
(1995) 06 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 1403 of 1995

Quasi Shahbas

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 22-06-1995

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 51
Penal Code, 1860 (IPC) — Section 147, 148, 149, 186, 353

Citation : AIR 1996 Bom 333

Hon'ble Judges : S.G. Mutalik, J; B.N. Deshmukh, J

Bench : Division Bench

Advocate : P.V. Mandlik, for the Appellant; P.G. Godhamgaonkar, A.G.P., S.R. Barlinge, Pradeep Deshmukh and Kiran Dantal, for the Respondent

Judgement

Deshmukh, J.—The petitioner was elected as a Councillor in the general election of Naldurg Municipal Council held in November, 1991. After the election of the President of the said Municipal Council, the President of the Municipal Council appointed the petitioner as Vice-President on 20-12-1994. The order of appointment of the petitioner was sent to the State Government on the very day, i.e., 20-12-1994. The same has been received by the State Government, as per the affidavit in reply filed on behalf of the Government, on 31-12-1994.

2. In the present case, the Government on 14th March, 1995 informed the President of the Municipal Council in reference to the letter of appointment of the Vice-President dated 20-12-1994 that the Government disapproves the appointment of the petitioner as Vice-President, as Crime No. 4 of 1988 is registered against the petitioner for offences under Sections 147, 148, 149, 353, 382, 420 186 504 and 504 (sic) of the Indian Penal Code, and for pendency of the crime registered against the petitioner, the appointment of the petitioner is not approved and required to be cancelled. The President was, therefore, directed to cancel the appointment of the petitioner as Vice-President and to appoint a person with good conduct as Vice-President immediately. Pursuant to

the letter dated 14th March, 1995 of the State Government, the President in turn on 18th March, 1995 informed the petitioner that his appointment as Vice-President is cancelled.

3. The President thereafter proceeded to appoint Respondent No. 5 as Vice-President of the said Municipality in place of the petitioner. The order of the State Government dated 14th March, 1995 and the consequential order issued by the President of the Municipal Council dated 18th March, 1995 are challenged in this writ petition. So also, the appointment of Respondent No. 5 as Vice-President in place of the petitioner is challenged.

4. Shri Mandlik, for the petitioner, invited our attention to the provisions of Section 51A of the Maharashtra Municipalities Act, 1965. It is worthwhile to take into consideration the provisions of the said Act regarding the appointment of the Vice-President at this stage. Section 51A deals with the appointment of the Vice-President and it reads as follows:

"51A(1)(a) Every Council shall have a Vice-President, who shall be appointed by the President from amongst the elected or deemed to be elected Councillors, before the first meeting convened by him is held, or, as the case may be, within seven days from the date on which the vacancy in the office of Vice-President occurs due to any reason.

(b) The President shall intimate the name of the Vice-President appointed by him under clause (a) to the Collector and the State Government forthwith and also to the Council at its meeting held immediately following such appointment.

(2) The appointment of the Vice-President by the President shall be subject to the approval of the State Government, within a period of sixty days from the date of receipt of the intimation under sub-section (1), the State Government may by order either approve or disapprove and cancel the appointment of the Vice-President made by the President and send an intimation to the President accordingly. If, within the said period, no intimation is sent to the President by the State Government, the appointment shall be deemed to be approved by it.

(3) Where the President fails to appoint a Vice-President within the period specified under clause (a) of sub-section (1), the Chief Officer shall report to the State Government; and the State Government shall appoint a Vice-President from amongst the elected Councillors.

(4) The Vice-President shall hold office of Vice-President for one year from the date of his appointment or for the residue of his term as Councillor, whichever is earlier, subject to the provisions of sub-section (5) of this section and of Section 55 A and other provisions of this Act and shall be eligible for re-appointment.

(5) The appointment of the Vice-President shall be liable to be terminated at any time during his term by the President, with the prior approval of the State Government.

(6) If the office of the President becomes vacant earlier due to any reason, the Vice-President may continue to hold his office for the residue of his term under sub-section (4)."

5. According in Shri Mandlik the power of approval to the appointment of Vice-President by the State Government has to be exercised within sixty days from the date of receipt of an intimation under sub-section (1); and if the approval is not granted within sixty days, by virtue of the provisions of subsection (2) of Section 51A, the approval is deemed to have been granted by the State Government. In the present case, the intimation under sub-section (1) was sent on 20th December, 1994. The same was admittedly received on 31st December, 1994. According to Shri Mandlik, the sixty days" period commenced for granting approval from 1st January, 1995 and expired on 2nd March, 1995. As the approval was not granted on or before 2nd March, 1995, under the said provisions, the appointment of the petitioner as Vice-President will be deemed to have been approved by the State Government; and there is no power left with the State Government thereafter to consider granting of approval to the appointment of the petitioner as Vice-President. He has further contended that under the provisions of sub-section (4), the petitioner was entitled to continue as Vice-President for one year from the date of his appointment and, prior to completion of one year, the Vice-President could have been removed only as per the provisions of subsection (5) and not otherwise.

6. Shri Godhamgaonkar, for the State, as well as the Counsel for other Respondents, have contended that the deeming provision will have to be construed in the light of the object sought to be achieved. The power of control is vested in the State Government and the manner in which and the period within which the power is to be exercised will have to be considered on the basis of facts of each case; the sixty days" period cannot be strictly construed and is required to be liberally construed. It is further contended that there is absolute discretionary power with the State Government which cannot be subjected to any challenge in this writ petition.

7. The circumstances in which the Government had sent letter disapproving the appointment of the petitioner as Vice-President have been enumerated in the affidavit in reply. It is mentioned in the affidavit that within 60 days, the Government thought it fit to get the information regarding the antecedent of the person, who was appointed as Vice-President, and after getting the information, the Government has taken a decision as communicated in the letter dated 14th March, 1995. After receiving the intimation under sub-section (1) on 20th December, 1994, the District Collector has forwarded the communication received from the President of the Municipal Council to the Department of Urban Development, which was received in the office on 9th January, 1995. On 20th January, 1995, a letter was sent to the District Collector, Osmanabad, with a request to forward his report after verification of the details. The Collector, Osmanabad, replied the said letter on the same day and informed the

Government that against the petitioner, crime is registered in Naldurg Police Station for the offences mentioned in the letter dated 14th March, 1995. Thereafter, the decision not to grant approval to the appointment of the petitioner as Vice-President is taken and information is sent on 14th March, 1995.

8. On the basis of these facts, it was argued that the 60 days" period mentioned in sub-section (2) shall be considered not from the date of intimation, but from the date of the report received from the Collector. Admittedly, in this case, though the intimation under sub-section (1) was received on 31st December, 1994 by the State Government, the report of the Collector is received on 20th January, 1995. According to Shri Godhamgaonkar, therefore, the period of 60 days has to be counted from 21st January, 1995. The action taken on 14th March, 1995 in not granting approval to the appointment of the petitioner as Vice-President will have to be regarded as within time.

23rd June, 1995

9. The submissions made by Shri Godhamgaonkar cannot be accepted in view of the entire scheme of Section 51A of the Act. The words in the statute are very specific and are not vague or ambiguous. In sub-section (2), it is specifically provided that the State Government may either approve or disapprove and cancel the appointment of the Vice-President within 60 days from the receipt of intimation under sub-section (1).

10. The emphasis is absolutely clear that the sixty days" period is to be counted from the receipt of intimation under sub-section (1). The intimation referred to in clause (b) of sub-section (1) is the intimation received by the State Government from the President in respect of the appointment of the Vice-President. Any other interpretation would militate the clear intention indicated in the statute. It is not, therefore, possible to construe that period of sixty days is required to be counted from the receipt of the report or taking of any steps by the State Government or other authorities in that regard. In the present case, the sixty days will have to be counted from the date of the receipt of the intimation, i.e., from 31st December, 1994.

11. Shri Godhamgaonkar has further invited our attention to the decision of the Division Bench of this Court in *Hukumsing y. State of Maharashtra* 1986 Mh LJ 18, wherein the scheme of Section 51A was considered. There is no doubt that the power of grant of approval is vested with the State Government. The ratio laid down in that case has no bearing on the manner and exercise of that power as per the procedure laid down u/s 51A of the Act as that aspect of the matter was not for consideration in that matter and is not considered.

12. On the question of deeming approval, our attention was invited to the decision of the Supreme Court in *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, . In paragraph 27 of the said judgment, at page 287, it is mentioned at page 853 of AIR :--

"It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or rule made to subserve an assumed "basic" requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for a section or a chapter in a Statute is provided; firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose."

13. We are unable to appreciate as to how any observation of this part of the judgment of the Supreme Court would support the argument advanced by Shri Godhamgaonkar. On the contrary, it is absolutely made clear by the Supreme Court that what is basic for the section or the chapter in the statute is provided firstly by the words used in the statute itself. Having regard to this, in the present case, the words used in the statute are that sixty days are to be counted from the date of the receipt of intimation sent by the President under sub-section (1) of Section 51A of the Act.

14. So far as the fiction of deeming provision is concerned, our attention was invited to yet another decision of the Supreme Court in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, wherein the Supreme Court has observed that the word "deemed" is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction on a word or phrase that would not otherwise prevail, but in each case, it would be a question as to with what object the legislature had made such a deeming provision. Reading the whole subsection (1) of Section 51A in respect of the appointment of the Vice-President of a Municipal Council, the object of the deeming provision is that, if the approval is not granted, within sixty days, it shall be deemed to have been granted by the State Government. The deeming provision mentioned in the statute is made for the purposes of granting approval to the appointment as Vice-President. It is a fiction created having regard to the entire scheme regarding the appointment of the Vice-President.

15. The deeming provision is also very specific, as; if the matter is not considered regarding the approval or disapproval by the State Government within 60 days, the statute itself provides that approval shall be deemed to have been

accorded to the appointment so made by the President. Any other interpretation will violate the specific provision of the statute.

16. The term of the Vice-President is restricted for a period of one year only. In Section 51A, it is further mentioned that the appointment of the Vice-President is also liable to be terminated at any time during his term by the President with the prior approval of the State Government. If the approval is not granted within 60 days, and if the deeming provision is not given its proper effect, the provision regarding prior approval which is required to be obtained by the President for the removal of the Vice-President would become redundant. The provision of prior approval for removing a person as a Vice-President is specific. The provision presupposes that either there is approval of the State Government; or, because of the fiction created by the statute, the approval is granted by the State, and before power of removal of Vice-President is exercised by the President, as the approval is either granted or deemed to be granted, for removing such a Vice-President, prior approval is a must, before removing the person. The provision for prior approval at the time of removal also provides a key to give effect to the deeming fiction. The provision so made is made for the purpose of creating a fiction and not for any other purpose.

17. It was further argued before us on behalf of Respondents Nos. 4 and 5 that, as there is a power vested in the President to terminate the appointment of the Vice-President, the letter issued by the President to terminate the appointment of the Vice-President shall be regarded to have been done under exercise of powers under sub-section (5) of the said section.

18. It is not possible to accept this contention also, as, admittedly, the appointment of the Vice-President was made by the President. The approval was not granted within 60 days and, by virtue of the deeming provision, it will have to be deemed that the approval was granted. Therefore, if the President was to act under the provisions of subsection (5), he has to obtain prior approval of the State Government for removal of the Vice-President. Such a step has not been taken at all. The letter dated 14th March, 1995 does not relate to the prior approval for removal of the Vice-President, but relates to the appointment of the Vice-President.

19. Under sub-section (5), for removal of the Vice-President, the action has to be initiated by the President and not by the State Government; and after initiating the action by the President, the State Government has to give approval for removal. In the present case disapproval to the appointment of the Vice-President as per letter dated 14th March, 1995 is at the instance of the State Government and not at the instance of the President. The submission, therefore, cannot be accepted.

20. It was further contended that the new Vice-President has already entered the office. As we are of the opinion that the Vice-President was illegally removed from the post on the ground that the disapproval can be granted after sixty days,

the Government can disapprove the appointment of the Vice-President only within sixty days of the receipt of the intimation sent under sub-section (1). No equitable relief contrary to the statute can be considered especially in the matter "of holding of a post.

21. In the order dated Nth March, 1995, it is mentioned that the approval is not granted because Crime No. 4 of 1988 is registered against the petitioner. Our attention is not invited to any guidelines framed by the State Government in this respect. It would, therefore, be doubtful whether the petitioner could have been removed, merely because a crime is registered against him.

22. In the result, the order dated 14th March, 1995 passed by the State Government (Exhibit A, the consequential order dated 18th March, 1995 (Exhibit B) and the appointment of the new Vice-President under Exhibit C are set aside. Rule absolute accordingly. No order as to costs.

Order accordingly.