
(2020) 02 MP CK 0172

In the Madhya Pradesh High Court

Case No : Writ Petition No. 27794 Of 2019

Basant Shravanekar

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 47, 323, 331, 332

Citation : (2020) 02 MP CK 0172

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Pushyamitra Bhargava, Mayank Purohit, Kamal Airen

Final Decision : Dismissed

Judgement

1. Petitioners, ten in numbers, have filed the present petition being aggrieved by the order dated 19.11.2019 (Annexure P/1) passed in Case No.C-

144/2019-20 passed by Collector Khargone whereby the motion moved by the Councilors of Municipal Council, Maheshwar under section 47 of the

Municipalities Act (hereinafter referred to as 'the Act') has been turned down.

Facts of the case in short are as under:

2. Petitioners are elected Councilors of Municipal Council, Maheshwar in the general election held in the year 2017. The result was published in the

gazette notification dated 24.08.2017. After completion of duration of two years, ¾th Councilors invoked the provision of section 47 of the

Municipalities Act by submitting a proposal to the Collector for recalling of the elected President of the Municipality. According to the petitioners, the

proposal was signed and supported with the affidavits of 15 Councilors. Under the provision of section 47 of the Act, the Collector was required to

verify the signatures and affidavits of the Councilors before forwarding it to the State Election Commission. Vide order dated 21.10.2019 the

Collector, Khargone has directed all the Councilors to remain present on 25.10.2019 at 4.00 P.M along with their ID cards for verification of the

signatures. On 25.10.2019 the Councilors appeared through their counsel but the Collector was busy in administrative work, therefore, the verification

could not be done and the next date of 04.11.2019 was given. On 04.11.2019 the Collector was not in the office, therefore, the next date was given by

the Reader. On 18.11.2019 ten Councilors appeared along with the counsel and signed the order sheet before the Collector and he also verified and

certified them on the basis of photos and ID cards. For verification of other Councilors the counsel sought time till 19.11.2019. On 19.11.2019 an

application was moved by counsel Shri Lakhan Yadav seeking adjournment on the ground that a death took place in the family of Councilor Dilip and

Councilors Ravi, Ruvina Bee and Ritu are unable to appear due to illness. Since the application was not supported by any documentary evidence,

therefore, the Collector has rejected the application and also turned down the proposal for want of quorum. According to the Collector, out of 15

Councilors, $\frac{3}{4}$ th Councilors i.e. 12 were required to verify their signatures but only ten have verified, hence the proposal of recall is not supported by

$\frac{3}{4}$ th Councilors, hence the same is liable to be rejected.

3. Being aggrieved by the aforesaid order, ten Councilors have filed the present petition before this Court on the ground that the Collector has

unnecessarily insisted for verification of the signatures by personal presence of the Councilors which is beyond the scope of section 47 of the Act.

The proposal was moved by $\frac{3}{4}$ th Councilors and section 47 does not contemplate that proposal should be presented by $\frac{3}{4}$ th Councilors in person or

that for the purpose of verification of their signatures the personal presence is necessary.

4. Shri Pushyamitra Bhargava, learned counsel appearing for the petitioners has placed heavy reliance over the judgment passed by the Full Bench of

this Court in the case of State of M.P and another vs. Mahendra Kumar Saraf reported in 2005 (3) MPLJ 578 judgment passed by the Full Bench in

the case of Smt.Naravadi Bai Choudhary vs. State of M.P reported in 2005 (2) MPLJ 306 in which it has been held that the provision of section 47 no

where mandates that the verification shall be made in presence of the signatories. The verification of signatures by way of personal presence is not the only or exclusive mode provided in section 47 of the Act. If the physical presence of the Councilor concerned is made a sine qua non for verification of the signatures, at times it may defeat the purpose. If the Councilors are unable to present due to old age, infirmity or serious illness etc. in such a situation the verification can be done by other mode, hence the impugned action of the respondent is arbitrary and in violation of the provisions of the Act and liable to be set aside.

5. Per contra, Shri Mayank Purohit, learned Govt. Advocate appearing for the respondents No.1 & 3 submits that the impugned order has been

correctly passed by the Collector in conformity with the provisions of Section 47 of the Act. Out of 14 Councilors, ten appeared and got verified their

signatures on 18.11.2019 and the remaining 4 Councilors sought time to appear but on 19.11.2019 none of them appeared and their counsel filed an

application for adjournment which was not duly supported by any document, therefore, the Collector has rightly turned down the proposal for want of

verification by 3/4th Councilors. In support of his contention he has placed reliance over the judgment passed by the Division Bench of this Court in

the case of Madanlal Narvariya vs. Smt.Satya Prakash Parsedia and others reported in 2008 (4) MPLJ 31 6in which after considering the aforesaid

two Full Bench judgments it has been held that under section 47 of the Act the Collector is required to record its satisfaction which means the act of

satisfying or the state of feeling being satisfied in respect of the proposal moved by 3/4th members of the council. The subjective satisfaction of the

Collector is necessary before forwarding the proposal to the State Election Commission. The degree of application of mind in the case of satisfaction

is greater than the word approval. If the Collector is not satisfied subjectively then he is competent to reject such proposal. Shri Purohit, learned Govt.

Advocate submits that against the impugned order the petitioners are having alternate remedy of revision before the State Govt. under section 331 of

the Act and thereafter a remedy of review under section 332 of the Act.

6. Shri Kamal Airen, learned counsel appearing for the respondent No.2 submits that at this stage there is no role of M.P State Election Commission

because the Collector did not find it satisfactory to forward it to the Election

Commission and turned down the proposal.

7. Section 47 of the Municipalities Act 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 (he elected Councillors and presented to the Collector :

Provided 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 signed 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.]

8. Undisputedly, 15 Councilors have signed a proposal and presented it before the Collector, Khargone for recalling of the President of the Municipal

Council, Maheshwar. The Collector registered it as case No.C-144/2019-20 and directed all the 15 Councilors to remain present on 25.10.2019 at 4.00

P.M for verification of the signatures. They have also been directed to keep their ID cards with them. The verification could not take place on

25.10.2019 and 04.11.2019. On 18.11.2019 out of 15 Councilors only ten were present for verification of their signatures and identity and that was

done by the Collector. For verification of the remaining four Councilors, the

counsel appearing on their behalf sought time till 19.11.2019. On 19.11.2019 the counsel on his own signature submitted an application for adjournment on the ground that Councilor Dilip is unable to appear due to demise in the family and the remaining 3 Councilors viz. Ravi, Ruvina Bee and Ritu are unable to appear due to sickness. The application was not supported by any affidavit or any documentary evidence. Even the counsel has not filed any Vakalatnama or there is no provision under section 47 of the Act for appearance of a Councilor through a counsel, therefore, the counsel was not authorized to file an application for adjournment, hence on 18.11.2019 out of 15 Councilors only ten remained present before the Collector and on 19.11.2019 none of them were present and only the counsel Mr.Lakhan Yadav had appeared on their behalf, therefore, the Collector has rightly turned down the proposal as it was not supported by 3/4th Councilors.

9. Even otherwise, all those four Councilors who did not remain present on 18.11.2019 and 19.11.2019 have not filed the writ petition before this Court and the only ten Councilors who remained present on 18.11.2019 have approached this Court by way of this writ petition, therefore, still those four Councilors have no grievance against the impugned order passed by the Collector. In this petition nothing has been produced to justify their non-appearance on 19.11.2019. Even if it is held as per the Full Bench judgment that personal presence is not required for verification of proposal, even then not a single document has been filed to verify their signature before the Collector, therefore, the Collector had no option but to turn down the proposal.

10. Under section 47 of the Act the process for recall of the President shall be initiated once in its whole term. By the impugned order the proposal of recall has been rejected by the Collector, therefore, a right has been created in favour of the President and if that order is quashed in this petition that would go against the elected President who has not been made respondent in this petition, therefore, the petitioners are seeking quashment of the impugned order which is passed in favour of the President. The writ petition is liable to be dismissed on this ground alone.

11. Learned Govt. Advocate has raised an objection that the petitioners are having alternate remedy to file a revision against the impugned order. A

specific query was made to Shri Pushyamitra Bhargava, learned counsel appearing for the petitioners as to whether the petitioners are willing to avail the remedy of revision at this stage. He submits that they want an order on merit in this petition because the said order is not revisable under section 323 of the Act as held by the Full Bench in the case of Mahendra Kumar Saraf (supra) and Smt.Naravadi Bai Choudhary (supra). In the matter before the Full Bench a writ petition was filed against the proposal sent by the Collector to the State Govt. and hence it has been held that forwarding of the proposal by the Collector is not an order as contemplated under section 331 of the Act, therefore, the petitioners therein cannot be relegated to the revisional authority. In the present case, the Collector has turned down the proposal under section 47 of the Act which is final in nature because the proposal of recall has been dropped for ever, hence it is an order under section 47 of the Act for which the petitioners ought to have available the remedy of revision. Since they have given up their right of revision and approached this Court and argued the matter on merit, therefore, at this stage they cannot be relegated to the revisional authority.

12. In view of the foregoing discussion, the petition is dismissed accordingly.