel for the parties, on merits, it would be convenient to consider an objection

raised by Mr. Sanghavi, which could be said to be in its nature a preliminary objection. It is the Government removing the petitioner is not a quasi-

judicial order, but it is an administrative act. It is, therefore, not competent to this Court to quash this order in exercise of its power under Article

226 or 227 of the Constitution of India.

(4) The first question, therefore, that arises is whether the order which the petitioner is seeking to get quashed is a quasi judicial order; in other

words, whether there was any duty imposed by the Act on the State Government to act in a quasi judicial manner in the matter of removing the

President. It is indeed true that in making the order the State Govt. was not deciding a dispute between two private parties, but the parties to the

dispute were the State Government on the one hand and the petitioner on the other. A similar question arose before Their Lordships of the

Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, . The facts in that

case were that the Examination Committee under the U.P. Intermediate Education Act, which was a statutory educational authority, had taken

action against an examinee on the ground that he had used unfair means. The question that arose was whether the statutory educational authority

was under a duty to act in a quasi judicial manner in taking action against then examine, and Their Lordships held that there was such a duty cast

on it though there were no express provisions to that effect in the Act. The principle laid down by Their Lord ships has been thus summarised in the

placitum;

The statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from

the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether

the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent

has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the

disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other Indicia afforded by the

statute.

Dealing with the provisions of the statute, Their Lordships further observed:

Though there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of

the disposal based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned,

must lead to the conclusion that a duty is cast on the Committee to act judicially in that matter, particularly as it has to decide objectively certain

facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under R. 1(1)".

Applying these principles to the facts of the present case, the power conferred on the statutory authority, viz., the State Govt., is a power to

remove a President or a vice-president of a municipality. The exercise of the power depends on the existence of either negligence in performance

of duty by the President or vice-president, or incapacity of the President or vice-president to perform his duty, or a misconduct on the part of the

President or Vice-president. It is clear that before an action could be taken by the statutory authority, it has to inquire objectively whether any of

these three aforesaid facts exists in the case. Needless to say, the action when taken u/s 23(7) of the Act prejudicially affects a subject having

serious consequences. It is not merely that a President or vice President is removed from the office, but the sub-section further provides that he is

debarred from standing for a re-election during the remainder of the term of the office of the municipality. There can hardly be any doubt that the

principles laid down by Their Lordships are attracted to the facts of the present case. In our opinion, therefore, having regard to the provisions of

the Act, the order made by the State Govt. removing the Petitioner from the office of President, is a quasi judicial order. The preliminary objection

raised on behalf of the respondent, therefore, should fail.

(5) The question that next arises is whether there was any duty on the part of the President (petitioner) to disallow the resolution that has been

moved at the meeting. It is only if there would be any duty cast on the petitioner to suo motu disallow the resolution then alone, if at all, it could be

so said that his failure to disallow the resolution would amount to negligence or incapacity on his part to perform his duty. The argument of Mr.

Chitale, learned Counsel for the petitioner, is that there is no such duty cast on the petitioner under the provisions of the Act. On the other hand, it

is the argument of Mr. Sanghavi, that having regard to the provisions of S. 24(1) (a) read together with rule 12 framed by the Bhor Municipality,

the only possible inference that could be drawn is that there was such duty imposed on the petitioner. Section 24 deals with the functions for a

President and clause (a) of sub-section (1) thereof is in following terms:

24(1) It shall be the duty of the President of a Municipality to

(a) President, unless prevented by reasonable cause, at all meetings of the Municipality, and subject to the provisions of the rules for the time being

in force under clause (a) of section 46 to regulate the conduct of business at such meetings." It would be seen that the duty imposed by this clause

on the President is two-fold (1) he has to preside, unless prevented by reasonable cause, at all meetings of the municipality, and (2) subject to the

provisions of the Rules for the time being in force under clause (a) of section 46 to regulate the conduct of business at such meetings. There is no

provision in the statute further elucidating the meaning of the clause ""to regulate the conduct of business at such meeting"" and this brings us to the

Rules. Relevant rules are framed by the Municipality under S. 46 of the Act. Relevant portion of S. 46 reads:

Every Municipality shall, as soon as conveniently may be, after the constitution thereof, and subject to the provisions of Chapter XIII A, make and

may from time to time after or rescind rules, but not so as to render them inconsistent with this Act,

(a) regulating the conduct of their business and the delegation of any of their powers or duties and, subject to the provisions of Ss. 27 and 27A, the

appointment and constitution of committees:"

The rules framed by the Municipality in exercise of the powers under this clause are contained in Chapter II of the Rules. They are Rules 3 to 36.

(6) Rule 3 deals with the time of commencement of the meetings. Rule 4 relates to confirmation of the minutes of the last meetings. Rule 5 provides

the manner in which the amendment to the minutes of the last meeting are proposed. Rule 6 relates to the language to be used at the meeting. Rule

7 provides the manner in which a member will speak at the meeting. Rule 8 provides that the presiding authority shall preserve order and all points

of order shall be summarily decided by him, no discussion thereon being allowed, unless he shall think fit to take the opinion of the members of the

meeting thereon. Rule 9 provides that any member of a meeting may at any time submit a point of order to the decision of the Presiding authority.

Rule 10 provides that a Councillor called to order by the presiding authority shall resume his seat till the decision of the point of order raised. Rule

11 empowers the President to adjourn any meeting that has refused to obey his ruling on the point of order. Rule 12 provides that when the

Councillor disregards the presiding authority or is guilty of obstructive or offensive conduct at any meeting, the presiding officer shall forthwith put

the question (no amendment, adjournment or debate being allowed) that such councillor be suspended from the service of the council for the

remainder of his seating, and if a majority of the councillors present are in favour thereof the councillor named shall withdraw, failing which the

presiding authority may call such aid as he deems expedient to secure such withdrawal and suspension. Rule 13 enables a councillor to leave the

meeting before it is closed after intimating his intention to do so to the presiding authority. Rule 14 to 17 relate to the procedure to be followed by

the members in putting question. Rule 18 relates to the provisions relating to the seconding of motion or amendment. Rule 19 relates to the manner

in which the discussion of a motion or amendment is to be conducted. Rule 20 relates to the manner in which the amendment could be moved.

Rule 21 relates to the right of a mover to speak, and also give a reply. Rule 22 relates to adjourning or postponing the consideration of any

question. Rule 23 relates to opening adjourned debate. Rule 24 relates to closure of discussion. Rule 25 relates to voting on original motion and

amendments. Rule 26 and 27 relate to the manner in which votes are taken. Rule 28 relates to the procedure to be followed when the votes are

equal. Rule 29 relates to declaration of the result of voting. Rule 30 enables a poll to be demanded. Rule 31 relates to the taking of votes for

appointment of committee. Rules 32 and 33 relate to the voting on budget. Rule 34 related to the form of minutes. Rule 35 relates to the manner in

which notice of business is given to the members. Rule 36 relates to the order in which the business is to be taken up by the chairman of the

meeting. Rule 37 provides the extent of which the procedure at the general meeting is to be followed on committee meetings.

(7) These are all the rules which have been framed under clause (a) of section 46(a) of the Act, which are relevant for the purposes of this case. It

is nowhere expressly stated that one of the duties of the President is to suo motu disallow a resolution which the members or a councillor propose

to move at the meeting. On the other hand, the scheme appears to be that it is the member or the councillor who has to raise a point of order, and

it is only when a point of President to decide normally summarily without allowing any debate or discussion on the point of order. It is only in a

special case when the President thinks it advisable to take the opinion of the members on the point of order, that he may allow a debate thereon.

The only case in which the President is empowered to suo motu move a motion is provided in rule 12, and that is only when a councillor disregards

the presidential authority or it guilty of obstructive or offensive conduct rule 12, the President is not empowered to ask a member to withdraw or

suspend him from the meeting. The only personal which the President can make under rule 12 is in the form of putting a question whether the

member who has disregarded the Presidential authority is guilty of obstructive of offensive conduct at the meeting should be suspended from the

service of the council for the remainder of his seating. It is only when the House or the councillors present are in favour of such an action, the

President may call such a councillor to withdrawn from the meeting. It would be noticed that the scheme of the rules is that a point of order is to be

raised by a councillor, but decided by the President; motion under rule 12 along could be made by the President suo motu, but the decision

thereon is left to the House. It is thus clear that the member or the President who proposes a motion or an action has not been made or has not

been empowered to judge the merits of the motion or the action, or is not empowered to take a decision thereon himself. It would, therefore, be

difficult to hold that the President is empowered under the provisions of the Act or the rules framed thereunder to suo motu disallow a resolution

which a councillor intends to move in absence of any point of order raised by the member. It is pertinent to note that at the meeting no councillor or

member including the two members Messrs. Bapat and Patil had raised any point of order regarding to the competence of the municipality to

consider the resolution No. 59 moved at the meeting on 30th January 1963. It is therefore, difficult to hold that there was any failure on the part of

the petitioner to perform his duty imposed on him by petitioner to perform his duty imposed on him by the Act or the rules framed thereunder. It is,

however, the argument of Mr. Sanghavi that the petitioner ought to have known that the only contingency provided in the rules under which a

member could be suspended is one provided in rule 12, and on no other ground a member could be suspended from House. The argument of Mr.

Sanghavi virtually amounts to reading something more than what R. 12 contains. It is nowhere stated in rule 12 that a member could be suspended

only when the conditions mentioned in that rule are fulfilled. However, it is not necessary for us to pursue the matter further, because we are not

here concerned with the validity or otherwise of the Resolution No. 59 passed by the Municipality. Mr. Chitale has frankly conceded that we

should proceed to consider this case on an assumption that the municipality was not competent to pass such a resolution. What we have to decide

is whether there was a duty cast on the petitioner to suo motu disallow moving of the resolution. We have provision to that effect in the Act, but no

express provision to that effect in the Act, but the inference that follows from the rules framed thereunder, is that there was no such duty cast on the

President.

(8) The question next to be considered is whether such a duty could be read in the expression: to regulate the conduct of business at such meeting

occurring in clause (a) of sub-section (1) of section 24. We have already stated that the expression has not any further been elucidated in the Act,

nor are there any provisions which impose any duty on the President in respect of regulating the conduct of business of a meeting of the

municipality. On the other hand, as it appears, it is left to each of the Municipality to frame rules regulating the conduct of business of its meetings.

Further, we have not been shown that there is any rule in any Municipality or Corporation or a book on the subject, imposing a duty on its

President to suo motu disallow moving of a resolution on the ground of incompetence of the Municipality to consider the resolution.

(9) In view of the aforesaid conclusion, it can hardly be said that the failure on the part of the petitioner to suo motu object to the moving of this

resolution amounted to negligence on his part to perform his duty or to his incapacity to perform his duty. The error in the order which assumes that

there was such a duty cast on the petitioner is appears on the face of the record. There is also another error which is apparent on the face of the

record. It appears that the view taken by the respondent is that the said failure on the part of the petitioner had prejudicially affected the two

councillors' "fundamental right" of attending the meeting. Now, the fundamental rights of a citizen are enshrined in Part III of the Constitution of

India. It is not necessary to elaborate, but suffice it to say that having regard to the Articles contained in Part III of the Constitution, it can hardly be

said that a right of a member or a councillor to attend the meeting of a Municipality is a fundamental right. The error being apparent on the face of

record. The error being apparent on the face of record, the petitioner is entitled to get the order quashed.

(10) In the result, application is allowed. The order of the date 16th July 1964 made by the respondent is hereby quashed. Rule is made absolute

with costs.

(11) Rule made absolute.