IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9829 OF 2017

Yogesh Mangalsen Bahal ...Petitioner
vs.
The Commissioner of Pimpri Chinchwad Municipal Corporation and others ...Respondents

Mr.Balkrishna Joshi a/w Mr.Virendra Pethe for the Petitioner
Mr.R.S.Apte, Senior Advocate i/b Mr.Rohit P. Sakhadeo for the respondent Nos.1 and 2
Ms R.A.Salunkhe, AGP for respondent No.3

CORAM : A.S.OKA, &
P.N.DESHMUKH, JJ.
DATE : FEBRUARY 20 and 21, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 By order dated 24th January 2018, notice for final disposal was issued. Accordingly, on earlier date the petition was heard and today it is kept for Judgment. The challenge in this petition under Article 226 of the Constitution of India is to the Resolution passed by the second respondent-Municipal Corporation in its General Body Meeting held on 20th June 2017. By the said Resolution, the General Body of the second respondent Municipal Corporation purported to delegate certain powers of the Municipal Corporation to the Standing Committee and to the Municipal Commissioner.

2 The first submission of the learned counsel

appearing for the petitioner is that there is no provision under the Maharashtra Municipal Corporations Act,1949 (for short `the said Act') which permits the delegation of powers of the General Body of the Municipal Corporation either to the Standing Committee or the Municipal Commissioner. The second submission is that the powers of the General Body both under section 101 as well as under Rule 2 of Chapter VII of Schedule D of the said Act cannot be delegated either to the Standing Committee or to the Municipal Commissioner. He submits that the subject of delegation of powers in favour of the Standing Committee or the Municipal Commissioner was not on the agenda of the meeting on that day. Inviting our attention to the relevant Rules and in particular, Rules contained in Chapter II of Schedule D of the said Act, he submitted that without there being a subject on the agenda, a resolution providing for delegation could not have been passed.

3 The learned senior counsel for the Municipal Corporation firstly submitted that the present petitioner is an elected Councilor who was present in the General Body Meeting held on 20th June 2017 and there was no material placed on record to show that he made an attempt to oppose the passing of the said resolution by raising the contentions which are raised in this petition. The second submission is that non essential functions of the Municipal Corporation (General Body) have been delegated to the Standing Committee. He pointed out that as

regards the delegated powers in respect of the budget, the said powers are formal in nature such as payment of income tax collected by the Corporation, refund deposits etc. He would therefore submit that by no stretch of imagination any illegality has been committed. He also invited our attention to various provisions of the said Act. He relied upon section 67 of the said Act. He submitted that there is no prohibition on making such delegation. He also invited our attention to section 88 of the said Act which deals with the municipal funds. Our attention was also invited to section 86 on the same issue. He submitted that as regards the powers of the Municipal Corporation which were delegated to the Standing Committee, the said Committee has not exercised said powers. He also invited our attention to sections 101 and 103 of the said Act. He pointed out the provisions of Chapter VII of Schedule D which deal with the budget. He also invited our attention to Rule 2 of Chapter VII. He submitted that in any case, no interference is called for at the instance of the petitioner who was present in the meeting. The learned counsel for the petitioner pointed out the averments made in the petition for showing the manner in which the meeting was conducted.

4 We have given careful consideration to the submissions. Firstly, we must note what are the contents of the impugned resolution No.42. The first part of the impugned resolution which is objected to by the petitioner provides that the

powers of the Municipal Corporation under section 101 and Rule 2 of Chapter VII in Schedule D of the said Act in relation to accounts head are conferred on the Standing Committee. It records that the approval has been granted to confer powers on the Standing Committee. The second part of the resolution which is objected to is that the authority as regards the third part of the budget has been conferred on the Municipal Commissioner.

5 Thus, the resolution purports to delegate certain powers of the Municipal Corporation to the Standing Committee as well as to the Municipal Commissioner.

6 Chapter II of the said Act provides for various municipal authorities in the said Act. The said authorities are the Corporation constituted under section 5 of the said Act, Standing Committee, Transport Committee, Wards Committee, Special and Ad-hoc Committees, Joint Committee, Municipal Commissioner and the Transport Manager. As far as the Corporation is concerned, section 5 provides that each Corporation shall consist of elected councilors as well as nominated councilors. This body is popularly referred as General Body. Thus, the Corporation, the Standing Committee and the Municipal Commissioner are the different authorities under the said Act. It is in this context that the submissions canvassed across the bar are required to be considered. Section 67 lays down the functions of the several municipal authorities. Section 67 reads

thus:

> **“67 Functions of the several municipal authorities**
>
> (1) The respective functions of the several municipal authorities shall be such as are specifically prescribed by or under this Act.
>
> (2) Except as otherwise expressly provided in this Act, the municipal government of the City vests in the Corporation.
>
> (3) Subject, whenever it is in this Act expressly so directed to the approval or sanction of the Corporation or the Standing Committee and subject also to all other restrictions, limitations and conditions imposed by this Act or by any other law for the time being in force, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which imposes any duty or confers any powers on the Corporations vests in the Commissioner, who shall also,-
>
> > (a) perform all the duties and exercise all the powers specifically imposed or conferred upon him by this Act or by any other law for the time being in force;
> >
> > (b) prescribe the duties of, and exercise supervision and control over, the acts and proceedings of all municipal officers and servants, other than the Municipal Secretary and the Municipal Chief Auditor

and the municipal officers and servants immediately subordinate to them, and subject to the regulations, dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances;

(c)in any emergency, take such immediate action for the service of safety of the public or the protection of the property of the Corporation as the emergency shall appear to him to justify or to require notwithstanding that such action cannot be taken under this Act without the sanction, approval or authority of some other municipal authority or of the [State] Government:

Provided that the Commissioner shall report forthwith to the Standing Committee and to the Corporation the action he has taken and his reasons for taking the same and the amount of cost, if any, incurred or likely to be incurred in consequence of such action which is not covered by the current budget-grant under the provisions of this Act;

(d) perform the duties and exercise the powers imposed or conferred upon the Transport Manager by this Act in his absence or on failure by him to perform or exercise the same."

7 Sub-section 1 of section 67 provides that

respective functions of the several municipal authorities shall be as are specifically prescribed by or under the said Act. On conjoint reading of sub-section 1 and 2, it is crystal clear that if the said Act specifically provide that a particular function shall be exercised by a particular municipal authority, the same shall be performed by the same municipal authority. Only when the said Act is silent as to which municipal authority shall perform a particular function, it is the municipal Corporation which will have to discharge the said function.

8 Sub-section 1 of section 69 specifically confers a power to delegate the exercise of power, duty or functions vested in the Commissioner or Transport Manager or any other Officer. Thus, in the provisions of the said Act, wherever the legislature intended, it has specifically provided for a power of delegation. In fact, there is a specific provision to delegate power of the Commissioner to the Additional Commissioner.

9 Before we deal with the relevant provisions regarding budget, we must deal with the argument that what has been delegated did not constitute essential functions. As far as delegation of powers is concerned, the law is well settled. In paragraph 20 of its decision in the case of Marathwada University vs. Seshrao Balwant Rao Chavan[1], the Apex Court has reiterated the well settled legal

1 (1989) 3 SCC 132

position. The Apex Court held that when the Act prescribes a particular body will exercise a particular power, the same must be exercised only by that body. The Apex Court observed that the said power cannot be exercised by another body unless it is delegated to it and that the law must also provide for such delegation.

10 It is not the case of the respondents that the powers of the Corporation have been delegated to Standing Committee or the Commissioner, as the case may be, under the specific statutory provision which is a part of the said Act. Therefore, the distinction which is sought to be made between essential functions and non essential functions is not relevant at all for considering the issue of validity of the delegation.

11 Now, firstly we come to section 101 of the said Act which reads thus:

> "101 (1) On the recommendation of the Standing Committee in the case of expenditure from the Municipal Fund and the Transport Committee in the case of expenditure from the Transport Fund, the Corporation may from time to time during an official year increase the amount of any budget grant, or make an additional budget grant from the purpose of meeting any special or unforeseen requirement arising during the said year, but not so that the estimated cash balance at the close of the

year exclusive of the balance, if any, of any special fund shall be reduced below one lakh of rupees or such other amount as may have been fixed for the time being by the Corporation in the case of either the Municipal Fund or the Transport Fund.

(2) Such increased or additional budget grants shall be deemed to be included in the budget estimates adopted by the Corporation for the year in which they are made."

12 Sub-section 1 of section 101 provides for increasing amount of budgetary grant and to make additional grant. Sub-section 1 vests the said power in the Corporation which could be exercised on the recommendation of the Standing Committee or the Transport Committee. Section 103 of the said Act reads thus:

"103 Reduction in and transfers from one budget head to another or within a budget head shall be made in accordance with the rules."

13 In view of section 103 that Rule 2 of Chapter VII comes into picture. Rule 2 of Chapter VII reads thus:

"2 Reductions or transfers

(1) Subject to the provisions of sub-section (1) of section 101, the Corporation may, on the recommendation of the Standing Committee

from time to time during an official year, sanction the transfer of any amount from one budget grant to another.

(2) The Standing Committee may at any time during an official year-

(a) reduce the amount of a budget grant;

(b) sanction the transfer of any amount within a budget grant for one minor head to another or from a subordinate head under one minor head to a subordinate head under another minor head; or

(c)sanction the transfer of any amount exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another.

(3) The Commissioner may, at any time during an official year, sanction the transfer of any amount not exceeding rupees five thousand within a minor head from one subordinate head to another or from one primary unit to another, if such transfer does not involve a recurring liability.

Provided that every transfer of an amount exceeding rupees five hundred made under sub-rule (3) shall be reported forthwith by the Commissioner to the Standing Committee.

(4) When making any transfer under sub-rules (1), (2) and (3) due regard shall be had to all the requirements of this Act.

(5) If any such reduction as is referred to in clause (a) of sub-rule (2) is of an amount exceeding five hundred rupees, the Corporation may pass with regard thereto such orders as if may think fit and it shall be incumbent on the Standing Committee and the Commissioner to give effect to such order.

(6) For the purpose of expenditure from the Transport Fund, the provisions of this rule shall apply as if for the word "Standing Committee" the words "Transport Committee" and for the word "Commissioner" the words "Transport Manager" had been substituted."

14 Under sub-rule 1 of Rule 2, the power is vested in the Corporation which could be exercised by recommendation of the Standing Committee. Sub-Rules (2) and (3) of Rule 2 deals with the powers of the Standing Committee and the Commissioner. Thus, the Corporation (General Body) has purported to delegate powers of the Corporation both under sections 101 and 103 read with Rule 2 of Chapter VII of Schedule D of the said Act. On the face of it, the said delegation is completely illegal as it is not supported by the provisions of the said Act.

15 Now we come to the second part of the delegation. The second part purports to provide that the Municipal Commissioner has been conferred power to do the needful in terms of section 3 of part 2 of the budget for the year 2017-2018. On page 289 to

page 299 of the budget document the receipts are shown. The expenditure has been set out from page 300 onwards which involves different kinds of expenditure such as payment of taxes, refund of security deposit etc. The second item in the expenditure is refund of octroi. The provision made in the budget for the said item is for Rs.40 crores. Item 15 is of disbursement of vehicle loans to the employees. The amount provided in the budget under this head is of Rs.2 crores. Item No.16 is as regards grant of housing loan and loan for repairs to the houses of the employees of the Municipal Corporation. The amount sanctioned in the budget for this head is of Rs.35 crores. There are several amounts which runs into crores.

16 On this aspect, it will be necessary to make a reference to various provisions of the said Act. Section 86 imposes restrictions on the expenditure of municipal funds. Section 86 of the said Act reads thus:

> "Section 86 (1) Except as hereinafter provided, no payment of any sum shall be made by the Commissioner out of the Municipal Fund, unless the expenditure of the same is covered by a current budget grant, and sufficient balance of such budget grant is still available, notwithstanding any reduction or transfer thereof which may have been made under the rules.
> (2) The following items shall be excepted from the prohibition in sub-section (1), namely :–
> (a) sums of which the expenditure has been

sanctioned by the Standing Committee under section 102;
(b) temporary payments under section 90 for works urgently required in the public service;
(c) refunds of taxes and other moneys which the Commissioner is by or under this Act authorized to make;
(d) repayments of moneys belonging to contractors or other persons held in deposit and of moneys collected or credited to the Municipal Fund by mistake;
(e) sums which under any provision of this Act or any other enactment are payable by way of compensation;
(f) sums payable in any of the circumstances mentioned in clause (h) of section 88;
(g) expenses incurred by the Commissioner in the exercise of the powers conferred upon him by section 319;
(h) costs incurred by the Commissioner under clause (c) of subsection (3) of section 67.

17 Sub-section (1) specifically provides that no payment of any sum shall be made out of municipal funds unless the expenditure of the same is covered by the current budget grant and sufficient balance of such amount is still available. Sub-section (2) carves out exceptions to sub-section (1) of section 86 of the said Act. Section 88 of the said Act provides for the purposes for which the municipal funds have to be applied. Section 88 does not confer any power on the Municipal Commissioner. Sub section (1) of section 86, as noted earlier, permits the Commissioner to make payment of amounts out of the municipal funds provided the same is covered by the current budget grant and sufficient balance of such budget grant is

still available. Thus, when amount can be spent by the Municipal Commissioner from the municipal funds is laid down in section 86.

18 In view of sub-section (1) of section 67 the Commissioner can exercise powers as regards the municipal funds provided it is covered by section 86. Sub-section 2 of section 67 of the said Act makes provisions as regards who can make expenditure. The power is of the Municipal Corporation to spend the municipal funds.

19 As held earlier, whenever the legislature intended there is a specific provision made for delegation in the said Act. Therefore, there cannot be any delegation which is not permitted by the provisions of the said Act. The impugned resolution means that even the power to spend money out of the municipal funds or the power to disburse municipal funds which is not expressly vested in the Municipal Commissioner can be exercised by him.

20 Looking from any angle, the impugned part of the resolution which provides for delegation in favour of the Standing Committee and the Municipal Commissioner is completely illegal being in breach of the provisions of the said Act. An argument was canvassed that non essential functions have been delegated. The question is whether the statute authorizes delegation. Whether the functions are essential or not is irrelevant.

21 Another submission canvassed by the learned Senior counsel for the Respondent Nos.1 and 2 is that the Petitioner is an elected councilor and the leader of the opposition and therefore, the Petitioner ought to have made a grievance during the course of the meeting. In paragraph 7 of the petition, there are specific allegations made by the Petitioner as to what transpired in the meeting dated 20th June 2017. The allegation is that after amendment was suggested and was seconded, the same was passed in a hasty manner and contrary to the provisions of law. There is a reply filed by the Respondent No.2. The said reply does not specifically deal with the averment made in paragraph 7.

22 Even assuming that the Petitioner is a party to the resolution which is impugned in the petition, if the said resolution is completely illegal, the petitioner being an elected councilor can always challenge the same in accordance with law.

23 We must note here that the present petition was filed on 23rd August 2017 and notice was issued for final disposal on 8th September 2017. However, there was no restraint order passed by this Court. Therefore, this order/judgment shall not be construed to mean that this Court intended to set aside the actions/decisions taken prior to the judgment on the basis of the impugned delegation. The Judgment does not prevent the Commissioner from

spending amounts/disbursing the amounts as permitted under the express provisions of the said Act such as section 86.

24 Hence, the petition is allowed and the following order is passed:

ORDER

i) The impugned Resolution No.42 dated 20^{th} June 2017 to the extent to which it provides for delegation of the powers in favour of the Standing Committee and the Municipal Commissioner is hereby quashed and set aside;

ii) We further make it clear that the rest of the resolution is not disturbed;

iii) The petition is accordingly disposed of on the above terms.

. At this stage, the learned Senior counsel appearing for the Municipal Corporation prays for stay of this order. The said prayer is rejected.

(P.N.DESHMUKH,J.) (A.S.OKA,J.)