
(2019) 01 RAJ CK 0086
In the Rajasthan High Court
Case No : Civil Writ No. 19353 Of 2018

Indira Kumari

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Municipalities Act, 2009 — Section 50(2)
Rajasthan Municipalities (Motion Of No Confidence against Chairperson or Vice-Chairperson) Rules, 2017 — Rule 2(b)
Constitution Of India, 1950 — Article 243

Citation : (2019) 01 RAJ CK 0086

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Kuldeep Mathur, Vinod Choudhary

Final Decision : Dismissed

Judgement

1. The instant writ petition has been filed by the petitioner who was elected as Chairperson of the Municipal Board, Sanchoe District Jalore in the month of August, 2015.

2. The petitioner has made following prayers in the present writ petition.

"It is, therefore, respectfully prayed that this writ petition may kindly be allowed and by an appropriate writ, order or direction:-

(a) The record of the case may kindly called for.

(b) The Motion of No Confidence against petitioner and proceedings undertaken pursuant thereto may be declared illegal being violative of the Rajasthan Municipalities (Motion of No Confidence against Chairperson or Vice-Chairperson) Rules, 2017, the respondents may be directed to follow the judgment dated 17.05.2018 passed by Hon'ble Rajasthan High Court Bench at Jaipur in DB Civil Writ Petition No.23845/2017 - Raj Kumar Jaiswal Vs State of Raj. & Ors. and the petitioner may be restored to the post of Chairperson, Municipal Board, Sanchoe.

(c) The appointment and election of Ms. Richa Meghwal as Chairperson, Municipal Board, Sanchore may be declared illegal and she may kindly be directed the position.

(d) Any other appropriate writ or order or direction which is favourable to the petitioner in the facts and circumstances of the case may kindly be granted to the petitioner.

(e) Costs of the litigation be allowed in favour of the petitioner."

3. The facts pleaded, in nutshell, are that the petitioner had taken part in the Municipal Election held in the year, 2015 and was declared elected in Ward No. 22 on 20.08.2015. The petitioner after being elected as Member in the Municipal Board, Sanchore, District Jalore, came to be elected as Chairperson of the Municipal Board, Sanchore and after taking oath, she was holding the office.

4. The petitioner has pleaded in the petition that she was working with full sincerity and efficiency but due to some internal disputes between the ruling party at the relevant time, a No Confidence Motion was moved by the Ward Members of the Municipal Board, Sanchore against the petitioner. The petitioner has pleaded that on 04.12.2017, 20 Members of the Municipal Board, Sanchore submitted a communication that they were not having faith and confidence in the Chairperson (the petitioner) and there were allegations of corruption at large against the petitioner and as such more than 3/4th Members moved the No Confidence Motion. The said communication expressing no confidence in the Chairperson (the petitioner) by 20 Members was communicated to the District Collector & District Election Officer, Jalore on 04.12.2017. The petitioner further alleges that on 08.12.2017, the District Collector, Jalore appointed the Additional District Collector, Jalore to hold a meeting of Members of Municipal Board on 21.12.2017 at 1:00 PM with regard to the motion moved by 20 members of the Municipality. The petitioner has pleaded that notices were issued to all the Members and the meeting was kept to consider the said motion in the office of Municipal Board, Sanchore on 21.12.2017.

5. The petitioner feeling aggrieved by the action of the respondents filed S. B. Civil Writ Petition No.16703/2018 before this Court. The petitioner challenged the communication dated 04.12.2017 submitted by 20 Members of Municipal Board, Sanchore. She also challenged the notices dated 08.12.2017 calling meeting of No Confidence Motion on 21.12.2017 and further specifically prayed that the No Confidence Motion initiated at the instance of the 20 Members of Municipal Board, Sanchore on 04.12.2017 may be quashed and the respondents be directed not to hold any meeting in pursuance of the communication dated 04.12.2017.

6. The petitioner has pleaded in the writ petition that this Court after hearing the parties on 19.12.2017 dismissed the writ petition filed by the petitioner and upheld the No Confidence Motion moved against the petitioner.

7. The petitioner has pleaded that this Court in the earlier petition was of the opinion that No Confidence Motion had been moved by 3/4th Members of the Municipal Board, Sanchore and the same deserved no interference, copy of the order passed by this Court in the earlier writ petition has been placed on record as Annex.8.

8. The petitioner has further pleaded that in the writ petition that the No Confidence Motion was carried out against her and in her place on 27.12.2017, the respondent Department exercised the powers under Section 50(2) of the Municipalities Act, 2009 and handed over the charge of Chairman, Municipal Board, Sanchore to one Ms. Richa Meghwal.

9. It is stated that the Ms. Richa Meghwal on 29.12.2017 assumed the charge. It is further pleaded in the writ petition that in the bye-election held for the post of Chairman Municipal Board, Sanchore on 14.03.2018, Ms. Richa Meghwal has been declared elected for the post of Chairman. And after submitting or joining report on again 14.03.2018 she is continuing as the Chairperson, Municipal Board, Sanchore.

10. The petitioner has pleaded in the present writ petition that similar controversy came up before the Division Bench of this Court at Jaipur Bench in D. B. Civil Writ Petition No.23845/2017 [Rajkumar Jaiswal Versus State of Rajasthan & Ors.] and the Division Bench after examining the various provisions of the Rajasthan Municipalities Act, 2009 and the Rajasthan Municipalities (Motion of No Confidence against Chairperson or Vice-Chairperson) Rules, 2017 has decided the controversy vide judgment dated 17.05.2018 by holding that ex-officio members like MP and MLA cannot be denied exclusion from the right to participate in the meeting of No Confidence Motion.

11. The petitioner has pleaded in her petition that SLP No.15132/2018 was filed before the Apex Court against the judgment/order passed by the Division Bench dated 17.05.2018 and the same was dismissed by the Apex Court vide order dated 31.10.2018.

12. The petitioner has pleaded in the petition that the Division Bench of this Court in the judgment of Rajkumar Jaiswal (supra) has clearly held that interpretation of the provisions has been made and the judgment would apply in the cases where challenge has been made to the No Confidence Motion and if someone has not made challenge to the No Confidence Motion, those will not be governed by the said judgment.

13. The petitioner has pleaded that admittedly she has challenged the No Confidence Motion moved against her by way of filing earlier writ petition which was dismissed by this court vide order dated 19.12.2017, as a consequence whereof on 21.12.2017 the illegal No Confidence Motion moved against her was carried out.

14. The petitioner has pleaded that in view of the interpretation made by the

Division Bench of this Court, the petitioner has illegally been removed from the post of Chairperson, Municipal Board, Sanchore and action of the respondent in considering the No Confidence Motion moved against her and electing Ms. Richa Meghwal as Chairperson, deserves to be declared illegal and arbitrary by this Court.

15. Learned counsel appearing for the petitioner Mr. Kuldeep Mathur has submitted that once the Division Bench of this Court has considered the identical question and has further made interpretation of the relevant Rules and a categorical finding has been recorded that ex-officio Members i.e. Members of the House of People and Legislative Assembly have right to vote in a meeting for No Confidence Motion, then any No Confidence Motion moved by exclusion of ex-officio Members is not sustainable in the eye of law.

16. Learned counsel argued that since the interpretation of the provisions law has been made by the Division Bench, the Judgment would apply in the cases where challenge has been made to the No Confidence Motion.

17. Learned counsel submitted that the petitioner had made challenge to the No Confidence Motion dated 04.12.2017 and notices of District Collector, Jalore issued pursuant thereto for consideration of No Confidence Motion against the petitioner on 21.12.2017 and as such as per judgment of the Division Bench, action of respondent needs to be declared illegal and arbitrary.

18. Learned counsel submitted that since No Confidence Motion was not sent to the Member of Legislative Assembly on the ground that he was not an elected Member but a nominated Member, in view of judgment of the Division Bench, the entire exercise is vitiated in the eye of law.

19. Learned counsel submitted that Members of Legislative Assembly of constituency at Sanchore who is also a Member of the Board had a right to vote in consonance with Article 243 of the Constitution of India and as per the Rules, every eligible Member under Rule 2(b) has to be notified with regard to the meeting of No Confidence Motion and since no notice was served upon the Members of the Legislative Assembly, the proceedings relating to No Confidence Motion are illegal and bad ab initio.

20. Learned counsel has further submitted that though the petitioner had approached this Court earlier but nevertheless her right to challenge the action of the respondents is revived by way of observations made by the Division Bench giving right to the candidates/persons who challenge the No Confidence Motion if notice was not given to the Members of Legislative Assembly or Member of Parliament, as the case may be.

21. I have heard learned counsel for the petitioner.

22. This Court finds that in the earlier petition filed by the petitioner several grounds were raised on behalf of the petitioner to challenge the action of the District Collector, Jalore of convening the meeting for consideration of No

Confidence Motion against the petitioner. The perusal of the order passed by this Court in the earlier petition reveals that counsel for the petitioner had specifically argued that No Confidence Motion submitted by the Members of Municipal Board, Sanchore was moved without there being any resolution or proposal expressing no confidence in the petitioner by 3/4th Members. The second ground was with respect to not giving notice of meeting for consideration of No Confidence Motion against the petitioner by the District Collector, Jalore to the Member of the Legislative Assembly of the area concerned. A close reading of the finding given by this Court in earlier writ petition reveals that the argument was specifically dealt with by this Court and it was found that there was a proposed resolution expressing no confidence in the petitioner and as such the plea of the petitioner was rejected specifically.

23. This Court further finds that the contentions of the petitioner that notice of meeting for consideration of No Confidence Motion was not sent to the Member of Legislative Assembly concerned, the opinion was expressed by the learned Single Judge that there was no requirement of sending any notice to him as the Member of Legislative Assembly, Sanchore was not an elected Member. The relevant portion of the judgment passed in the earlier writ petition are quoted hereunder:-

"The petitioner has challenged the action of the District Collector, Jalore of convening the meeting for consideration of no-confidence motion against her on two grounds. Firstly the no-confidence motion submitted by the Members of the Municipal Board, Sanchore is moved without there being any resolution or proposal expressing no-confidence in the petitioner by three-fourth Members and secondly, no notice of meeting for consideration of the no-confidence motion against the petitioner has been given by the District Collector to the Member of the Legislative Assembly of the area concerned.

Learned counsel for the petitioner has argued that the no-confidence motion moved by the twenty members of the Municipal Board, Sanchore is illegal as no proposed resolution expressing no-confidence in the petitioner was submitted along with the notice of no-confidence motion. Learned counsel for the petitioner has further argued that as per sub-rule (1) of Rule 3 of Rajasthan Municipalities (Motion of no confidence against Chairperson or ViceChairperson), Rules, 2017, a motion of no-confidence in the Chairperson or Vice Chairperson, as the case may be, signed by three-fourth eligible Members of the Municipality together with a copy of the motion, which is proposed to be made is required to be sent to the Collector of the District. It is submitted that in the absence of such proposal, the whole proceedings of convening the meeting against the petitioner for consideration of no-confidence motion are vitiated.

Xxx xxx xxx

The first argument of the learned counsel for the petitioner that the no-confidence motion submitted by three-fourth Members of the Municipal Board,

Sanchoe without a proposed resolution expressing no-confidence in the petitioner is bad in the eye of law is considered but for rejection only.

Xxx xxx xxx

As per the above, the Collector is required to send notice by registered post not less than seven clear days before the meeting to every eligible Member of the Municipality. As per clause (b) of sub-rule(1) of Rule 2 of the Rules of 2017, only the elected Members are the eligible Members and admittedly the Member of Legislative Assembly, Sanchoe is not an elected Member of the Municipal Board, Sanchoe but is a nominated Member and, therefore, there is no requirement of sending any notice to him for consideration of no-confidence motion against the petitioner.

Xxx xxx xxx

The ratio laid down by the Division Bench of this Court in the above referred case applies to the present case also. Twenty members of the Municipal Board have filed no-confidence motion against the petitioner. It is not the case of the petitioner that those twenty Members do not constitute three-fourth of elected Members of the Municipal Board, Sanchoe. This Court while exercising discretionary powers is not inclined to interfere in the matter purely on technical grounds.

In view of the above discussions, the writ petition fails and is hereby dismissed in limine.

Stay petition also stands dismissed.

Applications (APPLW No.6764/2017 and 6755/2017) filed on behalf of applicants for impleading them as party respondents also stand dismissed."

24. The submission of learned counsel for the petitioner that after decision of the Division Bench, now right is conferred on the petitioner to question the proceedings of No Confidence Motion, this Court is afraid to accept the argument of learned counsel for the petitioner.

25. It would be appropriate to quote the findings of the Division Bench with respect to interpretation which has been given for considering the eligibility of the elected Members of Parliament or of Legislative Assembly which are called ex-officio Members. The relevant portions is quoted hereunder:-

"It is stated that Section 51 of the Act of 2009 applies for meeting of business of a Municipality. The meeting for No Confidence Motion cannot be taken to be for business of Municipality. We do not find substance in the argument. Section 51 describes for meeting and not the right of vote therein. There can be general and special meeting. Section 53 of the Act of 2009 is for motion for no confidence. It does not provide for vote to only elected member. In view of the above, an unnecessary confusion has been created by referring Sections 51 to 53 of the Act of 2009. It has nothing to do with right of vote.

Section 51 of the Act of 2009 talks about meetings and not for participation. How the meeting is to be called is also provided. It may, however, be true that meeting as per Section 51 of the Act of 2009 is for business of Municipalities. Section 52 of the Act of 2009 talks about rights and privileges of individual members. There, word "member" has been used and, according to the learned Advocate General, definitions of "member" and "whole number" or "total number" given under Section 2(xxxvi) and Section 2(Lxxiii) of the Act of 2009 are in reference to the aforesaid only and not in reference to Section 53 of the Act of 2009.

We are unable to accept the view for the reason that Section 53, as amended, does not exclude any member to participate in the meeting, rather, Section 53 has to be read with other provisions and more specifically, definition of "member" and Section 6 regarding composition of Municipalities. When Section 6 of the Act of 2009 gives voting right to the members of Parliament and Assembly than denial of vote by subordinate legislation would not be permissible. The rules cannot be made in conflict to any provision of the Act. The conjoint reading of Sections 6 and 53 gives answer as to who can vote in a meeting for motion of no confidence. If we accept exclusion of ex-officio members despite their inclusion under Section 6 or debar them from voting right, it would hit Section 6 of the Act of 2009. In view of the above, reference of Sections 51 and 52 of the Act of 2009 does not provide any assistance for determination of the issues raised herein.

XXX XXX XXX

In the aforesaid judgment, No Confidence Motion was on the basis of 21 members which include 20 elected, one ex-officio member. It was after excluding 2 nominated members. The argument before the Apex Court was in reference to exclusion of nominated members and not of ex-officio (MP and MLA) members. Taking into consideration the aforesaid, the controversy was decided in reference to nominated members. It is as to whether they are having right of vote. It was not for ex-officio members, rather, facts show inclusion of vote of member of Assembly. It has not been held that ex-officio members cannot participate in the meeting. Accordingly, we are of the opinion that in the No Confidence Motion, nominated members cannot participate but neither provisions of the Act nor Constitution of India has excluded ex-officio member being Members of Legislative Assembly or Parliament from voting right.

If we take a view that ex-officio members cannot participate in the meeting of No Confidence Motion, it would hit Section 2(xxxvi) defining the word "member" so as Section 2(Lxxiii) defining the words "whole number" or "total number" and Section 6 of the Act of 2009 apart from Article 243R of the Constitution of India as it has not excluded ex-officio member from right of voting. Section 6 of the Act of 2009 and the Constitution of India excludes vote of nominated members only. Section 6 of the Act of 2009 gives right of voting to ex-officio members (MP and MLA) thus Rule 2(1)(b) of the Rules of 2017 cannot be allowed to stand contrary to it.

The reference of judgment of Punjab & Haryana High Court in the case of Sanjeev Kumar Verma (supra) has been given. Therein, issue was raised on the same ground as is before us i.e. voting right of the ex-officio members. We find that provision, as existing under Section 6 of the Act of 2009, has not been considered. The judgment aforesaid has been given after relying judgment of Apex Court in the case of Ramesh Mehta (supra) and also of this court where issue was not about voting right of exofficio member but of nominated member. The reference of proviso to Article 243R of the Constitution of India was not given in specific terms by the lawyers appeared therein. Against the aforesaid, a recent judgment has been given by the Karnataka High Court in the case of Sultan Ali & Anr. (supra).

XXX XXX XXX

In view of the aforesaid, we are of the view that if definition of "eligible member" given under Rule 2(1)(b) of the Rules of 2017 excludes ex-officio members (MP and MLA) then it is hit by Sections 2(xxxvi), 2(Lxxiii) and Section 6 of the Act of 2009 and otherwise Article 243R of the Constitution of India providing composition of Municipalities. The proviso under Article 243R of the Constitution of India excludes voting right of nominated member only and not of members of the House of people or Assembly, Section 6 of the Act of 2009 gives voting right to them. The definition of "eligible member" does not exclude ex-officio members as it is silent thus by applying the doctrine of reading down, it can be concluded that ex-officio members are not excluded from the definition thus would be eligible to vote in the meeting of No Confidence Motion. In the alternative to struck down the definition of "eligible member".

It has been argued that voting right in the meeting of No Confidence Motion has been given to those who participate in the election. We cannot accept aforesaid proposition when it goes against Article 243R of the Constitution of India so as section 6 of the Act of 2009. If intention would have been to deny right of voting to ex-officio members in the meeting, the Constitution of India and provisions of the Act would have been framed accordingly as otherwise it exist for nominated member. It is as per the proviso to Article 243R(2) and under Section 6 of the Act of 2009. Hence, argument raised by learned Advocate General cannot be accepted.

In view of the discussion made above, Rule 2(1)(b) of the Rules of 2017 is struck down if it excludes ex-officio member.

In the light of the aforesaid, we hold that ex-officio members i.e. Members of the House of people and the Assembly have right to vote in a meeting for no confidence motion.

In view of the above, no confidence motion vitiate due to exclusion of ex-officio members and is, accordingly, set aside. It is moreso if they would have been included for vote, the result could have been different as the no confidence motion was not carried by margin so as to ignore the vote of ex-officio members.

Learned Advocate General has prayed for application of judgment prospectively.

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.

The preliminary objections raised by learned Advocate General are not sustainable. The pleading of the writ petition would show not only in reference to Section 53 but other provisions as well. It may be that reference of unamended provision of Section 53 has been given but by virtue of it, other issues cannot be ignored for its adjudication.

In view of the discussion aforesaid, we allow the writ petition with the reliefs given above.

At this stage, learned Advocate General prays for stay of the operation of this order for a period of 15 days. It is submitted that similar controversy may come up before the Apex Court. In view of the above, prayer is accepted. The operation of this order is stayed for a period of 15 days."

(Emphasis supplied.)

26. This Court finds that the Division Bench has specifically considered the request of the Advocate General for application of the judgment in a prospective manner. The Division Bench about prospectivity of the judgment has held as under:-

"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."

27. The perusal of the said judgment clearly reveals that the judgment was applied only in the cases where challenge was made to the No Confidence Motion. This Court finds that the petitioner had filed the earlier writ petition and findings were recorded against the petitioner, upholding the No Confidence Motion.

28. The submission of the learned counsel for the petitioner that now elected Members are eligible to participate in No Confidence Motion and further there are required to be given notice, this Court finds that once the Division Bench has passed the order on 17.05.2018, the same cannot be given a retrospective effect

and petitioner cannot be again given liberty to challenge the action/notice of No Confidence Motion which stood concluded by way of dismissal of petitioner's writ petition vide order dated 19.12.2017.

29. This Court does not find any substance in the submission of learned counsel for the petitioner that since the petitioner has challenged the notice of No Confidence Motion and by virtue of declaring the law, the right of the petitioner will be revived to assail the action again.

30. This Court finds that filing of present writ petition is a sheer misuse of process of law and the petitioner once having lost the battle in first round of litigation, cannot be permitted to file successive writ petition.

31. This Court further finds that judgment of the Division Bench and upheld by the Apex Court, further would not revive those cases where No Confidence Motion has already been carried out prior to passing of the order by the Division Bench on 17.05.2018.

32. The submission of learned counsel for the petitioner that the right of the petitioner cannot be taken away to question the illegality of the action of the respondents, suffice it to say that at the relevant time when the Single Bench of this court has made interpretation about the Members who can participate in the No Confidence Motion, subsequent interpretation of Rules or reading down the law as held by the Division Bench, would not revive the cases which are already concluded.

33. This court does not find any illegality in the action which was taken earlier which bears the seal of approval of this court by way of decision given in the earlier writ petition on 19.12.2017. This court further does not find any ground to consider the prayer of the petitioner to decide her case in view of the law declared by this court in D.B.Civil Writ Petition No.23845/2017 [Rajkumar Jaiswal Vs. State of Rajasthan & Ors.].

34. This court finds that the present writ petition is a wholly misconceived petition and in fact the same is an abuse of process of law and wastage of judicial time as well. This court finds such kind of litigation needs to be deprecated and successive petition cannot be permitted to be filed by the litigants. This court thinks it proper to impose a cost of Rs.2,00,000/- (Rupees Two Lakhs Only) on the petitioner, to be deposited with the Joint Secretary, Rajasthan State Legal Services Authority, Jodhpur within a period of four weeks. In case the cost, as imposed, is not deposited, the same will be recovered from the petitioner as land revenue arrears.

35. Consequently, the instant writ petition is dismissed, with cost, as noted above.