

(2017) 09 BOM CK 0063
In the Bombay High Court
Case No : 3882 of 2016

Sau. Jayashree Vithoba Narnaware, & Ors.

APPELLANT

Vs

State of Maharashtra, Through its Secretary, Urban
Development Department, & Ors.

RESPONDENT

Date of Decision : 28-09-2017

Acts Referred:

Constitution of India, Article 243Q -
Constitution of Municipalities
Maharashtra Municipal Councils, Nagar Panchayats and Industrial
Townships Act, 1965, Section 3, <a h

Citation : (2017) 09 BOM CK 0063

Hon'ble Judges : B.P. Dharmadhikari, Arun D. Upadhye

Bench : DIVISION BENCH

Advocate : S.P. Bhandarkar, A.S. Fulzele, J.B. Kasat, M.I. Dhattrak

Final Decision : Dismissed

Judgement

1. The petitioners before this Court challenge the notification dated 11/4/2016 issued by respondent no.1 - State constituting Nagpur Parishad at Nagbhid under Section 3 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, hereinafter referred to as "the Act of 1965").

2. This Court has issued notice in the matter on 11/7/2016 and on 24/8/2016 by ad interim order stayed holding of elections of Nagar Parishad, Nagbhid. The said orders have been vacated on 9/12/2016. This order dated 9/12/2016 was questioned in Special Leave Petition No.7208/2017 and on 24/3/2017, the Hon'ble Apex Court while declining to interfere expressed that writ petition should be decided expeditiously within a period of four months from the date of receipt of its order.

3. Accordingly, parties were heard on various dates and finally today.

4. The petitioners before this Court are the members elected to various Gram

Panchayats before formation of Nagbhid Municipal Council. Their elections have been conducted in August, 2015. As preliminary notification inviting objections for formation of Nagar Parishad was issued on 15/6/2015, the petitioners submit that Writ Petition No.4064/2015 was filed before this Court for not holding elections of Gram Panchayat but then that writ petition was disposed of on 28/8/2015. The elections have been held and petitioners have been elected as Gram Panchayat members for a period of five years. Because of impugned action, Gram Panchayats on which they were elected have ceased to exist.

5. Contention of petitioners is, the decision to form Nagar Parishad is with oblique motive. Earlier, according to them, there was a decision to form Nagar Panchayat but when in Gram Panchayat elections the political party not in power in State won in most of the Gram Panchayats, in order to depict that verdict, decision to dissolve those Gram Panchayats and therefore to form a Nagar Parishad (Municipal Council) has been taken.

6. Our attention has been invited to provisions of Article 243 Q of the Constitution of India as also to Section 3 of the Act of 1965 to submit that norms prescribed show requirement of population in excess of 25000 and involvement in nonagricultural activities exceeding 35%. In present matter, these requirements are not satisfied. Our attention has been invited to various documents to substantiate this contention.

7. It is submitted that in area of Nagbhid Municipal Council there were total 12 Gram Panchayats and out of them nine had opposed. The majority of Gram Panchayats and therefore, the citizens residing in their area had opposed formation of Municipal Council. It is further submitted that village Khairi Chak Parkhi was not included in preliminary notification but then with oblique motive and with a view to show that population exceeds 25000, it has been added on 11/4/2016 while issuing final notification. Submission is, as brought out in correspondence by the various Government Officers/authorities population otherwise never existed 24950 and Nonagricultural Activities (N.A.) engagement was also not more than 15%.

8. Efforts made to obtain favourable report in this respect are highlighted by inviting attention to reports obtained even from not so responsible Government servant, like clerk in Tahasil Office on Sunday, i.e., 7/6/2015 about the provisions of N.A. activities.

9. The communication sent on 27/1/2016 by Collector Chandrapur to State Government is also relied upon to show that there Collector has not supported formation of Nagar Parishad. It is pointed out that office note produced on record and maintained by State Government dated 6/4/2016 shows an erroneous assumption of consultation also with Gram Panchayats who have opposed formation of Nagar Parishad. The petitioners claim that this assumption runs contrary to Article 243 Q of the Constitution of India.

10. By inviting attention to provisions of Article 243 Q of the Constitution of India

and Section 3 of the Act of 1965, it is contended that satisfaction necessary to initiate the action must be reached before publication of preliminary notification. According to petitioners, in this case office notes show material insufficient even to reach that satisfaction before 15/6/2015.

11. It is pointed out that as per Section 3 (4) of the Act of 1965 all objections received need to be forwarded to Government and then under Sub Section 5, the State Government has to reach a finding that objections raised are invalid. In present matter, there is no such application of mind by State Government and objections were dealt with at the level of Collector only.

12. It is lastly submitted that as Gram Panchayats have already raised objections and passed Resolutions opposing formation of Municipal Council, the petitioners who are subsequently elected to those Gram Panchayats relied upon earlier Resolutions and objections to support the present petition. Submission is, it is not therefore necessary for them to demonstrate individual objection filed by them after 15/6/2015.

13. Our attention is also invited to draft notification published on 15/6/2015 to show that it is for formation of a Municipal Council by name Nagbhid Municipal Council and therein the objections have been invited within 30 days while the law contemplates an opportunity to raise objections within period of not less than 30 days. It is therefore urged that this step is also vitiated.

14. Lastly, learned Counsel for the petitioners submitted that as norms prescribed in Article 243 Q of the Constitution of India or then in Section 3 of the Act of 1965 are not satisfied, the question whether petitioners have raised any objection within time or not is not material.

15. Learned Additional Government Pleader submits that action has been initiated on 15/6/2015 and opportunity to raise objections was given to all. As objections were invited within 30 days, it cannot be said that time shorter than what is prescribed was made available by respondents. None of the petitioners raised any objection and petitioners approached respondents only in the month of February, 2016, i.e., almost after eight months. Our attention is invited to Resolution of Zilla Parishad, Chandrapur dated 17/3/2016 to submit that vide subject no.5 (2) Standing Committee of Zilla Parishad has accepted the transformation. It is further pointed out that after publication of final notification on 11/4/2016 Gram Panchayats are no longer in existence and its employees have become employees of Municipal Council as per law. The general elections of Municipal Council have been held after vacation of interim orders of this Court and elected body is now managing the affairs of local authority.

16. Our attention is also invited to the affidavit filed on record by respondent nos.1, 2 and 4 vide Stamp No.13306/2016 to urge how relevant data showing percentage of N.A. employment and total population of 25167 has been collected. It is submitted that village Khairi Chak Parkhi is very much forming part of consideration because population thereof as per census report of 2011

has been looked into. Our attention is also drawn to preliminary notification dated 15/6/2015 to show that there in Scheduled B village Khairai Chak Parakhi is mentioned.

17. Heavy reliance is placed on notes reflecting the steps taken by State Government at various stages to show that transparently entire material has been evaluated and with due consideration, the final decision has been taken. It is contended that merely because there was opposition, that does not restrain the respondents from taking necessary decision. After taking note of various factors and opposition, the State Government has found it proper to constitute Nagar Parishad at Nagbhid.

18. To explain the total population of 12 Gram Panchayats and percentage of N.A. employment, chart forming part of office papers and produced as Annexure R3 is also relied upon. Learned Additional Government Pleader submits that this entire material shows that the State Government has consciously after keeping in mind the requirements of law, has found it necessary to form Nagar Parishad.

19. He contends that petitioners who could have opposed formation of Nagar Parishad as citizens did not do so and did not raise any objection within a period of 30 days. Only because they got elected as Gram Panchayat members in August 2015, they have for the first time in February, 2016 raised objections. According to him, as Gram Panchayats automatically get dissolved upon constitution of Municipal Council, no legal right of petitioners has been violated and hence, entire petition as filed is misconceived. He submits that in this situation arguments of mala fides are also erroneous and irrelevant. Lastly, he submits that as Nagar Parishad is already constituted and functioning and none of the local bodies like Gram Panchayats, who then have objected to its formation have approached this Court, cognizance of grievance made by petitioners should not be taken and this Court should dismiss the petition.

20. Perusal of Article 243 Q of the Constitution of India shows that it prescribes constitution of Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area. Sub Article (2) points out what is transitional area or a smaller urban area or a larger urban area. The notification dated 15/6/2015 published by State Government shows effort made by State Government to constitute Municipal Councils in various places in Chandrapur District. Nagbhid is one of them. The proclamation dated 15/6/2015 states that total 12 areas were dealt with and in draft notification those 12 areas are mentioned in Schedule - A. Village Nagbhid is at serial no.1. In Schedule B while giving boundaries, on eastern side village Khairi Chak Parkhi has been mentioned as boundary.

21. Objections were invited within period of 30 days of publication in Government Gazette and the same were to be lodged with office of Collector, Chandrapur. Under Section 3 (4) of the Act of 1965, the Collector has to forward all such objections to State Government. The scheme of Section 3 of the Act of

1965 shows that under Sub Section 2 the State Government is competent to specify any local area as smaller urban area if population of such area is not less than 25000 and percentage of employment in nonagricultural activities in such area is not less than 35 %. Sub Section 2 A stipulates that every such smaller urban area is to be constituted as Municipal council. Sub Section 3 prescribes a step prior to the steps envisaged in Sub Section 2. It requires State Government to publish in Official Gazette and also in newspaper, a proclamation announcing intention of Government to issue notification under Sub Section 2 and invite objections from all persons to it. The objections are to be filed with Collector of District within not less then 30 days from the date of publication of proclamation in Official Gazette.

22. In present matter, there is no challenge to validity of any legal provision. The objections invited by proclamation dated 15/6/2015 are within 30 days and hence, it follows that it is within not less than 30 days. Hence, contention that preliminary notification runs contrary to Sub Section 4 of Section 3 of the Act of 1965 cannot be sustained. In any case, when nobody raised any objection to the draft notification and/or has complained of any prejudice, their contention is misconceived in these facts.

23. Admittedly, the petitioners did not raise any objection within 30 days or thereafter till February, 2016. Sub Section 4 of Section 3 obliges Collector to forward the objections "so submitted" to the State Government. The words "so submitted" in Sub Section 4 therefore indicate objections filed with Collector within 30 days after publication of notification. Thus, Collector is not obliged to forward objections received after 30 days to State Government. Sub Section 5 then obliges State Government to apply its mind to objections so forwarded to it by Collector and record its opinion about it. The said provision casting obligation is worded in negative language and State is restrained from proceedings further to issue final notification till it finds that objections so received are insufficient or invalid.

24. In present matter, perusal of communication dated 25/8/2015 sent by office of Collector to State Government shows that insofar as Nagbhid Municipal Council is concerned, not a single objection was received between 15/6/2015 to 15/7/2015. This document has been placed on record as Annexure - N by petitioners along with their additional affidavit and it is not in dispute. It is therefore obvious that contention that objections were not considered by State Government or then objections were looked into by Collector only, is erroneous and unsustainable.

25. Perusal of office records made available as Annexures by petitioners again as part of their rejoinder show submission of office dated 6/4/2016. This note is signed by Desk Officer Shri Ambikar and it mentions total population of proposed Municipal Council area was 24,950. It also mentions that as per 2011 census, if the population of villages who had objected was to be excluded total left out population would be 17,778. Thus, this figure of 24,950 pointed out in note is as

per 2011 census. This note also mentions that total seven Gram Panchayats have not approved formation of Municipal Council and law provided appropriate consideration of such opposition. While commenting in this respect in said note, Shri Ambikar has submitted that as per Section 4 (2) of the Maharashtra Village Panchayats Act, such step to delete a village or add it to Municipal area can be taken after due consideration. He has opined that consideration of the adverse Resolutions passed by these Gram Panchayats, process of consultation can be presumed to be completed and State Government should be free to proceed further to take suitable decision.

26. On 27/1/2016, office of Collector, has on the basis of same figures of population, submitted that due to 2011 census figure of population was inadequate and formation of Municipal Council was not possible. However, on 15/2/2016 very same Collector has in same background again pointed out that total population of area under consideration was 24950 and the population of villages not agreeing to inclusion was 7172. He has also pointed out requirement of population of 25000 but then opined that office of Collector was in favour of formation of Nagar Parishad.

27. The above mentioned note of Desk Officer Shri Ambikar is then looked into by Deputy Secretary and he has submitted a favourable recommendation in the backdrop of all above mentioned facts. Ultimately, the papers were processed further and the Hon'ble Chief Minister has given final approval to it.

28. Respondent nos.1, 2 and 4 have filed a reply to rejoinder dated 25/10/2016 of petitioners. This reply filed vide Stamp No.13306/2016 is accompanied by office note and then a chart. All these documents are placed on record as Annexure R3 and are not in dispute. Annexure R3 contains a note dated 5/6/2015 which notes that on telephone percentage of N.A. employment was procured from Talathi and as per his estimate it was about 15%. The later note dated 6/6/2015 shows detailed consideration of population as reflected in 2011 census and then employment in agricultural sector and employment in nonagricultural sector. In paragraph 2, it is mentioned that as agricultural jobs were not available in areas forming part of Nagbhid Municipal Council, people work under Employment Guarantee Scheme (E.G.S.). It is mentioned that total population of villages forming part of Municipal Council is 25167 and number of registered labours under E.G.S. is 9656 i.e. levelling 38%. It is further submitted that percentage of N.A. employment at 32.53% in paragraph no.1 is pertaining to year 2011 i.e. about four years old. In these four years, the extent of N.A. land increased from 70.67 H.R. to 79.43 H.R. Thus, percentage increase was 13.34. The note therefore submits that taking overall view, 10% increase in N.A. potential after 2011 is apparent and hence, N.A. percentage at 35% should be pointed out to the office of Collector.

29. We need not go into more details of these figures. These figures are supported by a chart which contains the details of population of all 12 Gram Panchayats with number of households, details of persons engaged in cultivation,

engaged as agricultural labours and other works. The figures therein support the modification suggested to the office of Collector.

30. The total households in 12 Gram Panchayats are shown to be 6366 and total workers are shown to be 11842. The figure of 7077 is shown as main workers while 1184 are shown as cultivators. 2762 are shown as agricultural labours, 206 are shown as working in household industries, while 2925 are shown as working in other sectors. Thus, even if this chart is looked into and compared, it is apparent that when agricultural work is not available all the year round, registration of 9656 persons as labour under E.G.S. cannot be overlooked. Petitioners have submitted that works under E.G.S. are available for roughly 100 days in a year i.e. about 30% of total working days.

31. Works under E.G.S. are made available by State Government and persons not getting any work anywhere have to report Tahsildar and get themselves registered with Tahsildar. Obligation is cast upon Tahsildar then to provide work to such registered workers.

32. Considering total number of such workers registered with Tahsildar the fact that N.A. potential exceeds 35% cannot be denied. Duration of 100 days of employment guarantee work with total number of 365 days and above data together lays credence to the submission in note that percentage of N.A. potential is about 35 %.

33. In this situation, when after looking into the Resolutions by unwilling Gram Panchayats and other data, a decision has been reached and that decision is within four corners of law, submission that power has been used with oblique motive cannot be entertained. Fact that not a single citizen raised any objection within 30 days itself militates with contention of mala fide exercise of power. All data looked into is prior to 15/6/2015 and is relevant for the exercise of transformation. Sufficiency or adequacy of the material is beyond judicial review.

34. Petitioners could have opposed the move as vigilant citizens before their elections as Gram Panchayat members. They did not raise any objection within stipulated time. They were not petitioners before this Court in Writ Petition No.4064/2015. Thus, when they contested the election, they were aware of impending exercise of transformation. They have taken risk and ultimately in February, 2016 they chose to wakeup and raised objections.

35. It is to be noted that objections raised by petitioners and petition filed by them (by six Sarpanch) appear to be in individual capacity. No Resolution of Gram Panchayat deciding to challenge the final notification dated 11/4/2016 is filed along with petition. Petitioners have not pointed out that they have been authorized by their respective Gram Panchayats to approach this Court.

36. At this stage, Advocate Shri Bhandarkar submits that such Resolutions exist but the petitioners have not placed it on record. This submission at 11th hour cannot be appreciated and accepted by this Court.

37. We have gone through the judgment relied upon by the learned Counsel for the petitioners, reported at (2003) 4 Supreme Court Cases 739 (State of A.P. and others...Versus...Goverdhanlal Pitti). Paragraph 12 therein is about legal meaning of malice i.e. illwill or spite towards a party and any indirect or improper motive in taking an action.

38. In the light of above discussion, we are not in a position to accept the contention that here impugned action has been taken with any oblique motive. Petitioners have not placed on record necessary facts. Merely because in Gram Panchayat elections, a particular political party has succeeded that does not imply that action initiated before such decision is rendered bad. State Government has looked into all relevant facts and data before 15/6/2015 to its satisfaction is supported by relevant material. There is no jurisdictional error in the mode and manner of reaching the satisfaction. Petitioners do not show use of any irrelevant material. We therefore find that impugned process can not be faulted with. There is no perversity in said exercise.

39. We, therefore, find no case made out. Writ Petition is dismissed. Rule stands discharged. No costs.