

(1993) 11 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 4136 of 1993

Vishnu Narayan Thanage and another

APPELLANT

Vs

Pundalik Tukaram Patil and others

RESPONDENT

Date of Decision : 03-11-1993

Acts Referred:

Maharashtra Municipalities Act, 1961 — Section 3(3)

Citation : (1994) MhLj 83

Hon'ble Judges : N.D. Vyas, J;Ashok Agarwal, J

Bench : Division Bench

Advocate : C.J. Sawant with C.G. Gavanekar, for the Appellant; Madhavrao V. Paranjape with S.R. Borulkar and P.M. Patil, For respondents Nos. 1. 2 and 3, M.N. Zambre, Assn. Government Pleader, For State, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—By this petition, petitioners seek to challenge an order dated 15th of September, 1993, passed by the Honourable Minister, Rural Development and Irrigation Department. Government of Maharashtra, rejecting the representation of the petitioners to remove Shri Pundalik Tukaram Patil, the first respondent herein, as a Councillor of the Raigad Zilla Parishad who was elected from the electoral division of Karjat.

2. On the 28th of February, 1992 elections for the Raigad Zilla Parishad were held wherein the first respondent herein contested the election from Karjat Electoral Division and was declared elected.

3. On the 11th of May, 1989 the State of Maharashtra, respondent No. 5 herein, decided to form an area of Karjat and adjoining areas into a Municipal Council and accordingly issued a notification dated 1st of October, 1992, under sub-section (3) of section 3 of the Maharashtra Municipalities Act, 1961. Under the above notification a Municipal Council namely the "Karjat Municipal Council" was constituted and an area which hitherto formed part of the Zilla Parishad and

Panchayat Samiti was included in the area of the newly formed Karjat Municipal Council. On the very day i.e. on the 1st of October, 1992 the Government, by an order passed in exercise of the powers conferred under clause (ii) of section 257 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961. hereinafter, for the sake of brevity, the Act. removed one Shri Pundalik Dayaram Bhoir as Member of the Karjat Panchayat Samiti on the ground that under the aforesaid notification, the Government, during the term of office of Members of the Karjat Panchayat Samiti of the Raigad Zilla Parishad had altered the boundaries of the Karjat Block by excluding, inter alia, therefrom the entire local areas comprising the electoral college of Karjat and including the same as part of Municipal areas of Karjat Municipal Council and the said member i.e. Pundalik Dayaram Bhoir, who represented the excluded area of Karjat Panchayat Samiti, under provisions of section 257(H) was liable to be removed from his membership of Karjat Panchayat Samiti.

4. On 11th of November, 1992 a representation was made by certain M.L.As. u/s 255 of the Act for removing the first respondent herein as a Councillor of the Zilla Parishad, Karjat. As no action was taken by the Government, the petitioners filed in this Court a petition being Writ Petition No. 1605 of 1993. By an order passed on the 24th of June, 1993, this Court directed the Government to decide upon the representations after hearing the contesting parties within a stipulated period of six weeks from the date of filing of the representation. By the impugned order passed by the Honourable Minister on the 15th of September, 1993 the representations of the petitioners came to be rejected on the ground that more than fifty percent of the area and more than fifty percent of the population still continue to remain in the local area of the Zilla Parishad. The said decision is impugned in the present petition.

5. Sub-section (2) of section 255 of the Act, in so far it relates to the controversy in this petition, reads as under :?

"(2) Where during the term of office of the Councillors of any Zilla Parishad. ?

- (a) any local area is included within a District;
- (b) any local area is excluded from a District;
- (c) two or more Districts are amalgamated into one District; or
- (d) a District is split up into two or more Districts:

the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette provide for all or any of the following matters, namely:?

- (i) in a case falling under clause (a), the interim increase in the number of Councillors, by appointment of additional Councillors by the State Government until the normal term of the existing Councillors expires;
- (ii) in a case falling under clause (b), the removal of the Councillors, who in the

opinion of the State Government, represent the area excluded from the District and the continuance of the remaining Councillors until the normal term of such Councillors expires;

(iii) in a case falling under clause (c), the constitution of an interim Zilla Parishad consisting of such number of Councillors appointed v by the State Government as the State Government may determine, until the successor Zilla Parishad is in due course constituted under this Act;

(iv) in a case falling under clause (d) the appointment of Administrators to exercise the powers and to perform the duties and the functions of the successor Zilla Parishads including those of the Panchayat Samitis, the Standing Committees or Subjects Committees or other Committees appointed, if any, until the Zilla Parishads are in due course constituted under this Act.

Hence, so far as respondent No. 1 is concerned the relevant provision of section 255 provides that where during the term of office of the Councillors of any Zilla Parishad any local area is excluded from a District the State Government may provide for the removal of the Councillors who in the opinion of the State Government represent the area excluded from the District and the continuance of the remaining Councillors until the normal term of such Councillors expires.

6. Certain provisions of the Act relevant on the issue, we now refer. Section 3 of the Act provides that for the purposes of this Act the State of Maharashtra shall be divided into Districts, and Districts shall be divided into Blocks. Sub-section (1) of section 4 provides that subject to any alteration of boundaries which may be made in pursuance of the provisions of Chapter XV. every local area formed or constituted into a district under the relevant Code (but excluding therefrom the limits of a municipal corporation, municipality, a cantonment or a notified area committee, constituted or established by or under any law for the time being in force) shall be a District for the purposes of this Act. Section 5 provides that, subject to any alteration of boundaries which may be made in pursuance of the provisions of Chapter XV. the State Government may, by notification in the Official Gazette, constitute in every District such number of Blocks, each consisting of such local area, as may be specified in the notification. Section 6 inter alia provides that there shall be established a Zilla Parishad consisting of a President and Councillors. Section 9(1)(a) provides that, the Zilla Parishad shall consist of Councillors chosen by direct election from electoral divisions in the District being not more than seventy five in number and not less than sixty as may, by notification in the Official Gazette, be determined by the State Government so however that there is one Councillor as far as is reasonably practicable for not more than every (forty thousand) of the population. Sub-section (c) of section 9(1), on which certain submissions are advanced, provides that, the Zilla Parishad shall consist of amongst others the Chairman of all Panchayat Samitis in the District, ex officio. Section 12(1) provides that, for the purposes of election of Councillors, every District shall be divided into electoral divisions (the territorial extent of any such division not being outside the limits of

the same Block), each returning one Councillor, and there shall be a separate election for each electoral division. The above provisions are followed by sections 254 and 255 which are contained in Chapter-XV of the Act.

7. A reading of the above provisions indicate that emphasis is laid on the area forming part of the Zilla Parishad. Sections 9 and 12 speak of Councillors to be elected from the electoral division in the District. Section 12 provides for formation of electoral divisions so that their territorial extent does not fall outside the limits of a Block. Section 9, no doubt, provides for the number of Councillors to be elected being not more than seventy five and not less than sixty. The aforesaid number is provided for an electoral division in a District. The number is not made dependent upon the population or the number of voters comprising in the electoral divisions in a District. All that is provided is that there will be one Councillor as far as is reasonably practicable for not more than every forty thousand of population. The provision requires that an electoral division in a district is required to have Councillors numbering between sixty and seventy five. In our view, the scheme of the Act, as can be gathered from the above provisions, lays emphasis more on the area forming the electoral divisions than on the population or voters forming the electoral divisions.

8. It would appear from the plan placed on record that the area which has been excluded from the Zilla Parishad and included within the Municipal Council forms a minor portion of the area whereas the major portion of the area still continues within the Zilla Parishad. Since a major area of the electoral division through which respondent No. 1 is elected continues to form part of the Zilla Parishad we do not find that any justifiable cause has arisen to remove him as a Councillor.

9. It is contended on behalf of the petitioners that though a major portion of the area still continues to be within the limits of the Zilla Parishad the area which has been excluded has within it a larger chunk of population and hence the first respondent, who represents the majority of the voters of the area excluded, would cease to be the Councillor of the Zilla Parishad. In section 255, to which a reference has already been made, emphasis is made in regard to the area excluded from the District. There is no reference to the population or the voters of the area excluded. Hence, on a plain reading of the provisions what is made relevant is the area which is excluded and not the population or the voters of the area which is excluded from the District. The plan referred to above shows that a major portion of the area which respondent No. 1 represents still continues to form part of the Zilla Parishad. If this be so, we are of the view that, there is no justification to remove respondent No. 1 from his post of a Councillor of the Zilla Parishad. If the construction as is sought to be put by the learned counsel appearing on behalf of the petitioners were to be accepted it can be argued that the voters who occupy a larger portion of the area which still continues to form part of the District would remain unrepresented. A construction which would enable a representation to be continued rather than they remaining unrepresented would further the object lying behind the aforesaid provisions.

10. We do not find that the representation visualised by section 9(1)(c) can be an adequate representation. Representation, we are contemplating, is the representation by Councillors elected by direct election from the electoral divisions. In the circumstances, for reasons slightly different from those mentioned by the Honourable Minister, we find that his decision, declining to remove the first respondent, is just and proper and does not call for any interference. The petition, in our view, is devoid of merit and the same is summarily rejected. Certified copy expedited.