

(1996) 07 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 916 of 1996

Kaptan Singh Yadav

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Madhya Pradesh Municipalities (President and Vice-President) Election Rules, 1962 — Rule 2(d)

Madhya Pradesh Municipalities Act, 1961 — Section 43(4), 55, 55(2), 56, 57

Citation : (1996) 41 MPLJ 984 : (1996) MPLJ 984

Hon'ble Judges : Shraavan Shanker Jha, J

Bench : Single Bench

Advocate : K.S. Shrivastava, R.D. Jain and M.P.S. Raghuvanshi, for the Appellant; A. Dudawat, Additional Government Advocate for Respondents Nos. 1, 3 and 4 and Anil Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

The Office of President of Municipal Council, Bhind had fallen vacant on account of a motion of no confidence was passed against the President. After the vacancy took place, the Collector, District Bhind ordered Sub-Divisional Officer, Bhind to preside over the meeting to elect the President of the Municipal Council. The election in pursuance of this notification was fixed for 4-5-1996. A petition was filed before this Court and on 23-5-1996 declaration of the result of the election was stayed.

The contention of the learned counsel for the petitioner is that the order, Annexure P/1, is without jurisdiction and the Collector had no power to appoint Sub-Divisional Officer to preside over the meeting. The contention of the learned counsel for the petitioner is that immediately after election the Collector or Sub-Divisional Officer can preside over the meeting for the election of President or Vice-President u/s 55(2) of the Madhya Pradesh Municipalities Act, 1961

(hereinafter referred to as the Act"). The contention of the learned counsel for the petitioner is that the meeting can be held u/s 43(4) of the Act and shall be presided over by the Vice-President and convened by the Chief Municipal Officer with the approval of Vice-President as provided u/s 56 of the Act. He submitted that the Collector had no jurisdiction to appoint Sub-Divisional Officer to preside over the meeting. The meeting presided over by the Sub-Divisional Officer is contrary to law and the election so held by Sub-Divisional Officer as Presiding Officer for the post of President of Municipal Council, Bhind is invalid and contrary to law and, as such, the election is void.

Learned counsel for the respondents submitted that the Rules for the election of President and Vice-President, called as Madhya Pradesh Municipalities (President and Vice-President) Election Rules, 1962 (hereinafter referred to as the "Rules of 1962") are very clear, under which the Collector had the power to appoint Presiding Officer for the meeting for election.

The learned counsel appearing for the respondents invited my attention to Rule 2(d) of the Rules of 1962, wherein Presiding Officer is defined. He submitted that the Presiding Officer is defined under sub-section (2) of Section 55 of the Act. Section 2(c) deals with the meeting of the Council. Learned counsel submitted that for the purposes of meeting Section 55(2) shall be applicable. After amendment meeting is defined as the meeting of the Council called under clause (b) of sub-section (2) or sub-section (4) of Section 43 or sub-section (2) of Section 55 of the Act by the Presiding Officer. He submitted that since the meeting is defined in both Sections 55(2) and 43(4) of the Act, therefore, for the purposes of meeting the Presiding Officer shall be u/s 55(2) of the Act.

After considering the arguments advanced by the parties, I shall deal with the various provisions referred to by the learned counsel for the parties. Section 55 of the Act is reproduced below :-

"55. First meeting after general election. - (1) The Chief Municipal Officer shall with the approval of the prescribed authority, within one month of every general election, call a meeting of the elected councillors for the purpose of electing a President and a Vice-President.

(2) The first meeting of the Council called under sub-section (1) shall be presided over by such officer not below the rank of Deputy Collector in the case of a Municipal Council and not below the rank of Tahsildar in the case of Nagar Panchayat, appointed by the Collector and all provisions contained in this Chapter regarding meetings of the Council, shall, as far as may be, apply in respect of such meeting :

Provided that the presiding officer shall not have right to vote at such meeting and in case of equality of votes, the result shall be decided by lot."

From bare reading of Section 55, it is clear that this section relates to first meeting after general election. The provisions of Sections 43(1) and 43(4) are

reproduced below :-

"43. Election and term of President and Vice-President. - (1) The elected Councillors of the Council shall in the manner prescribed, at its first meeting, as referred to in Section 55 elect a President and a Vice-President from amongst themselves.

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(4) If any vacancy occurs in the office of a President or a Vice-President, the Municipality shall, within one month after the occurrence of such vacancy, elect a President or a Vice-President as the case may be, from amongst its elected Councillors to fill such vacancy :

Provided that if the office of President was filled in by a person belonging to a category for which reservation had been made under sub-section (3) the President shall be chosen from the same category :

Provided further that the President or the Vice-President so elected shall hold office for the unexpired term of the predecessor."

Section 43(1) and Section 55 deal with the first meeting of the Council after the general election. Sub-section (4) of Section 43 of the Act deals with the method and manner in which a casual vacancy to the post of President or Vice-President is to be filled. Section 56 of the Act is reproduced below which relates to convening of meeting :-

"56. Convening of meeting. - (1) A meeting of the Council shall be either ordinary or special.

(2) The date of every meeting except the meeting referred to in Section 47 and in sub-section (1) of Section 55, shall be fixed by the President, or in the event of his being incapable of acting by the Vice-President, and in the like event in his case, by the Chief Municipal Officer.

(3) Notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every Councillor and exhibited at the Municipal office seven clear days before an ordinary meeting and three clear days before a special meeting.

(4) No business other than that specified in the notice relating thereto shall be transacted at a meeting."

Rule 2(c) and Rule 2(d) of the Rules of 1962 are also reproduced below for just decision of the case :-

"2(c) "Meeting" means the meeting of the Council called under clause (b) of sub-section (2) or sub-section (4) of Section 43 or sub-section (2) of Section 55 by the Presiding Authority."

(d) "Presiding Authority" means, -

"Presiding Authority mentioned in Section 55(2)."

Section 57 of the Act relates to power of President and Vice-President to call special meeting.

A bare reading of Sections 43(1) and 55(2) of the Act makes it clear that these provisions relate to first meeting after general election, which is to be held in accordance with the provisions mentioned in the aforesaid sections. The meeting is to be called by Chief Municipal Officer with the consent of the Presiding Officer for electing the President and Vice-President. After the first meeting is over, the provisions of Section 43(1) and Section 55 are exhausted and they will cease to have any operation during the term of the body. The Legislature has specially enacted these provisions for the purposes of first meeting after general election.

The casual vacancy of President arising out of no confidence motion has to be filled as per the provisions contained in Section 43(4) of the Act. The main question is who shall preside over this meeting. The contention of the learned counsel for the respondents that under Rule 2(c) meeting is to be presided over as per the provision of Section 55(2) cannot be accepted. The word "or" after sub-section (4) of Section 43 itself makes it clear that the Rules define meeting either under sub-section (4) of Section 43 or sub-section (2) of Section 55. Therefore, the contention of learned counsel for the respondents is misconceived.

Now the question is whether for the purposes of election after the first meeting, the meeting can be convened by the Collector or the Sub-Divisional Officer. Since sub-section (4) of Section 43 provides for filling of the vacancy in the Office of President or Vice-President, a meeting shall be called within one month after occurrence of such vacancy. How this meeting is to be held after the first meeting, powers to convene the meeting are provided u/s 56 of the Act. It provides that every meeting except the meeting referred to in Section 43(1) and Section 55 of the Act shall be fixed by the President or in the absence of President by the Vice-President and if both are not available, by the Chief Municipal Officer. Reading sub-section (4) of Section 43 along with Section 56 it is clear that the intention of Legislature is very clear and it provides that the date of every meeting excepting the meeting referred to in Section 47 and sub-section (1) of Section 51 is to be fixed by the President or in the event of his becoming incapable of acting by the Vice-President and like event in his case, by the Chief Municipal Officer. Thus, the plain interpretation of the Statute and the intention of Legislature is that the Collector or Sub-Divisional Officer should preside over the first meeting. The intention of Legislature appears to be that immediately after general election there is neither President nor the Vice-President.

From the aforesaid interpretation of the Act, it is held that the Collector had no power to call the meeting for the purposes of getting President elected after the vacancy had arisen. It is for the Vice-President to convene the meeting provided u/s 56 or if he fails to convene the meeting then it is for the members to

convene the meeting u/s 57 of the Act. The Collector had no jurisdiction to convene a meeting of Municipality after first meeting provided u/s 55 of the Act.

If the Council fails to carry out any of the provisions of the Act then the power of control over the Municipality vested in the State Government and its functionaries can be exercised under Sections 327 and 333 of the Act.

On foregoing discussion, the order, Annexure P/1, and the action taken thereof in pursuance of Annexure P/1 is hereby quashed. It is directed that the Vice-President shall convene a meeting as per Rules for election of the President of the Council.

The petition is accordingly allowed. The order, Annexure P/1, and all the proceedings in pursuance of the order (Annexure P/1) are quashed. In the facts and circumstances of the case, the parties are directed to bear their own costs.