

Santokchand Kanaiyalal Jain

Vs

Bhusaval Borough Municipality and Others

Civil Appeal No. 481 of 1965

(K. Subba Rao, R. S. Bachawat, J. R. Mudholkar JJ)

02.09.1965

JUDGMENT

SUBBA RAO. J. –

This appeal by certificate raises the question of the true construction of the provisions of ss. 19 and 25 of the Bombay Municipal Borough Act, 1925 [Bom. Act 18 of 1925], hereinafter called the act, read with s. 3 of the Maharashtra Municipalities [Postponement of General Elections Pending Unification of Municipal Laws]. Act, 1964, hereinafter called the Maharashtra Act.

The fact lie in a small compass. The last general election of the members of the Bhusaval Borough Municipality was held under the provisions of the Act in the year 1960. The first general meeting thereafter was held on February 18, 1961. Under the provisions of s. 25 of the Act, in the normal course 17, 1965; but, under s. 3 of the Maharashtra Act the term of the Councillors of the Municipality was, by fiction, extended to and inclusive of December 31, 1965. On July 18, 1964, the appellant was elected the President of the Municipality; and on the same day the Municipality passed a resolution to the effect that the term of the office of the president shall be the residue of the term of office of the Municipality. On the assumption that the term of the President expired on February 17, 1965, the collector of Jalgaon issued a notice on March 15, 1965, for electing a new president. Thereafter, the appellant filed an application under Arts. 226 and 227 of the Constitution in the High Court of Maharashtra for the

The short question in the appeal is whether the expression the residue of the Municipality in the resolution of the Municipality, dated July 18, 1964, means the residue of the Municipality that would have been if the Maharashtra act had not been passed or whether it should be interpreted in the context of the extended term provided by the Maharashtra Act.

Mr. Agarwala, learned counsel for the appellant, contended that the appellant would get the extended term provided in the Maharashtra Act, because in effect it was an extension to s. 19 of the Act or in any event he got the benefit because the Maharashtra act in effect amended s. 25 of the act, with the result the residue of the term was extended to December 31, 1965.

The learned Solicitor General, on the other hand, argued that the second proviso to s. 19 of the Act had no application, for it dealt only with an extension by notification or otherwise under the provision of the act and the statutory extension given by the Maharashtra Act could not possible be an extension given by the Maharashtra Act had the effect of amending s. 25 of the Act with result that the life of the members of the Municipality was extended by the amendment of the Act itself, it would not help the appellant as the scope of the resolution passed by the Municipality should be

constructed on the basis of the circumstances existing at the time the resolution was passed i.e. pervasion to the election of the President, and at that time the councilors of the Municipality could have only passed the resolution fixing the term of the President during the residue of the life the Municipality had at that time to put it in other words, the intention of the Councillors, who passed the resolution could be gather

The problem presented from different angles by the learned counsel can only be solved on a true interpretation of the said provisions. It will, therefore, be convenient at this stage to red the relevant provisions.

Section 19 of the Act:

[1] Save as otherwise provided in this Act a president or vice- president, shall hold his office for such term, not less than one year or not than the residue of the term of office of the Municipality, whichever is less and not exceeding four years, as the Municipality shall, provision to the elections of the president or vice-president determine, or until the expiry within the said term of his term of office, as Councillors, but shall be eligible for re-election.

Provided that.....

Provided further that where the term of office of a municipality is extended under this Act to a term not exceeding in the aggregate five years the president and vice-president holding offices immediately before the date with effect from which such term is extended shall continue to hold their respective offices until the date on which the term so extended expires.

Section 25 of the Act. :

[1] Councillors nominated or elected at a general election under this Act, shall save as otherwise provided in this Act, hold office for a term of four years, extensible by order of the State Government to a term not exceeding in the aggregate five years, if on any occasion the State Government reasons which shall be notified together with the order in the official Gazette so to extend the same:

Section 3 of the Maharashtra Act:

Postponement of municipal elections: - Notwithstanding anything in any Act by or under which any municipality is constituted or established:-

[a].....

[b] the term or extended term of office, of the Councillors or members of a municipality, who were in office on the date of the commencement of the Ordinance [and whose term or extended term will expire before the 31st, day of December 1965], shall be deemed to be extended to and inclusive of the 31st, day of December 1965.

SCHEDULE [See Section 2]

## 2. The Bombay Municipal Boroughs Act, 1925 [Bom. XVIII of 1925.]

The combined effect of these two Acts may be stated thus: Under s. 25 of the Act the term of the Councillors of the Municipality is 4 years. It may be extended by the State Government to a term not exceeding in the aggregate five years. If the term is so extended by the Government in the manner prescribed by s. 25 of the Act, under the second proviso to s. 19 of the Act the term of the president also is automatically extended to the date on which the term so extended expires. The expression under this Act in the second proviso to s. 19 of the act certainly attracts the extension of the term of the councilors under s, 25, as it is an extension of the term extended under the Act. The impact of s. 3 of the Maharashtra Act on the provision of the Act is that is not only extends the term prescribed under s. 25 of the act but also the term extended under s. 25 or under any other section of the Act. If that be the legal effect of s. 3 of the Maharashtra act, the second proviso is not attracted to the instant case,

"In July, 1963, Government appointed a Committee for the purpose of considering the question of unification of the four Municipal Acts which are at present in force in the State. As substantial changes are envisaged in the unified municipal law, it is considered expedient that the advantages of the new and uniform pattern of administration should be available to all those municipalities concerned simultaneously with the holding of general election in accordance with the provisions of the unified law. Consequently, the Municipalities that are elected or may be elected under the existing Acts may be short lived, and the time, energy and expenditure incurred on holding any more general elections would be wasteful. It has, therefore, been decided to postpone the genera elections to such municipalities from the promulgation of the Ordinance until the 31 St. of December 1965, by which time the new unified municipal law is expected to be enacted.

This indicates that the question of extension of the term of the municipalities was under serious consideration even in July 1963. Indeed, on or about July 18, 1964, when the term of the President of the Municipality was extended, the Municipality be extended beyond 4 years. It is, therefore, clear that on the basis of statutory and other circumstances obtaining at the time the term of the Municipality would be or could be extended and with that knowledge they passed the resolution fixing the term of the president for the residue of the term of the Municipality; the intention appears to be that the term of the President should synchronize with the life of the Municipality existing or expended, as the case may be.

In our view, therefore, the order of the High Court is not correct and the same is set aside. A writ will issue prohibiting the Collector from holding the election of the President of the Municipality of the Bhusaval Borough till December 31, 1965.

The controversy arose because the relevant provisions are not free from ambiguity. We, therefore, think that this is a fit case where the parties may be directed to bear their own costs throughout.

Appeal allowed.

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