
(1966) 03 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 283 of 1965

Goverdhanlal	Vs	APPELLANT
Madhya Pradesh and Others		RESPONDENT

Date of Decision : 02-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipalities Act, 1961 — Section 19, 19(1)(b), 19(2), 20, 3

Citation : (1969) ILR (MP) 224 : (1966) JLJ 504 : (1966) MPLJ 591

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

Bench : Division Bench

Advocate : G.L. Oza, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution, the petitioner Goverdhanlal seeks a direction to the respondents, the Collector, Ujjain, and the Sub-Divisional Officer, Khachrod, to declare him as having been selected as a Councillor at the meeting of the elected Councillors held on 29th June 1965 and presided over by the Sub-Divisional Officer, Khachrod.

Under section 19 of the Madhya Pradesh Municipalities Act, 1961, (hereinafter called the Act), each Council is required to select Councillors, in number not exceeding one-fourth of the total elected Councillors, of whom at least one must be a woman. The selection is by single transferable vote by the elected members of the Council and has to be in conformity with the rules made by the Government u/s 19 (2) of the Act. Part IV of the Madhya Pradesh Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councillors) Rules, 1962 (hereinafter called the Rules), contain rules about the selection of Councillors. According to those Rules, selection has to be made at a meeting of the Councillors convened by the Chief Municipal Officer with the prior

approval of the Collector within one month of every general election, and an officer appointed by the Collector is the Chairman of the meeting. Rule 51 (1) of the Rules lays down that--

If the number of candidates tea excepting the seat of woman is equal to or less than the number of vacancies, they shall all be declared duly selected. If the number of candidates exceeds the number of vacancies, the meeting shall proceed to select Councillor by means of the single transferable vote according to the procedure laid down in the Schedule annexed to these rules.

Rule 52 provides that if for any reason no selection u/s 19 (1) (b) to made or an insufficient number of Councillors are selected, the Collector may convene another meeting for the purpose of selecting the Councillors, and the procedure thereat shall be in accordance with the Rules. The names of the Councillors selected are required to be notified forthwith by the prescribed authority in the Gazette, The Schedule to the Rules prescribes the method of selection of Councillors by means of single transferable vote.

A meeting of the elected Councillors of the Khachrod Municipal Council was convened by the Chief Municipal Officer, with the prior approval of the Collector, Ujjain, on 29th June 1965. The Sub-Divisional Officer, Khachrod, was the chairman of the meeting. After the selection of one woman candidate, the Sub-Divisional Officer proceeded to hold the selection of two persons as Councillors u/s 19 (1) (b) of the Act, read with the Rules. Three persons, namely, Rafi Ahmad Jafari, the petitioner Goverdhanlal and the respondent No. 6 Govind offered themselves as candidates for selection. In the first count Rafi Ahmad Jafari received first preference exceeding the quota required for selection according to the Rules. The Chairman of the meeting declared him as selected. The Chairman then recorded an order, which inter alia said-

It is not at all clear what precisely the Chairman intended to say by the order he recorded. Be that as it may, he came to the conclusion that another meeting should be convened by the Collector under rule 52 for the selection of one more Councillor. On the report made by the Sub-Divisional Officer, Khachrod, the Collector directed the Chief Municipal Officer to call another meeting of the elected Councillors on 13th July 1965.

The petitioner's contention is that the Sub-Divisional Officer, Khachrod, who was the Chairman of the meeting held on 29th June 1965 failed to complete the selection according to the Rules and the Schedule thereto; that under paragraph XVI (2) of the Schedule when only one vacancy remains unfilled and the value of the votes of some one continuing candidate exceeds the total value of all the votes of the other continuing candidates, together with any surplus not transferred, that candidate has to be declared selected; that the total value of the votes secured by him was 400 which exceeded the total value of the 300 votes secured by the respondent No. 6 together with all the 99 surplus votes not transferred; and that, therefore, he should have been declared as selected under

paragraph XVI (2) of the Schedule to the Rules. The petitioner prays that the decision of the Sub-Divisional Officer dated the 29th June 1965 with regard to the holding of a fresh meeting for selection of one Councillor, and the notice issued by the Chief Municipal Officer convening the meeting on 13th July 1965 for that purpose be quashed, and the Collector and Sub-Divisional Officer be directed to complete according to the Rules the selection of Councillors which commenced on 29th June 1965.

In our judgment, this petition must be granted. It is evident from the decision recorded by the Sub-Divisional Officer on 29th June 1965, namely that another meeting would have to be called for selection of one Councillor that he failed to complete the selection according to the Rules and the Schedule thereto. Under those rules and the Schedule, when here three candidates were nominated for selection of two Councillors, no question of an insufficient number of Councillors being selected could at all arise. After the selection of Rafi Ahmad Jafari, who secured first preferences exceeding the "quota", the Chairman was required to transfer the surplus vote to the remaining two candidates according to the Rules. If, as the petitioner says, the total value of the votes secured by him exceeded the total value of the votes of the respondent No. 6 together with the surplus votes not transferred, then clearly under paragraph XVI (2) of the Schedule he was entitled to be declared as selected. If, on the other hand, as the chairman seemed to think, even after the distribution of surpluses neither the petitioner nor respondent No. 6 Govind would receive the quota, that could not afford him any justification for entertaining the opinion that another meeting for the purpose of selection would have to be called. The Chairman overlooked the fact the Schedule to the Rules provides that when all the required number of candidates do not receive the quota by distribution of surpluses the process is reversed by dropping out the candidate who has the least number of first preferences, and the second preferences on the ballot papers are then given to the appropriate candidate against whose name they are placed, when the number of candidates nominated for selection exceeds the number of vacancies, the selection of Councillors by means of single transferable vote according to the procedure laid down in the Schedule annexed to the Rules has to be held, and if the count of first preferences and the distribution of surpluses is carried on according to the Schedule, the contingency of no person being selected or of only an insufficient number of persons being selected can never arise. It is plain from what has been stated above that the Sub-Divisional Officer failed to complete the selection according to the Rules and the Schedule attached to it and he must be directed to do the counting of the ballot papers received at the meeting held on 29th June 1965 according to the Rules and the Schedule thereto.

Shri Dharmadhikari, learned counsel for the respondent Govind, did not dispute that the counting of the ballot papers received at the meeting on 29th June 1965 was not according to the Rules and the Schedule. He, however, urged that the petitioner should have resorted to the remedy of an election petition u/s 20 of the Act and no relief could be granted to him in these proceedings under Article

226 of the Constitution. There is no substance in this contention. The remedy of election petition is available only when a candidate has been declared to be elected or selected. Here, the Sub-Divisional Officer, who presided over the meeting held on 29th June 1965, failed to count the ballot papers according to the Rules and the Schedule and declare the names of two persons who after counting were entitled to be declared as selected. The petitioner is not challenging the selection of any Councillor. What he is seeking is a direction in the nature of mandamus commanding the Collector and the Sub-Divisional Officer to complete, according to the Rules and the Schedule, the selection which began on 29th June 1965.

The further objection of the learned counsel for the respondent Govind that in view of the provisions of the Madhya Pradesh Sthaniya Pradhikaran (Nirvachan Sthagan) Adhyadesh, 1965 (No. 6 of 1965), promulgated by the Governor on 20th September 1965, the selection of Councillors cannot be held, must be rejected in view of the decision of a Division Bench of this Court in *Manaklal v. Collector, Seoni* 1966 M P L J 359 (Misc. Petition No. 435 of 1965 decided on the 23rd November 1965). In that case, it has been held that where a general election of any local authority was held before the Ordinance came into force, then neither section 3 nor section 5 bars the selection of Councillors or the notification u/s 45 of the Act of elected and selected Councillors.

For these reasons, this petition is allowed, and the Sub-Divisional Officer, Khachrod, is directed to do the counting of the ballot papers received at the meeting held on 29th June 1965 in accordance with the Rules and the Schedule thereto and complete the selection of the Councillors, and the Collector, Ujjain, is directed to take steps for convening a meeting of elected. Councillors for that purpose. The counting shall be completed on or before the 31st March 1966. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The outstanding amount of security deposit shall be refunded to the petitioner.