
(1955) 02 BOM CK 0029

In the Bombay High Court

Case No : Special Civil Application No. 2471 of 1954

B.G. Chavan

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 08-02-1955

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 19, 23(1A), 25, 25(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1955 Bom 334 : (1955) 57 BOMLR 421 : (1955) ILR (Bom) 584

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : R.A. Jahagirdar and N.M. Shanbhag, for the Appellant; B.M. Kalagate and V.S. Desai, for the Respondent

Judgement

Chagla, C.J.—The councillors of the Nippani Borough Municipality were elected in June 1951 for a period of three years. That was the life of the municipality under S. 25(1) of the Bombay Municipal Boroughs Act, 1925. On 22-9-1951, opponent No. 3 was elected the president of the municipality and the resolution electing him specified the period of his office as three years. His office expired on 21-9-1954. On 22-9-1954, the Collector gave notice of a meeting to elect his successor and that meeting was to be held on 9-10-1954. On 8-10-1954, the Collector postponed the meeting and the petitioner and some other councillors objected to the postponement of the meeting. A representation was sent to the Collector and he was asked to hold another meeting. The Collector refused to convene a meeting. A reminder was sent to the Minister of Local Self-Government on 29-10-1954, which also met with the same fate, and ultimately the petitioner has come before us on this petition for a "mandamus" directing the Collector to convene a meeting of the municipality for electing a president in the place of opponent No. 3.

2. Now, it is necessary to draw attention to certain amendments that were made in the Bombay Municipal Boroughs Act, 1925. By Act 35 of 1954 which came into

force on 11-5-1954, the life of the municipality was extended from three years to four years. u/s 25(1) the life of the municipality which was originally three, years was extensible by order of Government to a term not exceeding four years and by this amendment the life of the municipality could be extended by order of Government to five years. Therefore, the result of the amendment was that the statutory period of the municipality was four years and the Government had a right further to extend that period for a term not exceeding five years.

Section 19 of the Act provided for the term of office of president and the term of office was to be not less than one year and not exceeding three years, and it was left to the municipality to determine out of these two periods what should be the life of the president. The first proviso to this section was intended to deal with cases where the election of the successor took some time and the successor was not elected before the expiry of the office of the original incumbent, and the first proviso, therefore, stated that "the term of office of such president shall be deemed to extend to and expire with the date on which his successor is elected." A second proviso was added by Act 35 of 1954 and that is the relevant proviso on which the Collector has relied in not convening the meeting and that proviso is:

"Provided further that where the term of office of a municipality is extended, under this Act to a term not exceeding in the aggregate five years the president and vice-president holding offices immediately before the date with effect from which such term is extended shall continue to hold their respective offices until the date on which the term so extended expires."

And the view taken by the Collector is that inasmuch as the president was holding office before Act 35 of 1954 extended the term of office of the municipality his office should continue until the extended term expires and, therefore, according to the Collector the president's term of office was automatically extended from three years to four years. This is the view that the petitioners challenge in these petitions.

3. Now, we may refer to another amending Act that was passed and that is Act 54 of 1954 which came into force on 14-10-1954. In Section 19 the maximum term of the president's office was to be four years instead of three years and "not less than one year" which was the minimum term of office was qualified by "or not less than the residue of the term of office of the municipality whichever was less;" so that by reason of this amendment the president could be elected for a shorter period than one year provided that period was the residue of the term of office of the municipality, and by Section 3 these amendments were made retrospective to come into force with Act 35 of 1954.

Now, a rather interesting point was raised by Mr. Purushottam on behalf of opponent No. 3 which was a matter of some considerable importance and, therefore, we gave time to Mr. Desai to consider the position on behalf of Government and Mr. Desai has now made his submissions. What was urged by

Mr. Purushottam was that the amending Act 35 of 1954 was prospective in character and it could not possibly apply to the municipalities which had been elected for the statutory period of three years. According to him, the Act could only apply to municipalities which would be elected after the amending Act came into force and, therefore, according to him, no question of electing a president can arise until general elections have been held with regard to this municipality.

Now, what we have to consider is what is the true effect of Act 35 of 1954 substituting four years for three years in Section 25(1). The Supreme Court in -- Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, has considered the effect of an amending Act and it is laid down that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. The same principle is enunciated in Crawford on Statutory Construction (p. 110);

".....But where a section of a statute is amended, the original ceases to exist and the new section supersedes it and becomes a part of the law just as if the amendment had always been there."

And in Sutherland on Statutory Construction it is stated (p. 431):

"The Act or Code as amended should be construed as to future events as if it had been originally enacted in that form."

(4) Therefore, applying this principle to the amending Act, the position is that when we are to-day considering what is the life of the municipality, we must look at the Act as it stands to-day amended by the amending Act. The original Act has ceased to exist and what has to be given effect to is the Act as amended. Therefore, reading the original Act as amended, the position is that the councillors elected at a general election under this Act shall hold office for a term of four years. It would not be true to say that this is giving retrospective effect to the amendment. The amendment deals with a future event "viz., the election of the councillors, and it is this future event that is altered or modified by the amendment. It is also material to note that, as the Act is amended, the expression that we have to construe is "under this Act" and not "under the amending Act" and there again Sutherland at page 432 states;

"The phrase "this Act" in a section as amended is generally held to refer to the whole Act as amended and not merely to the amending Act."

Therefore, it was under the original Act and not under the amendment that the life of the municipality was fixed at four years.

(5) Now, it is urged by Mr, Kalagale that there are two vested rights that a voter has. One is to vote at the- end of three years and have a new municipality

elected and the other is to offer himself as a candidate, and according to Mr. Kalasate, this amendment affects both the vested rights and we should not hold that vested rights have been taken away unless it is so done by express enactment or necessary intendment. It is difficult to accept the view that a voter has a vested right in the duration of the body which he elects. His vested right is the right to vote and it may be that his vested right is also to stand as a candidate. But the question as to the duration of the municipality is a question of policy which is for the Legislature to determine from time to time. When the election took place undoubtedly by statute the duration of the municipality was fixed for three years. But it was open to the Legislature on grounds of policy to extend that period and fix the duration at four years and not at three years.

But even assuming that the rights suggested by Mr. Kalagate are vested rights, there is nothing to prevent the Legislature from taking away those rights. It is not necessary that the rights should be token away expressly. It is sufficient if they are taken away by necessary intendment and, in our opinion, looking at the form that the amendment has taken and looking to the canon of construction which must be applied to the amendment, it is clear that the Legislature did intend that the voters' rights relied upon by Mr. Kalagate were to be affected by this amendment. Therefore, in our opinion, the duration of every municipality to which the Act applied was extended by the Act from three years to four years.

(6) Now, turning to the main question as to the action taken by the Collector, he obviously seems to have, taken the view that the term of office of the municipality was extended under the amending Act and, therefore, the president must continue to hold office until the date on which the term so extended expired. The fallacy underlying this reasoning is that the expression "under this Act" referred to in the second proviso is not to the amending Act but to the main Act and, therefore, the extension must be under the main Act and not under the amending Act. The only extension that the main Act contemplates is by an order of the Government u/s 25(1). As we have already pointed out, the office of a municipality is extensible & that extension can be brought about by the Government by a proper order. It is that extension to which the second proviso refers.

The Collector thought that inasmuch as the amendment extended the life from three years to four years, the proviso applied to that extension. But if we incorporate the amendment in the main Act, as we must do, then there is no extension. The original Act must be read as it was amended and therefore the only extension that the second proviso can contemplate is the extension which the State Government can bring about by issuing an order u/s 25(1). Therefore we are dealing here with a case where the term of "office of the municipality has not been extended at all. Four years is its statutory duration and therefore, no question can arise of the term of office of the president being extended by reason of the extension of the duration of the municipality.

Now, Mr. Kalagate has urged that when the municipality elected the president for

a period of three years, its natural life was three years and the municipality contemplated that the president should continue to hold office so long as the municipality continued to exist, and says Mr. Kalagate that if by reason of legislative amendment the life of the municipality has been extended to four years, we must construe the resolution of the municipality to mean that the president should continue in office not for three years but for four years. In our opinion, in the first instance, the municipality has used clear and unambiguous language and has fixed the period of office of the president at three years. Even assuming the natural life of the municipality was four years and not three years, there was nothing to prevent the municipality from appointing the president for a "period of three years and having another election of a president for the remaining one year.

In the second place, it is not true to say that in no eventuality the life of the municipality could have been extended when opponent No. 3 was elected the president. As we have already pointed out, the office of the councillors was extensible by the Government and, therefore, if by a notification the Government had extended the life of the municipality from three years to four years, in any view of the case a new election would have to be held by the municipality for the president. Therefore, there is no reason whatever for us to assume that the municipality intended that the president should hold office for a longer period than three years or during the statutory term of office of the councillors.

The municipality have indicated the specific period and we must give effect to the intention of the councillors. If, therefore, the term of office of the president expired on 21-9-1954, u/s 23 (1A) a new president has to be elected and the procedure to be followed is the same as laid down in Section 19A. The Collector has to call a meeting for the election of a president. " This is a statutory duty cast upon the Collector and the Collector has failed to discharge this statutory duty. Therefore, it is open to us to issue a "mandamus" upon him and call upon him to discharge this statutory duty.

(7) We will, therefore, make the rule absolute and direct the Collector to call a meeting of the councillors of the Nippani Borough Municipality as early as possible for the election of a new president Respondent No. 1 to pay the costs.

(8) Rule-made absolute.