

(1970) 03 MP CK 0001

In the Madhya Pradesh High Court

Case No : C. Revision No. 101 of 1970

Jeewanlal and others

APPELLANT

Vs

Shanta Pathak

RESPONDENT

Date of Decision : 31-03-1970

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 19(1)(b), 20, 26(2)

Citation : (1972) J LJ 474

Hon'ble Judges : K.L. Pandey, J

Bench : Single Bench

Advocate : Y.S. Dhar madhikari, for the Appellant; J.P. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.—This revision u/s 26 (2) of the M.P. Municipalities Act, 1961 is directed against an order dated January 20, 1970 whereby, on an election petition filed u/s 20 of the Act, the selection of councillors of Sagar Municipal Council held on January 16, 1969 was set aside.

2. The material facts are these. There were seven seats, including at least one for woman, that had to be filled by selection. After withdrawals, only 8 candidates contested. Six of these were men and two, the applicant No. 3 and the non-applicant No. 1 were women. All six men were declared duly selected. For the seventh seat considered to be reserved for a woman, the two women candidates were regarded as contestants and, after voting, the applicant No. 3 was declared selected. This procedure of selection denied to the women candidates an opportunity to contest the six seats filled by men candidates and, on that account, it was successfully challenged by an election petition.

3. Shri Dharmadhikari, Learned Counsel, for the applicants, frankly concedes that, u/s 19(1) (b) of the Act which provides inter alia for number of selected candidates, women candidates are entitled to contest all seats that might be

filled by selection. That is also the opinion expressed en passant by a Division Bench of this Court in Mohanlal v. State of M.P. Miscellaneous Petition No. 4 of 1961; Decided on the 4th October 1969. It is, however, contended that the procedure adopted in this case is in accordance with Rule 51 of the relevant rules which could not be called in question in an election petition. In my opinion, the contention that Rule 51 itself sanctions such a procedure is not well founded.

4. Rule 51 reads as follows:

"Selection of councillors.-(1) If the number of candidates excepting the seat of woman is equal to or less than the number of vacancies they shall all be declared duly selected If the number of candidates exceed the number of vacancies the meeting shall proceed to select Councillors by means of the single transferable vote according to the procedure laid down in the Schedule annexed to these rules.

(2) In the case of selection of a woman, if the number of women candidates is not more than one, such candidate shall be declared duly selected. If the number of such candidates is more than one, the meeting shall proceed to select a woman Councillor by means of the single transferable vote according to the procedure laid down in the Schedule."

Sub-rule (2) applies when no woman has secured a selection seat in the usual way. If she has already done so, it is not necessary to resort to it at all. Therefore, in the first instance, all selection seats are open to men and women candidates alike. Sub-rule (1) does not lay down that only men candidates should be allowed to contest for seats other than the one for a woman. As I read that sub-rule, it is designed to work in this way. If the number of candidates, including women candidates, be equal to, or less than, the total number of seats excepting one for woman, all candidates including women candidates have to be declared duly selected Since one of the seats may thus filled by a woman candidate, the remaining seats should be filled by subsequently allowing both men and women candidates to contest therefor. If there be no woman candidate at this stage and only one seat remains unfilled, the seat for women candidate is filled under sub-rule (2). If, from the very beginning, the number of men and women candidates exceeds the number of seats, as in this case, all must be allowed to contest. If women candidates secure one or more seats in the usual way it will not be necessary to resort to sub-rule (2). But, if no woman candidate gets selected in this way, the last seat should remain unfilled and should be filled by having recourse to the procedure in sub-rule (2), Construed in this way, Rule 51, which is not a happily worded, is not inconsistent with section 19(1)(b) of the Act. There is, therefore, no ground for interference.

5. The result is that this revision fails and is dismissed. Costs shall follow that event. Hearing fee Rs. 50.