



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No.10 of 2023

Mr. Mrinall Shashi Shekhar Chakravorty,

Aged about 55 years,

Occ.- Social Worker/Business,

R/o 57, SKGN Sanstha, P&T Colony,

Near Safeway Motors, Mankapur,

Nagpur 440030.

... **Petitioner**

Versus

1. (Through The Administrator),

The Nagpur Municipal Corporation,

Civil Lines, Nagpur 440001.

2. (Through The State Election Commissioner),

The State Election Commission,

Madam Cama Road,

Mumbai 400032.

... **Respondents**

Petitioner-in-person.

Shri J.B. Kasat, Counsel for Respondents.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

Date when arguments were heard : 9th August, 2023.

Date when the order was pronounced : 13th September, 2023.

ORDER (PER A.S. CHANDURKAR, J.) :

1. The present proceedings in public interest have been filed with the following prayer :

“a. In keeping with the constitutional mandate under article 243R of The Constitution of India, direct the Nagpur Municipal Corporation and the State Election Commission to hold municipal elections only in areas vested into the Nagpur Municipal Corporation.”

2. According to the petitioner in person, under the provisions of Article 243R of the Constitution of India, the Nagpur Municipal Corporation-NMC as well as the State Election Commission-SEC have the authority to hold municipal elections only in those areas vested in the NMC. The areas that vest in the Nagpur Improvement Trust-NIT cannot be said to be vested in the NMC in view of the provisions of Section 48 of the Nagpur Improvement Trust Act, 1936 (for short, ‘the Act of 1936’). Since the NMC and the NIT are the agencies that are mutually exclusive, it is not permissible for the NMC to hold elections for the areas that vest with the NIT. It is also the contention of the petitioner that with regard to such areas that vest with the NIT, the NMC has no authority to collect taxes from the citizens residing in such areas. In this context, the petitioner on 5-9-2022 issued a communication to the Municipal Commissioner, NMC to delete the areas that fall within the authority of the NIT from the electoral process relating to elections of the NMC. A similar communication dated 1-12-2022 has also been issued by the petitioner to the SEC. The petitioner contends that his request has not been accepted by the said authorities. It is in the aforesaid backdrop that the present proceedings have been filed.

3. It is the contention of the petitioner-in-person that the provisions of the Maharashtra Municipal Corporations Act, 1949 (for short, 'the Act of 1949') apply to the city of Nagpur but do not apply to the defence enclaves and areas vested in the NIT. The NIT is not merely a planning authority but it is also responsible to execute the schemes framed by it through various agreements and contracts. It has territorial jurisdiction over the areas that vest in it and it also has its own rules for land disposal. This would indicate that the NIT is entitled to deal with the lands that vest in it. Though the general functions of the NMC and the improvement functions of the NIT are similar, the areas vesting in them are mutually exclusive. The NMC can exercise control only over those areas that vest in it and not the areas that vest in the NIT. By filing an additional affidavit, various similarities in the working of the NMC and NIT have been brought on record. Since the NMC and the NIT are two distinct local authorities, it is urged that the NMC is not competent or authorized to hold elections in the areas that vest in the NIT.

4. Reply has been filed by the NMC through its Assistant Commissioner, Election Department. Reference is made to the provisions of Article 243P(d) of the Constitution of India which defines 'Municipal area'. It is stated that initially Municipal Council of Nagpur was established in 1864. On 2-3-1951, it was upgraded as a Municipal Corporation. The gazette notification in that regard dated 11-5-1950 indicates the limits of the NMC. The City of Nagpur

Corporation Act, 1948 came into force on 2-3-1951. Now the NMC is governed by the provisions of the Act of 1949 from 5-12-2012. Under Section 2(8) of the Act of 1949, the expression 'City' has been defined, while Section 2(10) defines the expression 'Corporation'. After coming into force of the Act of 1948, the NIT continues to exercise powers and perform duties as conferred under the Act of 1936 since the Trust was constituted for the improvement and expansion of the City of Nagpur. The Trust functions for the improvement and expansion of the City of Nagpur and is not a 'Municipality' as constituted under Article 243Q of the Constitution of India. The NIT has been treated as a planning authority in view of the notification dated 9-4-2021 issued by the Urban Development Department under Section 2(15) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966'). Presently, the NIT is the planning authority for seven schemes assigned to it. It is further stated that the boundaries of the city of Nagpur have been revised pursuant to the Gazette notification dated 14-5-2012 and the additional areas have been included by revising the boundaries. Since the NIT is not a 'Municipality' nor has been notified as a 'City', the prayer made by the petitioner is misconceived. It is only the NMC that is authorized to hold the municipal elections with regard to the areas that vest in it. It is therefore prayed that no relief be granted to the petitioner and the proceedings be dismissed.

5. The petitioner-in-person as well as the learned counsel for the NMC were heard in the context of the affidavits placed on record.

6. According to the petitioner-in-person, the NMC is authorized in law to hold elections only in the areas that vest in it. Since certain areas falling within the limits of NMC vest in the NIT, the NMC is not entitled to conduct elections in those areas. To consider this contention, it would be necessary to refer to certain provisions of the Act of 1949. The Act of 1949 has been enacted to provide for establishment of Municipal Corporations for all larger urban areas in the State of Maharashtra. Section 2(8) of the Act of 1949 defines the expression 'City' to mean the larger urban areas specified in a notification issued under Article 243Q of the Constitution of India. The areas comprised in the city of Nagpur under the Act of 1948 are also included in the definition of 'City'. Section 3(1A) of the Act of 1949 contemplates that the Corporation of the City of Nagpur incorporated in the Act of 1948 is the larger urban area specified in the notification issued under Article 243Q of the Constitution of India. The Corporation is deemed to have been constituted under the Act of 1949 from the date of coming into force of the City of Nagpur Corporation (Repeal) Act, 2011. Thus in view of the aforesaid provisions, the City of Nagpur is governed by the provisions of the Act of 1949 pursuant to repeal of the Act of 1948. Section 5 of the Act of 1949 provides for constitution of a Corporation and sub-section (2) thereof indicates the number of councilors that would be elected on

the basis of population of citizens. Under Section 5(3), the SEC is entitled to specify for each city the number and the boundaries of the wards into which such city can be divided for the purpose of ward elections of councilors. Thus the SEC has been empowered to hold ward elections within the limits of the City under the Act of 1949. In the matter of conduct of elections of a Corporation, the provisions of the Act of 1949 provide for a scheme in that regard and such provisions can be treated to be a complete code for holding elections of a Municipal Corporation in a 'City' as defined by Section 2(8) of the Act of 1949.

7. A perusal of the Act of 1936 indicates that the same has been enacted for the improvement and expansion of the town of Nagpur. Under Section 3, the duty of carrying out the provisions of this Act is vested in a board that is called "the Nagpur Improvement Trust". The said board is a body corporate having perpetual succession and a common seal. The Trust consists of ten Trustees including its Chairman. The provisions in the Act of 1936 indicate the manner in which the improvement schemes are to be framed and implemented for the betterment of the City of Nagpur. The Trust is entitled to retain or let or hire, lease, sale, exchange or otherwise dispose of any land vested in it or acquire by it under the Act of 1936.

8. The provisions of the Act of 1966 and especially Section 2(15) thereof that defines 'Local authority' to mean the NIT constituted under the Act of 1936 which is entitled to exercise the powers of a

planning authority under the Act of 1966. Under Section 2(19), a planning authority means a local authority including a special planning authority constituted or appointed under Section 40 of the Act of 1966. The Act of 1966 has been enacted to make provisions for planning the development and use of land in the regions established for that purpose and for constitution of Regional Planning Boards. The object is to ensure that the town planning schemes are made in a proper manner and their execution is made effective.

9. When the enactments being the Act of 1936, the Act of 1949 and the Act of 1966 are considered as a whole, it becomes clear that the SEC under Section 5(3) of the Act of 1949 is empowered to hold elections only within the boundaries of the wards into which a City has been divided for the purposes of ward elections. Under Section 2(8) of the Act of 1949, it is only the larger urban areas specified in a notification issued under Article 243A(2) of the Constitution of India that are held to be a larger urban areas. This includes the city of Nagpur. Within its boundaries, the SEC is empowered to conduct ward elections. The constitution of a planning authority within the limits of a 'City' as defined by Section 2(8) of the Act of 1949 would not mean that for the area over which such planning authority exercises jurisdiction, the NMC is not entitled to conduct the elections. The NIT consists of Trustees and there is no provision in the Act of 1936 that enables representation of the members of the public on any post for being filled in through any

elections in which residents in general would participate. The vesting of areas with the NIT are only for the purposes of the Act of 1936 which is for the improvement and expansion of the city of Nagpur. The NIT is recognized as a planning authority under Section 2(15) of the Act of 1966 and is empowered to act as a planning authority in that regard. There is no legal basis or statutory support in the Act of 1936, the Act of 1949 or the Act of 1966 to hold that in areas that vest in the NIT as planning authority, the NMC is not competent to hold elections for electing councilors in ward elections notwithstanding the fact that there is overlapping of some areas of the NMC and the NIT.

10. In the light of the aforesaid, we do not find that there is any legal basis whatsoever in either of the statutes referred to hereinabove to grant the relief sought by the petitioner. In fact, granting such relief would run counter to the provisions of Articles 243R and 243Q of the Constitution of India. The Public Interest Litigation is thus dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)