
(2016) 04 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 161 of 2016

Pradip Vasantrao Gaurkhede

APPELLANT

Vs

The Divisional Commissioner

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Citation : (2016) 4 MhLJ 859

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Mr. A.S. Kilor, Advocate, for the Appellant; Mr. R.L. Khapre, Advocate, Mr. S.B. Ahirkar, Asstt. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.(Oral)—Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. By this petition, the petitioners have challenged the legality and correctness of the order dated 30.12.2015 passed by the respondent No.1, in his capacity as Regional Director appointed under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965. (hereinafter referred to as, "the Act, 1965").

3. The Grampanchayat of Tiwasa was declared as Nagar Panchayat on 10th April, 2015 and the elections of the Nagar Panchayat for the first time were held on 1st October, 2015. On 30th November, 2015, the elections of Chairman and Vice-Chairman were held. The petitioners and respondent No.4 are the elected members of the Nagar Panchayat, Tiwasa. While petitioner Nos.1 to 4 belong to one political party, petitioner Nos.5 and 6 belong to different political party. The respondent No.4 belongs to another political party. On 4th December, 2015, Collector, Amravati, the competent authority, under the Act, 1965 convened a special meeting of Nagar Panchayat for the purposes of nominations to be made to the subjects committees, in accordance with the provisions of Section 65 of

the Act 1965 and appointed Tahsildar respondent No.3, Tiwasa as the Presiding Officer for the special meeting. The respondent No.3 considering the strength of members of different political parties requested the leaders of the political parties to submit the names of members, who were to be nominated on behalf of their parties for the subjects committees. It appears that initially, respondent No.4 suggested only one name for being nominated for each of the subjects committees and when he was informed by the respondent No.3 that three names were to be nominated on behalf of his party, the respondent No.4 accordingly submitted three names for being nominated on behalf of his party. The respondent No.3 considered the names so suggested by respondent No.4 and accepting all of them, declared constitution of 5 subjects committees. The proceedings of the special meeting thus were concluded at about 1.00 p.m. of 9.12.2015. The minutes of the special meeting were also drawn out by the respondent No.3.

4. The respondent No.4, however, felt aggrieved by the constitution of the committees as according to him, the committees were constituted without taking into account all the names suggested by respondent No.4 for being nominated to the various subject committees on behalf of his political party. So, an appeal was filed by the respondent No.4 under the provision of Section 65(4B) of the Act 1965. The main ground taken in appeal related to the submission that the Presiding Officer had, without considering the list of the members furnished by the respondent No.4, inserted the names of some other members of his own choice although the Presiding Officer was not well in his lawful authority and right to do so.

5. The petitioners were not made party to the said appeal. However, on their application, they were allowed to intervene in the appeal and were granted hearing by the respondent No.1, the competent authority, before whom the appeal under Section 65(4B) of Act 1965 was filed. The respondent No.1, by the order passed on 30.12.2015 allowed the appeal and it is this order, which is under challenge in the present writ petition.

6. Learned counsel for the petitioners submits that the order impugned in the petition is without jurisdiction as it has been passed beyond the scope of appeal powers of respondent No.1 under Section 65(4B). He submits that under Section 65(4B) only the decision of the Collector or any officers appointed by him to take a decision relating to accepting or rejecting any nomination paper can be challenged and in the instant case, the respondent No.1 has even considered the legality and correctness of the entire proceedings of the special meeting. He submits that this is not permissible while deciding the appeal under Section 65(4B) of the Act 1965. His next objection relates to the vagueness of the grounds taken in the appeal filed by the respondent No.4. He submits that the respondent No.4 did not clarify as to which names were not considered and which names were arbitrarily added by the respondent No.3 to be the members of the subjects committees. Learned counsel for the petitioners further submits

that if the correctness of the proceedings was to be challenged, the challenge could be raised by filing a revision application under Section 318 of the Act, 1965. He submits that on these grounds writ petition be allowed by quashing and setting aside the impugned order.

7. Shri R.L. Khapre, learned counsel for respondent No.4, the main contesting respondent, submits that the power under Section 65(4B) includes the power to decide all the questions, which are ancillary to and which are penultimate to the main question as for example, whether or not the nominations were rightly accepted or rejected and, therefore, it cannot be said that the order impugned in this petition has been passed without any jurisdiction. For this submission, he places his reliance upon the case of *M/s. Kamala Mills Ltd. v. State of Bombay*, reported in AIR 1965 SC 1942. Learned counsel further submits that in the memo of appeal, it was specifically mentioned that some names given in the list of members to be nominated on behalf of the party of respondent No.4 have not been considered and some names were included in the subjects committees arbitrarily. He submits that once such an objection was raised, it fell for respondent No.1 to verify the correctness or otherwise of such an objection and the impugned order would show that this is what the respondent No.1 has done in this case. The correctness or otherwise of the said objection could have been very much ascertained by examining the list of nominations made by different political parties and the list of nominations submitted by respondent No.4 included not only three names appearing on the reverse page of that list but also one name suggested for each of the five subjects committees appearing on the front page of that list, so submits the learned counsel for respondent No.4. He also submits that while the respondent No.3 accepted the names appearing on the reverse page of the list, he did not accept the names appearing on the front page of the list and this is how the respondent No.1 considered the whole matter and passed the order impugned herein. He further submits that the notice issued for convening of special meeting itself was not in accordance with the provisions of Section 63(2)(b) and Section 65 of the Act 1965 and for this reason also, the respondent No.1 rightly found fault in the manner in which the special meeting was conducted. On these grounds he urges that there is no need for making any interference with the impugned order.

8. Learned Assistant Government Pleader for respondent Nos.1 to 3 has supported the impugned order adopting the argument canvassed on behalf of respondent No.4.

9. In order to appreciate the rival arguments, it would be necessary to examine the scope of Section 65(4B) of the Act, 1965. The section reads as under :

Section 65(4B) : "Any Councillor aggrieved by any decision of the Collector or such officer accepting or rejecting any nomination paper, may, within fortyeight hours from intimation of such decision, present an appeal to the Regional Director of Municipal Administration concerned and simultaneously give notice of such appeal to the Collector or such officer. Such appeal shall be disposed of by

the Regional Director, as expeditiously as possible, after giving reasonable opportunity of being heard to the parties concerned. The decision of the Regional Director on such appeal and subject only to such decision (if any), the decision of the Collector or such officer, as the case may be, accepting or rejecting the nomination of a candidate, shall be final and conclusive and shall not be called in question in any Court."

10. From the plain reading of this Section, it becomes clear that what can be decided in an appeal is the legality or otherwise of the decision taken by the Collector or his nominee in accepting or rejecting any nomination paper. The question is whether the decision as regards acceptance or rejection of nomination paper would include within its fold the power to decide all ancillary questions or in the words of learned counsel for respondent No.4 the penultimate questions or not.

11. According to learned counsel for respondent No.4, no decision regarding acceptance or rejection of the nomination paper can be taken under Section 65(4B) unless it is first decided that the nominations have been made properly and by following the provisions of Section 65(4B) read with Section 63(2)(b) of the Act, 1965. He submits that if the political parties at the fray are not aware as to how many members each of the political parties can nominate for being appointed on the subjects committees, no list suggesting names of the members to be nominated could be properly considered and could be properly accepted or rejected by the Collector or his nominee. Learned counsel for the petitioners submits that the language employed in sub-Rule (4B) is plain and clear and, therefore, as per the settled principles of interpretation of statute, reference to other sections of the Act, 1965 cannot be made. While there cannot be any dispute about the proposition of law that when the language of Section to be interpreted is plain, unambiguous and clear, there would be no need for referring to other sections so as to read something which is not provided in that Section. But, as held by the Hon'ble Apex Court in the case of M/s. Kamala Mills Ltd, the power to decide main question also includes power to decide all ancillary matters and, therefore, it would have to be considered as to whether or not any decision regarding acceptance or rejection of a nomination paper could be properly made de hors the decision on a question as to whether or not the nominations have been made by the respective political parties in accordance with the provisions of law. The answer to the question would have to be given in the negative if the effect of other relevant provisions, which are Section 65(4) and Section 63 (2)(b) read with Section 63 (2B) of the Act, 1965 is considered on the ability of political parties to make valid nominations to the subjects committees. It would be useful to reproduce these Sections which read as under :

Section 65(4) : "The Collector shall, within seven days of the election of the President under section 51] call a special meeting of the Council for the purpose of -

(a) determining the number of the members of the Standing Committee ;

(b) determining the Subjects Committee or Committees, if any, to be appointed, and the number of members of each such Committee, and if more than one such Committees are to be appointed, the Subject Committee of which the Vice-President shall be the exofficio Chairman ;

(c) nominating members on the Standing Committee and the Subjects Committee or Committees, if any, in the manner laid down in clause (b) of subsection (2) of section 63 :

Provided that, the President shall not be eligible for being a member of any of the Subjects Committees, but he shall have the right to speak in, and otherwise to take part in the proceedings of, any Subjects Committee, except that he shall not be entitled to vote thereat.

Section 63(2)(b) : The Collector shall, within seven days of the election of the President under section 51, call a special meeting of the Council for the purpose of,

(a)

(b) nominating councillors on the Subjects Committees in accordance with the provisions of subsection (2B) :

Provided that, the President shall not be eligible for being a member of any of the Subjects Committees but he shall have the right to speak in, and otherwise to take part in the proceedings of, any Subjects Committee, except that he shall not be entitled to vote thereat.

Section 63(2B) :

"In nominating the Councillors, the Collector shall take into account the relative strength of recognised parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting the leader of each such party or group :

Provided that, the relative strength of the recognised parties or registered parties or groups or aghadi or front shall be calculated by first dividing the total number of Councillors by the total strength of members of the Committee. The number of Councillors of the recognised parties or registered parties or groups or aghadi or front shall be further divided by the quotient of this division. The figures so arrived at shall be the relative strength of the respective recognised parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognised parties or registered parties or groups or aghadi or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognised parties or registered parties or groups or aghadi or front in the descending order of the fraction number in the respective relative strength starting from the highest fraction number in the relative strength, till all the seats are allotted:

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this subsection, the recognised parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986, within a period of not more than one month from the date of notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a pre-poll aghadi or front."

12. It is clear from a combined reading of aforesaid provisions that a special meeting for constitution of the committees and appointment of members to the subject committees cannot be held unless the relative strength of the respective recognised political parties is taken into account and the maximum number of nominations each recognised party would be entitled to make is determined. Now, if one peruses the notice dated 4.12.2015 issued for convening of the special meeting one would find that the notice is silent regarding the said two aspects i.e. relative strength of the recognised political parties and the maximum number of nominations each of the recognised parties was entitled to make in the instant case. So, the effect would be in the absence of any clarity as regards the number of nominees to be submitted by each of the recognised parties, these parties would not know as to how many persons they were entitled to nominate on the subjects committees. This effect, I must say, goes further and indicates that whatever names are suggested by the recognised parties could not be properly accepted or rejected by the Collector or his nominee as he himself would not be in a position to know as to how many nominations were to be accepted or rejected. Therefore, accepting the argument canvassed on behalf of respondent No.4, I find that the power to accept or reject the nomination paper also includes the power to decide the question as to how many nominations each recognised party is entitled to make for the purpose of constitution of the committees as provided under Section 65 of the Act 1965.

13. Once it is found that the power to decide upon acceptance or rejection of the nomination papers also includes determination of the question regarding entitlement of the recognised parties to suggest names of the persons to be nominated on the subjects committees, the respondent No.1 would have to be held, in the instant case, as within his rights to even consider the question relating to determination of relative strength of the parties and the fixation of the maximum number of nominations each of the parties could have made, which is what the respondent No.1 has done here. Thus, I find no substance in the argument that the impugned order is without jurisdiction and exceeds the scope of powers under Section 65(4B).

14. Learned counsel for the petitioners has submitted that the ground of illegality in determination of relative strength and the proportion in which the nominees were to be made was not taken in the appeal filed under Section 65(4B) of the

Act, 1965 and, therefore, the petitioners did not have any opportunity to meet the said challenge. It is true that this ground was not taken before the Appellate Authority i.e. respondent No.1. But, the ground pertains to a question of law and, therefore, even if it was not specifically taken in the memo of appeal, it could have been canvassed by the respondent No.4 before the respondent No.1 authority and, therefore, I see no illegality in the impugned order on this count as well.

15. The next contention of the petitioners relates to vagueness of the grounds taken in the appeal filed under Section 65(4B). Upon going through the memo of appeal (Page 35) I find no substance in the said argument. Of course, names which have been left out and names which have been inserted wrongly, in the opinion of respondent No.4, have not been specifically mentioned in the memo of appeal. But, the fact remains that an objection on exclusion and inclusion of some names arbitrarily has been taken and, therefore, a further exercise for ascertaining the correctness or otherwise of this ground was permissible in law. That exercise, as seen from the impugned order, however, has not been taken by respondent No.1. But, this failure in the end is of no consequence as the illegality pointed out by the Appellate Court and discussed earlier goes to the root of the whole matter.

16. It is also the submission of learned counsel for the petitioners that a specific remedy under Section 318 of the Act, 1965 was available to the respondent No.4 and since it was not resorted to, the impugned order cannot be said to be legal and proper. I am not inclined to accept the argument. The reason is obvious. The power under Section 318 is a revisional power, while the power under Section 65(4B) is an appeal power. Going by the settled principles applicable to revisional powers, I must say, the power under Section 318 is about authority to examine the legality, correctness or propriety or otherwise of any order passed by the Collector or any officer nominated by him to take decision under the provisions of the Act, 1965 and would not include the power to re-appreciate facts so as to substitute one view for another, just because it is possible. The appeal power under Section 65(4B), however, would permit re-appreciation of facts and I have also observed that this power would include the power to decide the questions which are ancillary for deciding the main issue of acceptance or rejection of the nomination papers in accordance with law. It can also be said, subject to limitations stated earlier, that power under Section 65(4B) is confined to determination of only those questions which relate to acceptance or rejection of the nomination paper and also the issues ancillary to main question, and whereas, the power under Section 318 being somewhat wider, would refer to authority to decide legality etc. of all questions arising from the order passed by the Collector or his nominee under the provisions of the Act, 1965 including the one passed under Section 65(4B). Therefore, I am of the view that the power under Section 65(4B) and the power under Section 318 are clearly distinguishable. It then follows that the power under Section 65(4B) was also exercisable in the instant matter and was exercised rightly. Therefore, the

argument that the Collector had no jurisdiction under Section 65(4B) in view of the provision of Section 318 has to be said as bereft of any solidity.

17. In the result, I find that there is no substance in the writ petition. The impugned order deserves no interference with it.

18. Writ petition stands dismissed.

19. Rule is discharged. No costs.