

(1926) 06 BOM CK 0061

In the Bombay High Court

Case No : Second Appeal No. 595 of 1925

Basaya Nurndaya Dhandvati

APPELLANT

Vs

Murgaya Somaya Jangin

RESPONDENT

Date of Decision : 07-06-1926

Acts Referred:

Bombay District Municipal Act, 1901 — Section 26(5)

Citation : (1926) 28 BOMLR 1184

Hon'ble Judges : Percival, J;Lallubhai Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lallubhai Shah, Kt., Acting C.J.

1. Two points have been urged in support of this appeal. The first point is that the meeting of the Municipality convened by the Chief Officer for November 12, 1923, for the election of the President, Vice-President, and other officebearers, was illegal, as already a meeting convened by that Officer, on October 31, 1923, for a similar purpose was adjourned sine die. The second point urged is that after the election of the President, the Chairman, who was elected to preside at the Meeting of November 12 in the beginning, ought to have vacated the chair, and the proceedings of the meeting should have been continued under the presidentship of the newly elected President. It is urged that, as this was not done, and as the proceedings were continued under the Chairmanship of the Chairman elected at the beginning of the meeting, who also happened to be elected as Vice-President at that meeting, the proceedings of that meeting are vitiated.

2. As regards the first point, there is no provision in the Bombay District Municipal Act III of 1901, as it stood at the material date to show that the meeting thus convened by the Chief Officer was ultra vires. In fact, there was no provision in the Act at tike date of the meeting as to who should convene the

first meeting after the new Municipality was constituted. As the first meeting of October 31 was adjourned sine die, a further meeting was necessary to avoid a deadlock. A second meeting was convened and there is nothing in the Act, as it then stood, to show that the meeting convened for November 12 was illegal in any sense.

3. We are not concerned with the question of the propriety of the meeting having been convened under those circumstances by the Chief Officer. It may be mentioned that most of the members of the Municipality were present at the meeting, and no objection was taken as to the validity of the meeting thus convened.

4. As regards the second point, it is urged, on the strength of Section 26, Sub-section (5), of the Bombay District Municipal Act, that, after the President was elected at that meeting, as he was present, the Chairman should have vacated the chair, and the proceedings should have been continued thereafter under the presidency of the newly elected President. It is not necessary to express any opinion as to whether it was obligatory upon the Chairman to vacate the chair with a view to enable the newly elected President to take the chair. It may be that the Chairman could have done so and might have done so in view of the implication of the provisions contained in Section 26, Clause (5), But it is not easy to draw the inference that it was obligatory to do so.

5. Assuming, without admitting or deciding, that it was necessary at that stage for the Chairman to vacate the chair, it seems that, u/s 38 of the Bombay District Municipal Act, the proceedings of the Municipality are not vitiated by reason of any disqualification of the Chairman in acting as the President or presiding authority of the General Meeting after the President is elected. Section 38 seems to us to cover the case of an irregularity, if any, in continuing the Chairman as the Chairman of the General Meeting after the President was elected. We are of opinion that the second contention also must be disallowed.

6. The result is that the appeal fails and is dismissed with costs.