

(1965) 03 BOM CK 0030

In the Bombay High Court

Case No : Special Civil Application No. 717 of 1964

Kisan Bhaguji

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 10-03-1965

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 16(2), 16(2A), 18(3)

Citation : AIR 1966 Bom 154 : (1965) 67 BOMLR 715 : (1965) MhLj 681

Hon'ble Judges : Wagle, J;Kotval, J

Bench : Division Bench

Advocate : P.G. Palshikar, for the Appellant; S.M. Hajarnavis, Asst. Govt. Pleader, B.A. Masodkar and S.G. Kukde for Intervener, for the Respondent

Judgement

1. As the question arising in this petition is said to be a question which also arises in other petitions, we have heard M/s. Masodkar and Kukday as Intervenes, as they are interested in Special Civil Application No. 222/65 and Special Civil Application No. 77/65 in addition to Mr. Palshikar for the petitioner. The short question that arises for determination is as to the effect of Ordinance No. V of 1964 promulgated by the Governor of Maharashtra and Maharashtra Act No. XLII of 1964, These laws were passed in order to stay general elections of Municipalities in Maharashtra State and for making consequential provisions and the question that has to be determined is, what is the effect of their provisions so far as the office of President of a municipality is concerned.

2. In the present petition, the facts in brief are as follows. We are concerned with the Nandura Municipal Committee. The general elections to that Municipal Committee were held in July 1959 and the notification of election of its present members was published in the Gazette on August 6, 1959. The result of that publication was that under the provisions of Section 16(2) of the C.P. & Berar Municipalities Act those members were entitled to continue in office for a period of five years from the said date till August 5, 1964. Thus, their term of office would have expired on that date; but first of all, the State Government

intervened to extend their term of office till November 6, 1964, under the powers given to them u/s 16(2-4) of the Act. While the term of office of the members thus stood extended till November 6, 1964, the Governor of Maharashtra promulgated Ordinance V of 1964. By that Ordinance the life of the Councillors or members was further extended till December 31, 1965. The Ordinance came into force on September 30, 1964, but was later replaced by Mah. Act No. XLII of 1964, which came into force on December 16, 1964. Therefore, today the Councillors or members of this Municipal Committee are continuing to hold office by virtue of Act No. XLII of 1964. It is explained that the reason for all this legislative activity is that the State is about to enact a new law to provide a new and uniform pattern of administration for municipalities in the entire State and till then it was considered expedient that no new general elections should be held but that the status quo should be maintained.

3. Now, on November 17, 1964, the Collector, Buldana, purporting to act under Rule 3(2) of the C.P. & Berar Municipalities President and Vice-president (Election and Appointment) (Bombay) Rules, 1958, announced the appointment of an officer to hold a meeting of the members of the Municipal Committee of Nandura for the purpose of electing a new President of the said Committee. He also issued a notice to all the members including the petitioner. In the present petition, the petitioner challenges not merely the notification appointing the officer to be the Chairman of the meeting at which the election is to be held, but also the issuance of the notice of the meeting to sitting members and the principal ground upon which both these acts of the Collector are challenged is that the petitioner is the present President and entitled to continue in office under law. On behalf of the respondents, the Collector, the sub-Divisional Officer and the State of Maharashtra, this stand of the petitioner is contested and it is urged that the life of the President was not in any way extended by the Ordinance or the Act or under the Municipalities Act and that the fresh elections would, therefore, be justified, and necessary under the Municipalities Act.

4. The provisions of Section 18 of the C. P. & Berar Municipalities Act, as amended by Bombay Act No. XVI of 1959, govern the election and continuance in office of the President of a Municipality and Sub-section (2) thereof prescribes that each Committee shall have a President who shall be elected by the members from among their number, and Sub-section (3) lays down the period for which he should hold office. Sub-section (3) runs as follows:

Save as otherwise provided in this Act,?

(a) the President shall hold office for such term, not less than one year or not less than the residue of the term of office of the Committee, whichever is less, and not exceeding three years, as the Committee shall, previous to the election of the President, determine or until the expiry within the said term of his term of office as member, but shall be eligible for re-election; and

(b) the Vice-President shall hold office during the term of office of the President

who appoints him:

Provided that the term of office of such President or Vice-President shall be deemed to extend to, and expire with, the date on which his successor is elected or appointed, as the case may be:

Provided further that where the term of office of a Committee is extended under this Act, the President and Vice-President holding office 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.

5. Reading the second proviso to Section 18(3), it is clear beyond any doubt that the right of a President or Vice-President to continue in office is limited to an extension earned by him under that Act itself and no other Act. This is clear from the vital words which lay down a condition to the application of the proviso itself "where the term of office of a Committee is extended under this Act" and the concluding words "until the date on which the term so extended expires."

6. It will be noticed that originally the provision which governed the term of office of the petitioner was Sub-section (3)(a) of Section 18 read with Section 16(2) and under those provisions the petitioner would have continued to hold office till September, 1964, but before the expiry of his term of office under those provisions the State Government extended the term of office of the members of the Municipal Committee under powers vested in it u/s 16(2-yl). Therefore, by virtue of the second proviso to Sub-section (J)(b) of Section 18 the term of office of the President was extended "under this Act" and he continued to hold office. It was during the period that the petitioner was thus holding office by virtue of: the extension granted by the State Government u/s 16(2A), read with Sub-section (5) of Section 18, proviso 2, that the Ordinance No. V of 1964 came to be promulgated. Almost the identical terms of the Ordinance were later enacted in Mali. Act No. XLII of 1964. The short question that now arises is whether the petitioner as the President can get the advantage of the extension of the term of life of the members, implied by the postponement of the general elections and say that he as the President also continues. The only provision that can be pointed out on his behalf is the second proviso to Section 18(5) of the Municipalities Act. That proviso speaks of an extension "under this Act" i.e. the Municipalities Act and the question is whether there is anything in Act XLII of 1964 which directly or indirectly grants such an extension as can be said to be an extension under the Municipalities Act.

7. Act No. XLII of 1964, as its preamble states, was an Act passed for two purposes, namely,

(i) to provide for the postponement of general elections, to certain municipalities until the enactment of law providing a new and uniform pattern of municipal administration in respect of certain municipalities

and (2) because it was considered expedient

that the advantages of the new pattern of administration should be available to those municipalities simultaneously with the holding of general elections in accordance with the provisions of the new law.

Two points arising from the terms of this preamble maybe noted here (1) that the Act and Ordinance were in terms temporary or interim provisions. They were intended so to say to maintain the status quo in municipal administration until a new law imposing" a new and uniform pattern of administration was enacted, (2) that for the achievement of the above object, it was considered necessary by the Legislature that only general elections to the said municipalities should be postponed until the enactment of the new law, and nothing" else. It is, in our opinion, of the greatest importance that the preamble itself says that the object of the Act was to postpone only the general elections, and not Presidential elections by a committee of its own President.

8. Section 3 of the new Act, which is the operative section, deals with the postponement of municipal elections and it provides:

Notwithstanding anything in any Act by or under which any municipality is constituted or established,

(a) during the period beginning with the date of the commencement of the Ordinance and ending on. the 31st day of December 1965, no general election to a municipality shall be held, or if commenced, and the poll has not taken place, shall be completed;

(b) the term or extended term of office, of the Councillors or members of a municipality, who were in office on the date of the commencement of the Ordinance (and whose term or extended term will expire before the 31st day of December 1965), shall be deemed to be extended to and inclusive of the -31st day of December 1965.

Then Sections 4, 5 and 6 give certain, powers to the State Government to nominate members or appoint an administrator to carry on the duties of such municipality. Section 5 gives power of delegation to the officer so appointed and s. (i) provide for the appointment of an Advisory Council which may consist of the erstwhile members of the municipality. Then, for the purpose of the points raised in this petition Section 7 is important. It provides:

Except as otherwise provided by this Act, the relevant Act shall in all other respects apply to the municipality concerned.

Now, the expression "relevant Act" is defined in Section 2(c) as follows: - "as respects any municipality, means the Act by or under which it is constituted or established". A "municipality" is defined in Section 2(a) as follows:

"Municipality" means a local authority by whatever name called constituted or established by or under any of the Acts specified in the Schedule.

One of the Acts specified in the Schedule is the C.P. & Berar Municipalities Act.

Therefore, reading Section 2(a) with Section 2(c) and Section 7, the result is that except as provided by Mah. Act No. XLII of 1964, the C.P. & Berar Municipalities Act continues in all other respects to apply to the Nandura Municipal Committee.

9. Now, it will be noticed that Section 3(6) of the Maharashtra Act No. XLII of 1964, refers only to the Councillors or members of a Municipality. It does not refer to the President or Vice-President and the question, therefore, is whether under the circumstances under which the petitioner was holding office as the President of the Nandura Municipal Committee, his term of office has been extended by operation of either the C.P. & Berar Municipalities Act or Mah. Act No. XLII of 1964.

10. So far as the provisions of Section 18(3) are concerned, we have already referred to the second proviso to that sub-section and the plenary language of that proviso is: "Provided further that where the term of office of a Committee is extended under this Act the President and Vice-President... shall continue to hold their respective offices until the date on which the term so extended expires." (the italics are ours). Nothing could be clearer than the language of this proviso. The extension must be under the C.P. & Berar Municipalities Act and none other and it is only a term "so extended" that validates further continuance in office. The power conferred under the Municipalities Act of extension of the President's term of office is conferred on the State Government by Section 16(2A). That Sub-section provides:

(2A). Notwithstanding anything contained in Sub-section (2), if on any occasion the State Government thinks fit, the State Government may by order in the Official Gazette, for reasons which shall be notified with such order, extend the term of office of the members of any Committee by a period not exceeding one year in the aggregate.

The proviso to this Sub-section (2A) which is new says that the State Government shall first invite and consider objections, if any, a provision with which we are not here concerned. Reading Sub-section (2A) of Section 16 with the second proviso to Section 18(5)(b) of the Act, it is quite clear that the President for the time being holding office may automatically claim an extension of his office as President if the life of the members of the Committee is extended under Sub-section (2A) of Section 16. In that case, it would be an extension "under this Act" and, therefore, the consequence indicated by the proviso will follow. There does not appear to be any other provision either in the C.P. & Berar Municipalities Act or in the Mah. Act No. XLII of 1964, granting extension to the existing incumbent of the office of the President.

11. What is here contended is that that is the effect of the provisions of the new Act, read in the light of the second proviso to Section 18(3) of the Municipalities Act. It is a little difficult to comprehend the argument but so far as we can gather Mr. Palshikar appearing for the petitioner contends that in view of Section 7 of Mah. Act No. XLII of 1964 the provisions of the C.P. & Berar Municipalities Act,

and the provisions of Mah. Act No. XLII of 1964 are so to say approximated to each other. They become one law and the provisions of either Act can be read into the other. It was urged that upon that construction it must be held that when the Maharashtra Act XLII of 1964 extends the life of the Councillors or members of a Municipality, it virtually extends their life under the C.P. & Berar Municipalities Act.

12. It is urged that this conclusion follows from the provisions of Section 7 of Act No. XLII of 1964. It seems to us that the conclusion should be the exact opposite of what is contended. All that Section 7 of Act, No. XLII of 1964 says is that "except as otherwise provided by this Act," the C.P. & Berar Municipalities Act "shall in all other respects apply to the municipality concerned." It would be begging the question to say that the extension under Act XLII of 1964 is an extension under the C.P. & Berar Municipalities Act because the wording of Section 7 is that the Municipalities Act shall "in all other respects apply." It can only apply in all other respects when its provisions are not in conflict with the provisions of the Maharashtra Act No. XLII of 1964. So far as the C.P. & Berar Municipalities Act is concerned, Section 16(2,4) only speaks of an extension of the life of the members of the Municipal Committee being extended by the State Government and upon such an extension the life of the President for the time being is also extended until the date on which the extended term of the Municipal Committee expires. v But the essential condition to the operation of this provision is that the extension must be "under this Act". We cannot find anything in the provisions of the Maharashtra Act No. XLII of 1964 to suggest that any provisions of the Municipalities Act are either incorporated in that Act or vice versa, In fact the provisions of the Mah. Act No. XLII of 1964 themselves indicate that the Municipalities Act is treated as a separate piece of legislation and Section 7 says that the provisions of that piece of legislation shall "in all other respects apply". We are unable to accept the contention that upon extension of the term of office of Councillors or members under the Mah. Act No. XLII of 1964, such an extension was granted, as would fulfil the requirements of the second proviso to Sub-section (5) of Section 18 of the C.P. & Berar Municipalities Act.

13. Another shade of the same argument was that by virtue of Section 3(&) of the new Act, Section 16(2) of the Municipalities Act stood amended, and the extension indicated by Section 3(7) was really an extension u/s 16(2) thus attracting the second proviso to Section 18(3)(6). Normally when a Legislature wishes to amend a legislation it says so in unmistakable language by the use of such words as "amended" or "Substituted." No such words appear in Act XLII of 1964 or in its preamble. There is moreover no reference in Section 3(6) of the new Act to the C.P. Municipalities Act except indirectly because of the use of the word "municipality" which is defined in Section 2(a) read with the third entry of the Schedule to the new Act nor is there any intention to amend expressed. We cannot suppose that the Legislature effected an amendment of Section 16(2) of Municipalities Act in this vague and indirect manner. There must be a clear

intention to amend expressed before we can hold that the Legislature has altered the provisions of a statute. There is no such intention to be found in Section 3(6) of the new Act.

14. Another argument which may here be noticed was advanced by Mr. Kukday who was appearing for one of the interveners. It is based upon the provisions of Clause (b) of Section 3 of the Mah. Act No. XLII of 1964. As we have shown, Clause (ft) says that the term or extended term of office of the Councillors or members of a municipality who were in office on the date of the commencement of the Ordinance "shall be deemed to be extended to and inclusive of the 31st day of December 1965". Now, when the clause opens with the words "the term or extended term of office" Mr. Kukday points out, and rightly in our opinion, that the clause refers to "the term," as mentioned in Section 16(2) of the C.P. & Berar Municipalities Act or the extended term of office as mentioned in Section 16(2 A) of the Act. So far we are in agreement with the submission. But the further contention is that since this term or extended term of office of the councillors or members is by Clause (Z>) of g. 3 "deemed to be extended to and inclusive of the 31st day of December 1965", the extension granted by Section 3(b) of Mali. Act No. XLII of 1964 is an extension under1 Section 16(2) or 16(2.4) of C.P. & Berar Municipalities Act. If so, it is urged it will immediately be covered by the provisions of the second proviso to Sub-section (3) of Section 18, as an extension "under this Act".

15. We are unable to accept this contention. Clause (b) of Section 3 of Act XLII of 1964 creates a well recognised fiction by the use of the words "shall be deemed to be extended to". The exercise of the positive power conferred up on the State Government by Section 16(2) or Section 16(2 A) to extend for a particular time cannot be equated with the powers exercised u/s 3(b) of Mah. Act No. XLII of 1964 fictionally extending time till December 31 1965. It is well known that where a fiction of this kind is created, the fiction is essentially and radically different from the real thing. Indeed, if it were the real thing, it would be unnecessary to resort to the fiction at all. Thus, where Section 3(b) says that the term or extended term of office u/s 16(2) or 16(2A) of the C.P. & Berar Municipalities Act shall by a, fiction be deemed to be a term upto December 31, 1965, it is clear that the law did not regard that extended term as the real exercise of power u/s 16. In fact, if it were the real exercise of power u/s 16 of the Municipalities Act, it would not be necessary to make any such provision at all. But because it was not considered the exercise of power u/s 16, Section 3(6) had to say that after that power was once exercised, the resultant terms would expire, but shall be deemed to be extended. It cannot, therefore, be held that by virtue of Section 3(6) any power under the Municipalities Act has been exercised. If so, the second proviso to Sub-section (3) of Section 18 of the Municipalities Act would not be attracted.

16. Reference was made to the objects and purposes of the new Act. Normally, the objects of an Act would not affect its interpretation. But it was urged that

where there is no doubt or difficulty, the preamble can be looked to as well as the purpose of an enactment. Even looking to the purpose and object of the enactment, we can see no valid reason why the term of office of Presidents or Vice-Presidents should necessarily be extended because general elections of municipalities had to be postponed in order to await the new legislation intended to usher in a new and uniform pattern of municipal administration. The object of the enactment is clear enough. It was intended that until the proposed new law was passed and began to operate, the status quo in the matter of elections of members to municipalities should be maintained and, therefore, no general elections should be held. The holding of such a general election would result in considerable time, money and energy being expended upon it, which would be wasted if the new measure came into operation within a short time thereafter and fresh election had to be held. But while these were weighty considerations for the passing of that legislation, we cannot see how these considerations would also make it necessary not to hold the periodical elections of the Presidents or Vice-Presidents of those municipalities. The election of the Presidents or Vice-Presidents of the municipalities does not depend upon the general vote of the people, but upon the vote of the members of a Municipal Committee for the time being. Once the life of the Municipal members for the time being is extended, the whole purpose and object of the new enactment would be fully subserved. Therefore, the interpretation which we think is the only possible interpretation of the provisions of Mali. Act No. XLII of 1964 as well as Section 18(5) of the Municipalities Act is in complete agreement with the objects and purposes of the new enactment.

17. An earlier decision of the English Courts reported in *In re Wood's Estate: Ex parte Her Majesty's Commissioners of Works and Buildings* (1886) 31 Ch. D. 007 was relied on in aid of the construction which we have earlier negated that the provisions of the new Act No. XLII of 1964 should, by implication, be read into the C.P. & Berar Municipalities Act. In that decision the provision of law which fell to be construed was wholly different. There, the legislation expressly provided that the main sections of one legislation shall be deemed to be repeated in another legislation and be deemed to be incorporated in that Act. There is no such provision here. On page 609, the provisions of Section 9 of Act 14 and 15 Victoria Chapter 42, are given in the Chancery Division re-port as follows:

Section 9 provided that, for the purposes of the Act, the following sections of the Act 3 & 4 Viet. c. 87—namely, Sections 11 to 26, both inclusive; Sections 28 to 57, both inclusive; and Sections 66 to 75, both inclusive, "shall be deemed to be herein repeated, with the alterations necessary to make the same applicable to the purposes of this Act, and to the Commissioners hereby incorporated, instead of the Commissioners by that Act incorporated, and so as to enable the Commissioners hereby incorporated to carry into effect the purposes of this Act.

It is clear that in the enactment which was constituted in that ease, there was an express reference to stated sections of another Act which were made part of the

enactment to be construed. There is no such reference whatsoever in the Mah. Act No. XLII of 1964 before us. The decision, therefore, is distinguishable upon its own facts.

18. We can see no substance in the contentions raised in this petition. Both the notice to the petitioner and the appointment of an officer to hold the elections were valid acts on the part of the Collector, Buldana. The petition is dismissed with costs. Leave to appeal is granted, as it has been represented that this question affects municipalities and their Presidents and "Vice-Presidents in all parts of the State. It would, therefore, be a "fit case" for the grant of leave.