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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5958 OF 2018

Ganesh Prakash Wankar ...Petitioner
vs.
The Municipal Corporation of
city of Solapur ...Respondent

Mr.Surel Shah for the Petitioner
Mr.Omar M. Kadu I/b Mr.D.G.Dhanure for the
respondent Nos.1 and 2
Ms R.A.Slunkhe, AGP for respondent No.4

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : JULY 17, 2018

P.C.:

1 Heard the learned counsel appearing for the
petitioner. The basic challenge in this petition
under Article 226 of the Constitution of India is to
the exercise of power by the General Body of the
first respondent-Municipal Corporation under section
35-A of the Maharashtra Municipal Corporations
Act, 1949 (for short 'the said Act').

2 It is not in dispute that under the provisions
of the said Act of 1949, Standing Committee
constituted under section 20 has vast powers. It is
also not in dispute that from 1st March 2018
onwards, the Chairperson of the Standing Committee
could not be appointed for various reasons.

3 The first submission of the learned counsel for the petitioner is that in view of sub-section 5 of section 21 of the said Act, the Municipal Corporation could have appointed the Chairperson of the Standing Committee on expiry of stipulated period of 30 days. The submission is that under the said provision, the Municipal Corporation has a power to appoint the Chairperson of the Standing Committee in case of the failure of the Standing Committee to appoint the Chairperson. His second submission is based on provisions of Rule 3 of Chapter II of Schedule D to the said Act of 1949. His submission is that if the elected Chairperson is absent at the time of the meeting of the Standing Committee, one of the members present can be chosen by the meeting to be the Chairperson for the said meeting. He submits that there is no difference between a situation where there is an absence of the appointed Chairperson and where there is a failure to appoint the Chairperson. He would, therefore, submit that the Municipal Corporation (General Body) should be restrained from exercising power of section 35-A.

4 We have considered the submissions. Section 35-A of the said Act reads thus:

“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."

5 Today, it is not in dispute that from 1st March 2018, for various reasons, the Chairperson of Standing Committee could not be appointed. Section 20 of the said Act of 1949 deals with the constitution of the Standing Committee. Section 21 provides for appointment of the Chairperson of the Standing Committee. Rule 3 of Chapter II of Schedule D deals with the proceedings of the Standing Committee. A meeting of the Standing Committee is ordinarily required to be presided over by its Chairperson. Clause (e) of Rule 3 further provides that the meeting shall be presided over by the Chairperson if he is present at the time of the meeting. If the Chairperson is absent, the meeting shall be presided over by one of the members present as may be chosen by the meeting to the Chairperson for the occasion.

6 Thus, unless the Chairperson of the Standing Committee is duly appointed under the provisions of

the said Act of 1949, meetings of the Standing Committee cannot be held as the Constitution of the Standing Committee is not complete. The exception is in the case of a meeting convened to elect/appoint the Chairperson. Clause (e) of Rule 3 is applicable only when there is a lawfully appointed Chairperson of the Standing Committee and when he/she fails to remain present at the time appointed for holding of the meeting. Clause (e) is applicable when there is an appointed Chairperson. Today, there is no appointed Chairperson.

7 Section 35-A is applicable when any Committee constituted under the said Act, for any reason, is not in a position to exercise its power and discharge its duties under the said Act. In such case, the powers of the Committee can be exercised by the Municipal Corporation (its General Body). The object of section 35-A which is incorporated by way of an amendment by Act No.32 of 2011 appears to be that the functioning of the Municipal Corporation should not come to a standstill because a particular statutory Committee is unable to function and unable to exercise its powers. Even assuming that the learned counsel for the petitioner is right in submitting that by exercising the power under subsection 5 of section 21, the General Body could have appointed the Chairperson, the fact remains that from 1st March 2018, there is no lawfully appointed Chairperson of the Standing Committee. Therefore, it follows that section 35-A is squarely applicable

as the Standing Committee is not in a position to hold meetings and perform its duties and functions. Hence, section 35-A is applicable to the fact situation.

8 Therefore, we find nothing wrong in the General Body exercising the power under section 35A of the said Act of 1949. We see no merit in the petition and the same is rejected.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)