

Chandrakant Khaire

Vs

Dr. Shantaram Kale and Others

Special Leave Petition (Civil) No. 7508 of 1988

(A. P. Sen, S. Natarajan JJ)

29.07.1988

JUDGMENT

SEN, J.-

1. This special leave petition is directed against the judgment and order of the High Court of Bombay dated June 28, 1988 upholding the election of respondents 1 and 2 Dr Shantaram Kale and Takiqi Hassan as Mayor and Deputy Mayor respectively, and respondents 3-8 as Members of the Standing Committee at the first meeting of the Aurangabad Municipal Corporation at the Alankar Hall, held on May 6, 1988 at 2 p.m. The issue involved is whether the first meeting of the Corporation called for that day at 2.45 p. m. by the Municipal Commissioner, respondent 9, who presided over the meeting was adjourned for the day or adjourned sine die and therefore had to be called on some subsequent date to be fixed by him and thus necessitated the giving of seven days' clear notice as required by Rule 1 (h), Chapter II of the Rules framed under Section 453 of the Bombay Provincial Municipal Corporation Act, 1949.
2. Since the question involved was a matter of moment and the affidavits filed by the petitioner Chandrakant Khaire, the leader of the Shiv Sena Party which is the largest single group in the Corporation consisting of 18 Councillors, and by some of the Councillors as well as their supporters, and the affidavits-in-opposition filed by the Party-in-power Congress I which has formed a coalition with the splinter groups commanding a majority of 32 Councillors in a House of 60, raise controverted facts as to whether the proceedings of the meeting had been adjourned sine die or merely suspended, we thought it better to have the minutes of the proceedings before us. Shri Vinod Bobde, learned counsel appearing for the Municipal Commissioner has placed the minute books written in Marathi along with a translation thereof in English. At the last occasion we were left with the impression that the word used by the Municipal Commissioner was 'takhub' while adjourning the meeting at 2.45 p.m. amidst unprecedented scenes of complete disorder, commotion and pandemonium. We now find the word used in the minutes is 'sthaagit' but in the translation furnished the word used is 'adjourned'.
3. The facts revealed in the counter-affidavits filed by the Municipal Commissioner, Collector and the Superintendent of Police show that a serious law and order situation had arisen due to which both the Collector and the Superintendent of Police had to rush to the venue of the meeting. They both have sworn to the fact that not only the Councillors but many outsiders were present in the hall where the meeting was being held. There were also a large number of supporters of the rival parties, spectators and journalists. The Municipal Commissioner was surrounded by some 20-25 persons apart from the Councillors, one group insisting upon the meeting being adjourned for the day i.e. the Councillors belonging to the majority Shiv Sena Party while the other group consisting of the

Congress I Party and the splinter groups forming the coalition demanding that the meeting be continued. The Collector has sworn to the fact that there was 'total confusion and bedlam inside the hall apart from the fact that the entire atmosphere was surcharged with commotion' and no business could be transacted. He has further sworn to the fact that respondent 9, the Municipal Commissioner, the presiding officer, appeared to be 'in a very agitated state of mind' and told him that he could not hold the meeting in the unruly and disorderly situation prevailing and complained that despite his repeated requests to the Councillors to maintain peace, it had no effect and they kept on shouting, raising slogans and fighting amongst themselves and thereby making it impossible for him to transact any business. The meeting was scheduled to be held at 2 p. m. and respondent 9 announced that the polling for the offices of Mayor, Deputy Mayor and Members of the Standing Committee would commence from 2.30 p. m. onwards.

4. What happened thereafter reveals a very disturbing feature which unfortunately has become too common these days and shows the strain through which our democratic system is passing. At about 2.30 p.m. some of the Councillors belonging to the Shiv Sena Party sat on the ballot boxes and others belonging to that Party and its supporters surrounded the Municipal Commissioner demanding that the meeting be adjourned to a subsequent date. Thereupon, the Councillors belonging to the Party-in-power i.e. Congress I, started shouting at him that the meeting be held later on that day, being apprehensive that if the meeting were to be adjourned, they might lose the contest. There followed shouting of slogans, hurling of abuses and thumping of the tables. The councillors belonging to the rival groups then started throwing chairs at each other leading to a pandemonium. That the fact that not only Councillors but also many outsiders were present in the hall where the meeting was being held who really had no business to be there, is clearly brought out in the affidavits sworn by the Municipal Commissioner, Collector and the Superintendent of Police. They also show a large number of persons freely entering and leaving the hall. It is apparent from the affidavit of the Superintendent of police that during the time when all this happened, Viswasrao Deshmukh, Revenue Minister, Government of Maharashtra came into his office and left the premises while he was actually busy in supervising the bandobust. We have been shown photographs showing the presence of a large number of policemen wielding lathis inside the hall. The Collector's affidavit reveals that the Superintendent of Police personally requested Chagan Bhujbal, a sitting Member of the State Legislative Assembly belonging to the Shiv Sena Party, to keep himself away from the premises of the meeting hall. Be that as it may, it appears that both the officers asked the outsiders to clear out of the hall, requested the Councillors to take their places so as to permit the Municipal Commissioner to transact the business for the day and brought the situation under control. They have sworn to the fact that after the Councillors had calmed down and order was restored, both of them left the hall. Thereafter, the Municipal Commissioner apparently announced on the mike that the meeting would continue and the elections would be held at 4.30 p. m. The petitioner Chandrakant Khaire being the leader of the Shiv Sena Party, filed a written protest at 4.15 p. m. that the meeting had been adjourned by the Municipal Commissioner for the day and therefore the holding of the meeting later on that day would be improper and illegal. After this, the Councillors belonging to the opposition group abstained from participating in the meeting held at 4.30 p. m. at which respondents 1 and 2 Dr Shantaram Kale and Takiqi Hassan were declared elected as Mayor and Deputy Mayor respectively and respondents 3-8 as Members of the Standing Committee, each of them having polled 32 votes.

5. We had the benefit of hearing Shri S. N. Kacker, learned counsel for the petitioner, Dr Y. S. Chitale, learned counsel appearing for respondents 1-8 and Shri Vinod Bobde, learned counsel appearing for respondent 9, the Municipal Commissioner. After a protracted hearing we at the end of the day reserved orders. Having given the matter our anxious consideration, we find it difficult to

interfere with the judgment of the High Court.

6. In view of the conflicting affidavits, the petitioner and his supporters asserting that the Municipal Commissioner had adjourned the meeting for the day and respondent 2 reiterating the version of the Municipal Commissioner that he had only suspended the proceedings so that the meeting could be held later in the day and the business for the day, namely, election of the Mayor, Deputy Mayor and Members of the Standing Committee, could be transacted, the High Court relying on the 'preponderance of probabilities' has come to the conclusion that in the facts and circumstances the affidavit of the Municipal Commissioner, respondent 9, appeared to be 'more impressive, probable and convincing' and therefore they were inclined to accept it as 'one inspiring confidence'. Acting upon the affidavit sworn by respondent 9, the Municipal Commissioner, the High Court has found as a fact that the meeting was not adjourned for the day or sine die but it was to be held as soon as peace was restored on the very day i. e. the meeting had only been postponed. That is an inference drawn from affidavits and we find no just and compelling reasons to upset the same.

7. Shri S. N. Kacker, learned counsel for the petitioner contends that the High Court erred in proceeding on probabilities in deciding the present matter which has far-reaching ramifications affecting the democratic principles. It is said that the High Court having found that because of unruly and provocative atmosphere prevailing in the meeting hall, the Municipal Commissioner was required to adjourn the meeting in order to restore peace and to re-arrange the furniture which was helter-skelter as the Councillors, it is stated, threw chairs at each other, erred in taking the view that the meeting was not adjourned for the day or sine die but had merely been suspended when in fact, the business for the day, namely, elections to the offices of Mayor, Deputy Mayor and Members of the Standing Committee, could not obviously be transacted. He further contended that when the Municipal Commissioner on his own showing had to adjourn the proceedings in view of the prevailing atmosphere and since he felt it was impossible to continue the election process in that situation, it was wrongly held by the High Court that the meeting was not adjourned sine die when the Municipal Commissioner unequivocally admits that such adjournment was necessary to enable him to decide and announce the time for the resumption of the further proceedings. In substance, the contention is that the meeting was not adjourned to a definite point of time and must therefore be regarded as adjourned for the day or adjourned sine die. The learned counsel referred to several law dictionaries to bring out the meaning of the expression 'adjourned sine die' and relied upon the decision of the Calcutta High Court in *Smt. Menaka Bala Dasi v. Hiralal Govindlal* and that of the Madhya Pradesh High Court in *Sheokumar Shashtri v. Municipal Committee, Rajnandgaon*, and also to a passage from *Shackleton on the Law and Practice of Meetings*, 7th edn. at p. 44 for the submission that in the case of adjournment sine die, the meeting stands adjourned to an unspecified date and as such a fresh notice calling for the meeting is necessary.

8. Dr. Y. S. Chitale appearing for respondents 1-8 and Shri Vinod Bobde for respondent 9, on the other hand, contended that the meeting had not been adjourned sine die but the proceedings had merely been suspended at 2.45 p. m. and the adjourned meeting at 4.30 p. m. was a continuation of the original meeting and no new notice of an adjourned meeting had to be given. It was contended further that there was no warrant for interference under Article 136 of the Constitution since a finding of fact has been reached by the High Court on a consideration of the material on record. It was also contended that the petitioner having failed to make good the averment in the writ petition that the meeting had been 'adjourned for the day', the High Court was justified in declining to interfere.

9. In order to appreciate the point in controversy, it is necessary to set out the relevant statutory

provisions bearing on the question. It is needless to stress that a Municipal Corporation cannot function without the Mayor, Deputy Mayor and Members of the Standing Committee who are entrusted with certain functions and duties under the Act. Sub-section (1) of Section 19 of the Act provides that 'the Corporation shall at its first meeting after the general election... elect from amongst the Councillors one of its member to be the Mayor and another to be the Deputy Mayor', term of office being one year. Sub-section (2) of Section 20 enacts that 'the Corporation shall at its first meeting after the general elections appoint 12 persons out of its own body to be Members of the Standing Committee'. The term of office of the elected Councillors, as provided by Section 6 (1), is a period of five years which in terms of sub-section (2) is deemed to commence on the date of the first meeting called by the Municipal Commissioner. The relevant Rules framed under Section 453 of the Act relating to the proceedings of the Corporation are as follows :

1 (b) The first meeting of the Corporation after general elections shall be held as early as conveniently may be on a day and at a time and place to be fixed by the Commissioner, and if not held on that day shall be held on some subsequent date to be fixed by the Commissioner.

1 (h) At least seven clear days' notice shall ordinarily be given of every meeting, other than any adjourned meeting.....

1 (m) Any meeting may, with the consent of a majority of the Councillors present be adjourned from time to time to a later hour on the same day or to any other, but no business shall be transacted and, except as is hereinafter provided, no proposition shall be discussed at any adjourned meeting other than the business or proposition remaining undisposed of at the meeting from which the adjournment took place.

2 (3) The Presiding Officer may in case of grave disorder suspend the meeting for a period not exceeding three days.

It is therefore quite obvious that the first meeting of the Corporation is of prime importance. Learned counsel for the parties have agreed that clause (m) of Rule 1 may not govern the first meeting of the Corporation but relates to subsequent meeting. The question before us is whether the first meeting 'could not be held on that day' within the meaning of clause (b) of Rule 1 and therefore had to be held 'on some subsequent date to be fixed by the Municipal Commissioner'. The affidavits on record clearly show that the Municipal Commissioner who presided over the meeting, was constrained to adjourn the meeting at 2.45 p. m. when some of the Councillors belonging to the Shiv Sena Party, of which the petitioner is the leader went inside the booth and forcibly removed the ballot boxes and set upon them to prevent casting of any votes, giving rise to commotion and pandemonium. What actually happened is best stated by the Municipal Commissioner in his affidavit :

As a result there was tremendous confusion, chaos and uproar in the house and there was tremendous noise and nothing could be heard clearly.

I say that there was tremendous tension and the situation was going out of control and it was not possible to conduct the election at that moment of time and therefore I announced that the meeting is adjourned and that the Councillors should restore peace. I also said that I shall soon announce the time of meeting.

I say that I did not leave the house and remained in the chair of the Presiding Authority hoping that the peace would be restored and I would be able to announce the time of the meeting. Thereafter Shri Man Mohan Singh Oberoi raised the point of order that the meeting should not be adjourned and that he along with another Councillor Dr Sancheti insisted that meeting should continue. At this stage the situation in the house worsened and in fact there was hot exchange of words and shouting between different groups of Councillors. An attempt was made to throw chairs at each other and in fact the furniture in the house was scattered and several Councillors surrounded me and some spoke in favour of adjournment and some spoke in favour of continuation. My efforts to restore peace and order were futile, and there was serious law and order situation.

In the circumstances aforesaid there was no alternative and I felt that it was my duty to seek the police help and I called the police to restore order. Thereupon some of the Councillors objected and actually resisted the entry of the police. Thereafter on my directives the police soon left. Some of the Shiv Sena Councillors were in aggressive mood and they came to my table and violently thumped the table and shouted that they would not allow this meeting to take place. During this period I even suggested that the Councillors should go out. This was necessary as I felt that without that the furniture cannot be re-arranged and further steps for resuming the meeting will not be possible. In the meantime the District Magistrate Shri R. R. Sinha and Superintendent of Police Shri T. C. Wankhede entered the Hall. S. P. Shri Wankhede appealed the Councillors on the mike to restore peace. I say that discussions took place between myself and the District Magistrate with a view to restore the peace. The District Magistrate Shri Sinha also appealed to restore peace.

Thereafter the Councillors were calmed down and the order was restored. On the peace being restored both the District Magistrate and the SP left the house at 3.45 p.m. I announced on the mike that meeting would continue and election would be held at 4.30 p.m.

* * *##

...in effect the adjournment declared by me as aforesaid amounts to suspension of the meeting because of the grave disorder...

* * *##

I also said that I shall soon make an announcement about the time for resuming the meeting.

* * *##

I had to adjourn the proceedings in view of the prevailing circumstances set out hereinabove and since I felt that it was impossible to continue the election process in that situation. It was also necessary to enable myself to decided and announce the time for the resumption of the further proceedings of the meeting.

While setting out facts we have already adverted to the facts sworn by the Collector and the Superintendent of Police. There is no reason not to act on these affidavits. The Collector says that 'there was total confusion and bedlam inside the hall' apart from the fact that 'the entire atmosphere was surcharged with commotion', and 'the Municipal Commissioner was in a very agitated state of mind and said that he could not hold the meeting in the unruly and disorderly situation prevailing'. These can be no doubt that such unruly scenes witnessed on that day gave rise to a serious law and

order situation but both the Collector and the Superintendent of Police were able to restore order in the House and prevailed upon the outsiders to vacate the meeting hall in order that the proceedings could be resumed. The fact that the Municipal Commissioner did not leave the House or vacate the seat does lend support to the version that he had merely suspended the proceedings till order was restored. There is no reason to doubt the affidavit sworn by the Municipal Commissioner that he announced on the mike at 3.45 p.m. that the proceedings would be resumed at 4.30 p.m. for transacting the business for the day.

10. It is quite obvious that the meeting was not 'adjourned for the day' or 'adjourned sine die'. Shri Kacker, learned counsel for the petitioner contended that when the affidavits of the three officers showed that utter confusion prevailed and there was pandemonium all around with strangers moving about in the meeting hall, it must necessarily follow that no business could be transacted on that day. The contention is that the meeting was not adjourned to a definite point of time and must therefore be regarded as 'adjourned for the day' or 'adjourned sine die.' He referred to the decision in *Menaka Bala Dasi and Sheokumar Shashtri*, as also to various law dictionaries, besides a passage from *Shackleton on the Law and Practice of Meetings*, 7th edn, at p. 44. On the strength of these authorities, it was submitted that the meeting was adjourned not to a definite point of time and must therefore be regarded as 'adjourned for the day' or 'adjourned sine die'. He accordingly submitted that the Municipal Commissioner should have fixed another date for the meeting and issued fresh notice therefor. We are afraid, we cannot accept this line of reasoning.

11. According to the ordinary meaning, the expression 'sine die' as given in *Shorter Oxford Dictionary*, 3rd edn., Vol. II at p. 2000 means :

Without any day being specified (for reassembling, resumption of business etc.); indefinitely.

Similarly, in *Webster's Comprehensive Dictionary*, International edn., the meaning given is more or less the same :

Without a day; indefinitely : an adjournment sine die (that is, without setting a day for reassembling).

The same is the legal meaning. In *Black's Law Dictionary*, Deluxe 4th edn. at p. 1556, the meaning of the expression sine die is :

Without day : without assigning a day for a further meeting or hearing.

The legal meaning given in *Jowitt's Dictionary of English Law*, 2nd edn., Vol. II at p. 1663 reads:

Without a day being fixed. The consideration of a matter is said to be adjourned sine die when it is adjourned without a day being fixed for its resumption.

The passage in *Shackleton* at p. 44 on which the learned counsel relies reads :

Adjourned meetings : Notice

An adjourned, if bona fide, is only a continuation of the meeting and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. If however the meeting is adjourned sine die, a fresh notice must be given.

No new business can be introduced unless notice of such new business is given.

12. There can be no dispute with the proposition but the difficulty is about the applicability of that principle to the facts of the case. Literally, there is nothing on record to substantiate the petitioner's submission that the first meeting scheduled to be held on May 6, 1988 at 2 p.m. was 'adjourned for the day' or 'adjourned sine die' without transacting any business i. e. without consideration of the agenda for the day. On the contrary, it is not in dispute that the business for the day was partly transacted when the Councillors met at 2 p.m. as scheduled and the Municipal Commissioner declared that the polling would commence from 2.30 p. m. onwards. The trouble started at 2.30 p. m. when the Councillors belonging to the petitioner's Shiv Sena Party prevented the casting of votes of by snatching away the ballot boxes from the polling booths and sat upon them. There was a predetermined plan on their part not to allow the first meeting to be held on that day. But the Municipal Commissioner did not give way to the commotion and pandemonium and he did not put off the meeting to another day. In the prevailing situation, the Municipal Commissioner had no other alternative but to adjourn the meeting. Under the scheme of the Act, when the term of the elected Councillors is a period of five years which in terms of sub-section (2) of Section 6 of the Act is deemed to commence on the date of the first meeting, the Municipal Commissioner obviously could not adjourn the meeting for another day or adjourn it sine die. If the contention that the meeting having been adjourned without specifying a definite point of time were to prevail, it would give rise to a serious anomaly. The effect of adjourning the first meeting to another day would imply the coming into existence of another deemed date under Section 6 (2) of the Act for commencement of the term of the Councillors. The Municipal Commissioner has unequivocally asserted that he only suspended the proceedings in order that they could be resumed for transaction of the business for the day, and the business for the day had to be transacted on May 6, 1988, the date of the first meeting, as fixed by him. Admittedly, the Municipal Commissioner did not leave the meeting hall nor vacate his seat. He showed exemplary courage in not yielding to the threats of violence wielded by the party in opposition, because he knew that in law the first meeting had to be held on that day and could not be adjourned to another day. There is no reason to disbelieve the Municipal Commissioner that when he adjourned the meeting he simultaneously made an announcement that he would later announce the time when the meeting was to be resumed. He is candid enough to say that he had to adjourn the proceedings in view of the prevailing situation when he felt that it was impossible to continue the election process hoping that peace would soon be restored and he would be able to announce the time of the meeting. One of the reasons given for the adjournment was that he adjourned the meeting to enable him to decide and announce the time for the resumption of the further proceedings of the meeting.

13. Rankin C. J. in *Menaka Bala Dasi* case [1. (1932-33) 37 Cal WN 583 : AIR 1933 Cal 816 : 147 IC 206] in repelling the contention that adjournment sine die of an application for making a decree in a mortgage suit final, was a discontinuance of it, observed :

(W) whatever may be the old authorities on that point, I have no doubt myself that with us today "adjournment sine die" differs altogether from discontinuance. It is after all an adjournment - an adjournment to a date that is not at the moment fixed.

14. The decision of the Madhya Pradesh High Court in *Sheokumar Shashtri* case [2 AIR 1964 MP 195 : 1964 MPLJ 197] relied upon by learned counsel for the petitioner is clearly distinguishable. In that case, it was admitted that the meeting of the Municipal Committee summoned for January 17, 1962 at which sine die for want of quorum and the High Court held relying upon the proviso to Section 32 of the Madhya Pradesh Municipalities Act, 1961, that a meeting convened for

consideration of a no confidence motion could not be adjourned sine die, but had to be adjourned to 'some other day' for which a fresh notice was necessary. P. V. Dixit, C. J. speaking for himself and K. L. Pandey, J. observed :

It is settled law that where there is a power of adjournment and a meeting is adjourned, then the adjourned meeting is a continuation of the original meeting and no new notice of an adjourned meeting need be given unless the relevant statutory provisions or rules so require. But in the case of an adjournment sine die a fresh notice is necessary, (see Scadding v. Lorant [3 (1851) 3 HLC 418 : 10 ER 164]. and Berar Municipalities Act, 1922, laid down that

if at any ordinary or special meeting of the committee a quorum is not present, the Chairman shall adjourn the meeting to such other day as he may thin fit...

Under this proviso, a meeting could be adjourned to some fixed date and not sine die.

The decision in Sheokumar Shashtri [2 AIR 1964 MP 195 : 1964 MPLJ 197] is therefore of no avail.

15. Shackleton on the Law and Practice of Meetings, 7th edn. apart from the passage at p. 44 already quoted, gives the different shades of meeting of adjournment as understood in legal parlance in the following words :

Adjournment is the act is (sic) postponing a meeting of any private or public body or any business until another time, or indefinitely, in which case it is an adjournment sine die. The word applies also to the period during which the meeting or business stands adjourned. An adjournment may be :

1. For an interval expiring on the day of the adjournment.
2. For an interval expiring on some later date.
3. For an indefinite time (i.e. sine die)
4. Until a fixed time and date.
5. To another place.

The learned author then sets out the different causes giving rise to an adjournment which may be by (1) Resolution of the meeting, (2) Action of the chairman, and (3) Failure to achieve or maintain a quorum.

16. A properly convened meeting cannot be postponed. The proper course to adopt is to hold the meeting as originally intended, and then and there adjourn it to a more suitable date. If this course be not adopted, member will be entitled to ignore the notice of postponement, and, if sufficient to form a quorum, hold the meeting as originally convened and validly transact and business thereat. Even if the relevant rules do not give the chairman power to adjourn the meeting, he may do so in the event of disorder. Such an adjournment must be for no longer than the chairman considers necessary and the chairman must, so far as possible, communicate his decisions to those present.

17. The law relating to adjournment has been put succinctly in Horsley's Meetings Procedure, Law and Practice, 2nd edn., ed. by W. John Taggart at p. 84, para 1002 :

The word 'adjournment' tends to be used loosely in connection with meetings. Indeed, as a result, the word is possibly in process of acquiring a further, derived meaning of 'close, conclude or finish', whereas a meeting or a debate is adjourned when its further proceedings are postponed to some subsequent time or to enable it to reassemble at some other place; to a later hour in the same day, to some future date, or indefinitely, i. e. sine die (without a day being named). The business (of the whole meeting or the debate respectively) is indeed suspended, but with an intention of deferring it until resumption at a later time.

The learned author goes on to say that the word 'adjourn' has been in use for almost five centuries in connection with meeting, with an early meaning of 'to put off or defer proceedings to another day', and adds :

This in due course gave rise to the added meaning 'to break off for later resumption.

18. On an overall view of the facts and circumstances, we have no hesitation in upholding the finding that the first meeting of the Municipal Corporation fixed by the Municipal Commissioner for May 6, 1988 was not 'adjourned for the day' or 'adjourned sine die' but had only been put off to a later hour i.e. the proceedings had only been suspended, to recommence when peace and order were restored.

19. In the result, the special leave petition must fail and is dismissed. No costs.

</html