
(1985) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 622 of 1984

Hargovind Tamrakar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-03-1985

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 328

Citation : AIR 1986 MP 63 : (1985) ILR (MP) 473 : (1985) JLJ 550

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : C.L. Kotecha, for the Appellant; K.L. Kathal, Dy. A.G. and Rohit Arya, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.—The petitioner in this writ petition under Arts. 226 and 227 of the Constitution is challenging the order dt. 17-2-1984 of the State Government passed u/s 328(6)(b) of the M. P. Municipalities Act, 1961 appointing a committee consisting of respondents 5 to 11 to exercise all powers and duties of the Municipal Council, Hatta of District Damoh, whose term had expired on 31-3-1979.

2. The Municipal Council, Hatta originally consisted of 12 elected and 3 co-opted members. Out of elected councillors, six were from the ruling party and the remaining six from the Nagrik Morcha, including the petitioner. Out of the three co-opted members, one was co-opted by each party and regarding the third member there was a toss and a member from the ruling party was co-opted. So the ruling party had a majority of one vote only and respondent No. 5 was elected President of the council.

3. The petitioner is a resident of Hatta and has been a councillor in the Municipal Council Hatta, having been elected in the election held in the year 1974. Besides, he is a businessman and active political worker. The term of the Municipal

Council, Hatta expired on 31-5-1979. The Collector, Damoh issued a programme for holding fresh election to the Municipal Council, by order dt. 31-3-79. The State Government by telegram dt. 14-9-1981 postponed the election to be held in Jan. 1982. Thereafter, the Collector again fixed the election programme but by another telegram dt. 15-12-1981 the same was cancelled. By another telegram dated 21-4-1982, the State Government cancelled the election to be held in June 1982. By wireless message dt. 3-1-1983 the State Government directed that the election to all Municipal Councils should be held on 24-5-1983 after revision of electoral rolls with reference to 1-1-1983. But the election was postponed again on the orders of the State Government. It may be mentioned here that the State Government on the expiry of the term of the Municipal Council on 31-5-1979 appointed administrator to discharge all the powers and duties of the Municipal Council. By the impugned order dt. 17-2-1984 the State Government constituted a committee consisting respondents 5 to 11 to discharge the functions and duties of the Municipal Council in place of the administrator. It may be mentioned that the respondent No. 5 was Ex-President of the Municipal Council whose term expired in 1979 and he has now been appointed President of the new committee. His wife respondent No. 12 was a sitting M.L.A. belonging to the ruling party at the relevant time. All the members who have been made members of the new committee also belong to the ruling party.

4. The contention of the petitioner is that there was no justification for postponing the election from time to time by the State Government; election ought to have been held within a reasonable time after the expiry of the term of the old council; instead of holding the election, the State Government has inducted members of the ruling party as members of the committee to discharge all the powers and duties of the council, thereby giving back door entry to the members of the ruling party into the affairs of the council without requiring to face the electorate; it is a colourable exercise of power and mala fide; besides, the respondents 5 to 9 were involved in criminal cases and were also in arrears of municipal dues and so disqualified to be councillors; the impugned order was passed by , the State Government under political pressure from respondent No. 12 to induct her husband as President of the Committee; there is no provision for appointment of President unless election is held and the order is bad. The respondents 4 to 12 denied the allegations of the petitioner. According to them, the elections were postponed not by the Collector, who has no power to postpone the election after the programme was announced but the postponement was by the State Government which had the necessary power under Rule 10 of the M. P. Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councillors) Rules, 1962; since the election could not be held for various reasons, the Government thought it fit to constitute a committee u/s 328(6)(b) to discharge the duties and functions of the Municipal Council; the Government has such a power to appoint such a committee under that provision. According to them, some of the criminal cases instituted against some of the respondents were due to political rivalry and were concocted; none of the

respondents were disqualified to be members of that committee; since somebody has to preside over the meeting of the committee, respondent No. 5 has been nominated to be the President of the committee. It may be mentioned here that the affidavit in support of the return has been sworn in by the Chief Municipal Officer and not by any of the respondents 5 to 12. Respondents 1 to 5 by their separate return contended that the action of the State Government is as per rules framed under the Act and there is no illegality in appointing a body of persons for running a Municipality. It is false that the appointment of the committee has been made under political influence. They have also adopted the return of other respondents. This return is supported by an affidavit of Deputy Director, Urban Administration, Jabalpur Division and not by any official of the State Government.

5. Section 36 of the M.P. Municipalities Act is as under :

"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 reasons 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 of the extended period, as the case may be, deemed to have been dissolved and the provisions of Section 328 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 Councillors shall be conterminous with the term of the Council of which he is a Councillor".

Under this section, the term of a Council continues for four years from the date of its first meeting. The term can be extended from time to time but not exceeding one year in the aggregate. If within the period of four years a new body is not constituted, the Council shall on the expiry of its term of four years, or the extended period, deemed to have been dissolved and provisions of Section 328 applies. The term of office of every Councillor shall be conterminous with the term of the Council of which he is a Councillor. Evidently, therefore, the term of office of the old body came to an end in the year 1979 and also the respondent No. 5 ceased to hold the office of the President of the Municipal Council. u/s 328(5) the period of supersession of a Municipal Council shall not exceed three years. Under Sub-section (6), on the dissolution or supersession of a council, all the Councillors shall vacate their office. Under Clause (b) of this sub-section, all powers and duties of the Council under this Act may, until the council is reconstituted, be exercised and performed by such person or a committee of

persons as the State Government may appoint in that behalf. Evidently, u/s 36, there is a duty cast to hold the election for a new body before the expiry of the term of the old body. This was not done in the present case and on the other hand the election has been postponed from 1979 till date. Before the last postponement, the impugned order of the State Government was passed u/s 328(6)(b) constituting a committee to discharge all the powers and duties of the municipal council. It has not been stated by the State Government what was the reason for postponing the election from time to time. Till the end of 1979 Janata Government was in power and then from 1980 June the Congress Party came to power. In the old body of the municipal council, the present ruling party had a majority of one member and that too of the co-opted member who was co-opted by toss. The then Janata Government and thereafter the Congress Government thought it fit to appoint administrator to exercise all powers and duties of the municipal council. It has not been explained as to why it was necessary to constitute a committee of Congress Party members and remove the administrator and that too of persons having no clean image and thereafter again postponing the election. That means the ruling party has been given back door entry to its members without requiring them to face the electorate.

6. The Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, has held that the Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and we consider, that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. Again the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, has reiterated that Article 14 strikes at arbitrariness in State Action and ensures fairness and quality of treatment.

It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory. It must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality, the principle of reasonableness and rationality which is legally as well as, philosophically, an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily;

7. In view of the facts stated, we have no hesitation in holding that the action of the State Government is not only arbitrary but also not justified inasmuch as it gives undue advantage to the ruling party members by giving them back door entry to the municipal council without holding election. A Division Bench of this Court in *Mukutdhari Sharma Vs. The State of Madhya Pradesh and Others*, has held that the municipality does not continue as a corporate body on dissolution of council, the corporate body is the council and not the municipality, when the

council is dissolved the corporate body comes to an end and the President or Vice-President cannot continue after the dissolution of the body. If administrators were exercising all the powers and duties of the municipal council satisfactorily all these years what was the compelling reason for constituting a committee, consisting of ex-president of the municipal council and other ruling party members and thereafter again postponing the election. There is no counter affidavit by the State Government. The allegations of the petitioner that this was done under political pressure as respondent No. 12 a sitting M.L.A. happened to be a member of the ruling party and her husband was the ex-President of the council have not been controverted. Admittedly criminal cases were pending against some of the respondents and the Government could have chosen persons with a clean image even if it were to appoint a committee in place of administrator. The order of the State Government dt. 17-2-1984 is colourable exercise of power and it is liable to be struck down.

8. Accordingly the petition is allowed. The order of the State Government dt. 17-2-1984 directed to appoint an administrator for exercising all powers and duties of the municipal council till a new body is constituted and. hold election at an early date, as more than 5 years have elapsed since the term of the old Council. Counsel's fee Rs. 200/-, if certified. The outstanding amount of security, be refunded to the petitioner.