

Santokchand Kanaiyalal Jain vs Bhusaval Borough Municipality And ... on 2 September, 1965

Equivalent citations: 1966 AIR 1358, 1966 SCR (1) 695, AIR 1966 SUPREME COURT 1358, 1966 (1) SCJ 676, 1966 (1) SCWR 683, 1966 MAH LJ 330

Bench: J.R. Mudholkar, R.S. Bachawat

PETITIONER:

SANTOKCHAND KANAIYALAL JAIN

Vs.

RESPONDENT:

BHUSAVAL BOROUGH MUNICIPALITY AND OTHERS

DATE OF JUDGMENT:

02/09/1965

BENCH:

SUBBARAO, K.

BENCH:

SUBBARAO, K.

MUDHOLKAR, J.R.

BACHAWAT, R.S.

CITATION:

1966 AIR 1358

1966 SCR (1) 695

ACT:

Municipalities-President elected by Municipality for residue of its terms-Normal term of municipality as provided in s. 25 of Bombay Municipal Borough Act four years-Term of municipality extended beyond four years by s. 3 of Maharashtra Municipality (Postponement of General Elections Unification of Municipal laws) Act, 1964-Effect of such extension on term of President-Second proviso to s. 19 of Municipal Boroughs Act whether attracted.

HEADNOTE:

The appellant was elected President of the Bhusaval Borough Municipality in Bombay State in July 1964. On the same day the Municipality passed a resolution to the effect that the term of office of the President would be "the residue of the term of office of the municipality". The four years' term of the municipality as provided in s. 25 of the Bombay Municipal Boroughs Act 1925 (Bombay Act 18 of 1925) was due

to expire on February 17, 1965. However in the meanwhile the Maharashtra Municipalities (Postponement of General Elections Pending Unification of Municipal Laws Act, 1964 was passed, and under s. 3 thereof the term of the councillors of the municipality was by fiction extended to December 31, 1965. The Collector of the area on the assumption that the term of the President ending on February 17, 1965, issued notice for a fresh election in March 1965. The appellant filed an application under Arts. 226 and 227 of the Constitution and contended that as the term of office of the municipality had been extended up to December 31, 1965 he was entitled to be President till that date under the resolution passed by the Municipality. The High Court rejected the contention. The appellant, with a certificate of fitness granted by the High Court, came to this Court.

The short question in the appeal was whether the expression "the residue of the municipality" in the resolution of the municipality meant 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. On behalf of the appellant it was argued that the appellant would get the extended term provided by the Maharashtra Act, because in effect it was an extension under the Act within the meaning of the second proviso 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 that 'residue' of the 'term' was extended to December 31, 1965.

HELD : (i) The impact of s. 3 of the Maharashtra Act on the provisions of the Municipal Boroughs Act is that it 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 was the legal effect of the Maharashtra Act, the second proviso to s. 19 was not attracted to the instant case as there was no order or notification issued under s. 25 or any other relevant section of the Act extending the term of the Councillors fixed under s. 25 of the Act. Therefore for the present purpose the second proviso to s. 19 had to be left out of consideration and the problem had

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to be approached on the basis of the fiction that the term of the Councillors prescribed under s. 25 of the Act was extended up to December 31, 1965. [699 G-700 A]

(ii) The intention of the municipality could be gathered only from the tances statutory or otherwise existing at the time when the resolution was passed and on the express terms of the said resolution.

The second proviso to s. 19 contemplates the extension of the term of office of the Municipality under the Act. It was therefore not possible to predicate that at the time the resolution was passed the municipality could not have

contemplated a situation when the term of the Municipality would be extended under the provisions of the Act. Moreover from the Statement of objects underlying the issuance of the Ordinance which culminated in the Maharashtra Act it appeared that the question of extension of the term of the municipalities in the State was under serious consideration even in July 1963. Indeed on or about July 18, 1964 when the term of the President was extended, the municipality passed a resolution recommending that the term of the Municipality be extended beyond 4 years. It was therefore clear that on the basis of the statutory and other circumstances obtaining at the time the extension was made, the councillors clearly expected that 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 appeared to be that the term of the President should synchronise with the life of the municipality existing or extended as the case may be. [700 B- 701 D] The order of the High Court was therefore not correct and had to be set aside.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 481 of 1965.

Appeal from the judgment and order, dated April 30, 1965, of the Bombay High Court in Special Civil Application No. 447 of 1965.

C. B. Agarwala, S. N. Prasad, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant. S. V. Gupte, Solicitor-General, and B. R. G. K. Achar, for respondent Nos. 2 to 4.

The Judgment of the Court was delivered by 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 facts 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 the life of the Municipality would have expired on February 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 2, 1965, calling for a

meeting of the Municipality 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 issue of an appropriate order setting aside the notice issued by the Collector. There the appellant contended that, as the term of office of the Municipality had been extended by the Maharashtra Act up to December 31, 1965, he was entitled to continue in office as President till that date. A Division Bench of the said High Court rejected that contention and dismissed the petition. Hence the appeal. 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" under the Act within the meaning of the second proviso 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 provisions of the Act and the statutory extension given by the Maharashtra Act could not possibly be an extension under the Act; that even if the Maharashtra Act had the effect of amending s. 25 of the Act with the 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 construed on the basis of the circumstances existing at the time the resolution was passed, i.e., previous to the election of the President, and at that time the councillors 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 gathered only from the circumstances, statutory or otherwise, existing at the time the resolution was passed.

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 read 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 less than the residue of the term of office of the municipality, whichever is less and not exceeding four years, as the municipality shall, previous to the election of the president or vicepresident determine, or until the expiry within the said term of his term of office, as councillor, but shall be eligible for reelection :

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 shall think fit, for 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.-Notwith-

standing 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 councillors under s. 25, as it is an extension under the Act. The impact of s. 3 of the Maharashtra Act on the provisions of the Act is that it 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, as there was no order or notification issued under s. 25 or any other relevant section of the Act extending the term of the councillors fixed under s. 25 of the Act. Therefore for the present purpose we leave out of consideration the second proviso to s. 19 and approach the problem on the basis of the fiction that the term of the councillors prescribed under s. 25 of the Act was extended up to December 31, 1965. If that be so, the next question is whether on July 18, 1964, when the Municipal councillors passed a resolution to the effect that the term of office of the appellant shall be the residue of the

Municipality, their intention was that his term should extend only up to February 17, 1965, i.e., the date when the term of the Municipal councillors would have expired but for the statutory extension given by the Maharashtra Act. The intention of the Municipality can be gathered only from the circumstances, statutory or otherwise existing at the time when the resolution was passed and on the express terms of the said resolution. Under s. 19 of the Act, the Municipality can fix the term of office of the President between one and four years, except when the residue of the term of the Municipality is less than one year. But the second proviso to s. 19 also contemplates the extension of the term of office of the Municipality under the provisions of the Act. It is, therefore, not possible to predicate that at the time the resolution was passed the Municipality could not have contemplated a situation when the term of the Municipality would be extended under the provisions of the Act. With the knowledge of such a possible extension, when the members used the elastic expression "residue", it is not reasonable to attribute to them the intention that they meant only the residue of the term available to them at that time. If that was their intention they would have prescribed a definite date on which the term of the President would expire. That apart, there is sufficient material on the record which indicates that the councillors designedly used the word "residue" instead of fixing a precise date. It appears that it was in the contemplation of the councillors at the time of the election of the President that there was a possibility of the term of the Municipality being extended. In the Statement of Objects underlying the issuance of the Ordinance which culminated in the Maharashtra Act, it was observed as follows "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 Muni-

parties 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 general elections to such municipalities from the promulgation of the Ordinance until the 31st 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 passed a resolution recommending that the term of 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 extension was made, the councillors clearly expected that 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 extended, 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.