

**(1959) 04 BOM CK 0007**

**In the Bombay High Court**

**Case No :** Appeal No. 67 of 1958 and Miscellaneous Petition No. 364 of 1958

Bombay Municipal Corporation and Another

APPELLANT

Vs

Ramachandra Laxman Belosay

RESPONDENT

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**Date of Decision :** 03-04-1959

**Acts Referred:**

Bombay Municipal Corporation Act, 1888 — Section 36, 63  
Constitution of India, 1950 — Article 12

**Citation :** AIR 1960 Bom 58 : (1959) 61 BOMLR 1129

**Hon'ble Judges :** Chainani, C.J;S.T. Desai, J

**Bench :** Division Bench

**Advocate :** Solicitor General, R.J. Joshi and N.A. Palkhivala, for the Appellant;  
Rajini Patel, Latifi and B.A. Desai, for the Respondent

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## Judgement

Chainani, C.J.—This is an appeal against the order passed by Mr. Justice K.T. Desai by which by directed the issue of a writ to appellant No. 1, the Bombay Municipal corporation, hereinafter referred to as the corporation requiring the corporation to forebear from discussing a resolution, in regard to Mr. Imre Nagy and is associates, of which a notice had been given by a councilor of the corporation. Dr. R. N. Kulkarni. The resolution was in the following terms:

That the Municipal corporation of Greater Bombay have learnt with deep regret about the execution of Mr. Imre Nagy, a former Prime Minister doctrine of Panchasila enunciated by our country and accepted by other countries of the world. The corporation hereby express their horror at the execution under peculiar conditions of those fighters for freedom of their motherland who, by displaying great courage and steadfastness even at the cost of their lives in the cause of their country freedom have upheld the dignity of man and rendered great serve to the highest value of life, viz. Freedom That Mayor be requested to forward the Resolution through the State Government to the Union Government with a request to communicate the proper channels for being communicated to the families of the late Mr. Imre Nagy and his associates with an expression of

the corporations sympathy in their sad bereavement.

It was moved at a meeting of the corporation held on 10th July 1958. A point of order was then raised that the corporation had no power to discuss the resolution, as it was of a political nature and related to international affairs and as it had nothing to do with civic duties which it was said must necessarily relate to the life and welfare of the citizens of Bombay. The second appellant who was the Mayor of the corporation, at the time and who was the chairman of the meeting, then gave a considered and well reasoned ruling, by which he held that the resolution was in order. Thereafter the meeting of the corporation was adjourned. On 18th July 1958, the respondent who is also a councilor of the corporation, filed a petition in which he contended that the action of the corporation in discussing and passing the above resolution would be ultra vires the corporation. He therefore prayed for the issue of a writ of mandamus or prohibition or any of the appropriate writ, direction or order, under Article 226 of the constitution, against the appellants, restraining the corporation from discussing or endorsing the said resolution. The petition was opposed by the appellants. The respondent contended that the corporation had the right and the power to discuss and pass the said resolution under clause (k) of section 36 Clause (k) of section 63 of the Bombay Municipal Corporation Act, hereinafter referred to as the Act. The appellants' contentions were not accepted by Mr. Justice Desai. He came to the conclusion that the resolution proposed was beyond the ambit and powers of the corporation. He therefore issued a writ restraining the corporation from discussing the said resolution or passing the same. This order is being challenged in the present appeal.

2. The Bombay Municipal Corporation is constituted by the Bombay Municipal Corporation Bombay Act. No. III of 1888. Being a creature of statute its powers are limited by the provisions of the act, by which it is created. It can therefore exercise only such powers as are specifically conferred upon it by or under the Act, or as are consequential to or incidental to the exercise of such powers. This position was not disputed during the course of arguments. It is therefore not necessary to cite any authority. I may, however, refer to the following passage from Halsbury's Laws of England, paragraph 129 in Volume IX, Third Edition:

"Statutory Corporations: The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it and extend no further than is expressly stated therein or is necessarily and properly required for carrying into effect the purposes of its incorporation or may be fairly regarded as incidental to or consequential upon, those things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.

3. It is therefore necessary to consider the relevant provisions of the Act. The preamble to the Act states that it was enacted to consolidate and amend the law relating to the municipal government of Greater Bombay. Section 4 of the Act specifies seven municipal authorities, which are charged with carrying out the

provisions of the Act. Clause (a) mentions the corporation as being one of these authorities. The powers and functions of each of these authorities are specified in different provisions of the Act subsection (1) of section 5 states that the corporation shall consist of one hundred and thirty on councilors. Subsection (2) of this section provides.

the corporation shall meet for the despatch of business and shall from time to time make such regulations which respect to the summoning, notice place, management and adjournment of such meetings, and generally with respect to the mode of transacting and managing the business of the corporation including the submission, asking and answering of questions u/s 66A as they think fit, subject to the following conditions.

(k) any councilor who desires at any meeting to bring forward any business, other than any questions u/s 66A or to make any substantive proposition, which is not already specified in the notice of such meeting, shall give written notice of the same to the municipal secretary at least three clear days before the day fixed for the meeting and a supplementary announcement of the business or propositions, of which notice has been so given, shall be given by the said secretary in not less than one local daily newspaper not later than the day previous to the meeting.

The appellants rely on this provision in support of their contention that the corporation is entitled to discuss the said resolution. Chapter III of the Act contains provision relating to the duties and powers of the municipal authorities. Section 61 of gives a list of obligatory duties of the corporation for which, it is, as stated in the section, incumbent of the corporation to make adequate provision by any means or measures which it is lawfully competent to them to use or to take. One of these duties, referred to in clause (q) of the section, is to maintain aid and suitably accommodate schools for primary education. Section 63 specifies what are called discretionary duties of the corporation in regard to which the corporation have a discretion. The section states.

The corporation may, in their discretion provide from time to time, either wholly or partly, for all or any of the following matters, namely:

(b) the furtherance of educational objects other than those mentioned in clause (q) of section 61: (k) any measure, not herein before specifically named, likely to promote public safety health, convenience or instruction.

And with the previous sanction of the State Government, the corporation may make -

(l) such contribution as they think fit towards any public ceremony or entertainment in Greater Bombay.

The provision contained in clause (k) is strongly relied upon by the appellants in the present appeal. Sub section (1) of section 64 provides that the respective functions of the several municipal authorities shall be such as are specifically

prescribed in or under the Act. sub section (2) of section 64 states that except as in this act otherwise expressly provided, the municipal government of greater Bombay vests in the corporation.

Sub section (1) of section 66A provides:

Subject to any regulations made in this behalf u/s 36, a councilor may question the commissioner who shall answer any question concerning or connected with the administration of this act or the municipal government of greater Bombay.

This provision draws a distinction between the administration of the Act and municipal government.

4. The learned solicitor General, who has argued this appeal on behalf of the appellants, has urged that the words municipal government for the carrying on of which the corporation has been created, are very wide and that the corporation is therefore concerned not only with providing physical comforts. such as sanitation, lights and water, but with all matters affecting the life and well being of the persons residing the Greater Bombay. He has also contended that by the resolution it was intended to place before the people an example of a great fighter for freedom and that that by itself would be education or instruction to the people, within the meaning of clauses (b) and (c) of section 63 of the Act. The words educational objects used in clause (b) and instruction used in clause (k) are words of very wide import. Websters Dictionary defines education as totality of information and qualities acquired through instruction and training which further the development of an individual which physically, mentally and bodily. In Murrays Dictionary the word instruction is defined as meaning to furnish knowledge or information, to train in knowledge or learning, to teach, to educate. Our notions, as to what constitutes education have also changed. Formerly, a person was regarded as educated if he knew the three Rs. - Reading writing and Rithmetic. Today education embraces a much wider field. Any teaching or training. Which furthers or brings about the physical, mental moral or spiritual development of an individual, is regarded as education. Education may also be imparted in civic rights and responsibilities, or in order that people might cherish certain ideals or imbibe certain people qualities. In a democratic country, it may well be regarded as part of education to teach people to love their country, to cherish freedom, to hate oppression and rule by foreigners and to be ready and willing to undergo hardship and suffering for maintaining the freedom of the country.

5. One of the recognised ways of educating people is to place before them examples of persons, who have achieved fame and distinction of life. School text books frequently contain stories or articles about lives of great en. These are taught, so that they may inspire the readers to acquire the same qualities and to try and reach the same heights. It is also not necessary that education or instruction should be imparted only in schools and colleges or other institutions. It may also given through newspapers, cinema shows, public lectures, seminars

and public debates. The meetings of the corporation are open to the public under clause (e) of section 36. A debate on a matter of public importance in a corporation may therefore also have an educative value.

6. The resolution, the validity of which has been challenged, describes the late Mr. Imre Nagy and his there associates as fighters for freedom for their motherland, as person who even at the cost of their lives displayed great courage and steadfastness in the cause of their countries freedom, and as person who upheld the dignity of man and rendered great service to the highest value of life, viz., freedom, By eulogising them and by expressing the corporation regret at their executions, the resolution places before the public examples and ideals which they may emulate. It is therefore urged that the resolution and the debate on it would educate the public and instruct them to cherish the ideals of freedom. to love their country and to be ever ready to sacrifice even their lives for the freedom of the country. I cannot say that this argument is without force.

7. The words in clause (k) of section 63 are "likely to promote instruction." The authorities competent to decide whether a resolution, proposed to be moved at a meeting of the Corporation, is likely to promote public instruction, are firstly the Mayor or the Chairman of the meeting, who has to determine whether the resolution is in order and thereafter the Corporation, which may pass or reject the resolution. The ultimate decision the matter is entrusted by the Legislature to the Corporation. The Corporation is therefore the best judge of what is likely to promote public instruction. No appeal is provided against its decision. The Court will, therefore, not interfere merely because it takes a view different from that taken by the Corporation. If the question is arguable or if two views are possible, the Court will decline to exercise its powers, for it cannot then be definitely stated that the Corporation is transgressing the limits of its powers. The Court will intervene only when it is shown that the resolution, which the Corporation proposes to discuss or pass, cannot reasonably be said to be within the scope and ambit of the Act.

8. In this case it is at least arguable that the resolution and the debate on it are likely to educate or instruct the public to love their country and to be ready to fight for its freedom. The learned Judge has also observed in his judgment that the debate on the resolution may be educative. He however took the view that the resolution was outside the ambit of the Corporation's powers, as its object was political and not educational. With respect, it seems to me that the object or motive, which led the author of the resolution to propose it, is entirely immaterial. The Corporation consists of 131 councillors and different councillors may support the resolution for different reasons. What one is really concerned with is the effect of the resolution, whether it is or is not likely to promote public instruction. If it cannot even reasonably be said hat the resolution might promote public instruction, it would be outside the scope of he Act. But, as I have already stated, I do not think I can say that the argument that the resolution is likely to promote public instruction, is without substance. Consequently, the resolution

cannot be said to be beyond the scope and ambit of the Act, or one which the Corporation cannot discuss. The order passed by Mr. Justice Desai cannot therefore be upheld.

9. The only reported case, in which a somewhat similar question came up for consideration, is *Daily Gazette Press Ltd, v. Karachi Municipality* AIR 1930 Sind 287. This case does not decide the question which we have to determine. There are observations in it on which either party might rely. In his judgment Rupchand Billaram A.J.C. had observed as follows:

"There is no doubt in my mind that the main object for which powers of local self-Government are transferred to Municipal Corporations under this Act is that the City fathers should look after the health of the City and the comfort and well-being of its residents. But I am not prepared to hold that for the attainment of public objects I may not in certain instances be necessary or in any case be not proper for them to discuss political subjects or "that the discussion on such subjects is ultra vires." With respect, I agree with these observations.

10. Mr. Rajni Patel pointed out to us that the Bombay Municipal Boroughs Act and the Bombay District Municipal Act contain provisions similar to those contained in clause (k) of section 63. I realise that he view, which I am taking, might result in the Municipalities spending their limited time and money on matters, with which they are not really concerned. If this, unfortunately, happens, it will be for the Legislature to consider whether some limitations should not be imposed on the powers of the Municipalities to discuss matters, which have no direct bearing on municipal administration.

11. In the view which I am taking, it is not necessary to deal with other questions, which have been raised before us. But as they have been argued, I will refer to them briefly. It was urged that under clause (k) of section 36 the Corporation is entitled to discuss a resolution on any subject, whether it relates or does not relate to municipal administration or municipal government. The heading of section 36 is "Proceedings of the Corporation." It is a procedural section, which provides for the mode and the manner in which business may be brought before the Corporation and in which it is to be transacted. I agree with the view taken by Mr. Justice Desai that this is not a section to which reference can be made for the purpose of determining what is that business of the Corporation, or what are its powers and functions. The expression "business" will include only that business, which can be said to relate to municipal administration or municipal government of Greater Bombay. A corporator cannot also ask the Corporation to discuss any resolution which he likes. The proposition, which he is entitled to make before any meeting of the Corporation, must also be such as relates to the business of the Corporation. It must therefore be on a subject, which has a bearing directly or indirectly on the municipal administration or municipal government of Greater Bombay.

12. Reference was made in the course of arguments to Article 12 of the

Constitution. This is the first article in Part III, which contains provisions relation to fundamental rights, and it states that in this Part the "State" includes all local authorities. The definition is for the purpose or ensuring that even the local authorities, which perform certain functions of government, do not contravene the fundamental rights of citizens and for enabling citizens to obtain relief against the violation of their rights. This article has therefore no bearing on the question which we have to determine in this appeal. Article 51, to which also a reference was made, is also not of any assistance in this case.

13. The Solicitor General referred us to the compilation Ex. No. 1, containing numerous resolutions passed by the Corporation on matters not connected with municipal government. He urged that the practice followed by the Corporation over a number of years, in regard to the category of mates which would fall under clause (k) of section 63, must be considered by us for the purpose of construing the general words used in this clause. We are unable to accept this argument. The Corporation cannot, by following a wrong practice, confer upon itself powers which it does not possess.

14. It was also urged that the Court can only interfere with an act of the Corporation and that until the resolution had been discussed and passed, it cannot be said that the Corporation had done any act, which it was not competent to do and which was ultra vires. This Court can, however, grant relief not only after damage has been done, but even when there is reasonable likelihood of damage being done. It, therefore, I had come to the conclusion that the said resolution was beyond the powers of the Corporation, I would have upheld the order passed by Mr. Justice Desai.

15. Mr. Rajni Patel urged that the resolution might embarrass Government in its relations with certain foreign States. He pointed out to us that the Bombay Municipal Corporation Act was passed in 1882 under the provisions of the Indian Councils Act, 1861, clause (8) in section 43 of which debarred the Governor-in-Council from making any law affecting relations with foreign States. There is, however, no provision in the Bombay Municipal Corporation Act, which debars the Corporation from discussing a matter, on the ground that it relates to an occurrence in a foreign State or on the ground that it might affect relations with foreign States. But every resolution must be within the scope and ambit of the Act. If therefore it can reasonably be said to relate to municipal government or municipal administration of Greater Bombay, its discussion cannot be prevented, merely because it may not be to the liking of some persons in some foreign States.

16. I would therefore set aside the order passed by Mr. Justice Desai and dismiss the petition filed by the respondent. As the case has been fought more or less as a test case and in order to obtain a decision in regard to the powers of the Corporation in certain matters, I make no order as to costs of this appeal.

17. Order set aside.