

(2021) 01 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition (ST) No.4385 Of 2020

Ajay Boraste

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:

Maharashtra Municipal Corporation Act, 1949 — Section 20, 20(2), 30, 31, 31A, 31A(2)

Citation : (2021) 01 BOM CK 0018

Hon'ble Judges : Dipankar Datta, CJ;G. S. Kulkarni, J

Bench : Division Bench

Advocate : Anil A.Anturkar, S.J.Deshmukh, Pravin Gole, A.I.Patel, M.M.Pable, M.L.Patil, Sandeep V. Marne, Pradeep Thorat, Aniesh S.Jadhav, Vaibhav Kamble, Jay Bhatia

Final Decision : Allowed

Judgement

Sr. No,Party,"Total
numbers","Divided by
Quotient",Relative strength,"Representati
on on
Standing
Committee
1.,BJP,66,7.62,8.66,9
2.,Shivsena,35,7.62,4.59,4
3.,Congress,7,7.62,0.91,1
4.,NCP,7,7.62,0.91,1
5.,MNS,6,7.62,0.68,1

6.,RPI,1,7.62,0.13,NIL

Sr. No,Party,"Total

numbers","Divided by

Quotient","Relative

strength","Representation on

Standing Committee

1.,BJP,64,7.62,8.39,8

2.,Shivsena,35,7.62,4.59,5

3.,Congress,7,7.62,0.91,1

4.,NCP,8,7.62,1.04,1

5.,MNS,6,7.62,0.68,1

6.,RPI,1,7.62,0.13,NIL

,,,,Total,16

(2) The Corporation shall at its first meeting after general elections appoint [sixteen] persons out of its own body to be members of the Standing,,,,,

Committee.~~~~~

(3) One-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which the first,,,,,

meeting of the Corporation mentioned in sub-section (2) was held:~~~~~

Provided that all the members of the Standing Committee in office when general elections are held shall retire from office on the election of a new~~~~~

Committee under sub-section(2).~~~~~

(4) The members who shall retire under sub-section (3) one year after their election under sub-section(2) shall be selected by lot at such time previous~~~~~

to the date for retirement specified in sub-section (3) and in such manner as the Chairman of the Standing Committee may determine, and in"~~~~~

succeeding years the members who shall retire under this section shall be those who have been longest in office :~~~~~

Provided that, in the case of a member who has been reappointed, the term of his office for the purposes of this sub-section shall be computed from"~~~~~

the date of his reappointment.~~~~~

(5) The Corporation shall at its meeting held in the month preceding the date of

retirement specified in sub-section(3) appoint fresh members of the,,,,,

Standing Committee to fill the offices of those who are due to retire on the said date.,,,,,

(6) Any Councillor who ceases to be a member of the Standing Committee shall be eligible for reappointment.,,,,,

31A.(1) Appointment by nomination on Committees to be by proportional representation.,,,,,

Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, in the case of the following Committees, except where it is" ,,,,,

provided by this Act, that the appointment of a Councillor to any Committee shall be by virtue of his holding any office, appointment of Councillors to" ,,,,,

these Committees, whether in regular or casual vacancies, shall be made by the Corporation by nominating Councillors in accordance with the" ,,,,,

provisions of sub-section (2) :â?" ,,,,,

(a) Standing Committee ;,,,,

(b) Transport Committee ;,,,,

(c) Any special Committee appointed under section 30 ;,,,,

(d) Any ad hoc Committee appointed under section 31.,,,,,

(2) In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognised parties or registered" ,,,,,

parties or groups and nominate members, as nearly as maybe, in proportion to the strength of such parties or groups in the Corporation, after" ,,,,,

consulting the Leader of the House, the Leader of Opposition and the leader of each such party or group : " ,,,,,

[Provided that, the relative strength of the recognized parties or registered parties or groups or aghadi or front shall be calculated by first dividing the" ,,,,,

total number of Councillors by the total strength of members of the Committee. The number of Councillors of the recognized parties or registered ,,,,,

parties or groups or aghadi or front shall be further divided by the quotient of this division. The figures so arrived at shall be the relative strength of the ,,,,,

respective recognized parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognized parties or registered ,,,,,

parties or groups or aghadi or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats ,,,,,

in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognized parties or registered parties or groups",,,,,

or aghadi or front in the descending order of the fraction number in the respective relative strength, starting from the highest fraction number in the",,,,,

relative strength, till all the seats are allotted:]",,,,,

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this Act, the",,,,,

recognised parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, notwithstanding anything",,,,,

contained in the Maharashtra Local authority Membersâ?? Disqualification Act, 1986, within a period of one month from the date of notification of",,,,,

election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if",,,,,

it is a registered pre-poll aghadi or front.,,,,,

(3) If any question arises as regards the number of Councillors to be nominated on behalf of such party or group, the decision of the Corporation shall",,,,,

be final.]â??",,,,,

(emphasis supplied),,,,,

16. By virtue of Section 20, the Standing Committee of the NMC would consist of 16 councillors. As per Sub-section (2) of Section 20 the Corporation",,,,,

shall at its first meeting after the general elections appoint sixteen persons out of its own body to be members of the Standing Committee. Sub-section",,,,,

(3) provides that one-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which",,,,,

the first meeting of the Corporation mentioned in sub-section (2) was held.,,,,,

17. As far as the appointment by nomination on the Committees which includes the nomination to the Standing Committee is concerned, it would be by",,,,,

proportional representation. From a bare reading of Section 31A , it is seen that it begins with a non-obstante clause, so as to provide for an overriding",,,,,

effect of this provision, in regard to anything contained in the Act, the rules or the bye-laws made thereunder, except for what is provided under the",,,,,

Act, to provide that appointment of a Councillor to any Committee shall be by virtue of his holding any office; appointment of Councillors to these",,,,,

Committees, whether regularly or to fill up the casual vacancies, to be made by the Corporation by nominating Councillors in accordance with the",,,,,

provisions of sub-section (2). Sub-section (2) provides that in nominating Councillors on the Committees, the Corporation shall take into account the",,,,,,

â??relative strengthâ? of the recognised parties or registered parties or groups or aghadi or front, and nominate members, as nearly as may be, in",,,,,,

proportion to the strength of such parties in the Corporation, after consulting the Leader of the House, the Leader of Opposition and the leader of each",,,,,,

such parties or group or aghadis or front. The method of calculating the relative strength of the recognized parties or groups or aghadi or front is,,,,,

required to be in the manner as provided for in the proviso below sub-section (2), which mandates that it shall be calculated by first dividing the total",,,,,,

number of councillors by the total strength of members of the Committee, as already noted by us. Thereafter, the number of Councillors of the",,,,,,

recognized parties or registered parties or groups or aghadi or front shall be further divided by the quotient of this division. The figures so arrived at,",,,,,

shall be the relative strength of the respective recognized parties or registered parties or groups or aghadi or front. The seats so determined shall be,,,,,

allotted to the recognized parties or registered parties or groups or aghadi or front by first considering the whole number of their respective relative,,,,,

strength so ascertained. After allotting the seats in such manner, if one or more seats remain to be allotted, the same shall be allotted one each, to the",,,,,,

recognized parties or registered parties or groups or aghadi or front in the descending order of the fraction number in the respective relative strength,",,,,,

starting from the highest fraction number in the relative strength, till all the seats are allotted.",,,,,

18. It is by such mechanism and method as prescribed in the proviso below sub-section (2) the members would be nominated to the Standing,,,,,

Committee by the Corporation. The interpretation of Sections 31 and 31A fell for consideration of the Division Bench of this Court in Vasant Nivrutti,,,,,

Gite (supra) case. It was held that the proper construction of sub-section (2) and provisos below sub-section (2) would be to first nominate the,,,,,

members to the Standing Committee from the parties which have necessary quotient based on relative strength of their membership on the General,,,,,

Body. This interpretation was followed and approved in the subsequent decision in Jayram Tolaji Shinde case (supra) as also in Sangram V. State of,,,,,

Maharashtra reported in 2017 SCC OnLine Bom 8579.,,,,,,

19. In our opinion the mandate of the proviso below sub-section (2) of Section 31A is quite clear that the nomination of the members to the Standing,,,,,

Committee amongst the parties necessarily has to be as per the quotient, which is based on the relative strength of such a political partyâ??s" ,,,,,

membership on the General Body of the municipal corporation. The proviso below sub-section (2) sets out a complete mechanism for arriving at such,,,,,

quotient and the consequent determination of the respective relative strength which would be required to be arrived at, in the descending order of the" ,,,,,

fraction number, starting from the highest fraction number in the relative strength, till all the seats are allotted." ,,,,,

20. We find that by applying the method and the manner of arriving at such relative strength as prescribed by Sub-section (2) of Section 31A, it was" ,,,,,

incumbent on the General Body of the NMC to consider the quotient of 7.56, which had arisen on account of reduction of two seats of Bharatiya" ,,,,,

Janata Party, reducing its total strength from 66 to 64. There is no dispute on such quotient being arrived, which is on the actual strength of the total" ,,,,,

number of councillors of each of these parties on the General Body of the Corporation. At the same time the total strength of the elected Councillors,,,,,

of Shiv-Sena had remained at 35, however, correspondingly on such change of the quotient, the relative strength of Shiv-Sena was required to be" ,,,,,

taken at 4.62, and by applying the rounding up formula, as accepted by this Court in Jayram Tolaji Shinde case (supra), and by considering the relative" ,,,,,

strength in the descending order of the fraction number, in our opinion, the General Body ought to have nominated one additional councillor from the" ,,,,,

Shiv-Sena on the Standing Committee, so as to make the strength of the Shiv-Sena councillors on the Standing Committee to be at 5 in place of 4. The" ,,,,,

General Body of the NMC, however, accepted nomination of only 2 councillors of the Shiv-Sena by the impugned resolution making the strength to 4" ,,,,,

instead of 5. For such reason, the impugned General Body Resolution to the extent it fails to nominate one additional member/councillor belonging to" ,,,,,

the Shiv-Sena on the Standing Committee of the NMC, would be required to be held to be illegal, being in breach of the provisions of sub-section (2)" ,,,,,

of Section 31A of the 1949 Act.,,,,,

21. As a sequel to the above discussion, the petition is required to be allowed in terms of prayer clause (a) and (b) which reads thus:" ,,,,,

a. that this Honâ??ble Court be pleased to issue appropriate writ, order or direction and particularly the Writ of mandamus thereby quash and set" ,,,,,

aside the resolution of the General Body of Nashik Municipal Corporation dated 24.2.2020 bearing no. 196 to the extent of nominating one extra ,,,,,

member of Bhartiya Janata party on the Standing Committee; ,,,,,

b. that this Honâ??ble Court be pleased to hold and declare that in view of Jayram Tolaji Shinde v. The Secretary, Urban Development Department," ,,,,,

Mumbai, 2010 (3) Mh.L.J. 465 and Sangram v. State of Maharashtra, 2017 SCC OnLine Bom 8579 : (2018) 3 Mah LJ 254 the Shivsena party in" ,,,,,

Nashik Municipal Corporation is entitled to nominate 5 seats on Standing Committee of Nashik Municipal Corporation for the year 2020-2021. ,,,,,

22. Rule is made absolute in the above terms. No costs. ,,,,,