
(1968) 06 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 389 of 1967

Awadh Behari Pandey

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 01-06-1968

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 43

Citation : (1968) MPLJ 638

Hon'ble Judges : P.V. Dixit, C.J.; G.P. Singh, J

Bench : Division Bench

Advocate : S.C. Dubey, for the Appellant; K.K. Dubey, Govt. Advocate for Respondents Nos. 1 to 3 and J.S. Verma, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution the Petitioner, who is a Councillor of Maihar Municipal Council, challenges the legality of the election of the non-applicant No. 4 Inayatullah Khan as President of the Council. He seeks a declaration that the election is invalid and prays that the proceedings of the meeting culminating in the election of the non-applicant No. 4 as the President be quashed by the issue of a writ of certiorari.

The election under challenge was held on the death of one Sunderlal who was the President of the Council and who died on 21st June 1967. It was held at a meeting of the Council convened on 22nd July 1967 and presided over by the Sub-Divisional Officer of Maihar.

In challenging the legality of the proceedings of this meeting and the validity of the election of the Respondent No. 4, Shri Dube, Learned Counsel for the Petitioner, first urged that u/s 43 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act) the President could be elected only at the first meeting of the Council and as the meeting held on 22nd July 1967 was not the

first meeting, therefore, the election of the non-applicant No. 4 was not valid. The contention is devoid of any force. By Section 44 of the Act it is provided that upon the occurrence of any vacancy in the office of the President or Vice-President, a new President or Vice-President shall be elected or appointed in the manner provided by Section 43. The first Sub-section of Section 43 describes persons who are eligible for being elected as the President or Vice-President. Clause (a) of Section 43(2) is concerned with the election of the President and the Vice-Presidents after every general election. It says that after every general election the Council shall elect the President and the Vice-Presidents at its first meeting held under Sub-section (2) of Section 55. There is no express provision in Section 43 itself about the convening of a meeting for the election of the President or the Vice-President upon the occurrence of any vacancy in the office of the President or the Vice-President by death or resignation. But it is plain from Clause (b) of Section 43(2), which deals with the election of new President and Vice-Presidents on the expiry of the term of the office of the President and the Vice-Presidents elected after the general election, that the meeting at which a new President or Vice-President is to be elected need not be and cannot in its very nature be the first meeting of the Council after the general election. Section 44 says that a casual vacancy in the office of the President or Vice-President shall be filled in the manner provided by Section 43. It, therefore, follows that the election of a new President or Vice-President to fill a casual vacancy can be at a meeting other than the first meeting of the Council after every general election and the election has to be in accordance with the rules framed under Sub-section (4) of Section 43 for regulating the mode and time of election of the President and the Vice-Presidents. The contention, therefore, that the election of non-applicant No. 4 was not validly held inasmuch as it was not held at the first meeting of the Council cannot be accepted.

The second ground urged by Learned Counsel for the Petitioner was that the meeting held on 22nd July 1967 could not be said to be properly held as it was presided over not by one of the Vice-Presidents as laid down in Section 59 but by the Sub-Divisional Officer and, therefore, the election of the non applicant No. 4 as the President was invalid. The contention lacks substance. Section 59, which prescribes that at every meeting of a Council, the President, or, in his absence or during the vacancy of his office, a Vice-President shall preside as Chairman applies only to the meetings of the Council held for the transaction of the business of the Council. It has no applicability to a meeting convened for the election of the President or a Vice-President. The Chairmanship of a meeting convened for the purpose of electing the President or a Vice-President is governed by Rules 2 and 3 of the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962, framed under Sub-section (4) of Section 43. Under those rules a meeting of the Council for the purpose of election of the President or a Vice-President is convened by the Presiding authority and the election of the President and the Vice-President takes place at such time and place as may be fixed by the presiding authority in that behalf. Rule 2 (d) defines

"Presiding Authority" as meaning in the case of first meeting of a Council for Class III or Class IV Municipalities called under Sub-section (2) of Section 55, the Sub-Divisional Officer. As u/s 44 the election of a new President or Vice-President to fill a casual vacancy in the manner provided by Section 43 and the Rules made thereunder, therefore, the Presiding officer in the case of a meeting subsequent to the first meeting of the Council held for the purpose of election of a new President or Vice-President is also the Sub-Divisional Officer in the case of a Class III or Class IV Municipality. The Maihar Municipality is a Class III Municipality. That being so, the meeting held on 22nd July 1967 was rightly presided over by the Sub-Divisional Officer.

Thirdly, it was submitted that in the notice which was issued by the Presiding Officer under Rule 3 inviting nomination papers, it was stated that nomination papers should be delivered on 21st July 1967 between the hours of 11 a. m. and 3 p.m.; that this was contrary to the mandatory provisions of Rule 4 fixing the hours between eleven in the forenoon and four in the afternoon for presentation of nomination papers. It was said that there was thus non-compliance of Rule 4 and, therefore, the election held on 22nd July 1967 was invalid. This contention must be rejected in view of the decision of a Division Bench of this Court in *Govind Rao and Anr. v. State of M.P. and 3 others* 1968 MPL J 634 (Misc. Petition No. 371 of 1966 decided on 11th October, 1966). In that case also, a similar objection was raised by a Councillor who was not able to show that a nomination paper presented by him after the hours specified in the notice issued under Rule 3 (2) but during the period prescribed by Rule 4 was rejected.

Lastly it was contended that the meeting held on 22nd July 1967 was invalid inasmuch as seven clear days" notice of the meeting was not given as required by Section 56(3) of the Act. This contention must be given effect to. It has been held in *Raghuvans Prasad v. Mahendra Singh* 1967 MPL J 941 that the provision about seven clear days" notice for an ordinary meeting of the Council is a mandatory one and that in the computation of that period both the terminal days have to be excluded. In that case also the election of the President and two Vice-Presidents of a Municipal Council was challenged on the ground that for the meeting at which the election was held, seven clear days" notice was not given. u/s 53(3) a notice of an ordinary-meeting has to be despatched to every Councillor and exhibited at the municipal office seven clear days before the meeting. In the present case, the notice of the meeting was dated 14th July 1967, but it was despatched on 15th July 1967. The meeting was held on 22nd July 1967. Thus, it is plain that seven clear days did not intervene between 15th and 22nd July 1967.

Shri J.S. Verma, Learned Counsel appearing for the non-applicant No. 4, however, relying on *K. Narasimhiah Vs. H.C. Singri Gowda*, , argued that the provision in Section 56(3) about seven clear days" notice was not a mandatory one. We are unable to accept this contention. In *K. Narasimhiah Vs. H.C. Singri Gowda*, the Supreme Court no doubt held that the provision in Section 27 (3) of

the Mysore Town Municipalities Act, 1951, about the giving of seven clear days" notice for an ordinary general meeting and of three clear days" notice for a "special general meeting" was only directory and not mandatory. The Supreme Court based its conclusion on two special features of the Mysore Act. One was that while providing for three clear days" notice for a special general meeting, Section 27 (3) also said that "in cases of great urgency, notice of such shorter period as is reasonable should be given to the Councillors of a special general meeting". Dealing with this provision the Supreme Court said:

The decision of what should be considered a case of "great urgency" was left entirely to the President or the Vice-President on whom the duty to call such a meeting is given u/s 27 (2). It is urged by the Learned Counsel that if the intention of the Legislature had been to make the service of three clear days" notice mandatory it would not have left the discretion of giving notice for a shorter period for some of the special general meetings in this manner. We see considerable force in this argument. The very fact that while three clear days" notice is not to be given of all special general meetings and for some such meetings notice only of such shorter period as is reasonable has to be given justifies the conclusion that the "three clear days" mentioned in the section was given by the Legislature as only a measure of what it considered reasonable.

The other provision in the Mysore Act which the Supreme Court noticed was Section 36 of the Mysore Act which lays down that no resolution of a Municipal Council or any committee shall be deemed invalid on account of any irregularity in the service of notice upon any councillor or member provided that the proceedings of the Municipal Council or committee were not prejudicially affected by such irregularity. In regard to this provision the Supreme Court observed:

It is reasonable to think that the service of notice mentioned in this provision refers to the giving of notice to the Councillors. Quite clearly, any irregularity in the manner of giving the notice would be covered by the words "irregularity in the service of the notice upon any Councillor". It appears to us, however, reasonable to think that in making such a provision in Section 36 the Legislature was not thinking only of irregularity of the mode of service but also of the omission to give notice of the full period as required.

There is a material distinction between K. Narasimhiah Vs. H.C. Singri Gowda, and the case before us. In the M.P. Municipalities Act, 1961, there is no provision for the curtailment of the notice period at the discretion of the Presiding Officer or the President or the Vice-President. There is also in the local Act no provision analogous to Section 35 of the Mysore Act. Section 81 of the Act no doubt says that until the contrary is proved, every meeting of the Council or any of its committees shall be deemed to have been duly convened and held.

But this presumption is rebuttable and good only until the contrary is proved. Here, the contrary has been proved by the fact that notice of the meeting was despatched on 15th July and the meeting was held on 22nd July, 1967 and seven

clear days did not intervene.

Shri Verma also cited *Jai Charan Lal Vs. State of U.P. and Others*, and contended that in the computation of the period of seven clear days, only the day of despatch of the notice could be excluded and not the day of the meeting, and on that calculation, there was clearly an interval of seven clear days between the despatch of the notice and the holding of the meeting. In our judgment, the decision of the Supreme Court in *Jai Charan Lal Vs. State of U.P. and Others*, does not lay down the proposition that in the computation of the period of seven clear day's notice, both the terminal days cannot be excluded. On the other hand it lays down that-

the expression "not earlier than thirty days" is not to be equated to the expression "not less than thirty days". It is no doubt true that where the expression is "not less than so many days" both the terminal days have to be excluded and the number of days mentioned must be clear days but the force of the words "not earlier than thirty days" is not the same. "Not earlier than thirty days" means that it should not be the 29th day, but there is nothing to show that the language excludes the 30th day from computation.

These observations only reinforce the view taken in *Rambharoselal v. The State* 1955 NLJ 124: AIR 1955 Nag. 35: ILR 1955 Nag. 1 and *Raghuvans Prasad v. Mahendra Singh* 1967 MPLJ 941 that in the computation of seven clear day's notice period, both the terminal days have to be excluded. As, in the present case, seven clear days did not intervene between the date of despatch of the notice and the holding of the meeting on 22nd July, 1967, that meeting was clearly invalid; and consequently the election of the respondent No. 4 as the President of the Council as that meeting was also invalid.

The result is that this petition is allowed. The proceedings of the meeting held on 22nd July 1967 are quashed and the election of the Respondent No. 4 Inayatullah Khan as President of the Municipal Council, Maihar, is declared to be invalid and quashed. The Petitioner shall have costs of this application from the Respondent No. 4. Counsel's fee is fixed at Rs. 100. The outstanding amount of the security deposit shall be refunded to the Petitioner.