
(2016) 05 DEL CK 0057
In the Delhi High Court
Case No : LPA No. 269 of 2015

North Delhi Municipal Corporation

APPELLANT

Vs

Onika Mehrotra

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Citation : (2016) 6 ADDelhi 442

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Sujoy Chatterjee, Advocate for Mr. Gaurang Kanth and Ms. Biji Rajesh, Advocates, for the Appellant; A.S. Chandhiok, Sr. Advocate instructed by Mr. N. Tripathi, Advocates, Mr. Subodh Kumar and Mr. Anil Kumar, Advocates, A.S. Chandhiok, Sr. Advocate ins

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.(Oral)—CM No. 17662/2016 Allowed subject to just exceptions.

CM No. 17660/2016 For the reasons stated in the application delay of 267 days in filing R.P.No. 230/2016 is condoned.

Application is allowed.

R.P.No. 230/2016 & CM No. 17658/2016

Certain members nominated under Section 3(3)(b)(i) of the Delhi Municipal Corporation Act, 1957 by the Administrator of the NCT of Delhi to the North, South and East Delhi Municipal Corporation had filed writ petitions pleading that their right to vote in the meetings of the respective Ward Committee for electing Chairperson/Deputy Chairperson as also their right to offer candidature to be elected to the post of Chairperson/Deputy Chairperson of their respective Standing Committee, Ward Committee and as members of the Standing Committee or as Deputy Chairperson of the said Committee was being violated.

The writ petitions filed gave birth to the following questions:-

"(i) Whether the persons nominated by the Administrator under Section 3(3)(b) (i) of the Act are dis entitled to vote in the meetings of their respective Wards Committee and Standing Committee?

(ii) Whether the persons nominated by the Administrator under Section 3(3)(b) (i) of the Act are dis entitled to offer their candidature to be elected as members of Standing Committees?

(iii) Whether the persons nominated by the Administrator under Section 3(3)(b) (i) of the Act are dis entitled to offer their candidature to be elected to the post of Chairperson and/or Deputy Chairperson of their respective Wards Committees and Standing Committees?"

2. The learned Single Judge answered the three questions as under:-

"42. Thus, to summarise the above, the petitioners ? being constituent members of Wards Committees, can participate and vote in any meeting of the respective Wards Committee. However, the petitioners cannot file their nomination or offer their candidature for being elected as Chairperson of the Wards Committee. The petitioners may also offer their candidature for being elected as member of the Standing Committee. In the event any of the petitioners are elected as member of the Standing Committee, they may vote at any meeting of the Standing Committee and also offer their candidature for being elected as Deputy Chairperson of the Standing Committee; but, they cannot offer their candidature for being appointed as a Chairperson of the Standing Committee."

3. Before the learned Single Judge the debate was with reference to Article 243R and 243S of the Constitution of India. As also Section 2(27), Section 3(3)(b)(i), Section 44, Section 45, Section 47, Section 50 and Section 51 of the Delhi Municipal Corporation Act, 1957.

4. Appeals filed against the decision of the learned Single Judge were dismissed by this Court on July 14, 2015. Review of the order is prayed for. The grievance in the review petition that certain provisions were not brought to the notice of this Court when the appeals were disposed of is incorrect. All the provisions were considered. Para 12 of the decision under review notes the constitutional provisions and the fact that pursuant thereto amendments were made in the Delhi Municipal Corporation Act, 1957. Para 12 reads as under:-

"12. Both parties were not at variance, either before the learned Single Judge nor in the appeal, that by virtue of the 74th Amendment to the Constitution of India, Part-IXA was inserted in the Constitution of India containing Articles 243P to 243Z, 243ZA to 243ZG with effect from June 01, 1993, necessitating corresponding amendments to be made in the Act and that the Administrator of the Union Territory of Delhi could nominate, to the three Corporations which exist in Delhi, ten persons not less than twenty five years of age who had special knowledge or experience in municipal administration, and that by virtue of

Section 50 of the Act these nominated persons would become members of the Wards Committee if the name of the person is registered as an elector within the territorial limit of the Zone concerned. The parties were not at variance that for the different Zones contemplated by the Act there shall be a Wards Committee. The parties were not at variance that each of the Municipal Corporation in Delhi would have a Standing Committee."

5. Thereafter, the contention of the appellants were succinctly noted in para 13 of the decision as under:-

"13. Meaningfully understood, the contention of the appellants before the learned Single Judge which was repeated in the three appeals was that since Section 2(27) of the Act defines a member to be a councillor, may be in relation to a Corporation, the tag to the persons nominated to the Corporation would be "nominated member" and thus the scheme of the Act has to be understood as limiting the powers of the nominated members to either vote or offer their candidature to be elected as Chairman or Deputy Chairman of the Standing Committee or the Wards Committee. Learned counsel for the appellant was at pains to argue that these nominated persons could not be equated as members of either the Corporation or of the Standing Committee or the Wards Committee. Learned counsel argued that these persons were nominated to the Corporations because of their special knowledge in municipal administration and the purpose of their appointment was to assist the elected members of the Corporation for a better functioning of the municipal affairs. Learned counsel relied upon the authorities reported as AIR 2004 SC 2258 Ramesh Mehta v. Sanwal Singh, 2015 (1) RCR(civil) 991 Sanjeev Kumar Verma v. The Director, Urban Local Bodies & Ors., (2006) 1 GLR 382 Batou & Ors. State of Nagaland, AIR 2003 Raj. 128 Prem Raj Bohra v. Jairoopa & Ors., AIR 2007 Gau 98 Miehlo Manasia v. State of Mizoram. Learned counsel for the appellant urged that the language of Section 2(27) of the Act was clear and unambiguous and clearly defined a member in relation to a Corporation to mean the councillor and thus urged that the literal rule of construction as enunciated in the decisions reported as (2005) 2 SCC 271 Nathi Devi v. Radha Devi Gupta, (2006) 5 SCC 745 A.N. Roy, Commissioner of Police v. Suresh Sham Singh, (2009) 9 SCC 92 Vijay Narayan Thatte v. State of Maharashtra, (2010) 10 SCC 744 Competition Commission of India v. Steel Authority of India, (2013) 10 SCC 772 Union of Indis v. National Federation of Blind, (2004) 9 SCC 686 Prakash Nath Khanna v. Commissioner of Income should be applied. Referring to the decision reported as AIR 1976 SC 888 Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain & Ors. learned counsel argued that where a statutory authority which is sui generic is constituted by a legislation it would be all embrative body/authority and bodies under the authority cannot be termed as separate authority. Learned counsel urged that since the right of the nominated persons to vote at the meetings of the Corporation is specifically barred under Article 243R and Section 3(3)(b)(i) of the Act these persons cannot vote at the meeting of anybody under the Corporation. Learned counsel relied upon the decisions reported as 2014 (141)

DRJ 157 Manohar Lal Sharma v. Union of India and ILR 1998 Karnataka 1005 Jayashankara Gowda v. Chief Secretary."

6. In para 16 the exception carved out in Article 243R was specifically noted. Decisions pertaining to other municipal statutes were noted but distinguished on the ground that legislative provision therein was different. The decision terminated by reasoning in paragraph 21 and 22 as under:-

"21. After referring to the corporation being composed of councillors, the Act provides for representation in a Corporation by ten persons to be nominated by the Administrator. Enumerating the municipal authorities under Section 44, providing for the constitution of the Standing Committee, Section 45 guides that the Committee shall consists of six members elected by the councillors, one member each elected by members of each Wards Committee. The legislature has obviously used the word members for these two streams. It would be impermissible to make any distinction in the reservoir so constituted after the water from the two streams has merged into a single entity. Conscious of the fact that these members would be constituting the Standing Committee and the Wards Committee, which would have to elect a Chairman as also a Deputy Chairman, the legislature was conscious of the fact that any one of these members can offer their candidature to be elected as a Chairman as also a Deputy Chairman and thus expressly provided that only a councillor can be the Chairman of the Standing Committee. The rule of exclusion by the legislature would lead us to the conclusion reached by the learned Single Judge that be it a councillor or be it a person nominated, since both form the homogenous category of a member of the Standing Committee, any one of them could be elected as a Deputy Chairman. Inherent would be the right to vote at the meeting of the Standing Committee to elect a Chairman and a Deputy Chairman. Since Section 51 makes applicable Section 47 in relation to a Wards Committee as it applies in relation to a Standing Committee, it would mean that the Chairman of a Ward Committee has to be a councillor and no more.

22. As regards the rights of persons nominated, to be appointed as members of the Standing Committee, the constitution of the Standing Committee, as provided in Section 45, is to consist of (a) six members elected by the councillors from among themselves, and (b) one member each, elected by the members of each Wards Committee, from among themselves at the first meeting of the Wards Committee. It is thus clear that the section provides for the composition of Standing Committees to specifically include councillors (to be elected from among themselves), as well as members (who need not necessarily be councillors, as stated above) elected from Wards Committees. The language of the Section does not provide any ambiguity meriting the Court's interpretation of the Section, and the plain reading of the statute makes it clear that the Standing Committee would comprise of elected councillors, as well as members of the Wards Committee (which includes nominated members). Thus, in the absence of any constitutional or statutory restriction on the inclusion of nominated members

into the Standing Committee, it may be stated that the Act permits nominated members to be members of the Standing Committee, if they are so elected in their respective Wards Committee."

7. Thus, the argument in review that certain issues went unnoticed and unconsidered is incorrect. We do not comment upon certain facets which the review petitioner seeks to urge as not being considered for the reason the review petitioners cannot be impleaded as parties as prayed for in CM No.17658/2016 for the reason merely because they are also nominated members would not mean that they can join at any stage. For example in a dispute between a landlord and a tenant a statutory provisions comes up for interpretation and is decided in favour of the landlord, if the same issue arises between another landlord and another tenant, the tenant cannot seek review in the earlier decision on the plea that law as interpreted is coming in his way. Of course, such a tenant can show to a Court that the earlier decision needs reconsideration and therefore the question may be referred to a Larger Bench.

8. We dismiss CM No. 17658/2016 and consequently since applicants are not impleaded as a party we dismiss RP No. 230/2016. Any grievance by them has to be urged in independent proceedings. If an issue arises in those proceedings concerning the decision sought to be reviewed, the petitioners would have to show that case is made out for the issue to be referred to a Larger Bench.

9. R.P.No. 230/2016 and CM No. 17658/2016 are dismissed.

10. No costs.