
(1998) 12 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4561 of 1998

Hemlata Pathak (Smt.) and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh General Clauses Act, 1957 — Section 10
Madhya Pradesh Municipal Corporation Act, 1956 — Section 18, 37, 46, 46(3)
Madhya Pradesh Municipal Laws Corporation (Amendment) Act, 1998 — Section 5, 5(1)

Citation : (1999) ILR (MP) 931 : (1999) 2 JLJ 96 : (1999) 2 MPJR 235

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : P.N. Dube, for the Appellant; A.S. Gaharwar, for Respondent Nos. 1 and 2 and S.N. Khare, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The two Petitioners in this petition under Article 226 of the Constitution of India claim a direction against the Respondents representing the authorities of the State through its Local Self Government and the Commissioner and Mayor of the Municipal Corporation, Jabalpur that they be allowed to complete their term of office as Chairman of the respective departmental committees in the Municipal Corporation Jabalpur.

Admittedly, the Petitioners were elected as Chairmen of two separate departmental committees in the Corporation u/s 46 of M.P. Municipal Corporation Act, 1956 as it stood then before its repeal and substitution by M.P. Nagarpalika Vidhi (Sanshodhan) Adhiniyam, 1998.

The cause of grievance arose to the Petitioner as after the second Amendment Act of 1998 (Act No. 20 of 1998) w.e.f. 29.8.1998, the authorities of the

Corporation refused to recognise the elected status of the Petitioners as Chairmen of the committees to which they were appointed.

For understanding the nature of the grievance raised by the Petitioners, it is necessary to briefly examine the legislative changes that have furnished a cause of action for the Petitioners. Prior to the enforcement of substituted provisions under Amendment Act No. 20 of 1998, u/s 46 there was a provision for constitution of departmental committees consisting of nine members in case of corporations having 60 or more than 60 wards.

From among the elected councillors, the Corporation had to elect members for every departmental committee. The term of departmental committee was co-terminous with the term of the corporation. In the first meeting of the committee so constituted, the members of the committee had to elect from amongst themselves a Chairman of the committee. After such election, the Chairman had a right to convene the meeting of the committee and to preside it.

Under Amendment Act No. 20 of 1998, the structure of administration in the Corporation has been drastically changed. A new Section 37 has been introduced and substituted for the original section providing for constitution of Mayor-in-Council which is a sort of an inner cabinet of the Corporation. Section 46 has been substituted to provide for Advisory Committees and the relevant new Section 46 as substituted by Amendment Act reads as under:

46. Advisory Committees -- (1) After the first meeting of the Corporation u/s 18, the Speaker shall constitute an Advisory Committee for every department of the Corporation from amongst the elected councillors other than the councillors included as member in the Mayor-in-Council u/s 37, to advise in the affairs of the department concerned.

(2) Each Advisory Committee shall consist of nine members in case of a Municipal Corporation having sixty or more wards and seven members in case of Corporation having less than sixty wards.

(3) The member of the Mayor-in-Council incharge of the department shall convene the meeting of the Advisory Committee of the department concerned at least once in every two months and shall preside over such meeting. He may take into consideration the suggestions made by the members of the Advisory Committee in the meeting.

Section 5 of the Amendment Act, containing transitory provisions, which is relevant for deciding the present petition, needs to be reproduced. Section 5 reads thus:

5. Transitory Provisions - (1) The Departmental Committees consisting immediately before the commencement of the Madhya Pradesh Municipal Laws (Amendment) Act, 1998 shall be designated as the Advisory Committee of the department concerned and the members of such departmental committees including their Chairman shall be known as the members of the Advisory

Committee of department concerned:

Provided that if any member of an Advisory Committee is included in the Mayor-in-Council of a Municipal Corporation or President-in-Council of a Municipal Council or a Nagar Pachayat, as the case may be, he shall cease to hold office of the member of the Advisory Committee.

(2) Notwithstanding anything contained in this Act, Mayor-in-Council shall be constituted for the Corporation and President-in-Council shall be constituted for the Councils existing on the date of commencement of the Madhya Pradesh Municipal Laws (Amendment) Act 1998 within one month from the date of such commencement.

Learned Counsel Shri P.N. Dube, appearing for the Petitioners, placing reliance on the transitory provisions contained in Section 5 of the Amendment Act, submits that the erstwhile departmental committees would be known as Advisory Committees and the members would continue as members with a new designation including its Chairman. The transitory provision, it is urged, does not indicate that on coming into force of the Amendment Act, the erstwhile Chairmen of departmental committees would not be allowed to function as Chairmen of the respective Advisory Committees. It is submitted that the status of erstwhile Chairman of a Departmental Committee cannot be taken away and thus, indirectly, retrospective effect cannot be given to the provisions of Amendment Act No. 20 of 1998. Learned Counsel for the Petitioners also argues that on the election of the Petitioners as Chairman of Departmental Committees, a vested right is created in their favour which cannot be taken away without express provision in the Amendment Act. Reliance is placed on *Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others*, . Reference is also made to Section 10 of the M.P. General Clauses Act for the contention that the Amendment Act does not show a clear intention to deprive the Chairmen of the erstwhile Departmental Committees to be stripped of their status as such.

On behalf of the State, I have heard Panel Lawyer Shri A.S. Gaharwar and for the Municipal Corporation Shri S.N. Khare who represented Respondents Nos. 2 and 3. On behalf of the Respondents it is submitted that the transitory provision contained in Section 5 of the Amendment Act No. 20/98 makes very clear the intention of the legislature that erstwhile departmental committees would not continue as such and the members of such committees including their Chairmen would become members of the respective Advisory Committees. Learned Counsel for the Respondents rely on the provisions of Section 46(3) as substituted by Amendment Act No. 20/98 (quoted above). It is submitted that the Departmental Committees after their re-designation as Advisory Committees would be chaired by a member of the Mayor-in-Council incharge of the concerned department who has been conferred with the authority to convene the meeting of the Advisory Committee at least once in every two months and preside over the said meeting. It is for him to seek advice and suggestions from the members of the Committee. On behalf of the Respondents it is submitted that the erstwhile

Chairmen of the Departmental Committees ceases to function as such and will continue in the Advisory Committee only as a member. This legal effect is clear from the transitory provisions contained in Section 5.

After hearing the learned Counsel, I have carefully looked into the relevant provisions of the Corporation Act as they stood prior to repeal and after substitution by Act No. 20/98. In my considered opinion, the submissions made on behalf of the Respondents are reasonable and have great force. They deserve to be accepted. The Amendment Act No. 20 of 1998 brought into force from 29.8.1998 is prima facie prospective. Section 5 of the Amendment Act No. 20/98 containing transitory provision lays down the manner in which the provisions of the Amendment Act have to be given prospective effect in the Corporations. It is clearly laid down therein that the erstwhile Departmental Committees shall be designated as Advisory Committees and members of such Departmental Committees including their Chairmen shall be known as the members of the Advisory Committee. From the very language employed in Section 5 it is clear that the Chairmen of the erstwhile Departmental Committees, with effect from the enforcement of the Amendment Act, would be known as members of the Advisory Committees. The argument on behalf of the Petitioners cannot be accepted that a Chairman of the erstwhile Departmental Committee who, as an effect of the provisions of Section 5(1) of the Amendment Act, becomes a member of the Advisory Committee, would nonetheless continue to be a Chairman of the Advisory Committee. As contained in Section 46, as substituted by the Amendment Act, the Advisory Committee has no Chairman. The meeting of the Advisory Committee are to be convened and presided over by the member of the Mayor-in-Council who is incharge of the department. The transitory provision contained in Section 5 of the Amendment Act has to be read harmoniously with Section 46 as substituted by the Act. After enforcement of the Amendment Act, there cannot be an Advisory Committee with a Chairman. The member of the Mayor-in-Council in the charge of the department is authorised to convene and preside over meetings of the Advisory Committee. If the argument advanced on behalf of the Petitioners is accepted, a conflicting situation is likely to be created in the exercise of functions of the so called Chairman of the Advisory Committee. The member of Mayor-in-Council and the erstwhile Chairman cannot both be held to be authorised to convene and preside over the meeting of the Advisory Committee under newly substituted Section 46(3) of the Act. Such an interpretation has to be rejected to avoid a conflicting situation.

The other argument advanced against the Mayor (Respondent No. 3) that in accordance with the newly substituted Section 46 of the Act, she cannot continue in office both as Mayor and Councillor and has to resign from one of the offices, is a matter for the State Government to take into consideration and take necessary action. The Petitioners can get no benefit from that legal result as against Respondent No. 3.

Consequently, the petition fails and is hereby dismissed, but without any order as

to costs. The interim order granted on 5.11.1998 is vacated.