

(1953) 06 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 692 of 1953

Bhairulal Chunilal

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 16-06-1953

Acts Referred:

Bombay Borough Municipal Election Rules, 1950 — Rule 12, 31, 35(1)
Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950 — Section 6
Bombay Municipal Boroughs Act, 1925 — Section 15, 15(5), 19(1), 23(1), 25
Constitution of India, 1950 — Article 226

Citation : AIR 1954 Bom 116 : (1953) 55 BOMLR 882 : (1954) ILR (Bom) 104

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

Bench : Division Bench

Advocate : R.B. Kotwal and M.W. Pradhan, for the Appellant; H.M. Choksi, Govt. Pleader and G.S. Gupte, for the Respondent

Judgement

Chagla, C.J.—The petitioner is a rate payer and a voter of the Amalner Borough Municipality which is opponent 3 to this petition, and he has sought for a writ of "quo warranto" against opponent 3 contending that the general election held on 2-3-1953, by which the councillors of the Amalner Borough Municipality were elected was null and void and therefore the Municipality has no power or authority to discharge the duties under the Municipal Boroughs Act. Certain reliefs were also sought against the State of Bombay and the Collector of East Khandesh, Jalgaon, who are opponents 1 and 2, but at the very outset Mr. Kotwal stated to the Court that he was not seeking any reliefs against the first two opponents and he would be content with a writ of "quo warranto" against opponent 3.

2. The councillors of the Amalner Municipality were elected in 1949 for a period of three years, the triennium ending on 15-1-1952. u/s 25(1) of the Bombay Municipal Boroughs Act the term of office of a councillor of a Borough Municipality who is either nominated or elected at a general election is three

years, but that term of office can be extended by an order of the State Government to a term not exceeding the aggregate of four years. On 18-9-1951, the State Government issued a notification extending the life of the Municipality up to 31-3-1952. A further notification was issued on 26-3-1952, extending it till 31-10-1952, and a further notification was issued on 27-9-1952, extending the life till 31-3-1953. It is urged by the petitioner that the notification issued by the Government on 27-9-1952, was without authority of law and Government could not extend the life of the Municipality up to 31-3-1953.

Therefore, it is urged that the existence of the Amalner Municipality came to an end on 31-10-1952, and there was no Municipality in existence after that date. It will be noticed that when the Government extended the life of the Municipality up to 31-3-1953, they extended it beyond four years, and therefore as the section stands it is clear that Government would have no such power to extend the life of the Municipality beyond the aggregate of four years. The Government purported to issue this notification under the belief that it had power to do so by reason of the amendment of Section 25(1) which was brought about by Section 6 of Act 17 of 1950. That section was in the following terms :

"During the period from the commencement of this Act (which was 2-5-1950) to 31-3-1952, Section 25, Bombay Municipal Boroughs Act, 1925, shall have effect as if for the words "four years", the words "five years" had been substituted."

It is to be noticed that when the notification was issued on 27-9-1952, the amendment of S. 25(1) had ceased to be operative. After 31-3-1952, Section 25 (1) only conferred the power upon Government to extend the life of the Municipality by one year and not for any longer period. What is urged by the Government Pleader is that the power under the amending Act could be exercised by the Government in respect of Municipalities whose triennium ended between 2-5-1950, and 31-3-1952, and according to the Government Pleader, inasmuch as the triennium of the Amalner Municipality ended on 15-1-1952, the amending Act had application and the Government Had the power to issue the notification of 27-9-1952.

In our opinion, the argument of the Government Pleader, with respect to him, is clearly fallacious. The amending Act 17 of 1950 does not provide that the power of the Government to extend the life of a Municipality for the aggregate of five years can be exercised in respect of certain Municipalities whose triennium ended within a particular period. It is purely speculation to suggest that the intention of the Legislature was as the preamble seems to indicate that as provision had to be made for adult suffrage the life of certain Municipalities should be extended beyond what was provided u/s 25(1). The intention of the Legislature with regard to the power to be conferred upon the Government can only be gathered from the clear and precise words used by the Legislature in the amending Act, and the only question that has to be decided with regard to the notification issued on 27-9-1952, is whether on that date the Government had the power to extend the life of the Municipality beyond the aggregate of four years.

If the question is posed in that way, the answer can only be one, because when the Government issued the notification on 27-9-1952, the amending Act to the extent of Section 6 had ceased to have operation and the Government's power on that day was confined to what was provided in Section 25(1) before it was amended. Therefore, when Government purported to extend the life of the Municipality on 27-9-1952, beyond the aggregate of four years, they were exercising a power which the Legislature had not conferred upon them. The Legislature conferred that - power upon the Government for a temporary period and that period was from 2-5-1950, to 31-3-1952, and the Legislature by its clear fiat withdrew that power after 31-3-1952. Therefore, in issuing the notification on 27-9-1952, Government exercised a power which it did not possess and in our opinion failed to extend the life of the Municipality up to 31-3-1953.

3. Now, the importance of this contention on the part of the petitioner lies in this that under the rules framed by Government known as the Bombay Borough Municipal Election Rules, 1950, the Municipality has to play a very important role. For instance, under Rule 35(1), on the date and at the time appointed under Rule 12, the ballot box or boxes shall be opened and the voting papers shall be scrutinised at a special general meeting of the Municipality in the presence of such candidates or their representatives duly authorised in writing as may be present; and Mr. Kotwal contends that inasmuch as the Municipality had ceased to exist on 31-10-1952, when the election was held there was no Municipality which could discharge the function and carry out the duties entrusted to it under the Election Rules, and therefore the election that took place was not a proper election at all and no proper Municipality was elected.

With regard to the election, it is important to note that an order was issued by the Collector under Rule 12 on 26-12-1952, fixing the date and place of the election. On 20-1-1953, the President of the Municipality issued a public notice announcing to the public the various dates and times that had been fixed by the Collector under Rule 12. The election actually took place on 2-3-1953, and the result of the election was declared between 3-3-1953, and 7-3-1953, and the present petition challenging the election was filed on 2-4-1953. Perhaps it would be best if we also noticed at this stage another important contention put forward by the petitioner, and that is that the President of the Municipality, who has also got to play an important part in the conduct of the election was not a properly elected President, and for that reason also the election that took place was not a proper election.

Under Rule 31 it is provided that the election shall be conducted under the general supervision of the President and the Returning Officer, and there are other rules which lay down what duties are to be discharged by the President in the conduct of the election, and it is pointed out that in January 1953 Mr. Deshmukh who purported to be the President of the outgoing Municipality was not the properly elected President, and therefore, if he discharged any duties

under the rules as the President, he did so without authority and illegality.

4. Now, the office of the President of this Municipality seems to have undergone several vicissitudes. It seems that one Brahme was elected President for one year on 24-1-1949. He was the first President and he was elected immediately after the general election. On 24-1-1950, one Dhobhan Budha was elected for one year. This Dhobhan resigned in June 1950 and one Dhondhu was elected for the remaining period. We have had occasion to point out in the case, -- Kashinath Laxman Bhide and Others Vs. The State of Bombay, , where the election of the President of the Kalyan Municipality was challenged that under the Municipal Boroughs Act it is not open to the Municipality to elect a President for a period which is shorter than one year, and therefore if Dhondhu was elected for the unexpired period of Dhobhan's office, it may be said that he was being elected for a period shorter than one year. But as pointed out by the Government Pleader, in this particular case Dhondhu was elected for the vacancy created by the resignation of Dhobhan, and there is a specific provision to that effect in Section 23(1), Municipal Boroughs Act.

Then on 3-2-1951, Chaudhari was elected President for the unexpired period of the triennium which would be till 15-1-1952. This would be clearly for a period less than one year. On 26-5-1951, Chaudhari resigned and on 16-6-1951, Brahme was elected President for the unexpired period which presumably would be till 15-1-1952. On 16-3-1952, Brahme resigned although he was not elected President for a period beyond 15-1-1952. It seems that the view taken was that inasmuch as the life of the Municipality had been extended to 31-3-1952, automatically Brahme continued to be the President. Brahme having resigned on 16-3-1952, on 28-3-1952, Deshmukh was elected President and the resolution electing him President stated that he had been elected President for the unexpired period of the term for which Brahme was elected as President. Brahme's period had already expired on 15-1-1952. In any view of the case it had expired on 31-3-1952, and it is therefore difficult to understand what the resolution intended to convey by stating that Deshmukh was elected President for the unexpired period of the term of Brahme.

The only meaning that we can give to the resolution is that it was intended to elect Deshmukh for the extended period of the Municipality up to 31-10-1952. But whichever way one looks at the resolution appointing Deshmukh as President, we agree with Mr. Kotwal that the election of Deshmukh as President is not according to law. It is clear that u/s 19(1) the Municipality has to determine, previous to the election of the President, the duration of the term of the office, and under that sub-section that duration has to be not less than one year and not exceeding three years. In this case the resolution neither determines the duration of the office nor is the period fixed which is not less than one year. Therefore, the resolution appointing Deshmukh President is not in conformity with the provisions of Section 19(1) of the Bombay Municipal Boroughs Act. We are, therefore, prepared to assume in favour of Mr. Kotwal that

when the election took place in 1953 and when Deshmukh purported to act as the President of the Municipality, he was not a properly elected President and he was not authorised in law to discharge the duties as a President.

5. Now, what we have to consider is, what is the effect on the election of the fact that the life of the Municipality came to an end on 31-10-1952, and the President who had been elected on 28-3-1952, was not elected in accordance with law. It may be pointed out that although in law the office of the councillors came to an end on 31-10-1952, it could not be said that Amalner was without a Municipality. Section 25 (2) (a) provides that when an election takes place and new councillors are elected, their term of office commences on the date of the first general meeting which shall be held after such election and after the expiry of the term of the outgoing councillors; and clause (b) provides that the term of office of the outgoing councillors shall be deemed to extend to and expire with the day before the date of such meeting. Therefore, if the election took place on 3-3-1953, and as we are told the first meeting of the councillors was held on 18-4-1953, then if clause (b) of Section 25(2) has application the term of office of the councillors was extended up to 17-4-1953.

Mr. Kotwal has very strongly urged that clause (b) can only have application provided the election took place before the end of the term of the Municipality as determined by Section 25(1). In other words, according to Mr. Kotwal the scheme of Section 25(1) and Section 25(2)(a) and (b) is that an election must take place before the term of three years has expired or the extended period of four years has expired, and in order to prevent the possibility of two sets of councillors being there, Section 25(2)(a) and (b) provide that the newly elected councillors must wait and not take office till the general meeting has taken place which has got to be after the expiry of the term of the outgoing councillors and the outgoing councillors should continue to remain in office by a legal fiction up to the date before that meeting. Mr. Kotwal further says that the expression "outgoing councillors" clearly indicates that they must be holding office as councillors and they were to go out by reason of the election which has already taken place. Mr. Kotwal says that the expression cannot apply to persons whose term of office has expired u/s 25(1) and who are no longer councillors.

There would be considerable force in Mr. Kotwal's contention if there was any provision in law which made it incumbent upon Government to hold an election prior to the expiry to the term of office laid down in Section 25. There is no such provision in law. It is left to the Col-lector to fix the date of the election and the date of the election may be prior to the expiry of the term of office or subsequent to the expiry of the term of office. In our opinion, clauses (a) and (b) of Section 25(2) were enacted in order to get over the difficulty of the interregnum between the new councillors taking office and the old councillors going out. Under Sub-section (2) (a) of Section 25, as soon as the election takes place the councillors cannot immediately step into their office. They have to wait till the first general meeting takes place and that general meeting can only take place after the

expiry of the term, of the outgoing councillors. Therefore, the Legislature had to provide for the period which must expire between the life of the Municipality as laid down in Section 25(1) and the date when the first general meeting was to take place under Sub-section (2)(a), and that is provided by clause (b) which by a legal fiction extends the period of the office of the councillors beyond what is fixed in Section 25(1). Whether the election took place before the expiry of the term fixed in Section 25(1) or the election took place subsequent to that period, the scheme laid down in Sub-section (2)(a) and (b) must operate.

6. Mr. Kotwal says that if we were to place this construction upon clause (b) of Section 25(2) it would give enormous powers to the Government to extend the life of the councillors beyond the period laid down in Section 25(1). Mr. Kotwal says that all that the Collector has got to do is to postpone the election for two or three years and thereby artificially extend the life of the Municipality. In our opinion, Mr. Kotwal is right when he suggests that ordinarily election should be fixed before the period mentioned in Section 25(1) has elapsed. It is only under abnormal circumstances or extraordinary circumstances that the Collector would be justified in fixing the election after the period fixed u/s 25(1) has expired. But if the Collector were arbitrarily or capriciously to postpone fixing the date of the election and thereby extend the life of the Municipality, he could certainly be brought to book by proper proceedings being taken against him, because the discretion given to the Collector to fix the date of the election is to be exercised properly and it has got to be exercised with the knowledge that the Legislature did not intend unduly to extend the life of the councillors under clause (b) of Section 25(2). But after exercising the discretion properly the election takes place some time after the period fixed u/s 25 (1), it cannot be suggested that the old councillors do not continue and cannot discharge their duties as provided in clause (b) of Section 25(2). The whole object of the Legislature in enacting clauses (a) and (b) of Section 25(2) was to provide that a Borough should not be without a Municipality as far as possible at any time and that the difficulty that always arose when an election takes place should be got over by providing for the artificial extension of the life of the councillors under clause (b).

7. Mr. Kotwal has referred to Sub-section (4) of Section 4 of the Act which provides :

"Save where it is otherwise provided in this Act, when a municipality ceases to exist on account of its members ceasing to hold office, or for any other reason whatsoever, the property and rights vested in the municipality shall, subject to all charges and liabilities affecting the same, vest in Government,..."

And Mr. Kotwal says that in this particular case the Municipality ceased to exist on account of the members ceasing to hold office on 31-10-1952, and therefore there was a vesting of the property and rights of the Municipality in the Government. This sub-section is subject to what is otherwise provided in this Act and it was precisely in order to prevent the vesting of the property and rights of the Municipality in Government when the councillors ceased to hold office that

clause (b) of Section 25(2) was enacted. Therefore, notwithstanding the fact that councillors ceased to hold office by reason of Section 25(1), the property and rights of the Municipality do not vest in the Government, but the term of office is artificially extended by clause (b) and it continues till the day before the meeting contemplated by sub-section (2) (a) is held. Section 4(4) would only come into force if no election was to be held after the members ceased to hold office and some provision had to be made with regard to the property and rights of the Municipality. But when an election has actually been held and a meeting has actually been called of the new councillors, the provision of the law which applies is clause (b) of Section 25(2) and not Section 4(4).

8. If, therefore, the property and rights of the Municipality did not vest in Government u/s 4 and the term of office of the outgoing councillors was extended, the Collector had every authority under the rules to fix a date for election which he did by his order dated 26-12-1952. In fact Mr. Kotwal does not challenge the order issued by the Collector. He does not dispute that the Collector was within his rights in ordering a general election to be held. His whole grievance is that in the course of the election illegalities were practised which vitiated the whole election and which made it liable to be set aside. If the term of office of the outgoing councillors was extended, there was nothing to prevent these councillors functioning as the Municipality for the purposes of the election proceedings and the only irregularity or illegality we have to consider is the fact that there was not a properly elected President who could perform the function assigned to him under the rules.

The Bombay Municipal Boroughs Act provides a machinery for challenging elections and that machinery is to be found in Section 15 of the Act. It lays down the grounds on which an election can be challenged, the tribunal that has to decide it and the procedure that has got to be followed, and it is important to note that u/s 15(5) an election cannot be set aside merely on the ground of an irregularity or informality not corruptly caused. Mr. Kotwal concedes that if he was challenging the election of a councillor, he would not succeed by reason of this provision of the law but his contention is that the election that took place was not an election at all, it was a sham election, and the Court can give him relief by issuing a writ of "quo warranto". It is well settled that where you have statutory provisions dealing with the conduct of an election, the writ of "quo warranto" is displaced. An election then can only be challenged in the manner laid down by the statute. What Mr.

Kotwal is doing by this petition is in effect challenging the election of all the councillors. He could undoubtedly have presented petitions for challenging the election of all the councillors u/s 15, and if he had done so, he would have failed because he would have failed to establish what Section 15 requires in order that he should succeed. Could it then be said that although a party would not succeed if he filed an election petition u/s 15, he could still get a writ of "quo warranto" from this Court merely because he does not choose to challenge the election of

an individual councillor but challenges the election of all the councillors as a body?

In our opinion the grievance made by the petitioner with regard to the conduct of the election is at best nothing more than an irregularity. The President who was in charge of the election under the rules was a person who was elected by the councillors and in whom the councillors had confidence. If he was not the "de jure" President, he was certainly the "de facto" President. There is not even a suggestion that in acting as the President under the rules he did anything which is contrary to the rules. It is not suggested that if anyone else had been in charge of the election he would have done any better than this "de facto" President. Therefore, putting it at the highest, the grievance of the petitioner amounts to this that a person who was elected by the councillors as President discharged the functions under the rules when he was not in law authorized to do so because his election by the councillors was not a proper and valid election.

9. Now, the writ of "quo warranto" is not issued as a matter of right. It is a discretionary relief and the Court has always to ask itself whether under the circumstances of each case the petitioner should be given the relief in the nature of "quo warranto" which he seeks. In this particular case every factor which can be taken into consideration weighs against the petitioner being entitled to this relief. The public notice, as already pointed out, was issued by the Municipality on 20-1-1953. Therefore, the petitioner had knowledge that the elections were going to take place under that notification and that the "de facto" President was going to act as the President of the Municipality under the Election Rules. He takes no action whatever till after the elections are held, which is on 2-3-1953. He allows voters to go and cast their votes, elect their representatives, incur expenditure, and then comes to this Court and challenges the election on a pure technicality. It is not suggested that the result of the election has in any way been affected by what took place in the course of the election. The Courts must always be reluctant to interfere with elections except on the clearest and strongest of grounds. An election is a luxury which a democracy cannot be expected to indulge in too frequently, and once the people have recorded their votes and expressed their confidence in their representatives, the Court should be loath to interfere with the decision of the people merely because some technicality has not been observed or some irregularity has been committed. The matter would be entirely different if the irregularity has resulted in- the people not being able to express their views properly, or if there was any corrupt practice which has materially affected the result of the election. It might have also been different if the election itself was held without any authority of law. But once it is conceded that the Collector had the authority to fix the dates of the general election and the general election took place according to law, any irregularity committed in the course of the election cannot be a ground for the issue of a writ of "quo warranto".

10. In the result, therefore, the petition fails. With regard to costs we must observe that the Amalner Municipality has not acted in accordance with law and

has not applied its mind to what the provisions of the law are and taken the trouble to comply with those provisions. The manner in which the President was elected from time to time is one which does not lend itself to commendation on our part. It cannot be said that the petitioner had no justification whatsoever to come to this Court to ventilate his grievance. He has established that there were irregularities in the conduct of the election, and therefore as between the petitioner and opponent 3 we think the fairest order to make would be that they must bear their own costs. With regard to opponents 1 and 2, as the petitioner did not press for any relief against them, as against these two opponents the petition will be dismissed with costs.

Order accordingly.