

(2020) 01 RAJ CK 0203
In the Rajasthan High Court
Case No : Civil Writ Petition No. 26 Of 2019

Goverdhan Lal Bhoi

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Rajasthan Municipalities (Motion Of No Confidence against Chairperson or Vice Chairperson) Rules, 2017 — Rule 2(1)(b), 3(5)

Citation : (2020) 01 RAJ CK 0203

Hon'ble Judges : Sandeep Mehta, J; Abhay Chaturvedi, J

Bench : Division Bench

Advocate : Dr. Nupur Bhati, Sunil Beniwal, Anurag Shukla

Final Decision : Dismissed

Judgement

1. The instant writ petition has been preferred by the petitioner Goverdhan Lal with the following prayers:

"a. By an appropriate order or direction, it is respectfully prayed to declare the provision of Rule 2(1)(b) of Rajasthan Municipalities (Motion of No Confidence against Chairperson or Vice Chairperson) Rules, 2017 may be declared unconstitutional and ultra vires to the provision of the Act of 2009.

b. By an appropriate order or direction, it is prayed to hold that the Rule 2(1)(b) of 2017 cannot be given effect to and the same is beyond the jurisdiction of the State Legislature.

c. By an appropriate order or direction, it is prayed that the decision or the minutes of the meetings by which the No Confidence Motion was moved against the petitioner may kindly be held to be illegal and may kindly be quashed and set aside.

d. By an appropriate order or direction, it is prayed that the notification dated 13.09.2017 (Annexure-04) and further the order dated 14.09.2017 passed by

the Collector directing holding of the meeting for passing the No Confidence motion against the petitioner may kindly be quashed and set aside.

e. By an appropriate order or direction, it is prayed that the minutes of No Confidence motion dated 26.09.2017 passed against the petitioner may kindly be quashed and set aside.

f. By an appropriate order or direction, it is respectfully prayed that any proceedings taken in pursuance to the direction of the Collector for holding No Confidence motion against the petitioner may kindly be quashed and set aside and declare the same as illegal.

g. By an appropriate order or direction, it is respectfully prayed that the Chairmanship of the petitioner may kindly be restored.

h. By an appropriate order or direction, any other appropriate order which is in the interest of justice may also be passed.

i. By an appropriate order or direction, Such further relief for which the petitioner is entitled may also be awarded in the facts and circumstances of the case including cost of the petition."

2. Dr. Nupur Bhati, learned counsel representing the petitioner urges that the disqualification of the petitioner from the post of Chairperson, Municipal Board, Bhinder is absolutely illegal and contrary to the Judgment dated 17.05.2018 rendered by the Division Bench of this Court Bench at Jaipur in the case of Raj Kumar Jaiswal vs. State of Rajasthan & Ors. (D.B. Civil Writ Petition No.23845/2017) and thus, the instant appeal deserves to be accepted and all events subsequent to the meeting for 'No Confidence' Motion convened under the order dated 14.09.2017 passed by the District Collector, Udaipur as well as the minutes of the meeting dated 26.09.2017 (Annexure-1) for 'No Confidence' Motion passed against the petitioner deserve to be struck down. She urges that the 'No Confidence' Motion was passed on 26.09.2017. The petitioner had challenged the notice of 'No Confidence' Motion by filing a writ petition No.11919/2017 which was decided on 20.09.2017. Thereafter, the petitioner filed a Division Bench Writ Petition No.18481/2017 before the Jaipur Bench of Rajasthan High Court which was decided on 31.10.2017. Thereafter, the petitioner filed yet another Division Bench Writ Petition No.15236/2017 at Rajasthan High Court which was decided on 20.12.2017 wherein, the petitioner was given liberty to withdraw the said writ petition while giving him liberty to file a fresh one. Thus, as per Dr. Bhati, the petitioner has been bonafide pursuing his legal remedies against the grossly illegal Motion of 'No Confidence' and as such, the objection of delay which is raised by the respondents against the petitioner does not hold any water. She thus implored the Court to accept the writ petition and struck down the impugned orders and the vote of 'No Confidence' passed against the petitioner.

3. Per contra, Shri Sunil Beniwal, learned AAG representing the respondent State

and Shri Anurag Shukla, Advocate representing the respondent Municipal Board, vehemently and fervently urge that the 'No Confidence' Motion was moved in the month of October, 2017 by 16 out of 20 elected members of the Municipal Board and was carried through against the petitioner by more than 3/4 majority of the house. They urge in arguendo that even if the contention of the petitioner's counsel that Rule 2(1)(b) of the Rajasthan Municipalities (Motion of 'No Confidence' against Chairperson or Vice-Chairperson) Rules, 2017 has been declared unconstitutional by the Division Bench in the case of Raj Kumar Jaiswal (supra) is accepted and the nominated member being the M.L.A. is counted as an eligible member of the Municipality then also, as the motion was moved by 16 out of 21 (20 Elected and 1 Nominated) members of the Municipal Board, the quorum was complete as per Rule 3(5) of the Rules of 2017. They thus urge that the writ petition should be dismissed.

4. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material available on record.

5. The fact that the vote of 'No Confidence' has been passed against the petitioner on 26.09.2017 on a "No Confidence Motion" moved by 16 out of 20 elected members [excluding the nominated member (M.L.A.)] is not disputed and is rather an admitted position. The Division Bench of this Court, while deciding the writ petition of Rajkumar Jaiswal (supra), struck down Rule 2(1)(b) of the Rules of 2017 holding the same to be unconstitutional and thus, by virtue of the ratio of this judgment, a nominated member of the Municipality/Municipal Board has been declared to be an eligible member within the meaning of Rules of 2017. As per Rule 3(5) of the Rules of 2017, 3/4th of the eligible members of the Board are required to complete the quorum required to move a Motion of 'No Confidence' against a Chairperson or a Vice-Chairperson. The Municipal Board was comprising 21 members including the nominated member and thus, 3/4th of this number would come to an approximate of 15.75. It is an admitted position that 16 elected members presented the Motion of 'No Confidence' against the petitioner which was carried through on the floor on 26.09.2017. Thus, even after adding the nominated member (M.L.A.), the quorum for presenting the Motion and for convening the meeting for the purpose of consideration of the 'No Confidence' vote was complete. The petitioner challenged the notice of convening the meeting of the 'No Confidence' Motion dated 26.09.2017 by filing a Single Bench Writ petition No.11919/2017 which was rejected on 20.09.2017. The 'No Confidence' Motion was adopted by a majority of the members present in the meeting of the Board held on 26.09.2017. The petitioner challenged the said resolution by filing D.B. Civil Writ Petition No.15236/2017 which was rejected by order dated 20.12.2017 as the petitioner sought withdrawal of the writ petition. Liberty was given to the petitioner to file a fresh writ petition but, as it is evident the present writ petition has been filed after nearly two years of the rejection of the previous writ petition filed by the petitioner. The petitioner did not challenge the order dated 20.09.2017 (passed in S.B. Civil Writ Petition No.11919/2017) any further by way of an appeal. The Division Bench writ petitions preferred by

the petitioner, as referred to supra, also stand rejected by this Court. Thus, the belated challenge which the petitioner has laid to the vote of 'No Confidence' in this writ petition filed in the year 2019 cannot be considered as being bonafide.

6. True it is that Rule 2(1)(b) of the Rules of 2017 was struck down by the Division Bench of this Court in the case of Rajkumar Jaiswal (supra) but even considering the ratio of the said judgment, the following observations made by the Division Bench conclude the issue against the petitioner:

"We find that by this judgment, interpretation of the provisions of law has been made after taking into consideration the Constitution of India. The interpretation cannot otherwise be given prospective effect, otherwise, past action would exist in violation of the Constitution of India. In any case, we made it clear that this judgment would apply only in the case where challenge has been made to the no confidence motion. If somebody has not challenged No confidence Motion then would not be governed by this judgment."

7. As the challenge laid by the petitioner to the vote of 'No Confidence' was withdrawn by him on 20.12.2017 (D.B. Civil Writ Petition No.15236/2017), this repeated attempt after nearly two years is not sustainable, moreso when no illegality has been pointed out in the actual adoption of the vote of 'No Confidence'.

8. Thus, the writ petition as well as stay application fail and are hereby rejected as being devoid of merit.