

(2009) 08 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 5264 of 2008

Baisakhuramsahu and Another

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Chhattisgarh Municipal Act, 1961 — Section 47, 47(1), 47(2), 47(3)

Citation : (2010) 1 CGLJ 23

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Sanjay S. Agrawal, in Writ Petition C No. 5264 of 2008 and Sanjay K. Agrawal, in Writ Petition C No. 7045 of 2008, for the Appellant; Amrito Das, Panel Lawyer for State, Sanjay K. Agrawal, in Writ Petition (C) No. 5264 of 2008 and Amrito Das, Panel Lawyer for State, B.D. Guru, for Respondent No. 3, A.S. Kachhawaha and Sanjay S. Agrawal, for Respondents Nos. 5 to 19 in Writ Petition (C) No. 7045 of 2008, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Heard learned Counsel for the parties.

2. W.P. (C) Nos. 5264 of 2008 and 7045 of 2008 involve common cause of action and as such, both the petitions are considered and disposed of by this common order.

3. By W.P. (C) No. 5264 of 2008 the Petitioners, who are Vice President and Councilor of Municipal Council, Bemetara, seek direction commanding the Respondent No. 1 to refer the proposal of recall, submitted by the Collector, Durg, vide its memo dated 25th August, 2008 (Annexure P/3) to the State Election Commission for further action.

4. By W.P. (C) No. 7045 of 2008 the Petitioner, who is President of Municipal Council, Bemetara, prays for quashment of no confidence motion proceedings dated 2nd June, 2008 and also prays for quashment of memos dated 27th

October, 2008 (Annexure - P/1) and 4th July, 2008 (Annexure - PI/A).

5. The facts, in nutshell, for adjudication of both the writ petitions, are that 15 Councilors of Municipal Council, Bemetara, have moved an application dated 2nd June, 2008 (Annexure - P/1 to W.P.(C) No. 5264/2008) to the Collector, Durg, for recalling of the President, Municipal Council, on the allegations that the President is not performing her duties in accordance with law and causing immense financial loss to the Municipal Council. On due verification, the Collector by memo dated 4th July, 2008 (Annexure - P/2) forwarded the matter to the State Government. According to the Petitioners, as per the settled principles of law, the State Government is under obligation to refer the matter to the State Election Commission, however, instead of referring the same to the State Election Commission, the State Government remitted the matter to the Collector, Durg. The Collector, Durg, after verifying and proving the signatures of all the 15 councilors in the application dated 2nd June, 2008, reiterated the same proposal to the State Government by memo dated 25th August, 2008 (Annexure - P/3). Thereafter, the State Government has not sent further the said proposal to the State Election Commission for further action. Thus, this petition being W.P.(C) No. 5264/2008.

6. The Petitioner was elected as the President of Municipal Council, Bemetara on the 19th December, 2004. On the 2nd June, 2008, the Respondents No. 5 to 19 herein moved an application for no confidence motion against the Petitioner. After due verification by the Additional Collector, the Collector by memo dated 4th July, 2008 (Annexure - PI/A) forwarded the matter to the Collector stating that no confidence motion has been verified. Thereafter, 3 councilors namely; Kamla Sahu, Hemlata Verma and Purnima Sahu filed an application along with affidavit before the State Government and disagreed for the no confidence motion. The State Government by its memo dated 25th September, 2008 made an enquiry with regard to the application made by 3 councilors through the Collector. The Collector by memo dated 27th October, 2008 (Annexure-P/1) again forwarded the case to the State Government for taking decision on the no confidence motion. According to the Petitioner, without any authority and jurisdiction, the Collector has forwarded the case of no confidence motion to the State Government for taking action. Thus, this petition being W.P. (C) No. 7045/2008.

7. Shri Sanjay S. Agrawal, learned Counsel appearing for the Petitioner in W.P. (C) No. 5264 of 2008 and Respondent No. 5 to 19 in Writ Petition (C) No. 7045 of 2008, would submit that admittedly, the provision for no confidence motion has been omitted from the statute by Nagar Palika Vidhi (Sansodhan) Adhiniyam, 1999 (for short "the Act, 1999") Act No. 11 of 1999 with effect from 23rd April, 1999. It was substituted by provisions for recalling of President. The Petitioners in W.P. (C) No. 5264 of 2008 accordingly made an application on 2nd June, 2008 (Annexure P/1), under signatures of 15 Councillors before the Collector for recalling of the President Smt. Sawana Bai Sen under provisions of Section 47 of

the C.G. Municipalities Act, 1961 (for short "the Act, 1961). The Collector forwarded the proposal by letter dated 4th July, 2008 to the Secretary, Urban Administration and Development, Raipur, Government of Chhattisgarh. The State Government, instead of referring the same to the State Election Commission, remitted back the matter to the Collector for reconsideration. The Collector again by memo dated 25th August, 2008, reiterated the proposal of 15 Councillors indicating that the signatures made by the 15 Councillors have been found properly proved. Thereafter, no action has been taken by the State Government, which is contrary to the provisions of Section 47(2) of the Act, 1961. Thus, a direction may be issued to the State Government to refer the proposal for recalling of the President to the State Election Commission for further action in accordance with the provisions of Sub-section (3) of Section 47 of the Act, 1961.

8. Shri Sanjay S. Agrawal would further submit that the State has no jurisdiction either to remit the matter back for verification of the signatures or to withhold the proposal of the councilors for recalling of the President under any provision of law. The action of the State Government is excessive, arbitrary with an intention to protect the President of the Municipal Council, Bemetara.

9. Per contra, Shri Sanjay K. Agrawal, learned Counsel appearing for the President, Nagar Palika Parishad (Petitioner in W.P.(C) No. 7045/2008 and Respondent No. 3 in W.P.(C) No. 5264/2008, submits that the provision for no confidence motion has been omitted from the statute and the same has been substituted by provision of recalling of the President. Thus, the initiation of no confidence motion by the councilors does not lie. Thus, the proposal of the private Respondents in W.P. (C) No. 7045/2008 to initiate no confidence motion is illegal.

10. On the question of competence of the State Government to withhold the proposal u/s 47 of the Act, 1961, it is submitted that the signatures made by the councilors have not been properly verified and as such, the matter was remitted back to the Collector for verification of the signatures of 15 Councillors. Even thereafter, after verifications of the signatures, the Collector, reiterated the same on 25th August, 2008, it is for the State to consider about the genuineness about proposal and forward thereafter to the Commission. The State has to apply its mind before referring the proposal to the State Election Commission under provisions of Sub-section (2) and (3) of Section 47 of the Act, 1961.

11. Shri Amrito Das, learned Panel Lawyer appearing for the state would submit in support of the stand taken by the State Government.

12. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto.

13. The application dated 2nd June, 2008 clearly states that the proper steps may be taken under provisions of Section 47(2) of the Act, 1961, on the ground of alleged financial irregularities committed by Smt. Sawana Bai Sen causing loss to the Municipal Council. There is one line in the application which shows that the

councilors express their no confidence in Smt. Sawana Bai Sen, President, Municipal Council. At the last para, it is clearly mentioned that the steps may be taken under provisions of Section 47(2) of the Act, 1961. Thus, it cannot be held that the letter dated 02nd June, 2008 (Annexure P/2 to WP(C) No. 5264/2008) was a proposal for vote of no confidence but the same was for recalling of the president under provisions of Section 47 of the Act, 1961. The Collector, by letter dated 4th July, 2008, (Annexure P/2 to WP(C) No. 5264/2008) in his communication sent the proposal of recalling of the President to the Secretary, Government of Chhattisgarh, Urban Administration and Development Department, under the provisions of Section 47(2) of the Act, 1961. The matter was remitted back to the Collector, contrary to the provisions of law. The Collector, in the subsequent communication dated 25th August, 2008 (Annexure P/3 to WP(C) No. 5264/2008), reiterated the same proposal holding that he has verified signatures of 15 Councillors out of 19 Councillors including the President, which is more than 3/4th of the total number of elected councilors required under provisions of Section 47(1) of the Act, 1961. The State Government, thereafter kept silent over the proposal made by the Collector.

14. Before 23rd April, 1999, Section 47 provided for no confidence motion against President of the Municipal Council. By Act No. 11 of 1999, the original Section 47 was substituted by "Recalling of President". It is useful to quote the said provision which came into force w.e.f. 23rd April, 1999. It reads as under:

47. Recalling of President. --(1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed:

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three fourth of the total number of the elected Councillors and presented to the Collector:

Provide further that no such process shall be initiated:

(i) within a period of two years from the date on which such President is elected and enters his office;

(ii) if half of the period of tenure of the President elected in a by-election has not expired;

Provided also that process for recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three fourth of the Councillors specified in Sub-section (1) have the proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for

voting on the proposal of recall in such manner as may be prescribed.

Subs. By MP 11 of 1999 (23.4.1999)

15. On bare perusal of the provision, it is evident that Section 47(1) of the Act, 1961 contemplates recalling of President through a secret ballot by majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed. Proviso to Section 47(1) states that no process shall be initiated unless the proposal is sent by the three fourth member of the total number of the elected Councillors and presented to the Collector. In case on hand, 15 Councillors out of 19 Councillors including the President made an application on 2nd June, 2008 (Annexure P/1 to WP(C) No. 5264/2008) to the Collector, Durg. The Collector, after verifying and satisfying himself sent the proposal to the State Government for making a reference to the State Election Commission. The State Government remitted back the matter for fresh verification and approval. Again on 25th August, 2008, after verification of the signatures, the Collector reiterated the same under provisions of Section 47(2) of the Act, 1961. It appears that there is no scope for the State Government to reconsider and withhold the proposal for recalling of the President as Sub-section (2) of Section 47 of the Act, 1961 clearly provides that the Collector, after satisfying himself and verifying that the three-fourth of the councilors specified in Sub-section (1) for proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission. Sub-section (3) provides that on receipt of reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed.

16. Provisions of Section 47 of the Act, 1961 is clear and unambiguous. It does not admit of any other interpretation. It is well settled principle of interpretation of statute that if the provision of the Act is clear and unambiguous and does not lead to absurdity or anomalous situation, the literal interpretation has to be resorted to.

17. In *Jugalkishore Saraf v. Raw Cotton Company Ltd.* AIR 1955 SC 376 the Supreme Court observed as under:

6...The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction of the rule leads to no apparent absurdity and, therefore, there can be no compelling reason for departing from that golden rule of construction.

18. A Constitution Bench of Supreme Court, in *Harbhajan Singh Vs. Press Council of India and Others*, , observed as under:

12. The rival pleas regarding rewriting of statute and *casus omisus* need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". See *Lenigh Valley Coal Company v. Yensavage*. The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*.

19. In *Harbhajan Singh Vs. Press Council of India and Others*, , the Supreme Court observed as under:

7...The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule--the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material--intrinsic or external--is available to permit a departure from the rule.

20. In *Kuldip Nayar Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court observed as under:

201...We endorse and reiterate the view taken in the above quoted paragraph of the judgment. It may be desirable to give a broad and generous construction to the constitutional provisions, but while doing so the rule of "plain meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In fact the rule of "literal construction" is the safe rule unless the language used is contradictory, ambiguous, or leads really to absurd results.

21. The Supreme Court, in *Commnr. of Central Excise, Bhavnagar Vs. Saurashtra Chemicals Ltd.*, observed as under:

13. A beneficent statute may have to be considered liberally but where a statute does not admit of more than one interpretation, literal interpretation must be resorted to....

22. It is clear from the above stated reasons that after verification of the signatures of the three-fourth of the councilors, the Collector had sent the proposal to the State Government on 25th August, 2008 and the State Government has no jurisdiction to withhold the same. The State Government has no option but to refer the proposal to the State Election Commission. The State Election Commission on receipt of the proposal, shall arrange for voting on proposal of the recall.

23. In *Bharti Sonkar v. State of C.G. and Ors.* 2008 (3) CGLJ 115 (DB), a Division Bench of this Court observed as under:

11. On a cumulative consideration of the above mentioned broad features of the case, we have no manner of doubt that on the mere mention of the motion as "Motion of No Confidence" in place of "Motion to Recall" by the Collector in the memo dated 26.03.2007, it cannot be held that the mandatory provisions contained in Section 47(2) of the Act have not been complied with by the Collector, Durg. We, therefore, do not find any substance in the first submission of learned Counsel for the Appellant and the same is liable to be rejected and is hereby rejected.

24. The Full Bench of High Court of Madhya Pradesh, in *State of M.P. and Another Vs. Mahendra Kumar Saraf and Others*, relied on by Shri Sanjay S. Agrawal, observed as under:

13. Whether the presence of Councillors who have signed the proposal, in person before the Collector is a legislative requirement or not depends upon the true construction and interpretation of proviso to Sub-section (1) of Section 47 of the Act which has been reproduced in earlier part of this order. If we scan and put apart the two aspects regarding signing and presentation of the proposal, it appears in the following form:

(i) signed by not less than 3/4th of the total members of the elected Councillors; and

(ii) presented to the Collector.

Had the phrase "and presented to the Collector" as used in the closing part of the proviso, been placed immediately after the word "signed", then the shape of this proviso would have been as under:

Provided that no such process of recall shall be initiated unless a proposal is signed (and presented to the Collector) by not less than 3/ 4th of the total members of the elected Councilors.

25. For the reasons stated hereinabove, the provision of Section 47 of the Act, 1961 is clear and unambiguous, thus, the State Government has no authority to withhold the proposal for recalling of the President of Municipal Council, but send the same to the State Election Commission. It is accordingly directed that the State Government shall send the proposal of recalling of the President of Municipal Council, Bemetara forwarded by the Collector, Durg on 25th August, 2008 to the State Election Commission immediately.

26. The Writ Petition (C) No. 5264 of 2008 is allowed. For the reasons stated hereinabove, Writ Petition (C) 7045 of 2008 is disposed of. No order as to costs.