

**SUPREME COURT OF INDIA**

Shailesh Bandu Swami

Vs.

Dipak

C.A.No.9970 of 2018

(Ashok Bhushan and Uday Umesh lalit,JJ.,)

25.09.2018

**JUDGMENT**

**Uday Umesh Lalit,J.,**

SLP(Civil)No.25814 of 2018

1. Leave granted.

2. These appeals question the correctness of the Judgment and Order dated 05.09.2018 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.6897 of 2018.

3. Matters pertaining to elections to Municipal Corporations in Maharashtra including those relating to constitution of Standing Committees of such Municipal Corporations are dealt with by Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as the Act). Provisions of Sections 20, 21, 31A and 35A which are relevant for the present purposes are quoted for ready reference:-

“20. Constitution of Standing Committee.- (1) The Standing Committee shall consist of sixteen councillors.

(2) The Corporation shall at its first meeting after general elections appoint sixteen persons out of its own body to be members of the Standing Committee.

(3) One-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which the first meeting of the Corporation mentioned in sub-section (2) was held:

Provided that all the members of the Standing Committee in office when general elections are held shall retire from office on the election of a new Committee under sub-section (2).

(4) The members who shall retire under sub-section (3) one year after their election under sub-section (2) shall be selected by lot at such time previous to the date for retirement specified in sub-section (3) and in such manner as the Chairman of the Standing Committee may determine, and in succeeding years the members who shall retire under this section shall be those who have been longest in office :

Provided that, in the case of a member who has been reappointed, the term of his office for the purposes of this sub-section shall be computed from the date of his reappointment.

(5) The Corporation shall at its meeting held in the month preceding the date of retirement specified in sub-section (3) appoint fresh members of the Standing Committee to fill the offices of those who are due to retire on the said date.

(6) Any Councillor who ceases to be a member of the Standing Committee shall be eligible for reappointment.

#### 21. Appointment of Chairman of Standing Committee.-

(1) The Standing Committee shall at its first meeting after its appointment under sub-section (2) of section 20 and at its first meeting in the same month in each succeeding year appoint one of its own member to be the Chairman.

(2) The Chairman shall hold office until his successor has been appointed under sub-section (1) but shall be eligible for reappointment.

(3) Notwithstanding the provisions of sub-sections (1) and

(2) the Chairman shall vacate office as soon as he ceases to be a member of the Committee.

(4) If any casual vacancy occurs in the office of the Chairman, the Standing Committee shall, as soon as conveniently may be after the occurrence of the vacancy, appoint one of its member to fill such vacancy and every Chairman so appointed shall continue in office so long only as the person in whose place he is appointed would have held it if such vacancy had not occurred.

(5) If for any reason the Standing Committee does not appoint the Chairman under sub-section (1) or (4), within a period of thirty days from the date of its appointment under sub-section (2) of section 20, or from the date following the date of retirement of one-half of the members specified in sub-section (3) of that section, or from the date on which a casual vacancy occurs in the office of Chairman, as the case may be, the appointment of the Chairman, after the expiry of the said period, shall be made by the Corporation, from amongst the members of the Standing Committee, at a special meeting called and held for the purpose within fifteen days from the expiry of the said

period of thirty days. At such meeting, the question shall be decided by a majority of votes of the Councillors present and voting and if there be an equality of votes, the presiding authority shall have and exercise a second or casting vote. Every Chairman so appointed, shall continue in office so long only as the Chairman appointed by the Standing Committee would have continued in office.

31 A.Appointment by nomination on Committees to be by proportional representation.- (1) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, in the case of the following Committees, except where it is provided by this Act, that the appointment of a Councillor to any Committee shall be by virtue of his holding any office, appointment of Councillors to these Committees, whether in regular or casual vacancies, shall be made by the Corporation by nominating Councillors in accordance with the provisions of sub-section(2):-

(a) Standing Committee;

(b)Transport Committee;

(c) Any special Committee appointed under Section 30;

(d)Any ad hoc Committee appointed under Section 31.

(2)In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognized parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Corporation, after consulting the Leader of the House, the Leader of Opposition and the leader of each such party or group:

Provided that, the relative strength of the recognized parties or registered parties or groups or aghadi or front shall be calculated by first dividing the total number of Councillors by the total strength of members of the Committee. The number of Councillors of the recognized parties or registered parties or groups or aghadi or front shall be further divided by the quotient of this division. The figures so arrived at shall be the relative strength of the respective recognized parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognized parties or registered parties or groups or aghadi or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognized parties or registered parties or groups or aghadi or front in the descending order of the fraction number in the respective relative strength, starting from the highest fraction number in the relative strength, till all the seats are allotted: Provided further that, for the purpose of deciding the relative strength of the recognized parties or registered parties or groups under this Act, the recognized parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra

Local Authority Members' Disqualification Act, 1986, within a period of one month from the date of notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a registered pre-poll aghadi or front.

(3) If any question arises as regards the number of Councillors to be nominated on behalf of such party or group, the decision of the Corporation shall be final.

35A. Exercise of powers and discharge of duties of any Committee by Corporation.- If, any committee or special committee under this Act is not constituted at any point of time, or for any reason not in a position to exercise its powers or discharge its duties under this Act, its powers shall be exercised and its duties shall be discharged by the Corporation until such committee is constituted or in a position to exercise its powers or discharge its duties.”

#### 4. The aforesaid provisions thus contemplate:-

In terms of Sub-Section (2) of Section 20, the Corporation in its first meeting after general elections is obliged to appoint 16 persons out of its own body to be members of the Standing Committee. As per Sub-Section (1) of Section 21 soon after its constitution, the Standing Committee is to appoint one of its own members as its Chairman. In terms of Sub-Section (3) of Section 20, one-half of the members namely 8 out of 16 would retire every succeeding year on the first day of the month in which the first meeting of the Corporation was held. Sub-Section (4) then contemplates a process under which the names of those eight persons who would so retire in the succeeding year are to be identified. Their names are to be selected by lot in such manner as the Chairman of the Standing Committee may determine. Such selection has to be undertaken previous to the date of retirement as specified in Sub-Section (3). Naturally the action to be contemplated in terms of Sub-Section (4) of Section 20 must be by the Chairman who was holding office in terms of appointment under Section 21. In terms of sub-section (5) of Section 20, it is the Corporation which must appoint fresh members of the Standing Committee in the month preceding the date of retirement as specified in sub-section (3).

According to Section 21, the appointment of a Chairman could be in three contingencies. The first part of Sub-Section (1) of Section 21 deals with the first meeting of the Standing Committee wherein the appointment of a Chairman has to be undertaken from amongst the members of the Standing Committee. The second part of Sub-Section 21(1) contemplates similar such exercise to be undertaken in the successive years as and when the constitution of the Standing Committee would undergo change as a result of one-half of the body getting retired and fresh elections to fill those vacancies taking place. The third contingency is one which is spoken of in Sub-Section (4) of Section 21 when any casual vacancies were to arise in the office of the Chairman. Sub-Section (5) of Section 21 then contemplates a situation where no appointment of the Chairman is undertaken in terms of both limbs of Sub-Section (1)

or under Sub-Section (4) of Section 21 and empowers the Corporation to take appropriate steps in such cases.

Section 31A stipulates a salutary principle that appointments by nomination on Committees of the Corporation must be undertaken in accordance with proportional representation and not by pure majority in the house.

Section 35A gives general power to the Corporation to discharge the duties as exercisable by any Committee in case such Committee or Sub-Committee is not constituted at any point of time or is not in a position to exercise its powers or discharge its duties under the Act.

5. In the present case we are concerned with the constitution of Standing Committee in respect of Latur City Municipal Corporation, Latur. As per record , Latur City Municipal Corporation has 18 Wards and 70 councillors are elected. In the general election held in the year 2017, 36 elected members were from Bharatiya Janta Party, 33 members were from Indian National Congress Party and one member was from Nationalist Congress Party. In terms of Section 31-A of the Act, 8 members from Bharatiya Janta party and 8 members from Nationalist Congress Party were nominated to be the members of the Standing Committee. The first meeting of the Standing Committee was held on 22.05.2017 in which by draw of lots, a member from Indian National Congress Party was elected as Chairman of the Standing Committee. The first meeting having been held in the month of May 2017, in terms of Section 20(1) of the Act as stated hereinabove, the Chairman of the Standing Committee was obliged to select by lot before the expiry of the term namely first day of the month of the succeeding year that is to say before 01.05.2018, names of 8 persons who would retire by rotation as members of the Standing Committee.

6. It however appears that because of biennial elections of Local Authorities constituency namely Latur-Osmanabad-Beed to elect members of Maharashtra Legislative Council which were scheduled to be held on 21.04.2018, the Election Commission of India had imposed “code of conduct” with effect from 20.04.2018 which as a matter of fact continued to be in operation till 31.05.20 18 . It is thus a matter of record that no steps were taken by the Chairman of the Standing Committee to identify those who would retire in terms of Section 20(3). 01.05.2018 being a holiday namely Maharashtra Day, a meeting of Latur City Municipal Corporation was held on 02.05. 2018 pursuant to the intimation dated 26.04.2018 issued by the District Collector instructing the Commissioner of the Corporation to call such meeting. All the members of the Standing Committee including the Chairman were present. The minutes of the meeting indicate that in the presence of all the members it was decided to identify names of the retiring members by lots. Consequently 16 chits were kept in a pot and 8 chits were drawn representing names of those 8 members who would retire in terms of Section 20(3) of the Act. Those 8 members included the name of the Chairman of the Standing Committee himself. However since the “code of conduct” was still in operation the next stage contemplated by the Act namely to have fresh appointment of 8 new incoming members was not undertaken. The “code of conduct” was in operation till 31.05.2018 and the

Municipal Corporation received an intimation after it ceased to be in operation. Soon thereafter, on 06.06.2018 the Municipal Secretary of the Corporation prepared Agenda and issued notices regarding meeting scheduled to be held on 14.06.20 183.

7. A notice was also issued on 12.06.2018 to all elected Councillors that a meeting would be held on 15.06.2018 for election of the Chairman of the Standing Committee in terms of Section 21(5) of the Act. Since by 12.06.2018, names of incoming 8 members of the Standing Committee were still not known, notices were sent to all the members of the Corporation. In its meeting dated 14.06.2018, the respective political parties through their block leaders submitted names of the Councillors who would now be incoming or new members. True translation of the proceedings of said meeting dated 14.06.2018 is as under:-  
 “The block leaders from the respective parties have submitted the names of the corporation members, by nominations by comparing as per their seats, for Standing Committee by certifying representative as per the Section 31 A for 8 posts of Standing Committee vacated as per the Section 20(3) of the Maharashtra Municipal Corporations Act 1949 therefore, the Mayor has declared the names of following 8 members appointed as the standing committee members.

Sr.No.	Name of Hon. Member	Name of Party	Name of Block leader
1.	Meena Goroba	Indian National	Adv. Sul Deepak

	Lokhande	Congress	Gangadhar.
2.	Imran Jabbar Sayyad	Indian National Congress	Adv. Sul Deepak Gangadhar.
3.	Kamble Kailas Vyankatrao	Indian National Congress	Adv. Sul Deepak Gangadhar.
4.	Sabade Vijaykumar Hanmantrao	Indian National Congress	Adv. Sul Deepak Gangadhar.
5.	Panchakshari Pooja Subhash	Indian National Congress	Adv. Sul Deepak Gangadhar.
6.	Sapana Pandurang Kiswe	Indian National Congress	Adv. Sul Deepak Gangadhar.
7.	Shailesh Bandu Swami	Bharatiya Janata Party	Adv. Shailesh Prakash Gojamgunde.
8.	Malu Shital Shivrprasad	Bharatiya Janata Party	Adv. Shailesh Prakash Gojamgunde.

Sd/-  
(Pawar Suresh Nivrutti)  
Latur City Municipal Corporation, Latur.”

8. The names of incoming members show that since 6 outgoing members were from one political party, it had nominated 6 persons to be part of the incoming group of 8 new members of Standing Committee. Thus by virtue of such nomination, the balance as it existed earlier was again maintained. Since the Standing Committee was now re-constituted, in the subsequent meeting held on the next day i.e. 15.06.2018 the entire body of 16 members of the Standing Committee then elected one of its own members namely Shailesh Prakash Gojamgunde to be the Chairman of the Standing Committee.

9. Soon thereafter, Writ Petition No.6897 of 2018 was filed by two Councillors (one of them being Block Leader who had submitted names of his party members to be part of the Standing Committee in the meeting dated 14.06.2018) of Latur City Municipal Corporation submitting inter alia that the notice issued on 12.06.2018 for holding the meeting to elect the Chairman of the Standing Committee on 15.06.2018 was inadequate and that before issuance of such notice there had to be a Standing Committee in existence which, as a matter of fact, was not so. The petition prayed inter alia for following reliefs:-

“ A) Call for record and proceedings of the case.

B) Issue a writ of certiorari or any other appropriate in the nature of order and direction to quash and set aside the election of Chairman of Standing Committee dated 15.06.2018 being contrary to the provisions of law.

C) Issue a writ of certiorari of any other appropriate in the nature of order and direction to quash and set aside the appointment of fresh members in meeting dated 14.06.2018 being contrary to the provisions of law.

D) Pending hearing and final disposal of this writ petition, kindly grant stay to the election of Chairman of Standing Committee dated 15.06.2018 being contrary to the provisions of law.

E) Pending hearing and final disposal of this writ petition, kindly be restrained the Chairman of Standing Committee from taking any policy decision.

F) By allowing this Writ Petition, may kindly be disqualified the respondent No.6 from the post of mayor as he has misused his post and power.

G) Ad-interim relief be granted in terms of prayer clause “D” and “E”.

Thus, the challenge was to the meetings held on 14.06.2018 and 15.06.2018. However, no challenge was raised in respect of meeting held on 02.05.2018 wherein names of 8 outgoing members were identified. Though the election held on 14.06.2018 to the Standing Committee

was put in challenge, none of the Councillors appointed as new members of the Standing Committee in its meeting dated 14.06.2018 was made party to the petition.

10. Affidavits in reply opposing the petition were filed by respondent No.6, namely, the Mayor of the Latur City Municipal Corporation and by respondent No.7 Shailesh Prakash Gojamgunde, Chairman of the Standing Committee elected on 15.06.2018.

11. After hearing learned counsel, the High Court by its judgment and order dated 05.09.2018 allowed said Writ Petition. It was observed by the High Court that as on 12.06.2018 when notice was issued to hold a meeting on 15.06.2018 the Standing Committee consisting of 16 members had not come into existence; that mandatory requirements of Section 20 of the Act were violated and an attempt was made to appoint Chairman of the Standing Committee by the Corporation under Section 21(5) of the Act when the Standing Committee consisting of 16 members was not yet constituted. Relying on the judgment of this Court in *Prithipal Singh and Ors. vs. State of Punjab and anr.* to the effect that while dealing with unprecedented cases the court has to innovate and at times pass unconventional orders, the High Court passed certain directions in paragraph 43 of its judgment. Out of 11 directions so passed, we are concerned with first 7 directions which pertain to the present matters. Rest of the directions are in the nature of guidelines with a view to ensure compliance of various provisions of the Act. Said first 7 directions as spelt out in paragraph no.43 are extracted hereunder:

“43. In the light of the above, the present Writ Petition is allowed and disposed of as follows:

(i) The election of respondent No.7 as Chairman of the Standing Committee of the respondent Municipal Corporation in the special meeting held on 15.6.2018, is quashed and set aside as being contrary to the provisions of the Maharashtra Municipal Corporations Act, 1949.

(ii) It is held that, the appointment of fresh 8 members on the Standing Committee in the meeting dated 14.6.2018 is illegal and hence, the same is also quashed and set aside.

(iii) The Standing Committee consisting of 16 members constituted in the meetin dated 22.05.2017 immediately after general elections of the Corporation held on 19.04.2017 and its Chairman elected on 19.06.2017 shall take steps for selecting 8 of its members for retirement from the Standing Committee. This step shall be taken by the said Standing Committee and its Chairman on 14th September, 2018.

(iv) The said Standing Committee shall then hold a meeting on 18.09.2018 for appointing fresh 8 members on the Standing Committee. This would enable any member who has been selected for being retired from the Standing Committee to be eligible for reappointment.

(v) The 8 members selected for retirement shall stand retired on 19.09.2018 and the fresh 8 members shall become members of the newly constituted Standing Committee on the same day.

(vi) Thereafter, such reconstituted Standing Committee shall in its first meeting to be held in the month of September 2018, elect its Chairman. Accordingly, there would be a smooth transition from the erstwhile Standing Committee to such newly constituted Standing Committee. If for some reason the Standing Committee is unable to appoint its Chairman within 30 days of 19.09.2018, the Corporation shall appoint the Chairman in a special meeting under Section 21(5) of the said Act, to be held within 15 days from expiry of the said period of 30 days.

(vii) The reconstituted Standing Committee and its Chairman appointed in terms of directions given hereinabove shall remain in existence for the remaining part of the one year tenure of the Standing Committee.

12. Thus, the High Court has ruled that the Standing Committee as was in existence before 02.05.2018 shall be the one which must take all the steps and decisions. It must first, through its Chairman take appropriate steps for selecting names of 8 members for retirement. Thereafter, the Standing Committee would hold a meeting for appointing 8 new members on the Standing Committee. Such reconstituted Standing Committee shall, thereafter, in a meeting elect its Chairman. The Standing Committee so reconstituted with its Chairman shall then continue to be in existence for the remaining part of the tenure of one year.

13. The decision of the High Court is under challenge in present matters. The first matter was filed by two councillors who are also members of the Standing Committee, the first petitioner being a councillor who was appointed as a member of the Standing Committee for the first time in the meeting dated 14.06.2018. Since both these petitioners were not parties in the Writ Petition, they approached this Court with an application seeking permission to challenge the judgment under appeal. The second petition was filed by original respondent No.7. Both these petitions came up before this Court on 17.09.2018, on which date the learned counsel for the writ petitioners also appeared on caveat. Considering the nature of urgency, where certain directions passed by the High Court were to come into effect on 18th and 19th September, 2018, the matter was immediately taken up for hearing. After conclusion of hearing, the following order was passed by this Court:

“Permission to file SLP is granted.

Heard learned counsel for the parties.

Issue notice. As Mr. Chinmoy Khaladkar, Adv. on the instructions of Mr. Dilip Annasaheb Taur, Adv. appearing on caveat has shown his readiness to go ahead with the final submissions at this stage itself, notice made returnable forthwith. We issued notice to Mr. Nishant R. Katneshwarkar, Adv. appearing for the State of Maharashtra as well, who has appeared for the State.

Having heard learned counsel for the parties finally and considered their submissions, we direct (a) pending consideration, the judgment and order passed by the High Court shall remain stayed (b) the parties shall file their written submissions within three days from today (c) the matter will be posted for pronouncement of order next week.”

14. We have heard learned counsel for the parties and gone through the entire matter and the submissions on record.

15. The decision of the High Court is premised on non-compliance of the mandatory provisions of the Act and non-adherence to the timelines as prescribed under the Act. According to the provisions of Sections 20 and 21 of the Act following stages should have been undertaken in the present case:

a) Names of one-half of the members of the Standing Committee who would be retiring on the first day of May of 2018 ought to have been identified. Exercise to identify such persons ought to have been undertaken well in advance.

b) Any councillor who as a result of such exercise ceased to be a member of the Standing Committee would be eligible for reappointment in terms of Sub-Section (6) of Section 20 and as such adequate chance or opportunity seeking an 'appointment' should have been afforded.

c) The Corporation would then appoint fresh members of the Standing Committee to fill the offices of those who “are due to retire” in terms Sub-Section (5) of Section 20 of the Act. Such meeting of the Corporation should have been held in the month “preceding the date of retirement” as specified in Sub-Section (3) of Section 20 of the Act, i.e. to say in April 2018.

d) While making such appointments the Corporation would be guided by principles laid down in Section 31A of the Act namely those relating to proportional representation.

16. It is clear from the record that the mandates as prescribed by various provisions of the Act were not adhered to and were violated. But the reasons that are forthcoming in the affidavits in reply filed by the respondents are to the effect that there was “code of conduct” issued by the Election Commission of India as a result of which no appropriate steps could be taken. Theoretically it was possible to initiate the steps in the first half of April, 2018 itself but failure on that count, by itself does not make the actions suspect. The “code of conduct” having been brought in force from 20.04.2018, no steps were taken either to identify 8 outgoing members or to have election in terms of or to have the meeting of the Corporation in terms of Sub-Section (5) of Section 20 before 30.04.2018. What happened thereafter was certainly not in strict compliance of the timelines prescribed. In the circumstances, there would be two courses that are open to be considered. (A) Upset all actions and relegate the issues to be dealt with afresh at the appropriate levels in accordance with law. (B) Consider whether the actions taken by the concerned authorities are only

irregular or blatantly illegal. If there is a mere irregularity which has not caused prejudice to anyone, a call can certainly be taken to condone such irregularity rather than nullifying all actions.

17. The High Court has adopted the first course and issued the aforementioned directions. Its direction No.(iv) is not quite correct. It is the Corporation and not the Standing Committee which is to hold meeting as per Section 20(5) of the Act for appointing fresh eight members. Be that as it may, the question is whether the first course or the second course is the most appropriate one in the present matter.

18. In the present case there was no challenge to the meeting dated 02.05.2018 which identified names of eight members who would retire, which included the Chairman of the Standing Committee himself. Under the orders of the High Court, despite these developments, the same Standing Committee is to be deemed to be in existence which must initiate all the actions de novo. In a given situation such extraordinary directions may be justified. The question, however, is whether such directions were justified in the present case. On 02.05.2018, names of eight outgoing persons were identified but nothing further was done as at that time, the “code of conduct” was still in operation. Appropriate steps were taken only after the “code of conduct” ceased to be in operation and a meeting was called on 14.06.2018 to appoint new set of eight members to be part of the Standing Committee. Going by Sub-Section (5) of Section 20 such a meeting had to be held by the Corporation and was rightly undertaken. In this meeting the proportional representation was maintained and those persons whose names were suggested by the group leaders of the respective political parties, were appointed as new members of the Standing Committee. It is true that the Chairman had to be selected by the newly constituted Standing Committee. It appears that in order to expedite the matters, the meeting was scheduled to be held on the next date that is on 15.06.2018. This meeting was called pursuant to agenda circulated on 12.06.2018. It is again true that as on that date the reconstituted Standing Committee was not in existence. However, since the Standing Committee would be of the Councillors of the Corporation itself, and since the identity of eight new members who would now become part of the Standing Committee was not yet known on 12.06.2018, notices were issued to all the Councillors of the Corporation. The record then shows that item 10 on the agenda for the special meeting dated 15.06.2018 was for election of the Chairman. It is further clear that the meeting started at 11.00 a.m. whereafter nominations for the post of Chairman were accepted and various stages were thereafter conducted and the election of the Chairman was done by 16 members of the Standing Committee. It is not as if that the election was undertaken by an entity other than members of the Standing Committee. The observations of the High Court in that behalf are not correct.

19. The circumstances thus show that the irregularity that had crept in as a result of non adherence to the various steps which were required to be taken in the month of April, 2018 led to a situation where certain urgent actions were required to be taken. Though said actions were in a way irregular but in substance and in real sense they followed the mandate and the appropriate steps were taken by the bodies in question and not by any entity or agency which, in law, was not authorised. In this scenario, in our considered view, no emergent

directions were required or called for. The appointment of new members of the Standing Committee went on proportional representation theory and was purely by nomination coming from the group leaders. Even if very same exercise is to be undertaken now in terms of the orders passed by the High Court it would not be qualitatively different. It is not as if any person or a group lost out or was deprived of any right under the statute.

20. We thus find that there was no reason for the High Court to interfere in its writ jurisdiction and issue directions as referred to above. We, therefore, allow these appeals, set aside the judgment and order under appeal and dismiss Writ Petition No.6987 of 2018. No costs.