
(2003) 02 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3775 of 2002

Jagdish Prasad and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Rajasthan Municipalities (Motion of No-confidence against Chairman and Vice Chairman) Rules, 1974 — Rule 3(1)
Rajasthan Municipalities Act, 1959 — Section 72

Citation : (2003) 2 RLW 1035 : (2003) 2 RLW 1033 : (2003) 2 WLC 626

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Jagdeep Dhankar and G.S. Fauzdar, for the Respondent

Final Decision : Allowed

Judgement

Rathore, J.—Present petition is directed against the order dated 21.6.2002 passed by the District Collector, Bharatpur and against the notice dated 21.6.2002 also issued by District Collector, Bharatpur.

2. Brief facts of the case are that the petitioners are the elected ward members of Municipal Board Kumher District Bharatpur. Total 20 ward members were elected. In addition to the elected ward members there are two co-opted members.

3. District Collector Bharatpur issued a notice dated 21.6.2002 for convening a meeting for consideration of motion upon the request made by the petitioners. An application dated 11.6.2002 along with no confidence motion duly signed by petitioners was moved against the Chairman of Municipal Board Kumher to the District Collector Bharatpur.

4. It is given out by petitioners that no action was taken on the aforesaid application dated 11.6.2002 till 14.6.2002. In the meantime, petitioners moved another written application duly signed and duly attested by Notary Public to

District collector to withdraw their earlier application dated 11.6.2002.

5. On application dated 14.6.2002 so moved on behalf of the petitioners to withdraw their earlier application dated 11.6.2002 regarding no confidence motion against the Chairman of Municipal Board Kumher, the District Collector fixed a date for hearing on the application dated 14.6.2002 to decide this question as to whether such application can be entertained or not, once an application for no confidence motion has been moved, such application can be withdrawn by subsequent application.

6. Another application dated 19.6.2002 was also moved on behalf of respondent No. 4 Chairman of Municipal Board, Kumher with intention to summon the eight ward members who moved the application dated 14.6.2002 for withdrawal of the application for no confidence motion dated 11.6.2002.

7. The District Collector, Bharatpur after hearing the rival submissions of the parties dismissed the application of the petitioner dated 14.6.2002 vide its judgment dated 21.6.2002.

8. After dismissing the application dated 14.6.2002 the District Collector, Bharatpur issued a notice dated 21.6.2002 for convening a meeting for consideration of application for no confidence motion dated 11.6.2002 against the Chairman and fixed the date 4.7.2002 and has also authorised the SDO Kumher to preside over the meeting.

9. Before the date fixed for consideration of motion i.e. 4.7.2002 the petitioners filed this writ petition before this Court. Matter was listed before this Court on 28.6.2002 and 1.7.2002. Since the petitioners in view of the order dated 28.6.2002 of this Court has not filed notices for respondents No. 1 to 3 the petitioner was directed to file the notices for respondent No. 1 to 3 and learned Advocate General who was present in the Court was requested to accept the notices on behalf of respondent No. 1 to 3. On the joint request the matter was listed on 3.7.2002.

10. On 3.7.2002 after hearing the arguments of respective parties at length respondents were given liberty to convene the meeting for no confidence motion as it was scheduled to be held on 4.7.2002 but were directed not to declare the result of no confidence motion without seeking prior permission of this Court and were further directed to keep the result of no confidence motion under the sealed cover.

11. During the course of argument original record/proceedings of the no confidence motion was called for and was examined by the Court and it was found that on 4th July not a single member turned up to express his opinion for and against the no confidence motion. Consequently the no confidence motion fails.

12. Learned counsel for the petitioners submits that petitioners have assailed the order and notice issued by the Collector on the ground that all the 8 members

who have signed the application are the one third of the total members and given a written notice duly attested by Notary Public showing their intention to make the motion of no confidence against the respondent No. 4 Chairman of Municipal Board Kumher on 11.6.2002 to the District Collector, Bharatpur and immediately after three days i.e. on 14.6.2002 petitioners moved another written application duly signed and duly attested by Notary Public to the District Collector, Bharatpur showing their intention to withdraw their earlier application dated 11.6.2002.

13. Learned counsel for the petitioners further submits that the order dated 21.6.2002 and notice dated 21.6.2002, both are illegal and contrary to law and material on record. There is legal as well as the factual error in passing the order dated 21.6.2002 because of reason that petitioners moved application dated 14.6.2002 before any action have been taken on the application dated 11.6.2002 and any notice have been issued for consideration of the said application.

14. It is given out that there is no bar in the statutory rules of 1974 for refusal of such withdrawal, therefore, in the normal course, application dated 14.6.2002 should have been allowed and application dated 11.6.2002 should have been disposed of or consigned to record as withdrawn.

15. Learned counsel for the petitioners further referred Rule 3(1) of Rules of 1974. The District Collector is required to convene a meeting for consideration of the motion on the date and time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of receipt of the notice.

16. Petitioners gave a notice under Rule 3 on 11.6.2002 and District Collector was required to give notice for its consideration on a date, which could not have fixed before 20 days i.e. before 1.7.2002. It is submitted that before 1.7.2002 petitioner had every right to withdraw their notice of motion dated 11.6.2002.

17. Learned counsel for the petitioners further submits that the District Collector has not fixed any date and time on the notice of the petitioners dated 11.6.2002 and later on issued a notice on the application dated 11.6.2002 for motion on 21.6.2002.

18. Learned counsel for the petitioners also submits that judgment of this High Court reported in 1974 WLN 753 was referred before the District Collector, Bharatpur and the District Collector Bharatpur has wrongly distinguished the law laid down by this High Court in the case reported in 1974 WLN 753 and wrongly relied upon the judgment mentioned in the order dated 21.6.2002.

19. The District Collector, Bharatpur has also wrongly interpreted the provisions of Rajasthan General Clauses Act, which were in favour of the petitioners and as per the provisions of Rajasthan General Clauses Act, it was clear that in absence of any specific negative provision, it should have been deemed that the applicants have a right to withdraw their notice of motion given by them under Rule 3 of the Rules of 1974 before it came for consideration in the meeting.

20. In support of the arguments learned counsel for the petitioners also placed reliance on the judgment *Ramhetlal v. Collector, Sawai Madhopur* (1), and gave much emphasis on para No. 5 to 12. (21). Learned counsel for the petitioners further submits that impugned order as well as notice dated 21.6.2002 issued by the District Collector, Bharatpur are wholly illegal and against the well settled principles of law as the petitioners have moved an application on 11.6.2002 but before any action have been taken on the said application and before any notice could have been issued for consideration of the said application the petitioners moved another application on 14.6.2002 to withdraw their earlier application dated 11.6.2002.

22. There is no bar in statutory rules of 1974 for refusal of such withdrawal. Therefore, in normal course the application dated 14.6.2002 should have been allowed and application dated 11.6.2002 should have been disposed of or consigned to record as withdrawn.

23. The application of withdrawal which has been moved on behalf of the petitioners has not been allowed by the District Collector, Bharatpur is nothing but to hold that Chairman will have a legal right to continue as Chairman for two years if notice of motion falls. This finding of the District Collector is not only premature but also perverse for the reason that notice of motion in the present case has not even been considered and it has not been fallen down by the majority in the meeting. Therefore, no right has accrued to the non-petitioner Chairman. The order dated 21.6.2002 passed by the District collector is per se illegal and suffers from malice.

24. Learned Advocate General Mr. S.M. Mehta with Ms. Parinitoo Jain appeared on behalf of the respondent No. 1 to 3 and submitted that right to vote is subject to limitations imposed by the statute which can be exercised only in the manner provided by the statute. Right to stand and contest an election cannot be challenged on the ground of common law right or fundamental right.

25. Learned Advocate General referred Section 72 of the Rajasthan Municipalities Act, 1959 read with Rule 3(1) of the Rajasthan Municipalities (Motion of No Confidence against the Chairman and Vice Chairman) Rules 1974. He further submits that under Rule 3 of the Rules 1974 complete procedure have been provided for moving a Motion of No Confidence. The process of No Confidence starts under Rule 3(1) by a written notice of intention to make motion of no confidence in the Chairman or Vice Chairman signed by one third members of the Board together with a copy of the motion which is proposed to be made shall be sent to the Collector of the District, who shall thereupon convene a meeting for the consideration of the motion to be held at the office of the Board on the date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

26. Under Sub-rules 2 to 9 procedure has been laid down.

27. Learned Advocate General further submits that by bare perusal of the

aforesaid provisions of Act and Rule the intention of the legislature is clear that the process of no confidence motion starts as soon as the written notice of intention to make motion of no confidence is moved and there is no provision provided for the withdrawal of such motion after the process for motion of no confidence starts. Thus the application for withdrawal of earlier application has rightly been rejected by the District Collector Bharatpur.

28. In support of his contention Advocate General has referred the decision of the Hon''ble Supreme Court *Anukul Chandra Pradhan v. Union of India* and Ors. (2), and referred para No. 9 to 12. He also referred the case of *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* (3) and *Jyoti Basu v. Devi Ghosal* (4). (29). After referring the aforesaid judgments learned Advocate General submits that in view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute, and that the challenge to any provisions in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution. The challenge to the validity of Sub-section (5) of Section 62 of the Act, is therefore, not available and this petition deserves to be dismissed.

30. Learned Advocate General further distinguished the judgments reported in 1968 RLW 366 and 1874 WLN 753 and submitted that law laid down in the judgments rendered by this Court is not correct law and thus the same are not relevant and need not be followed in view of the observations/decisions made by the Hon''ble Supreme Court. Learned Advocate General also requests that since there is no specific provision in the statute for withdrawal of the motion once moved, therefore, looking to the importance of the matter, matter may be referred to larger Bench for an authoritative decision on this point.

31. On behalf of respondent No. 4 Mr. Jagdeep Dhankar Sr. Adv. and Mr. G.S. Fauzdar Adv. appeared and adopted the arguments advanced on behalf of the learned Advocate General, Mr. Dhankar also referred relevant provisions of Act and Rules 1974 and more particularly referred Rule 3 of the Rules of 1974 and submitted that Collector Bharatpur was obligated by law to convene the meeting and to depute some one to preside over the same. Since no other option lies with the Collector, therefore, the action of the Collector, Bharatpur does not suffer from any legal infirmity. He also submitted that the matter is required to be covered purely by expressed statutory provisions and not by motion of common law. There is no expressed provisions under the Municipalities Act to permit the withdrawal of the motion of no confidence.

32. Since the Collector, Bharatpur has taken the entire action in form of the Rule 3 of Rule 1974, therefore; the action taken by the Collector, Bharatpur cannot be said to illegal and contrary to the provisions of law.

33. In answer to that Collector include Addl. Collector Mr. Dhankar placed reliance on the judgment rendered in the case of *Smt. Pinki Rajoriya v. State of*

Raj. and Ors. (5), wherein this Court has held as under :

Intention of the Legislature can be gathered from a bare look at the above provision. The legislature intended that the written notice to make motion of no confidence duly signed by one-third members of the Municipal Board shall be sent to the Collector of the District who shall convene a meeting for the consideration of the motion. The collector shall sent by registered post a notice of such meeting to every member of power to convene a meeting and communication of notice exclusively to the District Collector and any other person under Sub-rule (3) of the Rule 3 who shall act in the capacity of nominee of the District Collector. For the purpose of Sub-rules (1) and (2) of Rule 3 of 1974 Rules, the Words "Collector of District" do mean to include Additional Collector of District and the Additional Collector of District has no jurisdiction to exercise power under Sub-rules (1) and (2) of Rule 3 of 1974 Rules. In the case on hand admittedly on December 11, 2001 application for a motion of no confidence was presented to the Additional Collector Dausa at Camp Lalsot and the Additional Collector Dausa forthwith passed an order on the application itself directing, to convene the meeting for consideration of no-confidence motion against the petitioner on January 2, 2002. This act of Additional Collector Dausa was without jurisdiction and even though the District Collector Dausa on December 21, 2001 issued registered notices of the meeting to the members of the Municipal Board yet the illegal act of the Additional Collector would not get validated by it. It will only be deemed that the District Collector Dausa on December 31 (sic 217), 2001 passed conjoint order under Sub-rules (1) and (2) of Rule 3 directing to convene the meeting on January 2, 2002 for consideration of no-confidence motion against the petitioner. That itself is against the mandate of Sub-rule (1) of Rule 3 as meeting could not be convened earlier than twenty days. Since the mandatory provision of Sub-rule (1) of Rule 3 of 1974 Rules have been flouted in the instant case, I have no option but to hold that the order dated December 11, 2001 of the Additional Collector Dausa and the entire proceedings of the meeting convened in pursuance thereof on January 2, 2002 were illegal.

34. During the course of dictation of judgment I perused the judgment referred by the petitioner reported in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , Jyoti Basu and Others Vs. Debi Ghosal and Others, . In the case of Ram Chandar v. State of Rajasthan (Supra) this Court has held that persons signing notice may withdraw before meeting convene. Since there is no provision in the Municipal Act for withdrawal of no confidence motion once given and no specific provisions in the statute and in these judgments the Court observed that before the meeting convened the signatory of the no confidence motion can withdraw the notice.

35. Respondents has categorically stated that once the notice for no confidence motion is moved the signatories having no power to withdraw the same as the moment the notice moved the no confidence motion is said to be charged. On

this point the matter was again listed under the category of "to be mentioned" and the arguments on this point was heard.

36. Heard on the issues (1) whether a motion of no confidence submitted against the Chairman/Vide Chairman of a Municipal Council in terms of Rajasthan Municipalities (Motion of No Confidence against Chairman or Vice-Chairman) Rules, 1974 can be withdrawn after its submission to the Collector concerned?

(2) Whether a motion of no confidence submitted to the Collector in terms of the Rules of 1974 can be withdrawn by presenting a withdrawal application to the Additional Collector and not the Collector?

(3) Whether after submission of the motion of no confidence against Chairman under the Rules of 1974, makers of the motion become functus-officio?

37. Learned Advocate General Mr. S.M. Mehta and Senior Counsel Mr. Jagdeep Dhankar were called upon to address the Court to distinguish the case of Ram Chandra v. State of Raj. (6), and Ramhetlal v. Collector, Sawai Madhopur (7), since in these two judgments this Court has held that signatories of the notice of no confidence motion may withdraw the same before meeting convene.

38. Learned Advocate General reiterated the arguments which are already advanced on earlier occasions and again placed reliance on the judgment reported in Jyoti Basu and Others Vs. Debi Ghosal and Others, , N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others, .

39. Whereas Mr. Jagdeep Dhankar heavily placed reliance in the case of Pinky Rajoria v. State of Rajasthan (8). He submits that since the notice for no confidence motion was submitted to Collector and the withdrawal application of the notice of no confidence motion was made before the Additional Collector and in view of the judgment rendered in Pinky Rajoria's case the Collector does not include Addl. Collector, therefore the withdrawal application which is submitted by the petitioner, the Addl. Collector is not competent to entertain the same.

40. He further submits that the view taken by this Court in the case of Ram Chandra (Supra) that motion of no confidence is liable to be withdrawn any time before it comes up for consideration in the meeting, this requires re-consideration on the reasons that interpretation would militate against the essence of Section 72(3) of the Act which provides that failure of a motion would debar bringing of a subsequent motion for two years thereafter. If the interpretation accorded in Ramchandra's case is accepted, then makers of the motion would take chance and finding just before the meeting that there is no hope of success of the motion would conveniently withdraw the same.

41. He further submits that interpretation accorded in the case of Ramchandra also goes contrary to the provisions of Rule 3(8) of the Rules of 1974, if the meeting is not held for want of corum, the motion of no confidence would be deemed to have lost. Such a situation arise if the interpretation accorded in the

case of Ramchandra is not re-considered as in that situation the makers of the motion faced with a sure defeat of the motion would conveniently withdraw the same and thus defeat the underlying spirit of Rule 3(8) of Rules 1974.

42. Mr. Jagdeep Dhankar Sr. Advocate also referred Rule 3 of the Rules of 1974. In view of the Rule 3 of Rules the meeting is required to be convened by the Collector not earlier than 20 or not later than 30 days of the receipt of notice. The Collector is required to send by registered post a notice of not less than seven clear days. Since this schedule has been provided under Rule 3 of the rules, a Collector in a given situation issue notice, fix the date of meeting on the very first day of the receipt of the motion. While in another case, Collector may wait for good above 20 days before taking this decision. That being so, no distinction can be drawn on account of the timing of the action taken by the Collector on the "motion of no confidence.

43. Therefore, the moment the motion of no confidence is received by the Collector, he becomes subject to the time frame given in Rule 3 of the Rules of 1974 and is under statutory obligation to conform to the same.

44. Learned Advocate General Me S.M. Mehta and learned Sr. Advocate Mr. Dhankar submits that the cases referred by the petitioner Ram Chandar (Supra) and Ramhetlal (Supra) requires re- consideration and it is fit case to refer before the Larger Bench to consider the questions :

(1) Whether makers of the motion of no confidence against the Chairman/Vice Chairman of the Municipal Council in the Rules of 1974 have any right to withdraw the same? If so, what is the stage at which such a motion of no confidence can be withdrawn?

(2) Whether the law laid down by this Court in the case of Ramchandra v. State of Rajasthan (Supra) and Ramhetlal v. Collector, Sawai Madhopur (Supra) requires re-consideration.

45. Having heard rival submissions of learned counsel for the respective parties, only controversy involves in this matter whether an application with intention to move no confidence motion against the Chairman can be withdrawn by making another application signed by two third members of the total members or not. To resolve this controversy it is necessary to examine the relevant provisions of Rajasthan Municipalities Act 1959 and the Rules 1974. First I like to refer Section 72 of Municipalities Act 1959 which reproduced as under :

Motion of non-confidence against Chairman-Motion expressing non-confidence in the Chairman or the Vice-Chairman shall be made and considered in the manner prescribed.

(2) No notice of motion under this section shall be made within one year of the assumption of office by a Chairman or a Vice-Chairman.

(3) If a motion under Sub-section (1) is not carried, no notice of a subsequent

motion expressing non-confidence in the same Chairman or Vice-Chairman shall be made until after the expiration of two years from the date of the meeting in which the motion was considered.

Procedure for consideration of no confidence motion has been laid down under Rule 3 of the Rules 1974 which reproduced as under :

Procedure etc- (1) A written notice of intention to make motion of no-confidence in the Chairman or Vice-Chairman signed by one-third members of the Board together with a copy of the motion which is proposed to be made shall be sent to the Collector of the District, who shall thereupon convene a meeting for the consideration of the motion to be held at the office of the board on the date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

(2) The Collector shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and of the date and time fixed therefore to every member of the Board.

(3) The Collector or his nominee shall preside at such meeting and if within half an hour from the time appointed for the meeting Collector or his nominee is not present or is unable for any unavoidable cause to preside at the meeting the meeting shall stand adjourned to the date and the time to be fixed and notified to the members.

(4) A meeting convened for the purpose of consideration of the motion of no-confidence under these rules shall not for any reason except stated at Sub-clause (3) be adjourned.

(5) As soon as the quorum is present, the Collector or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion. No meeting for the consideration of the motion of no- confidence shall be held unless the quorum is present. One-third of the whole numbers shall form the quorum.

(6) Such discussion shall not be adjourned and shall automatically terminate on the expiry of four hours from the time fixed for the commencement of the meeting unless it is concluded earlier.

(7) On the conclusion of the debate or upon the expiry of the said period of four hours, as the case may be, the motion shall be put to the vote of the Board and the Collector or his nominee shall neither speak on the merit thereof nor vote thereon.

(8) If the motion is the carried by a 2/3 majority of the whole number of members, or if any meeting cannot be held for want of quorum, the motion of no confidence against Chairman or Vice-Chairman, as the case may be, shall be deemed to have been lost.

(9) If the motion is carried by a majority of 2/3 number of whole number of

members, the motion shall be deemed to have been passed against the Chairman or Vice-Chairman, as the case may be and such Chairman or Vice-Chairman shall forthwith be deemed to have vacated his office.

46. By bare perusal of Section 72 it reveals that no notice of motion under this section shall be made within one year of the assumption of the office by a Chairman or a Vice-Chairman and second if a motion under Sub-section (1) is not carried, no notice of a subsequent motion expressing non-confidence in the same Chairman or Vice-Chairman shall be made until after the expiration of two years.

47. In case aforesaid two conditions are fulfilled and the motion is moved after one year from the assumption of the office by the Chairman or Vice-Chairman than a written notice of intention to make motion of no confidence in Chairman or Vice-Chairman signed by one-third members of the Board accompanied with a copy of motion which is proposed to be made can be sent to the Collector of District.

48. After receipt of such written notice of intention to make the motion the Collector of District shall convene a meeting for the consideration of the motion to be held at the office of the Board on the date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

49. Collector have followed the procedure as laid down under Rule 3. After receipt of a written notice of intention to make the motion along with the resolution, Collector shall have sent the notice to the Chairman by registered post not less than 7 clear days before the date of meeting a notice of such meeting and of the date and time fixed thereupon to every member of the Board against whom the motion has been moved and on the meeting fixed by such notices shall consider the proposed motion of no confidence and the Collector can adjourn the meeting by expressing written reason for adjournment of such meeting.

50. As per Rule 3 Sub-rule 5 as soon as the quorum is present, the Collector or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion and such consideration cannot be took place until unless the quorum is present. It is expressly made in the provisions of Rule 3 Sub-rule 6 that when the date is fixed and declare it to be open for discussion, such discussion shall not be adjourned and shall automatically terminate on the expiry of four hours from the time fixed for the commencement of the meeting unless it is concluded earlier.

51. After the debate or expiry of time of four hours, the motion shall be put to the vote and after such voting if the motion is not carried by 2/3 majority of all present members such motion shall be deemed to have been lost. And if the motion is carried by majority of 2/3 members the motion shall be deemed to have been passed against the Chairman.

52. Herein the instant case the controversy is with regard as to whether the petitioners are entitled to seek withdrawal of the application for intention to move the motion against the Chairman or not. Petitioners have given much emphasis to this effect that the application for intention to make the motion against the Chairman was made by the petitioners on 11.6.2002 before the Collector, Bharatpur and by another application dated 14.6.2002 the members who have signed the earlier application has moved with the intention to seek permission to withdraw the application dated 11.6.2002 on the ground that from 11.6.2002 to till 14.6.2002 when the petitioner moved another written application duly signed and duly attested by Notary Public to the District Collector showing their intention to withdraw their earlier application dated 11.6.2002, nothing has been done by the District Collector.

53. Since learned counsel for the petitioners has placed heavy reliance on the judgment rendered in the case of Ramhetlal v. The Collector, Sawai Madhopur (9), I have carefully examined this judgment. In para No. 12 of the judgment this Court has observed that some of the members has signed the notice for motion of no confidence it was undoubtedly open to them to withdraw themselves from that notice, at any date, prior to the Collector having taken any action. This Court has considered passage at page 400 of Parliamentary Practice and held as under :

What are contemplated to be the conditions in this passage are unfortunately obtaining today in our country. There are at times signature campaigns and counter campaigns for elective offices and, therefore, though this tendency is to be discouraged, yet it cannot be motion or petition should be able to withdraw his name before any action has been taken thereon. The position would be different if the stage of the notice of motion is passed and the motion has once come before the House which has to deal with that motion, for such a situation May has observed at page 407 of his book "Parliamentary Practice" that "A member who has proposed a motion cannot be allowed to withdraw it except by the leave of the House and that too will be permissible if there is no dissent found against the withdrawal of the motion." In the present case the stage had not reached when the motion could be said to be before the House. Before that date and anterior to the stage when the Collector convenes the meeting it was certainly open to a member who had signed the notice of motion of no confidence to withdraw his name therefrom. A perusal of the impugned order Ex. 11 shows that well before 26.9.67 i.e., on 12.9.67 and 19.9.67, some members had approached the Collector with the affidavits stating therein that they were made to sign certain blank papers and they had not signed any notice of motion of no confidence. Thus they disassociated themselves with the notice for the motion that was presented to the Collector on 13th September, 1967. It is remarkable that even before that date i.e. on 12th September, 1967, some members had disclaimed their signing the notice of the motion for no-confidence. It was argued by the learned counsel for the respondents that there was nothing to show that the concerning members themselves presented these

affidavits. He submitted that these affidavits were stealthily obtained from the concerning members as back, as 3.9.67 and were kept by the petitioner with himself or some of his friends and then those affidavits were made use of at the appropriate stage. Whatever may be the reason the fact remains that the Collector was apprised of the fact that certain members had taken the position that they had not signed any notice for the motion of no confidence against the Pradhan. In that situation it was the duty of the Collector to see whether the name of a particular person had been withdrawn by him from the notice. The legislature attaches some importance to a certain minimum number of members signing the notice for the motion of no confidence against him elected head of the Panchayat Samiti. This is with a view to ensure some security to the incumbent about his tenure so that he may be able to discharge his duties unhampered and unopposed by the thought that any day he may be asked to quit that office. This question regarding the withdrawal of some of the names by the concerning members from the notice for the motion of no confidence was thus of great importance. The order Ex. 11 does not show that the Collector has gone into that matter. On this ground, therefore, I am satisfied that the Collector has not approached the matter from the correct angle. There was an argument about the person presenting this affidavit before the Collector, it has been averred in the writ petition that the affidavits were presented by the concerning members to the Collector through their counsel. This position has not been clearly controverted. It has not been stated that the counsel who presented these affidavits before the Collector could not have represented the members concerned. In these circumstances the order Ex. 11 stands vitiated.

54. I also carefully perused the judgment of *Ramchandra v. State of Raj.* (10), wherein this Court has observed that in the absence of any statutory provision it would be reasonable to hold that it becomes effective only when the authority charged with final action has acted upon it. The notice of motion of non confidence could be withdrawn by its author before it actually came up for consideration before the meeting called for the purpose. In the present case the notice had been given by Hajikhan alone and since he had withdrawn it before the date fixed for the meeting, the notice did not become effective.

55. In the case of *Union of India and Anr. v. Wing Commander. T. Parthasarathy* (11), which has been referred by petitioner relates to the service law. Where resignation to have effect from a future date, it can be withdrawn at any time before that date. Apex Court has held that a substantive legal right cannot be denied to a person merely on the basis of some policy decision of Govt. or any certificate issued by him acknowledging a particular position which has no legal sanctity.

56. The petitioners have got right to withdraw the notice for no confidence motion prior to date fixed by the Collector in view of the decision rendered by this Court in the cases of *Ram Chandra v. State of Raj.* (Supra) and *Ramhetlal v. Collector Sawai Madhopur* (Supra).

57. In the judgment of N.P. Ponnusawami v. The Returning Officer, Namakkal Constituency (12), wherein the Hon"ble Supreme Court has observed as under :

Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

58. Upon perusal of the judgment of Pinky Rajoria (Supra) wherein this Court has held that the application for no confidence motion was handed over to Addl. Collector on 11.12.2001 and Addl. Collector held the meeting on 2.1.2002 and it was also held that act of the Addl. Collector is without jurisdiction since word Collector for the purpose of Sub-rule 1 and 2 does not include Addl. Collector.

59. The judgment of Pinky Rajoria has already been challenged before the Division Bench and Division Bench vide its order dated 22.5.2002 passed the stay order which is reproduced as under :

We have heard learned counsel for parties. Counsel for appellant has argued that the learned Single Judge mainly decided the case on the basis of the fact that notice convening the meeting for no confidence motion was dealt with by the "Additional Collector" whereas it is required to have been dealt with by the "Collector". She has drawn our attention to the definition of "Collector" as given in Sub-clause (A) of Section 3 of the Rajasthan Municipalities Act, 1959, according to which "Collector" includes "Additional Collector". Prima facie we are unable to subscribe to the view taken by the learned Single Judge. Therefore, we stay operation of the judgment of the learned Single Judge. The State Government will now pass an order in accordance with law appointing a Chairman of the Municipal Board, Dausa within two weeks from today.

60. Since the operation of this case has been stayed by the Division Bench, the question of application of this judgment does not arise as the matter is still subjudice before the Division Bench.

61. I also carefully examined the judgment referred by learned Advocate General Mr. S.M. Mehta and Sr. Adv. Mr. Jagdeep Dhankar. Learned Advocate General referred the judgment reported in Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others, wherein Hon"ble Supreme Court has observed that the nature of right to vote has been held to be a statutory right and not a common law right conferred by the State.

62. Similar view has been taken in the case of N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, 1952 (Supra) as the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

63. In Jamuna Prasad Mukhariya v. Lachhi Ram (13), the Constitution Bench reiterated that the right to stand as a candidate and contest an election is not a

common law right, it is a special right created by statute and can only be exercised on the conditions laid down by the statute. The fundamental Rights Chapter has no bearing on a right like this created by statute.

64. In the case of *Jyoti Basu v. Devi Ghosal* (14), it was held that the nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights have been explained by the Court in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* (Supra) and *Jagan Nath v. Jaswant Sing* (15). We proceed to state what we have gleaned from what has been said, so much as necessary for this case.

65. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right, it is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, creations they are, and therefore, subject to statutory limitation.

66. The judgments of *Ramhetlal v. Collector Sawai Madhopur* (Supra) and *Ram Chandra v. State of Raj.* (Supra) are only judgments on the controversy involved in the present matter.

67. In the judgments which are referred by learned counsel for the petitioners to this effect rendered in the case of *Ram Chandra v. State of Raj.* and *Ramhetlal v. Collector Sawai Madhopur*, this Court has also expressed this view that in the absence of any statutory provisions it would be reasonable to hold it becomes effective only when the authority charge with final action has acted upon it.

68. When it said to be charged and in motion for that purpose again it is necessary to have close look to Section 72 and Rule 3 which laid down the procedure for moving no confidence motion. The assigned ingredients are (1) written notice of intention (2) signed by one-third members of the total strength (3) after receipt of such notice of intention to make motion Collector shall convene a meeting for consideration (4) such date shall not be fixed earlier than 20 or later than 30 days from the date of receipt of notice (5) after fixing the date of meeting the Collector shall send the notice through registered post for 7 clear days before the date of meeting (6) to preside the meeting either by himself or by his nominee (7) in case quorum is present the Collector or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion. (8) on the conclusion of the debate or expiry of four hours the voting shall take place (9) if the motion is not carried by a 2/3 majority shall deemed to have been lost. If it is carried by majority of 2/3 members of the whole number the motion shall be deemed to have been passed against the Chairman or Vice-Chairman.

69. To examine this aspect that when it said to be charged and charged with final action, as per the requirement of the procedure laid down under Rule 3 a written notice of intention to make motion is received by the Collector. Collector have

fixed the date and moment and notice have sent to the individual members through registered post the motion is said to be charged. Or as per the decision rendered in the case of Ram Chandra v. State of Raj. the motion is only be charged with a final action has acted upon. This could only be said at the time of open discussion on the notice of no confidence motion as it is also provided under Rule 3 of Sub-rule 3 and 4, no meeting as scheduled to be held can be adjourned. A meeting convened for the purpose of consideration of the motion of no-confidence under these rules shall not for any reason except stated at Sub-clause (3) be adjourned. Since meeting cannot be adjourned then also even if how after such discussion it is seeking withdrawal by the signatories can be adjourned.

70. Considering the facts of the present case and arguments advanced on behalf of respective parties, after given thoughtful consideration to the judgments referred by the respective parties and relevant provisions of Act and Rules which are referred hereinabove, as in the instant case the application to the Intention of no confidence motion was moved on 11.6.2002 and immediately after 3 days another application dated 14.6.2002 was made by all the members who were signatories of the application dated 11.6.2002 showing their intention to withdraw their application dated 11.6.2002. It is not disputed that during this period Collector has not even fixed the date for consideration of no confidence motion nor has issued registered notice to this effect.

71. Provisions of Section 72 clearly provides that no confidence motion can only be moved first time after completion of one year from the assumption of the office of Chairman or Vice-Chairman and if it is so moved and is not carried out no notice of a subsequent motion expressing non-confidence in the same Chairman or Vice-Chairman shall be made until after the expiration of two years from the date of the meeting in which the motion was considered.

72. As in the instant case the motion was moved but immediately after 3 days the withdrawal application was also moved by the same persons and the fact of the present case are examined in view of the decision rendered in the case of Ram Chandra v. State of Raj. (Supra) and Ramhetlal v. Collector Sawai Madhopur (Supra).

73. In the case of Ram Chandra the fact was that petitioner was elected as Sarpanch of Gram Panchayat, Shivbari in the year 1965. On 29.12.72 the non-petitioner No. 4 delivered a notice of motion of non confidence against the petitioner to the Addl. District Development Officer, Bikaner on which the Addl. District Development Officer, Bikaner called a special meeting of the Panchayat to be held on 12.1.73 for consideration of the motion and authorised the Tehsildar, Bikaner to preside at the meeting. On 9.1.73 Haji Khan made an application to the Addl. District Development Officer, Bikaner that he wanted to withdraw the notice of non confidence moved by him.

74. The Panchayat Act and the Rules of 1961 bearing on the subject are silent in

this respect. Erskine May in his book on Parliamentary Practice (18th Edition) makes the following observation at page 361 :

Withdrawal of notice- When a member has added his name to a notice of motion given by another Member, he may subsequently withdraw his name; similarly the Member who first gave notice of a motion "for an early day" is permitted to withdraw the motion although other names have been added to it. Both forms of withdrawal are indicated by a memorandum at the end of the Notices of Motions."

Again at page 336 the learned author observed :

"A notice orally given holds good for the day on which it is given and cannot be withdrawn. It must be supplemented by a written notice handed in at the table during the same sitting, if it is to continue effective. A written notice becomes effective for purposes of the rule of anticipation only when it appears on the notice paper on the day following that on which it was handed in at the table and continues effective as long as it remains on the paper. A notice cannot be withdrawn from the notice paper of the day or the current issue of the order book in the course of a sitting; it can be withdrawn from a future issue of the order book."

75. After considering the aforesaid observations the Court arrived at conclusion and made the following observations :

In my opinion the main point for decision is when does notice become effective? It cannot be withdrawn after it has become effective. The matter would have been free from difficulty if there had been any statutory provision on the subject. In the absence of any statutory provision it would be reasonable to hold that it becomes effective only when the authority charged with final action has acted upon it. I have no doubt, in my mind, that once the notice of motion of non-confidence has been placed in the meeting called for the purpose there can be no withdrawal of the same thereafter. The Additional District Development Officer was not at all the authority charged with final action on the motion. In fact he had no say in the matter except to call a meeting for consideration of non-confidence motion. In these circumstances, I have come to the conclusion that the notice of motion of non-confidence could be withdrawn by its author before it actually came up for consideration before the meeting called for the purpose. In the present case the notice had been given by Hajikhan alone and since he had withdrawn it before the date fixed for the meeting, the notice did not become effective. I am, therefore, of opinion that after the notice of motion of non-confidence had been withdrawn by Hajikhan by his application dated 9.1.73, there was no authority left in the Additional District Development Officer or for that matter in his delegatee the Tehsildar to place it for delegate the Tehsildar to place it for consideration before the meeting of the Panchayat held on 12.1.73. In this view of the matter, the proceedings of the meeting held on 12.1.73 were invalid.

76. In the case of Ramhetlal v. Collector Sawai Madhopur (Supra) the Hon''ble

Court has observed that the Collector is discharging for the purpose of convening a meeting for consideration of a vote of no confidence on the basis of a notice presented to him, is, only an administrative function and it does not involve any judicial element in it. In other words the Collector is not required to hold an enquiry like a Tribunal who has to deal with a matter quasi judicially.

77. The Court after considering the Section 39(2) of the Panchayat Samiti and Zila Parishad Act, has opined that persons signing notice may withdraw before meeting convene. When a member joins others in presenting a notice for the motion of no confidence against a Pradhan then before any action is taken thereon it is the right of that member to withdraw from that notice. There are at time signature campaigns and counter- campaigns for elective offices and, therefore, though this tendency is to be discouraged, yet it cannot be denied that a person signing a certain notice of motion or petition should be able to withdraw his name before any action has been taken thereon.

78. In view of the discussion made in page 400 of parliamentary practice the Court has held that persons signing notice may withdrawn before meeting convened.

79. Upon perusal of the judgments rendered in the case of Ram Chandra (Supra) and Ramhetlal (Supra) and I also perused the judgment referred by respondents.

80. All the judgments which are referred by the respondents, pertains to the election petition. As no confidence motion is different than the election proceedings it cannot be equated. Therefore, the judgments which are referred by respondents are ofcourse not disputed with relation to the election but not applicable to the facts and circumstances of the present case. And the request of learned counsel for the respondents regarding reference to Larger Bench is not accepted since in the case of Ramhetlal (Supra) and Ram Chandra (Supra) the answer has already been given.

81. Ratio decided in the case of Ramhetlal (Supra) and Ram Chandra (Supra) are fully applicable to the facts and circumstances of the case. As in the instant case the notice for no confidence was moved on 11.6.2002 and after 3 days same has been withdrawn vide application dated 14.6.2002 and during this period the Collector has not even fix the date and it cannot said to be charged as no notice and date of no confidence motion has been fixed by the Collector, Therefore, in view of the ratio of judgment rendered in the case of Ram Chandra (Supra) and Ramhetlal (Supra) present petition deserves to be allowed.

82. The order passed by the District Collector, Bharatpur dated 21.6.2002 is herewith quashed and set aside with the direction to the District Collector, Bharatpur to allow the application of the petitioner dated 14.6.2002 for withdrawal of the notice of motion dated 11.6.2002 and the proceedings initiated by the Collector pursuant to the notice dated 11.6.2002 stands herewith quashed and set aside.

83. With these observations, writ petition stands allowed.