

(1966) 08 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 218 of 1966

Babulal Jain and others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-08-1966

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 2(2)(ii), 47

Citation : (1966) JLJ 735

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; A.P. Sen, Advocate General and K.K. Dubey, Government Advocate for Respondents 1 and 4 and R.K. Tankhe, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—The four Petitioners, who are Councilors of the Kolaras Municipal Council, have filed this application under Articles 226 and 227 of the Constitution for the issue of a writ of certiorari for quashing an order of the State Government made on 22nd January 1966 holding that the motion of "no-confidence" moved against the Respondent No. 2, Chintamani Jain, the President of the Council, was not validly passed, and for a direction restraining the said Respondent from functioning as President of the Council.

2. The Kolaras Municipal Council was constituted in 1959, under the Madhya Bharat Municipalities Act, 1954. The Respondent No. 2, Chintamani Jain, and the Petitioner No. 1, Babulal Jain, were then elected as President and Vice-President of the Council. They were holding these offices when the Madhya Pradesh Municipalities Act, 1961, (hereinafter referred to as the Act), came into force. By virtue of Section 2(2) (ii) of the Act, the Municipal Council, the members of the Council, and the President and Vice-President thereof continued to function till the expiry of their term under the M. B. Municipalities Act, 1954, which was repealed by the Act of 1961, for sometime thereafter. On 18th March 1963 fresh

elections to the Municipal Council were held under the provisions of the Act of 1961, and after this election the non-applicant No. 2, Chintamani Jain, was again elected as President. The Council consists of six members. On 9th January 1965 three of the Councillors sent a notice of a motion of no-confidence against the President, Chintamani Jain, and sent a requisition to the Chief Municipal Officer to convene a meeting of the Council for discussing the motion. The Chief Municipal Officer, acting u/s 47(2) of the Act, issued a notice of the meeting to the Councillors intimating them that the meeting for discussion of the no-confidence motion would be held on 27th January 1965. The meeting was held on that date at the appointed hour and was attended by all the six Councillors. At this meeting, the motion of no-confidence against the President was passed by a majority of two-thirds of the Councillors present and voting. Four of the Councillors voted in favour of the motion and two against it.

3. The opponent No. 2, Chintamani Jain, then moved the Collector, Shivpuri, u/s 323 of the Act for suspending the operation of the no-confidence motion. The Collector first made an order suspending the effect of the passing of the no-confidence motion, but later on, taking the view that the motion of no-confidence had been validly passed, cancelled his order of suspension. Thereafter the Respondent No. 2, Chintamani Jain, preferred a revision petition before the State Government against the order of the Collector refusing to suspend the effect of the passing of the no-confidence motion. In filing the revision petition Chintamani Jain purported to act u/s 331 of the Act. After hearing the parties, the State Government came to the conclusion that the no-confidence motion should have been moved and passed in accordance with Section 24 of the M. B. Municipalities Act, 1954; and that as this was not done and the motion of no-confidence was moved and passed u/s 47 of the Act of 1961, the no-confidence motion moved and passed at the meeting of the Council held on 27th January 1965 was invalid and ineffective. On this view, the revision petition preferred by the Respondent No. 2 was allowed.

4. The view expressed by the State in the order allowing the Respondent No. 2's revision petition has been reiterated in the return filed on behalf of the State. It has also been added therein that the election of Chintamani Jain as President in 1963 should have been held under the Madhya Bharat Municipalities Act, 1954, and not under the Act of 1961, and consequently his election as President under the Act of 1961 was a nullity.

5. Having heard learned Counsel for the parties, we have reached the conclusion that this petition must be allowed. For the purposes of this petition, it is not necessary to enter into a discussion of the question whether the election to the Municipal Council, Kolaras, and of the President and Vice-President thereof held in March 1963 should have been under the M. B. Municipalities Act, 1954, instead of under the Act of 1961. If a new election to the Council could be held in 1963, then, whether that election was held under the repealed Act of 1954 or the new Act of 1961, the new Council which came into existence would be a Council

under the Act of 1961, That being so, the provisions of Section 47 of the Act of 1961 regulating the moving and passing of a no-confidence motion against a president would clearly apply. There is nothing in Section 2(2)(ii) of the Act, as it stood originally, or even after it was amended by Act No. 31 of 1963, to support the argument that when a fresh election to the Council and of its office-bearers is held under the repealed Act after the coming into force of the Act of 1961, then the functioning of the new Council would be under the repealed Act. Section 2 (2) (ii) only deals with the functioning of the continued bodies and the office-bearers until the expiry of the respective (sic) under the repealed Act. If, on the other hand, it is taken that in 1963 fresh election to the Council and of its office-bearers could not be held and the Council and the office-bearers elected in 1959 continued to function then and even till now, then also, as held by this Court in Sheo Kumar Shashtri Vs. Municipal Committee, , after the coming into force of the Act of 1961 a motion of no-confidence could be moved only in accordance with the provisions of Section 47 of the Act of 1961.

6. Now, the motion of no-confidence, which was moved and passed against the Respondent No. 2 on 27th January 1965, was strictly in accordance with Section 47 of the Act. The meeting at which the motion was discussed was convened by the Chief Municipal Officer on a requisition signed by three of the six Councillors, that is to say, by more than one-sixth of the total number of Councillors constituting the Council. The notice of the meeting specifying the time and place thereof was despatched by the Chief Municipal Officer to other Councillors ten clear days before the meeting. The President against whom the motion of no-confidence was moved did not preside over the meeting. It was presided over by Mother Councillor. Thus all the requirements of Section 47(2) of the Act were fulfilled. The motion of no-confidence was carried by a majority of two-thirds of the Councillors present and voting. This is clear from the fact that out of the six Councillors constituting the Council, four voted for the motion and two against it. u/s 47(1) if a motion of no-confidence against a President or Vice-President is validly passed, then the office of of the President or Vice-President, as the case may be, falls vacant forthwith. The motion of no-confidence takes effect from the moment it is passed. As here the motion of no-confidence was validly passed against the Respondent No. 2 on 27th January 1965, he ceased to hold the office of President from the moment it was passed.

7. The Collector has no power u/s 323 of the Act to direct that a motion of no-confidence passed u/s 47 shall not take effect. Section 323 deals with the suspension of execution of those orders or resolution of a Council which are executor. A motion of no-confidence passed u/s 47 is neither an executory order nor an executory resolution of the Council. It takes effect from the moment it is passed and the office of the President or Vice-President, as the case may be, becomes vacant forthwith. If the Collector has no pawer u/s 323 of the Act to make any order in relation to a motion of no-confidence and to suspend the effect of a motion of no-confidence passed u/s 47, then clearly the Government also cannot claim such a power u/s 331 in the exercise of its revisional

jurisdiction against an order passed by the Collector refusing to suspend the effect of the passing of a no-confidence motion u/s 47. Our attention was drawn to Section 330 of the Act, which is as follows:

The State Government may, at any time, for the purpose of satisfying itself, as to the legality or propriety of any order passed by the Chief Municipal Officer or the President in exercise of the powers conferred by this Act, or as to the regularity of the the proceedings of any meeting of the Council or any of its Committees held in pursuance of the provisions of this Act call for and examine the record of any case pending before or disposed of by the Chief Municipal Officer, the President, the Council, or such committee and may pass such order in reference thereto as it thinks fit:

** **

It was suggested on behalf of the Respondent No. 2 that the Government has under this provision the power to suspend the effect of a no-confidence motion passed u/s 47. We are unable to accede to this contention. In regard to the proceedings of any meeting of the Council, the Government's power u/s 330 is confined to an examination of the regularity of the proceedings of any meeting of the Council in relation to any case pending before or disposed of by the Council. The words "any case pending before or disposed of by the Council" are important. A motion of no-confidence passed u/s 47 is clearly not "any case pending before or disposed of by the Council."

8. In our judgment, the motion of no-confidence passed against the Respondent No. 2 on 27th January 1965 was validly passed and the order of the State Government dated the 22nd January 1966 holding that the motion was not validly passed was altogether without jurisdiction. For these reasons, this petition is allowed, the order dated the 22nd January 1966 of the State Government is quashed, and it is declared that the motion of no-confidence moved against the Respondent No. 2, Chintamani Jain, was validly passed on 27th January 1965, and from that date the said Respondent ceased to hold the office of the President. The Respondent Chintamani Jain is restrained from functioning as president of the Council. The Petitioners shall have costs of this application from the Respondent No. 2. Chintamani Jain. Counsel's fee is fixed at Rs. 150. The outstanding amount of security deposit, shall be refunded to the Petitioners.