
(1976) 04 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 299 of 1975

Shripatrao Mahadeorao Jadhav and Others

APPELLANT

Vs

Lonawala Municipal Council

RESPONDENT

Date of Decision : 08-04-1976

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 65(2), 66, 9

Citation : AIR 1976 Bom 439 : (1976) MhLj 695 : (1976) MhLj 659

Hon'ble Judges : Sawant, J;Deshpande, J

Bench : Division Bench

Advocate : C.R. Dalvi, for the Appellant; A.C. Agarwal, for the Respondent

Judgement

Deshpande, J.—This case raises an interpreting question as to the true interpretation of Section 65 and 66 of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as "the Act") . A few facts so far as relevant to the points are these: At the election of the Lonawala Municipal council. respondent No. 1 herein held in the month of November, 1974, petitioner Nos. 1 to 14 and opponents Nos. 3 to 14 were elected as councillor. Opponents No. 15 are both co-opted councillor. It is admittedly a `C` class council. A meeting was convened on 25th January, 1975, after elections, for determining the strength of the Standing Committee as also the composition thereof in addition to the election of the subjects Committees, in accordance with the provisions of Section 62 of Section 66 of the Act. The total strength of the elected councillor of this council admittedly consists of 26 elected councillor, two co-opted councillor and the President directly elected by the voters u/s 51 of the act. The council thus consists in all of 29 councillor, the president also being a deemed councillor, according to the definition of the word "councillor" u/s 2 (7) of the Act Excepting where context indicates to the contrary. Five subjects Committees were constituted and it was decided that vice-president should be the chairman of the Planning and Development Committee. It was then unanimously decided that the standing Committee should consist of 9 members. Thereafter the question as to

the composition of the Standing Committee was taken up. At this stage, two questions arose for consideration --- firstly whether President can take part in the deliberation of the council and vote at such election and, secondly whether the strength of the Standing Committee so determined should be inclusive or exclusive of the President. The President ruled that he was entitled to take part in deliberations of the said council meeting and exercise vote at such election, and he was to be a member of the Standing Committee, in addition to 9 members; strength determined u/s 65 (2) of the Act being exclusive of the President. Validity of this decision of the President is challenged by the petitioners in this Special Civil Application under Article 226 of the Constitution.

2. Now the one year period of the Standing committee has expired and the points can be said to have become now points can be said to have become now only of academic interest. But Mr. Dalvi and Mr. Agarwal, the learned advocates appearing respectively for the petitioners, and respondents 1 and 2, i.e. the Municipal Council and the president requested that the points should be thrashed out, as the same are likely to arise every year and affect such elections, in all the councils in Maharashtra. We have, therefore, acceded to this request of the learned advocates, and accordingly heard the arguments.

3. Mr. Dalvi's first contention that, the President has not right to take part in the deliberations of the council and to vote at the time of the election of the councillor to Standing Committee. The contention does not appear to us to be well founded. The answer should not admit of any serious doubt. u/s 9 of the Act, every council consistence of (1) the President, (2) councillor elected at Ward elections, and (3) the co-opted councillor. The president thus is one of the constituents of the council. This itself is enough to clothe him with the right to take part in the deliberation and vote at every meeting of the council. Rather, it would be his duty to do so. The definition of the word "councilor" also includes president, in addition to the elected and co-opted councillor. A statutory fiction is thus introduced to this effect. This definition would prevail, unless the context in a given situation otherwise indicates. We are concerned in this case with Section 66 of the Act, which is as follows:

"The Standing Committee referred to in sub-section (1) of the last preceding section shall consist of-

- (a) the President of the Council as the Chairman;
- (b) the Chairman or Chairmen of the Subjects Committees, if any appointed under clause (b) of sub section (4) of that section, and if no such Subjects Committee is appointed the vice president, as the member of members: and
- (c) such other members elected by the councillor from amongst their number in the manner laid down in Clause (b) of sub-section (2) of Section 63, so however that the total number of members of the Standing Committee shall not exceed the number determined under Clause (a) of subsection (4) of the said section:

Provided that, no councillor shall be eligible to be a member of the Standing Committee, if he is already elected as a member of more than one Subjects Committee."

4. Clause (c) is mainly relevant. Apart from ex-officio member covered by Clause (a) and (b), the remaining members have to be elected by the "councilor" . The president is also a deemed councillor u/s 2 (7). There is nothing in the context indicating to the contrary. He is also thus entitled to take part in the deliberation and vote at the election, like any other councillor.

5. Mr. Dalvi relies on two circumstances to suppose of his contrary contention. Firstly, that he is elected as President and not as councillor. It is no doubt so. But Section 2 (7) makes the President also a councillor under a statutory fiction as discussed above. He is as much a councillor as other members are. Mr. Dalvi then secondly relies on his disability to take part in co-option of the councillor. But this is because Section 9 itself specifically leaves this choice exclusively to the elected councillor. This is an instance of contrary indication within the meaning of the opening clause of Section 2 of the Act. The reliance by Mr. Dalvi on both these factors is thus misplaced and his first contention thus is untenable.

6. Mr. Dalvi then contends that the President as chairman, is inclusive in the strength of nine members of the Standing Committee determined u/s 65 (2) of the act. This contention appears to us to be formidable. Admittedly, respondent No. 1 is a "C" class council. Section 65 and 66 govern the strength, composition and the constitution of its Standing Committee. Section 65 (2) is to the following effect:

"The Standing Committee shall consist of such number of members as the Council may determine, so however that the number of members so determined shall not exceed one-third of the total number of councillor:

Provided that in so determining the number of the members of the Standing Committee, a fraction shall be ignored." This provision indicates how the maximum strength of the Standing Committee is to be determined. It was unanimously decided earlier by the Council to have in all 9 members on the Standing Committee. It could not have even thought of higher number, as this could be the maximum strength for the council of to have in all 26 elected and 2 co-opted councillor under the above provision. In terms of the provision to above S. 65 (2), a fraction in addition to 9, has to be ignored. This provision only aims at determining the strength without regard to the mode of its composition and whether such members happen to be elected, nominated or ex officio.

7. It is Section 66 that indicates the mode of composition and its sources. Under the above quoted provision for Section , the standing Committee is to consist of (1) President (2) Chairman of the Subjects committees were appointed in terms of Section 65 (4) of the Act. Five Chairman thus become members ex-officio on their election as such Chairman. So does the President . Thus out of 9 members, six seats on the Standing Committee get automatically filled in by the Statutory

nomination of the ex-officio members. The council now is left with the limited choice of electing only remaining members. That is what clause (c) of Section 66 in terms lays down. Under this legislative mandate, councillors are left with the choice of electing from amongst them only "so" may other members as "however" but, the total number of members of the Standing Committee shall not exceed the number determined under Clause (a) of sub-section (4) of section 65, which in turn was determined at 9 by the council in exercise of the powers conferred on it by Section 65 (2) of the Act. Thus the council could only fill in three unfilled seats on the standing Committee which had remained vacant after the statutory nominations of the President and Ex-officio Chairmen of the five Subjects committees. Any doubts on this point should be removed by the words "shall consist of" in both Section 65 ambiguously indicate as to of how many members the Standing Committee is to be composed of. There is absolutely no warrant to assume that the words "shall consist of" has or can have different connotations in these two sections. The president obviously was in error in assuming that the strength of the 9 members determined by it earlier u/s 65 (2) could be exclusive of the president and that four and not three members could have been still elected by the councillor.

8. Mr. Agarwal strongly relied on the fact that the president is elected by entire voters and is not an elected councillor. According to Mr. Agarwal, Section 65 (2) of the Act deals with the strength of the elected councillor and number so determined cannot be inclusive of the President who is not a councillor. This contention, though attractive, appears to us to be fallacious. Now, it is true that the President is not an elected councillor in the strict sense of the councillor. Unlike in the past he is no more elected by the councillor, since the enforcement of the Amendment Act No. 47 of 1973 to the Act. Mr. Agarwal also is right in contending that Section 9 of the Act contemplates council to consist of the President, and elected and co-opted councillor. This section does emphasise separate and distinct identity of the President from the elected councillor. We are, however, unable to see how this feature can have any bearing on the question of the composition of the Standing Committee. Notwithstanding all this president is still deemed to be a councillor by force of the fiction of Section 2 (17) and it is difficult to conceive of his position excepting as a councillor in the council, unless the context in a given situation indicated to the contrary.

9. Mr. Agarwal also relied on the fact that the President is appointed as Chairman in his official capacity and he cannot therefore, be equated or counted along with other members of the Standing Committee. This contention is equally misconceived. In the first instance, it is a case of statutory nomination and not of ordinary ex-officio appointment. Secondly, even the other Chairmen of the Subjects Committees also get on the Committee because of the similar statutory nomination. Memberships of President and the Chairman stand on the same footing. The president is as much the effective member of the Standing Committees, and both would be inclusive of the strength determined u/s 65 (2) for the same reason. His getting the place on the Committee under the statutory

scheme, because of his being the President, cannot make any difference to the legal position.

10. Mr. Agarwal then argued that Section 66 (b) and (c) refers to the Chairmen and elected members as members the Standing Committee, while clause(a) or other clauses of the section do not refer to President as such member. This contention again is attractive at the first blush and plausible too. But it fails to take notice of the scheme of the Section as emphasised earlier, opening clause of Section 66 indicates of whom the Standing Committee is to consist. The standing Committee is to consist of the three elements under this section, firstly of the President, secondly of the ex-officio Chairmen and, thirdly of the elected members. Each one of them thus happens to be member of the Standing Committee. The President does not cease to be a member merely because in Clauses (b) and (c) the ex-officio Chairmen and the elected members are referred. Any such construction will make the words "shall consists for" in the opening clause redundant and meaningless. The words "..... so however shall not exceed the number determined under Clause (a) of sub-section (4) of the said section" go to further clearly indicates how many, other members are required to be elected after the strength is filled in by statutory nominations. The said section obviously has reference to Section 65 (2) in the context. Strength of the Standing Committee under no circumstances can exceed the total number of members determined by the council u/s 65 (2) of the Act. The same aspect is sought to be emphasised by the words "so however that " in section 66 (c) of the Act. The contention of Mr. Agarwal, though attractive, does not appear to be sound and cannot be accepted pear to be sound and cannot be accepted without causing violence to the language of the two section as also the underlying scheme thereof.

11. Mr. Agarwal then alternatively contends that in either case the Presidents ruling cannot be said to be wrong, if one takes into account the provision to section 65 of the Act. All that the provision requires is that, any fraction should be ignored while determining the number of members of the Standing Committee by ascertaining the one- third strength of the total Number of the council. As discussed earlier, the total number of councillor of the council can be said to be 28 having regard to the definition of the words "total number of councilor "under Section 2 (49). One - third strength in terms of Section 65 (2) come to $9\frac{1}{3}$. When the provision requires ignoring the fraction, it can only mean that the fraction of "one upon three" should be ignored and the strength should consist of only 9 members. That is what the council decided and, in our opinion rightly. This is what the council decided and in our opinion, rightly. this phraseology cannot be construed to mean that the shortage of two - third fraction should be ignored and 10th member should be deemed to have been permitted under the provision to Section 65 (2). This is simply impermissible.

12. The application thus partly succeeds and rule is made absolute as above.

13. There will be no order as to costs.

14. Application partly allowed.