

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.04.2015

+ W.P.(C) 2913/2014 & CM No. 6035/2014

ONIKA MEHROTRA & ORS.

..... Petitioners

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

AND

+ W.P.(C) 3048/2014 & CM No. 6377/2014

NARENDER JAIN & ORS.

..... Petitioners

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

AND

+ W.P.(C) 3051/2014 & CM No. 6381/2014

SURENDER SOLANKI & ORS.

..... Petitioners

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in these cases:

For the Petitioners : Mr A.S. Chandihok, Sr. Advocate with
Mr Anil Amrit and Mr N. Tripathi in
W.P.(C) 2913/2014.

Mr Amit Gupta and Mr Anant A. Pavgi in
W.P.(C) 3048/2014 & W.P.(C) 3051/2014.

For the Respondents : Mr Subodh Kumar with Dr Kanchan Chawla
for R- 1 in W.P.(C) 2913/2014.

Mr Laliet Kumar and Mr Vipin Malik
for R-2 in W.P.(C) 2913/2014.

Mr Gaurang Kanth, Advocate with Mr Biji
Rajesh, Mr Rajeev Yadav, Mr Anchit Sharma,
Mr Abhay Pratap Singh for MCD in
W.P.(C) 3048/2014 & W.P.(C) 3051/2014.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners are persons who have been nominated by the Administrator (Lt. Governor of Delhi) under Section 3(3)(b)(i) of the Delhi Municipal Corporation Act, 1957 (hereafter the 'Act') to be represented in the concerned corporation. The petitioners, by virtue of being nominated in their respective corporations, are also members of the Ward Committees being electors within the territorial limits of the respective zones. The petitioners are being denied a right to vote in the meetings of their respective Ward Committees for electing a chairperson/deputy chairperson and a representative to the Standing Committee. They are also being denied an opportunity to offer themselves for election as a chairperson/deputy chairperson of their respective Ward Committees and/or as member of the Standing Committee or as the Deputy Chairman of the Standing Committee. Accordingly, the petitioners in W.P.(C) No.2913/2014 have filed the petition, *inter alia*, praying as under:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, order or direction thereby directing:-

A. The respondents to allow the petitioners and other similarly situated nominated members under clause (b) of sub-section (3) of section 3 of Delhi Municipal Corporation Act, 1957 to participate and vote in the ensuing elections to the ward committees to be constituted under section 50 of Delhi Municipal Corporation Act, 1957.”

In substance, the prayers of the petitioners in W.P.(C) 3048/2014 & W.P.(C) 3051/2014 are also similar. In addition, these petitioners also claim to be entitled to vote and offer themselves for election as members and office bearers of the Standing Committee.

2. The controversy that has to be addressed is whether a person who has been nominated by the Administrator under Section 3(3)(b)(i) of the Act would be disentitled to vote in the meetings of a Wards Committee. It is also necessary to consider whether nominated members – such as the petitioners – are entitled to offer their candidature for being elected as a representative of the Standing Committee, Chairperson/Deputy Chairperson of the Wards Committee or as a Chairman/Deputy Chairman of the Standing Committee.

3. The petitioners concede that they are not entitled to vote in any meeting of the corporation to which they are nominated as the same is proscribed by the proviso to Section 3(3)(b)(i) of the Act. They, however, contend that the same would not preclude them from voting in the meetings of their respective Ward Committees or being elected to the Standing Committee. They contend that the proviso to Section 3(3)(b)(i) of the Act would not extend to meetings other than the meetings of the concerned corporation. It is submitted that the Wards Committee or the Standing Committee are separate authorities under the corporation and the proviso to Section 3(3)(b)(i) of the Act does not place any fetter on the petitioners from fully participating in the meetings of the Wards Committee and/or Standing Committee along with other members of their respective committees.

4. The respondents dispute the above contention and contend that a person nominated to a municipal corporation is inherently disentitled to vote in any meeting of the corporation or in meetings of any authority constituted under the corporation. It was contended that the Ward Committee or the Standing Committee are part of the corporation and thus, the nominated members to the corporation would be disentitled to vote in the meetings of the said Committees. The learned counsel for the respondent also referred to Section 2(27) of the Act, which defines a member in relation to a corporation to mean a Councillor. He submits that reference to a member in relation to a Standing Committee or a Wards Committee would have to be read in a restrictive sense to mean only a Councillor and even though the persons nominated under Section 3(3)(b)(i) of the Act may be members of the Ward Committee, they would not be entitled to either vote in any meeting of the Wards Committee or be entitled to be elected as a member of the Standing Committee. The respondents rely on the decision of the Supreme Court in **Ramesh Mehta v. Sanwal Chand Singhvi and Ors: (2004) 5 SCC 409** in support of their contention that nominated members would not have any voting rights.

5. At the outset, it would be relevant to note the legislative history which led to the enactment of the provisions of the Act, the interpretation of which are the subject matter of dispute in these petitions.

6. The Municipal Government of Delhi was administered as per the provisions of the Punjab District Boards Act, 1883 and the Punjab Municipal Act, 1911. The municipal affairs of Delhi were being conducted by various local bodies and local authorities. A need was felt to have a

unified body to administer the municipal affairs of Delhi. Accordingly, the Delhi Municipal Corporation Act, 1957 was enacted by the Parliament which, *inter alia*, provided for the constitution of the Municipal Corporation of Delhi.

7. A need was felt to strengthen the urban local government, and this led to the enactment of the Constitution (Seventy Fourth Amendment) Act, 1992 by virtue of which Part IXA was introduced in the Constitution of India. Part IXA of the Constitution of India includes Article 243Q for constitution of Municipalities; Article 243R for composition of Municipalities; and 243S for constitution and composition of Wards Committees.

8. Clause (a) of Article 243P of the Constitution of India defines the term ‘Committee’ and clause (e) of Article 234P of the Constitution of India defines the term ‘Municipality’. The relevant clauses are quoted below for ready reference:-

“243P. Definitions – In this Part, unless the context otherwise requires, –

(a) “Committee” means a Committee constituted under article 243S;

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(e) “Municipality” means an institution of self-government constituted under article 243Q;”

9. Article 243Q of the Constitution of India provides for the constitution of Municipalities. Sub-article (1) of Article 243Q of the Constitution of India is relevant and is quoted below:-

“243Q. Constitution of Municipalities. — (1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.”

10. Since Delhi, undoubtedly, has a large urban area, the mandate of Article 243Q(1) of the Constitution of India, in the context of Delhi, would be to constitute Municipal Corporation(s) for the National Capital Territory of Delhi.

11. Article 243R of the Constitution of India provides for composition of Municipalities and reads as under:-

“243R. Composition of Municipalities.—(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of—

- (i) persons having special knowledge or experience in Municipal administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- (iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.”

12. Article 243S of the Constitution of India, which provides for constitution and composition of Wards Committees reads as under:-

“243S. Constitution and composition of Wards Committees, etc. — (1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to—

- a) the composition and the territorial area of a Wards Committee;

- b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of—

- a) one ward, the member representing that ward in the Municipality; or
- b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee,

shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees.”

13. A plain reading of Article 243Q of the Constitution of India mandates that a Municipality be constituted and in the context of Delhi, which is a larger urban area, the Municipality would be a Municipal Corporation. By virtue of Article 243R(1) of the Constitution of India, all seats in a municipality – which in the case of Delhi would be a municipal corporation – would be filled by persons chosen by direct election from the territorial constituencies. By virtue of Sub-article (2) of Article 243R of the Constitution of India, a Legislature of State could provide for a representation in a municipality of other persons including persons having special knowledge or experience in municipal administration. However, the proviso to Article 243R(2)(a) of the Constitution of India makes it clear that those persons who are represented in a municipality, not by virtue of being

elected but by reason of having special knowledge or experience in municipal administration, would not have a right to vote in meetings of the Municipality.

14. Article 243S(2) of the Constitution expressly provides that the Legislature of a State may make laws with respect to the composition of the Wards Committee and the manner in which the seats in a Ward Committee would be filled. It is apparent from the plain reading of these provisions that the Constitution of India has made separate provisions for composition and constitution of Ward Committees and separate provisions for Municipalities. Whereas provisions for constitution and composition of Municipalities are stated in Article 243Q and 243R of the Constitution of India, the provisions of constitution and composition of Wards Committee are contained in Article 243S of the Constitution of India.

15. By virtue of Article 243R(1) of the Constitution of India, the seats in a municipal corporation are necessarily to be filled by persons directly elected from the territorial constituencies in the municipal area; the State legislature does not have any leeway in this regard. But, the State legislature may, by law, provide for representation in a municipality of other persons as specified under Article 243R(2) of the Constitution of India including persons having special knowledge or experience in municipal administration. However, insofar as the composition of the Ward Committee is concerned, the Constitution of India has left it to the Legislature of the State to make laws for its composition, as well as the manner in which the seats in the Ward Committee would be filled. Thus, the State Legislature is not fettered in any manner in determining the

composition of the Wards Committee except that by virtue of Article 243S(3) of the Constitution of India, a member of a Municipality representing a ward within the territorial area of the Wards Committee would necessarily be a member of the Wards Committee.

16. A plain reading of Article 243R and 243S of the Constitution of India clearly discloses distinct schemes for composition of Municipality and Wards Committee. Whilst the role of a State legislature in composition of a Municipality is limited, the role of a State Legislature in determining the composition of Wards Committee is much larger. Whereas the municipal corporations are to be composed by persons directly elected from the territorial constituencies, the State Legislatures could make laws for further representation by persons having special knowledge or experience in municipal administration. However such persons, by virtue of the proviso to Article 243R(2)(a) of the Constitution of India, would not be entitled to vote in the meetings of the Municipalities. The scheme for constitution of Wards Committee is distinct from the scheme in Articles 243Q and 243R of the Constitution of India made in respect of Municipalities; the Constitution of India has left it to the State Legislature to frame laws to provide for compositions as well as the manner in which the Wards Committee and other Committees would be constituted. Thus, it was open for the Legislature to either provide for equal voting rights to all members of the Ward Committees or to specifically exclude some members. It is also not necessary that persons being represented in the Municipality be made members of Wards Committees. Subject to the provisions of Article 243S(4) of the Constitution of India, it would be open

for a State Legislature to, by law, include such persons as members of Ward Committees as it in its legislative wisdom deems fit. The only constitutional mandate regarding composition of Wards Committee is found in Article 243S(3) of the Constitution of India. A plain reading of Article 243S(3) and 243S(4) of the Constitution of India indicates that a member of a Municipality representing a ward would also necessarily be a member of the Wards Committee. Article 243S(4) of the Constitution of India also indicates that the chairperson of the Wards Committee would necessarily have to be a member representing the ward in the Municipality and where a Wards Committee is for two or more wards, the chairperson of the Ward Committee would necessarily be one of the members representing the wards in the Municipality as may be elected by other members. It is also apparent that the member representing the ward in the municipality is a person who is directly elected to a seat in the Municipality in terms of Article 243R(1) of the Constitution of India. Thus, whilst an elected member from a ward would necessarily be a member the Wards Committee, the Legislature can make provisions for other constituents of Wards Committee.

17. With the introduction of Part IXA in the Constitution of India, it was necessary to amend the Act to bring it in conformity with Part IXA of the Constitution of India. Accordingly, the Act was amended by the Delhi Municipal Corporation (Amendment) Act, 1993 which came into effect from 01.10.1993. Prior to the said amendment, the Act provided for six elected Aldermen to be on the Corporation. Such Aldermen enjoined voting rights. Since Article 243R of the Constitution of India provided for

representation in a Municipality of persons having special knowledge and experience in municipal administration without any voting rights, Section 3 of the Act was amended; the provision for six elected Aldermen on the Corporation was replaced to provide for nomination of 10 members having special knowledge or experience in municipal administration. Section 50 of the Act was also amended to introduce provisions for constitution of a Ward Committee for each zone.

18. Since the area under the Delhi Municipal Corporation had expanded considerably. A need was felt for splitting up the area under the Delhi Municipal Corporation and establishing three Municipal Corporations in place of the Municipal Corporation of Delhi. This necessitated legislative changes in the Act. Accordingly, the Delhi Municipal Corporation (Amendment) Act, 2011 was enacted which brought about the legislative changes in the Act to provide for three Municipal Corporations in place of Municipal Corporation of Delhi.

19. Section 3 of the Act provides for establishment of Corporations. The relevant portion of the said Section, as is currently in force, reads as under:-

“3. Establishment of the Corporation – (1) The Government shall, by notification in the Official Gazette, establish for the purposes of this Act, three Corporations charged with the municipal Government of Delhi.

(1A) The name, area and limits of the three corporations established under sub-section (1) shall be as per the fourteenth schedule.

(2) Every Corporation so established shall be a body corporate with the name duly notified by the Government

having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.

(3) (a) A Corporation shall be composed of the councillors;

(b) the following persons shall be represented in the a Corporation, namely:—

- (i) ten persons, who are not less than 25 years of age and who have special knowledge or experience in municipal administration, to be nominated by the Administrator:

Provided that the persons nominated under this sub-clause shall not have the right to vote in the meetings of a Corporation;

- (ii) members of the House of the People representing constituencies which comprise wholly or partly the area of a Corporation and the members of the Council of States registered as electors within the area of a Corporation;

- (iii) as nearly as possible one-fifth of the members of the Legislative Assembly of the National Capital Territory of Delhi representing constituencies which comprise wholly or partly the area of a Corporation to be nominated by the Speaker of that Legislative Assembly, by rotation, every year:

Provided that while nominating such members, by rotation, the Speaker shall ensure that as far as possible all the members are given an opportunity of being

represented in a Corporation at least once during the duration of a Corporation;

- (iv) the Chairpersons of the Committees, if any, constituted under sections 39, 40 and 45, if they are not councillors.

(4) Councillors shall be chosen by direct election on the basis of adult suffrage from various wards into which Delhi shall be divided in accordance with the provisions of this Act.”

20. Section 3A of the Act provides for division of the area of a Corporation into zones and wards and the said Section reads as under:-

“3A. Division of the area of a Corporation into zones and wards.-(1) The area of every Corporation shall be divided into a number of zones and each zone into a number of wards as specified in the Fourteenth Shedule.

(2) The Government may, by notification in the Official Gazette, alter the number or the name, and increase or diminish the area or any zone or ward specified in the Fourteenth Schedule.”

21. Section 11 of the Act provides for general election of Councillors. Section 11(1) of the Act is relevant and reads as under:-

“11. General elections of councillors.-(1) A general election of councillors shall be held for the purpose of constituting a Corporation under section 3.”

22. Chapter IV of the Act provides for municipal authorities under each corporation. Section 44 of the Act mandates that there shall be a Standing Committee; a Ward Committee; and a Commissioner under each Corporation. Section 45 of the Act provides for Constitution of a Standing

Committee. Section 47 of the Act provides for election of a Chairman and a Deputy Chairman of the Standing Committee. Section 50 of the Act provides for the constitution of the Wards Committee.

23. For the purposes of these petitions, it would also be necessary to refer to Sections 44, 45, 47, 50 and 51 of the Act, which are quoted below:-

“44. Enumeration of municipal authorities.-For the efficient performance of its functions, there shall be the following municipal authorities under each Corporation, namely:—

- (a) the Standing Committee;
- (b) the Wards Committee; and
- (c) the Commissioner.

45. Constitution of the Standing Committee.-(1) The Standing Committee shall consist of—

- (i) six members elected by the councillors from among themselves at the first meeting of a Corporation;
- (ii) one member each elected by the members of each Wards Committee from among themselves at the first meeting of the Wards Committee;

after each general election or as soon as possible at any other meeting subsequent thereto.

(2) On and from such date as may be determined by a Corporation by resolution the Standing Committee shall be deemed to have been constituted.

(3) One-half of the members referred to in clause (i) of subsection (1) and one-half of the members referred to in clause (ii) of that subsection shall retire on the expiration of one year from the date of the constitution of the Standing Committee after the commencement of the Delhi Municipal Corporation

(Amendment) Act, 1993, and for that purpose they shall be selected by lot from amongst their respective categories before the said expiration in such manner as the Chairman of the Standing Committee may determine.

(4) During each succeeding year the members who have been longest in office shall retire therefrom:

Provided that in the case of a member who has been re-elected the term of his office shall for the purpose of this sub-section be computed from the date of his re-election.

(5) A Corporation or the concerned Wards Committee, as the case may be, shall in a meeting held immediately before the occurrence of the vacancies, caused by the retirement of the members under sub-section (3) or sub-section (4), elect the requisite member or members from amongst the councillors or from amongst members of the Wards Committee, as the case may be, to fill up those vacancies.

(6) Any councillor who ceases to be a member of the Standing Committee shall be eligible for re-election.

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47. Chairman and Deputy Chairman of the Standing Committee.- (1) The Standing Committee shall at its first meeting in each year elect one of its members who is a Councillor to be the Chairman and another member to be the Deputy Chairman.

(2) The Chairman or the Deputy Chairman of the Standing Committee shall hold office from the date of his election until the election of his successor in office unless in the meantime he resigns his office as Chairman or Deputy Chairman or his term of office as member of the Standing Committee is in any manner determined or unless in the case of the Deputy Chairman he is elected as Chairman.

(3) On the occurrence of any casual vacancy in the office of the Chairman or the Deputy Chairman, the Standing Committee shall within one month of the occurrence of such vacancy elect one of its members who is a Councillor as Chairman or Deputy Chairman, as the case may be, and the Chairman or the Deputy Chairman so elected shall hold office for the remainder of his predecessor's term.

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50. Constitution of the Wards Committee.- (1) For each Zone there shall be a Wards Committee which shall consist of,—

(a) all the councillors elected from the wards comprised in that Zone; and

(b) the person, if any, nominated by the Administrator under sub-clause (i) of clause (b) of sub-section (3) of section 3 if his name is registered as an elector within the territorial limits of the Zone concerned.

(2) The Wards Committee shall be deemed to have been constituted from the date on which a Corporation is constituted after each general election.

51. Applications of sections 47 and 48.- The provisions of sections 47 and 48 shall apply in relation to a Wards Committee as they apply in relation to the Standing Committee.”

24. A plain reading of Section 3(3)(a) of the Act indicates that the Corporation is composed by Councillors. By virtue of Section 11(1) of the Act, the Councillors are to be elected by a general election. This is in conformity with Article 243R of the Constitution of India which provides for filling the seats in a Municipality by persons chosen by direct election from the territorial constituencies in the municipal area. Section 3(3)(b) of

the Act provides for representation in the Corporation by several category of persons. By virtue of Section 3(3)(b)(i) of the Act, the Administrator - which means the Lt. Governor of the National Capital Territory of Delhi - is to nominate 10 persons who have special knowledge and experience in municipal administration to be represented in the corporation. The proviso to Section 3(3)(b)(i) of the Act clearly indicates that the persons nominated under the said clause would not have any right to vote in the meetings of a corporation. This is also in conformity with the proviso to Article 243R(2)(a) of the Constitution of India, which proscribes such persons from having any right to vote in meetings of the Municipality to which they are nominated.

25. Section 44 of the Act mandates that there shall be a Standing Committee; Wards Committee; and Commissioner for the efficient functioning of the Corporation. These are described as “municipal authorities under each corporation”. Thus, although the said authorities are stated to be under each corporation, nonetheless, they are described as separate and distinct municipal authorities.

26. By virtue of Section 50(1) of the Act, each zone shall have a Wards Committee which would consist of all Councillors elected from the Wards comprised in that zone and persons nominated under Section 3(3)(b)(i) of the Act whose names are registered as electors within the territorial limits of the concerned zone. By virtue of Article 243S(2) of the Constitution of India, the Legislature of State is empowered to make provisions for constitution and composition of the Wards Committee. And, Section 50 of the Act has been enacted pursuant to such power. Section 50

of the Act does not contemplate any distinction in either the role or the function of the members that constitute the Wards Committee. As pointed out earlier, Article 243S of the Constitution of India has left it to the State Legislature to make provisions with respect to the composition of the Wards Committee and the manner in which the seats in the Wards Committee shall be filled. Section 50 of the Act expressly provides that the persons, if any, nominated by the Administrator under Section 3(3)(b)(i) of the Act would be constituents of the Wards Committee if their names are registered as electors within the territorial limits of the concerned zone. It is important to note the difference in the language of Section 50 and Section 3(3) of the Act. Whereas Section 3(3)(a) of the Act expressly states that corporation shall be composed of Councillors and Section 3(3)(b) of the Act provides for persons to be represented in a Corporation, Section 50 of the Act provides that the Wards Committee “*shall consist of*” Councillors and persons nominated under Section 3(3)(b)(i) of the Act who are registered as electors within the concerned zone. Since there is no restriction as to the participation of the constituent members of a Wards Committee, the restriction as to the voting rights that may be placed on persons nominated under Section 3(3)(b)(i) of the Act cannot be read in under Section 50 of the Act. It is important to note that the Constitution of India had clearly made separate provisions relating to Municipalities (i.e. Article 243Q and 243R) and Wards Committees (Article 243S). Whereas express provision has been made to disentitle persons, nominated to a Municipality by virtue of their special knowledge and experience in municipal administration, to vote in meetings of the Municipalities, no such restriction or fetter is found under Article 243S of the Constitution of India

which provides for Constitution of Wards Committee. It was open for the State Legislature to make appropriate law for the composition and the manner in which seats to a Wards Committee would be filled. Thus, it was open for the Legislature to make provisions for any restriction on voting rights of any category of members of Wards Committee. Although the Parliament has enacted provisions for constitution of the Wards Committee, the Act does not indicate that the participation of any member of the Wards Committee in its functions is restricted in any manner. The decision of the Supreme Court in **Ramesh Mehta** (*supra*) is in the context of the Municipality and does not throw any light as to the rights of nominated members who are accepted as constituent members of other Committees, in relation to those Committees.

27. However, insofar as the election of a Chairperson of a Wards Committee is concerned, the Constitution of India expressly provides that in case of a Wards Committee consists of one ward, the member representing that ward in the municipality would be the chairperson of the Wards Committee. And, in case the Wards Committee consists of two or more Wards Committees it is expressly provided that one of the members representing such wards in the municipality elected by members of the Wards Committee would be the chairperson. It is, thus, necessary that the chairperson of the Wards Committee be a member which represents a ward in the municipality. Clearly, the persons nominated by the Administrator for representation in the Corporation under Section 3(3)(b)(i) of the Act are not members representing a particular ward in the corporation. The Wards are represented by Councillors who are elected. By virtue of Section 5 of

the Act, the area of the corporation is to be divided into single member wards for the purposes of election of Councillors. Since the Constitution of India provides that there shall be a Chairperson of the Wards Committee, the provisions of Article 243A(4) of the Constitution of India would have to be complied with. And since the language of Article 243S(4) of the Constitution of India is clear inasmuch as only a member representing the ward in a municipality would be the Chairperson, a person who is nominated by virtue of having special knowledge or experience in municipal administration cannot be the Chairperson of the Wards Committee, as he does not represent the Ward in the Municipal Corporation, but is a nominated member by virtue of his/her knowledge or experience in municipal affairs.

28. It is also relevant to note that Section 51 of the Act provides that the provisions of Section 47 of the Act, which provides for appointment of a Chairperson and a Deputy Chairperson of a Standing Committee would *mutatis mutandis* apply in relation to Wards Committee. It is relevant to note that Section 47(1) of the Act provides that the “*Standing Committee shall at its first meeting in each year elect one of its members who is a Councillor to be the Chairman and another member to be the Deputy Chairman.*” Since by virtue of Section 51 of the Act the said provision is also applicable to a Wards Committee, the chairperson of a Wards Committee would necessarily have to be a member of Wards Committee, who is a Councillor. Thus, only a Councillor – i.e. an elected member to the Municipal Corporation – can file his/her nomination for being elected as a

Chairperson of the Wards Committee. This is in complete sync with the provisions of Article 243S(4) of the Constitution of India.

29. It was contended by the respondents that the expression “member” as used in Section 47 of the Act – which by virtue of Section 51 of the Act – is also applicable to the Wards Committee must be read to mean a Councillor. The sole basis on which the said contention was advanced was the definition of a ‘member’ as provided under Section 2(27) of the Act. I find it difficult to accept this contention as Section 47(1) of the Act makes a distinction between a member who is a Councillor and another member of the Standing Committee. Whilst a member who is a councilor can be elected as a Chairman, no such qualification is required of another member to be elected as the Deputy Chairman. The plain reading of Section 47(1) of the Act indicates that the Legislature was conscious that the Standing Committee would be comprised of members who are not Councillors. Otherwise, there was no reason to expressly provide an added qualification of being a Councillor for a member to be elected as a Chairman. It is relevant to note that the words “*who is a Councillor*” were introduced by the Delhi Municipal Corporation (Amendment) Act, 1993 which was enacted to amend the Act in conformity with Part IXA of the Constitution of India. It is apparent that the above amendment was carried out to bring the Act in conformity with Article 243S(4) of the Constitution of India.

30. The contention that by virtue of Section 2(27) of the Act, the expression “member” as used in relation to a Standing Committee must also mean a Councillor is, in my view, liable to be rejected. First and foremost, for the reason that Section 2(27) of the Act expressly indicates

that a member “*in relation to the corporation*” would be a Councillor. Thus, clearly indicating that this definition would not be applicable for members in relation to other bodies. It is also seen that the Act uses the word “member” in relation to several bodies including a Standing Committee, House of People, Council of States etc. Thus, the definition of a member in relation to a Municipal Corporation as provided under Section 2(27) of the Act cannot be extended to a member of the Standing Committee or a Wards Committee. These bodies are separate municipal authorities as expressly indicated by Section 44 of the Act. The Constitution of India also makes a clear distinction with regard to composition and constitution of a Municipality and Wards Committee

31. The next issue to be addressed is whether a member of the Wards Committee could offer its candidature for being elected as a member of the Standing Committee. By virtue of Section 45 of the Act, the Standing Committee is to consist of (a) six members elected by Councillors from among themselves; and (b) one member each elected by members of each Wards Committee from among themselves.

32. Indisputably, by virtue of Section 50(1)(b) of the Act, a person who is nominated by the Administrator under Section 3(3)(b)(i) of the Act and his name is registered as an elector within the territorial limits of the zone concerned, would be a constituent member of the Wards Committee. As stated earlier, there is no restriction placed on the role or participation of a member of the Wards Committee who becomes a member by virtue of being nominated under Section 3(3)(b)(i) of the Act. In absence of any fetter to vote and participate in a meeting of the Wards Committee, either

under the Act or under the Constitution of India, there would be no reason to deny voting rights to the petitioners or curtail their participation in the Wards Committee in any manner, except to the extent as expressly provided under Article 243S(4) of the Constitution of India.

33. It is also relevant to note the provisions of Section 47(1) of the Act which provides that Standing Committee shall at its first meeting in each year elect one of its member, who is a Councillor, to be the Chairman and another member to be a Deputy Chairman. A plain reading of Section 47(1) of the Act indicates that only a member who is a Councillor can be elected as a Chairman. Thus, the post of Chairman is restricted only to those members who are Councillors and is not available to any other member. No such qualification is placed on the post of Deputy Chairman. Thus, a Deputy Chairman of the Standing Committee can be any member of the Standing Committee. A plain reading of Section 47(1) of the Act also supports the view that while some members of the Standing Committee are Councillors, others are not. Since the composition of Standing Committee consists of (a) six members elected by Councillors from among themselves; and (b) one member each elected by members of each Wards Committee from among themselves. It stands to reason that a member who is not a councilor has to be a member elected by members of Wards Committee. If the interpretation as canvassed by the respondents is to be accepted then no person other than a Councillor could be a member of the Standing Committee. If this were so, there was no reason for the legislature to expressly make a distinction between a member who is a Councillor for the post of Chairman and any other member for the post of Deputy Chairman.

It is relevant to note that the provisions of Section 47(1) of the Act were amended by virtue of Section 41 of the Delhi Municipal Corporation (Amendment) Act, 1993 and the words “who is a Councillor” were introduced as a qualification of members who could be elected as Chairpersons. If the respondent’s contention is accepted that all members of the Standing Committee would have to be Councillors then the aforesaid amendment would be wholly unnecessary and the words which have been specifically introduced by a legislative amendment would be mere surplusage. Thus, in my view, the respondent’s contention must be rejected.

34. In **Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry**: AIR 1920 PC 181, it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons.

35. In **Aswini Kumar Ghose v. Arabinda Bose**: [1953] 4 SCR 1 the Supreme Court observed as under:

“It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.”

36. It is apparent that the words “who is a councilor” were added to Section 47(1) of the Act in view of the Seventy-fourth Constitution Amendment. There is no reason to believe that these words are mere surplusage and the statute was needlessly amended to introduce aforesaid words. This, in my view, cannot be readily accepted.

37. It was contended on behalf of the respondents that Wards Committee and Standing Committee are an integral part of a Corporation and, therefore, the proviso to Section 3(3)(b)(i) of the Act would also be applicable where the nominated persons under Section 3(3)(b)(i) are co-opted as a member. In my view, the aforesaid contention also cannot be accepted. First of all, there is no requirement for persons nominated under Section 3(3)(b)(i) of the Act to be nominated to other bodies as the Article 243S of the Constitution of India had expressly left it to the State Legislature to enact laws for providing for composition of the Wards Committee. The legislature in its wisdom chose to include members nominated to in the Corporation to be constituent members of Wards Committee without any fetter or restriction. Thus, in absence of any restrictive provision with respect to rights of members of a Wards Committee, no such restriction can be inferred. Secondly, a clear distinction has been made by the Constitution of India with regard to composition of the Corporation and Wards Committee. Even though a Wards Committee and a Standing Committee are a part of the Municipal Government, they are statutory authorities constituted under the Act. Thus, the disqualification as may be attached to a nominated member of the Corporation cannot be necessarily imputed by implication to members of these bodies.

38. It is well settled that the intention of the Legislature is to be gathered from the language used. The words of the statute have to be understood in their normal and ordinary sense unless it leads to some absurdity or unless the context suggests otherwise. In the present case, there is no ambiguity in

the language of the relevant Sections of the Act, which would lend them to another interpretation. Thus, the language of Section 45(1)(ii) of the Act would have to be read as its plain meaning suggests. There is no scope for adding any other words or introducing any qualification to restrict any member of the Wards Committee from participating in electing any constituent member of the Wards Committee as a member of the Standing Committee.

39. In *Nathi Devi v. Radha Devi Gupta*: (2005) 2 SCC 271 the Supreme Court held as under:

“13. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.”

40. In *Prakash Nath Khanna and Anr. v. Commissioner of Income Tax and Anr.*: (2004) 9 SCC 686 the supreme Court reiterated the above principle in the following words:

“14. 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.”

41. As explained earlier, the Act had been amended in 1993 to bring it in conformity with the Constitution of India. Thus, the provisions of the Act have to be read in the context of part XIA of the Constitution of India. The Constitution itself does not fetter or restrict voting rights in respect of any member of a Wards Committee. No such restrictions are found in the Act either. It is also important to note that the Parliament in its wisdom thought it fit not to provide any voting right to persons nominated in the municipality by virtue of their knowledge and experience in municipal affairs. And, it accordingly expressly indicated so. The fact that no such restrictions have been indicated in respect of general participation of the members in a Wards Committee clearly indicates that the Parliament did not consider it necessary that any such restriction be placed on members of the Wards Committee who had not been elected. It is important to note that insofar as the appointment of a Chairperson of the Wards Committee is concerned, the Constitution expressly provided that Chairperson would be a member who represented the Ward in Municipality, which clearly indicated

that a person nominated for his knowledge and experience of municipal affairs could not be a Chairperson of the Wards Committee. In the context of the Act as well as the Constitution of India, no restriction on the participation or voting of a member of the Ward Committee can be inferred other than as indicated above.

42. Thus, to summarize the above, the petitioners - being constituent members of Wards Committees, can participate and vote in any meeting of the respective Wards Committee. However, the petitioners cannot file their nomination or offer their candidature for being elected as Chairperson of the Wards Committee. The petitioners may also offer their candidature for being elected as member of the Standing Committee. In the event any of the petitioners are elected as member of the Standing Committee, they may vote at any meeting of the Standing Committee and also offer their candidature for being elected as Deputy Chairperson of the Standing Committee; but, they cannot offer their candidature for being appointed as a Chairperson of the Standing Committee.

43. The petitions are allowed in the aforesaid terms. Pending applications stand disposed of. No order as to costs.

VIBHU BAKHRU, J

APRIL 27, 2015
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