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**(1981) 03 MP CK 0010**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 99 of 1981**

Jiwanlal Agrawal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 13-03-1981**

**Acts Referred:**

Madhya Pradesh Municipalities Act, 1961 — Section 16, 16(1), 16(2), 326, 328

**Citation : AIR 1981 MP 186 : (1981) JLJ 554 : (1981) 26 MPLJ 412**

**Hon'ble Judges : G.P. Singh, C.J.; U.N. Bhachawat, J**

**Bench : Division Bench**

**Advocate : Y.S. Dharmadhikari, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

G.P. Singh, C.J.

Birsinghpur and Sabhapur of tahsil Raghurainagar, district Satna, were previously, head-quarter of Gram Panrhayats constituted under the provisions of the Madhya Pradesh Panchayats Act. 1962. The State Government de-established the Gram Panchayats and by notification dated 5th January, 1979 declared the local area comprised in Birsinghpur, Sabhapur and other villages to be a municipality from 26th January, 1979. This notification was issued u/s 5 of the Madhya Pradesh Municipalities Act, 1961. By another notification issued on the same date, the State Government constituted a committee u/s 16 consisting of 15 persons to function as a council for the purposes of the Act. This notification was issued u/s 16 read with Section 7 (b) of the Act. In the committee so constituted the petitioner was nominated as Junior Vice-President, In April, 1980 there was some proposal to supersede the committee and to constitute another committee of 15 other persons. That move was not pursued. On 16th January, 1981. the Government issued a notification, which is Document No. 5, by which the Block Development Officer, Maihgawan, was appointed Administrator of the Municipality as the period of two years of the council expired on 25th January,

1981. It is this notification which has been challenged in this petition under Article 226 of the Constitution.

The argument of the learned counsel for the petitioner is that there is no provision in the Act enabling the Government to appoint an Administrator when the term of a committee constituted u/s 16 expires. Learned counsel submits that the Government should have extended the terms of the council by one year under the proviso to Section 16 (2). The learned Government Advocate in reply submits that the Government has power to appoint an Administrator after the expiry of the period of the committee under Sections 16, 36 and 328 read together. He also submits that it is not obligatory on the Government to extend the term of the committee appointed u/s 16.

To appreciate the rival contentions it is first necessary to have a look at the relevant provisions of the Act. A notification declaring a local area to be a municipality is issued u/s 5. If the local area declared to be a Municipality was previously a town area or a Panchayat, the government is required to constitute a committee in accordance with the provisions of Section 16 to exercise the power of the council pending its constitution. This is provided in Section 7 (b) of the Act. Section 16 reads as follows:

"16. Exercise of powers of Council pending its constitution.-- (1) When an area is declared to be a Municipality for the first time under this Act, the State Government shall, by notification, constitute a Committee consisting of a President, two Vice-Presidents and such number of members as it may deem fit and such a Committee shall be deemed to be a Council for the purposes of this Act:

Provided that no person shall be appointed as President or Vice-President or Member of such a Committee who is ineligible to hold such office in the council under this Act.

(2) A Committee constituted under Sub-section (1) shall continue to function until a Council is constituted under this Act or until the expiration of two years from the date on which notification under Sub-section (1) is published in the Gazette, whichever is earlier;

(3) The State Government may, by notification, at any time remove the President, Vice-President or a member of the Committee and appoint any other person eligible to be so appointed in his place.

(4) Notwithstanding anything contained in Sub-section (1), the provisions of Sections 41, 47 and 48 shall apply to the Committee."

A Council is continued by election and selection of councillors as provided in Section 19 and other allied provisions. The term of an elected Council is four years from the date of its first meeting. These terms can be extended from time to time for a total period not exceeding one year in the aggregate. If within the period of four years or within the extended period a Council is not newly

constituted, the Council is deemed to have been dissolved and the provisions of Section 328 begin to apply. Section 36 which is relevant on this point reads as follows :--

"36. Term of Council and Office of Councillors.-- (1) Every Council shall continue for four years from the date appointed under Sub-section (2) of Section 55 for its first meeting. Provided that the State Government may, by a notification, for reasons to be stated therein extend the term of the Council, from time to time, for a total period not exceeding one year in the aggregate.

(2) If within the period of four years mentioned in Sub-section (1) or if the said period is extended under the proviso thereto, within the period as extended, the Council is not newly constituted, the Council shall, on the expiry of the said period of four years or the extended period, as the case may be, deemed to have been dissolved and the provisions of Section 328 shall apply in respect thereof.

(3) If within the period mentioned in Sub-section (2) the Council is not newly constituted, the Council shall on the expiry of such period be deemed to have been dissolved and the provisions of Section 328 shall apply in respect thereof.

(4) The term of office of every Councillor shall be conterminous with the term of the Council of which he is a Councillor."

Section 328 in so far as material confers power to dissolve or supersede a Council. Section 328 (6) (b) makes provision that if the Council is dissolved or superseded, all powers and duties of the Council until the Council is reconstituted will be exercised and performed by such person or a Committee of persons as the State Government may appoint in that behalf. The persons or Committee of persons appointed u/s 328 (6) (b) for exercising and performing the powers and duties of a dissolved Council is popularly called Administrator.

It will be seen that the power u/s 328 (6) (b) to appoint a person or Committee as Administrator to exercise and perform the powers and duties of a Council can be exercised only when the Council is dissolved or superseded under the provisions of section 328 (1) or (2). The power to appoint an Administrator u/s 328 (6) (b) is not available to the State Government in a case where the term of a Council expires. Normally, a Council has to be reconstituted by election before the expiry of the term of the existing Council. But it is quite possible that elections may not be held before the expiry of the term for one reason or the other. It is in this background that Section 36 (2) enacts that when the term of a Council expires the Council shall be deemed to have been dissolved and the provisions of Section 328 shall apply. Section 36 (2) which was introduced by Amendment Act No. 39 of 1973 enables the Government to appoint an Administrator u/s 328 (6) (b) when the term of a Council expires before reconstitution of the Council by election. Section 36 on its own terms has application to the case of an elected Council the term of which is four years from the date of the first meeting. It does not in terms apply to a committee constituted u/s 16. The argument of the learned Government Advocate, however,

is that a committee appointed u/s 16 is deemed to be a Council and, therefore, if the term of such a committee expires before constitution of the committee by election, the power of appointing an administrator will become available u/s 36 (2) read with Section 16 (1). In our opinion, this argument must be accepted. Section 16 (1) in clear terms enacts that the committee constituted "shall be deemed to be a Council for the purpose of this Act." The legal fiction created by these words is wide enough to make a committee constituted u/s 16 also a Council for purposes of Section 36 subject to the special provisions made in Section 16. The term of a committee u/s 16 is two years as provided in Sub-section (2). It can also be extended by one year more under the proviso. The provision in Section 36 that the term of the council will be four years will thus have no application for a committee deemed to be a council u/s 16. Even so, we are of opinion that the provision made in Section 36 (2) that after the expiry of the term the council is deemed to have been dissolved and the provisions of Section 328 become applicable must also be applied to a committee constituted u/s 16. In case of an elected council Section 36 (2) in terms applies and if within the period of four years or within the extended period a council is not, newly constituted, the council is deemed to have been dissolved making applicable the provisions of Section 328. As already seen, the period of a committee which is deemed to be a council u/s 16 is two years which can be extended from time to time for an aggregate period of one year. Section 36 (2) has, therefore, to be applied for a committee u/s 16 with the modifications that the deeming provision that a council shall be deemed to have been dissolved after the expiry of the term will become operative after expiry of two years or the extended period, in case the period is extended by the Government under the proviso to Section 16 (2). We are conscious that the better course for the legislature would have been to make a similar provision as made in Section 36 (2) in Section 16 also. But the omission of the Legislature in this matter does not preclude us in reaching a reasonable result in the construction of the deeming provisions contained in Section 16 (1) and Section 36 (2) and by applying the latter with such modification as the context of Section 16 requires.

In *Seaford Court Estates Ltd v. Asher* (1949) 2 All ER 155, Lord Denning observed; "when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament.....and then he must supplement the written words so as to give force and life to the intention of the legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases." These observations were criticised by the House of Lords in *Magor & St. Mellons Rural District Council v. Newport Corporation* (1951) 2 All ER 839 (HL) but they have been generally approved by the Supreme Court: (See *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, , *Union of India (UOI) Vs. Sankalchand Himatlal*

Sheth and Another, . Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , Lord Denning reiterated his liberal views in the matter of statutory construction in subsequent cases. In *Lucy v. W. T. Henleys Telegraph Works Co. Ltd.* (1969) 3 All ER 456 he said; "I have said before and I repeat it now that we should so construe an Act of Parliament as to effectuate the intention of makers of it and not to defeat it. If they have by mistake overlooked something, we should do our best to smooth it out. We should construe it so as to avoid absurdities and incongruities and to produce consistent and just result." (See further *Nothman v. Barnet London Borough Council*, (1978) 1 All ER 1243 (C. A.)). (The Discipline of law pp. 11 to 16). It is also well settled that deeming provisions creating legal fictions must be given their full effect and the court must assume all those facts and consequences which are inevitable corollaries to the giving effect of the fiction (See *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1951) 2 All ER 587 at 589 (HL) and *Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others*, .

In our opinion, the aforesaid rules of construction must guide us in this case. Unless we construe the deeming provision contained in Section 16 (1) to include Section 36 (2) with a modification relating to the term of the committee deemed to be a council, an absurd result would follow. If within the term of two years or when the term is extended within the extended term of one year of a committee u/s 16 no elected council is constituted, there would be no one to look after the municipal administration and to exercise the powers of the council unless Section 36 (2) is by implication brought into play conferring power on the State Government to appoint an Administrator. It is true that effort should generally be in every case to constitute an elected council within the period of two years or within the extended period if the term is extended. But there may be situations where it may not be possible to hold an election within the said period or it may not be even desirable to extend the term of the committee. In such cases unless the State Government is able to draw upon the power contained in Section 328 of appointing an Administrator with the help of Sections 16 (1) and 36 (2), a lacuna will result leaving no one to exercise the power of the council in a local area declared to be a municipality. Such a result could not have been intended by the legislature. It is also a well recognised principle that effort should be made not to create a *casus omissus* by construction (See *State of Karnataka Vs. Union of India (UOI)* and *Another, and Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, . Thus it is proper for us to adopt a liberal construction and to construe Sections 16 and 36 in the manner we have done above. In our opinion, it was open to the Government to appoint an Administrator even in case of a committee u/s 16 after the expiry of its term in the same manner as it can do in case of an elected council u/s 36 (2).

The argument that the State Government should have directed extension of the term of the Committee by one year cannot be accepted. The power to extend the term under the proviso to Section 16 (2) is discretionary and the Government cannot be compelled to exercise it.

The petition fails and is dismissed. There will be no order as to costs.