
(2009) 01 MP CK 0048
In the Madhya Pradesh High Court

Azmatullah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 14
States Reorganisation Act, 1956 — Section 51

Citation : (2009) ILR (MP) 1311 : (2009) 3 MPHT 122 : (2009) 1 MPJR 258 :
(2009) 1 MPLJ 575

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Viney Mittal, J.

The petitioner-Azmatullah, a resident of Mhow, District Indore, has filed the present petition under, Article 226 of the Constitution of India, raising a grievance against the Union of India, the President, Returning Officer and Chief Executive Officer etc. of the Cantonment Board, Mhow, in not, allegedly, conducting the elections to Mhow Cantonment Board (hereinafter referred to as "the Board"), in accordance with law.

The relevant facts.

Mhow town is a Cantonment as per Section 3 of the Cantonments Act, 2006 (hereinafter referred to as "Act"). u/s 10 of the Act, governance of Mhow Cantonment is done by a Cantonment Board. The Elections of the Cantonment Board are held as per the various provisions of the Act and the Cantonment Electoral Rules, 2007 (hereinafter called as "Rules").

The petitioner pleads that he is a resident of Mhow Cant, living in Ward No. 4 thereof. He has pleaded that he is qualified to become a Member of Cantonment Board, as per Section 29 of the Act.

In exercise of powers u/s 15(1) of the Act, the Central Government, issued a notification dated September 10, 2008, notifying that the elections to the Cantonment Board, Mhow, would be held on November 9, 2008. A copy of the said notification dated September 10, 2008 has been appended as Annexure P-1 with the present petition. It may be noticed that through the said notification, elections to the Cantonment Board of Jabalpur and Saugor were also notified. In pursuance to the said notification, the President of Cantonment Board, as per requirement of Rule 20 of the Rules, published a public notice of the aforesaid election, A copy of the aforesaid public notice has been appended as Annexure P-2 with the petition.

Subsequently, on October 3, 2008, the Central Government issued another notification, in exercise of its powers u/s 15(1) of the Act read with Rule 20 of the Rules, changing the date of elections of the Cantonment Board, from November 9, 2008 to December 14, 2008. It was recited in the said notification that the said change was necessitated, on having been brought to the notice of the Central Government by the Presidents of the Cantonment Boards of Jabalpur, Mhow and Saugor, that the Assembly Elections for Madhya Pradesh State were expected to be held shortly and therefore, with a view to avoid administrative problems, in view of the close proximity of the Assembly Elections, the Board Elections were deferred, to be held on December 14, 2008. A copy of the aforesaid notification dated October 3, 2008 has been appended as Annexure P-3 with the petition.

Still further, another notification dated November 17, 2008 was issued by the Central Government, wherein again, it was noticed that on recommendations of the Presidents of Cantonment Boards in question, that the State Assembly elections in the State of M.P. had been notified to be held on November 27, 2008, and therefore, again, with a view to avoid administrative problems and in view of the close proximity of the Assembly Elections, the date for Cantonment Boards Elections was notified to be held on January 18, 2009, instead of December 14, 2008. The aforesaid notification dated November 17, 2008 has been appended as Annexure P-5 with the present petition.

It is in these circumstances that the petitioner has approached this Court through the present petition, claiming that as per Proviso to Rule 20 of the Rules, although the Central Government, on the recommendation of the President of the Cantonment Board, could postpone the date of elections in three situations, as provided under the Proviso, but the said postponement could not be for a period of more than forty days. According to the petitioner, since the Notification Annexure P-1 issued on September 10, 2008 had notified the elections of Cantonment Board, Mhow to be held on November 9, 2008, therefore, as per Proviso to Rule 20 of the Rules, the Central Government did not possess any power to postpone the elections beyond a period of forty days from the said date, and because of the fact that the Notification Annexure P-5 had notified the elections to be held on January 18, 2009, the postponed date of elections, being

beyond a period of forty days from the original notified date of November 9, 2008, the entire exercise of holding the elections through Notification Annexure P-5, was vitiated. The petitioner has also maintained that since the elections were not held within the period of forty days of November 9, 2008, therefore, the entire fresh procedure for holding the elections to the Cantonment Board was required to be followed, and even fresh electoral rolls were required to be published.

On a show-cause notice issued by this Court, the respondents have contested the petition. Separate replies have been filed. A reply has been filed on behalf of the Union of India-respondent No. 1 and an independent reply has been filed by respondent Nos. 2, 3 and 5, i.e., the Cantonment Board and its officers. The respondents have justified postponement of the elections and fixing January 18, 2009 as the date for holding the same. It has been maintained that on account of the fact that the State Assembly Elections had been notified by the Election Commission of India, and as per the notification dated October 3, 2008, Annexure P-3, were expected to be held in the proximity of November 9, 2008, therefore, the said date was postponed to December 14, 2008, and later on, when the State Assembly Elections were notified to be held on November 27, 2008, then keeping the aforesaid fact, the Board Elections were postponed to be held on January 18, 2009. The respondents have specifically maintained that on such postponement, there was no requirement of law to have followed, de novo, the entire procedure and frame fresh electoral rolls.

I have heard Shri A.S. Garg, learned Senior Counsel for the petitioner, Shri V.K. Zelawat, learned Assistant Solicitor General for respondent No. 1 and Shri B.L. Pavecha, learned Senior Counsel for respondent Nos. 2 to 6 and with their assistance, have also gone through the various provisions of law and record.

Shri A.S. Garg, learned Senior Counsel for the petitioner, during the course of arguments, has reiterated all pleas which have been raised by the petitioner in the petition. Shri Garg has referred to Rule 20 of the Rules and has placed specific reliance upon the First Proviso therein. According to the learned Senior Counsel, whenever, a public notice of election of a Cantonment Board was issued under Rule 20, then the same was required to contain the date, time and place of polling; the number of persons to be elected and details of wards reserved for Scheduled Castes etc.; the time and place for receipt of nominations; the time and place for scrutiny of nominations; the symbols that were to be allotted to the candidates etc.; and any other matter which was required to be informed to the voters and candidates. It has been maintained by Shri Garg that the First Proviso to the said Rule, enabled the Central Government, to postpone the date of elections in three situations enumerated therein, i.e., the date of election coinciding with or being in close proximity of the date of election for the Lok Sabha, State Assembly etc.; a riot or open violence breaking out or existence of tension in the area; or some natural calamity affecting the Cantonment, on recommendation of the President of the Cantonment Board. However, such a

postponement, as per the Proviso, could not be beyond a period of forty days. On facts of the case, it has been pointed out by learned Senior Counsel that originally, through Notification Annexure P-1, the elections to the Cantonment Board, Mhow, were notified to be held on November 9, 2008, and even if it were to be taken that on account of the close proximity of the said date to the State Assembly Election, the Central Government had the power to postpone the same, the same had been validly postponed to December 14, 2008, through Notification Annexure P-3, but through the subsequent Notification Annexure P-5, the Elections having been postponed beyond a period of forty days from November 9, 2008, the said postponement was beyond the power of Central Government.

On the other hand, Shri B.L. Pavecha, learned Senior Counsel for respondent Nos. 2 to 6, has vehemently refuted the aforesaid contention raised by Shri Garg. Shri Pavecha has maintained that the facts, which have not been even disputed by the petitioner, disclosed that after the Notification Annexure P1 had been issued by the Central Government on September 10, 2008, notifying the date of Cantonment Board elections to be held on November 9, 2008, the Election Commission of India had taken a decision to hold the State Assembly Elections in the month of November, 2008. On that basis, the said fact, having been brought to the notice of the Central Government by the President of the Board, the date of elections was postponed to December 14, 2008 through Notification Annexure P-3. Later on, when the Election Commission of India notified the date of holding the State Assembly Elections as November 27, 2008, then a decision was taken by the Central Government, on the recommendation of the President of the Board, to postpone the elections of the Cantonment Board to January 18, 2009. According to Shri Pavecha, the postponement of the elections of the Cantonment Board, and fixing the date of January 18, 2009, for holding the same was absolutely in-conformity with Rule 20 of the Rules, and the postponement itself specifically was visualized by Clause (i) of the First Proviso.

With regard to the objection raised on behalf of the petitioner that postponement of elections of the Board, under Proviso to Rule 20 of the Rules could not be for a period of more than forty days, the learned Senior Counsel for the respondents has maintained that the powers conferred by any statutory provision can be exercised repeatedly, if and when occasion arises, unless such repetitive exercise is forbidden, either by express language or by necessary implication. In this regard, reliance has been placed by learned Senior Counsel on Section 14 of the General Clauses Act, 1897.

To support the aforesaid argument, strength is sought from the provisions of Section 23-F of the Madhya Pradesh Accommodation Control Act, 1961, wherein a power has been given to stay the operation of the order of eviction for a total period of not more than six months. The law laid down by a Division Bench of this Court in the case of B. Johnson v. C.S. Naidu 1985 J.L.J. 793 has been cited. Specific reliance has been placed on Para 31 of the judgment.

Similar contentions have been raised by Shri V.K. Zelawat, learned Assistant

Solicitor General, appearing for respondent No. 1.

I have given my thoughtful consideration to the rival contentions raised by learned Senior Counsel for the parties.

At the outset, it would be appropriate to extract the relevant portion of Rule 20 of Rules as under:

Rule 20. Public Notice of Election. - As soon as possible after the notification by the Central Government of the date of an election u/s 15 of the Act, the Board or where a Board has not been constituted, the Officer Commanding the station shall draw up and publish in the same manner as in Rule 12, a public notice setting out-

- (a) the date, time and places of polling,
- (b) the number of persons to be elected and details of wards reserved for Scheduled Castes or Scheduled Tribes or women,
- (c) the time and place for receipt of nominations,
- (d) the time and place for scrutiny of nominations,
- (e) the symbols that may be chosen by candidates and the restrictions to which their choice shall be subject, and
- (f) any other matter which may be necessary for information and assistance of voters and candidates:

Provided that the Central Government may, on receipt of a recommendation to that effect from the President, postpone, by not more than forty days, the date of such election to a later date if-

- (i) the date of election coinciding with or is in close proximity of the date of election for the Lok Sabha, State Assembly or any adjacent local authority;
- (ii) a riot or open violence breaks out or there is tension in the Cantonment on account of such riot or violence; or
- (iii) some natural calamity affects the Cantonment.

It would also be beneficial to extract the provisions of Section 14 of the General Clauses Act, 1897 as under:

14. Powers conferred to be exercisable from time to time.- (1) Where, by any (Central Act) or Regulation made, after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

(2) This section applies also to all (Central Acts) and Regulations made on or after the fourteenth day of January, 1887:

Under the Provisions of the Act and the Rules, the Central Government has

competence to notify the elections of a Cantonment Board. Rule 20 of the Rules, requires that after notification by the Central Government, a public notice of election shall be issued, indicating the details, as enumerated in the Rule. The First Proviso to Rule 20 of the Rules enables the Central Government, that in three situations enumerated therein, on receipt of a recommendation to that effect from the President of the Board, it may postpone the date of elections of a Board, which had been earlier notified. A limit of forty days has been provided by which the elections may be postponed from the earlier date fixed for such elections. Thus, there can be no dispute, nor has one been raised on behalf of the petitioner, that the Central Government does possess the powers to postpone the date of elections of a Cantonment Board, once they are so notified. However, whereas, the petitioner maintains that postponement, in any situation, could not have been for a period beyond forty days, the respondents have maintained that the power of the Central Government, conferred under Proviso, could be exercised from time to time, as the situation may demand, but the aforesaid postponement, in exercise of the said powers, could not be for a period of forty days, while issuing a particular notification.

Section 14 of the General Clauses Act, reproduced above, provides that where, through a Central Act or Regulation, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion arises. Thus, once, the Central Government has the power to postpone the elections for a period of forty days under the Proviso to Rule 20, it is apparent that since there is no such prohibition decipherable from the Rule, in any manner, therefore, the said power may be exercised by the Central Government, on repeated occasions, from time to time, under the Proviso, if the conditions enumerated in anyone of the three situations in the said Proviso exist.

Under the provisions of Section 23-F of Madhya Pradesh Accommodation Control Act, 1961, a power has been given to stay the operation of the order of eviction for a total period of not more than six months. Relying upon the Division Bench judgment in B. Johnson's case (supra), it has been maintained by learned Senior Counsel for the respondents that a fresh stay order, on the expiry of six months of the earlier stay order, could be passed in a suitable case, which would operate for same time limit.

It would be relevant to notice the provision of Section 23 of M.P. Accommodation Control Act, 1961, at this stage:

23-F. Duration of Stay.-The stay of the operation of the order of eviction passed by as Rent Controlling Authority or by the High Court shall not ensure for a total period of more than six months.

It would also be relevant to notice the observations of the Division Bench in Para 31 of the judgment in B. Johnson's case (supra) as follows:

31. We are, therefore, of the opinion that Section 23-F prescribed the time limit of six months for operation of the stay order and the same stands automatically

vacated by efflux of time on expiry of six months from the date of the stay order. However, a fresh stay order can be passed in suitable case, which would operate for the same time limit, as there is no prohibition against a fresh stay order being made on the expiry of the earlier stay order by efflux of time. There is thus no basis to challenge the validity of this provision.

Thus, the postponement of the elections through Notification Annexure P-5 of the Act, appears to be absolutely justified, legal, and even warranted by the facts and circumstances of the case.

It would also be beneficial to notice the legal position, as laid down by the Apex Court in various judgments.

In the case of *State of Maharashtra Vs. Narayan Shamrao Puranik and Others*, , it was held by the Supreme Court that a power under Sub-sections (2) and (3) of Section 51 of the States Re-organization Act, 1956, was intended and meant to be exercised from time to time, as occasion arises, as there is no intention to the contrary manifested in the Act, within the meaning of Section 14 of the General Clauses Act, 1897.

Again, in the case of *B.N. Shankarappa Vs. Uthanur Srinivas and others*, , the Apex Court, while relying upon Section 14 of Karnataka General Clauses Act (which is in pari materia to the provisions of General Clauses Act, 1897), held that if the situation so demanded, and there was justification, the enabling power could be exercised from time to time.

Again, in the case *M.P. Vidyut Karamchari Sangh Vs. M.P. Electricity Board*, , it was held by the Apex Court that since the M.P. Electricity Board has the power to make regulations to lay down the conditions of service of its employees, therefore, having regard to the provisions of General Clauses Act, 1897, it has the power to make regulations from time to time.

Even in the case of *M.P. State Electricity Board Vs. Union of India (UOI) and Others*, , relying upon the provisions of Section 14 of the General Clauses Act, 1897, it was held by the Apex Court that a Statutory Authority may exercise his statutory power from time to time.

As already noticed, no provision under the Rules or the Act, has been brought to the notice of the Court, reflecting that enabling power conferred upon the Central Government under the Proviso to Rule 20 of the Rules, could not be exercised from time to time, therefore, on the basis of the provisions of Section 14 of the General Clauses Act, 1897, and in view of the settled position of law, and also keeping in view the factual position with regard to the dates notified for the State Assembly Elections, it has to be held that the Central Government, while issuing the Notification (Annexure P-5), had validly and for justifiable reasons, postponed the elections now to be held on January 18, 2009.

No other point has been urged.

Consequently, I do not find any merit in the present petition. The same is hereby dismissed.

C.C. as per rules.