(2006) 03 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition No''s. 74 and 540 of 2006

Nitin Shirsat APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 20, 20(2), 20(3), 20(5), 21
Bombay Provincial Municipal Corporations Rules, 1949 — Rule 3(3)
Constitution of India, 1950 — Article 226

Citation : (2006) 4 ALLMR 296 : (2006) 5 BomCR 698 : (2006) 3 MhLj 601

Hon'ble Judges : N.V. Dabholkar, J;M.G. Gaikwad, J

Bench : Division Bench

Advocate : S.S. Chaudhary, in W.P. No. 74 of 2006 and V.J. Dixit and N.R. Katneshwarkar, in W.P. No. 540 of 2006, for the Appellant; E.P. Sawant, Government Pleader for respondent No. 1, P.M. Shah and Mukul Kulkarni, for respondent Nos. 2 and 3 and A.S. Sawant, for respondent Nos. 5 to 9, 16 to 19 in W.P. No. 74 of 2006 and K.G. Ghute Patil, Assistant Government Pleader for respondent No. 3 and M.L. Sangit, for respondent Nos. 4, 10 to 15 in W.P. No. 540 of 2006, for the Respondent

Final Decision : Allowed

Judgement

N.V. Dabholkar, J.—Both writ petitions under Article 226 of the Constitution of India are clubbed together since common challenge and common question of law is raised by the two petitions. All three petitioners (one in Writ Petition No. 74/2006 and two in Writ Petition No. 540/2006) are elected councillors of the Municipal Corporation of Dhule. The petitioner in Writ Petition No. 74/2006, in addition; was also elected as member of the Standing Committee of the said Corporation for two years. He along with 7 others retired as members of the Standing Committee on due completion of their tenure.

2. The factual matrix in both the writ petitions is common and undisputed, which can be narrated in brief as follows:

General elections of Dhule Municipal Corporation were held on 8th December, 2003. Total 67 Councillors were elected and 5 were co-opted. Thus, the strength of Municipal Corporation is 72. On 30-12-2003, in the first General Body Meeting of the Corporation, Mayor was elected, so also, 16 members of the Standing Committee were elected. On expiry of one year, 8 members of the Standing Committee, drawn by following procedure of lots, retired on 1st December, 2004 and were duly substituted by new 8 members. Similarly, on 1st December, 2005, senior 8 members of the then Standing Committee retired and in their places, 8 new members were added to the Standing Committee by election held on 31st December, 2005.

The Municipal Secretary of Dhule Municipal Corporation issued a notice dated 2nd January, 2006, convening a meeting of the Standing Committee on 10th January, 2006, for the purpose of election of Chairman of the Standing Committee. This notice and consequent meeting is under challenge as illegal being contrary to the provisions of Section 21 of the Bombay Provincial

Municipal Corporation Act, 1949 (henceforth referred to as "the said Act" for the sake of brevity).

3. Heard Shri S.S. Chaudhary, Advocate, and Senior Counsel, Shri V.J. Dixit, for petitioners in respective writ petitions; Government Pleader Shri E.P. Sawant, for respondent No. I/State in Writ Petition No. 74/2006 and Senior Counsel Shri P.M. Shah, for respondent Nos. 2 and 3. Assistant Government Pleader, Shri K.J. Ghute Patil for State/respondent No. 3 in Writ Petition No. 540/2006, has practically adopted the arguments advanced by Senior Counsel, Shri P.M. Shah, for respondent Nos. 2 and 3 in Writ Petition No. 74/2006 and respondent Nos. 1 and 2 in Writ Petition No. 540/2006. Respondent Nos. 4 to 19 in both the writ petitions are present members of the Standing Committee. Respondent Nos. 4, 10 to 15 are represented by Advocate Mrs. M.L. Sangit. By mutual consent of the Lawyers, rule was made returnable forthwith and matter was heard for final disposal.

4. In order to appreciate the submissions advanced by the two sides, it is desirable to refer to and for the purpose to reproduce portion of relevant provisions for ready reference. We are mainly concerned with Section 20 and Section 21 of the Bombay Provincial Municipal Corporation Act, 1949, and we reproduce herein below the relevant portions :

Section 20. Constitution of Standing Committee. -- (1) The Standing Committee shall consist of sixteen councillors.

(2) The Corporation shall at its first meeting after general elections appoint sixteen persons out of its own body to be members of the Standing Committee.

(3) One-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which the first meeting of the Corporation mentioned in Sub-section (2) was held :

Provided that....

(4) The members who shall retire....

Provided that....

(5) The Corporation shall at its meeting held in the month preceding the date of retirement specified in Sub-section (3) appoint fresh members of the Standing Committee to fill the offices of those who are due to retire on the said date.

(6) ....

Section 21. Appointment of Chairman of Standing Committee . -- (1) The Standing Committee shall at its first meeting after its appointment under Sub-section (2) of Section 20 and at its first meeting in the same month in each succeeding year appoint one of its own member to be the Chairman.

(2) The Chairman shall hold office....

(3) Notwithstanding the provisions of Sub-sections (1) and (2) the Chairman shall vacate office as soon as he ceases to be a member of the Committee.

(4) If any casual vacancy occurs in the office of the Chairman,...

(5) If for any reason the Standing Committee does not appoint the Chairman under Sub-section (1) or (4), within a period of thirty days from the date of its appointment under Sub-section (2) of Section 20, or from the date following the date of retirement of one-half of the members specified in Sub-section (3) of that section, or from the date on which a casual vacancy occurs in the office of Chairman, as the case may be, the appointment of the Chairman, after the expiry of the said period, shall be made by the Corporation, from amongst the member of the Standing Committee, at a special meeting called and held for the purpose within fifteen days from the expiry of the said period of thirty days. At such meeting, the question shall be decided by a majority of votes of the Councillors present and voting and if there be an equality of votes, the presiding authority shall have an exercise a second or casting vote. Every Chairman so appointed,

... (Emphasis supplied)

5. From the provisions quoted hereinabove, it is evident that tenure of the Standing Committee, as well as, Chairman is of one year. The complexion of the Standing Committee changes every year and it changes in the same month in each succeeding year, in which the first meeting of the Corporation mentioned in Section 20 Sub-section (2) was held i.e. meeting for election of 16 persons as the members of the Standing Committee. From Section 20, Sub-section (5), it is evident that it is obligatory on the Corporation to hold a meeting for election of fresh members of the Standing Committee (eight in numbers) to fill the offices of those who are due to retire on the prescribed date and the prescribed date, as can be seen from Sub-section (3) of Section 20, is first day of the month of

every succeeding year, in which first meeting of the Corporation u/s 20(2) was held.

From Sub-section (21), and more particularly, Sub-section (5), it is evident that responsibility to elect its Chairman is required to be fulfilled by the Standing Committee within a period of thirty days (and the time from which this period of thirty days is to be computed is the issue of controversy in the present matter). From the said Sub-section (5), it is evident that in case of failure on the part of the Standing Committee to so appoint the Chairman within a period of 30 days, the Corporation (Full House) is required to convene a special general meeting for election of the Chairman from amongst the members of the Standing Committee and this is required to be done within a period of 15 days from the expiry of the said period of 30 days during which the Standing Committee is obliged to elect its Chairman.

6. In the matter at hands, since it is not in dispute that the general elections were held in the month of December, 2003 and the Mayor, as well as, first Standing Committee were elected on 30th December, 2003, the date of retirement of 50% members of the Standing Committee is 1st December of every year i.e. 1st December, 2004, 2005, 2006 and 2007. It is also not in dispute that there was retirement as required by the statute in December, 2004, so also, fresh appointments of new members to the Standing Committee. So far as December, 2005 is concerned, the election for the purpose of filling in vacancies of the eight retired members of the Standing Committee, the meeting of the Corporation was held only on 31st December, 2005 and, therefore, it is obvious that the Corporation had failed to respond to its responsibility as cast upon it by Sub-section (5) of Section 20, to keep ready the list of 8 Standing Committee members to take office in place of those who were due to retire on 1-12-2005. It may not be out of place to say that to quite a considerable extent; this failure of the Corporation has given rise to present litigation. It is required to be inferred and there need be no dispute over it, that the Standing Committee did not elect its Chairman on 31-12-2005, immediately after its constitution by substitution of 50% (8) members.

7. It was submitted by S/Shri S.S. Chaudhary, Advocate, and Shri V.J. Dixit, Senior Counsel, that the words used "in the same month" in Section 21(1) of the said Act put an outer limit on the Standing Committee to hold its meeting and elect its Chairman from amongst its own members in the month of December, because first meeting of the Corporation u/s 20(2) of the said Act after general elections, for electing 16 members of the Standing Committee was held in December, 2003. Although fresh Standing Committee was constituted on the last day i.e. 31-12-2003, the Committee could have met on the same day and elected the Chairman. Having not done so, now the Standing Committee cannot elect its Chairman. Even after taking into consideration Sub-section (5) of Section 21, according to learned Counsel for the petitioners, the period of 30 days, in the fact situation of the matter, can be computed only from 1st

December, 2005 which was the date of retirement of one half of the members.

According to Senior Counsel, Shri P.M. Shah, which arguments were also subscribed by learned Assistant Government Pleaders, the phrase "in the same month" in Section 21(1) is required to be interpreted in the light of time limit of 30 days prescribed by Sub-section (5) of Section 21. According to Shri Shah, that will be correct way of purposeful interpretation of the statutory provision. He has pointed out that in the matter at hands, the Corporation has not fulfilled its responsibility of substitution of 8 members on the 1st December, the date of retirement of one half members and, thus, the Corporation has deprived the Standing Committee of its statutory right to elect its Chairman. This will be the situation, if interpretation, as suggested by learned Counsel for the petitioners, is accepted. According to Shri P.M. Shah, Senior Counsel, therefore, the period of 30 days must be computed from 31st December, 2005 when the new Standing Committee was constituted. According to Shri Shah, the words with which Sub-section (5) begins "If for any reason, the Standing Committee does not appoint the Chairman...", indicate that there must be an attempt and failure of attempt on the part of the Standing Committee to elect a Chairman and only in that case, the full house of the Corporation will have to elect the Chairman of the Standing Committee by a majority vote in the special general meeting convened for the purpose.

8. Regarding the argument of Senior Advocate, Shri P.M. Shah, that opening part of Sub-section (5) of Section 21, "if for any reason, the Standing Committee does not appoint the Chairman...", indicates that there must be an attempt and failure of attempt on the part of the Standing Committee to elect a Chairman, cannot be accepted by any stretch of imagination. This is because, interpreting the opening clauses in that fashion would enable the Standing Committee to keep the issue of election lingering/pending till eternity. If the interpretation as suggested by Shri Shah is to be accepted, unless the Standing Committee holds a meeting and fails to elect the Chairman in the said meeting, the powers to elect the Chairman would not revert to full house of the Corporation, as contemplated by later half of Sub-section (5) of Section 21. Such an interpretation will also throw away the outer time limit prescribed by the said provision upon the powers of the Standing Committee to elect its Chairman. Irrespective of the dispute as to how the period of 30 days for election of the Chairman by the Standing Committee is to be computed, and what is the starting point of this period of 30 days, it must be taken a note that the statutory provisions pass the powers to the full house, in case, Standing Committee does not act with promptness and within statutory time limit. It is evident that the legislators desired that office of the Chairman may not be kept vacant due to default on the part of Standing Committee to elect its Chairman. That is why there is outer time limit on the Standing Committee to elect the Chairman and if it fails to so elect, there is also outer time limit on the powers of the full house to elect the Chairman of the Standing Committee. (Unfortunately in this matter, both the statutory authorities have failed to act with desired promptness and

undesired situation of Standing Committee without elected Chairman appears to be the likelihood).

For any reason" is the phraseology which ought to include both types of failure to elect the Chairman i.e. in spite of attempt or without attempt. Only election of Chairman by the Standing Committee would be contra to, "failure to elect for any reason". In the light of outer limit prescribed, it may not be possible to distinguish the failures to elect, as tried to be classified by Senior Counsel, Shri P.M. Shah, i.e. failure to elect in spite of attempt and failure to elect due to no attempt. We are unable to agree with such an interpretation tried to be propounded by learned Senior Counsel, Shri P.M. Shah.

9. So far as election of the Chairman of the Standing Committee, on conjunctive reading of provisions of Section 20 and Section 21 of the said Act, it can be seen that Section 21, Sub-section (1), and Section 21, Sub-section (4), contemplate three contingencies in which Chairman of the Standing Committee is required to be elected. The first one is after constitution of the Standing Committee in accordance with Section 20(2) of the said Act i.e. immediately after general election. Later half of Section 21(1) indicates the second contingency i.e. at its first meeting in the same month in each succeeding year. This is election of the Chairman of the Standing Committee, as soon as, complexion of the Standing Committee is changed at the end of each year by retirement and substitution of half the members. Sub-section (4) of Section 21 considers the third situation when a casual vacancy occurs in the office of Chairman, may be for reasons unforeseen, such as, death or resignation or disqualification from being a corporator.

On reference to Sub-section (5) of Section 21, it is evident that the provision within itself contains the time limit in all three contingencies, although the opening part of the provision begins with reference only to Sub-sections (1) and (4). We are unable to resist the temptation to reproduce in analytical manner, that much portion of Sub-section (5), which relates to time limit in electing the Chairman of the Standing Committee :

...Within a period of thirty days from the date of its appointment under Sub-section (2) of Section 20.

or

from the date following the date of retirement of one-half of the members specified in Sub-section (3) of that section

or

from the date on which a casual vacancy occurs in the office of Chairman, as the case may be, ...

The submission of learned Senior Counsel, Shri P.M. Shah, that there is outer limit of 30 days, is acceptable. However, we may not agree, if it is suggested that the period of 30 days is to be computed from the date on which fresh Standing Committee is constituted from year to year and for the next year. The three clauses, as reproduced hereinabove, clearly indicate that there are different points of time in each clause indicated as the starting point of computation of period of 30 days, available to the Standing Committee for election of its Chairman by itself. The period of 30 days is to be computed in case of first Standing Committee elected at the election of the general body, immediately after general elections u/s 20(2) of the said Act; from the date of such constitution of new Standing Committee immediately after general elections. By third clause, the period of 30 days is to be computed from the date on which the casual vacancy occurs.

So far as election of the chairman of the new Standing Committee every year, the starting point is the date of retirement of half of the members specified in Sub-section (3) of that section. Consequently, the second clause is required to be read with Sub-section (3) of Section 20. On reference to the said provision, it is evident that the legislation in its wisdom has not left the date of retirement at the option of the member of the Standing Committee. Half of the members of the Standing Committee, at the end of first year, by procedure of drawing lots and at the end of succeeding years, the senior half members of the Standing Committee stand retired on the first day of the month in which the first meeting of the Corporation, as mentioned in Sub-section (2) of Section 20, was held. Thus, even if the first meeting of the Corporation for election of first Standing Committee was held after expiry of major portion of the calendar month, that will not enable the first Standing Committee to continue to be Standing Committee exactly for a period of one year and upto the date of the same calendar month of the succeeding year on which they were elected immediately after general elections. If they are elected on the first day of the calendar month, the tenure of the members of the first Standing Committee may be exactly 365 days. But if they are elected in the general body meeting of the Corporation held on later date of the month, the life of the first Standing Committee shall stand curtailed to that extent from exact period of one year. If they are elected on the last day of the calendar month, their tenure practically would be only 11 months. By Sub-section (3) of Section 20, legislation has left no option to the members of the Standing Committee and they retire on the first day of the month of the succeeding year in which they were elected at the first meeting of the Corporation u/s 20(2). In the matter at hands, new complexion of the Standing Committee was and is due on every 1st December. Such an interpretation is strongly supported by Sub-section (5) of Section 20 which casts an obligation on the Corporation to appoint fresh members in the month preceding the date of retirement specified in Sub-section (3) of Section 20. Thus, in the case of subject Corporation, the constitution of the Standing Committee was to change on 1st December of every succeeding year and it was the responsibility of the Corporation to elect the half members of the Standing Committee to be substituted in place of members retiring on 1st December in the month of

November itself.

On reading the relevant portion of Sub-section (5) of Section 21, to be precise, the second clause out of the three clauses reproduced hereinabove, in an analytical manner for convenient consideration, in the light of Section 21(1) and (4), as also, Section 20(2), (3) and (5), the interpretation as propounded by learned Senior Counsel, Shri P.M. Shah, does not seem to be acceptable. The date of retirement of half the members of the Standing Committee in the succeeding years and starting point for computation of limitation of 30 days for election of its Chairman by the newly constituted Standing Committee is fixed by the statute to be the first day of month of succeeding years, in which the first Standing Committee, immediately after general elections was constituted.

10. Consequently in the matter at hand, the Standing Committee ought to have held a meeting for the purpose and elected its Chairman on 31st December, 2005 itself. The submission of learned Senior Counsel, Shri Shah, that if there is majority of different parties in the Corporation and in the Standing Committee (which contingency we are unable to agree, in the light of manner in which political equations change as we perceive from the newspapers), the provision may be taken benefit by the Corporation to deprive the Standing Committee of its statutory right to elect its Chairman. Firstly, we do not visualize such a possibility. Even in the present case which is extreme case of its nature, Standing Committee could have elected its Chairman on 31st December, 2005 in spite of the delay on the part of the Corporation, to elect the Standing Committee. In the fact situation of the case, we also do not find Corporation being able to take advantage of the situation because the period of 15 days during which Corporation could have elected the Chairman of the Standing Committee, has also expired and at least for this year, the Standing Committee of the subject Corporation will have to work without elected Chairman, due to default on the part of both, the Corporation, as well as, the Standing Committee, to observe the discipline laid down by the legislature so far as time limits for election of Chairman are concerned. We do not find the Standing Committee being unable to function due to such a situation. On reference to Schedule "D" which are the rules framed u/s 453 of the said Act, and more particularly, on reference to Rule 3(3) as contained in Chapter IInd pertaining to the proceedings of the Corporation, Standing Committee, Transport Committee, etc., it is evident that the Standing Committee can transact its business in the absence of Chairman by choosing one of the members to be the Chairman for the occasion.

11. Having arrived at a conclusion that the starting point for computation of period of limitation of 30 days during which the Standing Committee can elect its Chairman is first day of the same calendar month, in which first Standing Committee was elected after general elections, the same is 2nd of December in the matter at hands and, therefore, period of 30 days expired on 31st December, 2005 by taking 2nd December as day one for the purpose of computation, since the retirement of half the members of the Standing Committee was to take effect

on 1st December, 2005. The notice dated 2nd January, 2006 convening a meeting for election of Chairman of the Standing Committee on 10th January, 2006 is, therefore, violative of Section 21 of the Bombay Provincial Municipal Corporations Act, 1949 and is required to be struck down.

12. The Writ petitions are, therefore, allowed. The notice dated 2nd January, 2006 and consequent meeting held on 10th January, 2006 is illegal and, therefore, the result of the meeting which might have been kept sealed in view of interim order of this Court dated 9th January, 2006, shall be no result in the eye of law and shall never be declared.

Rule absolute accordingly.

