
(2000) 09 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 4988 of 2000

Raju Kishan Awale

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 55

Citation : AIR 2001 Bom 51 : (2000) 4 MhLj 592

Hon'ble Judges : A.P. Shah, J; A.M. Khanwilkar, J

Bench : Division Bench

Advocate : S.A. Bobde and R.V. More, for the Appellant; V.M. Purshurami, AGP, C.J. Sawant and Vijay Patil, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition, under Article 226 of the Constitution of India, takes exception to the notice issued by the Collector dated September 11, 2000, convening the special meeting of the Respondent No. 4 Council on September 19, 2000 to consider the resolution of no-confidence moved against the Petitioner.

2. Briefly stated, on December 17, 1998, the Petitioner was elected as the President of the Respondent No. 4 Municipal Council which consists of 52 elected councillors. The Petitioner's term as President of the Council was originally for a period of 2 1/2 years from the said date, however, more than half of the total councillors expressed No Confidence against the Petitioner and called upon the Collector to convene special meeting of the Council, for the purpose of removal of the Petitioner as the President, within the meaning of Section 55 of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the said Act). Pursuant to the abovesaid requisition the Collector issued impugned notice dated September 11, 2000

convening the Special meeting of the Council.

3. This writ petition was moved for urgent Circulation before this Court on 18th September 2000, however, the matter was kept on 19-9-2000, first on board, for admission, having regard to the fact that the special meeting was convened at around 11.00 a.m. on 19-9-2000 itself. When the matter was called out for admission, at around 11.30 a.m., the learned A.G.P. pointed out that the special meeting held pursuant to the impugned notice has since been concluded and Resolution has been carried through by majority of 39:6. Nonetheless, as the Petitioner was assured at the time of mentioning that upon hearing if this Court takes the view that the Petitioner has made out prima facie case then appropriate relief would be passed in favour of the Petitioner including setting aside the Resolution passed by the council in the meeting held pursuant to the impugned notice.

4. Shri Bobde, Senior Advocate with Shri R.V. More appeared for the Petitioner. Shri C. J. Sawant with Vijay Patil appeared for the Respondent No. 5 and Shri V.M. Purshurami, AGP appeared for Respondent Nos. 1 to 3. Heard the learned Counsel for the parties.

5. The only point raised by Shri Bobde, learned Senior Advocate, for the Petitioner, is that the impugned show cause notice is bad as it does not contain any reason which persuaded the majority of the Council members to initiate action for the removal of the Petitioner from the post of the President of the Municipal Council. According to him, the show cause notice should clearly indicate the reason which prevailed upon the members to take action u/s 55 of the Act, with a view to ensure compliance of principles of natural justice. In support of this contention, emphasis is placed on the expression "removal" appearing in Section 55 of the Act. It is contended that since the Petitioner was being removed from the post of the President, it was bound to entail into some Civil consequences, for which it was essential to indicate the reasons in the notice so as to ad here to the principles of natural justice. It is contended that the expression "removal" also appears in Article 311 of Constitution of India and therefore the same will have to be construed in the same manner as understood by the Apex Court to mean that before removing any person it is essential to follow the principles of natural justice .In support of this submission reliance is placed on the decision of the Apex Court reported in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, and the decision of the Mysore High Court reported in AIR 1954 Mys 598. Krishnappa v. Bangalore City Co-op. Bank Ltd.. Reliance is also placed on the book titled "Law of Meetings" by B.A. Masodkar, as he then was. Relevant portion which has been relied upon from the said book thus reads thus :--

"5) Notice pertaining to expulsion and election -

It is not, however, free from doubt to say that a notice of a general meeting containing words "any other matter" would be a sufficient notice when the

question affects the rights of the membership or the constitution of the body itself. It can be said to be well settled that the matter like expulsion of the members or elections cannot be taken up unless a reasonable opportunity has been afforded to all concerned and the requirement stems out of basic principles of fair play and justice. It is implicit that wherever a right of a person or a member is being affected, the notice cannot but be specific and the requirements cannot be relaxed and a mere mention of the words "any other matter" cannot be sufficient. The rule laid down in *Young v. Ladies Imperial Club* (supra) appears to be a rule based on the doctrine of fair play and justice in the matters of expulsion and all other exercise of disciplinary jurisdiction. Similarly, where a question pertains to the exercise of an electoral right, i.e. of voting or contest to an office, it cannot be said that the words "any other matter" would be sufficient to give a notice, to those who are possessed of this right and are being affected. *Nilkanth Devrao Nadkarni Vs. Murari Govind Mhale*, , this would be necessary with regard to all the special matters having effect on the rights of the members who cannot be taken by surprise nor can be tricked."

6. On the other hand Mr. C. J. Sawant, learned Senior Counsel, appearing for the contesting Respondent, placed reliance on the decision of the Division Bench of this Court reported in *Ramkrushna Gangaram Rathi and Another Vs. Kisan Zingraji Madke and Others*, . According to Mr. Sawant, all the questions raised in the present writ petition have already been extensively considered by this Court and rejected in the abovesaid decision. To counter the said argument, Shri Bobde, contended that reliance on the abovesaid decision of this Court cannot be placed as much water has flown thereafter, in view of the decision of the Apex Court reported in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, . According to Shri Bobde, in view of the decision of the Apex Court, it will have to be held that the judgment of this Court reported in 1970 M LJ 836 is no more a good law. Besides the aforesaid decision reported in 1970 M LJ 836 Shri Sawant has also placed reliance on the full bench decision of this Court reported in *Ashok Maniklal Harkut Vs. The Collector of Amravati and Another*, .

7. In our view, the issue raised on behalf of the Petitioner has been squarely dealt with by the Division Bench of this Court in the judgment reported in *Ramkrushna Gangaram Rathi and Another Vs. Kisan Zingraji Madke and Others*, . From paras 1 and 3 of the said decision it would be seen that the only question that was pressed before this Court was whether the requisition for convening the meeting to pass a Resolution to remove the President of the Municipal Council need state the ground on which the President would be removed. In other words, the question considered by this Court was whether the requisition itself is invalid as it does not state any grounds on the strength of which the President was to be removed from his office. The contention was that the President against whom the so called No Confidence motion was tabled, the grounds or the reasons for his removal or for No Confidence in him must necessarily be stated either in the requisition or in the appendix thereto, so that the President concerned would get a reasonable opportunity to meet those grounds at the time of meeting to be

able to convince or persuade the councillors to take the view that the reasons for his removal are without substance and there is no cause for his removal. As observed above, this contention has been rejected by this Court in the aforesaid decision. This Court, not only referred to the relevant provisions of the Act, but also referred to the decision of our Courts as well as the position in other countries, to conclude that there is marked distinction between the removal of the President by Councillors u/s 55 of the Act and the removal falling u/s 42 and 56 of the Act. According to this court, the removal u/s 42 or 56 of the Act would attach stigma on the councillor of misconduct or of being incapable of performing his duty as a councillor. On the other hand, no such stigma is attached in case of the removal of the President in terms of Section 55 of the Act. This Court has further observed that the effect of passing resolution u/s 55 of the Act is that the President automatically ceases to hold the office of the President. There is no reason to take a different view than the one already taken by this Court in the aforesaid decision. In our view, since the process of removal of the President u/s 55 is neither an administrative nor a quasi judicial action, would not necessitate complying with the principles of natural justice. On the other hand, the said action is purely a democratic action; and is the exclusive domain of the House, for which, no reason need be indicated in the requisition which is not put to vote before the House. The notice convening the Special Meeting for that purpose by itself is a sufficient opportunity offered to the person concerned.

8. In so far as the contention raised on behalf of the Petitioner that much water has flown after the decision of Ramkrushna Gangaram Rathi and Another Vs. Kisan Zingraji Madke and Others, , by referring to the decision of the Apex Court on Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, , in our view, there is no substance in this plea. The Apex Court, in the decision referred to above, was concerned with the action taken against the member, Respondent therein, on the ground of allegations of misconduct. In that context, while construing Regn, 14 of the Chartered Accountants Regulations 1964, the Apex Court observed that there is nothing in regulation 14 which excludes the operation of the principles of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. It is, however, relevant to note that the Apex Court in the same decision has observed that the principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. In other words, in a given situation the legislative intent can be spelt out that the legislature never intended that the principles of natural justice should be followed. In our view, Section 55 of the Act, as has already been construed by this Court that it would not permit ascribing reading of the principles of natural justice inherent even in the process of removal of the President by the council u/s 55 of the Act. In para 7 of the decision in 1970 M.LJ 836 it has been observed that the omission of providing for the reasonable opportunity in Section 55 of the Act cannot be said to be inadvertent or unintentional and it would not be permissible for the Courts to read something in the Section which it does not contain. It is thus well settled

that Section 55 clearly excludes the operation of the principles of natural justice in the process of action for the removal of the President of the Council. Besides, the decision of the Apex court, is a case where the disciplinary action was taken against the members on the allegations of the misconduct. However, in so far as Section 55 of the Act is concerned, it is not necessary that every removal is based on the allegations of misconduct. On the other hand, no stigma can be attached when the person is removed from the office of the President of the Municipal Council under this provision. This Court while taking the above view had considered the decision of the Apex Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, of the judgment this Court has rightly concluded that in a democratic institution, the office bearers are elected by majority and at the time of election there are no considerations of his capacity, integrity, honesty, ability or any other considerations whatsoever. It has been further held that a majority of the Councillors desire that a particular person should be chosen as a President, and his qualities and capabilities are not subjected to any discussion before the house, before the election is held. This Court, in the circumstances has taken a view that there is no reason then, when the majority of the councillors does not want that person to be an office bearer, why he should continue in that office and as to why reasons for his removal should be given or why matter should be discussed in the house on this question. We are of the view that the decision of the Apex Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, which is mainly based on the same principle as annunciated in the above referred decision of the Apex Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , in the first place, can have no application to the point in issue and in no case can be said to have impliedly overruled the decision of this Court which is holding the field since 1970. As observed above, the decision of the Apex Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, is not applicable to the case on hand as the same pertains to the removal of members on the allegations of misconduct pursuant to the disciplinary proceedings, unlike in the present case, the removal is by the decision taken by the Councillors which is the exclusive domain of the House. The said action is neither an administrative or a quasi judicial action. In our view, therefore, submissions advanced on behalf of the petitioner cannot be entertained in view of the decision of this Court reported in judgment of 1970 M. LJ 836. In our view, reference made to the extracts from the book on Law of Meetings, is also totally misplaced and of no avail to the petitioner.

In the circumstances this writ petition is devoid of any merits and the same deserves to be dismissed. Hence, the same is dismissed.