
(2019) 07 BOM CK 0094

In the Bombay High Court

Case No : Public Interest Litigation (L) No. 60 Of 2019

Zoru Darayus Bhathena

APPELLANT

Vs

Tree Authority And Ors

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Maharashtra (Urban Areas) Protection And Preservation Of Trees Act, 1975 — Section 2(f), 2(g), 3(1), 3(2), 3(3), 7, 8, 8(1), 8(2), 8(3), 9, 10, 14, 15, 16, 17, 19
Environment (Protection) Act, 1986 — Section 2(a)
Madhya Pradesh Cooperative Societies Act, 1961 — Section 48(b), 48(8), 52(1)
Companies Act, 1956 — Section 10F
Maharashtra (Urban Areas) Protection And Preservation Of Trees Rules, 2009 — Rule 4

Citation : (2019) 07 BOM CK 0094

Hon'ble Judges : Pradeep Nandrajog, CJ; N.M. Jamdar, J

Bench : Division Bench

Advocate : Sonal, Manoj Shirsat, Kainaz Irani, Pushpa Thapa, D.J. Khambata, A.Y. Sakhare, Aruna Savla, H.C. Pimple, K.H. Mastakar, Rajesh Patil, Rohan Mirpurey, Aaditya Mehta, Tushar Hathiramani, Ashutosh Kumbhakoni, Geeta R. Shastri, Akshay Shinde

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, CJ

1. At the hearing of the Public Interest Petition on 16.07.2019, learned counsel for the Petitioner restricted arguments to the number of nominated

members on the Tree Committee for the area under the jurisdiction of Municipal Corporation of Greater Mumbai. Other challenges were given up.

2. In the year 1975, the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 (Hereinafter referred to as the Trees Act) was

promulgated. As per Clause (f) of Sub-section (2) of the Act, "Urban area" was defined to mean a municipal corporation area for which a

municipal corporation was constituted under the Bombay Municipal Corporation Act, the Bombay Provincial Municipal Corporation Act or the City of

Nagpur Corporation Act or a municipal area for which a Municipal Council was constituted under the Maharashtra Municipalities Act, 1965 and

included notified areas for which special planning authority was constituted or appointed under the Maharashtra Regional and Town Planning Act or

an area designated as the site for a new township under the Maharashtra Regional and Town Planning Act.

3. Chapter II of the Trees Act 1975, under the caption:

ESTABLISHMENT AND PROCEDURE OF TREE AUTHORITY, vide Sub-section (1) of Section 3, provides that as soon as may be after the

Act is brought into force in any urban area, the Urban Local Authority concerned shall constitute a Tree Authority comprising a Chairman and not less

than five and not more than fifteen persons from amongst its members, appointed in such manner and for such period as that authority may determine.

Vide Sub-section (3) of Section 3 it is further stipulated as under :-

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(3) Every Tree Authority may nominate representatives of non-official organizations, who have special knowledge or practical experience in the field

of planting and preservation of trees, as members of the Tree Authority, but the number of such nominated members shall not exceed the number of

members appointed under sub-section (1). These members shall be nominated in such manner and for such period as may be prescribed.

4. The words `such nominated members shall not exceed the number of members appointed under sub-section (1)â?? were incorporated in the sub-

section by an amendment made in the year 1996. The substituted words were: `such co-opted members shall not exceed threeâ??.

5. The contention of the petitioner is that since under sub-section (1) of Section 3 of the Trees Act the members of the Tree Authority from amongst

the members of the Urban Local Authority have to be not less than five and nor more than fifteen persons, the number of nominated members under

sub-section (3) of Section 3 have also to be equal to the number of members appointed under sub-section (1).

6. Thus, the phrase: `but the number of such nominated members shall not exceed the number of members appointed under sub-section (1)â??, arises

for interpretation.

7. The argument is advanced with reference to a Division Bench Judgment of this Court in PIL No. 93 of 2009 Deepak Balkrishna Vahikar & Anr.

vs. The State of Maharashtra & Ors., delivered on 20th September 2013. In the said decision, the Division Bench noted that the Tree Authority had

not been constituted in the Municipal Corporation of Pune and further the Corporation had not taken steps required by law for protection of the trees

in areas comprising the Corporation. The Pune Municipal Corporation was directed to take necessary steps to ensure that census of trees adopting

modern technology in a digitized framework with geo-tagging is completed and steps taken to ensure constitution of the Tree Authority to discharge its

obligations in the terms indicated in the statute.

8. Concerning Sub-section (3) of Section 3 of the Trees Act, the Division Bench observed that the object underline the said provision is that civil

society organizations with special knowledge or practical expertise in the preservation of trees should be co-opted as non-official representatives. As

regards the constitution of the Tree Authority, under Section 3 (2) of the Trees Act, the Division Bench noted that only the members of the Urban

Local Authority as defined in Section 2(g) can constitute the Tree Authority, with minimum required strength being five members and maximum

fifteen members. The Division Bench noted that Pune Municipal Corporation stated that seven corporators would be named to constitute the Tree

Authority, and in said context the Division Bench observed in para 20:-

“A membership of seven non-official members is, in our view, fair and proper having regard to the need of making the functioning of the Tree

Authority of manageable proportion. Under Section 3(3), the total number of nominated members cannot exceed the number of corporators, who

constitute the Tree Authority. Hence, the nominated members would also be restricted to seven.”

9. Thus, the submission of learned counsel for the petitioner is that aforesaid decision concludes the issue and the Division Bench Judgment binds a

Co-ordinate Division Bench.

10. Learned Senior Counsel urged that in a subsequent decision dated 23rd April, 2018 in PIL No. 119 of 2017 Rohit Manohar Joshi vs. Tree

Authority, Thane & Ors., in paragraph 50, the Division Bench reiterated that

nominated members under Section 3(3) of the Trees Act have to be equal in number to the corporators.

11. Learned counsel for the petitioner urged that the reasoning supporting the aforesaid view is that duties of the Tree Authority as per Section 7 of the Trees Act read with the manner in which permission for felling trees is to be granted, as per Section 8 of the Trees Act read with Sections 15, 16, 17 & 19 of the Trees Act which require a separate fund called 'the Tree Authority Fund' to be created with a budget finalized as per Section 16 and as per Section 19 no permission for development of land to be given except with the approval of and subject to conditions imposed by the Tree Officer, requires equal number of citizens' representatives on the Tree Authority as are the number of corporators.

12. Thus, we note Sections 7, 8(1), (2) & (3) as also Sections 15, 16, 17 & 19 of the Trees Act. They read: -

7. Notwithstanding anything contained in the relevant Act or in any other law for the time being in force, and subject to any special or general directions given by the State Government, the Tree Authority shall be responsible for--

- (a) protection and preservation of all trees in all lands within its jurisdiction;
- (b) carrying out a census of the existing trees in all lands within its jurisdiction, once before December 1996 and thereafter one in every five years;
- (c) prescribing standards specifying the number and types of trees which each plot of land shall have and which shall be planted therein;
- (d) development and maintenance of nurseries for the supply of seeds, sapplings and trees to persons who desire to plant new trees or to replace trees which have been felled with the previous permission of the Tree Officer or involuntarily uprooted;
- (e) transplanting of trees necessitated by construction of new roads or widening or existing roads or for safeguarding danger to life or property;
- (f) organisation of flower, fruit, vegetable, tree or plant shows at least once a year and assisting private and public institutions in organising such shows, and creation of consciousness of importance of trees and vegetation to the human welfare;
- (g) grant of advice and technical assistance to any person seeking such advice or assistance in any matter connected with planting, protection and

preservation of trees;

(h) planting and maintaining such number of trees as it considers necessary, according to the prescribed standards, along the roads, in public parks and

gardens and on banks of rivers or takes or sea shores, on hills, open spaces or public places;

(i) undertaking any other schemes or measures for achieving the objects of this Act.

8. (1) On and after the date on which this Act is brought into force in any urban area, notwithstanding any custom, usage, contract or law for the time

being in force, no person shall fell any tree or cause any tree to be felled in any land, whether of his ownership or otherwise, situated within that urban

area, except with the previous permission of the Tree Officer.

(2) If any person, including an officer of the urban local authority or an officer of the State Government or the Central Government, proposes to fell a

tree, he shall apply in writing to the Tree Authority for permission in that behalf. The application shall be accompanied by the description of the tree

and a site plan, indicating the position of the tree required to be felled and the reasons therefor.

(3) (a) On receipt of such application, the Tree Authority shall cause the Tree Officer to personally inspect the tree and hold enquiry and submit a

report to the Tree Authority within a period of thirty days from the date of receipt of such application. Adequate public notice shall be given by the

Tree Officer by advertising in local newspapers as well as by affixing a notice on a conspicuous part of the tree that is required to be fell. Thereafter,

the Tree Authority may give permission with or without conditions or refuse it, within a period of sixty days from the date of receipt of the application.

However, no tree shall be fell until fifteen days after such permission is given:

Provided that, no such permission shall be refused if, in the opinion of the Tree Authority, the tree is dead, or diseased or wind-fallen, or it constitutes a

danger to life or property, or obstructs traffic; and if any objection is received against such permission, the matter shall be placed before the Tree

Authority for reconsideration, and a decision shall be taken within two weeks after giving a hearing to the person who has raised the objection.

(b) A report of permissions granted by the Tree Authority for felling trees shall be submitted at least once in six months to the concerned urban local

authority in whose jurisdiction the Tree Authority is functioning.

15. Notwithstanding anything contained in the relevant law or any other law for the time being in force, the urban local authority shall create a

separate fund to be called the Tree Authority Fund, to which shall be credited all moneys received by the Tree Authority including--

(a) a contribution by the urban local authority from its income from such taxes as may be prescribed or when such taxes are not levied by the

Authority, from its income from the betterment charges, if any, levied by it under the relevant Act or from the income derived by it from the sale of

plots made by it under the relevant Act. The rates of the contribution shall be such as may be specified by the State Government, from time to time, by

a general or special order;

(b) all moneys raised by levy of a cess under Chapter VII;

(c) any grants made by the State Government to the Tree Authority;

(d) any moneys received by the Tree Authority as donations from any individuals, or corporate bodies or institutions;

(e) any other money received under the Act:

Provided that, if the total receipts of the Tree Authority from all the sources specified above are less than one half per cent of the total receipts of the

urban local authority, then, the urban local authority shall credit the deficit to the Tree Authority Fund at the end of each financial year.

16. Every Tree Authority shall, on or before the 31st day of October every year, prepare in such form as the urban local authority may prescribe, an

annual budget estimate in respect of the ensuing financial year of the estimated income and expenditure of the Tree Authority and shall,

notwithstanding anything contained, in the relevant law, submit it to the urban local authority for approval and inclusion in the budget estimate of that

authority.

17. The procedure applicable under the relevant law for maintenance and audit of accounts of the urban local authority shall mutatis mutantids apply to

the maintenance and audit of the accounts of every Tree Authority.

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19. Notwithstanding anything contained in the relevant law or any other law for the time being in force,--

(a) any authority or officer of the urban local authority, who is empowered to give any permission for development of land, shall not give such

permission, except with the approval of and subject to the conditions, if any, imposed by the Tree Officer in regard to the preservation or plantation of trees on such land;

(b) no completion or occupation certificate in respect of any building shall be issued under the relevant law unless the authority competent to issue

such certificate is satisfied that the conditions subject to which permission for development of the land as aforesaid was given have been complied

with.

13. Rule 4 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Rules, 2009 reads as under :

4. With regard to the conduct of meetings of the Tree Authority, the following provisions shall apply, namely :-

(i) in respect of Tree Authority in a Municipal Corporation Area the Municipal Commissioner shall be the Chairman of the Tree Authority:

Provided that, in the absence of Chairman, an officer not below the rank of Additional Municipal Commissioner, as is authorized by the Municipal

Commissioner, by writing for the meeting may preside over the meeting;

(ii) in respect of other Urban Local Authorities, the Chairman as is described in the Table to sub-section (2) of Section 3 of the Act shall preside over

the meeting;

(iii) the meeting of the Tree Authority shall be held at least once in forty-five days and shall ordinarily be held at the headquarters of the Tree

Authority:

Provided that, the Chairman may direct the meeting to be held at some other place within the jurisdiction of the Tree Authority:

(iv) The Tree Officer shall be Member-Secretary of the Tree Authority and in his capacity as the Member-Secretary shall serve the notice for the

meeting;

(v) One-third of the members of the Tree Authority shall form the quorum for the meeting:

Provided that, in case there is no required quorum at the time date specified for the meeting, the meeting shall be adjourned to thirty minutes and

thereafter no quorum shall be required for such adjourned meeting;

(vi) The Chairman shall have a casting vote;

(vii) Notice of motion shall be given at least three days in advance;

(viii) Point of order may be raised on the spot with short notice and the decision of the Chairman in that cases shall be final and the same shall be

included in the minutes of the meeting;

(ix) The Chairman shall decide other relevant matters.

14. Therefrom, learned counsel urged that since in case of a division, voting is contemplated, the number of representatives of the citizens must equal

the number of corporators.

15. Section 2(a) of the Environment (Protection) Act, 1986 reads:-

â??2. Definition. - In this Act, unless the context otherwise requires, -

(a) â??environmentâ?? includes water, air and land and the inter-relationship which exists among and between water, air and land, and human

beings, other living creatures, plants, micro-organism and property;â??

16. Undoubtedly, plants are an inalienable component of environment. Trees contribute to the environmental balance, particularly in terms of ambient

air quality and provide succor and shelter to other living creatures. The Preamble to the Trees Act evinces that the Act has been enacted to make

provisions for trees in the urban areas in the State of Maharashtra by regulating felling of trees in the face of growing urbanization and industrialization

accompanied with indiscriminate felling of trees. The object of preserving trees needs to be kept in mind while interpreting its provisions. Thus, there

can be no quarrel with the proposition advanced by learned counsel for the petitioner that while interpreting the statute, the object for which the statute

was enacted has to be kept in mind.

17. But, aforesaid principle of interpretation i.e. the purposive rule of interpretation requires to be applied if there is an ambiguity in the language of the

statute. While interpreting a statute, courts can supply words if there is casus omissus or there is ambiguity or if two provisions if literally read would

result in an apparent conflict, as was held in the decision reported as 218 FR 547 Lenigh Valley Coal Co. vs. Yensavage, which was followed with

approval in the decision reported as (2003) 2 SCC 455 Unique Butyle Tube

Industries (P) Ltd. vs. U.P. Financial Corporation & Ors .that it is well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said, Statutes should be construed, not as theorems of Euclid, Judge Learned Hand said, but words must be construed with some imagination of the purposes which lie behind them.

18. The expression in Sub-section (3) of Section 3 of the Trees Act is `but the number of such nominated members shall not exceed the number of members appointed under sub-section (1)â??.

19. A plain reading of the Sub-section means that the number of nominated members cannot exceed the number of members appointed under Sub-

Section (1) and by no means the words `not exceedingâ?? can be replaced with the words `be equal toâ??. This would be plain legislation.

20. Taking guidance from past precedents, in the decision reported as 1992 M.P. L.J. 789 Harikant Joshi vs. Assistant Registrar and Returning

Officer & Ors., the Division Bench of the Madhya Pradesh High Court was called upon to construe Sub-section (8) of Section 48 of the Madhya

Pradesh Cooperative Societies Act, 1961. The provision reads as under:-

â??48(8). â??Notwithstanding anything contained in this Act or the Rules made thereunder or bye-laws of a society, total number of members in the

committee of a society excluding representatives elected under Section 48-B, Govt. nominees appointed under sub-section (1) of Section 52 and ex-

officio members shall not exceed fifteen.â??

21. The Division Bench held that a plain reading of the provision would show that there is no ambiguity which requires the creases to be ironed out.

The Division Bench held that the words `shall not exceed fifteenâ?? cannot be read to mean `shall be fifteenâ??.

22. At home, in the decision reported as (2009) 152 Comp Cas 75 (Bom) Smt. Hetal Alpesh Muchhala vs. Adityesh Educational Institute & Ors., the

words `not exceeding sixty daysâ?? in the proviso to Section 10F of the Companies Act, 1956 were held to be clear in the meaning and thus the

words 'not exceeding' cannot be given any other meaning except 'not more than' or 'not beyond' or 'not thereafter'.

23. Qua the contention of the petitioner that there are two binding precedents i.e. the decision dated 20th September, 2013 in Deepak Balkrishna

Vahikar (Case) supra and Rohit Manohar Joshi (Case) supra, suffice it to state that the issue of interpretation of Sub-section (3) of Section 3 of the

Trees Act did not come up for consideration in the two decisions. The former decision proceeds on a concession given by learned counsel for the

Pune Municipal Corporation and thus the language used in the decision is a reflection of the concession and not an interpretation of the law. Indeed,

the said decision neither noted nor dealt with the principles of interpretation and judgments on the point which we have noted. The reason being, the

point was not in issue. The second decision is also sans any discussion on the point and it merely reflects the language used in the former.

24. The argument of learned counsel for the petitioner that since the Rules envisage voting and in case of a tie, a casting vote by the Chairman, there

must be an equal representation of the representatives of the citizens is premised on the assumption that the corporators would always gang-up and

would overlook the material facts while deciding applications seeking permission to fell trees.

25. We, however, in law, cannot proceed on the premise that the corporators, while dealing with issues of conserving the environment by saving trees,

would always decide against it. Inclusion of expert members in the Tree Authority is not for a tug of war between the corporators and the expert

members. The legislative intent of including expert members in the Tree Authority is that the collective decision is enriched by the special knowledge

and practical experience of the expert members. Therefore the functioning of the Tree Authority is to be made more effective not by increasing the

voting power of the expert members, but making expert and practical experience of the experts a part of the decision making. The responsibility of the

expert members is, therefore, to guide the members of the Tree Authority in taking an informed decision.

26. The very fact that the legislature has found it necessary to include expert members inheres that their expert opinion must be valued and should

become an essential facet of decision making. As per Section 8 of the Trees Act, the Tree Authority deals with objections received under the public

notice given by the Tree Officer and a decision is taken after giving a hearing to the person who has objected. That hearing is given when an objection

is raised would indicate that a decision has to be in must contain the reason why the objection is being overruled. Section 14 of the Trees Act also

provides for an appeal from an order passed under Section 9 or 10 by the Tree Officer to the Tree Authority. For this appeal, hearing is statutorily

provided, and the decision is made final. Thus this decision has to be reasoned. This being the scheme of Sections 8 and 14 of the Trees Act and the

purpose for which expert members are included, it is necessary that the expert members give their inputs in writing. The scientific input cannot be in

the form of an oral suggestion. The Tree Authority must discuss the input of the expert members for taking an informed decision as envisaged under

Section 3 read with Sections 8 and 14 of the Trees Act. Considering the function of the Tree Authority and the object of the Trees Act, if the Tree

Authority is to differ from the expert's input, it must record reasons. If the scientific input is not even referred to in the decision making, then the

purpose for which the expert members are included would be rendered meaningless.

27. An argument orally advanced is that the provision of the number of expert members being left to the discretion of the Tree Authority, it is unguided

and arbitrary. In the present case, the number of experts appointed in the Tree Authority is five. It is evident that the ratio of the number of expert

members vis-a-vis the other members cannot be absurd, but in the present case inclusion of five expert members as against fifteen is not ex facie

absurd.

28. Noting that in the instant case, in the area comprising Municipal Corporation of Greater Mumbai, fifteen corporators constitute the Tree Authority

in terms of Sub-section (1) of Section 3 and five experts in the field who are members of NGOs registered with the Forest Department have been

nominated, we declare that there is a proper constitution of the Tree Authority in the City of Mumbai. The said Authority would henceforth discharge

its duties and perform its obligations under the Trees Act.

28. The Public Interest Petition is disposed of in above terms.