

(1983) 01 CAL CK 0004
In the Calcutta High Court
Case No : F.M.A.T. No. 855 of 1982

Ranu Sen Gupta and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 12-01-1983

Acts Referred:

Bengal Municipal Act, 1932 — Section 16, 56A, 56A(2), 67A

Citation : AIR 1983 Cal 144 : 87 CWN 330

Hon'ble Judges : M.M. Dutt, J;C.K. Banerji, J

Bench : Division Bench

Advocate : P.K. Sen Gupta, B.G. Chakraborty and A.C. Das, for the Appellant;
Mukul Prakash Banerjee, M. Chowdhury, for Respondents Nos. 3 to 15 and 17 to 32 and A.P. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—In this appeal the appellants, who were at the material time mid-wives in the Health Department of the Howrah Municipality, have assailed the propriety of the judgment of G. N. Ray, J. whereby the learned Judge discharged the Rule Nisi issued on the application of the appellants under Article 226 of the Constitution. In the writ petition, the appellants challenged the validity of the order of transfer dated June 3, 1980 passed by the President of the Committee appointed, by the State Government u/s 56-A of the Bengal Municipal Act, 1932, hereinafter referred to as the Act, to take charge of the administration of the affairs of the municipality. By the impugned order of transfer, the appellants were transferred from one ward to another within the municipality.

2. At the hearing of the Rule Nisi, in assailing the impugned order of transfer the appellants challenged the constitutional validity of Section 56-A which has been inserted in the Act by Section 3 of the Bengal Municipal (Second Amendment) Act, 1969. It was contended on behalf of the appellants that as Section 56-A was ultra vires the constitution, it was void and, consequently, the Committee appointed u/s 56-A did not derive from such appointment any authority to

administer the affairs of the municipality. It was, accordingly, contended by the appellants that the impugned order of transfer was illegal and void and should be quashed. Further, it was contended that the appointment of the Committee was mala fide.

3. The learned Judge, after considering the facts and circumstances of the case and the submissions made on behalf of the parties, overruled the above contentions of the appellants and, as stated already, discharged the Rule Nisi. Hence this appeal.

4. Section 56-A, the constitutional validity of which has been challenged before us, reads as follows:

"56-A. Appointment of Committee in case of delay in forming new body of Commissioners by reason of orders of Court or for other reason.-- (1) Where after the expiry of the term of office of the Commissioners of a municipality under Sub-section (1) or Subsection (5) of Section 56, the State Government is of opinion that by reason of the order of a Court or for any other reason, there is no likelihood of a new body of Commissioners being formed within a reasonable time to take over municipal administration, the State Government may, if it thinks fit so to do in the public interest, by order, appoint a Committee consisting of the same number of members as the Commissioners of the municipality to take charge of the administration of the affairs of the municipality in accordance with the provisions of this Act and the rules and the bye-laws made thereunder.

(2) No person shall be appointed as a member of the Committee if he is subject to any of the disqualifications mentioned in Section 22.

(3) The State Government shall appoint one of the members of the Committee to be the President and another member to be the Vice-President, of the Committee.

(4) Upon the appointment of the Committee under Sub-section (1), all the Commissioners of the municipality continuing in office by virtue of Sub-section (2) of Section 56 shall be deemed to have vacated their offices as such Commissioners.

(5) The members of the Committee shall for all purposes be deemed to be the Commissioners of the municipality and the President and the Vice-president of the Committee shall be deemed to be the Chairman and the Vice-Chairman, and references in this Act or any other Act or any rule, bye-law, order or notification made under this Act or any other Act to the Commissioners of the Municipality, the Chairman and the Vice-Chairman shall be construed as references respectively to the members of the Committee, the President and the Vice-President of the Committee.

(6) The members of the Committee shall hold office till the date of the first meeting, at which a quorum is present, of the newly-formed body of Commissioners after a general election of Commissioners held under the provisions of the Act or any other Act applicable to the area comprised within the

municipality.

(7) If the office of a member of the Committee falls vacant by resignation, death or otherwise, the State Government shall appoint another person as member to fill the vacancy; and if the office of the President or the Vice-President falls vacant for similar reasons, the State Government shall appoint one of the members of the Committee to be the President or the Vice-President, as the case may be."

5. It is contended by Mr. P.K. Sen Gupta, learned counsel appearing on behalf of the appellants that Section 56-A does not provide for any guideline as to who will be selected as members of the Committee and how such selections and appointments will be made, and that it does not also provide for any check or safeguard or remedy against any illegal appointment of persons to the Committee. Further, it is said that Section 56-A does not specify any period of time during which the Committee will continue to administer the affairs of municipality. It is submitted that by enacting Section 56-A, the legislature has prescribed a double standard for the administration of municipalities, namely, that some municipalities will be administered by elected commissioners and some by the Committee appointed u/s 56-A. It is on these grounds the learned counsel submits that Section 56-A is ultra vires the Constitution although, it may be stated that, no specific provision of the Constitution, of which Section 56-A may be violative has been referred to.

6. We may first of all consider whether Section 56-A provides any guideline for the selection and appointment of persons as members of the Committee. Section 23 of the Act lays down the qualifications of Commissioners and voters. Under Sub-section (1) of Section 23, no person shall be qualified to be elected a Commissioner of a municipality, whose name is not included in the electoral roll for the election of Commissioners of such municipality. Section 22 of the Act lays down the general disqualifications for being a Commissioner and enjoins, inter alia, that a person shall not be eligible for election or appointment as a Commissioner if such person is under twenty-one years of age or is in arrears for more than three months in payment of any rate or tax as contained in Clauses (b) and (g) of Sub-section (1). Now Sub-section (2) of Section 56-A provides that no person shall be appointed a member of the Committee if he is subject to any of the disqualifications mentioned in Section 22. Section 56-A, however, has not expressly laid down the qualifications of persons to be appointed members of the Committee. But in laying down the disqualification for being members of the Committee, as in Section 22 of the Act, Sub-section (2) of Section 56-A has, in our opinion, indirectly or by necessary implication provided for the qualifications of persons to be appointed members of the Committee. In view of the disqualifications, contained in Clauses (b) and (g) of Section 22(1) of the Act, which are also disqualifications for being appointed a member of the Committee, Sub-section (2) of Section 56-A provides by necessary implication that a person to be appointed a member of the Committee shall not be less than 21 years of

age, and he shall be a ratepayer of the municipality which follows from the disqualification referred to in Clause (g) of Section 22 (1) providing that if a person is in arrears for more than three months in payment of any rate or tax, he will not be eligible for election or appointment as a Commissioner. Thus Sub-section (2) of Section 56-A impliedly lays down the qualifications of a person to be appointed a member of the Committee, namely, that he must not be less than 21 years of age and must be a rate-payer of the municipality and shall not have the other disqualifications referred to in Section 22 of the Act. In oilier words. Section 56-A has laid down a guideline as to who shall be appointed a member of the Committee. Such members are to be appointed by the Slate Government in accordance with the provisions of Section 56-A, particularly in strict compliance with Sub-section (2) thereof. There is, therefore, no substance in the contention of the appellants that Section 56-A has not provided for any guideline as to the selection or appointment of persons as members of the Committee.

7. We may now consider the contention of the appellants that Section 56-A has not pro-vided for any check or safeguard or remedy against an illegal appointment of a person has a member of the Committee. Section 56-A has been enacted with a view to avoiding a deadlock arising out of circumstances mentioned therein. The Committee is appointed by way of a slop-gap arrangement to continue till a new body of Commissioners is elected in accordance with the provisions of the Act. It has been already seen that the State Government has not been conferred with an arbitrary power of appointment of persons as members of the Committee inasmuch as such appointments shall have to be in conformity to the provision of Sub-section (2) of Section 56-A. There is, therefore, sufficient restriction on the exercise of power by the State Government in regard to the appointment of members of the Committee. In case of any illegal appointment in violation of Sub-section (2) of Section 56-A, such appointment can surely be challenged by any rate-payer of the municipality in a Court of competent jurisdiction or by filing a writ petition. Thus the above contention of the appellants is unsound and without any substance.

8. There is also no merit in the contention of the appellants that Section 56-A does not specify any period during which the Committee will continue to administer the affairs of the municipality, for Sub-section (6) of Section 56-A clearly provides that the members of the Committee shall hold office till the date of the first meeting, at which a quorum is present, of the newly formed body of Commissioners after a general election of Commissioners held under the provisions of the Act or any other Act applicable to the area comprised within the municipality. It is, however, complained by Mr. Sen Gupta that the State Government has not taken any steps to hold the general election of Commissioners. Even assuming that to be so that will not affect the validity of Section 56-A. In case of any default in this regard by me State Government, a rate-payer of the municipality will not be without any remedy. A writ petition will be maintainable at his instance for the purpose of compelling the State

Government to take steps for holding the general election of Commissioners in accordance with the provisions of the Act. It is, however, stated by Mr. Arun Prakash Chatterjee, learned Senior Standing Counsel appearing on behalf of the State respondents including the State of West Bengal, the respondent No. 1 that on account of certain difficulties, the general election of Commissioners of the Howrah Municipality could not be held. It is further stated by him on instruction from the Minister-in-charge. Local Government and Urban Development Department, that the general election will be positively held by Sept., 1983. There can be no doubt that after the appointment of a Committee, the State Government should hold the general election of Commissioners as expeditiously as possible, but that has nothing to do with the question as to the validity of Section 56-A. Be that as it may, as stated already, the contention of the appellants referred to above is without any substance whatsoever.

9. It is difficult for us to accept the contention of the appellants that by enacting Section 56-A, the legislature has prescribed a double standard, that is to say, some municipalities will be administered by duly elected Commissioners and some by the members of the Committee appointed u/s 56-A. The administration of the affairs of a municipality by the Committee is not a permanent affair; on the contrary, it is an interim arrangement to continue till a body of newly elected Commissioners takes charge of the affairs of the municipality. Such a legislation was necessary in order to meet the exigency of the circumstances mentioned in Section 56-A. There is, therefore, no question of following a double standard as contended on behalf of the appellants.

10. In this connection, we may refer to another contention of the appellants that such a situation could be overcome by the appointment of an executive officer u/s 67-A of the Act which was in force at the material time, but since repealed by the West Bengal Act 51 of 1980. The contention is, however, misconceived, for, u/s 67-A an Executive Officer could only be appointed during the continuance of the Commissioners and not after the expiry of the term of their office. Moreover, it is for the State Government to decide which procedure it will follow as laid down by the provisions of the Act. We are unable to accept the contention of the appellants that at least it should have appointed the Commissioners under the first proviso to Section 16 of the Act. Under that proviso, the State Government may appoint all the Commissioners of a municipality newly created and constituted under the Act for period not exceeding two years from the date of the notification under which such municipality is created and constituted. So the first proviso to Section 16, which relates to a newly created municipality, is on the face of it not applicable to the circumstances under which a Committee is appointed by the State Government u/s 56-A. This contention of the appellants also fails. It is significant to be noticed that the above contentions have nothing to do with the challenge of the appellants to the constitutional validity of Section 56-A which is the principal ground, on which the order of transfer in question has been impugned.

11. Lastly, it is contended on behalf of the appellants that the appointment of the Committee u/s 56-A was made mala fide. In para 19 of the writ petition, it has been alleged that the appointment has been made with the sole purpose of bestowing privilege on the local cadres of the constituents of the ruling party of West Bengal in complete supersession of the democratic rights and aspirations of the rate-payers of the Howrah Municipality. It is a mere allegation inasmuch as no particulars have been given in support of it. So we do not think, we shall be justified in embarking upon an enquiry into the allegation. Even if we had so wished, we could not do it in the absence of any particulars; nor is it possible for the respondents to deal with such a vague allegation except denying the same. The contention is, accordingly, overruled. No other point has been urged in this appeal.

12. For the foregoing reasons, we hold that the learned Judge was perfectly justified in discharging the Rule Nisi. The judgment of the learned Judge is, accordingly, affirmed and this appeal is dismissed.

13. In view, however, of the facts and circumstances of the case, there will be no order as to costs.

C.K. Banerji, J.

14. I agree.