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**(1964) 01 MP CK 0009**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 393 of 1963 (J)**

Hari Singh (Sardar)

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 23-01-1964

**Acts Referred:**

Madhya Pradesh Municipalities Act, 1961 — Section 2(2)(ii)

**Citation :** (1964) JLJ 585

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

**Bench :** Division Bench

**Advocate :** A.P. Sen, A.H. Saifi and K.K. Adhikari, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.V. Dixit, C.J.—By this application under article 226 of the Constitution, the petitioner Sardar Harisingh seeks a direction restraining the Collector, Guna, from holding any election of the President of the Municipal Council, Guna, so long as the applicant is filling the office.

2. The matter arises thus: At the time of the coming into force of the Madhya Pradesh Municipalities Act, 1961, (hereinafter referred to as the Act), one Shri Jain was the President of the Municipal Council, Guna. By virtue of section 2(2) (ii) of the Act, Shri Jain was entitled to continue in office, and did continue, till the expiry of his term under the Madhya Bharat Municipalities Act, 1954, which was repealed by the Act of 1961. Section 2(2)(ii) provided that notwithstanding the repeal of the Acts mentioned in sub-section (1) of section 2 and unless the State Government otherwise directs "the Committees, Councils, sub-committees and Boards referred to in clause (i) and the Presidents, Vice-Presidents, members and councillors thereof shall continue to function until the expiry of their term under the repealed Act applicable to them before the commencement of this Act and any vacancy occurring in their office before the expiry of their term shall be filled in the manner provided in such repealed Act." After the expiry

of Shri Jain's term as President the Council elected on 15th March 1962, under and in accordance with 43 of the Act, the petitioner as the President of the Council. Thereafter the M.P. Municipalities Act, 1961, was amended by the Madhya Pradesh Municipalities (Amendment) Act, 1963, (hereinafter called the amending Act). By section 2 of the amending Act, the following clause was substituted for clause (ii) of section 2 (2) of the principal Act-

(ii) the Committees, Council, Boards and Sub Committees referred, to in sub-clause (i) and the Presidents, Vice-Presidents Presiding Officers by whatever designation known, members and councillors thereof shall continue to function until the expiry of their respective terms under the repealed Act applicable to them before the commencement of this Act, and any vacancy, including a casual vacancy, in the office of the President, Vice-President, other Presiding Officer, member or councillor, as the case may be in any of the said bodies, occurring before the expiry of the term of the body concerned, may be filled in the manner provided in such, repealed Act and the rules made there under: Provided that...

Section 9 of the amending Act laid down that Amendments made by section 2 of this Act shall be deemed to have formed part of the principal Act from the commencement thereof.

It must be noted that the amending Act was first preceded by an amending Ordinance in similar terms. That Ordinance was repealed by section 10 of the amending Act.

3. After the coming into force of the amending Act, the Government sent a circular to all the Collectors in Madhya Pradesh saying that u/s 2(2)(ii) of the Act, as amended, any vacancy, including a casual vacancy, in the office of the President, Vice-President in any Committee or Council has to be filled in the manner provided in the relevant repealed Act, and, therefore, the elections held in accordance with the provisions contained in the Act of 1961 for filling the offices of the President, Vice-President and Councillors in the municipalities mentioned in the list appended to the circular were void and fresh elections should be held in those Municipalities for filling the officer On receipt of the circular, the Collector made an order on 17th November 1963 fixing a programme for the election of the President of the Municipal Council, Guna, under the Madhya Bharat Municipal Council (Selection and Election) Rules, 1954, made under the M. B. Municipalities Act, 1954.

4. The petitioner contends that the amendment made in section 2(2)(ii) of the Act has no retrospective effect and cannot be so construed so as to invalidate his election as President under the provisions of the Act of 1961 before the amending Ordinance of the Act; that he still validly continues to be the President of the Council; and that, therefore, the opponents have no authority to direct the Council to elect a new President in accordance with the provisions of the M.B. Municipalities Act, 1954, and the rules made thereunder.

5. In our judgment, this contention must be given effect to. It is clear from

section 2(2)(ii) as it stood before the amendment and after it that whereas. under the original provision, only a casual vacancy occurring in the office of the President, Vice-President. Members or Councillors was required to be filled in the manner provided in the relevant repealed Act, under the amended provision any vacancy in those offices, whether a casual vacancy or one occurring by efflux of time, has to be filled in the manner provided in the repealed Act concerned and the rules made thereunder. The words "any vacancy, including a casual vacancy, in the office of the President, Vice-President, other Presiding Officer, Member or Councillor" occurring in the amended section 2(2)(ii) leave no doubt on this point. It may be mentioned in passing that the expression "occurring before the expiry of the term of the body concerned" used after the words "in any of the said bodies" is really tautological after saying "any vacancy, including a casual vacancy". A "casual vacancy" necessarily means a vacancy occurring before the expiry of the normal term of the office or before the expiry of the term of the body in which the office is constituted. The petitioner's election as President of the Council was held before section 2(2)(ii) was amended and after the expiry of the term in the normal course under the M.B. Municipalities Act, 1954; of Shri Jain as the President of the Council. It was rightly held in the manner provided in the Act of 1961 and the rules made thereunder see *Narayandas Vs. State of MP.*, M.P. No 87 of 1963, Decided on the 20-9-63.

6. The short question that, therefore, arises for determination is whether the amendment made in section 2(2)(ii) of the Act is retrospective in operation so as to have, the effect of annulling the petitioner's election as the President of the Council. It is a well established rule of construction of statutes that no statute, unless it be a statute dealing with procedure, shall be construed to have retrospective operation unless it so provides either expressly or by necessary implication or intendment. Where vested rights are affected, prima facie the question is not of procedure. Further, a statute is not to be construed to have a greater retrospective operation than its language renders necessary. These principles do not admit of any doubt or demur (see *Maxwell on Interpretation of statutes*, 11th edn., pp. 204 to 206; and *Caries on Statute Law*, 6th edn., pp. 386 to 392). The petitioner having been validly elected as President u/s 2(2)(ii) and section 43 of the Act, as it stood before amendment, there accrued to him a vested right to hold the office of the President in accordance with the provisions of the Act of 1961. The question is whether the petitioner's right to continue in office has been destroyed by the amendment made in section 2(2)(ii) of the Act. Now, the amended provision nowhere expressly says that any vacancy occurring in the office of the President, Vice-President, other Presiding Officer, Member or Councillor before the passing of the amending Act and filled in accordance with section 2(2)(ii), as it was before its amendment, and section 43 of the Act, shall also be filled after the amendment in accordance with the provisions of the relevant repealed Act. There is also nothing to suggest that this is a necessary implication of the amendment made in section 2(2)(ii) of the Act. No doubt, by section 9 of the amending Act the amendment made in section 2(2)(ii) is deemed

to have formed part of the principle Act from the commencement thereof. But this provision only means that as from the date of the commencement of the principle Act section 2(2)(ii) shall be read in the artificial manner narrated in the substituted new clause (ii). It does not mean that the amendment made in section 2(2)(ii) of the Act shall have retrospective effect as from the date when the principle Act itself came into force. It is one thing to say that a certain statutory provision shall be read from a particular date in a particular manner even though on that date on its language it could not be so read, and quite different to say that the "deemed" reading shall have a retrospective effect so as to effect and impair vested rights. What came into force on the commencement of the principle Act was inter alia the unamended provisions of section 2(2)(ii). If the text of this provision was later on changed and it is made to read from the beginning as it does after amendment, it does not follow that the amendment also came into force on the date of the commencement of the principal Act so as to affect substantive and vested rights of the parties. On the application of the rigid rule of construction that a statute can only be held to have retrospective effect so as to avoid or affect substantive and vested rights if it is expressly stated that it has to have such effect or if by necessary implication such effect must be given to it, to the language of section 2 and 9 of the amending Act it is impossible to reach the conclusion that the amendment was intended to invalidate and avoid election held before the amendment for filling the offices mentioned in section 2(2)(ii) of the Act. In this connection, it would be pertinent to refer to the decision of the Bombay High Court in *Jivaji Keshav Bapat Vs. Vishnu Rangnath Bapat*, where Stone C.J. said-

"Deeming" a past event or thing to be something other than what it was or is, may be an interference with the course of nature, since it creates artificial data in the place of existing fact. But it is not in my opinion a retrospective changing of the statute law and that is the only law we are concerned with in this case.

In our judgment, it would require a language much more explicit than which is to be found in sections 2 and 9 of the amending Act to justify us in holding that the Legislature intended not merely to alter the law but also to affect the vested right of the petitioner to continue in office in accordance with the provisions of the Act of 1961.

7. For these reasons, in our view the petitioner is entitled to continue to hold the office of the President of the Municipal Council, Guna to which he was elected before the amending Act came into force for the term and subject to the conditions fixed under the M.P. Municipalities Act of 1961 and that the order of the Collector, Guna, directing the Municipal Council to hold a fresh election for electing a President in accordance with the provisions of the M. B. Municipalities Act, 1954, cannot be sustained. The result is that this petition is allowed, the order dated 17th November 1963 of the Collector, Guna, with regard to fixation of election programme is quashed, and the respondent No. 2 is restrained from giving effect to that order. The petitioner shall have costs of this application.

Counsel's fee is fixed at Rs. 100/-. The outstanding amount of security deposit shall be refunded to the petitioner.