
(1983) 12 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 3994 of 1983

N.N. Khubchandani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-12-1983

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 51A

Citation : (1988) 4 BomCR 139

Hon'ble Judges : S.K. Desai, J;S.C. Pratap, J

Bench : Division Bench

Advocate : N.K. Singhvi and B.N. Singhvi, for the Appellant; V.A. Gangal, A.G.P., for the Respondent

Judgement

S.K. Desai, J.—The petitioner before us is one Notandas K. Khubchandani, a resident and businessman of Ulhasnagar. He is an elected Municipal Councillor of the Ulhasnagar Municipal Council. In paragraph 1 of the petition he has stated that he pays large income tax, that he has never been charge sheeted for committing any crime and has served as Chairman of Public Works Committee for three successive terms.

2. Section 51 of the Maharashtra Municipalities Act, 1965 provides for the election of a President and co-option of Councillors. Section 51(A) which was subsequently introduced makes provision for appointment of a Vice-President and it is provided that every Municipal Council governed by the Act shall have a Vice-President who is to be appointed by the President from amongst the elected or deemed to be elected Councillors. The appointment is to be made before the first meeting convened by the President of the Council is held or within seven days from the date on which the vacancy in the office of the Vice-President occurs. Under Clause (b) of sub-section (1) of section 51-A the President is to intimate the name of the Vice-President appointed by him to the Collector and the State Government forthwith and also give intimation of the same to the Councillors at the Council meeting held immediately following such appointment.

3. Under sub-section (2) of section 51-A, the appointment of Vice-President by the President is made subject to the approval of the State Government within a period of sixty days from the date of receipt of the intimation provided in sub-section (1). The State Government may by its order either approve or disapprove and cancel the appointment of the Vice-President. Intimation of such order is to be given to the President and there is provision that if intimation is not sent within the period of sixty days the appointment shall be deemed to be approved.

4. As the statutory provisions stand sub-section (1) of section 51-A would seem to confer a discretion on the President to nominate the Vice-President he wants and sub-section (2) would seem to give discretion to the State Government either to approve of the nomination or disapprove the same and cancel the appointment of Vice-President.

5. The short question to be considered in this petition arises from the sequence of events whereby the nomination of the petitioner by the President has been repeatedly disapproved by the State Government.

6. It would appear from the petition that the President of this Municipal Council is one Prahlad H. Advani who along with the petitioner belongs to Bharatiya Janta Party. It is further alleged that the majority of the Councillors of this Municipal Council belong to the said party. It would appear that in 1981-82, one Shyamdas Mohandas Gurnani was the Vice-President of this Council and when his term was to come to an end on 26th June, 1982, the said Advani, who was the President of the Council, appointed the petitioner by his order dated 27th July, 1982, as the Vice-President of the Council. Necessary intimations were given and since the State Government's order was not communicated to the President within sixty days as provided, the appointment of the petitioner was deemed to have been approved.

7. The term of this Vice-President was to expire on 26th July, 1983. By his order dated 25th July, 1983, President (the said Advani) exercising his powers under sub-section (1) of section 51-A appointed the petitioner for another term effective from 27th July, 1983. Intimations were given to the Collector and the State Government. However, this time, unlike the previous year, the Government disapproved the said appointment and cancelled the same by its order dated 14th September, 1983. By a fresh order the President (the said Advani) once again appointed the petitioner as the Vice-President of the Council for a period of one year. Intimations were again given to the Collector and the Government of Maharashtra by its order dated 10th November, 1983, the Government has disapproved the same and cancelled the said appointment. It is this order which is under challenge in the petition. The petitioner has also impugned what the petitioner describes as a direction at the end of the said order which is atleast a suggestion that the President should not consider the petitioner for appointment as Vice-President of the Ulhasnagar Municipal Council again.

8. Various grounds have been averred in the petition as regards the vulnerability

of the said order and these are summarised in paragraph B. Before dealing with these grounds we may refer to the return made on behalf of the State which consists of an affidavit filed by the Harishchander Uddhav Pitale, Desk Officer. The said Affidavit refers to the complaints received by the Government in respect of the working of the President of the Ulhasnagar Municipal Council viz. the said Advani and goes on to say that after issue of a show cause notice to the said Advani and giving him a hearing in January and May 1983, the Government held the charges of corrupt practice proved against him (the said Advani) and removed him from office as President. The affidavit goes on to say further that the said Advani had thereafter filed a writ petition in the High Court and obtained stay of the order of removal. Although the affidavit in this connection is not very happily worded the purport of the statement after the aforesaid facts is to the effect that in the circumstances the Government came to the view that it was not proper to approve the name of the petitioner as the Vice-President for the second term since his appointment had been made by the said Advani who had been removed as President by the Government but had only obtained a stay of the order of removal. We have carefully perused the entire return and the return does not contain any allegation against the petitioner personally or even indicate that he was at all unfit to hold the office of Vice-President or be considered for the said appointment.

9. The learned A.G.P. on our suggestion has very fairly handed over the file to us and same impression is borne out by the perusal of the file. It is not found anywhere either in the return or in the file pertaining to this appointment that there was any allegation whatsoever against the petitioner as regards his unfitness to hold the office or any other circumstance pertaining to the petitioner personally from which the Court may feel that he ought not to be considered for being appointed as the Vice-President.

10. It has been urged in the return that the last sentence in the order dated 10th November, 1983 does not contain a specific instruction or a direction but merely a suggestion. Perhaps proper reading of that sentence may create the impression but this was obviously not what was intended. Perhaps although it was intended to give a specific direction it was subsequently realised that there was no such clear statutory provision and what was intended as a direction or an order got modified into a suggestion for consideration.

11. Whatever that be we find that the status does not contain any guidelines regarding the appointment to be made by the President except that the Vice-President should be one of the Councillors which the petitioner undoubtedly is or pertaining to the action to be taken by the Government on receipt of necessary intimation from the President. This however can not be taken to imply that either the President or the Government exercising their powers under sub-section (1) or sub-section (2) respectively can act arbitrarily, capriciously or whimsically. It is possible to hold that there is no scope for a hearing or for passing a speaking order. This however cannot imply that it is absolutely in the direction of the

Government to approve or disapprove of the appointment of the Vice-President and that disapproval can be made without the slightest basis for the same or on a basis which is totally irrational or capricious. The basis suggested in return that the appointment made by the said Advani was not acceptable, is in our opinion, totally whimsical and irrational. If that basis regarded as proper it must imply that Ulhasnagar Municipal Council can never have a Vice-President, unless the President (the said Advani) nominates a councillor in whom not the President but the Government has confidence. That can not be and if this view of the Government is accepted it must result in a stalemate in the sense that Advani will go on nominating the person of his confidence as a Vice-President or might go on nominating the petitioner as the Vice-President and the Government will go on disapproving and cancelling the appointment. The powers of disapproval and cancellation are undoubtedly wide. If they are exercised bona fide and with barest of material (against the nominee) being present to the Government, then it is quite clear that there is no scope for judicial review of such action. However, the material must have some reference to the capacity of the petitioner or the conduct of the petitioner. In the present case the basis and action really turn on the conflict going on between the President the said Advani and the Government. If there was any material against the petitioner available either in the return or reflected to the slightest degree in the file which we have persued, then we would have been very reluctant to embark on a judicial review or appraisal of the material or to suggest that some hearing is required to be given to the petitioner on the material. Since there is no material on the file or in the return against the petitioner our task is much easier. The total absence of any material against the petitioner compel that the action of the Government indicated in the letter dated 10th November, 1983 disapproving the appointment of the petitioner as Vice-President is wholly arbitrary and capricious and is based on thoroughly irrelevant considerations. If that be so then this disapproval would be required to be quashed.

12. If the order of the Government contained in the communication dated 10th November 1983 is quashed we have the position that more than sixty days have lapsed since intimations of the petitioners name to the Government. If that be so, the petitioner's appointment as the Vice-President is deemed to have been approved by the Government. In any case that would be the necessary corollary of the view we have expressed above that since there was no material whatsoever permitting Government's disapproval, the Government was obliged either to expressly approve of the appointment or keep quiet and allow the period of sixty days to lapse by which fact the appointment would be deemed to be approved.

13. In the return a point has been made that neither the President nor the petitioner challenged the first disapproval. We find no substance in this argument. By not challenging the first disapproval would not imply acceptance of the order of disapproval. What the President did and perhaps rightly was to emphasis his own choice by making the appointment of the petitioner once

again. It is at this stage after the second disapproval which was communicated under the letter dated 10th November, 1983 that the petitioner has moved the High Court and in our opinion, he was entitled to do so.

14. In the result we find the disapproval unsustainable and we quash the said communication. Rule is made absolute in terms of prayer (a) part. The necessary corollary of this quashing as we have indicated earlier, must be deemed approval of the petitioner as Vice-President of the Ulhasnagar Municipal Council. In the circumstances of the case, parties to bear their own cost.