

**(1989) 04 BOM CK 0008**

**In the Bombay High Court**

**Case No : Writ Petition No. 1384 of 1989**

Anand Chintamani Dighe and Others

APPELLANT

Vs

Thane Municipal Corporation and Others

RESPONDENT

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**Date of Decision : 04-04-1989**

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 30(7)

**Citation : (1989) 2 BomCR 564**

**Hon'ble Judges : S.C. Pratap, J; B.G. Kolse-Patil, J**

**Bench : Division Bench**

**Advocate : P.M. Pradhan, for the Appellant; R.S. Bhonsale and Kiran V. Gupta for respondent Nos. 1 to 3, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.C. Pratap, J.—The strength of the Municipal Corporation of Thane is of Sixty-five elected councillors. Some weeks back, for reasons not relevant here, as many as thirty councillors resigned, leaving thirtyfive councillors in office.

2. At the meeting of the remaining councillors scheduled to be held on Wednesday, 5th April 1989, there are resolution Nos. 529 to 535 relating to the dissolution of the existing twelve special committees and fresh elections thereto. This petition challenges the legality and validity of these resolutions.

3. Mr. Pradhan, learned Counsel for the petitioners, contented that it would be an arbitrary and mala fide exercise of power to dissolve the twelve special committees and hold fresh elections thereto. It is not possible to agree. Political expediency apart, power to dissolve special committees squarely vests in the Corporation under sub-section (7) of section 30 of the Bombay Provincial Municipal Corporations Act, (for short "the Act"), under which provision---

"The Corporation may at any time dissolve or alter the constitution of a Special Committee."

Now, if as a result of large scale resignations, a situation arises where there is, in the totality, large number of vacancies in as many as twelve special committees, and, if, in the result, the Corporation decides to dissolve these committees and hold fresh elections thereto, in pursuance of powers vested in it under sub-section (7) section 30 of the Act, action cannot be said to be arbitrary or mala fide. It is open to the Corporation not to dissolve the special committees. It is also open to the Corporation not to dissolve the special committees. It is also open to the Corporation to hold elections to the existing committees only to the extent of existing vacancies. But it is likewise also open to the Corporation to dissolve these committees and hold elections afresh thereto. The ultimate choice may as well be a political decision but the choice rests ultimate with the Corporation. And this all the more when power in that behalf expressly vests in it.

4. In the context, it is relevant to note that the legislature has not conferred on the Corporation similar power of dissolution qua two important committees viz. the standing committee constituted u/s 20 of the Act and the transport committee constituted u/s 25 of the Act. A vital distinction has been drawn between these two committees and the twelve special committees. It is also relevant to note that those who would be elected in the place of the resigned councillors would have the opportunity of standing for elections even to these twelve special committees. That opportunity, however, will come by after the tenure of the special committees (as existing at the time of election of the new councillors) comes to an end.

5. Besides, it would not be proper for this Court to interfere with the internal working of the Corporation when the same is, as here, in accordance with the power squarely and expressly vested in that body u/s 30(7) of the Act. Working of democratic institutions should not be lightly interfered with. The law must be allowed to take its course.

6. Mr. Pradhan invited our attention to the following head-note of a ruling of the Supreme Court in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, :

"Fraud on power voids the order if it is not exercised bona fide for the end design. There is a "distinction between exercise of power in good faith and misuse in bad faith. The former arises when the authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matter. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy private or personal grudge or for wreaking vengeance of a Minister.

A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power "for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power, Same is the position when an order is made for the

purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of a misuse of the power."

We fail to see the relevance of these observations to the present case. We see no fraud on power in this case nor any malice. Indeed, the present situation has arisen because of the voluntary large scale resignations of as many as thirty councillors, thereby giving to the existing councillors an unexpected opportunity to dissolve the existing special committees and hold fresh elections thereto. Be that as it may, if action accordingly is in the exercise of powers expressly vested in them under the Act, it is not possible to interfere.

7. In the result, this petition thus fails and the same is dismissed.