

(1960) 01 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 160 of 1959

Ambika Charan

APPELLANT

Vs

Collector, Durg

RESPONDENT

Date of Decision : 29-01-1960

Acts Referred:

Madhya Pradesh Local Government Act, 1948 — Section 23(3)

Citation : (1961) JLJ 1085

Hon'ble Judges : T.P. Naik, J; S.B. Sen, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; K.U. Rama Gupta, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Naik, J.—This is a petition under Article 226 of the Constitution of India for a writ or direction in the nature of quo warranto against Laxman Prasad Tiwari (respondent No. 4) requiring him to show cause how he claims to be the elected Chairman of the Janapada Sabha, Bemetara.

2. The facts, which are not in dispute, may shortly be stated as follows. At the relevant time, the Janapada Sabha, as Bemetara, consisted of 27 elected members and five Chairmen of the standing committees. The Chief Executive Officer, Janpada Sabha, Bemetara, (respondent No. 2), on 7th March 1959, convened a meeting of the Sabha for the purpose of electing a new Chairman to fill in the casual vacancy of the Chairman caused by the resignation of the previous Chairman. Notices of the aforesaid meeting were issued to the 27 elected councillors, of whom only 25 attended the meeting. The five Chairmen of the Standing Committees of the Sabha, who had not been noticed for the meeting, also attended the meeting and claimed to exercise their right of vote at the election of the, Chairman on the ground that they were deemed to be councillors u/s 23 (3) of the Madhya Pradesh Local Government Act, 1948 (hereinafter referred to as "the Act") The Deputy Chairman of the Sabha, who

was presiding over the meeting, ruled in their favour, and consequently they were allowed to vote at the election of the Chairman. In the election, which followed, Laxman Prasad Tiwari (respondent No. 4) was elected the Chairman; while the petitioner Ambika Charan Choubey was declared to have been unsuccessful.

3. The petitioners claim that the five Chairmen of the standing Committees of the Sabha had no right to take part in the election of the Chairman of the Sabha; and in so far as they were permitted to vote at the said election the election of the Chairman was vitiated.

4. The only question, therefore, is whether the Chairman of the Standing Committees were entitled to vote at the election of the Chairman of the Sabha held on 7-3-1959.

5. u/s 14 of the Act, any casual vacancy occurring in the office of Chairman shall be filled in the manner prescribed u/s 20. Section 20 then provides that every election of the Chairman of a Sabha shall be made in accordance with the rules made u/s 182 of the Act. The rules made u/s 182 (2) (iii) and (ix) provide that in a casual vacancy occurring in the office of the Chairman of a Sabha, the Chief Executive Officer, shall forthwith report the fact to the Deputy Commissioner who shall take necessary action for the election of a fresh Chairman in the same manner and under the same conditions as in the case of the original election. The rules framed for the purpose of the original election of the Chairman u/s 182 (2) (ix), which are printed at page 189 of the Janapada Manual, provide that the Deputy Commissioner shall fix a date for the first meeting of a Sabha and intimate the same to the Chief Executive Officer as soon as possible after the notification u/s 20 of the election, selection and appointment, if any, of the councillors of the Sabha; and on receipt of such intimation, the Chief Executive Officer shall convene a meeting of all the newly elected and selected councillors and appointed councillors. If any, for the purpose of electing the Chairman of the Sabha and shall give at least ten days notice of such meeting to each councillor concerned. It is further provided that half the number of the councillors shall form a quorum and the councillors present at the meeting shall elect the Chairman for the meeting.

6. The contention of the learned counsel for the petitioners is that just as in the case of the original election of the Chairman of a Sabha only the newly elected and selected councillors and appointed councillors, if any, have to be noticed and have the right to elect the Chairman, so also in the case of a casual vacancy caused in the office of the Chairman, only such elected and selected councillors and appointed councillors, if any, shall have the right to elect the Chairman.

7. In our opinion, the contention is misconceived. Under sub-section (3) of Section 23 of the Act every Standing Committee shall have a Chairman elected either from the councilors or from other persons residing in the Janapada area and qualified to be a councillor. If a person not being a councillor is elected as

Chairman, such a person shall for all purposes of the Act be deemed to be a councillor so long as he continues to be such Chairman. It would thus be seen that a Chairman of a Standing Committee, even though not a councillor, so long as he continues to be such Chairman, has been put by a legal fiction in the same category as a councillor. u/s 2(1) (d), councillor means a member of the Sabha; and as such member he would ordinarily be entitled to take part in any deliberation of the Sabha, including the election of the Chairman. It has been held by one of us (Naik J.) in Miscellaneous Petition No. 568 of 1956, decided on 31st January, 1958 (Shyamlal Vs. State of M. P.) that the Chairman of the Standing Committees of a Janapada Sabha, who are councillors by a legal fiction created by Section 23 (3) of the Act, were as such members of the Sabha entitled to participate in the election of the Chairman or Deputy Chairman of the Sabha. Similarly, Chaturvedi, J. in Civil Revision No. 261 of 1957, decided on 26th March 1958 (The Chief Executive Officer Janapada Sabha. Chhindwara vs. Verendra Kumar and another) held that the Chairman of the Standing Committees of a Janapada Sabha were entitled to vote in a meeting which was held for the election of the Deputy Chairman of the Sabha.

8. It will be seen that the rules framed u/s 182 (2) (iii) and (ix) of the Act for the filling in of a casual vacancy occurring in the office of the Chairman of a Sabha, provide that action has to be taken for the election of a fresh Chairman in the same manner and under the same Conditions as in the case of the original election. No specific detailed rules have been framed for the purpose, and it is obvious that the rules framed for the purpose of the original election of Chairman cannot fully apply in the very nature of things for the election to fill in a casual vacancy. When the first meeting of the Sabha is held newly elected and selected and appointed councillors if any, have to be noticed and they alone have the right to effect the Chairman or the Deputy Chairman, as the case may be But, when a meeting is convened for the filling in of a casual vacancy, the rules framed u/s 182(2) (ix). which are at page 189 of the Janapada Manual, have to be applied mutatis mutandis, as at such a meeting there are in existence not only the elected, selected and appointed councillors but also persons who are deemed to be councillors on account of the legal fiction created by Section 23 (3) of the Act. In our opinion, as the election of the Chairman has to be by the Sabha, all persons, who are its members at that time, have the right to vote at such an election. We cannot confine a meeting of a Sabha, for filling in a casual vacancy in the office of Chairman, to elected and selected councillors and appointed councillors, if any, only. There is no warrant either in the express language of the sections on the rules made under the Act, for prohibiting the Chairman of the Standing Committees of a Sabha from taking part in a meeting convened for the purpose of electing a Chairman in a casual vacancy occurring in the office of Chairman, when the Act provides that they are to be deemed to be councillors for all purposes of the Act, which evidently include such a meeting.

9. The learned counsel for the petitioners strongly relied on a decision reported in Mahadeosa vs. Deputy Commissioner, Amravati and others 1954 NLJ 173, in

support of his contention. In our opinion that case has no relevance to the facts of this case. All that it decided was this that the President and the Vice-Presidents of a Municipal Committee were not deemed to be members of the Municipal Committee for the purposes of Sections 10 (3) (d) and 10 (4) of the Act and were, therefore, not entitled to participate in the selection of members. The reason, as pointed out in that case, being that if the privilege of membership accorded to the President and the Vice-Presidents by Section 18 (4) of the Act is extended to the right to select the members as contemplated in Section 10 (3), they shall be going beyond the purpose for which the legal fiction was created. It was also pointed out that under the provisions of Section 18 (4) of the Act, the President and the Vice-Presidents were given the status of members in all cases in which the Act had made reference to "members", and that this privilege and obligation could not extend beyond that; and as u/s 10 it was not every member but only the elected members, who were clothed with the privilege of selecting members, the fictional member created by Section 18 (4) of the Act, could not claim the right of an elected member. In the instant case, we find nothing in the Act or the rules which could be construed as giving the right of filling in a casual vacancy in the office of Chairman of a Sabha to those Categories of its members only who were entitled to vote at the first meeting of the Sabha for the purpose of electing the first Chairman. The rules framed for the purpose of electing the first Chairman have to be applied mutatis mutandis for the election of a Chairman in a casual vacancy. Moreover, the meeting convened for filling in a casual vacancy in the office of the Chairman of a Sabha is a purpose of the Act and for this purpose, a Chairman of the Standing Committee shall be deemed to be a member. In our opinion, in so applying the legal fiction, the purpose of the fiction was in no way exceeded. Mahadeos's case, therefore, does not help the petitioners-applicants.

10. We are, therefore, of opinion that the Chairman of the Standing Committees of the Sabha were properly permitted to vote at the election of Chairman at a meeting convened for the purpose of filling in a casual vacancy occurring in the office of the Chairman.

11. No other question was raised before us.

12. The petition, therefore, fails and is dismissed with costs. Counsel's fee Rs. 50/-