

(1970) 02 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No. 1240 of 1969

Ramkrushna Gangaram Rathi and Another

APPELLANT

Vs

Kisan Zingraji Madke and Others

RESPONDENT

Date of Decision : 03-02-1970

Acts Referred:

Bombay District Municipal Act, 1901 — Section 23(7)
Central Provinces and Berar Municipalities Act, 1922 — Section 18A
Maharashtra Municipalities (Conduct of Business) Rules, 1966 — Rule 16, 24
Maharashtra Municipalities Act, 1965 — Section 42, 43, 44, 52, 55
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 49, 49(1)
Municipal Ordinance — Section 277(1)
Penal Code, 1860 (IPC) — Section 21

Citation : AIR 1971 Bom 305 : (1971) ILR (Bom) 885 : (1970) MhLj 836

Hon'ble Judges : Padhye, J;Deshmukh, J

Bench : Division Bench

Advocate : M.N. Phadke and P.G. Palshikar, for the Appellant; C.S. Dharmadhikari, Assistant Govt. Pleader, V.G. Palshikar, M.B. Mor, B.A. Masodkar and G.B. Gandhe, for the Respondent

Judgement

Padhye, J.—The only question pressed in this petition is, whether the requisition for convening a meeting to pass a resolution to remove a President of a Municipal Council need state the grounds on which the President is to be removed.

2. Section 55 provides for the removal of President and Vice-President. This section is the subject-matter of the main controversy in this petition and the construction of this provision is the matter of debate. Portion of Section 55 which is relevant for the purposes of the present controversy needs to be reproduced. It is:

"Section 55 (1). A president or a Vice President shall cease to be President or Vice President as the case may be, if the Council by a resolution passed by a majority of the total number of councillors (excluding the co-opted councillors) at a special meeting so decides.

(2) The requisition for such a special meeting shall be signed by not less than one-fourth of the total number of councillors (excluding the co-opted councillors) and shall, if such meeting is to be convened for considering the resolution for removal from office-

X X X X X (4) x x x x The co-opted Councillors present at the meeting shall have no right to vote on any resolution relating to the removal of the President or the Vice President." .

3. Sub-section (2) of Section 55 requires that the requisition for such special meeting, as contemplated by Sub-section (1), shall be signed by not less than one-fourth of the total number of Councillors (excluding the co-opted Councillors) and if the Council passes a resolution by a majority of the total number of Councillors (excluding the co-opted Councillors) at a special meeting, the President or the Vice President ceases to be the President or the Vice President, as the case may be. In this petition the requisition for a special meeting as required by Section 55 (2) of the Act with the requisite number of Councillors was given for removing the President from that post and the substance of the resolution in the said requisition was that the Council had no faith or confidence in the President of the Council and hence the meeting removes him from the post of the President. In pursuance of this requisition, the Councillors convened a special meeting of the Council to consider the said resolution and authorised an officer to preside over such a meeting. In this meeting votes of eligible voters were taken and the resolution was passed by the Municipal Council. The question that has been raised in this petition is that the requisition itself is invalid as it did not state any grounds on the strength of which the President was to be removed from his office. It has been contended on behalf of the President against whom this so called no confidence motion was tabled that the grounds or the reasons for his removal or for no confidence in him must necessarily be stated either in the requisition or in an appendix thereto so that the President concerned must have a reasonable opportunity to meet those grounds at the time of the meeting and to be able to convince or persuade the Councillors to take the view that the reasons for his removal are without any substance and there is no cause for his removal. On the other hand, the respondents contend that it is not necessary to state any grounds for the removal of the President in the requisition and it is enough if the proposed resolution states that the President is to be removed from his office,

4. On a plain reading of Section 55 of the Act, it does not appear that the requisition must also state the grounds or reasons on which the President is sought to be removed from his office. It does not require any reasonable opportunity to be given to the President who is sought to be removed. In contrast, to Section 55, Section 56 of the very Act requires that when a President or the Vice President is to be removed from his office on account of his absence without leave for a period exceeding three months at a time, the Collector is empowered to decide that such a President or Vice President has ceased to be

the President or Vice-President, but before such an order is passed by the Collector against any President or Vice President such President or Vice President has to be given a reasonable opportunity of being heard. Similar provisions are to be found in Sections 42, 43 and 44 of the Act which relate to the removal from office of the Councillor or to his disqualification as a Councillor. In all these cases, these provisions provide that such a Councillor must be given a reasonable opportunity of being heard before he is removed or held to be disqualified. Such a specific provision of giving a reasonable opportunity to the President or the Vice President has not been made u/s 55 of the Act, but the learned counsel for the President in this petition contends that such a reasonable opportunity is implicit even in such cases from the different words used in this section and the specific words used therein of necessity require a reasonable opportunity to be given. While construing the provisions of Section 55 of the Act a Division Bench of this Court (Abhyankar and Bhole, JJ.) in Spl. Civil Appln. No. 1109 of 1967, D/- 19-4-1968 (Bom) has taken the view that the requisition or the proposed resolution need not state the charges or allegations or complaint for the removal of the President. According to the said decision, the scheme under the Municipalities Act appeared to be that there may not be any indication either in the requisition or in the resolution itself as to why in the opinion of the majority if the resolution is passed, they do not desire that the office bearer shall continue in office or in other words, desire that he should cease to hold the office. This Bench being of equal strength would ordinarily be bound by the aforesaid decision unless there were compelling reasons to differ from the said decision in which case it would be necessary to refer the matter for the decision by a larger Bench. Mr. M.N. Phadke, the learned counsel for the petitioner, in the present petition vehemently presses upon us that there are compelling reasons for taking a different view and that the decision in Spl. Civil Appln. No. 1109 of 1967 (Bom) referred to above, needs reconsideration as in his view the provisions of Section 55 of the Act must be given the meaning that the requisition and the resolution must state the grounds on which the President is sought to be removed so as to afford him a reasonable opportunity to meet those grounds.

5. According to Mr. Phadke, the office of the President is a creature of Statute and it has a fixed tenure and also carries with It some powers and privileges which cannot be taken away at the pleasure of a majority of the Councillors without good cause. According to him, when a Statute gives power to remove a person from a Corporation, the power to remove implies the power to remove for good cause. He further contends that if it is an exercise of statutory power, then the words imply a further requirement of natural justice as it entails civil consequences and the person to be removed must know why such an action is being taken even if it is not a quasi-judicial act, and according to him, that is what Section 55 of the Act in fact provides. He urges that the tenure of the President which is conterminous with the tenure of the elected councillors, which is five years, is not a tenure at pleasure but for a fixed statutory term and the President is entitled to continue for that term until removed for a good cause and

unless he is afforded a reasonable opportunity to show that there is no good cause for removing him. According to him, the President of a Municipal Council is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, vide Section 302 of the Act and the office of the President carries an honorarium or a sumptuary allowance per year as per Section 61 of the Act, besides several powers to be exercised by a President and his removal from office would necessarily entail civil consequences which cannot be done without following the requirements of natural justice of which one is of giving of the reasonable opportunity of being heard. He lays much emphasis on the word "decides" used in Section 55 (1) and the word "removal" in Sub-section (2) of Section 55 of the Act and these words according to him, necessarily mean that the President or the Vice President is not to be removed without giving him any reasonable opportunity which must necessarily mean that the grounds on which he is sought to be removed must be stated in the requisition and the resolution to be passed by the Council. He, therefore, contends that since the requisition does not state the grounds of removal, the said requisition is invalid and the consequent resolution passed on such an invalid requisition is also invalid and has not the effect of the removal of the President, that is, the President does not cease to be a President u/s 55 (1) of the Act. He also relies upon the rules called the Maharashtra Municipalities (Conduct of Business) Rules, 1966 which have been framed under Sub-sections (11), (13) and (19) of Section 81 of the Act and also on the provisions of Sub-section (4) of Section 81. Sub-section (4) of Section 81 of the Act provides for the notice to be given for an ordinary and a special meeting and such a notice is required to state the business to be transacted at the meeting and has also to include the motion or proposition which the Councillor proposes to bring in such a meeting. He relies on Rules 16 and 24 of the Rules in support of his contention. Sub-rule (a) of Rule 16 provides-

"16. No motion shall be admissible which does not comply with the following conditions, namely,--

(a) It shall be clearly and precisely expressed and shall raise only one definite issue.

* * *

Rule 24 provides for discussion on the subject and reads as under:

"24 (1). On a motion or amendment being moved and seconded, the presiding authority shall read it or cause it to be read to the meeting; it shall then be considered to be before the meeting for discussion. The mover may then speak in support of the motion or amendment and the seconder may either follow or reserve his speech for a later stage of the debate thereon. Other Councillors may, save as otherwise provided, speak on the motion in the order in which they are called upon by the presiding authority."

From this he spells out that the reasons for the removal of the President must be stated in the requisition and the proposed resolution, as otherwise in the

absence of such reasons the discussion contemplated by Rule 24 will be meaningless and there could not be any discussion on a ground which is not known to the House. The discussion also contemplates that the Councillors taking part in the said discussion must have a prior knowledge of the ground on which the discussion is to take place and for this reason, it is very essential that the requisition must state the grounds for the removal so as to give notice to every Councillor as to the point on which the discussion is to take place.

6. The learned counsel for the petitioner lays very great emphasis on the word "decides" in Section 55 (1) and the word "removal" in Section 55 (2) of the Act and contends that it is not just a pleasure of the Municipal Councillors to say that they do not desire the President to continue at their sweet-will and for no cause whatsoever, but they are enjoined by this provision to take a decision in the matter and for taking the decision there must be some material before them on which they must deliberate and to which they must apply their mind before taking a decision. The word "decides", therefore, is, according to him, the key to the construction of the provisions of Section 55 and it necessarily means that the grounds for removal must first be made known. According to him, the word "removal" casts a stigma as also loss of emoluments, privileges and powers and results in civil consequences and, therefore, stating of reasons for the removal is essential. He contends that the earlier Division Bench in Spl. Civil Appln. No. 1109 of 1967 (Bom) has not considered the effect and the impact of the words "so decides" and "removal" and has treated the tenure of the President as if it was a pleasure tenure, and therefore, it requires reconsideration. He also contended that the said decision was contrary to the law laid down by the Supreme Court.

7. Part (3) of Chapter III of the Act deals with the election and removal of the President and the Vice-President. Though u/s 52 the term of office of the President is conterminous with the term of the elected Councillors, it is subject to the provisions of Sections 55 and 56 of the Act whereunder he can cease to be the President even before that term. He can cease to be such President in three ways: (1) by death or resignation (2) by a resolution of the majority of the Councillors and (3) by an order of the Collector for his absence without leave. There is also one more way in which the President ceases to be a President where he as a Councillor has been found to be guilty of any misconduct in the discharge of his duties or of any disgraceful conduct or if he is incapable of performing his duties as a Councillor in which case he is removed from the office of the Councillor u/s 42 of the Act and on such removal as a councillor he would automatically cease to be the President. In cases falling under Sections 42 and 56 of the Act reasonable opportunity has specifically been provided for. That is so because upon removal u/s 42 a stigma is cast on the Councillor of misconducting himself in the discharge of his duties or of a disgraceful conduct or his being incapable of performing his duties as a Councillor. Similarly, u/s 56 when he is to be removed for being absent without leave for a period in excess of the prescribed period he must have an opportunity to show that he was not really

absent for that period or in any case was so absent either with leave or for good reason. No such reasonable opportunity has been provided in Section 55 of the Act and on the plain reading of Section 55 it appears that the Council has simply to pass a resolution by a majority of the total number of Councillors at a special meeting called for this purpose and as soon as such a resolution is passed, the President ceases to be the President. The section does not also require that the requisition for calling such a special meeting should state the grounds for removing the President and the section does not further provide for a reasonable opportunity to be given of being heard before a resolution removing him is passed. Just as the election of a President to the Municipal Council is a statutory right of the Councillors to elect him from amongst them to be the President and the Statute gives certain powers and privileges to the President on his election and fixes the term of his tenure as conterminous with the term of the elected Councillors, it also gives the Councillors the right to say that if the majority of the Councillors so desires the President shall cease to be the President. In a Democratic Institution it is the majority which rules and the decision taken by the majority of the members is binding on the whole house as if it is the decision of the whole House. To other uninterested and independent persons the decision of the majority might appear to be incorrect and the view of the minority to be the correct view. Even so, the will of the majority must prevail over that of the minority and that "will" cannot be questioned. At the time where such decisions are taken the matters on the agenda are discussed and every Councillor gets an opportunity to put forward his views and thereafter a vote is taken and the decision of the majority is taken as the decision of the Council, but that decision once taken by a majority is unassailable even though such a decision may appear to be erroneous or unreasonable and certain sanctity, is attached to the same. Such a resolution could only be reversed in the manner prescribed by the provisions of Sub-section (15) of Section 81 of the Act by a requisite majority. The Act itself has at several places indicated where the reasonable opportunity is required to be given. The omission of this reasonable opportunity in Section 55 could not, therefore, 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. Even in the earlier Municipal Acts which the present Act has repealed, the only requirement was to give ten days" notice for moving a motion of no confidence in the President and on the resolution of no confidence being passed in the President at the meeting, the President ceases to hold the office. Section 18A of the C. P. and Berar Municipalities Act. 1922, provides for the passing of the motion of no confidence against the President. Section 18A or the rule framed thereunder does not require that the requisition must state the grounds on which the President is to be removed, nor do they require that any reasonable opportunity of being heard should be given to the President before the resolution is passed. However, by amendment to the C. P. and Berar Municipalities Act by the Bombay Act No. 16 of 1958, a specific provision has been made in the new Section 18A by which the President is to be given reasonable opportunity of showing cause why such resolution should not be passed. The Bombay District

Municipal Act, 1901, by Section 23 (7) has also provided that the President shall be removable from his office by a resolution passed to that effect by a majority of three-fourths of the whole number of the Councillors and before such resolution is passed, the President has to be given a reasonable opportunity of showing cause why such a resolution should not be passed. A similar provision is to be found in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, Section 49 whereof provides for the removal of the President or Vice President by moving a motion of no-confidence against him. Under Sub-section (1) of Section 49 thereof a requisition of not less than one-fifth of the total number of the Councillors has to be given for calling a special meeting to consider the motion of no-confidence in the President or Vice-President and in the special meeting if the motion is carried by a majority of the total number of Councillors, the President ceases to hold office forthwith and the office held by him is deemed to be vacant. The requisition, however, is to be given in such form and in such manner as may be prescribed by the State Government. The State Government has prescribed the manner in which the requisition is to be given and the form prescribed requires that it should state the grounds on which the President is sought to be removed. When the Legislature enacted the present Act by which the earlier Municipal Acts were replaced, the Legislature must be taken to be aware of the provisions of the earlier Municipal Acts as well as the Maharashtra Zilla Parishads and Panchayat Samitis Act or the Bombay Village Panchayats Act in which also a similar provision is to be found. The omission, therefore, to incorporate this requirement in Section 55 of the Act appears, to be intentional and with a purpose. The contention of Mr. Phadke is that in the present Act the words "so decides" and "removal" have been used and therefore, it must not have been thought necessary to further add specifically the requirement of reasonable opportunity as these words themselves contain an obligation of giving a reasonable opportunity. We are not able to subscribe to this view. There is nothing special in the words "so decides" or "removal". The words "so decides" in Section 55 of the Act only indicate that the resolution must be by a decision of the majority of the total number of Councillors.

8. The Concise Oxford Dictionary defines the word "decide" as settle (question, issue, dispute) by giving victory to one side; give judgment, bring, come, to a resolution. By a majority of the Councillors the Council settles the question about the President ceasing to be a President by giving victory to one side, that is, to the majority or by a resolution of the majority of the Councillors, the Council comes to a resolution or resolves that the President shall cease to be the President. The words "so decides" do not, therefore, necessarily mean that it must be a decision after a full debate or discussion pro and con as is contended by the learned Counsel. Similar is the case with the word "removal." "Remove" is defined as take off or away from place occupied, convey to another place, change situation of, get rid of, dismiss. Thus, "removal from office" would mean taking off from the place occupied or getting rid of. The Chambers's Dictionary also gives one of its meanings as "to withdraw". The resolution is to be passed

for withdrawing or taking off the President from his place occupied by him as the President and for such mere removal, no reasons or grounds seem to be necessary. When a President is removed from his office by a majority of the Councillors, there is no stigma cast on him as in the case of his removal as a Councillor and secondly, as a President u/s 42 of the Act no civil consequences, as is generally understood, follow in case of a simple removal from office by a majority of votes. Analogy of a person holding a civil post is given by the learned counsel for the petitioner, but even in case of the removal of a person holding a civil post simpliciter, it does not cast a stigma. In a Democratic Institution, removal from an office by a prescribed majority of votes does not amount to any stigma on the person so removed. Such a removal by the "will" of the majority is incidental to the holding of democratic office and no reasons or grounds are required to be given unless the Statute specifically so provides. Section 42 of the Act also uses the word "removal" but this removal under this provision is for a misconduct in the discharge of his duties or for a disgraceful conduct or the Councillor becoming incapable of performing his duties as a Councillor. Such a removal would necessarily cast a stigma on the person so removed and therefore, the Legislature has been careful enough to provide for a reasonable opportunity of showing cause as to why he should not be removed. No such provision has advisedly been made in Section 55 of the Act. Section 23 (7) of the Bombay District Municipal Act also provides for removing the President from his office by a majority of three-fourths of the whole number of the Councillors, but it is also provided in the said subsection that he must be given a reasonable opportunity of showing cause why such a resolution should not be passed. If the words "removal" or "removable" had implicit in them a meaning that he must be removed for good cause for which a reasonable opportunity must necessarily be given, then it was not necessary to further provide specifically for giving of a reasonable opportunity. The word "removal" therefore has no such meaning as is ascribed to it by the learned counsel for the petitioner, that is, that it must be for a good cause and for which a reasonable opportunity must be afforded. Reading "reasonable opportunity" or "good cause" in Section 55, would be reading something which is not there in the section and would be adding to the section which the Courts are not permitted to do. It is for the Legislature to enact the law and for the Courts to interpret it, to bring out the meaning of the Legislature. It is, however, not permissible to add to or subtract from, the provisions of an Act.

9. Our attention has been invited to a decision of this Court in *Ganesh Sinha v. Commr., Nagpur Division, Nagpur*, 1963 Mah LJ 569 in which it has been observed that-

".....the object appears to be not only that the Chairman or Deputy Chairman against whom the no-confidence is being expressed should know in advance what was being alleged against him, but also that all other members should be apprised of the charges upon which the no confidence motion was moved. Thus the requirement as to the grounds achieves a double object,

namely, to limit the area of discussion and also to give due notice to the party charged as well as the members of the Samiti of the charges and enables them to make up their minds upon the charges."

No assistance of this decision can be taken by the petitioner as the rules made under the Zilla Parishads and Panchayat Samitis Act specifically make a provision that the requisition must state the grounds on which the motion of no-confidence is to be moved. *Govindji Vithaldas and Co. Vs. The Municipal Corporation of the City of Ahmedabad and Others*, on which also reliance has been placed was a case regarding the grant of a licence and the question was whether the discretion vested in the Commissioner was an arbitrary and unfettered discretion to grant or withhold the licence and in that connection, it was observed:

"Therefore, it is clear from this judgment that if the Court can discover a policy underlying the law and if a discretion is conferred under that law. then the Court must hold that the discretion is to be exercised not in an arbitrary manner, not in a capricious manner, not in an uncontrolled manner, but in a manner so as to effectuate the policy of the law."

We do not see how this decision supports the contention of the petitioner. The policy underlying the election and removal of the President is given by the Act itself and it provides for removal of the President in different circumstances. When the provisions are clear and unambiguous, they have to be given effect to and the removal of a President of a democratic institution is not the same thing as a granting or withholding of a licence which places reasonable restriction on the fundamental rights of a citizen to practise any profession or carry on any occupation, trade or business.

10. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , their Lordships have said in paragraph 12 as under;

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

This was a case where the Government servant was sought to be retired by a particular date on the footing of a certain date of birth of the said servant. It was challenged by the Government servant who contended that this amounted to a compulsory retirement before she attained the age of superannuation and was contrary to the rules governing her service conditions and the order of retirement amounted to punishment involving civil consequences. In that context, these observations were made by their Lordships of the Supreme Court. In a Democratic institution, the office bearers are elected by majority and at the time of the election there are no considerations of his capacity, integrity, honesty, ability or any other considerations whatsoever. A majority of the Councillors

desires that a particular person should be chosen as a President. His qualities and capabilities are not subjected to any discussion before the house, before the election is held. 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 the matter should be discussed in the house on this question. The President holds the office so long as he enjoys the confidence of the majority of the Councillors, It is no doubt true that the tenure of the President is conterminous with that of the Councillors and is ordinarily for a period of five years under the Municipalities Act, but such a tenure is always subject to the pleasure of the majority of the Councillors and when such a tenure itself is subject to the pleasure of the majority, it cannot be said that by his removal from the office of the President by the majority, any civil consequences as are ordinarily, understood, are involved.

11. A.K. Kraipak and Others Vs. Union of India (UOI) and Others, is also a case of a service matter. Their Lordships pointed out in that case that the dividing line between an administrative power and a quasi-judicial power was quite thin and was being gradually obliterated and the requirement of acting judicially in essence was nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. They then considered whether the principles of natural justice applied to administrative proceedings similar to those with which they were dealing. In that connection, they observed that the horizon of natural justice was constantly expanding. They were laying down the scope of the principles of natural justice and took the view that they would also govern the administrative enquiries and one of the requirements of natural justice would be giving of a reasonable opportunity and application of mind. The matter with which we are dealing is entirely of a different kind and the decision aforesaid would not apply to the question that is before us.

12. A decision of the Privy Council in *Duraiyappah v. Fernando*, (1967) 2 All ER 152 was also referred to by the learned counsel for the petitioner. In this case the Minister ordered supersession of a Municipal Council for incompetence and no opportunity was given to the Council to be heard in defence. It was held that the rule of natural justice, audi alteram partem pattern was applicable to a decision on the part of the Minister to make an order u/s 277 (1) (of the Municipal Ordinance) on the ground of incompetence on the part of the Council. It was also observed that no man was to be deprived of his property without having an opportunity of being heard and this must apply equally to a statutory body having statutory powers, authorities and duties just as it does to an individual and accordingly on this ground the Minister should have observed the principle. This was a case of the supersession of the Council and on supersession the Council was deprived of its property which vested in the State during the period of supersession. No such thing occurs on the removal of the President. The Council is very much there and continues to function with the change of the President. The President does not hold any property of which he can be said to be divested. This decision is, therefore, not applicable to the situation that arises in the present case. When a

Councillor is elected as a President by the majority, the majority places an obligation on that Councillor to act as a President in order to guide the affairs of the Council and to conduct its business. The President is at any time entitled to resign from this office. When the majority does not want him to continue in the said office, in fact that is not his removal but a cessation of the obligation placed upon him by the election.

13. The principles in construing the statute have been given in Craies on Statute Law and what may or what may not be implied if the meaning is not plain is to be found in Chapter VII at page 109 (Sixth Edition). While dealing with the construction by Implication, the learned Author says:

"If the meaning of a Statute is not plain, it is permissible in certain cases to have recourse to a construction by implication, and to draw inferences or supply obvious omissions. But the general rule is "not to import into Statutes words which are not to be found there," and there are particular purposes for which express language is absolutely indispensable. Words plainly should not be added by implication into the language of a Statute unless it is necessary to do so to give the paragraph sense and meaning in its context."

This is a case where the requirement of "good cause" or "reasonable opportunity" has been deliberately omitted and not accidentally because we find that such requirements are clearly provided in the other provisions of the Act. If the matter is altogether omitted from the Statute it is clearly not allowable to insert it by implication, for, to do so, would not be to construe the Act but to alter it. By reading into the provisions of Section 55 of the Act the words "good cause" or "reasonable opportunity" would be adding our own words to the said section which is not permissible, nor can we read into the words "decides" and "removal", as has been stressed upon us by Mr. Phadke, the requirement of "good cause" and a "reasonable opportunity of being heard."

14. We may also refer to a passage from Craies on Statute Law at page 176. It is:

"Words of limitation are not to be read into a Statute if it can be avoided. This cardinal point is thus stated by Bowen, L. J. in *R. v. Liverpool Justices*: "One objection which, to my mind, is almost conclusive evidence against it (the decision in *Ex. P. Todd*) is this that so to construe the section is reading into it words which limit its prima facie operation, and make it something different from, and smaller than, what its terms express. Now, certainly we should not readily acquiesce in a non-natural construction which limits the operation of the section so as to make the remedy given by it not commensurate with the mischief which it was intended to cure."

And Lord Hanworth more recently said:

"It is a fundamental principle in construing an Act of Parliament to give to it its ordinary and grammatical meaning if this produces no repugnancy or

inconsistency."

We do not find in this case that the construction which we are putting on Section 55 of the Act produces any repugnancy or inconsistency.

15. The observations of the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, are also similar where their Lordships observed in paragraph 38:

"If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the Legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature."

16. While dealing with the topic "Municipal Corporations", *Corpus Juris Secundum*, Volume 62, makes a distinction between the removal of a member of a Municipal Governing body and the officers of the Council. So far as the removal of the member is concerned, it states in para. 390 (g):

"A member of a Municipal Governing body may be removed for proper cause, provided he is given a fair hearing and there is compliance with statutory or charter requirements as to the procedure to be followed."

This would be equivalent to the power of the State Government to remove a Councillor u/s 42 of the Act. In such cases a fair hearing is required to be given, but as regards the officers of the Council, it says:

"Where the presiding officer of the municipal governing body is chosen by the members from one of their own members, he holds office, in the absence of Statute or charter provision providing otherwise, at the will or pleasure of the members of such body and may be removed by them at any time."

This was the view taken in *Commonwealth v. Heinze*, 25 Pa. Dist. 21 in which it was observed:

"President of Council was held appointive officer within the meaning of constitutional provision authorising removal of such officer at the pleasure of the power by which he was appointed."

17. In *Vishvamohan Raghuviraprasad Tiwari Vs. Mahadu Chaudhari*, this Court while dealing with the provisions of Sub-section (7) of the Section 23 of the *Bombay District Municipal Act (III of 1901)* observed at p. 195 Col. 1 as follows:

"Mr. Joshi, however, contended that the Municipality would be competent to remove a President or a Vice President under the power conferred upon it by the first part of Sub-section (7) of Section 23 only in cases other than those in which the State Government would have power to remove him. In other words, Mr. Joshi contends that the Municipality could not remove the President or Vice

President on the ground of misconduct, neglect of, or incapacity to perform his duty as such President or Vice President. Mr. Joshi urged that if that was the true construction, then the State Government could properly be said to be the exclusive authority to remove a President or Vice President on any of the three grounds of misconduct, neglect of or incapacity to perform his official duty as a President or Vice President. I am afraid, this contention cannot be accepted. As already observed, on a true construction of Sub-section (7) of Section 23, the Municipality has power to remove its President or Vice President as it thinks fit without assigning any reasons for such removal merely by passing a resolution with the majority of three-fourths of its councillors. This power can be exercised by the Municipality also in cases of misconduct, neglect of or incapacity to perform his duty on the part of its President or Vice President."

The Mysore High Court in *The State v. Chikkayenkatappa* AIR 1965 Mys 253 dealing with the provisions of Section 23 (7) of the Bombay District Municipal Act, 1901 also concurred with the view taken by Shah, J. in the aforesaid Bombay decision.

18. It will thus appear that the tenure of the office of the President is wholly at the pleasure and the will of the majority of the Councillors and he can stick to that office only so long as he enjoys the confidence of the majority. As soon as he loses the confidence of the majority, he is not entitled to continue in his office. It may be that the President is not guilty of any misconduct in the discharge of his duties or is not guilty of any disgraceful conduct. He may be an honest man or a man of integrity and may be very able, competent and efficient in his work, but still there could be honest policy differences between the President and the majority of the Councillors; there might be honest ideological differences between them, in which case the administration would not be smooth and the majority might not be able to carry on their policy or programme if the President were to hold different or opposite views, though honestly. In such cases, it would not be desirable that a person who does not enjoy the confidence of the majority of the Councillors should head the Council and it is for this reason that the Legislature seems to have deliberately framed Section 55 of the Act in the manner it has done by which only the "will" of the majority has to prevail for passing a resolution that the President shall cease to be the President though no ground or reasons are required to be given in the requisition to move such a resolution. In our view, this has been advisedly, done by the Legislature and we cannot attribute a different meaning to it as is pressed upon us by the learned counsel for the Petitioner.

19. We do not, therefore, see any reasons, much less compelling reasons, to take a different view than that taken by the earlier Division Bench (Abhyankar and Bhole, JJ.) in Spl. Civil Appln. No. 1109 of 1967, D/- 19-4-1968 (Bom). In our view the only requirement of a valid requisition for convening a special meeting to pass a resolution that the President or the Vice President shall cease to be the President or Vice President is the signatures of not less than one-fourth

of the total number of Councillors (excluding the co-opted Councillors) and for such requisition to be valid, no grounds or reasons are required to be disclosed for removing the President or the Vice President. It is not argued in this case that the requisition in question was not signed by the requisite number of the Councillors. Since that is so, the requisition dated 3-12-1969 for passing a resolution that the petitioner No. 1 who is the elected President of the Municipal Council, Washim, shall cease to be the President, is perfectly valid and is not liable to be quashed.

20. Accordingly, we dismiss this petition with one set of costs. At the time of pronouncing the judgment, leave to appeal to Supreme Court is asked for orally by the Counsel for Petitioner. It is rejected.

21. Petition dismissed.