
(2016) 09 BOM CK 0161
In the Bombay High Court
Case No : Writ Petition No. 3474 of 2016

Ambedkarite Party

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 21
Constitution of India, 1950 — Article 243R
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 14(2)

Citation : (2017) 3 ALLMR 588 : (2017) 2 MhLJ 575

Hon'ble Judges : B.R. Gavai and V. M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. N.D. Sonare, Advocate, for the Petitioner; Mr. Rohit Deo, Acting Advocate General with Mrs. Bharti Dangre, Government Pleader, for the Respondent Nos. 1 to 3; Ms N.G. Choubey, Advocate, for the Respondent No. 4

Final Decision : Dismissed

Judgement

B.R. Gavai, J (Oral)—Petitioner has approached this Court being aggrieved by the Ordinance promulgated by the Hon"ble Governor of Maharashtra called as "the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township (Amendment) Ordinance, 2016 hereinafter referred to "the amended Ordinance". By virtue of the said Ordinance, amendments have been effected to the Maharashtra Municipal Corporations Act (hereinafter referred to as "the Corporations Act" and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Act of 1965"). The amendments provide that, insofar as the Municipal Corporation is concerned, each of the wards shall elect as far as possible four Councillors but not less than three and not more than five Councillors. It further provide that each voter would be entitled to cast the same number of votes, as number of Councillors to be elected in his ward.

2. Insofar as the general elections to the Municipal Council are concerned, it has

been provided that each of the wards shall elect as far as possible two Councillors but not more than three Councillors. It has been further provided that each voter shall, notwithstanding anything contained in sub-section (2) of Section 14, be entitled to cast the same number of votes, as the number of Councillors to be elected in his ward.

3. Another ground of challenge is with regard to election of Chairpersons of Municipal Councils directly. According to the learned Counsel, there is no provision in the Constitution which permits election to the post of President of Municipal Council to be done directly and as such, the amendment violates the Constitution of India.

4. Mr. N.D. Sonare, learned Counsel appearing on behalf of the petitioner, which is a registered political party, submits that the Constitution Bench of Hon'ble Supreme Court has held that Secularism is one of the basic feature of the Constitution of India. Learned Counsel submits that, by providing for multi Member Ward System, the very concept of Secularism is under attack inasmuch as the community having majority of votes in a particular ward would be dominating the elections in that ward. Learned Counsel submits that such a System is prejudicial to small political party like the petitioner.

5. Learned Counsel further submits that "One Man One Vote and One Value" is the basic concept recognised in the Constitution of India and by the impugned Ordinance, the said principle is sought to be given a total go-bye.

6. The learned Counsel has taken us through the speeches given by Dr. B.R. Ambedkar as well as other members in the Constituent Assembly debates.

7. Mr. Rohit Deo, learned Acting Advocate General, on the contrary, submits that the issue is no more res integra. He submits that the issue is put to rest by two Division Bench Judgments; one in Writ Petition No.4855 of 2011 delivered by the Division Bench at Aurangabad on 23.8.2011 and the other one in Writ Petition No.10354 of 2011 delivered by the Division Bench at the Principal Seat in Mumbai on 23.12.2011.

8. No doubt that the arguments advanced by the learned Counsel for the petitioner appears to be attractive at the first blush. Nobody would deny that the Indian Constitution recognises Secularism to be one of the basic concepts of it. With the development of law by Their Lordships of Hon'ble Supreme Court and various High Court, it cannot be denied that Secularism will have to be construed to be a basic structure of the Constitution of India. However, the question that would be required to be considered is as to whether the impugned Ordinance attacks the concept of Secularism or not.

9. Another argument of the learned Counsel regarding the concept of "One Man One Vote and One Value" also finds place in the Indian Constitution. Learned Counsel is right in relying upon various speeches of Dr. B.R. Ambedkar as well as other eminent members of the Constituent Assembly wherein they have stated

that the Indian Constitution promises political democracies by adopting principle of "One Man One Vote and One Value" . However, again question would be as to whether the Multi Member Ward System attacks the said principle or not.

10. Insofar as the first submission is concerned, we are unable to understand as to how the Multi Member Ward System would attack the concept of Secularism. The concept of Secularism could be said to have been attacked, if there was any communal reservation provided in the Constituencies. What would not be permissible by the concept of Secularism is reservation for a particular community professing a particular religion. Same would not be at all permissible under our Constitutional Scheme. However, none of the provisions of the impugned Ordinance would show that any attempt is made in that regard. Needless to state that all the eligible candidates professing any religion would be entitled to contest elections provided that they are otherwise eligible for contesting elections and insofar as the Constituencies which are reserved for various categories are concerned, they belong to that category. Equally the person belonging to any religion would be entitled to cast vote for any candidate though he may be belonging to different religion or community.

11. As a matter of fact, the Constitution Bench of Apex Court in the case of R.C. Poudyal v. Union of India and Others reported in AIR 1993 SC 1804 has clearly held that no reservations could be provided in the electorates on the basis of any religion. In the said Judgment, Their Lordships have elaborately considered the debates in the Constituent Assembly wherein there was almost unanimity amongst the Hon"ble Members of the Constituent Assembly, that the greatest evil in this Country in the past was of communal electorate. It could be seen that, in one of the debates, the legendary Sardar Patel has observed that introduction of the system of communal electorates is poison which has entered into the body of politics of our Country. Apart from that, it could be seen that, the Sub-Committee of the Constituent Assembly, on the question, as to whether separate electorates for particular communities could be permitted under the Constitution, had firmly opined against separate electorates and had recommended all the elections to the Central Province Legislature on the basis of joint electorate. It can thus be seen that the concept of joint electorates is not introduced by the impugned Ordinance for the first time but it finds its origin in the report of the Sub-Committee of the Constituent Assembly. In that view of the matter, we find that merely because the impugned ordinance is capable of causing some prejudice to the petitioner party, cannot be a ground to hold the same to be unconstitutional.

12. Insofar as the second argument regarding the impugned Ordinance violating the principle of "One Man One Vote and One Value" is concerned, in our considered view, the same is also without substance. If a particular ward is to elect five Councillors, then a person from the said ward will have to vote for different five persons contesting from the said ward. It is not as if, that the voter would be entitled to cast all his five votes in favour of one particular candidate.

Had this been the position, then certainly the petitioner would have been justified in saying that the principle of "One Man One Vote and One Value" is adversely affected. However, the learned Counsel fairly concedes that, that is not the position.

13. Insofar as the principle of "One Man One Vote and One Value" is concerned, it would further be relevant to refer to the following observations of Their Lordships of the Apex Court in the case of R.C. Poudyal (*supra*) :

" The principle of one man, one vote envisages that there should be parity in the value of votes of electors. "

14. Now the only question that requires to be considered is regarding prejudice caused to the small political parties like the petitioner. By now it is a settled principle of law that the Courts are not required to consider the matter from a political angle. The political considerations would not weigh with the Court. While considering the challenge to statutory enactments or ordinance, only two grounds that will be available for scrutiny would be : (1) whether the Legislature has competence to enact the said enactment and correspondingly as to whether the Hon"ble President or the Hon"ble Governor would have competence to issue an Ordinance in respect thereof (2) As to whether the enactment or Ordinance is in conflict with any of the provisions of the Constitution.

15. It is not the case of the petitioner that the Ordinance which is issued is beyond legislative competence of State Legislature. In that view of the matter, it will be in the competence of Hon"ble Governor to issue Ordinance till such time it is placed before the Houses of the Legislature.

16. Insofar as the second ground is concerned, no provision of the Constitution has been pointed out which can be said to be in conflict with the said Ordinance. Hence, the challenge on that ground would also fail.

17. In any case, the question regarding Multi Member Ward System has fallen for consideration before the two Division Benches of this Court, one at Aurangabad Bench and one at Principal Seat at Mumbai in the above referred cases. The said challenge was rejected by this Court.

18. As has already been discussed herein above, the impugned Ordinance does not provide for any disparity of value of votes amongst one section of people as against another section of people. The value of votes in a particular ward of all the voters belonging to any religion, community, caste or creed would be the same.

19. Insofar as the third challenge regarding direct election of the Chairperson of a Municipality, it will be relevant to note that under Article 243 R Clause 2(b) of the Constitution of India, it is for the Legislature of a State to enact law providing for the manner of the election of the Chairperson of the Municipality. It can thus be seen that the Constitution of India has itself left it to the wisdom of Legislature to provide for the manner of election of Chairperson of the

Municipality. Unless there is any provision under the Constitution which prohibits election of the President of Municipal Council by direct electorate, the statutory provision cannot be held to be unconstitutional. Learned Counsel has not been in a position to point out to us any provision in the Constitution which prohibits direct election of the President of Municipal Council.

20. In view of the above, since the present Writ Petition is devoid of merits, the same is dismissed. No order as to costs.