
(2010) 03 BOM CK 0177

In the Bombay High Court

Case No : Writ Petition No. 2182 of 2010

Prashant Prabhakar More, Nashik Municipal Corporation

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 20, 20(3), 20(4), 31
Constitution of India, 1950 — Article 226

Citation : (2010) 6 BomCR 486 : (2010) 112 BOMLR 1469 : (2010) 3 MhLj 497

Hon'ble Judges : R.M. Savant, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : A.V. Anturkar and S.S. Deshmukh, for the Appellant; V.S. Gokhale, AGP for Respondent No. 1, M.L. Patil, for Respondent Nos. 2 to 4, Y.S. Jahagirdar and Sachin Gite for Respondent Nos. 5 and 11, M.S. Karnik, for Respondent No. 13 and T.S. Ingale, for Respondent Nos. 6 to 10 and 12, for the Respondent

Judgement

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr. V.S. Gokhale AGP waives service for Respondent No. 1. Mr M.L. Patil waives service for Respondent Nos. 2 to 4. Mr. Sachin Gite waives service for Respondent Nos. 5 and 11. Mr. M.S. Karnik waives notice for Respondent No. 13. Mr. T.S. Ingale waives notice for Respondent Nos. 6 to 10 and 12.

3. The principal question raised in this petition is, whether the term of onehalf members (eight in numbers) of the present Standing Committee of the Nashik Municipal Corporation has already expired on 1st of March 2010 and as a consequence whereof it would be necessary to take steps to elect new eight members in place of the outgoing members of the Standing Committee.

4. The facts which are relevant to examine this limited controversy can be broadly stated as under :

General Ward Elections of Nashik Municipal Corporation for 108 wards was held

on 1st February 2007. The results of the said elections was declared on 2nd February 2007. First meeting after General Elections took place on 15th March 2007. In the said meeting the Mayor and Deputy Mayor were elected. The newly elected Mayor adjourned the meeting to 7th April 2007. On 7th April 2007, General Body nominated 16 members on the Standing Committee as per the provisions of Section 20 and 31(a) of the Bombay Provincial Municipal Corporations Act. 1949. The State Government, however, suspended the execution of the said resolution on 10th April 2007. That decision of the State Government was assailed before this Court by way of Writ Petition No. 2622 of 2007. The said Writ Petition was finally allowed on 30th April 2007 when this Court passed the following order :

In the light of our discussion, all these Petitions are disposed off by issuing the following directions:

(1) The action of the State Government suspending the execution of the resolution dated 10.4.2007, is upheld.

(2) In view of the fact that the resolution is upheld, the Corporation of City of Nashik is directed to commence the process of nomination to the Standing Committee afresh/denovo, in the light of what we have stated above.

Rule is made absolute accordingly. In the circumstances of the case, there shall be no order as to costs.

As a consequence of the above decision, third general body meeting was held on 12th June 2007 when the general body nominated 16 members of its own body to be members of the Standing Committee. Thus, the Standing Committee was constituted in terms of the said resolution.

5. On the basis of these admitted factual position, the Respondents assert that one year term of the Standing Committee would commence from 12th June 2007 and as per Sub-section (3) of Section 20 of the Act onehalf of the members of the Standing Committee shall retire every succeeding year at noon on the first day of June of the succeeding year.

6. According to the Petitioner, although 16 members were nominated in the meeting held on 12th June 2007, keeping in mind the mandate of Section 20 of the Act the term of the Standing Committee will have to be reckoned from the date of first meeting after the general elections which was held on 15th March 2007. It is on that premises, the Petitioner has approached this Court by invoking writ jurisdiction under Article 226 of the Constitution of India amongst others to quash and set aside the letters dated 4th March 2008 and 30th March 2009 issued by the Respondent No. 1 and to further declare that term of 8 members on Standing Committee of Nashik Municipal Corporation expires on 1st March 2010 and to direct the Respondent Nos. 1 to 3 to elect fresh members of the Standing Committee (eight in numbers) to fill such offices as soon as possible after 1st March 2010. In the alternative, it is prayed that it may be

declared that term of 8 members on Standing Committee of the Respondent Corporation expires on 1st April 2010 and direct the Respondent Nos. 1 to 3 to hold a meeting for election of fresh members of the Standing Committee (eight in numbers) to fill such offices as soon as possible after 1st April 2010. To buttress the stand taken by the Petitioner, reliance is placed on the exposition of the Division Bench of our High Court in the case of Nitin Shirsat Vs. State of Maharashtra and Others, .

7. Per contra, the counsel appearing for the Respondents submitted that the expression "first meeting" occurring in Section 20 of the Act will have to be construed liberally. More so, in the fact situation of the present case, it will have to be held that nomination of 16 members on the Standing Committee ought to be reckoned from the date of general body meeting dated 12th June 2007, keeping in mind the decision of our Court dated 30th April 2007 which directed to commence the process of nomination to the Standing Committee afresh/denovo. According to the learned Counsel for the Respondents, the interpretation put forth by the Respondents is reinforced even from the language of Sub-section (4) of Section 20 of the Act. It is further submitted that in any case, term will have to be reckoned from 7th April 2007 when the general body convened a meeting as first meeting after general elections to appoint 16 persons out of its own body to be members of the Standing Committee. For, the said meeting was the first meeting was evident from the Agenda as well as Minutes of the said meeting. In that view of the matter, at any rate, the term of onehalf of the members of the existing Standing Committee ought to continue till end of March 2010 and election to replace 8 retiring members will have to be held on or after 1st April 2010.

8. Besides resisting the petition on merits, the Respondents have raised preliminary points about maintainability of the petition. According to them, the Petitioner is one of the elected members of the general body of the Respondent Corporation. He has acquiesced himself to the action of the Respondents in treating term of the Standing Committee as having commenced from 12th June 2007. In that, he has been elected as a member of the Standing Committee to replace one of the retiring member of the Standing Committee in June 2009. It is therefore not open to the Petitioner to raise the grievance which is now brought before this Court. It is then contended that the Petition also suffers from laches. Moreover, the Petitioner is praying for the same relief as was prayed in Writ Petition No. 1421 of 2010 and 3657 of 2009 which petitions have been disposed of. Even for this reason, the Petitioner cannot be permitted to ask for the same relief. It is lastly contended that the Petition suffers from non joinder of necessary parties. Inasmuch as, only 8 outgoing members, whose term is likely to expire, have been impleaded as Respondents whereas other 8 members of the Standing Committee, who would continue in the office, have not been impleaded as party Respondents. Since even the said 8 members are likely to be affected in future, if the stand taken by the Petitioner was to be upheld, therefore, they ought to have been impleaded as party Respondents to the present petition.

9. After considering the rival submissions, we would first examine the preliminary objections regarding maintainability of the petition. The first grievance is regarding acquiescence by the Petitioner. This argument does not commend to us. The mere fact that the Petitioner is one of the elected members of the general body and has been nominated as a member of the Standing Committee in June 2009 does not militate against the Petitioner and in particular from raising a question which goes to the root of the matter. Further, it is well established position that there can be no estoppel against the law. Whereas, if we were to dismiss this petition on the ground of acquiescence of the Petitioner, it would result in a situation where the Petitioner is estopped from seeking relief as per law.

10. In so far as grievance regarding the Petition suffers from laches, even this objection does not commend to us. The question raised by the Petitioner is a recurring one. It is in the nature of continuing cause of action. It is pertaining to the status of the present outgoing 8 members of the Standing Committee. We cannot overlook the fact that if the stand taken by the Petitioner was to be accepted, in future it was going to prejudicially affect the Petitioner himself, who is also the member of the Standing Committee. Thus understood, the argument of the Respondents that the Petitioner should be nonsuited on the ground of laches cannot be countenanced.

11. That takes us to the third preliminary objection that, the Petitioner is praying for similar relief which was prayed in two other writ petitions filed in this Court in the past and which have been disposed of. There is no serious dispute about the fact that the Petitioner is claiming almost similar relief to one claimed in Writ Petition 3657 of 2009 and also in Writ Petition No. 1421 of 2010. The only distinguishing feature is that the above two Petitions were filed in the context of challenge to the continuation of outgoing members whose term had already expired in March 2009 and 2010 respectively. However, the fact remains that both these petitions were filed by some other members of the Corporation and not by the Petitioner himself. Besides, Writ Petition No. 3657 of 2009 was allowed to be withdrawn on 11th June, 2009, as it had become infructuous. Even, Writ Petition No. 1421 of 2010 has been disposed of on 10th March, 2010 without deciding the point in issue. Thus, the institution of the two writ petitions in the past for similar relief's by some other parties and its withdrawal will not come in the way of the petitioner to pursue his remedy before this Court.

12. Reverting to the last preliminary objection taken by the Respondents regarding non-joinder of necessary parties, even this objection will have to be stated to be rejected. It is not in dispute that 8 members of the Standing Committee, who are likely to be immediately affected by the outcome of this petition, have already been made party Respondents in this Petition. The fact that other 8 members, whose term will expire in future, have not been made party Respondents in this Petition, will make no difference. In strict sense, those 8 members are not necessary parties. The fact that they are likely to be affected

by the decision in future does not mean that they will have to be treated as proper parties. If that logic is to be accepted, then impleadment of all the 108 members of the general body would become necessary. Since, at some point of time, the said members, if they were aspiring to be nominated as members of the Standing Committee to replace the outgoing members, would be affected by such interpretation. Suffice it to observe that nonimpleadment of the remaining 8 members of the Standing Committee, whose term is yet to expire, will not militate against the Petitioner. For the aforesaid reasons, it is not possible to accede to the argument of the Respondents that the petition should be thrown out at the threshold.

13. That takes us to the principal question to be decided by us. Before we proceed further, we think it apposite to reproduce Section 20 of the Act, which has direct bearing on the point in issue. Section 20 reads thus :

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 appoints [sixteen] persons out of its own body to be members of the Standing Committee.

(3) Onehalf 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 subsection (2) was held:

Provided that all the members of the Standing Committee in office when general elections are held shall retire from office on the election of a new Committee under Sub-section (2)

(4) The members who shall retire under Sub-section (3) one year after their election under subsection (2) shall be selected by lot at such time previous to the date for retirement specified in subsection (3) and in such manner as the Chairman of the Standing Committee may determine, and in succeeding years the members who shall retire under this section shall be those who have been longest in office:

Provided that, in the case of a member who has been reappointed, the term of his office for the purposes of this subsection shall be computed from the date of his reappointment.

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

(6) Any councillor who ceases to be a member of the Standing Committee shall be eligible for reappointment.

We have the advantage of the decision of our High Court in case of Nitin Manga Shirsat (Supra) which had occasion to examine the purport of Section 20. It will be useful to reproduce the relevant discussion in this decision which has

considered the purport of Section 20, in the context of point in issue. The same reads thus :

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 subsection (3) of that section. Consequently, the second clause is required to be read with subsection (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 subsection (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 up to 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 subsection (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).

We are in agreement with the above said opinion. The plain language of Sub-section (2) leaves no manner of doubt that it is mandatory to appoint 16 persons out of its own body to be members of the Standing Committee "at its first meeting" of the Corporation after general elections. In other words, the Corporation has no option but to appoint 16 persons out of its own body to be members of the Standing Committee "at its first meeting after general elections." That decision cannot be postponed or deferred to some other meeting at all. This is obviously to ensure that the term of the Standing Committee so constituted is coterminus with the term of the newly elected members of the general body of the Corporation. The term of the general body is circumscribed by the provisions of Constitution of India read with Section 6 of the Act of 1949. That term commences from "the first meeting after general elections." The first meeting of the general body after general elections has to be convened within a reasonable time and in any case before the maximum term of the outgoing general body expires. Lest, it would result in a void situation. The law circumscribes the maximum term of the outgoing general body. Obviously, therefore, to ensure that the term of the Standing Committee (which is constituted by election of 16 members amongst the general body of the newly elected members of the

Corporation) should be co terminus with the term of the general body which has constituted it, the mandate of subsection (2) is to elect 16 persons thereon "in its first meeting after general elections." This is the expectation of law as legislated by the State Legislature.

14. The purport of subsection (3) mandates that onehalf 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 subsection (2) was held. Proviso to subsection (3) stipulates that all the members of the Standing Committee in office when general elections are held shall retire from office on the election of a new Committee under subsection (2). This subsection deals with two aspects. Firstly, that onehalf of the members of the Standing Committee shall retire at the prescribed time. Secondly, the proviso envisages that all the members of the Standing Committee in office shall retire from the office on the election of the new committee under Sub-section (2). From this provision it is amply clear that the term of the Standing Committee has to be coterminus with the term of the outgoing general body which had constituted the said Standing Committee in its first meeting after the general elections so that the new general body would elect the members out of its own body to be members of the Standing Committee.

15. In so far as subsection (4) is concerned, that deals with the right of the members who would retire due to expiry of their term specified in subsection (3). Indeed, it provides that the members would retire "one year after" their election under Sub-section (2), to be eligible for being reappointed and their continuation in the office for specified period. Proviso to Sub-section (4) envisages that a person is reappointed, the term of his office for the purposes of the said subsection shall be computed from the date of his reappointment.

16. Taking clue from the opening part of subsection (4), it was argued on behalf of the Respondents that there is guarantee of one year term of the member of the Standing Committee after the election under subsection (2). Therefore, the sweep of Sub-section (2) will have to be harmonised with the said guarantee of one year term as member of the Standing Committee after his election. This submission will have to be stated to be rejected. In the first place the subject dealt with by subsection (4) is not to guarantee the term of office of the members, but the substance of that provision is that the outgoing member may offer himself to be reappointed for the specified period. Whereas, subsection (2) is a substantive provision as to when the term of the member of the Standing Committee would expire. There is hardly any option available to the newly elected general body but to appoint 16 persons out of its own body to be members of the Standing Committee at its first meeting after general elections. The emphasis in subsection (2) is to appoint persons as members of the Standing Committee at its first meeting after general elections and not at any point of time as general body may like or other fortuitous circumstances resulting in deferring appointment of persons as members of the Standing Committee

beyond the date of the first meeting after general elections.

17. To get over this position, it was argued on behalf of the Respondents that in the fact situation of the present case, it will have to be held that the Standing Committee was constituted on 12th June 2007 and the first meeting after election on 15th March 2007 will have no bearing to reckon the term of members of the sub Committee, inasmuch as the election of the members was as per the directions issued by this Court in Writ Petition No. 2564 of 2007 decided on April 30, 2007. It is not possible to accede to this submission. For the view that we have already taken that for the purpose of constitution of the Standing Committee, term will relate back to the date of first meeting of the Corporation after general elections. The fact that the Standing Committee was not so constituted for whatever reason would not extend the term of office of members beyond the term specified in subsection (3) which mandates that onehalf 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" referred to in subsection (2) was held. Since subsection (3) refers to subsection (2), both these provisions are intertwined. On reading the provisions separately or for that matter conjointly, the mandate for computing the commencement of the term of office of the Standing Committee will have to be reckoned from the date of the first meeting of the Corporation after the general elections. No other interpretation is possible. Taking any other view would result in rewriting of the provision which would be against the legislative intent. Besides, it may result in an uncertainty and also leaving it to the discretion of the Corporation to appoint 16 members out of its own body to be members of the Standing Committee at any time, whereas the view that we are inclined to take will not only be purposive construction of the relevant provision but also uphold the legislative intent of specifying the date of commencement of the term of the Standing Committee duly elected by the general body.

18. From the facts which are not disputed before us, the first meeting after general elections of the Corporation was held on 15th March 2007. Accordingly, the term of the Standing Committee of the Respondent Corporation commenced from that date. As a result of subsection (3), onehalf members of the Standing Committee irrespective of the date on which they were elected as members stood retired by rotation every succeeding year at noon on 1st of March of the succeeding year. In other words, the first set of original onehalf members retired on 1st March 2008 and the next set of onehalf of the members retired on 1st March 2009. The members who were elected to replace the first set of onehalf members, their term came to end on 1st March 2010 and the second set of members who were elected to replace the second set of onehalf original members would come to an end on 1st March 2011 and so on. The Petitioner has been elected as a member of the Standing Committee in June 2009. Nevertheless, for the view that we have taken even his term would expire on 1st March 2011. The argument of the Respondents to take a view that term of office as member of the Standing Committee should be reckoned from the date of

election and not from the date of the first meeting after general elections and more so that there is guarantee of term at least of one year after the election as is provided in subsection (4), will have to be rejected for more than one reason. Firstly, as aforesaid, subsection (4) deals with entirely different subject of stipulating that the outgoing member may offer himself to be reappointed. This provision cannot control the purport of subsection (2) or for that matter of Sub-section (3). It will have to be subservient to the regime provided in those subsections. The fact that subsection (4) refers to period of one year after elections does not mean that it is a provision to guarantee the minimum term of one year from election, in the office of the member of the Standing Committee, as is contended. Besides, this argument, in any case, is not available to the present set of members of the Standing Committee. At best, such argument could have been invoked by the first set of original members who stood retired in March 2008 as their term were to be curtailed below one year from the date of their election.

19. Accordingly, we have no hesitation in taking a view that the term of the Standing Committee, in the fact situation of the present case, commenced on or from 15th March 2007 for the purpose of computing the term of office of the members of the present Standing Committee, even though, in fact, the elections were held on 12th June 2007.

20. That takes us to the argument in the context of alternative relief claimed by the Petitioner to hold that the term of 8 members of the present Standing Committee of the Respondent Corporation would expire on 1st April 2010 and to direct the Respondent Nos. 1 to 3 to hold a meeting for election of fresh members of the Standing Committee (eight in numbers) to fill in such vacancies as soon as possible after 1st April 2010. It is not in dispute that the election to appoint 16 persons out of the newly elected general body to be members of the Standing Committee was held on 7th April 2007. Moreover, the meeting in which that election was held was considered as the first meeting of the Corporation after general elections, as was notified in the Agenda as well as the Minutes of that meeting. The fact that the said meeting dated 7th April 2007 was described as or treated as the first meeting after general elections of the Corporation does not take the matter any further. We have already taken a view that the legislative intent to provide certainty to the date on which Standing Committee should be constituted and more so as the Sub-section (3) in unambiguous terms provides, onehalf of the members of the Standing Committee so constituted would retire every succeeding year at noon on the "first day of the month" on which "the first meeting" of the Corporation mentioned in Sub-section (2) was held. It is indisputable that the first meeting after general elections for the purpose of subsection (2) was held on 15th March 2007. The fact that the subject of appointing 16 persons to be members of the Standing Committee was not considered in the said meeting and that subject stood deferred to the meeting held on 7th April 2007 would not extricate from the requirement of reckoning the term of members of the Standing Committee as provided in

subsection (2) read with subsection (3) of Section 20 of the Act, which has to be the date of the first meeting after general elections, as that was the meeting held as per subsection (2) of the Act.

21. To sum up, we hold that the term of 8 members of the existing Standing Committee of the Respondent Corporation, in law, has expired on 1st March 2010. As a result, the Respondent Nos. 1 to 3 are obliged to hold a meeting for electing fresh members of the Standing Committee (eight in numbers) to fill in the vacancies so created as expeditiously as possible and in any case not later than one week from today.

22. Accordingly, this Writ Petition succeeds.

23. Rule is made absolute in terms of prayer Clauses (a) and (b) with no order as to costs.

24. At this stage, the counsel for the Respondent Nos. 5 and 11 prays that operation of this order may be stayed to enable the said Respondents to carry the matter in appeal. Considering the view that we have taken, the question of acceding to the above request does not arise. This prayer is rejected.