
(2008) 04 BOM CK 0037
In the Bombay High Court
Case No : Writ Petition No. 896 of 2007

Bhalchandra Joshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 5, 5(2)
City of Nagpur Municipal Corporation Act, 1948 — Section 9(1)
Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated Councillors) Rules, 2007 — Rule 3, 5

Citation : (2008) 4 ALLMR 714 : (2008) 3 MhLj 919

Hon'ble Judges : R.C. Chavan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : B.G. Kulkarni, for the Appellant; B.H. Dangre, A.G.P. for respondent No. 1, P. Marpakwar, for respondent No. 2, S.K. Mishra, for respondent Nos. 3 and 4 and F.T. Mirza, for respondent No. 5/Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—The petitioner seeks a Writ of Mandamus for quashing and setting aside the Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated Councillors) Rules, 2007 (hereinafter referred to as "the Rules"), notified on 21st February, 2007 as well as amended Rule 5 of the Rules, notified on 21st April, 2007 as ultra-vires the provisions of City of Nagpur Corporation Act, 1948 (hereinafter referred to as "the NMC Act").

2. The elections to the Municipal Corporation, Nagpur were held in the year 2007. A meeting of the Corporation was scheduled on 5th March, 2007. The petitioner was desirous of getting co-opted as a Member of the Nagpur Municipal Corporation u/s 9(1)(b) of the N.M.C. Act. Under a programme, which was finalized by the Corporation, nomination forms were to be submitted on 27th February, 2007. However, upon promulgation of rules, by notification dated 21st February, 2007, the entire programme had to be scrapped. Under Rule 5 of the Rules Mayor was authorised to nominate councillors in proportion to the relative

strength of recognised parties or groups, after consulting Leader of the House, Leader of Opposition and leader of each of such party or group. The petitioner challenged these rules since they clothed the Mayor with the powers of Corporation to nominate councillors u/s 9(1)(b) of the NMC Act. The petitioner came up for hearing before a Bench of this Court on 2nd March, 2007. After hearing the parties, the effect of these rules was stayed, pending hearing of the petition.

3. After this order staying effect of the Rules, the Government of Maharashtra issued a fresh notification on 21st April, 2007 substituting Rule 5 in the Rules notified on 21st February, 2007 by a new Rule 5 inter alia replacing the word "Mayor" by "Commissioner" and providing for nominations by the Commissioner to be placed before the Corporation for considering the nominations. The amended rule also provided that Corporation could for the reasons to be recorded decide not to accept the recommendation of the Commissioner with respect to a person so recommended. In view of this new notification dated 21st April, 2007, the petitioner sought leave to amend the petition, and, by adding paragraphs 10-A to 10-D and prayer Clause (i-a), the petitioner challenged this notification as well, on the ground that the notification curtails the powers of the Corporation to democratically select the councillors to be nominated. It was also contended that the Commissioner, who is removable by resolution of 3/4th members of the Corporation, virtually can dictate the Corporation as to who were to be the nominated councillors and make the Corporation accountable to him by requiring the Corporation to furnish him with reasons, should the Corporation refuse to accept nominations sent by him.

4. Respondent No. 1/State, has filed an affidavit in reply, justifying the amendments carried out in the rules. We have heard learned Advocate Dr. B. G. Kulkarni for the petitioner, learned Additional Government Pleader Smt. Bharti Dangre for respondent No. 1/State, learned Advocate Shri Prabhakar Marpakwar for the Election Commissioner and learned Advocate Shri S. K. Mishra for respondents No. 3 and 4 Nagpur Municipal Corporation and its Mayor.

5. Notification dated 21st February, 2007 prescribing nomination by Mayor was obviously untenable since the rule travelled beyond the section providing for nomination of the councillors by the Corporation. For the sake of ready reference, Section 9(1) of the City of Nagpur Corporation Act is reproduced as under:

9(1) The Corporation shall consist of:

(a) One hundred thirty-six Councillors directly elected at ward elections.

(b) Five nominated Councillors having special knowledge or experience in Municipal Administration, nominated by the Corporation in the prescribed manner. (2)...

6. The nomination was required to be made by the Corporation and not the Mayor, in the prescribed manner. The power to prescribe the manner of making

nomination could not have been used by the State Government to change the authority empowered under the statute to make nominations. When the effect of these Rules was stayed by order dated 2nd March, 2007 of this Court, the State rightly remedied the defect in the rule. By providing for nomination by the Corporation in the amended Rules notified on 21st April, 2007. This amended rule reads as under:

Nomination of Councillors : (1) For the purpose of nomination of Councillors, the Commissioner shall, after consulting the leader of the House, leader of Opposition and leader of each recognised or registered party or group in the Corporation and after taking into account the relative strength of such parties and groups and recommend the names of suitable persons to the Corporation for being appointed as a nominated Councillors. The names of such persons recommended shall not exceed the number of Councillors to be nominated in accordance with Rule 3.

(2) The Corporation shall, after considering the recommendation by the Commissioner, nominate the Councilors ;

Provided that, if the Corporation decides not to accept the recommendation of the Commissioner with respect to a person so recommended, it shall record the reasons therefor.

7. This rule applies not only to the Nagpur Municipal Corporation but also to other Municipal Corporations in the State which are governed by the provisions of the Bombay Provincial Municipal Corporation Act, 1949, Section 5(2)(b) whereof provides for such nomination, and reads as under:

5(2): Each Corporation shall consist of:

(a)...

(b) such number of nominated Councillors not exceeding five, having special knowledge or experience in Municipal Administration, to be nominated by the Corporation in such manner as may be prescribed.

8. The validity of the Rule was challenged before the Principal Seat of this High Court by Writ Petition No. 4196 of 2007. The petitioner claimed to be a social worker residing in Thane and had challenged nomination to the Thane Municipal Corporation as per the impugned rule. After considering the challenges raised and also noting the interim order passed by this Court in the present petition, a Division Bench of this Court at the Principal Seat dismissed the petition. The learned Additional Government Pleader Mrs. Dangre submitted that in view of this judgment the questions raised in this petition do not survive and the petition would have to be dismissed. The learned Counsel for the petitioner, however, submitted that the judgment in Writ Petition No. 4196 of 2007 specifically shows that the challenges raised by the petitioner in the present petition were not before the Bench considering Writ Petition No. 4196 of 2007 and therefore, this petition cannot be dismissed. He pointed out that, in paragraph 6 of the

judgment in the said writ petition, the Court observed as under:

...If the reliefs prayed for are considered the proper relief ought to have been to seek a declaration that the Rules of 21st February, 2007 and 21st April, 2007 for whatever reasons are illegal being contrary to the provisions of the Statute. That relief has not been prayed. That, however, should not detain us from considering the challenge as contained in these Rules.

9. Therefore, the learned Counsel for the petitioner submitted that the petition before the Principal Seat was decided without considering the grounds of challenge to the Rules which have been raised in the present petition. He submitted that the petitioner in the present petition has elaborately raised grounds in paragraphs 10-A to 10-D of the petition pointing out that these rules, in fact, do away with the democratic function of an institution for local self Government and turn the hierarchy in the Corporation topsy-turvy.

10. It is not that the Bench at Principal Seat considering the aforementioned writ petition had not considered the challenge on the ground that the rule deviates from democratic process of making nominations. The Court had made following observations in paragraph, numbered again as paragraph 6 in the copy made available for our perusal:

6. It is next submitted that u/s 5 of the Bombay Provincial Municipal Corporation Act, an individual had a right of nomination and the procedure was by secret ballot. A perusal of the relevant section does not indicate that the procedure for nomination has been set out therein. The section only provides for nomination. A power is conferred under the Act on the State Government to make Rules. The earlier Rules made in 1995 provided a procedure for election. That procedure has now been substituted by nomination, based on the respective strength of the political parties. In other words proportional representation. Section 5 by itself contemplate nomination. Nothing has been brought to our attention or material produced as to why such a Rule is ultra-vires the provisions of Section 5 and/or that it is unreasonable or manifestly arbitrary. In the absence of any material and/or contention in our opinion it will not be possible to accept the bald challenge as made by the petitioner.

11. It may be seen that the Court had thus, considered the individual's right of getting nominated in the above paragraph in the judgment. The challenge raised in paragraphs 10-A to 10-D of the petition, by way of amendment, are merely verbose version of what has already been considered by the Bench deciding Writ Petition No. 4196/2007. Since the State has the authority to prescribe the manner in which councillors shall be nominated, and since it is not shown that this power has been exercised mala fide, or in an arbitrary manner, or in a manner violative of fundamental rights, or violating the provisions in the parent Act, the rule cannot be assailed. Direct elections are not the only manifestation of a democratic process. It may be seen that even the new rule, which is now prescribed, is democratic in the sense that the Commissioner is required to

consult the leader of the House, leader of Opposition and leaders of each recognised party or group of the Corporation and take into consideration their relative strength and then recommend names of the suitable persons to the Corporation for being nominated. The Corporation, which is an elected body, then decides upon such nomination, obviously in democratic manner. Therefore, it cannot be said that the process is not democratic.

12. As to the challenge based on the surmise that the Corporation becomes subordinate to the Commissioner by being required to record reasons for not accepting the nomination by the Commissioner, suffice it to say that the challenge is based on a convoluted perception of the duty of the Commissioner and power of the Corporation. The Commissioner is under a duty to recommend the names to the Corporation and the Corporation has power to accept nomination or not to accept it. The requirement of recording reasons is not to furnish reason to the Commissioner as if it is an explanation in pursuance of a show cause notice by the Commissioner, but only to ensure that non-acceptance of the nomination is not arbitrary. This is necessary because the nomination is made by the Commissioner after consulting all the concerned, who would have a say in the proceedings in the Corporation, and therefore the reason for rejection may not be left to be speculated. Therefore, this objection too has to be rejected.

13. In this view of the matter, we see no merit in the petition. It is, therefore, dismissed with no order as to costs. Rule discharged.