

(2011) 01 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No. 37 of 2011

Vitthal P. Chopade

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 55

Citation : (2011) 2 ALLMR 869 : (2011) 4 BomCR 663 : (2011) 2 MhLj 749

Hon'ble Judges : V.C. Daga, J; R.G. Ketkar, J

Bench : Division Bench

Advocate : A.V. Anturkar and Prashant Kulkarni, for the Appellant; Vijay Patil, Government Pleader for Respondent No. 1, Aniket U. Nikam, for Respondent Nos. 2 and 3, A.A. Kumbhakoni, S.S. Shah, for Respondent Nos. 4, 5, 7 to 27 and Amit Borkar, for Respondent Nos. 28 to 51, for the Respondent

Final Decision : Dismissed

Judgement

R.G. Ketkar, J.—Rule. Rule is made returnable forthwith. Heard finally by consent of the parties since the Advocates appearing for the respective Respondents have waived service.

2. By this petition under Article 226 of the Constitution of India, the Petitioner has prayed for quashing and setting aside the impugned order dated 18.12.2010 passed by the 2nd Respondent, Sub-Divisional Officer, as also has challenged the constitution of the Subject Committees and the appointment of the Chairman of the respective Committees dated 18.12.2010.

FACTS:

3. The facts and circumstances, giving rise to the filing of the present petition, briefly stated are as under:

The Respondent No. 3, Ichalkaranji Municipal Council is a Municipal Council

established under the provisions of the Maharashtra (Municipal (Councils), (Nagar Panchayats and Industrial Townships) Act, 1965 (for short the Act). It is a "A" class Municipal Council and the election to the 3rd Respondent Council were held in the year 2006. The total number of Councillors of the 3rd Respondent is 57 Councillors. By order dated 17.9.2009 five Councillors were disqualified under the provisions of the Maharashtra Local Authority Members Disqualification Act, 1986 and the Maharashtra Local Authority Members Disqualification Rules, 1987. These five Councillors filed writ petitions in this Court. The order passed by the learned Single Judge in the writ petitions was challenged before the Division Bench of this Court by way of Letters Patent Appeals. The said appeals were disposed of on 5.1.2010. The relevant Clauses 3(2) and 3(3) of the said order read as under:

3. The impugned order dated 20.11.2009 passed in Writ Petition/s is modified as follows:

(1)

(2) The Respondents will remain Councillors of the Ichalkaranji Municipal Council except to the extent restricted by para 3 below so long as the stay order lasts or their tenure as Councillors expire whichever is earlier.

(3) The Respondents will be entitled to attend and sign the register kept for attendance but they will neither participate in the proceedings in the council nor vote nor draw remuneration in their capacity as Councillors of the Ichalkaranji Municipal Council.

4. On 9.6.2010 2nd Respondent issued notice fixing the meeting of the municipal council for the purpose of election of Subjects Committees of the 3rd Respondent Council. On 18.12.2010 objections were raised by three Councillors. The objections in substance were that five Councillors belonging to the Indian National Congress were not entitled to attend and sign the register kept for attendance. They were neither entitled to participate in the proceedings in the council, nor vote nor draw remuneration in their capacity as Councillors of the 3rd Respondent. It was therefore contended that these five Councillors should be excluded while considering the "total number of Councillors" of the 3rd Respondent.

5. In support of these objections, reliance was placed upon the Full Bench decision of this Court in the case of Ashok Maniklal Harkut Vs. The Collector of Amravati and Another, , as also the Division Bench judgment of this Court in the case of Chandrakant Ghuse Vs. State of Maharashtra and Others, . The Objections were considered by the 2nd Respondent. The objections raised by three Councillors were overruled by the 2nd Respondent. He came to the conclusion that as per the order dated 5.1.2010 passed by this Court in the LP As 291/2009 to 293/2009, five Councillors were allowed to function as Councillors of the Municipal Council, subject to the restrictions set out in Clause 3(3) of the said order. He was therefore of the view that the decisions of this Court in the

case of Ashok Maniklal Harkut (supra) and in the case of Chandrakant Ganpatrao Ghuse (supra) are not applicable. He eventually held that while considering the "total number of Councillors" these five Councillors cannot be excluded. It is against this decision, the present petition is filed.

RIVAL SUBMISSIONS:

6. Mr. Anturkar, learned Counsel for the Petitioner, Mr. Vijay Patil, learned Government Pleader for Respondent No. 1, Mr. Aniket Nikam, learned Counsel for Respondent Nos. 2 & 3, Mr. A.A. Kumbhakoni, learned Counsel for Respondent Nos. 4, 5, 7 to 27 and Mr. Amit Borkar, learned Counsel for Respondent Nos. 28 to 51 made their respective submissions. In support of this petition, Mr. Anturkar relied upon the provisions of the Act and in particular Section 2(7) which defines the term "Councillor", Section 2(49) which defines the term "Total Number of Councillors", Section 55 which provides for "Removal of President by the Councillors" and finally Section 63 which provides for "Constitution of Subject Committees of 'A' & 'B' class Councils".

7. Mr. Anturkar also relied upon the Full Bench decision of this Court in the case of Ashok Harkut (supra) as also the Division Bench judgment of this Court in the case of Chandrakant Ghuse (supra). Relying upon these decisions, he submitted that the term "Total Number of Councillors" can only mean total numbers of Councillors who are entitled to sit and vote at the relevant time. If that be so, the five Councillors who are not entitled to participate as also who are not entitled to vote, cannot be included while arriving at the "Total Number of Councillors". In his submission, the total number of Councillors excluding five Councillors in respect of 3rd Respondent would be 52 and consequently, the number of members of the Subject Committees shall not be less than one-fourth or more than one-third of 52 viz. the total number of Councillors as per Section 63(1) of the Act.

8. On the other hand, learned Counsel for the Respondents submitted that Section 2 of the Act which defines several phrases, opens with the words "In this Act, unless the context otherwise requires" which clearly shows that wherever the word so defined occurred in the statute, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definition clause. Ordinarily, where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. While distinguishing the Full Bench decision in the case of Ashok Harkut (supra) as well as the Division Bench judgment in the case of Chandrakant Ghuse (supra) it was submitted that Section 55 of the Act fell for consideration of this Court. Section 55 of the Act provides for removal of the President by Councillors by passing a resolution at a special meeting by a majority not less than three fourths of the total number of Councillors. Considering the context, u/s 55, the total number of Councillors would be only those Councillors who are entitled to sit and vote at the relevant time. However, in the present case, the controversy arises about the constitution of the Subject

Committees, where there is no question of passing of any resolution by a majority. In short there is no question of casting of any votes by any of the Councillors. It was therefore submitted that, having regard to Section 2(49) of the Act, the total number of Councillors would be the total number of Councillors of the 3rd Respondent council viz. 57 (including 5 Councillors), and therefore, the order passed by the 2nd Respondent is perfectly valid.

9. It was further submitted on behalf of the Respondents that if the order dated 5.1.2010 is considered properly, it makes it abundantly clear that the five Councillors are continued as Councillors of the 3rd Respondent council except to the extent of restriction imposed in paragraph No. 3(3) of the said order. These Councillors are entitled to attend and sign the register kept for attendance, but they will neither participate in the proceedings in the council, nor vote nor draw remuneration in their capacity as Councillors of the 3rd Respondent council. It was therefore submitted that the five Councillors will continue as Councillors of the 3rd Respondent council and therefore they will have to be included while arriving at total number of Councillors of the 3rd Respondent.

10. The learned Counsel for the Respondents relied upon the judgments of the Apex Court in the case of (1) The State of Maharashtra Vs. Indian Medical Association and Others, , (2) Bihar School Examination Board Vs. Suresh Prasad Sinha, , as also the judgment of the learned Single Judge of this Court in the case of Umabai Dangore Vs. State of Maharashtra and Others, .

STATUTORY PROVISIONS:

11. Before we proceed to consider the submissions advanced on behalf of the rival parties, let us consider the relevant provisions of the Act. Section 2(7) defines the expression "Councillor" and Section 2(49) defines the expression "Total Number of Councillors" and they read as under:

Section 2: In this Act, unless the context otherwise requires -

(7) "Councillor" means a person duly elected as a member of the council, the directly elected President and includes the nominated Councillor, who shall not have the right,

(i) to vote at any meeting of the Council and Committees of the Council; and

(ii) to get elected as a President of the Council or a chairperson of any of the Committees of the Council.

(49) "Total Number of Councillors" in relation to a Council, means the total number of the Councillors of that Council.

Section 51 of the Act provides for "Election of the President". Sub-section (1) of Section 51 reads as under:

Subject to the provisions of Section 51-1A every Council shall have a President who shall be elected by the elected Councillors from amongst themselves.

Section 55 of the Act lays down the manner for "Removal of President by Councillors" and reads as under:

Section 55: Removal of President by Councillors:

(1) Notwithstanding anything contained in this section, after the coming into force of the Maharashtra Municipal Corporation and Municipal Councils, (Amendment) and Temporary Provisions for Conduct of Elections of Municipal Corporation Act, 2001, a President shall cease to be the President if the Councillors by a resolution passed at a special meeting by majority not less than three fourths of the total number of Councillors so decides.

Provided that no such resolution shall be moved within a period of one year from the date of election of the President.

(2) The requisition for such special meeting shall be signed by not less than one-half of the total number of councillors and shall be sent to the Collector.

Provided that any co-opted Councillor co-opted on the Council before 31st May, 1994 shall not have the right to sign the requisition for the special meeting and shall also have no right to vote at such special meeting.

(3) The Collector shall, within ten days of the receipt of a requisition under Sub-section (2), convene a special meeting of the Council;

Provided that, when the Collector convenes a special meeting, he shall give intimation thereof to the President.

(4) A meeting to consider a resolution under Sub-section (1) shall be presided over by the Collector or any other officer authorised by him in this behalf, but the Collector or such other officer shall have no right to vote.

(5) The nominated Councillors present at any meeting mentioned in Sub-section (4) shall have no right to vote on any resolution relating to the removal of the President.

(6) If the resolution seeking the removal of the President is not moved or, as the case may be, rejected, in the special meeting convened for the purpose under Sub-section (3), no fresh resolution seeking the removal of the president shall be brought before the Council.

Section 63 of the Act provides for "Constitution of Subjects Committees of "A" and "B" Class Councils. Sub-section (1) of Section 63 reads as under:

Each Subjects Committee of the Council appointed under the last preceding section shall consist of such number of Councillors as the Council may determine, so however, that the number of members of a Subjects Committee shall not be less than one-fourth or more than one-third of the total number of Councillors;

Provided that, in so determining the number of the members of any Subjects-Committee, a fraction shall be ignored;

Provided further that, on the Women and Child Welfare Committee, not less than seventy-five per cent of the members shall be from amongst women Councillors;

Provided also that, the Chairperson and the Deputy Chairperson of the Women and Child Welfare Committee shall be from amongst the women Councillor members thereof.

Explanation:

For the purpose of computing the number of members at seventy-five per cent, fraction, if any, shall be rounded off to one.

CONSIDERATION:

12. Mr. Anturkar relied upon the Full Bench decision of this Court in the case of Ashok M. Harkut (supra) as also the Division Bench judgment of this Court in the case of Ghuse (supra), to contend that five Councillors cannot be included while arriving at the "total number of Councillors" of the 3rd Respondent council. In the case of Ashok Harkut (supra), the Petitioner was elected as president of the Municipal Council, Chandur Bazar, District Amravati. On 12.6.1987 a requisition incorporating a proposal to move the resolution to remove the president was served by 12 Councillors on the Collector of Amravati District, requesting him to convene a special meeting within 10 days of the receipt of the requisition. On 17.6.1987 the Collector gave intimation about the said resolution to the president and on the same day issued notice calling a meeting of "no-confidence" on 30.6.1987. The meeting of 30.6.1987 was attended by 19 elected and 2 co-opted Councillors. 13 elected Councillors voted in favour of the resolution whereas 6 Councillors voted against it. The Presiding Officer declared that the motion of "no-confidence" was duly passed as a resolution was carried out by the majority of not less than two third of the total number of Councillors (excluding co-opted Councillors). The said resolution was challenged before this Court. In Paragraph No. 5 of the said judgment, three questions that arose for consideration were formulated. In the present case, we are concerned with the Question No. 1 and the same reads as under:

What is the meaning of the expression, the total number of Councillors (excluding co-opted Councillors), which occurs in Section 55 of the Maharashtra Municipalities Act? Whether it means total number of seats in a particular Council as determined u/s 9 of the Act or it means total number of Councillors, entitled to sit and vote and not the sanctioned strength.

13. In Paragraph No. 8 of that judgment, the Court recorded submissions made by the learned Counsel for both sides as regards the phrase "total number of Councillors" to the effect that the said phrase can have two meanings; (1) it could mean actual number of Councillors at the given time who are entitled to sit and vote and (2) it could also mean total number of Councillors as there are seats in the council i.e. total number of elected seats in the council. In paragraph No. 13, the Full Bench observed as under:

Therefore, in our view having regard to the scheme of the Act, the phrase "total number of councillors" as used in Section 55(3) of the Act can only mean total number of councillors who are entitled to sit and vote at the relevant time. Hence, we agree with the view taken by the Division Bench of this Court in the Shivdas Govind's case.

14. As far as the decision of the Division Bench of this Court in the case of Chandrakant Ghuse (supra) is concerned, in that case also Section 55 of the Act fell for consideration and in paragraph No. 19 it was observed as under:

In our opinion, therefore, in view of the scheme of the Act, the phrase "total number of Councillors" as used in Sub-section (1) of Section 55 of the Act as well as the definition of "total number of Councillors" given in Sub-section (49) of Section 2 would only mean, the total number of Councillors, who are entitled to vote and sit at the relevant time.

15. We have already extracted Section 55 and Section 63(1) of the Act. Section 55 (1) provides that the President shall cease to be a President if the Councillors, by a resolution passed at the special meeting, by a majority of not less than three fourths of total number of Councillors, so decide. Proviso to Sub-Section 2 thereof lays down that any co-opted councillor co-opted on the council before 31.5.1994 shall not have the right to sign the requisition for the special meeting and shall also have no right to vote at such special meeting. Sub-Section 5 thereof provides that the nominated councillors present at any meeting mentioned in Sub-section (4) shall have no right to vote on any resolution relating to the removal of the President.

16. The scheme of Section 55 therefore clearly pre-supposes that while arriving at total number of Councillors, only those Councillors who are entitled to sit and vote at the relevant time can be considered as forming "total number of Councillors" of the concerned municipal council. However, while considering the constitution of subject committees as per Section 63 of the Act, there is no question of passing of any resolution, as also there is no question of any voting by any Councillors. It is in that context the definition of the term "total number of Councillors" occurring in Section 2 (49) is applicable, which means the "total number of Councillors" of a particular Municipal Council. In our opinion, the phrase "total number of Councillors" will depend upon the context in which the said phraseology is used in a particular section. For example, while considering the "total number of Councillors" appearing in Section 55 it would be only those Councillors who are entitled to sit and vote. However, that will not be so while considering Section 63 of the Act. In short, it will depend upon the context in which the said phraseology is employed.

17. In the case of State of Maharashtra (supra) the Apex Court has observed in Paragraph No. 7 as under:

In K. Balakrishna Rao v. Haji Abdulla Saitit was held that a definition clause does not necessarily in any statute apply in all possible contexts in which the word

which is defined may be found therein. In *Printers (Mysore) Ltd.v. Asstt.CTO* it was held that it should be remembered that the provisions which define certain expressions occurred in the Act open with the words "In this Act unless the context otherwise requires" which shows that wherever the word so defined occurred in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definition clause. Ordinarily where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied.

18. In the case of *Bihar School Education Board (supra)*, the Apex Court has exhaustively dealt with the applicability of the precedents and observed in Paragraph Nos. 18 to 22 as under:

18. The courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made. In *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, this Court observed: (SCC pp.385-86)

39. ...It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.

19. It is also necessary to keep in mind the following principles laid down in *Government of Karnataka and Others Vs. Smt. Gowamma and Others*, , with reference to precedential value of decisions: (SCC pp.485-86, para 10-11)

10. "12. ...Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it

actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, .) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leatham*, 1901 AC 495 the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

11. "15. ...Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

18. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the part of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

20. In *Sarva Shramik Sanghatana (K.V), Mumbai Vs. State of Maharashtra and Others*, , this Court cited the following passage from *Quinn v. Leatham*, 1901 AC 495 with approval; (AC p. 506)

....Now, before discussing *Allen v. Flood* 1898 AC 1, and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment

must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always a logical at all.

21. In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, this Court observed: (SCC p.130)

59. ...It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

22. As held in *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed: (SCC pp.584-85, para 9)

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. (emphasis supplied).

19. The learned Single Judge in the case of *Umabai* (supra) in Paragraph No. 13 observed as under:

Section 2 of the Municipal Council Act begins with the following words -"In this Act, unless the context otherwise requires". It is therefore clear that all definitions in the Act are subject to context. If otherwise required, said requirement of context has to prevail over the meaning given in the definition clause.

20. In view of the aforesaid discussion, we are clearly of the opinion that the Full Bench decision of this Court in the case of *Ashok Harkut* (supra) as well as the Division Bench judgment of this Court in the case of *Chandrakant Ghuse* (supra) are not applicable to the facts and circumstances of the present case.

CONCLUSION:

21. In our opinion, the 2nd Respondent rightly overruled the objections raised by the three Councillors and in the light of the order dated 5.1.2010 in LPA Nos. 291/2009 to 293/2009 rightly came to the conclusion that the five Councillors cannot be excluded while arriving at the "total number of Councillors". We do not find any infirmity in the decision dated 18.12.2010 taken by the 2nd Respondent.

In the result, petition being devoid of substance deserves to be dismissed, and hence Petition is dismissed. Rule is discharged with no order as to costs.