
(1981) 12 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 1492 and Appeal No. 487 of 1981

Smt. Chandra Srinivasan

APPELLANT

Vs

D.M. Sukhtankar

RESPONDENT

Date of Decision : 05-12-1981

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 69

Citation : AIR 1982 Bom 254 : (1982) 84 BOMLR 48

Hon'ble Judges : Mehta, J; Chandurkar, J

Bench : Division Bench

Advocate : D.R. Dhanuka, A.R. Rana and L.A Kasturay, for the Appellant; K.K. Singhvi, R.L. Datal, N.V. Kamat, Bhimrao Naik, G.S. Bhatt, Mahabaleshwar Morje and Subhash N. Parikh, for the Respondent

Judgement

Chandurkar, J.—This is a joint petition filed by one social worker in Municipal Ward No. 48 (Petitioner No. 1) a Municipal Councilor in Ward No. 104 (Petitioner No. 2), the District President of the Janata Party, North Central Bombay (Petitioner No. 2) and the Secretary of the Samajwadi Mahila Sabha of Maharashtra State (Petitioner No. 4) and it is substantially directed at the action of the Municipal Commissioner (Respondent No. 1) in accepting the tender given by Respondent No. 2 M/s. Degremont international, on the footing that the Standing Committee of the Municipal Corporation of Greater Bombay must be deemed to have approved the Commissioner's proposal made to the Standing Committee recommending that the tender of M/s. Degremont international (hereinafter referred to as "Respondent No. 2") should be accepted.

2. The facts which have given rise to this petition are not in dispute, Sealed tenders for the supply, delivery, erection and commissioning of the water supply plant at Panjrapur were invited by the Consultants of the Municipal Corporation, The works included the following:-

(i) Filtration of the clarified water by means of rapid gravity filters, and

(ii) Storage and application of the Chlorine to the raw and/or settled water and to the filtered water.

Global tenders were invited as per the international Competitive Bidding Procedure by public advertisements. In pursuance of these advertisements, which were published not only in the Indian newspapers, but also abroad by issuing Circular letters to the Consultants of Foreign Embassies and to the Consultants on the Mailing List, 15 firms sent the tender documents. Out of these 15 firms, 7 tendered for the work on the due date 1, e 2nd April 1981, In view of the controversy in the petition, it is necessary to refer to the tenders of only two firms. The amounts quoted by them were as follows:-

(i) M/s. Candy Filters (India) Ltd., Rs. 2,88,10,000/-

(ii) M/s. Degremont International Rs. 3,09,27,594/-

3. The tenders of the seven firms were scrutinized and evaluated by M/s. Tata Consulting Engineers in association with M/s. Binnie and Partners (India) Ltd., who were the Consultants of the Municipal Corporation, and an Officer of the Municipal corporation specially deputed for this purpose, It is really not necessary for the purpose of this petition to refer to the merits and demerits of each of the tenders as evaluated by the Consultants and it is enough to mention that the tenders of four Firms were outright rejected by the Consultants on several grounds, one of the grounds being that in some cases their bids were not competitive with the remaining bids. The Consultants laid down that in the contract specifications, such tenderer must fulfill four mandatory conditions, which were as follows:-

(a) Variable declining rate filtration,

(b) The feed back system of inlet level control.

(C) The level difference of 3 metros between the inlet to the fillers and Chlorine Contact Tank Wet, and

(d) The pressure conduit system between the filters and Chlorine Contact Tank.

On a consideration of the tender of M/s. Candy Filters (India) Ltd., Respondent No. 5 in the petition, the Consultants came to the conclusion that they were unable to recommend the offer of M/s. Candy Filters primarily because of its basic technical deficiencies. With regard to the other firm viz. M/s. Geo Miller and Co. Pvt. Ltd., the Consultants found that the entire system which the firm intended to use for the first time had never been tested, nor had it been used by them in any of their works and this made the tender of M/s. V. M. Jog and Co., the Consultants found that on assessment, their technical capability for the type and size of the work required by the Corporation was not satisfactory and their offer was higher than the offer of M/s. Degremont International was the only offer which was based on a proven design and its reliability as regards performance could, therefore, be taken as assured.

4. In views of this recommendation of the Consultants the Municipal Commissioner sent a proposal to the Standing Committee of the Municipal Corporation on 14th Aug., 1981, Ex, B giving details of the evaluation of the different tenders by the Consultants and the operative part of the letter seeking approval reads as follows:-

"I now seek the approval of the Standing Committee under S. 69(c) of the Bombay Municipal Corporation Act to enter into a contract with M/s. Degremont International for supply, delivery, erection and commissioning of filtration and chlorine plant at Panjrapur at the rates and on the terms and conditions of their tender with modifications referred to above, at which the total cost of the, work including municipal supervision, contingencies (physical and cost) Import duties costs to Rs. 5,24,72,000/- as detailed below" The letter seeking approval mentioned that the requisite sanction of the Government of India and the World Bank would be obtained before work order was placed. It may be mentioned at this stage that the expenses for this project which is intended for the supply of filtered water to the people of Bombay are to be incurred out of a loan given to the Municipal Corporation by the World Bank. The last paragraph of the letter of the Municipal Commissioner reads as follows :-

"The tender of M/s. Degremont International is valid for acceptance up to 29th Aug., 1981, This may, therefore, be treated as URGENT BUSINESS:

5. Now, this item with regard to the approval sought by the Municipal Commissioner was put on the agendas of the Standing Committee of the Municipal Corporation for the meeting to be held on 19th Aug., 1981 and on the agenda it was Item No. 45. Meetings of the Standing Committee were held on the 19th Sept., 1981 when the discussion remained inconclusive and it was, therefore, taken up again on 16th Sept., 1981, The Commissioner was present at both these meetings

6. Some reference is required to be made to the proceedings of the Standing Committee on 16th Sept., 1981, It approved that the Resolution before the Standing Committee on 16th Sept., 1981 was as follows:-

"That the Commissioner's proposal contained in para 10 of his letter, be approved and the applicant's letter, dated 21st Aug., 1981, on the subject, be recorded."

The reference to the applicant's letter is in the context of a letter said to have been addressed by M/s. Geo Miller & Co. Pvt. Ltd. To the Standing Committee, The Contents of that letter are nowhere on record, nor does that letter appear to have been relied on by anybody. The proceedings record the fact that an amendment was proposed by Shri S. R. Rao, and seconded by Shri Ramesh Sanghvi. The amendment read as follows :-

"That approval be given, under S. 89 (c) of the B. M. C Act to a contract being entered into by the Commissioner with M/s. Candy Filters (India) Ltd. For supply,

delivery, creation and commissioning of Filtration and Chlorinating Plant at Panjrapur etc, at the cost and on the terms and conditions of their tender instead of with M/s. Degremont International as proposed by the Commissioner and the applicant's letters, dated 21st Aug., 1981, be recorded".

This purported amendment was put to vote and was carried by 7 votes to 6. But when it was put to vote as a substantive proposition, the votes as a substantive proposition, the votes were equal, 7 and 7, for and against, and the Chairman gave his casting vote against the substantive proposition and declared it lost.

7. At this stage, a Member of the Standing Committee proposed an amendment, which reads as follows:-

"That approval be given, under S. 69 (c) of the B. M. C. Act to a contract being entered into by the Commissioner with M/s. Geo Miller & Co. Pvt. Ltd., for supply, delivery, creation and commissioning of Filtration and chlorinating Plant at Panjrapur etc, at the cost and on the terms and conditions of their tender instead of with M/s. Degremont International as proposed by the Commissioner and the applicant's letters, dated 21st Aug., 1981, on the subject, be recorded".

When Shri Sharad Rao desired to second this amendment, the Chairman pointed out that he had moved the earlier amendment and, therefore, he could not second this amendment, upon which the amendment was seconded by Shri. R. T. Kadam. A point of Order was raised objecting to the amendment on the ground that the member could not move an amendment at that stage after the earlier amendment was put to vote as a substantive proposition which was lost, and that the amendment should have been moved before the earlier amendment was put to votes as a 1982 Bom./17 VI G - 14 substantive proposition. The Chairman of the Standing Committee adjourned the meeting because, according to him, the Point of Order involved legal implications and he would reserve his ruling.

8. The next meeting of the Standing Committee was held on 30th Sept., 1981, The Chairman of the Committee upheld the Point of Order and ruled that "nothing remained before the Committee for consideration so far as Item No. 45 was concerned in view of what he had stated earlier" and added that "since there was nothing before the Committee in respect of the said Item No. 45 of 19th Aug., 1981 the Commissioner should bring a fresh proposal before the Committee in the matter." The proceedings are reproduced by us from the extracts of the Minutes filed along with the Petition.

9. Now, after the earlier meeting of the Standing Committee was adjourned on 16th Sept., 1981 a letter came to be addressed by the Chief Engineer, Water Supply Projects, to the Respondent No. 2 on 21st Sept., 1981, stating therein:-

"..... the Municipal Commissioner has, in pursuance of the provisions of the proviso to S. 69 (c) of the Bombay Municipal Corporation Act. Accepted your tender on behalf of the Municipal Corporation of Greater Bombay, subject only to the formal approval of the World Bank which is awaited, for the execution of the

work of supply, delivery, erection and commissioning of Filtration and Chlorination Plant at Panjrapur, at the rates and on the terms and conditions of your tender with modifications referred to below"

The letter also specified that in accordance with the terms of the tender, Respondent No. 2 should execute the contract agreement and furnish the performance guarantees within one month from the receipt of that letter, It is not in dispute now that consequent upon this letter, a contract has been duly executed on the 19th October, 1981 with Respondent No. 2 granting it the contract to carry out the project.

10. The petitioners originally filed that petition on 15th Oct., 1981, There is some discrepancy about the relieves which the petitioners are asking if we go strictly by the prayer clause, But there is no dispute that the petitioners feel aggrieved by the letter, dated 21st Sept., 1981, the effect of which was that the Commissioner treated the approval as having been granted in view of the provision in the proviso to S. 69 (c) of the Bombay Municipal Corporation Act. The main grievance made in petition as originally filed was that Item No. 45, which dealt with the proposal made by the Municipal Commissioner and to which the Municipal Commissioner sought approval, was finally disposed of by the Standing Committee and the fact that an amendment was moved to the effect that the contract of the work should be given to Messes Candy Filters showed that there was no proposal to grant the contract to Respondent No. 2, to which the provisions of the proviso to Section 69 (c) would be attracted. The petition proceeds on the footing that no proposal having been approved in respect of Respondent No. 2 the Municipal Commissioner was not entitled to proceed with the proposal of granting the contract to Respondents o. 2 The petition originally seems to have come up for admission on 16th Oct., 1981 when no order was made either with regard to the admission or any interim relief. It came up for admission then after the Diwali Vacation and was admitted and the learned single Judge made an order of interim stay in terms of prayer (c) (I) of the petition. Prayer(c) (I) of the petition asked for a relief that pending the hearing and final disposal of the petition "the operation of the letter/order dated 21st Sept., 1981 (Ex. "E") hereto be stayed". Now, strictly there is no letter on record issued by the Municipal Commissioner on the 21st Sept., 1981, Ex. E is really an intimation given by the Municipal Commissioner to the Standing Committee on 29th Sept., that he had accepted their tender on behalf of the Municipal Corporation of Greater Bombay. The Commissioner of the Municipal Corporation filed an Appeal against his order of the learned singly Judge, being Appeal No. 487 of 1981, which was admitted on 5-11-1981 and an interim order was made by us staying the impugned Stay Order, but we gave directions that no additional moneys be paid to Respondent No. 2 pending the appeal. The appeal was directed to be heard peremptorily on 30th Nov., 1981. However, since any decision in the appeal would really have disposed of the petition itself, the parties agreed that it would be advisable to have the petition itself heard by the Bench and after

obtaining appropriate orders of the learned Chief Justice, the petition was placed before us for hearing yesterday afternoon.

11. When the petition was taken up, Mr. Dhanuka appearing on behalf of the petitioners applied for an amendment of the Petition. The amendment sought to raise what are considered to be strictly questions of law and the new grounds of attack introduced by the amendment were.

(1) Respondent No. 2 having extended the due date of acceptance of the tender to 15th Oct., 1981, the original proposal made by the Municipal Commissioners on 14 Aug., 1981 was varied and the varied proposal not having been put on the agenda afresh, the 15 days period under the proviso to S. 69 (c) of the Bombay Municipal Corporation Act was not attracted:

(2) The Municipal Commissioner in view of his conduct consisting of attending the meetings of the Standing Committee and taking part in the discussion of Item No. 45 should not have proceeded to award the contract to Respondent No. 2 in the face of the decision of the Standing Committee to amend the original proposal in favour of Messrs Candy Filters.

(3) The Municipal Commissioner did not act in good faith and his action smacks of mala fides, arbitrariness, unreasonableness and an attempt to disregard totally the view of the elected Corporations.

12. We shall now take up the arguments advanced before us by Mr. Dhaka, But before we do that it is necessary to reproduce the provisions of S. 69 (c) of the Bombay Municipal Corporation Act. S. 69 reads as follows:-

"With respect to the making of contracts under or for any purpose of this Act, the following provisions shall have effect, namely:-

(a) every such contract shall be made on behalf of the corporation by the Commissioner;

(b) no such contract, for any purpose which in accordance with any provision of this Act, the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first of all been duly given:

(c) no contract, other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto, which will involve an expenditure exceeding one lakh rupees, shall be made by the Commissioner unless the same is previously approved by the Standing Committee or in case the expenditure is to be incurred for the purposes of Cl. (Q) of S. 61 by the Education committee.

Provided that, where the previous approval of the Standing Committee is sought by the Commissioner for any contract for the purposes of Chapter IX of X, the Standing Committee shall consider and dispose of the proposal made by the Commissioner in that behalf, within fifteen days from date on which the item is

first included in the agenda of any meeting of that Committee, failing which, the previous approval to such contract shall be deemed to have been given by the Committee, and a report to that effect shall be made by the Commissioner to the Corporation"

The provisions of S. 69 are clear that where a contract under or for any purpose of Bombay Municipal Corporation Act is to be made, ever such contract has to be made on behalf of the Corporation by the Commissioner, Further, a contract other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto. If it involved an expenditure exceeding one lakh of rupees, cannot be made by the Commissioner unless the same is previously approved by the Standing Committee. Then there is a proviso and under the proviso it is provided that where the previous approval of the Standing Committee. Then there is a proviso and under the proviso approval of the Standing Committee is sought by the Commissioner for any contract for the purposes of Chapter IS or X and there is no dispute that the present contract is covered by Chapter X - it is obligatory on the Standing Committee to "consider and dispose of the proposal made by the Commissioner within fifteen days from date on which the item is first included in the agenda of any meeting of that Committee." The consequence of failure of the Standing Committee to consider and dispose of the item within the specified period of fifteen days is that "the previous approval to such contract shall be deemed to have been given by the Committee". In cases where the proviso operates, the Commissioner has to make a report to the Corporation.

13. The proviso, therefore, introduces a fiction if the Standing Committee does not consider and dispose of the proposal made by the Commissioner within the period statutory fixed by the proviso. The only circumstance on which the fiction comes into operation is the expiry of fifteen days from the date on which the item is first included in the agenda of a meeting of the Standing Committee without disposal of the proposal. It is clear that the legislature contemplated that it was obligatory on the part of the Standing Committee to dispose of the proposal of the Commissioner within a period of fifteen days.

14. The proviso itself was introduced in S. 69 by an amendment in 1978 by Act No. 34 of 1973. The original Bill which deals with several amendments of the Bombay Municipal Corporation Act dealt with this amendment in the form of an addition of a proviso to S. 69. Cl (c) in Cl. 2 of the Bill. It would be permissible to refer to the reasons which prompted the legislature to introduce the proviso in S. 69 (c) as well as come other provisions in the Act. The Statement of Objects and Reasons refers to the fact that the water supply system and the drainage system, which were about hundred year old, were not inadequate having regard to the increased population of Greater Bombay and, therefore, it became imperative for the Corporation to take Immediate steps to improve these services in the interest of public health, sanitation etc. The Corporation, therefore, decided to undertake heavy capital works expenditure programmes to be spread

over a period of eight years, with the help of the World Bank to improve the water supply and sewerage system in Greater Bombay. The World Bank had approved the projects and it was found necessary "with a view to obtain the loan from the World Bank in time and completing these works within the prescribed time limit" to make certain amendments to the Bombay Municipal Corporation Act to enable the Commissioner to execute these works as expeditiously as possible. When this proviso was debated in the legislature, suggestions were made that in place of the proposed period of seven days, the period should be four weeks and another suggestion was that it should be fifteen days, when the provision was finally passed, the of seven days was changed to fifteen days and the proviso was put on the statute book. It is clear, therefore, that the object of this proviso was not to by-pass the Standing Committee or deprive it of its legitimate function or power under the Bombay Municipal Corporation Act, but to see that the Standing Committee disposed of the proposal before it within the specified period of time as expeditiously as possible. However, for some reason or the other if the Standing Committee was not able to dispose of the proposal seeking approval, then the statute stepped in any approval was taken to have been given by the Standing Committee and the fetter on the power of the Municipal Commissioner to get positive approval of the Standing Committee was removed. On the expiry of fifteen days, the Municipal commissioner was free to proceed with the proposal even if the Standing Committee either did not dispose it of or they continued to discuss it. Having regard to the mandatory provisions in the proviso, it appears to us clear that any discussion of the proposal beyond the period of fifteen days from the time when the proposal was first put on the agenda or a meeting of the Standing Committee would be wholly an exercise in futility and the legal effect in the form of deemed permission could not be prevented by any further discussion by the Standing Committee at any point of time beyond the period of fifteen days specified in the proviso.

15. Having thus considered the scope of the proviso, we will now take up the first contention advanced before us by Mr. Dhanuka that the proposal having stated in the last paragraph, which we have reproduced above, that the tender of Respondent No. 2 was valid for acceptance up to 29th Aug., 1981 and this period having expired prior to 3rd Sept., 1981, i.e., before the expiry of fifteen days period from 19-8-1981 when the proposal was first put on the agenda of the meeting of the Standing Committee for that day, there was in fact no proposal in existence on 3rd Sept., 1981. The argument is that the time fixed by the tendered viz. Respondent No. 2 for acceptance of its tender was an essential term of the offer or tender and since no fresh proposal was made after 29th Aug., 1981, there was no proposal in respect of which deemed approval under the proviso could be invoked by the Municipal Commissioner. It is not now in dispute in this case that the date for acceptance was extended by Respondent No. 2 to 15th Oct., 1981 and this information was supplied to the Standing Committee on 18th Sept., 1981. It is difficult for us to appreciate how the information conveyed

by the Municipal Commissioner to the Standing Committee that the tender was valid for acceptance up to 25th Aug., 1981. Can be said to be a part of the proposal contemplated by S. 69 (c) The effective part of the proposal which we have reproduced above would show that in substance the proposal of the Commissioner was that the Consultants of the Corporation had recommended the tender of the pendent No. 2 for acceptance having considered the merits and demerits of each of the tenderizers. The terms of the tender of Respondent No. 2 were set out in the proposal. When the Municipal Commissioner informed the Standing Committee in Para 18 of his letter, reproduced earlier, that the tender was open for acceptance up to 29th Aug., 1981, It was clearly intended by give notice to the Standing Committee that the matter required to be urgently decided and indeed. This is expressly made clear by the Municipal Commissioner when he stated in the letter communicating the proposal that letter communicating the proposal that letter communicating the proposal that "This may, therefore, be treated as Urgent Business". It is unfortunates that in spite of the urgency made out be the Commissioner, the matter was not treated as urgent by the Standing Committee with the result that the Commissioner became entitled to invoke the proviso is S. 69 (c).

16. It can hardly be disputed that when Respondent No. 2 kept its tender for acceptance up to 25th Aug., 1981, that WA a term for its own benefit and nothing prevented Respondent No. 2 from extending this date. As a matter of fact, the letter produced before us, D/- 21-8-1981, addressed by Respondent No 2 to M/s Tattoo Consulting Engineers, with a copy to the Bombay Municipal Corporation and the London Consultants, categorically stated:

"As desired by Bombay Municipal Corporation we hereby extend our Tender Validity up to 15th Oct, 1981".

It is not, therefore, possible to accept the contention that there was no proposal subsisting on 3rd Sept., 1981, the date having been extended by Respondent No. 2 itself up to 15th Oct., 1981, Till that date the tender was open for acceptance.

17. It is then alternatively contended by Mr. Dhanuka that the proviso merely provided for an enabling power of the Municipal Commissioner to proceed with a proposal on the basis of deemed approval and since it was not obligatory on the Municipal Commissioner to proceed with the proposal on the basis of deemed approval, be need not have sent the letter of acceptance of the tender to Respondent No. 2 on 19th Oct., 1981 when the Standing Committee had clearly debated the matter on 8th, 18th and 21st Sept., 1981 at which the Municipal Commissioner was himself present. The argument approval is an afterthought after the commissioner found that there was an express disapproval, inasmuch as the Standing Committee had to its approval to grant the contract to Respondent No. 2 Another limb of the same argument is that the power under the proviso was exercised by the Municipal Commissioner in the teeth of indications to the contrary by the Standing Committee, in so far as the proposal to accept the tender of Respondent No. 2 was concerned. It is urged that the

very fact the till 19th Oct., 1981 no agreement was executed showed that there was in fact no urgency and the action of the Municipal Commissioner amounted to abuse of power. This contention necessitates the serenity of the proceedings of the Standing Committee on 18th Sept., 1981. We have already reproduced above the extracts from the Minutes of the proceedings of that meeting. The resolution before the Standing Committee on that day was that the Commissioner's proposal contained in para 10 of his letter be approved. This must be taken to be the main Resolution which was before the Standing Committee. Now what was sought to be done when this subject was taken up was that what purported to be an amendment was sought to be moved and the amendment was that approval under S. 69 (c) be given to contract being entered into by the Commissioner with Messrs Candy Filters (India) Ltd (Respondent No. 5) As already pointed out, this amendment was said to have been carried but when put to vote as a substantive proposition, it was lost as a substantive proposition, It was lost as a result of the easing vote of the Chairman of the Standing Committee. Now, if we merely go by what really happened at the meeting of the Standing Committee there cannot be any doubt that the proposal made by the Commissioner that the contract was to be given to Respondent No. 2 was not approved. A Section of the Members of the Standing Committee seemed to be in favour of considering whether the contract should be given to Messrs. Candy Filters, But when even the proposal was put to vote, the proposal was lost by the casting vote of this Chairman. We are, not however, concerned as to whether the Standing Committee desired or did not desire to grant the contract to Messrs. Candy Filters. We are only concerned in this petition with the limited question as to whether having regard to the proceedings of the Standing Committee at its meeting of 16th Sept., 1981, the Standing Committee can legally be said to have decided that it was not granting its approval and whether it was permissible of the Standing Committee to consider this question at its meeting of 16th Sept., 1981. As we have earlier pointed out, the moment fifteen days had expired, there was a statutory bar to the consideration of the proposal in the sense that the proposal could no longer be discussed as it must be deemed to have been approved in view of the provisions of the proviso to S. 69 (c).

18. Apart from this, it is impossible for us to appreciate how what was suggested as an amendment could really be, in the legal sense of the terms, an amendment of the Resolution which was property before the Standing Committee. Once again going back to the provisions of s. 69 (c) the requirement thereof is that the approval of the Standing Committee is to be sought by the Municipal Commissioner for a particular contract. Primarily, the power to enter into a contract is the power of the Commissioner under the Act. On this power, there is a restriction. In case the contract involves expenditure exceeding one lakh of rupees. The Commissioner has to seek the previous approval of the Standing Committee, What the Standing Committee is expected to do is also specified in the proviso. The Committee is expected to consider and dispose of the proposal made by the Commissioner. There is no power in the Standing Committee to

substitute its own proposal for the proposal made by the Municipal Commissioner, The provisions of S. 69 are very clear and leave no one in doubt that the proposal has to be initiated and made by the Commissioner himself and there is no jurisdiction or power of the Standing Committee to substitute its own proposal for the proposal of the Municipal Commissioner.

19. Apart from this legal infirmity in the proceedings of 18th Sept., 1981 there is another infirmity, inasmuch as what was suggested as a purported amendment could really not be an amendment at all. It is well known that there can be no amendment which negatives or which is substantially destructive of the main Motion which is before the meeting of Committee for consideration. The position is well set out by Sacristan in his Treatise on "The Law and Practices of Meetings". 6th Edition, at page 100 as follows;:-

"An amendment is a proposed alteration in the terms of a motion (or of an amendment already before the meeting) by those whose views would not be met by either the acceptance or rejection of the motion or amendment as moved. It should take the form of omitting, substituting or inserting certain words in the original motion (or amendment). The alteration should not be such as to constitute a direct negative of the motion for the same result could be achieved by an adverse vote: neither should it be beyond the scope of the original motion".

Thus, what was really sought to be done in the form or guise of an amendment of the Resolution, which was before the Standing Committee viz. That the Commissioner's proposal should be approved, was not to amend the substantive motion, but to substitute another proposal for the proposal of the Municipal Commissioner, a thing which was wholly impermissible to be done by the Standing Committee. As a matter of fact, what purported to be an amendment was not an amendment at all. Therefore, notwithstanding the fact that the Minutes did record that according to some members the contract had to be given to Messrs. Candy Filters, the legal effect is that at the meeting of 16th Sept., 1981 the proposal of the Municipal Commissioner was not disposed of by the Standing Committee and indeed the whole debate was futile in view of the statutory provision in the Proviso to S. 69 (c) of the act.

20. It is also difficult for us to appreciate the argument that the Municipal Commissioner should not have acted on the basis of deemed approval in view of the indication to the contrary by the Standing Committee. We are in this petition concerned with the exercise of the statutory power by the Municipal Commissioner, and if the pre-condition to the exercise of the statutory power exists, no fault can be found with the Municipal Commissioner if he has taken the view that the proviso to S. 69 (c) has operated in respect of the proposal made by him. Indeed it appears to us that it was obligatory on him to act in the manner he has done and if he had not given effect to the proviso, he would have really failed in his duty to act according to the statutory provision. The circumstance that he was present at the meeting of 16th Sept., 1981 and intimated to the Standing Committee that the date was extended up to 15th Oct., 1981 by

Respondent No 2 had no relevance to so far as the statutory effect of the proviso to S. 69 (c) was concerned. Its operation does not depend on the conduct of any person and it is not within the power of either the Commissioner or the Standing Committee to prevent the statutory effect of the proviso to S. 69 (c)

21. Once the proviso to S. 69(C) had come into operation, the circumstance that the Commissioner did not write to Respondent No. 2 earlier has also no relevance.

22. An argument was also advanced that if specific approval was given by the Standing Committee to the Municipal Commissioner's proposal, that approval could have been revoked by the Standing committee in the appropriate manner and, therefore, a deemed approval, which is a creation of the statute, could also be is a creation of the statute, could also be withdrawn by a Resolution of revocation and the further argument was that the decision of the Standing committee at its meeting of 16th Sept., 1981 expressing its views against granting of the contract to Respondent No. 2 must be considered as an implied revocation. The argument of implied revocation must be rejected out right. Whether the approval expressly granted could be revoked or not is not relevant for the purpose of this case, but it cannot be disputed that a revocation of an earlier decision must expressly be a decision taken consciously with the express and sole intention of revoking the earlier action. There can never be an implied revocation of something which is the effect of a statutory provision, part from the fact that it does appear to us that the statutory effect of a provision like the proviso to S. 69 (c) can be undone by any resolution of the Standing Committee.

23. It was faintly argued that the Municipal Commissioner has not acted to good faith and that his action Amax of mala fides, arbitrariness, Unreasonableness and an attempt to disregard totally the views of the elected Corporations. Beyond making the averment and the further averment that the Municipal commissioner has obviously acted at the dictates of someone of the prejudice of the Corporation, there is no material on record which necessitates out consideration of this contention on its merits. However, it is obvious to us that the fact remnants that the Standing Committee was not able to make up its mind within the prescribed period when the matter was discussed by it. It was discussed in utter disregard of the legal provision in the proviso to S. 69 (c) when the discussion was a futile exercise and if under these circumstances the Municipal Commissioner has given effect to the law contained in the proviso to S. 69 (c) it cannot be challenged merely because some members of the Standing Committee did not want the contract OT be given to Respondent No. 2 On a consideration of the arguments before us, it is obvious that the whole petition is misconceived and must fail.

24, So far as the Appeal is concerned, having regard to the fact that we have found no substance in the petition, it is not necessary to decide the Appeal on Merits and the appeal has not become infructuous.

25. In the result, the petition is Dismissed. However, to the circumstances of the case, we do not think that it is necessary to make any order as to costs. We therefore, make on order as to costs, Rule discharged.

26. Order accordingly.