
(1964) 01 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 440 of 1963 (J)

Balram

APPELLANT

Vs

Corporation for Jabalpur City

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipal Corporation Act, 1956 — Section 37, 39A, 66, 67, 70

Citation : (1964) J LJ 201

Hon'ble Judges : P.V. Dixit, C.J; K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant;

Final Decision : Allowed

Judgement

Dixit, C.J.—In this application under article 226 of the Constitution by Chairman and two members of the Standing Committee of the Municipal Corporation of Jabalpur, the prayer of the petitioners is that a direction be issued to the Corporation for bearing it from discussing a resolution expressing no-confidence in the Standing Committee and directing the Commissioner of the Corporation to take necessary steps for the election of a new Standing Committee.

2. The matter arisen thus: On 12th December 1963 ten members of the Corporation sent a requisition to the Mayor requesting him to call a meeting of the Corporation for discussing the resolution stated in their written requisition. On receipt of this requisition, the Mayor called a special meeting of the Corporation on 18th December 1963 at 6 p. m. The Secretary of the Corporation, acting under the orders of the Mayor, issued notices of the meeting to the members of the Corporation on 14th December 1963. The resolution, which the requisitions wanted to be discussed at the meeting, was in Hindi. It was to the effect that on the resignation of the Mayor and the Deputy Mayor, belonging to the Praja Socialist Party, it was expected that the Standing Committee constituted by the members of that Party would also resign; but the Standing

Committee had not done so and continued to function arbitrary, on the basis of groupism and regardless of the interests of the Corporation. The resolution gave one instance of the manner in which the Standing Committee was functioning, and ended by expressing no-confidence in the Committee and contained a direction to the Commissioner to take necessary steps for the constitution of a new Committee.

3. Immediately after the admission of this petition on 17th December 1963, the petitioners prayed for the issue of an interim direction restraining the Corporation from holding the meeting which was scheduled to be held on 18th December 1963 at 6 p. m, This prayer was granted and on that very date we issued a direction restraining the opponents from holding any meeting of the Corporation for discussing the intended motion of no confidence till the disposal of this petition.

4. The petitioners' contention is that the Standing Committee is a statutory body constituted u/s 37 of the Madhya Pradesh Municipal Corporation Act, 1956, (hereinafter called the Act), and the Act nowhere gives to the Corporation the power and jurisdiction to consider and discuss any motion of no-confidence against the Standing Committee: that u/s 38(2) of the Act the term of office of the Standing Committee is one year; and that the Corporation has no power to cut down this term in any manner and to direct the Commissioner to commence proceedings for the election of a new Standing Committee after the passing of a motion of no confidence by the Corporation against the Committee. No return has been filed in the case by the opponents and at the time of the hearing of the petition none appeared before us on their behalf We have not, therefore, had the advantage of knowing the views of the Corporation as to the legal sanction behind the action they intended to take.

5. After hearing learned counsel for the petitioners, we have no doubt that this application must be granted. It is axiomatic that the powers of a statutory corporation or body are limited and circumscribed by the statute creating it and regulating its business; and the corporation can exercise only those powers which are specifically conferred upon it by or under the Act or which are consequential or Incidental to the exercise of those powers. The position has been stated in Halsbury's Laws of England (Vol. 9-3rd edn.- paragraph 129) thus-

The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorized. What the statute does not expressly or impliedly authorize is to be taken to be prohibited.

6. Now, u/s 37 of the Act, the Standing Committee consists often Councilors. According to section 38 (2), the term of office of the Committee is one year. By section 39 (1), the Standing Committee is required to elect one of its members

to be Chairman of the Committee who holds office until a new Chairman is elected Sub-section (4) of section 39 deals with the filling of a casual vacancy in the office of Chairman. Section 39A deals with the passing of a motion of no-confidence against the Chairman. It runs thus-

39 A (1). A motion of no confidence may be moved against a Chairman of a Standing Committee by any member thereof at a meeting of the Standing Committee specially convened for the purpose under sub-section (2) and if the motion is carried by a majority of two third of the councilors constituting the Standing Committee for the time being, the office of the Chairman shall be deemed to have been vacant forthwith.

There is no provision in the Act for the initiation or passing of a motion of no-confidence by the Corporation against the Standing Committee. Section 70 of the Act, however, gives to the Corporation the power to call from the Standing Committee any return, statement, account or report concerning or connected with any matter which the Committee is empowered to do. It is as follows-

70. The Corporation may at any time call for any extract from any proceeding of any committee and for a return, statement, account or a report concerning or connected with any matter with which any such committee is empowered by this Act to be; and every such requisition shall be complied with by such committee without unreasonable delay.

Chapter V of the Act contains provisions in regard to the powers, duties and functions of the municipal authorities. Sections 66 and 67 specify the obligation and discretionary duties of the Corporation. The Act also contains provisions dealing with the powers of the Standing Committee.

7. It is plain that the Corporation is entitled to discuss any subject relating, to the duties which it is required to discharge in connection with the municipal administration. A perusal of sections 66 and 67 of the Act, which specify the obligatory and discretionary duties of the Corporation, and of other provisions which deal with the powers of the Corporation, is sufficient to show that there is not even a remote relation between a resolution expressing no-confidence in the Standing Committee and any of the duties which the Corporation is required to discharge under the Act. The Corporation has no doubt the power u/s 70 to call from the Standing Committee a return statement, account or report concerning with any matter which the Committee has done or is empowered to do under the Act and it can also discuss the report. During the course of the discussion, the Corporation can of course give expression to their views as regards the manner in which the Committee has discharged its functions. But section 70 does not authorize the Corporation to pass any resolution expressing no-confidence against the Committee, or for the matter of that, any resolution on the discussion of the report, statement, account or return requisitioned from the Committee u/s 70. There is no provision in the Act as to the action that the Corporation should take after getting a report from the Committee u/s 70. As at

present advised, we are disposed to think that the Corporation has no doubt the power to discuss the report furnished to it by the Committee u/s 70 but it has no power to end the discussion by passing any resolution. In our opinion, the Act nowhere expressly or impliedly authorizes the Corporation to pass a resolution against the Standing Committee. It must, therefore be taken that the Corporation is prohibited from passing any such resolution. Indeed, the passing of such a resolution would be altogether, anomalous when the Standing Committee is a body of the Corporation it self consisting of members elected from and by the Councilors. It would also be futile when the Act nowhere contains a provision for cutting down the term of office of the Standing Committee fixed by section 38 (2) of the Act on the passing of a motion of no-confidence against it. In such circumstances, the passing of a resolution would be to no purpose and would only create bad feelings amongst the Councilors and impede the efficient and smooth running of municipal administration which is expected from the Councilors.

8. We are fortified in the view we have taken by the decision of the Bombay High Court in *Bom. Municipal Corpn. Vs. Ramchandra* AIR 1960 Bom. 58. In that case, the question arose whether the Bombay Municipal Corporation had the power to discuss and pass a resolution describing the late Mr. Imre Nagy, a former Prime Minister of Hungary, and his three associates as fighters for freedom for their motherland, as persons who even at the cost of their lives displayed great courage and steadfastness in the cause of their country's freedom, eulogizing them and expressing the Corporation's deep regret at their execution. The notice of the resolution was given by one of the Councilors of the Corporation. Desai J. before whom the matter first came held that the resolution was beyond the ambit and powers of the Corporation and issued a writ to the Corporation rerunning it from discussing and passing the resolution. In appeal, a Division Bench of the Bombay High Court took the view that the resolution was within the scope and ambit of the Bombay Municipal corporation Act, 1888, as the subject-matter of the resolution was reasonably related to section 63 (k) of the Bombay Act which gave to the Corporation the power to take any measure likely to promote public instruction. The learned Judges of the Bombay High Court laid down that the Corporation could exercise only such powers as were specifically conferred upon by or under the Bombay Municipal Corporation Act, 1888, or as were consequential or incidental to the exercise of such powers and that the proposition which a corporator is entitled to make before any meeting of the Corporation must be such as relates to the business of the Corporation and that it must, therefore, be on a subject which has a bearing directly or indirectly on the municipal administration or municipal government of Greater Bombay. These observations make it very clear that the test to be applied in determining whether the Corporation has the power to discuss any particular resolution is whether the subject-matter of the resolution has any relation to the business or duties which the Corporation is competent to discharge under the Act constituting it, It Is on the application of this test that we have held that the

resolution which the Corporation desired to discuss and pass expressing to-confidence against the Standing Committee was beyond the scope and ambit of the M.P. Municipal Corporation Act, 1956.

9. For these reasons, this petition is allowed and the Corporation is restrained from discussing and passing at any time the "resolution which it intended to discuss and pass at the meeting which was to have been held on 18th December 1963 on a requisition often Councilors. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioners.