
(2004) 09 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No. 934 of 2004

Randhirsingh

APPELLANT

Vs

Sau. Alkatali Bhiwapurkar and Others

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 63(3B), 81(9)

Citation : (2005) 2 ALLMR 194 : (2005) 1 MhLj 198

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.M. Gordey, for the Appellant; B. Maldhure, for Respondent Nos. 1, 4, 6, 7, 9, 11, 15, 17 and 23, S.G. Charde, for Respondent No. 2, T. Khade, A.G.P. for Respondent No. 3 and Dhawle, for Respondent Nos. 8, 10, 13, 14, 18 to 22, 25 and 26, for the Respondent

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard finally by consent of Shri Gordey, learned Counsel for the petitioner, Mrs. Maldhure, learned Counsel for the respondent Nos. 1, 4, 6, 7, 9, 11, 15, 17 and 23, Shri Charde, learned Counsel for the respondent No. 2, Mrs. Khade, learned Assistant Government Pleader for the respondent No. 3, and Shri Dhawle, learned Counsel for the respondent Nos. 8, 10, 13, 14, 18, 19, 20, 21, 22, 25 and 26.

2. The petition is directed against the decision rendered by the respondent No. 3 vide order dated 12-2-2004 as well as order dated 13-2-2004 passed by the respondent No. 1.

3. Shri Gordey, learned Counsel for the petitioner, states that so far as decision dated 12-2-2004 taken by the respondent No. 3 is concerned, same is against the provisions of Section 81(9)(ii) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Act"). It is submitted that there are 25 elected Councillors including respondent No. 1 and three nominated Councillors in Umred Municipal Council. So far as

quorum at special meeting is concerned, in view of Section 81(9)(a)(ii) of the Act, the same should be one half of the total members of the Councillors and in view of Section 2(49) of the Act, it should be of elected Councillors and, therefore, quorum necessary for holding special meeting of Umred Municipal Council comes to 12.5. The learned Counsel further states that in view of proviso to Section 81(9)(a)(ii) of the Act, while computing quorum, fraction is required to be ignored and, therefore, quorum for special meeting comes to 12. It is, therefore, contended that the decision rendered by the respondent No. 3 dated 12-2-2004 holding that there was no quorum available as per above referred section for transacting business of special meeting is incorrect and cannot be sustained. It is further contended that in view of the above referred facts, order dated 13-2-2004 passed by the respondent No. 1 constituting Subject Committees and nominating members on those Subject Committees is also invalid in law since power exercised under Sub-section (3B) of Section 63 of the Act is available to the President of Municipal Council only if Council fails to fill up by election any vacancy of a member or members of any of the Subject Committees or if there is failure to elect a member in the fresh election, such vacancy or vacancies may be filled up by nomination of a Councillor or Councillors, as the case may be, by the President. It is submitted that since quorum was adequate for the special meeting and it was possible to transact business in the special meeting for constituting Standing Committee as well as Subject Committees of Umred Municipal Council, order dated 13-2-2004 passed by the respondent No. 1 President is also not sustainable in law.

4. Mrs. Khade, learned Assistant Government Pleader for respondent No. 3, does not dispute factual aspect of the matter. However, she states that respondent No. 3 in order dated 12-2-2004 observed that 50% of members (elected) out of total 25 members comes to 12.5 and 13 members are required to complete quorum for special meeting and, therefore, for want of quorum, business of the special meeting could not be transacted. Consequently, respondent No. 1 was justified in exercising power under Sub-section (3B) of Section 63 of the Act.

5. Shri Charde, learned Counsel for respondent No. 2, and Shri Dhawle, learned Counsel for respondent Nos. 8, 10, 13, 14, 18, 19, 20, 21, 22, 25 and 26, do not dispute the factual and legal aspect of the matter.

6. We have given our anxious thought to the contentions of the learned Counsel for the parties and perused relevant provisions of the Act as well as impugned orders passed by the respondent Nos. 1 and 3. Sub-section (9)(a) of Section 81 of the Act reads thus :

"(9)(a) The quorum necessary for the transaction of business -

(i) at an ordinary meeting shall be one-third of the total number of Councillors,

(ii) at a special meeting shall be one-half of the total number of Councillors

Provided that, in computing the quorum, a fraction shall be ignored."

As per above referred provision, it is evident that quorum necessary for transaction of business at a special meeting is one half of the total number of Councillors. It is not in dispute that total elected Councillors of Umred Municipal Council are 25 and one half of total elected Councillors would be 12.5. Proviso to Sub-section (9)(a) of Section 81 of the Act mandates that in computing quorum, fraction shall be ignored and, therefore, though one half of total elected Councillors comes to 12.5, the fraction has to be ignored as per proviso and hence, one half of the total elected Councillors comes to 12 for constituting quorum necessary for transacting the business at a special meeting. It is not in dispute that 12 elected Councillors were present on 12-2-2004 in the special meeting, which was a valid quorum for the special meeting and, therefore, business at the special meeting, i.e. constituting Standing Committee as well as Subject Committees of Umred Municipal Council could have been validly transacted. However, respondent No. 3 ignored the proviso to Sub-section (9)(a) of Section 81 of the Act and wrongly counted fraction and held that one half of total elected Councillors comes to 13 and, therefore, wrongly concluded in the impugned order dated 12-2-2004 that there was no requisite quorum for transacting business at the special meeting, which was scheduled on 12-2-2004. The conclusion arrived at by the respondent No. 3 in view of provisions of subsection (9)(a) of Section 81 of the Act is impermissible in law. Hence, the impugned order passed by the respondent No. 3 cannot be sustained in law.

7. It is also not in dispute that respondent No. 1 President is entitled to exercise power under Sub-section (3B) of Section 63 of the Act only if Council fails to fill up by election any vacancy of a member or members of any of the Subject Committees or if there is failure to elect a member at the fresh election, such vacancy or vacancies may be filled up by nomination of a Councillor or Councillors, as the case may be, by the President. However, in the instant case, no such contingency existed since quorum for the special meeting was adequate as per provisions of the above referred section and, therefore, order dated 13-2-2004 passed by the respondent No. 1 is also not sustainable in law in view of the above referred undisputed facts.

8. For the reasons stated hereinabove, we quash and set aside the order dated 12-2-2004 passed by the respondent No. 3 as well as order dated 13-2-2004 passed by the respondent No. 1 and direct respondent No. 3 to hold a special meeting for constitution of Standing Committee as well as Subject Committees of Umred Municipal Council according to procedure applicable in this regard

9. The rule is made absolute in the above terms. No order as to costs.