

(1958) 01 MP CK 0008
In the Madhya Pradesh High Court
Case No : L.P.A. No. 100 of 1957

Brindaban Prasad

APPELLANT

Vs

Collector Guna

RESPONDENT

Date of Decision : 10-01-1958

Acts Referred:

Madhya Bharat Municipalities Act, 1954 — Section 17(3)

Citation : (1958) J LJ 203

Hon'ble Judges : M. Hidayatullah, C.J.; P.K. Tare, J

Bench : Division Bench

Advocate : K.A. Chitale with R.S. Dabir, for the Appellant; H.L. Khaskalam, G.P. Patankar and K.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Hidayatullah C.J.

1. This appeal is against an order made by Samvatsar, J. in Civil Miscellaneous Case No. 21 of 1957 on 12th October 1957.

2. The present appellant, who was the petitioner before Shri Samvatsar, J., filed an application for a writ of mandamus or in the alternative for a writ of quo warrantor against the President of the Guna Municipality, who was elected at a meeting called on the 4th June 1957. The President is the 4th respondent in the appeal before us. According to the appellant, he was entitled to participate in the election of the President, as he had been selected on 17th May 1957 in place of the third respondent Niaz Ahmad Solat, whose term of office was to end on the 9th June 1957. The contention of the appellant was that in calling the meeting on the 4th June 1957 he was deprived of the chance of electing the President and that a Councilor who was going out five days later was enabled to vote.

Shri Samvatsar J., after considering the Madhya Bharat Municipalities Act (hereinafter called the Act) and the Rules framed there under, came to the conclusion that there was nothing in the Act which compelled the Returning

Officer to call a meeting after the term of the President was over and that it was in the fitness of things that the President should have been elected before the term of the incumbent was over, so that the new President could take charge from him on the date the term came to an end. In the end Shri Samvatsar, J. held that a writ of quo warrantor should not be issued in a case which was at best doubtful and that the discretionary powers under Art. 226 were not called for in this case.

3. It was contended on behalf of the appellant that on a true construction of the Act and the Rules it was necessary that a meeting should have been called after the expiry of the term of the President who had been elected previously. This is one of those cases in which due to the defective draftsmanship of the Act arguments could indeed have been carried on to the end of all time. The Act and the Rules are nowhere clear when such elections are to take place, and therefore, we heard a great deal of argument on either side. Having heard both sides, we are of the opinion that there is no adequate material on which we can say that the decision of Samvatsar, J. is erroneous. We give our reasons below.

4. The Act provides for two classes of Councilors, viz. elected and selected. The elected Councilors are elected at a general election held on the basis of adult franchise. The selected members, who are not to exceed one-fourth the number of the elected Councilors, are elected by the single transferable vote. The two together form the body of Councilors of which the Municipality is composed. Unfortunately, the term of the office of the elected and the selected Councilors is not coterminous, because the elected Councilors continue for three years, whereas, by virtue of the Rules framed under the Act the selected Councilors continue for four years. There is also rotation amongst the selected Councilors, of whom two have to retire every two years and fresh selections have to be made. It will thus be seen that the composition of the Municipality changes at the end of every two years by reason of the selected Councilors going out and others being selected in their place. Again, the composition of the municipality changes at the end of the third year, when general election on the basis of adult franchise takes place. Similarly, the composition of the Municipality changes at the end of the 4th year again when the selected members have to retire in rotation and others have to be selected in their place. This being the case, the point of time at which the election of the President can take place has to be found out with reference to the Act and the Rules. We have been taken through a number of sections, from which it is contended that the point of time can be adequately gathered. On the other side, it is contended that under the Rules the point of time is in the discretion of the Returning Officer, who has to appoint the date for the election. An analysis of some of the sections of the Act, therefore, becomes necessary.

5. Sec. 17 of the Act lays down the term of office of the Councilors. Sub-section (1) lays down what we have already summarized above that the term of office of a Councilor elected at a general election under the Act shall ordinarily be three

years, though it may be extended for reasons which shall be notified in the Gazette. Then sub-sec. (2) of that Section lays down that the term of office of such Councilors shall commence on the date appointed for the first general meeting after such election. Sub-sec. (3) lays down that notwithstanding the expiration of the formal term, the term of office shall be deemed to extend to and expire on the day immediately preceding such general meeting. To summarize, elected members continue in office either for three years from the date of the first general meeting to which they have been invited or until such further time as may be necessary for their successors may be invited for the first time. Sub-sec. (4) provides for the term of office of the Councilors selected in accordance with the provisions of Sec. 9. The Act does not provide for the duration, but it is to be fixed in the Rules to be framed by Government, with the corollary that the Rules should provide for retirement of members by rotation and the term should not exceed six years. The pertinent rule under this section is Rule 92. It lays down that the selected Councilors shall continue in office for four years. It also, however, provides that of the first selected members half the number will be for a term of only two years and thereafter the newly selected members in their place shall continue for four years. By this method rotation is introduced at the end of every two years. As in the case of the elected members, the selected members also enter upon their term of office when they are invited to attend a general meeting. Thus, in the case of selected members also, the term of office is between the first general meeting to which they are invited and the first general meeting to which their successors have to be invited.

6. The President's office, however, is not coterminous with even the office of the selected members who go out by rotation. The duration of the President's office has been made one year, and every year, therefore, a fresh President has to be elected. This is provided by Sec. 20 (1) of the Act.

7. There are several other sections in the Act, which provide for the filling of casual vacancies, for the continuance in office of members and for various other matters with which we are not concerned. For the solution of this case we are only concerned with two sections, which may be quoted, Sec. 19 reads as follows: --

Immediately after the election or selection the names of all Councilors of a Municipality shall be published in the Gazette by the "Government in the case of a City Municipality and by the Inspector-General, Municipalities in other cases.

Sec. 19 lays down that after election or selection a notification of the names of all Councilors of the Municipality has to be made. Unfortunately, the English translation does not reproduce the effect of the Hindi version inasmuch as it uses the word "the" before "election". The meaning becomes quite clear if the word is qualified by the indefinite article "an", It means, therefore, that every time there is an election or selection, the names of all the Councilors must be gazetted. In the present case, it is admitted that the names were not so gazetted after the new selections took place.

8. Then comes Sec. 20 (1). It reads as follows: -

A Municipality shall have a President and a Vice-President who shall within one month from the publication after the general election of the names of the Councilors selected under Sec. 19 be elected by the Councilors from amongst themselves in accordance with the rules framed by the Government and they shall hold office for a term of one year in the case of a City Municipality and First Class Municipality and three years in other cases

We found considerable difficulty with this subsection, because no punctuation has been utilized. We, therefore, attempted a punctuation of the sub-section to get its meaning. Punctuated according to the agreement of Counsel, it reads as follows: --

A Municipality shall have a President and a Vice-president, who shall, within one month from the publication, after the general election, of the names of the Councilors selected, under Sec. 19, be elected by the Councilors from amongst themselves, in accordance with the rules framed by the Government, and they shall hold office for a term of one year, in the case of a City Municipality and First Class Municipality, and three years in other cases.

9. The contention of the appellant is that this sub-section applies not only to the first election of the President after the inauguration of the Act, but also to all subsequent elections. The contention of the other side is that in terms this sub-section can only apply to the first election of a President and not thereafter, except in so far as the term of the President and the rules for election of the President each time are concerned. The section, to say the least, is very defectively worded. It would have been easy for the legislature to indicate at what specific point of time the President's election should be held. Not having done that in the section, it was still open to the Government to have cleared the matter in the rules. The rules which have been framed under this sub-section do not lay down any limitation on the power of the Returning Officer, but give him ample authority to fix the date which he chooses. Indeed, the learned Single Judge has gone on the assumption that there is only a proper discretion to be exercised and no more. We have also looked into the rules, and if we were required to interpret the rules alone, we would say that the power which is given to the Returning Officer by the rules is untrammelled and only a fair and proper discretion has to be exercised by him. If the matter stood with the rules, it cannot be said that the Returning Officer had not chosen the date with deliberation, and indeed the contention that his action was mala fide was not pressed before us in appeal.

10. We have thus to see whether any limitation on the powers granted by the rules can be spelled out from the section. The section, no doubt, makes it incumbent that the election of the President should take place within one month of the publication of the names of the selected Councilors in the Gazette under Sec. 19. In a case where there has been no such publication, indeed, it cannot

be said that the election has been carried out according to the letter of the section. The spirit of it is, however, there, because the election of the President took place within one month from the date of the selection of the new Councilors and the notification would, if made, have been immediately after the selection. However, we do not go by the spirit of the section either. Let us see what the substance of the matter is under that sub-section.

11. According to that sub-section there is to be a perpetual succession even amongst Presidents and Vice-Presidents. Indeed, sub-section (3) of Section 20 clearly lays down that even if the term of office of the President or Vice-President may have expired, the old incumbent can carry on till his successor is ready to enter upon office. In other words, there is a perpetual succession as a Corporation sole, which continues till the new Corporation sole takes over. It postulates a circumstance in which the election of the President may take place even after the term of the President. The intention, however, underlying the law must be that the term of office should be adhered to as far as possible. If the contention of the appellant were to be accepted, the provisions of sub-sec. (3) will always have to be invoked and there would never be a case in which the President would be ready to take over on the expiry of the term of the outgoing President. In our opinion, the intention of the law is that the new President, as far as possible, should be available to take over from the out-going President at the end of one year's time. If, however, some contingency happens by which the President is not so available, the law gives the enabling power to the old President to carry on till the new President can take over from him.

12. In our opinion, the section must be read in such a way as to give effect to the limitation of the duration of the President's term as far as possible. For this purpose, the election of the President must be before the term expires. In the present case the date could have been chosen between the 9th June 1957, when the term of the sitting member was to expire, and the 12th June, when the President's term expired. It was however, not incumbent upon the Returning Officer to choose a date between the 9th June and the 12th June. Even then the old member would still be qualified under Sec. 17 (3). No specific provision has been brought to our notice which will whittle down the discretion granted by Rule 121 to the Returning Officer to fix a date according to his discretion. But he had not entered upon his office inasmuch as he had not been invited to a general meeting, and the old member's term was still continuing. The sitting selected member, who is the third respondent here, was a competent Councilor till the 9th June 1956, and on the 4th June 1956 if an election had to take place he was competent to vote at it. Equally he would be a competent voter till the 12th June and thereafter till the first general meeting to which the appellant was invited. We do not see any particular hardship in a case of this type, because after working out the duration of the President's office vis a vis that of the selected member's office we find that every selected member gets a chance to elect a President after he enters on his office but not before. In our opinion, the rational way to interpret this irrationally drafted section would be to confine it to the

matters to which Samvatsar, J. has confined it.

13. We are fortified in reaching this conclusion by certain observations of the Bombay High Court in *Bairulal vs. State of Bombay*, AIR 1954 Bom. 160. There, Chagla C.J in dealing with very similar matters stated that the proper course would be to hold the election of the President before the term expires. That was a case converse to the one with which we are dealing, but the observations there are of great importance. In an elective institution it is of a paramount importance that there should be some continuity. The new President should be elected by those who are presently members. Those who come afterwards would also have the right to choose their own President when the new President's term comes to an end. In this way, as we find, everybody gets an equal chance of voting for the President's office. Otherwise, the third respondent would have two chances to the appellant's three, which we think would be unfair and would not be a proper interpretation of the Act.

14. It was contended that the notification of the name of the selected Councilor gives him the right to take part in the election. We do not agree, A Councilor is not a Councilor unless he has entered upon his office (see the definition of "Councilor" and Sec. 17). A Councilor, whether he be elected or selected, enters upon office only when he is invited to a general meeting. The general meeting is called by the President, whereas the meeting for the election of the President has to be called by the Returning Officer. Unless the present appellant can show that he was invited to a general meeting and that he had thus entered upon his Councilorship in place of the third respondent, he can have no grievance about this matter, Even treating him as a realtor without an interest, we do not think that this is an appropriate case in which we should issue a writ of quo warrantor or even of mandamus: If the interpretation suggested by the learned counsel for the appellant were to be accepted, its implication would be, that we should interpret the word "councilor" differently occurring in the various sections for the purpose of deciding as to when a Councilor enters upon his office and as to his right to participate in the presidential election. It would be contrary to the ordinary rule of interpretation that a word or a phrase in the absence of context to the contrary, bears the same meaning throughout the Act. Indeed, after reading the decision of Samvatsar J., we have been unable to find anything of such a decisive character by which we can say that the decision impugned before us is erroneous.

15. The result, therefore, is that the appeal must fail. We dismiss it, but in the circumstances of the case we do not make any order about costs. The outstanding amount of security deposited by the appellant be returned to him.