

(1992) 01 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No's. 20 and 53 of 1992

Madhu Deolekar and Another

APPELLANT

Vs

Commissioner, Bombay Municipal Corporation

RESPONDENT

Date of Decision : 20-01-1992

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 19, 19(1A)
Census Act, 1948 — Section 17
Constitution of India, 1950 — Article 226

Citation : (1992) 2 BomCR 201 : (1992) 94 BOMLR 740

Hon'ble Judges : K. Sukumaran, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Arun Sathe, instructed by Sanjeev Kanchan and Co. in W.P. No. 20 of 92, B.P. Apte and Anil Singh, in W.P. No. 53 of 92, for the Appellant; C.J. Sawant and S.G. Syrana, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—The Municipal Corporation of Greater Bombay (we shall hereafter refer to it as "the Corporation"), is soon to go to the polls, on 21-2-1992 according to the Schedule. The Corporation is one of the oldest amongst the local authorities in India, dating back to 1888 when the Bombay Municipal Corporation Act, 1888 came into force. It has its hoary tradition and glorious history. The Elections were last held in 1985. The terms of the Council (and therefore, of the Councillors) in ordinarily for five years. Fresh elections were due in 1990. For reasons it is unnecessary to probe into, elections did not take place then. The life of the Council has been prolonged from time to time. The Municipal Corporations (Amendment) Acts of 1991, extended the term to 31-12-1991 and later to 30th June, 1992. Under Maharashtra Ordinance XII the term comes to an end on 31-3-1992.

2. It was an inability in holding the elections at the expiry of the then stipulated period of 31-3-1991 (as felt by the Government) that necessitated the

promulgation of the Ordinance for a further extension of the term till 31-12-1991. That occasion was also utilised for effecting certain substantial alterations in the statutory provisions such as sections 5, 19 and 22 of the Act. The Ordinance so promulgated on 15-2-1991 was replaced by the Municipal Corporation Act, 1991, which was given effect from 16-2-1991.

3. Ordinance XII of 1991, sought, amongst other things, to amend, temporarily, the Act in question and the Elections Rules. Substantial changes have been effected in sections 19 and 22 of the Act.

4. The petitioners, as citizens of India, felt the amendments to be unconstitutional, and the follow-up steps for the conduct of election, opposed to the provisions of the Act as properly interpreted, according to them. They have approached the Constitutional Court for various reliefs including the invalidation of the amended provisions.

5. Acting on the basis of the provisions in the Municipal Corporation (Amendment) Act, 1991, the Government took steps for the division of the area of the Corporation into the stipulated numbers of wards. The number of wards had been increased to 221. Objections and suggestions were invited about that notification. The Government considered the objections and suggestions received in that behalf. By notification dated 29-11-1991, it divided the city into 221 wards, reserving certain seats for Schedule caste and Schedule tribes and for women, and specified the number, name and boundaries of the wards so reserved.

6. The petitioners produced alongwith the affidavit dated 9-2-1992 a copy of the objections dated 29-10-1991 filed by the 2nd petitioner and his party. (These documents too are marked as Exhibits "B" and "C", overlooking the assignment of those letters for identifying the documents produced along with the writ petition. The confusion caused by the hurry need not be carried along in the judgment). The objection raised by the political party, among others, states that the division of the ward should be only on the basis of the 1991 figures.

7. Notwithstanding the absence of a pointed contention in the objection filed on behalf of the 2nd petitioner, we heard arguments on the interpretation of section 19 as amended as also on the vires of the Act and the Ordinance, as attempted by the petitioners. The learned Government Pleader appearing on behalf of the State explained to us the stand of the State Government on the interpretation of section 19 and put forward the submissions on the constitutional aspects.

8. We shall consider the contentions seriatim. In doing so, we shall eschew arguments exclusively encapsulating political philosophies. Political thickets are better avoided by Constitutional Courts unless there is a compulsive situation for treatment of mixed matters of legal concepts even with a strong component of political ideas.

9. The first contention centred around the division of the wards. The composition

of the Council has undergone drastic change by the Amendment Act 1991. The criteria to be adopted for the determination of number of wards, and therefore, the number of Councillors to be elected, have been materially changed. There was no attack on that part of the change reflective of a realisation of the population explosion and the like matters. We do not therefore, ponder to consider in detail the change effected in that behalf.

10. The totality of the voter population is necessarily to be reckoned while considering the division of the Corporation area and the wards. That is explicitly stated in the provisions contained in section 19. In that respect, there is no change of ideas even under the amendment effected by the Act of 1991. The census figures are to be adopted and applied to the ward division exercises.

11. It is useful in this context, to view, side by side, the provisions as they obtained prior to the amendment effected by Act, Ordinance 15 of 1991, and the position as it obtained at the stage soon after the amendment of the Act 1991 and as it now stands in the light of the further amendment effected by the Ordinance 15 of 1991.

12. Under the pre-amendment situation as it obtained, prior to 16-2-1991, the census figures which could be looked into were the figures which had been published; did not matter then, whether the figures so published were provisional or final. Publication was, however, mandatory. Collection of the census statistics, scrutiny at the various stages and levels, collation and co-ordinate of the material collected under the very elaborate guidelines and instructions issued from time to time-were all to be ignored in the absence of publication. In other words, the adoption of the census figures was not possible by the mere availability of the information. It had to appear to the public gaze, by accepted modes of publication.

13. In the pre-amendment situation, a finalisation of the figures was not an indispensable requirement for the utilisation of those figures for the purpose of division of the wards. Provisional figures also were allowed to be used, provided, of course, they were published.

14. Under the amended provisions, no reference whatever is made to the words "provisional" or "final". The expression used is latest census figures. That leads us to consider the vital question about the scope and amplitude of the term "the latest census figures".

15. In order to understand and appreciate that term, an examination of the provisions of the Census Act and the Rules framed thereunder would be highly helpful.

16. Census operations had been conducted in India from very early times. There was superintendence of census operation in each province or presidency. A background history of Census operations is available from judicial decisions. See Kattimani Chandappa Jampanna Vs. Laxman Siddappa Naik and Others, ; Pars

Ram Vs. Sh. Shiv Chand and Others, ; B. Mutyalamma v. B.C. Appann, 1968 (I) A.W.R. 429; and Bhanabhasa Seikha v. Union of India, ILR 1970 Ass 220. It is however, not strictly necessary to carry the research into those distant days. We shall bear in mind the history, practice and procedure of the Census operations of the earlier period also, while at the interpretational exercise. The first proper Government Census for Bombay was in 1872 (See City of Gold by Guildhall 238).

17. The Census Act, 1948 came into force on 3-9-1948. It has undergone some amendment which are not material for the purpose of the present case. It is a comparatively short enactment with 18 sections, the 18th one conferring the power on the Government to make Rules. Section 3 enabled the Central Government by notification in the official gazette to declare its intention to take a census and provide that thereupon the Census shall be taken. The emphasis on publication cannot be easily missed. The Central Government is to appoint a Census Commissioner to supervise the taking of the census throughout the area in which the census is intended to be taken. It can also appoint Director of Census Operation to supervise the taking of the census within the several States. Census Officers are to be appointed by the State Government. Having regard to the complex and complicated nature of the operations, the District Magistrate or designated authority u/s 6, is empowered to direct the categories of person enumerated therein to perform the duties of a Census Officer. Similar power is given in section 7, to call upon persons as indicated therein to give assistance for the census operations. Census officials are public servants. A Census Officer is enabled to ask questions of the nature permitted. There is a legal obligation on every person to whom the question is put, to answer the same to the best of his knowledge or belief. Census-Officers are to be permitted access as provided u/s 9. Section 10 casts the obligation on a manager to fill up the schedules as detailed therein. Section 11 provides for penalties; and section 12 regulates the grant of sanction for prosecution, section 15 which may have greater significance in the context reads :

"15. Records of census not open to inspection nor admissible in evidence:-

No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such, or any schedule delivered u/s 10, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other law for any Act or omission which constitutes an offence under this Act."

Under section 17, the Census Commissioner or any Director of Census Operations or other authorised persons may cause abstracts to be prepared and supplied from the census returns, containing statistical information, if the information is not contained in any published report, in the circumstances mentioned in the section.

18. The only set of rules placed before us by Counsel and the learned Government Pleader are the rules published by Government of India u/s Order 967(E) dated 31st December 1990. Rule 5 is particularly material. Under sub-rule (1)(e) the Census Commissioner shall publish the census statistics through publication or magnetic media. Sub-rule (2) enumerates the powers of the Director of Census Operations. Clause (c) casts an obligation on him to provide "provisional population figures to the Census Commissioner, India through the District Census Officers within such time as is specified. Under clause (e), the Director shall publish statistics collected and computed during the census with the approval of the Census Commissioner .

19. Thus, it is self evident that the publication of the census statistics is the exclusive privilege of the Census Commissioner.

20. The mode of publication is also clearly specified. The Director of Census Operation is authorised only to public statistics collected and computed during the Census with the approval of the Census Commissioner.

21. Some of the other rules throw light on some murky areas of the scheme of Census Operations. Under Rule 5(1), it is the Census Commissioner who has to take, aid in and supervise the taking of the Census. It is for him to devise the schedules or questionnaire. Under sub-rule (2)(c) the Director has to attend to the various operations enumerated therein as per procedure laid down by the Census Commissioner, and under sub-rule 2(f), the guidelines provided by the Census Commissioner in that regard have to be conformed to while providing Census material to Census Officers. Only the Census Commissioner is clothed with the authority to decide the items on which data may be released. Again, under Rule 11 disposal of Census Schedules and other connected papers is to be in accordance with the general or special directions given by the Census Commissioner. A close supervision and control of all vital operations is thus invested with the Census Commissioner.

22. There is no averment in the writ petition that the census statistics has been published by the Census Commissioner, nor is there any averment that the final census figures have been so published. The only contention is that a publication is available which contains some provisional population totals of Maharashtra.

23. It is quite possible that the provisional figures may be faulty or fallacious for a variety of reasons, having regard to the complexity of the operation and the detailed and prolix character of the guidelines and instructions issued from time to time. It can be missing of an information relating to the alteration a unit if administration, or the extension or abridgment, of an area as the case may be, or other adjustment due to other administrative reasons. Crude data has to be smelled at various levels and by various processes before they can attain the purity and brightness of the final figures. Only such final figures could be recognized and acted upon as the latest census figures. The above view is not a mere theoretical possibility or imaginary surmise. Even in the immediate past, it

has happened in the wake of the 1981 Census operations. The following passage from a judgment of this Court in *Shri Kondaji Dhondge and others v. State of Maharashtra*, ILR 1987 Bom 217 would demonstrate the actuality :

"It was also reported to the Government that the figures of population as per the 1981 census, in so far as the Tribal/Scheduled Caste population are concerned were wholly incorrect as the persons not belonging to the Scheduled Castes and Scheduled tribes got themselves recorded as Scheduled Castes and Tribes for various reasons."

24. A "Report of the Provisional Population Totals Maharashtra", was made available to us. We shall assume that there has been a publication of that report by the Director of Census Operations on the day on which the Preface has been written by the Director (on the Independence day of 1991). Even then it only contains the provisional figures which are still subject to scrutiny and finalisation.

25. Having regard to the scheme of the Act and the Rules, it could be concluded that census figures assume a needed finality only with the publication of such census statistics by Census Commissioner as provided under sub-rule (5)(1). We are, therefore, of the view, that the term "latest Census figures" in section 19 would take in only the latest Census figures as finally published by the Census Commissioner.

26. It is not difficult to appreciate the necessity for the election process being linked with some definite, specific, finalised and fixed time. The numerous exercise to follow in the election process, could not be left to a grey area of provisional figures or material in fluid state. If the legislature felt that it is safer and more proper to proceed with the firm and definite material as the latest census figures, that idea could have its real reflection in the crucial statutory provision. The obliteration of the Explanation which visualised the utilisation of even provisional figures, assumes greater significance in that context. A purposive idea should ordinarily be attributed to a conscious and positive act like the deletion of an earlier explanation. A change of language in an amending or repealing Act postulates a change of law. See *S.V. Natesa Mudaliar, Proprietor, S.L.N.S. Transports Vs. Sri Dhanapal Bus Service Private Ltd. and Others*, . This Court has applied the principle, in different contexts. Vide *Pramod M. Jhaveri and another v. Sukhdeo Ramrattan and others*, 1978 M.L.J. 300 and *Madanlal Sharma v. Smt. Santosh Sharma*, 1980 M.L.J. 391 : 1980 Bom.C.R. 218. The evaporation of the Explanation caused by the Legislative drier gives a new content and form to section 19. We are of the view that the stand taken by the State Government that it should proceed only on the basis of the figures of 1981 Census, is in conformity with the intent inferable from the altered section 19. In that view of the matter, subject to the constitutionality of the new provision now under attack, we have to uphold the draft notification published by the Government based on the basis of 1981 Census, and the final one, which followed that criteria.

27. The learned Government Pleader made reference in the course of his arguments to a communication addressed to the Census Commissioner, seeking information about the publication of the final census figures and the reply which indicated that the publication of final figures was expected only by middle of 1992. The endeavour, apparently, was to demonstrate the bona fides of the Government in acting in the manner in which it had done in October 1991 when it published the draft notification based on the 1981 census figures. It is unnecessary to pursue that submission in the light of the conclusion we have already reached above.

28. This leads us to the next step and stage in the argument, where the constitutional validity of the new section is attacked.

29. Counsel projected the following arguments to shoot down the new provision :

(a) Adoption of the population figures of an earlier period, nearly a decade old, would deny to the electorate, a valuable right to voice their demands and ventilate their grievances in the Municipal Council through a representative of a ward with a compact area and reckoned according to the latest population figures. This is particularly so, according to learned Counsel, in view of the vastness of the area and the fastness of the increase in the population;

(b) The Act, as amended, has provided for reservation for Scheduled Caste and Scheduled Tribes. Many people belonging to that class have swelled the population of the area of Greater Bombay. Only recently, there has been a recognition of a segment of such population the Neo Buddhists as belonging to Scheduled Castes. An omission to reckon them while deciding on the reservation of the seats for Scheduled Caste and Scheduled Tribes, can lead to a depletion in the deserved reservation;

(c) The figures indicated in provisional abstract of census figures make out a case of depletion in the population of the city area and sizable inflation in the Western and Eastern Suburbs. The adoption of the 1981 Census figures would work out manifest disadvantages to the disabled sections of the society.

30. The constitutionality question may be approached keeping in view a fundamental postulation of a presumption of constitutionality enjoyed by the State in respect of a legislative measure. Nor is the intention of the Legislature to be questioned. See *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, . It is equally profitable to bear in mind some basic postulates regarding the election and rights appertaining thereto.

31. The right to vote or to contest an election is the creature of the statute. It is essentially for the Parliament or the Legislature of a State to take note of the requirements in relation to the election process to be conducted under its auspices, at a particular point of time. Ordinarily in such administrative matters, the State which has the administrative equipment and expertise would be a better Judge in the formulation of the policy. Even if another view is possible, the

Court would not encroach upon policy areas which are normally to be kept off by the Courts of law. Dongde's case (supra), has rightly expressed the legal position thus :

"It is well settled principle that the right to vote or stand as a candidate for election is not a civil right, but is creature of statute or special law and must be subject to the limitations imposed by it."

32. The only ground taken in the writ petition to question the constitutionality of the amendment is that it deprives the petitioner of a "meaningful life". No foundation on facts or established legal principle is made out to support that plea. The history of Parliamentary democracy has witnessed deprivations of franchise for many. Such was the case with the well-known elections of England in 1945. See what Butler states in "The Electoral System in Britain at page 100-1:

"The election of 1945 was remarkable for more than its result... The Civilian register,was far from accurate, owing to the limitations of the National Registration Scheme and owing to a large number of removals at the close of war."

To ascribe to such circumstances the very annihilation of life and its meaning is to project an inconceivably ambitious contention or lofty proposition. We do not find any force in the plea and consequently repel the same.

33. In the present case, there is no case of any voter having been denied the right to exercise his franchise. A marginal change in the case of a nominal section of people has arisen only in respect of the ward in which he is to vote. This is the result of limitation imposed by the very statute under which he gets the right. The provision is neither arbitrary in its form nor capricious in its content. It clearly passes muster even when subjected to the rigorous tests visualised under Articles 14 and 19 of the Constitution of India.

34 The world has long passed the age of rotten boroughs and paid permanent election agents. New problems appear to have surfaced such as rigging the elections, capturing the both and subtle methods of enticement or intimidation of voters. Such problems do not in any way impinge upon the constitutional invalidity or the laws under which the elections are held. Constitutional practices and democratic behaviour and attendant eternal vigil against debilitating influences may be some of the antidotes. They are beyond the pale of discussion in proceedings of this nature.

35. In the present case, fortuitous circumstances have intervened between the time when the elections were due and the time when elections are proposed now. If election had been held in time, the census operations of 1991 would not have even commenced. The availability of new figurers (new but provisional figures) by end of 1991 is itself thus a fortuitous circumstances. The Legislature has given adequate thought on the necessity of reckoning the greater population in fixing the number of the Councillors. This is evident in the increase in the

number of the Councillors to be elected to the present figure of 227. Yet another fortuitous development is the reduction in the voting age from 21 to 18 and the correlative increase in the electorate. It cannot be said that the figure strength is not reflective of a recognition of the facility of affording strong enough voice of the people through their representative in the Municipal Council.

36. The express wording in relation to the division of the wards, is expressive of a difficulty in giving mathematical equality while drawing the boundaries of a ward or reckoning the population for the purpose of division of the wards. The Court cannot lightly discard the significance given by the Legislature by introduction of the new words in section 19, "as far as possible" and "approximately". That is yet another reason for our disinclination to rush to a verdict of unconstitutionality of the amended provisions.

37. This leads us to the further stage and further step in the arguments where the Ordinance and its provisions had been the target of attack. Basically, the amendment effected under the Ordinance, are in the area of reduction in the period in relation to the various election exercises. Thus, in the light of the Ordinance provisions, as regards an addition or deletion of any entry in the ward roll, a bar operates after 16 days of the publication of the ward roll, as against the period of 45 days under the pre-existing provision. Similarly, the period of filing the appeal is reduced from 15 days to 5 days. Under the amended section 19(1)(b)(6), a finality in the ward roll is reached after 16 days from the day of publication of the draft roll as against the earlier period of 45 days. The time for exhibition of particulars of application for inclusion of name u/s 19(1)(A)(b) stands reduced from one week to two days.

38. It cannot be said that the reduction in the period as regards matters alluded to above results in any irrational or unreasonable abridgement of the right provided in relation to the various election processes. If, having regard to the fast times and advanced operative facilities, the Legislature felt that those in the election fray, whether as voters or as candidates, should exhibit a sense of urgency, that cannot be faulted, at any rate in the constitutional plane. We repel the contention about the unconstitutional character of the amended provision on the basis of the ground as urged above.

39. A more spirited argument was made as regards the reduction of the campaign period from 21 days to 12 days. Here, the character of the election to a local authority has necessarily to be taken note of. In the earlier days of the evolution of elections to the local authority, every one was very familiar with each other in the small borough. The virtues and qualities of the candidates were well-known to the electorate. He was found moving almost shoulder to shoulder with the voter, whether it be in the farm or field the work place.

40. Counsel contended that the peaceful time of the good old days has vanished and is no longer available. The present surroundings with quickest pace in various developments and facets of life have totally changed the City-he

asserted. Doubtless, there have been vast changes. We have our limitations in endeavouring to make an accurate account of the sea of changes which have overtaken the area. Some consoling comfort comes in the form of recorded history, fortunately available. True, Bombay has changed; and changed much beyond recognition, from the time it became one of the possessions that came to Charles II as part of his marriage contract with the Portuguese Princess Catherine of Braganza. The industrialisation in the West and the entry of the corporate undertakings had their impact in Bombay and brought fast changes in its wake. John and Company became a familiar figure for Bombay. With Regulation of 1773, Government came into administration. The geographical features changed, so also the life style in food and dress. The opening of Railway (1853) also brought in its wake, not a reface but a revolution. It was not to those changes that Counsel referred to. His trust was on the change in population in the immediate context of the number of electors with direct link on election and the division of wards. In "The City of Gold Biography of Bombay by Gull Hall, there is a reference to this aspect as well.

"Bombay was growing. In 1780, it had 113726 people, by 1806 this was considered to have risen to 200,000 and by 1814 to 240000 in the early Thirties it took off again rising between 1832 and 1842 to 270000 or possibly considerably more".

The population explosion in later periods is well-known. ".... .. by 1911, it was close on a million. It has been rising ever since and the rate of rise has increased also" (Ibid P. 238). The population of this area has by now overshot a 10 million mark.

This phenomenal increase of population has its impact on election process as well. As observed by Noren D. Paliner in "Elections of Political Development. The South Asian Experience", these electoral processes are part of political system and in a larger sense, of the social system. Various problems connection with electoral process are dealt with exhaustively in that book including the modalities of electoral campaigns, which are of special and specific interest in these writ petition (See pages 106, 125-6 and 132). But, as noted by Bulter, "Even the simplest electoral system involves administration. The compilation and printing of an electoral register, the provision of polling places..... .. are all questions over which small difficulties must constantly arise" The author has further noted (Ibid page 3) how electoral processes have gradually changed and yet many traditions have survived and that much of the electoral reform has been non-controversial. These minor problems should not induce us to delay or defeat the election process, a process which proclaims the noble message, "ballot not bullets".

The growing population has added to this difficulty in approaching the electorate personally; but this is more than offset by scientific achievement and emergence of a strong media (Press & TV) in recent times. It is no longer necessary for the candidate to move so closely (as is generally done in the election time) with the electorate to fondle a kid or kiss a grand-ma, to present a smile or promise the

moon. The stress and strain of his addressing a speech at every street corner with the attendant risks of facing a brickbat, an annoying heckling or the hurling abuses are also avoided. Fast moving automobiles equipped with illuminated posters and screeching amplifiers are multipurposed and speedy. The tempo vans can carry many to shout the slogans and to sing a litany of the virtuous contestant. A jeep, better if it is a four wheel drive- would cover the most neglected of the roads or the steepest ascents. If such vehicles are too costly, then there are the two wheelers and three wheelers. These are all additional facilities in speed and effect which could reach any message to the electorate in the posh flat and the humble hut. In a sense, it is much relief both to the campaigners, and those amongst whom the campaign takes place, to have a quicker pace of action and a compressed space of time, for the campaign to close. The reduction in the campaigning period, to our minds, is totally unobjectionable and is sufficiently insulated against attack grounded on Constitutional points.

41. The attack on the increase in the deposit fee fixed for contesting the election from Rs. 200/- to Rs. 500/- is equally fragile. "The intention behind a deposit fee is to discourage free and propaganda candidatures and there could be little doubt that in recent years there could have been many more candidatures but for this limitation". (See Butler page 167). Recent experiences have posed the poignancy of the problem and even the necessity of far more stringent measures. The wisdom of providing for deposit fee is not under attack. The upward trend in the price of materials or costs of services, in every aspect of life, would fully justify the increase in the deposit fee. The revision is only a partial reflection of inflation in relation to various monetary transactions.

42. Then comes the argument of excluding an M.P., M.L.A, Zilla Parishad member from the election contests of Councillors. This restriction has to be understood in the back drop of the functions, responsibilities and duties of an MP, MLA or Zilla Parishad member.

43. A member of Parliament has to face high exactions on his time and his health. Even if uninitiated into the lessons of law (Our Constitution and the Representation of People Act do not insist on any educational qualifications, whether it be in Parliament or in the Legislatures), he has to be involved in the law making process. He has to formulate intelligent questions, to catch the speaker's eye, and to intelligently intervene in the interpretation. His words in print are read with critical interest; and in those days, even his gestures and gesticulations would be viewed by his electorate over television. Alike in problems of national and international character, he has to be mindful of the local needs. He has not merely to nurse his constituency but also to undertake a "constituency surgery", when pressed in that behalf. A distinguished Speaker, George Thomas Viscount Thonycandy, observed how "newly elected MPs are exposed to all sorts of pressures and temptations, and it is easy for a novice to get into trouble-as I did". (See Mr. Speaker page 57). The pitfalls and pot-holes

pose threats even to experienced veterans. Long and frequent travels a wearying experience to ordinary mortals have to be undertaken when he is shuttled between his constituency and the Parliament when it is in session. A Member of Parliament, in such circumstances, may not be able to do justice to his local ward and its daily needs, while they are decided upon by the administration or discussed in the Council. Quite often, it could be even risky to sit between two stools.

In one sense, a member of Parliament has been almost made "a slave to his constituency" Earl Kilmuir felt it to be a modern fetish. (See Political Adventure-By Earl Kilmuir page 326). That, however, is an indication about an exaction made on a Member of Parliament.

As regards, A leader of the House, it was observed :

They physical task alone is sufficient to shatter the health of any man who is not a robust man. The intellectual gifts which are required are great and secular-readiness, perfect command of temper, good humour, a certain dash of wit, a facility and promptitude in repartee."

Though these qualities needed for a leader may not be necessary in full measure for the follower, many are desirable, even if not indispensable, in such a Member.

44. Many distinguishable personalities have expressed their views about the election process and its qualities. One who had an extra ordinarily shrewd mind referred to election not in very complimentary terms, when he stated :

"It is a vile business this electioneering, though no doubt it is chastening in its effects. They say that mud baths are healthy and purifying and I can compare it to nothing else."

(See Memories and Adventures- Arthur Conan Doyle page 207).

Many among the intelligentsia have avoided plunging into its difficult and deep waters of elections. Swinburne declined an offer for contesting election. The scholar philosopher who wrote about Liberty, John Stuart Mill, was little better than a failure in the House of Commons. Dickens declined to throw his hat into the election arena. Conan Doyle was happy when, after the election, he was returned not to the House, but to the sweet home. These and other experiences of able man show the arduous nature of the duties of an M.P.

45. The Constitution and the election laws discountenance divided attention of an M.P., by diverse provisions. Holder of an office, is ineligible to contest the election. (See Section 19(f) of the Act). What is true of the MP, is true in a substantial measure about the member of the Legislative Assembly and Zilla Parishad. The recent legislative measures increasing the salary and perquisites (including pension) of the elected representatives of people, to throw light on a virtual full time employment of such persons, rendering their position almost the same as busy government officials. Divided attention in such circumstances

would be against public interest. This is not an area where one would admire a jack of all trades; his little acknowledge can indeed be a dangerous thing. To exclude such a busy person from the area of local administration is a proper recognition of the complication of modern life, and is a reasonable provisions; its absence, in a way, will be irrational and unreasonable. If the Ordinance provided for such a realistic, rational, and reasonable provision, the Constitutional Court will not strike it down.

46. Yet another contention raised in ground 11(h) is about restricting the extended term of office to 31-3-1992 as against the earlier date of 30-6-1992. The base of the attack is the intention of the respondents to take advantage of the present political situation". When it has been decided to hold the polls on 12-2-1992 and when the programme of election schedule (Para II Item 11) visualises the publication of the results on 20-2-1992, a "time-expired Councillor" cannot entertain a legitimate desire to continue to squat on his seat. It is useful to bear in mind that even in established democracies the Prime Minister's ability to chose an election date" has been always accepted; and "ideally he is likely to act for a time when he is most likely to win". (See Constitutional Practice by Rodney Brazier p. 82). The contention has no moral grace nor legal force. We have no hesitation in repelling it.

47. It was contended somewhat feebly that the Ordinance itself was mala fide. The Ordinance 12 of 1991 was promulgated by Governor on 27-12-1991 within a few days of the end of Session of the Legislative Assembly. The Legislature could have addressed itself on the aspects provided by the Ordinance during the Session; the side lining of the Legislature exhibits the ugliness and bad faith in the action. There are other indications of sly designs it is contended.

48. The Ordinance itself says that the Act is to be amended only temporarily. It is suspected that once the current elections are over, the Executive may not care to face the Legislature for replacing the Ordinance with an Act and may allow the Ordinance to lapse once the purpose is accomplished in the intervening period. The writ petition does not contain satisfactory or sufficient averments to sustain an attack on the ordinance.

49. There could be a variety of reasons which made it impossible for the Government to introduce the Bill and complete the formalities needed for the deliberation over the same by the House. Those are factors to weigh with the authorities. It cannot be assumed, without more, that the Executive managed a manipulative mala fide measure to be promulgated by a high constitutional functionary with considerable administrative acumen.

50. The introduction of the term "temporarily" in relation to the amendment of the Act attempted under the Ordinance is not of any material consequence. Even if the word is missing it is open to the Executive to allow the Ordinance to lapse. Even if it is not allowed to lapse, the Legislature could modify it in the manner ultimately resolved upon by it. Circumstances such as those which obtained in

the decision in *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, , are not present in this case. It is impossible to accept a challenge against the legislation on the ground of mala fides, as was attempted as regards the amendment Act and the Ordinance. It is well settled that as regards legislative measures, allegation of mala fides are unavailable See *Captain B.D. Gupta Vs. State of U.P.* and another, , where it is observed :

It is well-settled that no legislation can be challenged on the ground of mala fides".

51. We may also indicate one more circumstance which persuaded us to decline jurisdiction under Article 226 of the Constitution in the present case.

52. The draft notification based on the figure of 1981 Census was published on 19th October, 1991. The final notification came in on 29-11-1991. Yet, the writ petition was moved only on 30-12-1991. Under the present schedule, the commencement of the election process is imminent. It is now well settled that when election process has commenced, the Court should not exercise its jurisdiction to halt or impede that process. That is the view taken by the Supreme Court soon after the country came under Constitution. The decision in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and the subsequent decisions in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , *Barua v. Election Commission of India*, AIR 1981 S.C. 1911, and *Laxmi Charan Sen v. A.K.M. Hassan Uzan*, AIR 1985 S.C. 1233 all fortify our view. The election process is formally set into motion by the announcement of the President or the governor, as the case may be, by the issue of notification calling upon the electors to elect their representatives. (See *The Electoral Process in India* p. 113). The operations covered by election commences from the initial notification and culminates in the declaration of the return of a candidate. (See para 28 in *Mohinder Singh Judgment Supra*). The reference by its section 8 sets out the date of notifications as 20-1-1992.

53. Massive administrative work, involving investment of much money and energy, has been already carried out to bring matters to the present stage. A casual demand for a wipe-it-off and do-it-all-over again cannot in the above circumstances, be easily acceded to by a Constitutional Court. The Court shall not, in the absence of compelling reasons, put any block in the conduct of the election in the busiest area of Greater Bombay, particularly when the elections were long over-due, even as early as in 1990.

54. On consideration of the totality of the circumstances, we are of the view that the petitioners have not been able to establish any unconstitutionality in the impugned statutory provisions or executive exercise. The writ petition do not contain adequate ammunition nor striking power to strike down the statutory provisions.

The petitions are accordingly dismissed.

Counsel for the petitioners in Writ Petition No. 20 of 1992 sought stay of the judgment. We are not satisfied that any ground exists for the same. It is declined.

Certified copy to be issued expeditiously.

Petition dismissed.