
(1995) 12 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 671 of 1995 (J)

Dilip Kumar Ghosh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 36

Citation : (1996) 1 MPJR 246

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : Y.S. Dharmadhikari with S. Dharmadhikari, for the Appellant; V.K. Shukla and N.S. Kale, for the Respondent

Judgement

S.K. Dubey, J.

Alter the constitution of the Municipal Council Pasan, district Shahdol, in the year 1991, on 6.2.1991, 13 persons including the petitioner were elected as Councillors. Out of the Councillors on election, one Tirathsingh was elected as President and the Petitioner, as Vice-President. As the office of the President fell vacant, the petitioner was discharging the duties and functions of the President. On expiry of the term of 4 years, that is, after 6.2.1995 Administrator was appointed as a consequence of which the petitioner and other Councillors were removed from their Office, which has been challenged in this petition under article 226 and 227 of the Constitution of India.

Learned counsel for the petitioner contended that in view of the amendment by Constitution (Seventy Fourth Amendment) Act, 1992, in the Constitution, Part IXA has been inserted of which article 243 U provides the term of the office as five years. Accordingly section 36 of the Madhya Pradesh Municipalities Act, 1961 (for short "the Act") was amended on 30.5.1994 whereby the duration of the Municipality, unless it is dissolved, has been substituted from 4 years to 5 years. Therefore, the removal of the petitioner and Councillors prior to expiry of five years is illegal.

Admittedly, on establishment and constitution of the Municipalities, the term of council and office of the Councillors as per section 36 of the Act was four years. Section 36 as it stood prior to its amendment reads thus :

36. Term of Council and office of Councillors. (1) Every Council shall continue for four years from the date appointed under sub-section (2) of section 55 for its first meeting :

Provided that the State Government may, by a notification, for reason to be stated therein extend the term of the council, from time to time, for a total period not exceeding one year in the aggregate.

(2) If within the period of four years mentioned in sub-section (1) or if the said period is extended under the proviso thereto, within the period as extended, the council is not newly constituted, the Council shall, on the expiry of the said period of four years, or the extended period, as the case, may be, deemed to have been dissolved and the provisions of section 238 shall apply in respect thereof.

(3) If within the period mentioned in sub-section (2) the Council is not newly constituted, the Council shall on the expiry of such period be deemed to have been dissolved and the provisions of Section 328 shall apply in respect thereof.

(4) the term of office of every Councillor shall be co-terminus with the term of the Council of which he is a Councillor.

After insertion of Part IX A in the Constitution by Constitution (Seventy Fourth Amendment) Act, 1992, which deals with the Municipalities, Articles 243 (U) lays down the duration of office of Municipalities as five years from the date of its first meeting. Hence in view of article 243 (U), section 36 of the Act was substituted by M. P. Act No. 17 of 1994 from 30.5.1994, which reads thus:

36. Duration of the Municipality - (1) Every Municipality unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer.

(2) An election to constitute a Municipality shall be completed -

(a) before the expiry of its duration specified in sub-section (1).

(b) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this section for constituting the Municipality for such period.

(3) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under sub-section (1) had it not been so dissolved.

Here it would be appropriate to refer to article 243 (U) and 242, ZF which read thus :-

243 U (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer :

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed -

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved." "243 Z F - Notwithstanding anything in this part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy Fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration, of one year from such commencement, whichever is earlier :

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.

Article 243 ZF of the Constitution, is a non-obstante provision, clearly lays down that duration of the Municipality if it is consistent with the provisions of part IXA of the Constitution shall be continued to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from such commencement whichever is earlier. Section 36 of the Act was substituted in the year 1994 after the expiry of one year of the

commencement of the Constitution (Seventy Fourth Amendment) Act, 1992; hence in view of article 243 ZF, constitution of Municipal Council in accordance with law as it stood, the duration of the Municipal Council was to continue upto 6.2.1995, therefore, the council was rightly dissolved by appointing an Administrator.

As a result of the above, the petition has no merit and has to be dismissed. However, before parting with the petition, as the elections have not been held and the Administrator is functioning the State as well as the Election Authorities shall take appropriate steps to hold clection of the Council expeditiously in accordance with law.

Accordingly, the petition is dismissed with no order as to costs.