

(1990) 03 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No. 340 of 1989

Arolkar Ghanshyam Govind

APPELLANT

Vs

Chandrakant Tukaram Korgaonkar and others

RESPONDENT

Date of Decision : 19-03-1990

Acts Referred:

Goa, Daman and Diu Municipalities Act, 1968 — Section 18, 2, 306, 52(8)(b), 56

Citation : AIR 1991 Bom 216 : (1991) 1 BomCR 460 : (1990) 92 BOMLR 343

Hon'ble Judges : Sharad Manohar, J;G.D. Kamat, J

Bench : Division Bench

Advocate : M.B. D'Costa, for the Appellant; J. Dias Mrs. S. Albuquerque and P.A. Kolkar, for the Respondent

Judgement

Kamat, J.—This petition under Articles 226 and 227 of the Constitution of India seeks a writ of certiorari or a writ in the nature of certiorari or an appropriate writ, order, direction for quashing and setting aside the order dated 12th October, 1989 made by the Presiding Authority Sub-Divisional Officer, Mormugao rejecting the nomination paper filed in favour of the petitioner for electing Vice-President for the Mormugao Municipal Council.

2. Facts giving rise to this petition are that for the election of Vice-President of the Mormugao Municipal Council a special meeting was convened on 12th October, 1989 as the said office had fallen vacant along with the office of the President. This meeting was presided over by the Sub-Divisional Officer, Mormugao, the respondent No. 2. The petitioner is an elected Councilor of the Mormugao Municipal Council and his name was proposed for the Office of Vice-President to be elected at that meeting by a nomination made by Shri Prakash Parulekar who is a co-opted Councilor of the said Council. It is common ground that along with the petitioner, the first respondent, Shri Francisco Gerald Barreto and Shri Ashok Chandra Halarnkar were also proposed as candidates for the office of Vice-President duly nominated by elected Councilors. On a scrutiny of the nominations made, the respondent No. 2 rejected the nomination paper of

the petitioner on the ground that the co-opted Councilor Parulekar had no right to vote at the election and therefore no right to propose and nominate the petitioner as a candidate for the election of the Vice-President. At the elections that were held on that day needless to mention that the respondent No. 1 got the majority of votes and was accordingly declared duly elected to the post of Vice-President.

3. The sole question to ask in this petition is whether a co-opted Councilor can nominate another Councilor for being elected to the office of Vice-President.

4. Mr. M. B. D'Costa, learned counsel appearing for the petitioner in support of this petition relied upon Rule 3 of the Rules called the Goa, Daman and Diu Municipalities (President and Vice-President Elections) Rules, 1969 and urged that having regard to the definition of a "Councilor" appearing in the Act there is nothing to distinguish a Councilor elected from a Councilor co-opted. He therefore says that on reading this Rule with the definition of a Councilor as contained in the Goa, Daman and Diu Municipalities Act, 1968 it is open to a co-opted Councilor to propose and nominate an elected Councilor for election of Vice-President or President notwithstanding the fact that a co-opted Councilor has otherwise no right to vote at the election of the Vice-President. According to him it is not possible to read any bar for a co-opted Councilor to nominate. He further urged that a co-opted Councilor has otherwise untrammelled rights side by side and co-extensive with elected Councilor under the Goa, Daman and Diu Municipalities Act to participate in any meeting and vote for any Resolution and the only bar is that a co-opted Councilor cannot himself vote at the election of a President and Vice-President and that too because the statute specifically provides for that eventuality. In this connection he points out the bar as contained in Section 52(8)(b) of the Act. He therefore now says that apart from the exclusion of a co-opted Councilor to vote at the election of President or Vice-President it is not possible to read either in the Act or the Rules for want of powers by a co-opted Councilor and hold that he is not empowered to nominate a Councilor of his choice for the post of the Vice-President.

Tersely put according to Shri "D"Costa, if the legislature wanted a co-opted Councilor not to propose and nominate that curtailment would have found place in the statute just as the Act provides specifically that a co-opted Councilor shall not vote at the election of a President and Vice-President. Since it is not there he says considering all other powers of the co-opted Councilor otherwise on par with elected Councilor, it is not possible to deny the right of nomination to co-opted Councilor.

5. As against this Mr. J. Dias, learned counsel appearing for the first respondent in his foremost submission says only elected councillors can contest the election to the office of President and Vice-President of a Council and there is no question of co-opted Councilor even becoming a President or a Vice-President in view of the bar spoken to in sub-section (1) of Section 52 of the Act. He says that under the scheme of the Municipalities Act the co-opted councillors are excluded not

only from voting at the election of a Vice-President and a President u/s 52(8)(b) but also from voting on any resolution for the removal of a President and a Vice-President u/s 56 of the Act. He now says that when a co-opted Councilor has no powers to vote at such elections it must equally be held that such co-opted Councilor has no right or power to propose and nominate.

In so far as Section 52 of the Act is concerned according to him the Section specifically deals with the election of a President and Vice-President. This section also lays down the procedure as to how the Collector or his nominee shall convene a special meeting of the councillors for electing a President and/or Vice-President and after the election of the President and Vice-President is over and a Council is constituted the question of co-option is taken up. Referring to subsection (8) of that section he says that during the term of a Council when a vacancy occurs in the office of the President or Vice-President for any reason whatsoever the procedure prescribed in sub-sections (2) to (5) of Section 52 is made applicable. When this be the procedure he says sub-sections (2) to (5) are made applicable obviously because there is no place for co-opted Councilor to take part at the special meeting convened to elect a Vice-President and/or President for filling up the vacancies during the term of the Council. He therefore says that co-opted member are totally excluded in all matters relating to the process of election of President and Vice-President of the Council and also for their removal from office.

6. Section 2(9) of the Goa, Daman and Diu Municipalities Act, 1968 defines a Councilor to mean a person who is duly elected or co-opted or nominated as a member of the Council. We will have therefore seen that in the definition of a Councilor not only duly elected Councilor but also the co-opted and nominated Councilor are included.

The Goa, Daman and Diu Municipalities (President and Vice-President Elections) Rules, 1969 for short Rules of 1969 made in exercise of the powers conferred by sub-section (2) of Section 306 read with Sections 18 and 52 of the Act provides for filing of nominations for election of President under Rule 3 thereof. It reads :

"When the Collector convenes a special meeting of the councillors for election of the President, the Collector shall cause a notice of the date, time and place fixed for the meeting to be sent to every Councilor. In such notice, the officer to whom nomination papers may be delivered shall also be specified. At any time before noon on the day preceding the date so fixed, a Councilor may nominate another Councilor for election by delivering to the said officer a nomination paper completed in Form I signed by himself as proposer."

(Underlining supplied)

7. The counsel for the petitioner no doubt lays stress on the expression "a Councilor may nominate another Councilor" and says when read in conjunction with definition of a Councilor which includes a co-opted Councilor, there is no bar and therefore it is open to a co-opted Councilor to nominate.

It may however be required to be seen that; the Rules of 1969 are made with reference to Section 52 of the Act in addition to other sections and though Councilor defined in the Act includes a co-opted Councilor, by virtue of clause (b) of sub-section (8) of Section 52 of the Act there is an express bar for voting by a co-opted Councilor. There can equally be no dispute that a co-opted Councilor cannot himself stand for election or get elected as a President or Vice-President and therefore Rule 3 of the Rules does not pose any difficulty in its interpretation. The word "Councilor" appears at two places in that section. When Rule 3 says that a Councilor may nominate another Councilor it is clear that the word "Councilor" will have to be given one and the same meaning at both the places and there is no scope for giving a different meaning for the word Councilor subsequently appearing. If we are to accept the interpretation sought to be given by the learned counsel for the petitioner that the Councilor who nominates will include not only an elected Councilor but also a co-opted Councilor, the word "Councilor" thereafter appearing will also mean and include a co-opted Councilor which obviously cannot be the case.

8. It is indeed urged by the learned counsel for the petitioner that if there is any conflict between the Rules and the Act the Rules having been made under the parent Act, the Act will prevail and not the Rules. Equally effort is that if there is disharmony between the Rules and the Act, the Act must prevail. This is naturally pointed out to say that when the Act includes a co-opted person within the definition of a Councilor, the Rules cannot obviously give a different meaning to a Councilor. It is however pertinent to notice that very Section 2 of the Act under the heading "Definitions" begins by saying "in this Act unless the context otherwise requires". The definition clauses enumerated in Section 2 of the Act will have to be therefore read and interpreted in their context. In our view therefore it will lead to anomalous result if we were to read the first expression "Councilor" to mean and include the elected as well as the co-opted councillors and the next expression "Councilor" is restricted only to elected Councilors. The interpretation to be given must be in tune with the rules of interpretation of same words appearing in one section to have same meaning and used in the same context.

9. In aid of his proposition, Mr. D'Costa learned counsel for the petitioner read before us Section 78..of the Municipalities Act to show that a co-opted Councilor enjoys all the powers of an elected Councilor in all spheres at all meetings or at all resolutions to be made by the Council. A point was sought to be made that if a co-opted Councilor can take part at every meeting and vote on any resolution then in the absence of no other express bar a co-opted Councilor can as well have the powers to nominate and all the more so because only express bar set out is that the co-opted member shall have no right to vote at the election of the President and Vice-President. There being no other bar he says that the power to nominate is available which is very different from power or right to vote.

It is equally urged relying upon Section 52 of the Act that the Collector is bound

to give notice to all councillors for the special meeting to be convened for electing a President or Vice-President. It is therefore suggested that a co-opted Councilor is bound to get notice for attending such a meeting and therefore even a co-opted Councilor has a right to propose and nominate a Councilor for the election.

10. In our view it is not necessary to import Section 78 of the Act to recall the powers of a co-opted Councilor in greater detail as the present matter is restricted to a short controversy falling u/s 52 of the Act and Rule 3 of the 1969 Rules.

Section 52 of the Act is a specific Section relating to the election of President and Vice-President of a Council. Obviously selection of co-opted councillors is taken up after the election of the President and Vice-President under the procedure prescribed in sub-sections (2) to (5). But what is required to be emphasised is under sub-section (8) the procedure under sub-sections (2) to (5) is made applicable when during the term of the Council the vacancy in the Office of President and / or Vice-President is required to be filled.

Section 52(8)(b) clearly says that the co-opted member shall have no right to vote on any motion relating to the election of the President or Vice-President.

Equally u/s 56 there is a similar bar that co-opted councillors shall have no right to vote on a resolution for the removal of the President and Vice-President. It therefore stands to reason that those who do not have rights to vote shall have no right to nominate. All the more reason therefore that co-opted Councilor is excluded to file nomination proposing a candidate for the election.

11. This being the dispute in this petition, we are unable to fault the order made by the respondent No. 2 in rejecting the nomination paper of the petitioner. The petition is therefore liable to be dismissed. Petition dismissed. Rule made is discharged. There shall however be no order as to costs.

12. Petition dismissed.