

(1979) 01 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 286 of 1978

Ashok

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 30-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councillors) Rules, 1963 — Rule 17
Madhya Pradesh Municipal Corporation Act, 1956 — Section 441

Citation : AIR 1979 MP 135 : (1979) JLJ 647

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : M. Bhatnagar, for the Appellant; S.L. Garg and T.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

Oza J.

1. This petition has been filed by the petitioner who had filed a nomination paper for election to Ward No. 16 of the Ujjain Municipal Corporation. His nomination paper was scrutinized and ultimately accepted. According to the petitioner, the date fixed for withdrawal by the Collector, Ujjain, was 16th Oct. 1978 up to 3-0 P.M. The petitioner alleges that he went to the Supervising Officer respondent No. 3 at 2 minutes past 3-0 P.M. but his withdrawal was not accepted as it was not done up to 3-0 P.M. on 16th Oct., 1978. According to the petitioner, under Rule 17 of the Madhya Pradesh Municipal Corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councillors) Rules 1963 (hereinafter called "the Rules") a candidate should have been permitted to withdraw his nomination up to 23rd Oct. as what is provided in Rule 17 is that withdrawal is permissible up to a date which is fourteen days before the date of election. According to the petitioner, by refusal to accept the withdrawal the petitioner has been shown as a contesting candidate although the petitioner had decided to

withdraw and consequently he has been declared as a defeated candidate and as a consequence of it, according to the petitioner, he cannot stand as a candidate for selection under S. 9 of the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as "the Act").

2. It is not disputed that the Collector Ujjain had fixed 16th Oct. 1978, 3-0 P.M. as the last date of withdrawal. In the return an attempt has been made to justify the fixing of this date on the ground that Rule 17 of the Rules does not fix the time, that is, the limit prescribed and it was within the powers of the Collector to fix a date. It is also contended in the return that 16th Oct., 1978 was fixed because sufficient time was necessary to get the ballot papers printed. As regards the fact about the petitioner having gone and submitted his withdrawal a few minutes after 3-0 P.M., the reply in the return is that the petitioner did not submit the withdrawal in time as required by law. It is significant that the assertion made by the petitioner that he went and submitted his withdrawal a few minutes after 3-0 P.M. has not been categorically denied as a fact in the return. In support of the return the affidavit of an officer-in-charge is filed; but the affidavit of the person who was the supervising officer was not filed along with the return. Now ultimately when the case is listed for hearing an application has been filed wherein an amendment of the return is sought denying the fact that the petitioner went to the Supervising Officer for submitting his withdrawal and also an affidavit is filed of the Supervising Officer, himself. It is rather strange that in face of the positive allegation made in the petition, in the return filed initially this factual position was not challenged, and at the time of filing of the return no affidavit of the Supervising Officer was filed. It is also significant that this petition was filed even before the elections were held wherein this allegation was made by the petitioner.

3. It is not disputed that when the Collector notified the programme of elections he fixed 16-10-78, 3-0 P. M., as the last date of withdrawal. It is contended on behalf of the petitioner that under Rule 12 of the Rules the Collector was not expected to fix a date for withdrawal. It was also contended that under Rule 17 a candidate who has been duly nominated can withdraw his nomination by giving a communication in Form XII to the Supervising Officer not less than fourteen clear days before the date fixed for election. It is not disputed that 6th Nov., 1978 was fixed as the date of election. According to the petitioner, fourteen days before the date of election will be 23-10-78 whereas according to the return it will be 22-10-78. In any event, it could not be 16th Oct., 1978 as admittedly was notified as the last date of withdrawal by the Collector respondent No. 2. It is also contended by the petitioner that although as a fact it is asserted by the petitioner that he went to submit his withdrawal in the prescribed form a few minutes after 3-0 P.M. on 16-10-78 itself and the Supervising Officer refused to accept it and this fact was not disputed but now at the last stage an attempt has been made to deny it; and therefore, according to learned counsel for the petitioner this denial which has come as an afterthought clearly deserves to be rejected. Apart from it, it is also contended that when the Collector notified the

last date of withdrawal as 16-10-78, 3-0 P.M., ordinarily no candidate could imagine that his withdrawal will be accepted after that hour and even that is not the stand taken in the return that although the date notified was 16-10-78, yet the respondent would have accepted the withdrawal if it was done within the time as contemplated in Rule 17. It is therefore contended that by notifying 16-10-78 as the last date the Collector prevented the petitioner from withdrawing his nomination which he could otherwise do up to 22nd or 23rd Oct., 1978. And this contravention of law (Rule) by the Collector, according to the petitioner, has resulted in his being declared defeated losing the security amount and also incurring a disqualification u/s 9 of the Act even for selection because Section 9 Sub-section (1) Sub-clause (b) of the first Proviso lays down,--

"9. (1).....Provided that no person shall be eligible for selection as councillor if he.....(b) has failed to be elected as a councillor at any election to the corporation immediately preceding such selection."

4. Learned counsel for the petitioner also contended that in the return an objection has been taken under Article 226(3) of the Constitution on the ground that an alternative remedy of election petition is available to the petitioner. It is contended by learned counsel that u/s 441-B of the Act which provides for the grounds on which an election petition could be filed Sub-section (1) (d) (iv) mentions "non-compliance with the provisions of this Act or of any rules or orders made thereunder....." but learned counsel contended that the present case is not of "non-compliance" but is of contravention of the rules. Apart from it, it is contended that on this ground the election could be set aside if the petitioner is able to prove that by this illegality the election of the returned candidate has been materially affected. And that, according to learned counsel for the petitioner, the petitioner has not alleged and he frankly conceded that in fact the petitioner having decided to withdraw is not interested in getting the election set aside but he is really interested in getting the declaration, that he has been defeated losing his security, quashed as that will remove his disqualification u/s 9 of the Act. And for this relief, according to learned counsel, no remedy is provided within the scheme of the Act.

5. Learned Advocate General appearing for the State contended that although the Collector had notified 16-10-78 as the last date of withdrawal, but the petitioner had not filed any withdrawal form up to 22nd Oct., the date up to which he could have withdrawn within the language of Rule 17. He attempted to rely on the affidavit that has now been filed of the Supervising Officer. He contended that the Collector is empowered under Rule 12 and the scheme of the Rules to fix a date for withdrawal. He, however, could not contend that the Collector could fix a date which is not in accordance with Rule 17. The main contention advanced by the learned Advocate General was that the petitioner could file an election petition u/s 441 and according to him "non-compliance" u/s 441-B will also cover a case of breach of a rule. He however could not contend that the limited relief that the petitioner is interested in seeking could be availed

of by the process of election petition. He contended that the petitioner ought to have challenged the election by alleging that the result of the election has been materially affected; and thus; there being an alternative remedy the petitioner is not entitled to relief in this petition.

6. Rule 17 reads;

"17. A candidate who has been duly nominated for election may withdraw his candidature by a written and signed communication in Form XII delivered to the supervising officer not less than four- teen clear days before the date fixed for election. A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renomi-nated as a candidate for the same election."

It is clear from this rule that a candidate who has been duly nominated for election may withdraw his candidature by submitting to the supervising officer a communication signed by him not less than fourteen clear days before the date fixed for election. Apparently, 6th Nov., 1978 was fixed as the date of election. Excluding this date, as the law requires clear fourteen days, the last date of withdrawal would come to 22nd Oct., 1978 whereas the Collector had notified the last date of withdrawal as 16th October, 1978 up to 3-00 P.M. It therefore could not be disputed that the Collector, by fixing the last date of withdrawal as 16-10-78 has fixed a date which is contrary to what is provided in Rule 17.

7. The contention advanced in the return is that what is provided in Rule 17 is "not less than fourteen days" which is only the last limit and the Collector could fix any other date which would be more than fourteen days. But a mere reading of Rule 17 would indicate that such a contention could not be accepted. This rule requires an option to a duly nominated candidate to communicate his intention of withdrawal up to a date which shall not be less than fourteen clear days before the date of election. This apparently goes to show that when the Collector notified 16-10-78, 3-00 P. M. as the last date for intimating withdrawal, he prohibited the candidates from communicating their withdrawal after 16-10-78; in law they were entitled to communicate their withdrawal up to 22-10-78; and thus the Collector had notified a date clearly in contravention of Rule 17.

8. It was contended by learned counsel for the petitioner that under Rule 12 it was not necessary for the Collector to fix the date of withdrawal; whereas learned Advocate General contended that there is nothing in Rule 12 to prevent the Collector from fixing such a date. Rule 12 provides:

"12. Fixation of dates for nominating etc.-- Subject to the provisions of Rule 10 the Collector shall appoint the last date (hours) and place for the receipt of nomination papers by the supervising officer, the last date being not less than thirty days before the date of election. He shall also appoint a date which shall not be less than twenty-two days before the date of election for the scrutiny of nomination papers by the supervising officer. Due publicity in Form VII setting forth the dates, hours and place so fixed and the name of the supervising officer

shall forthwith be given by the Commissioner in each ward and the notice shall at the same time be posted at conspicuous places in the city and may be published in local papers if the Corporation so desires."

Apparently, Rule 12 does not talk of fixation of a date as the last date of withdrawal. It therefore is clear that even if the Collector in his notification had not fixed the date for withdrawal, the notification could not be challenged as when the date of election is notified, the date up to which a candidate could withdraw is already provided for in Rule 17. But it also could not be disputed that even if the Collector chose to notify a date of withdrawal it would not have been bad if the date notified as the last date of withdrawal would have been in accordance with Rule 17.

9. The petitioner, even before the elections when he filed this petition, had alleged as a fact that he had communicated his intention of withdrawal in the manner provided a few minutes after 3-00 P.M. on 16-10-78 itself. But in the return this fact was not specially denied nor any affidavit of the supervising officer was filed. At a late stage now when the petition is listed for hearing an application for amendment of the return denying this allegation of fact by the petitioner, supported by the affidavit of the supervising officer, has been filed. Apparently, it could not be doubted that this is an afterthought; but in our opinion it is not necessary to go into this question. When the Collector notifies 16-10-78, 3-00 P.M. as the last date for withdrawal it could not be doubted that a candidate who even desires to withdraw his candidature but has failed to communicate up to the time notified by the Collector cannot send his communication of withdrawal after 3-00 P. M. on 16-10-78, as there is nothing in the Collector's notification to indicate that he would have accepted the communication of withdrawal even if it was received after the last date notified by him. It is also not the case of the respondents in their return that in spite of this last date having been notified as 16-10-78 the Collector by any subsequent notification intimated the candidates that he would be receiving their communication of withdrawal even after 16-10-1978 up to 22-10-78. It is therefore clear that a candidate who has been duly nominated, even if wanted to communicate his intention of withdrawal after 16-10-78, has been prevented from submitting his communication by the said notification of the Collector fixing 16-10-78, 3-00 P. M. as the last date and therefore when the petitioner alleges, that he intended to withdraw and his withdrawal was not accepted or that he was prevented from sending his communication because of the notification issued by the Collector fixing 16-10-78 as the last date, it has to be accepted.

10. As the petitioner did not want to contest the election and as he was prevented from getting his name withdrawn from the list of candidates he filed the present petition even before the date of election. And as a result of his not having been permitted to withdraw it is not disputed that he has been declared a candidate defeated at the elections and further he has lost his security deposit; whereas in fact if this notification of the Collector had not prevented him from

withdrawing from elections he could not have been declared as a defeated candidate losing his security deposit.

11. Section 441 provides for an election petition. Sub-section (1) of this section provides:

"441 (1). No election under this Act shall be called into question except by a petition presented in accordance with the provisions of the section." It is clear that election of a candidate could only be challenged by an election petition. As regards the grounds on which an election could be challenged, Section 441-B of the Act provides:

"441-B (1). Subject to the provisions of Sub-section (2), if the Court is of the opinion (a) (b) (c) (d) that the result of the election, or selection, in so far as it concerns a returned candidate has been materially affected

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder save the rules framed u/s 10 in so far as they relate to preparation and revision of list of voters;

the Court shall declare the election of the returned candidate to be void."

It is therefore clear that non-compliance with the provisions of the Act or Rules could be a ground for setting aside an election if the result of election or selection of the returned candidate has been materially affected by such non-compliance. Apparently, the petitioner who had withdrawn from the election is not interested in getting the election of the returned candidate set aside; he is concerned with a declaration that the result of the election wherein he has been declared as a defeated candidate losing his security amount alone should be quashed. And for such a relief he cannot file an election petition as is clear from the provision quoted above. Learned Advocate General was not able to point out any other provision of law in this Act whereby such relief, as the petitioner is seeking in the present petition could be made available to the petitioner. Clause (3) of the Article 226 of the Constitution provides:

"226 (3). No petition for the redress of any injury referred to in Sub-clause (b) or Sub-clause (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force."

It is clear that relief under Article 226 could only be refused if the remedy that the petitioner seeks is available to him under any other law; and that is what has been held by a Division Bench of this Court in Gwalior Rayon Silk Mfg. Co. Ltd. v. K. K. Khosla, I.T.O., Indore, Misc. Petn. No. 178 of 1969, D/- 15-7-1978. Thus, the objection raised by the respondents that because of Clause (3) of Article 226 of the Constitution the petitioner is not entitled to the relief could not be accepted.

12. Learned counsel for the petitioner frankly conceded that he does not want to press any other ground alleged in the petition and he only seeks the relief of

quashing the result of election in so far as the petitioner has been declared as a defeated candidate losing his security amount.

13. Consequently, this petition is allowed and it is directed that the petitioner having communicated his intention to withdraw before the date in accordance with Rule 17, the result declared of Ward No. 16 of the Ujjain Municipal Corporation, declaring the petitioner as a defeated candidate losing his security amount is modified. The petitioner shall be deemed to have withdrawn from the elections and the declaration of the result so far as the petitioner is concerned is quashed. In the circumstances of the case, parties are directed to bear their own costs. Security amount be refunded to the petitioner after verification.