
(1984) 04 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1404 of 1984

Sudam Jinappa Chougule

APPELLANT

Vs

Kolhapur Municipal Corporation and Others

RESPONDENT

Date of Decision : 24-04-1984

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 6, 7

Citation : AIR 1985 Bom 114 : (1984) 2 BomCR 306

Hon'ble Judges : Kamat, J; Dharmadhikari, J

Bench : Division Bench

Advocate : Bhimrao N. Naik, for the Appellant; N.H. Gursahani, Spl. Counsel, D.P. Hegde, Addl. Govt. Pleader, W.S. Devnani, Asst. Govt. Pleader, K.K. Singhavi and B.N. Singhavi, for the Respondent

Judgement

Dharmadhikari, J.—The Petitioner Shri Chougule was the Councillor of the Municipal Corporation of Kolhapur. He was duly elected in the general elections held in May 1978. His tenure as Municipal Councillor commenced from 16th August 1978 when the first meeting of the Council was held. Five years tenure of the Councillors, expired on 15th August 1983. By a notification dt. 16th July 1983 issued under S. 6 of the Bombay Provincial Municipal Corporation Act (Hereinafter referred to as the Act), the said term was extended up to 31st Mar. 1984. Prior to the expiry of the extended term the Municipal Corporation passed a resolution on 18th Dec. 1982 for taking steps towards holding of the general elections. On 22nd Aug. 1983 a tentative election programme was also drawn by the Municipal Commissioner. By this programme the 20th Feb. 1984 was fixed as the date for filing the nominations under R. 8 of the Rules. This date was duly approved by the Government vide Government Resolution dt. 18th Nov. 1983. First Oct. 1983 was specified as the date with reference to which the electoral rolls were to be prepared. On 5th Dec. 1983 draft ward-wise rolls were published. For preparation of these rolls staff was appointed by the Municipal Corporation and requisite expenditure was also incurred. It appears that thereafter by a letter dt. 24th Jan. 1984 the Collector of Kolhapur wrote to the

Deputy Secretary to the Government of Maharashtra in Urban Development Department that since the applications for inclusion of names were received to the tune of 75000 and about 15000 applications for corrections, transfer and deletion were also received, it was not possible for them to complete and finalise the electoral rolls prior to the date fixed. In view of this the Collector proposed that the date of final publication of ward-wise rolls be relaxed by a week and suitable Government orders be issued in that respect. By a letter dt. 25th Jan. 1984 the Deputy Secretary to the Government informed the Collector that the Municipal Commissioner is the proper authority to fix the date for final publication of ward-wise list after taking into consideration the difficulties pointed out by him. The Municipal Commissioner then wrote to the Deputy Secretary to the Government of Maharashtra on 26th Jan. 1984 that the election programme will have to be changed since a change in the date of publication of final ward-wise roll is necessary. He also proposed changes in the election programme. According to this changed programme final ward roll was to be published on 2nd Feb. 1984. By a letter dt. 27th Jan. 1984 written to the Municipal Commissioner by the Deputy Secretary to the Government of Maharashtra this change in the election programme was duly noted. However, surprisingly enough, he was also informed that the Government Resolution dt. 18th Nov. 1983 fixing 20th Feb. 1984 as a date for filing the nominations, should be kept in abeyance until further orders. Thereafter on 20th Mar. 1984 the petitioner wrote a letter to the Municipal Commissioner enquiring as to why the elections are not being held. The Municipal Commissioner by his letter dt. 23rd Mar. 1984 informed the petitioner that the Government of Maharashtra has informed him to stay the election process until further orders and, therefore he is unable to hold the elections. He also informed that to complete the election process after the publication of final voters list, he will take minimum 70 days. Therefore in substance the whole election process was held up since the earlier approval granted by the State Government was kept in abeyance. Therefore, the petitioner filed the present petition on 27th Mar. 1984 praying for a writ of mandamus or any other appropriate writ, direction or order directing the respondents to hold the elections to the Municipal Corporation, Kolhapur. When this writ petition came up before us on 30th Mar. 1984 Rule nisi was issued which was made returnable on 16th April. 1984. In this writ petition the petitioner had also asked for interim relief I terms of prayer clause (E) i.e. that in the event the Administrator is appointed under S. 7-A1 of the Act, then the Respondent No. 3 should be directed not to execute the said order at least for 15days so as to enable the petitioner to approach this Court to obtain necessary Orders.. however while granting this interim relief the Court directed the respondent 3 not to execute the order. If passed till 10th April. 1984. It then appears that on 30th Mar. 1984 itself the State Government passed an order in exercise of powers conferred by sub-sec (1) of S. 7A1 of the Act, directing that all the Councillors including Mayor and Deputy Mayor of the said Corporation shall as from the 1st April 1984 cease to hold office and vacate their office as Councillors. By the said order Shri S.G. Bhosale the Municipal Commissioner was appointed as an

Administrator to manage the affairs of the said Corporation during the period from the specified date i.e. 1st April 1984 up to the date preceding the date on which the 1st meeting of the reconstituted Municipal Corporation of the City of Kolhapur after the general election is held, where there is a quorum or for a period of one year from the date of publication of this order in the official gazette, whichever is earlier. In view of the issuance of this order petitioner amended his petition and challenged the order issued by the Government under S. 7-A1(1) of the Act. Thus in substance in the present petition the petitioner is challenging the order issued by the State Government under sub-sec. (1) of S.7-A1 of the Act and is also seeking a writ of mandamus directing the respondents to hold elections to the Municipal Corporation forthwith. The petitioner has also challenged the validity of S. 7-A1 of the Act on various grounds.

2. It is contended by the petitioner that action taken by the Government is wholly mala fide. The reasons disclosed in support of the order are not only artificial but are also false. Further before issuing the order under S. 7-A1 of the Act, the petitioner or the Municipal Corporation, was not given an opportunity of being heard and, therefore, the said order is also contrary to the well established principles of natural justice. In law the term of the Municipal Corporation could have been extended by a further period of six months. Instead of taking recourse to this power, for oblique motive the State Government has chosen to exercise its power under S. 7-A1 of the Act. None of the circumstances on the basis of which action under Sec.7-A1 could have been taken were in existence. This is not the end of the matter. By issuing a letter dated 27th of January 1984 asking the Municipal Commissioner to keep the whole election programme in abeyance, the very process of holding the elections for reconstituting the Municipal Corporation was also held up. Therefore according to the petitioner the impugned order is passed by the party in power to achieve its political object and has not been issued in bona fide exercise of power. The petitioner has also challenged the validity of the provisions of S. 7-A1 of the Act on the ground that it is violative of Article 14 of the Constitution of India. According to the petitioner the said section is also beyond the legislative competence of the State Legislature. Enactment of the said section results in hostile discrimination. Said section provides no classification at all, and even if assuming that it provides for classification, the said classification is not founded on any intelligible differentia, which distinguishes local authorities grouped together from others left out. Further the said section has no rational relation to the object sought to be achieved by the Act. Ss. 452 and 7-A1 of the Act are in conflict with each other and, therefore, S. 452 of the Act must prevail over S. 7-A1 of the Act. It was also contended that the said section is arbitrary, as it confers unguided, unbridled and uncontrolled power on the State Government to peck and choose the Municipal Corporation for supersession, which is violative of Art. 14 of the Constitution. Thus in the present petition the petitioner has challenged the validity and legality of S.7-A1 of the Act and has also challenged the order issued under the said section.

3. Shri Bhimrao Naik the learned counsel appearing for the petitioner contended

before us that the power conferred upon the State Government under S. 7-A1 of the Act has been exercised by the Respondent to achieve the oblique motive and is wholly mala fide both legally and factually. He has also contended that having throttled down the very process of election, to gain the control over the Municipal Corporation an artificial reason has been put forward by the State Government for issuing the said order. Therefore the order is issued in colourable exercise of the power. He also contended that two alternatives were open to the State Government in the present case i.e. to extend the term of the Municipal Corporation by six months or to issue order under S. 7-A1 appointing the Administrator. It is nowhere disclosed as to why the first alternative could not have been opted for and it was necessary to pass the order appointing the Administrator. Therefore in the present case it was obligatory on the part of the Government to have given an opportunity of being heard to the Municipal Corporation before the impugned order was issued. This is more so when the process for reconstituting the Corporation had already commenced. He also contended that the reason given for issuing the order is wholly irrelevant and was not germane for issuing the order under S. 7-A1 of the Act.

4. On the other hand it is contended by Shri Gursahani and Shri Singhavi, the learned counsel appearing for the respondents, that under S.6 of the Act the normal term of the office of the Councillors is 5 years. This could be extended by the State Government by notification in the official gazette a term not exceeding in aggregate 6 years and that too for the reasons to be stated in the notification. Further this extension is subject to the pre-publication and consideration of objections from the voters. Thus after expiry of the term of 5 years the Councillors have no legal or vested right to remain in office. An absolute discretion is also not conferred upon the State Government to extend the term. In the present case 5 years term was over and 6 months extension was granted which also ended on 31st Mar 1984. The Councillors cannot claim extension of term as of right. Therefore after the expiry of the extended term they become functus officio and cease to be the Councillors. Sub-sec. (3) of S. 6 applies when the term is not extended and elections are held in the normal course. Apart from this S.7-A1 starts with non obstante clause, which means that an order could be issued under the said section notwithstanding anything contained in sub-secs. (1) and (3) of S. 6. In the present case as after the expiry of the extended period the councillors ceased to be the Councillors, the Government had no other alternative but to issue notification appointing the Administrator. Therefore the power has been exercised by the State Government bona fide so that the Administrator can manage the affairs of the Municipal Corporation and there is no vacuum. The learned counsel also contended that the allegations made about the mala fides lack in particulars. They are hopelessly vague. These allegations are denied by the Respondents. No material has been placed before this Court by the petitioner to establish the mala fides. Admittedly the party in power in Kolhapur Municipal Corporation was Congress (I) party. By the impugned order the said party is robbed of its power. Therefore this is a case where the

Government in power at the State level has chosen to appoint the Administrator to a Municipal Corporation whereon its own party is in power. This clearly indicates that the Government has acted bona fide and in the interest of general public. This is not the only Municipal Corporation wherein such power is exercised. In other Municipal Corporation also Administrators are appointed. This is not the end of the matter. all the Municipal Councils in the state are also managed by the Administrators. Therefore it cannot be said that the Municipal Corporation, Kolhapur is being treated differently or there is any hostile discrimination. So far as the vires or validity of the section is concerned, it is contended by the learned Counsel, that similar challenge has been negatived by the Division Bench of this Court in Mohamad Maqbool Mohamad Khaja and Others Vs. State of Maharashtra and Others, wherein the provisions of S. 48A of the Maharashtra Municipalities Act were challenged. S. 7-A1 of the Bombay Municipal Corporation Act is *pari materia*, to S. 48A of the Maharashtra Municipalities Act. Therefore for the reasons given in the said judgment, present challenge also deserves to be negatived. They also contended that there is no inconsistency between Ss. 452 and 7-A1 of the Act. the said sections cover different fields and areas, S. 7A1 comes unto operation in different circumstances. Even otherwise the provisions of an enactment cannot be declared as ultra vires of the provisions of the same Act. So far as the order issued by the State Government holding the elections programme is concerned, it is contended by the learned counsel that under the amended rule the date of nomination is to be fixed by the Commissioner with the prior approval of the State Government. It was the Municipal Commissioner who sought change in the date of nomination. When such request was made by the Municipal Commissioner the Government thought it fit to withhold the approval till the final decision is taken in the matter. Election Commission of India has written to all State Governments that the electoral rolls should be revised treating the 1st January 1984 as the basic date for revision of the electoral rolls. This process of revision of electoral rolls was in contemplation. The State Government found that on the basis of the date specified i.e. 1st Oct. 1983 several voters will lose their right of franchise. Therefore with a view to give fair chance to those persons who are entitled to exercise their right of vote if the first January 1984 is taken as basic date, the Government thought it fit to prepare the Municipal Election rolls afresh. This is in contemplation. After the expiry of the extended period of the Municipal Corporation, the State Government has appointed the Administrator under S. 7-A1 of the Act, to manage the affairs of the Corporation . by the said notification he is appointed to hold the office for a period of one year, or till the Corporation is reconstituted, whichever is earlier. Under S. 7A1(b) read with the rules, the respondents are obliged to hold elections within a period of one year from the date of publication of the order issued under the said section. Therefore it is not correct to say that the Government has no intention to hold the election or wants to postpone it indefinitely. In substance it is contended by the counsel for the respondents that the Government has acted bona fide and within its power under S. 7-A1 of the Act. The power has been exercised bona fide in the

interest of general public and, therefore, the petitioner is not entitled to any reliefs much less as claimed for in this writ petition.

5. S. 7-A1, with which we are concerned in this writ petition reads as under :

" S.7-A1. (1) Notwithstanding anything contained in sub-sec. (1) and (3) of S. 6 or any other provisions of this Act, where the term of office of five years of the Councillors of any Corporation has expired and the State Government is of the opinion that in the changed circumstances the continuance of such Councillors in office is not necessary or expedient, the State Government may, at any time, even during the period the term stands extended under sub-sec. (1) or (3) of S.6, by order, published in the official Gazette, direct that : (a) all Councillors of the Corporation shall, as from the date specified in the order, cease to hold and vacate their offices as councillors or otherwise; and (b) the person appointed by the State Government, from time to time, shall be the Administrator to manage the affairs of the Corporation, during the period from the date specified in the order up to the day preceding the date on which the first meeting of the reconstituted Corporation after the general election is held, where there is a quorum. Such general election shall be held within period of one year, from the date of publication of the order issued under this sub-section in the Official Gazette:

Provided that this period of one year may be extended, from time to time, by the State Government in exceptional circumstances, to a period not exceeding four years and two months in the aggregate by notification in the Official Gazette, for reasons, which shall be stated in the notification.

(2) During the said period, all the powers and duties of the Corporation and its various authorities under this Act or any other law for the time being in force shall be exercised and performed by the Administrator.

(3) The Administrator may delegate any of his powers and duties to any officer for the time being serving under the Corporation.

(4) The Administrator shall receive such remuneration from the Municipal fund, as the State Government may, from time to time, by general or special order, determine".

From the bare reading of this provision it is quite clear that it makes a provision for appointment of Administrator after normal term of the office of councillors expires. The Administrator is appointed only to manage the affairs of Corporation during the period from the date of his appointment up to the day preceding the date on which first meeting of the reconstituted Corporation, after general election is held. The section further lays down that such general election shall be held within a period of one year. By proviso to sub-sec (1) cl. (b) in exceptional cases the period of one year could be extended up to four years and two months in the aggregate. However the fact remains that authorities are duty bound to hold general elections as early as possible and the maximum prescribed cannot

be treated as minimum and exception cannot be allowed to become the rule. It is not intended that the Administrator should function ad-indefinitum. He can function only until the Corporation is reconstituted. He is also entrusted with a duty to hold elections as early as possible. If this power is abused the Courts can control the action by directing the authorities to hold elections, and by fixing the dates for the same. The challenge to the section will have to be tested in this background.

6. So far as the challenge regarding the vires and validity of S. 7-A1 is concerned, the same will have to be negated in view of the decision of this Court in Mohamad Maqbool Mohamad Khaja and Others Vs. State of Maharashtra and Others, It is not disputed that the provisions of S. 48A of the Maharashtra Municipalities Act and S. 7-A1 of the Bombay Provincial Municipal Corporation Act are *pari materia* and identical. To say the least similar challenge was raised before the Division Bench in Mohamad Maqbool's case. The said provision was also challenged on the ground that it was violative of Art. 14 of the Constitution. It was also contended therein that the said provision is invalid being contrary to the principles of natural justice. The said challenge was wholly negated. In view of the decision of the Division Bench in Mohamad Maqbool's case, Shri Naik also found it difficult to argue otherwise. However it was contended by him that the provisions of S. 7-A1 of the Act are in conflict with the provisions of S.452 of the same Act. We do not find any substance in this contention also. S.452 of the Act confers a power upon the State Government to supersede the Corporations in case of incompetency, persistent defaults or abuse of power. The order to be passed under the said section obviously results in the Civil and evil consequences. The said power is to be exercised when the Councillors have a right to be in the office. The area and the field covered by the said section is different that one covered by S. 7-A1 comes into operation after the normal term of the office of the councillors expires. By S. 7A1 a provision is made for appointment of Administrator after the normal term of office of the Councillors expires, so as to avoid a vacuum and provide for continuity in the Administration. The Administrator is appointed to manage the affairs of the Corporation till the new body enters the office. An obligation is cast upon the Government and the Administrator to hold general elections for reconstitution of the Corporation. Therefore the area and field covered by these two sections being different it is difficult for us to hold that there is any inconsistency between these two provisions. This being the position in law the challenge to S. 7-A1 must fail.

7. The Division Bench in Mohamad Maqbool Mohamad Khaja and Others Vs. State of Maharashtra and Others, has also held that the principles of natural justice cannot be imported in S. 48A of the Municipalities Act, which is akin to S.7-A1. In Mohamad Maqbool's case it is held that since there is no vested right in the Councillors to continue in the office, after the expiry of normal term, the Government was not bound to give any notice to the councillors, before taking action under S.48A of the Municipalities Act. In terms it is held by the Division Bench that the principles of natural justice will not apply to such a case where

person who claims violation has no right to remain in office. The Division Bench has also laid down the guidelines and indicated the circumstances in which power can be exercised under the said provision. It was also observed therein that the special circumstances on the basis of which order could be issued are justiciable in Court and are not left to the whims of executive. Once it is held, as has been held by the Division Bench in Mohamad Maqbool's case that after the expiry of normal term there is no right in the Councillors to continue in the office, then obviously present case must also stand on the same footing. The councillors have no vested right to get their term extended. The power conferred upon the State Government directing the extension of term is also not absolute but is a qualified one. Before such a notification extending the term is published the State Government is obliged to invite and consider the objections from the persons entitled to vote at the elections under the Act. Therefore there is neither automatic extension of term nor such an extension could be claimed as of right. Therefore in our view present case is also covered by the Division Bench decision in Mohamad Maqbool's case. The position is further clear if the provisions of S. 452 are compared with S. 7-A1. The provision of hearing as has been made in S. 452, does not find place in S. 7-A1. It is no doubt true that in the present case the term of the office could have been extended by six months, but once it is held that such an extension cannot be claimed as of right then it cannot be held that no order could have been issued under S. 7-A1, unless an opportunity of being heard was given to the petitioner. However before issuing order under S. 7-A1, the State Government has to form an unbiased opinion, that in the changed circumstances the continuance of the Councillors in office is not necessary or expedient. Therefore if there are allegations of bias or mala fides which are established then different considerations might prevail.

8. After the order under S. 7-A1 of the Act is issued appointing the Administrator much of the challenge in the petition has become academic. Shri Naik, has fairly not pressed for the reinstatement of Councillors in the office since even the extended term is over and the further term could be extended by few months only, in which his client is not very much interested. He is more interested in the early reconstitution of Corporation and holding of elections for that purpose. However, it was contended by Shri Naik that the order passed under S. 7-A1 of the Act is wholly mala fide. The allegations of the mala fides are made in para IV of the petition. It is contended by the petitioner that he is convinced that the elections are postponed mala fide by the present Government which is headed by the Congress (I) party, in order to appoint the Administrator and this is being done because of the recent bill introduced in the State Assembly to have similar provisions in the Bombay Municipal Corporation Act. Then it is alleged that the petitioner belongs to the opposition group in the Municipal Corporation at Kolhapur. Petitioner and his group hopes to succeed in the fresh elections. However, people belonging to the Congress (I) group are not interested in going ahead with the election programme and they want that the fresh elections should be held only after the entire general elections are held i.e. to the State Assembly

or Parliament. He has also made a reference to the fact that for the first time in the history of the Bombay Municipal Corporation similar provisions have been inserted in the enactment, since the Congress (I) party does not have majority in Bombay Municipal Corporation. To make a show that the Bombay Municipal Corporation is treated equally the impugned order is issued qua the Municipal Corporation, Kolhapur also. It is also alleged by the petitioner that since the Congress (I) party cannot capture power in the Municipal Corporation, Kolhapur by democratic process, by defeating the said process and by superseding it, they want to have an indirect control over the Municipal Corporation by appointing the Administrator. Since it was found that the holding of the fresh election was not in the interest of the Congress (I) party, the State Government decided mala fide to exercise its powers under S. 7-A1 of the Act. All these allegations are denied by the Respondents. It is an admitted position that in the Kolhapur Municipal Corporation Congress (I) party was in power. Therefore if the State Government was politically motivated then it sounds a bit unnatural that it will choose to rob its own party of the power in the Municipal Corporation by appointing the Administrator. It is well established that the burden of establishing mala fides lies very heavily on the person who alleges it. In the present case but for making bare allegations and placing reliance upon certain circumstances no material is placed before us to establish the allegations of mala fides. It is no doubt true that the allegations made and the circumstances brought on record do raise a suspicion against the respondents. But it is well settled that mere suspicion cannot take the place of proof. Therefore it is not possible for us to come to the positive conclusion or draw a positive inference that the present order is actuated by mala fides. In this context Shri Gursahani and Singhvi have rightly placed reliance upon the decisions of the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu* and *Another, - E.P. Royappa Vs. State of Tamil Nadu and Another, - Madurai Coats Ltd. v. The Workmen of Madurai Coats Ltd.* Therefore in the absence of proof of high order, we do not think that it can be held that the impugned order is vitiated by mala fides.

9. It was then contended by Shri Naik that initially the term of the Municipal Corporation was extended by six months obviously with an intention to hold fresh elections for reconstituting the Municipal Corporation. The process of reconstitution had already started. All arrangements were made for holding fresh elections. Tentative programme was duly prepared. The Government of Maharashtra vide notification dt. 5th Oct. 1983 had also specified 1st Oct. 1983 as the date for the purposes of sub-sec. (1) of S. 7-A. Special Land Acquisition Officer No.9 Kolhapur was also appointed as designated officer. S. 7-A deals with the preparation of Municipal Election rolls. Therefore by specifying this date, the election process for reconstitution of the Municipal Corporation had duly started. Draft ward rolls were already published on 5th Dec. 1983. On the respondents own showing by 6th Jan 1984, applications for inclusion of names of voters to the tune of 75,000 and about 15,000 applications for correction, transfer and deletion of names were received. Further on publication of the list about 25,000

objections were received. Receipts during the last four days were very heavy inasmuch as it was about 40,000 and on the last date alone 12,5000 applications were received which were against open for objections, up to 16th Jan. 1984. This seems to be the reason why the Collector of Kolhapur wrote to Government on 24-1-1984 that he will require some more time to finalise the electoral roll. After making a reference to the aforesaid circumstances the Collector proposed that the last date of final publication of ward roll be relaxed by about a week, preferably any date after 31st Jan 1984. In reply to this letter the Deputy Secretary to Government of Maharashtra rightly informed him, that it is the Municipal Commissioner who is the competent authority to fix the date for final publication of the ward list of voters and therefore he should approach him. As is clear from the rules, it is the Municipal Commissioner who is entrusted with the work of preparation of the election roll. Under the unamended R. 7 the whole election programme was to be fixed by the Municipal Commissioner. However it appears that so far as the Municipal Corporation of Kolhapur is concerned, R. 7 the whole election programme was to be fixed by the Municipal Commissioner. However it appears that so far as the Municipal Corporation of Kolhapur is concerned, R. 7 came to the amended on 24-1-1983. The new rule reads as under :

"7(1) The Commissioner shall with the prior approval of the State Government fix the date of nomination of candidates for general ward election of councillors or, as the case may be, for general election of councillors for reconstitution of the Corporation, on such days in the three months immediately preceding date on which the term of office of the councillors elected at the last preceding general election is due to expire under S. 6, or as the case may be, date on which the term of office of the Administrator appointed under S. 7-A1 is due to expire".

The Municipal Commissioner had also fixed the date for nomination with the prior approval of the State Government. The State Government accorded its approval to 20th Feb. 1984 as the date for filing the nominations vide Government Resolution dt. 18th Nov. 1983. Thereafter by his letter dt. 24-1-1984 he sought a change in the said date by a week or so. However by letter dt. 27-1-1984 the State Government directed him to keep in abeyance the said date until further orders. This letter of the State Government dt. 27-1-1984 is seriously commented upon by Shri Bhimrao Naik. According to Shri Naik, once the election process started by fixing date for nomination after the prior approval of the State Government, power conferred upon the State Government under the amended R. 7 gets exhausted. Thereafter the State Government has no power either to revoke the approval or to keep it in abeyance. Even if it is assumed that the Government has such a power, then also the said power will have to be exercised in the same manner. The approval was granted by issuing a Government Resolution. Therefore it cannot be revoked or withheld by a mere letter written by the Deputy Secretary to the Urban Development Department to one Shri Bhosale, who happens to be the Municipal Commissioner of Kolhapur Municipal Corporation. Under S. 21 of the General Clauses Act, such a power is exercisable

in the like manner. Therefore the letter dt. 27-1-1984 written by the Deputy Secretary is wholly without jurisdiction. A power is conferred upon the State Government to grant the approval. In a given case for good reason the Government might refuse to grant approval. But Government has no power to keep everything in abeyance and thereby throttle the very process of election. It is also contended by Shri Naik that the State Government deliberately misread and misconstrued the letter written by the Collector of Kolhapur, on 24-1-1984. It is not disputed by the State Government that it had granted an approval to the date of nominations. It is also admitted by the State Government that the electoral roll was made up-to-date. However, according to the State Government it was constrained to withhold the approval for the reasons disclosed in para 3 of its affidavit. The said para reads as under :

"3. I say that for the purpose of holding general elections to elect new Councillors of the Municipal Corporations and Municipal Councils in the State of Maharashtra and to replace the Administrators in some of the Councils and the Corporations, steps were taken by the State Government to prepare the Ward rolls or ward lists as the case may be on the basis of electoral rolls of the Maharashtra Legislative Assembly as in force on 1-10-1983 in the case of Kolhapur Municipal Corporation. I further say that these electoral rolls of the Assembly which included the names of persons who had completed 21 years of age on the first day of January 1983 have been revised so as to include therein the names of persons who had completed 21 years of age on the first day of January 1984. If the elections to the Kolhapur Municipal Corporation were to be held with reference to the Ward Rolls or the Ward Lists so prepared then in that event a very large number of persons whose names are subsequently included in revised Assembly Rolls would be deprived of their right of franchise and to vote in the ensuing elections to the Kolhapur Municipal Corporation. Therefore, the State Government wrote to the Election Commission of India pointing out these defects and the Election Commission directed that intensive revision of electoral rolls with 1-1-1984 as the qualifying date in respect of the remaining 158 Constituencies not covered during the first phase of intensive revision be taken up during the current year and that the summary revision of electoral rolls with reference to 1-1-1984 as the qualifying date in respect of 130 Constituencies already covered during the first phase should also be taken up along with the programme of intensive revision. For this purpose the Election Commission had given approval to the proposals of the State Government and accordingly the State Government issued instructions to the Collectors, District Election Officers, Commissioners intimating them about the revision of the Assembly Electoral Rolls. In this connection, it is relevant to mention that the Collector of Kolhapur by urgent communication letter dt. 24-1-1984 informed the State Government that the Commissioner had published the draft roll of each ward under sub-sec. (1) of S. 7-A of the Bombay Provincial Municipal Corporations Act 1949 on 5-12-1983. The last date for receiving claims and objections was on 6-1-1984. It was expected that about 20,000 claims and objections would be received by the

due date. But actually the applications for inclusion of names received within the due date were to the tune of 75,000 and about 15,000 applications for corrections, transfers and deletions and he further intimated that on publication of list of claims and objections about 25,000 objections had been received and the receipts during the last four days i.e. from 2-1-1984 to 6-1-1984 were heavy inasmuch as it was about 40,000 and on the last date alone 12,500 applications were received which were open for objections up to 6-1-1984. This resulted in a huge number of objections at the fag-end and this has created a very heavy load of work. Therefore, from this letter the Government realised that unless the elections were postponed thousands of people would be disfranchised who were otherwise eligible to vote and exercise their right of franchise for elections to the Kolhapur Municipal Corporation and therefore, the Government bona fide took a policy decision on 7-3-1984 to postpone the elections to all the Corporations in the State of Maharashtra which were due by the end of March 1984 and decided to appoint an Administrator under S. 7-A1 in respect of Kolhapur Municipal Corporation. This Court will kindly appreciate that the decision with regard to not holding the elections in respect of Kolhapur Municipal Corporation has nothing to do with the party in power at the State level because this decision has been taken in respect of all Corporations and Councils wherever the elections were to be held before 31-3-1984 in public interest".

10. In our opinion there is much substance in the contention of Shri Naik that the Government either misunderstood the letter written by the Collector dt. 24-1-1984 or has deliberately misconstrued it. The Collector of Kolhapur had merely asked for extension of a week's time. The request made by the Collector had nothing to do with the revision of the voters list qua the persons who had completed 21 years of age on 1-1-1984. In this context it is pertinent to note that on 31st Mar. 1983 itself the State Government issued a circular addressed to Collectors and District Election Officers throughout the State of Maharashtra for intensive revision of electoral rolls of rural constituencies with 1-1-1983 as the qualifying date and it is common knowledge that on that basis village panchayat elections were held during Feb. to April. 1984. This is not the end of the matter. On 15-9-1983 a Government Resolution was issued on the basis of the directions issued by the Election Commission of India for revision of electoral rolls for 158 constituencies in different districts, with reference to 1st Jan. 1984. This list included Kolhapur District. Thus the State Government was well aware of the directions issued by the Election Commission of India in the month of March 1983 or in any case in September 1983. With the awareness of the directions issued by the Election Commission of India the State Government had specified 1st Oct. 1983, as qualifying date, and had also approved the 20th Feb. 1984 as the date for filing nominations for the purposes of ensuing general elections to the Kolhapur Municipal Corporation. Therefore it cannot be said that the Government of Maharashtra for the first time came to know about the directions issued by the Election Commission of India, when the letter was written by the Collector on 24-1-1984. It cannot be forgotten that under S. 7A, read with the

relevant rules, the Assembly rolls for the time being in force are to be adopted as basic ward rolls, qua the qualifying date to be specified by the State Government. Therefore prescribing or specifying such a date is a must for holding the elections. S. 7AA then makes a provision for inclusion of the names even after the publication of the final rolls and this section begins with non obstante clause. Some debate was raised as to the true construction or ambit of S. 7AA. It was contended that, under the said section, which starts with a non obstante clause even the names of the persons who attained twenty one years of age on 1st Jan 1984, could have been included in the voters list till the last date fixed for nomination, if they had so desired. Therefore for that purpose it was not necessary to postpone the elections. On the other hand it was contended that S. 7AA, is subject to S. 7A(3) of the Act. However we do not feel that it is necessary to go into the said debate or to decide the said question finally. It is needless to say that there is always a time lag between the date prescribed under S. 7-A(1) and the actual filing of the nomination papers and consequential poll. Therefore between that period i.e. the specified date and the date for nominations, some persons are bound to become eligible for exercising their franchise. This eligibility may not merely be qua voter but could be also as a prospective candidate. This is inevitable in the process of election, which to some extent is a time consuming process. Therefore if it is held that the name of every person who becomes eligible as a voter till the date of nominations must find place in the voters list, then holding of elections will become an impossibility. As already observed the general elections to the village panchayats were held in this State during this very period. It is really difficult to hold that the Government had either any bias against the rural population or was partial to urban youth, when it decided to revise the electoral rolls qua the Municipal Corporations only. If the elections to the village Panchayats could be held during the said period we fail to understand as to why the said yardstick was not applied to urban area. According to Shri Naik this discriminatory treatment was meted out to urban areas, since the party in power, though was sure to win elections in the rural areas, was not very sure about urban areas. Therefore, according to the learned Counsel election programme is so manipulated, that the elections to the Municipal Corporations and Municipal Councils could be held after the general elections to the Legislative Assembly and the Parliament are over. In the meanwhile Administrators are appointed in all the Municipal Bodies, so that the party in power can manipulate elections through Administrator who is a Government Servant. Thus according to the learned counsel the election to the Kolhapur Municipal Corporation has been kept in abeyance with ulterior motive. This may be true or may not be true. However, one thing is clear that "All is not well in the Kingdom of Allah". Therefore we do not think that the reason now given by the State Government that it took decision to keep the election in abeyance in view of the directions issued by the Election Commission of India, could be termed as genuine. In our view the said reason is obviously an afterthought. However, as already observed this aspect of the matter has now become academic since the date fixed for filing the nominations has expired long back. Rightly or wrongly approval to the date

of nomination is kept in abeyance and the whole election process is throttled down. To say the least now the whole thing will have to start de novo.

11. Under the scheme of the Act it is the duty of the concerned authorities to initiate the process of reconstitution of the Municipal Corporation even before the expiry of the normal term. Even the Administrator appointed under S. 7-A1 of the Act is obliged to take early steps for the reconstitution of the Municipal Corporation. Local self Government is part and parcel of the scheme of decentralisation of power. Decentralisation of power is the essence of democracy. In this context the observations of the Supreme Court in *Narendra Madivalapa Kheni Vs. Manikrao Patil and Others*, - *Narendra Madivalapa Kheni v. Manikrao Patil* are quite pertinent, which read as under (At p. 2175) :

"Elections to local bodies and vesting of powers in units of self government are part of the Directive principles of State Policy (Art. 40 of the Constitution) and, in a sense a homage to the Father of the Nation, standing as he did for participative democracy through decentralisation of power. Unfortunately, after holding elections to the Bidar Board and making people believe that they have elected their administrative representatives at the lowest levels, the State Government did not bring to life the local board even long after the High Court had disposed of the challenges to the elections in June 1972. A Government, under our constitution must scrupulously and energetically implement the principles fundamental to the governance of the country as mandated by Art. 37 and, if even after holding elections Development Boards are allowed to remain moribund for failure to notify the curtailment of the administrator's term, this neglect almost amounts to dereliction of the constitutional duty. We are unhappy to make this observation but power to the people, which is the soul of a republic, stands subverted if decentralisation and devolution desiderated in Art. 40 of the Constitution is ignored by executive inaction even after holding election to the floor level administrative bodies. The devolutionary distance to ideological Rajghat from power-jealous State capitals is unwillingly long indeed, especially in view of the familiar spectacle of long years of failure to hold elections to local bodies, supersession aplenty of local self-government units and gross inaction even in issuing simple notifications without which elected bodies remain still born. "We, the people" is not constitutional mantra but are the power holders of India from the panchayat upward".

The Supreme Court has also observed in the same judgment that :

"Caesar's wife must be above suspicion and wielders of public power must fill this bill. A moral matrix and administrative culture must nurture the power process if democracy is not to commit suicide".

".....the performance of the political government and the pressurization implicit in the hectic activities we have adverted to read in the light of the likely political gains accruing to the party-in-power, generate apprehensions in our minds about the peril to the electoral process if political bosses in office rubberise the public

services to carry out behests which are contrary to the law but non-compliance with which might be visited with crypto punitive consequences....."

".....civil services have a high commitment to the rule of law, regardless of covert commands indirect importunities of bosses inside and outside government, Lord Chesham said in the House of Lords in 1958: "He is answerable to law alone and not to any public authority". A suppliant, obsequious, satellite public service - or one that responds to allurements, promotional or pecuniary - is a danger to a democratic polity and to the supremacy of the rule of law. The courage and probity of the hierarchical election machinery and its engineers, even when handsome temptation entices or huffy higher power brow-beats, is the guarantee of electoral purity"....."

We hope that the sentiments expressed by the highest Court of the land will not remain on paper only, but will adhered to and respected by every body concerned.

12. Local self Government means continuous effort to be independent of Government control, whether it is foreign Government or National Government. The Government that runs its affairs smoothly and effectively without much State interference is truly democratic. When such condition is absent, form of a Government is democratic only in the name. It is deceptive democracy. Real democracy cannot be worked by men sitting at the top. It has to be worked from below by people of every village and town. The sovereignty resides in and flows from the people. So said the father of the Nation in whose name we swear. When the nation is wedded to adult suffrage election is a must. People participate in democratic process by exercising their right of vote and by paying taxes. Democracy is a way of life and a citizen is the architect of his own Government. The order of keeping the election process in abeyance is obviously calculated to drain the vitality from the Rule of Law and Democracy, which our Constitution so unmistakably proclaims. By the preamble of the Constitution to constitute India into a Sovereign Democratic Republic". It is not possible to achieve this object if elections to the local bodies are postponed or kept in abeyance on flimsy grounds, and administrators are appointed in place of responsible elected representatives. It will amount to murder of democratic republic. As already observed the grounds now put forward by the Government for keeping the whole election process in abeyance are wholly unworthy of credence and will have to be rejected being the result of an afterthought.

13. By issuing the order under S. 7-A1 an Administrator is appointed to manage the affairs of the Municipal Corporation of Kolhapur. Fortunately the person who was holding the office of the Municipal Commissioner is appointed as Administrator and under the provisions of law he is duty bound to take early steps for the reconstitution of the Corporation. We are sure that the Administrator shall take immediate steps for the reconstitution of the Corporation. Before us a statement is filed by Shri Gursahani which is signed by the Deputy Secretary to the Government of Maharashtra that the election to the

Municipal Corporation, Kolhapur will be held along with the elections to other Municipal Corporations in the State before 31st Mar. 1985. However, it is rightly contended by Shri Naik that this is neither an undertaking nor a commitment. It is also contended by Shri Naik that the experience shows that once an Administrator is appointed, elections are postponed on one ground or the other for several years. In this context he has brought to our notice the fact that no elections are held nor any steps are taken for reconstituting the Nagpur Municipal Corporation or Solapur Municipal Corporation for more than 3 years and these Corporations still continue to be in charge of the Administrators. He also brought to our notice the fact that in spite of the decision of this Court in *Mohamad Maqbool Mohamad Khaja and Others Vs. State of Maharashtra and Others*, till today no steps are taken to hold elections to the said Municipal council also. By amendment to proviso to S. 7-A1 an Administrator can continue in office for a period of 4 years and 2 months. In this context it is pertinent to note that normal term of the Councillors is five years and now under law as it stands today, an Administrator can also continue in office for a period of 4 years and 2 months. This means his term is short by eight months only. According to Shri Naik this proviso is being amended from time to time to increase the said period, and nobody is sure that the period of 4 years and 2 months will not be further extended by amending the Act, to make a mockery of democracy. Therefore according to Shri Naik if no directions are issued by this Court then no elections will be held to the Kolhapur Corporation in near future. With the experience in the field based on the instances brought to our notice, we cannot say that this apprehension is wholly unfounded.

14. In the present case the date of nomination was already approved by the State Government. The process of preparation of the electoral rolls is intimately connected with the election process. It is an integral part of the process of election and reconstitution of Municipal Corporation. S. 7-A of the Act contemplates preparation of electoral rolls for the purpose of holding the elections. In the present case the work of preparation of Municipal Election rolls is practically complete qua the qualified date i.e. 1st of Oct. 1983. Even if the Government is interested in revising these electoral rolls so as to confer a voting right upon the persons who have attained the age of 21 years on 1st Jan. 1984, the period which will be required for this revision will be hardly of few months. We are sure that by now all appeals filed before the authorities must have been disposed of. In the circumstances we do not feel that the period of one year will be required to reconstitute the Kolhapur Municipal Corporation. In any case the authorities are duty bound to hold the election as early as possible.

15. Therefore we make rule partly absolute and direct the Respondents to hold election to the Municipal Corporation, Kolhapur for the reconstitution of the Municipal Corporation as early as possible or in any case before 31st Oct. 1984. The Respondents are also directed to take immediate steps under S. 7-A read with relevant rules for preparation of electoral rolls and drawing election programme, by specifying relevant dates. However, in the circumstances of the

case there will be no orders as to costs.

16. Ordered accordingly.