
(2003) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 504 of 2003

Kedar Nath Saini

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Rajasthan Municipalities Rules, 1974 — Rule 3

Citation : AIR 2004 Raj 86 : (2004) 2 RLW 778 : (2004) 1 WLC 372

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Rajendra Prasad, for the Appellant; Narendra Jain, K.P. Singh and Parinitoo Jain and S.M. Mehta, Gen., for the Respondent

Final Decision : Dismissed

Judgement

Meena, J.—This appeal is directed against the order of the learned Single Judge dated 6.2.2002.

2. The appellant has challenged the order of learned Single Judge whereby the learned Single Judge has quashed the order of District Collector, Bharatpur dated 21.6.2002 and also quashed the proceedings which were in consequence of the notice.

3. The petitioner-respondent had filed an application dated 11.6.2002 regarding no confidence motion against the Chairman of the Municipal Board, Kumher, District Bharatpur. On 14.6.2002, he moved second application for withdrawal of the application for no confidence motion. The District Collector, Bharatpur has rejected the application dated 14.6.2002 on 21.6.2002. After rejecting the application of respondent dated 14.6.2002, the District Collector, Bharatpur issued a notice dated 21.6.2002 for convening the meeting to consider the application dated 11.6.2002 for no confidence motion against the Chairman and fixed the date of meeting on 4.7.2002 and also authorised the S.D.O. to preside over the meeting.

4. Before the date fixed for consideration of no confidence motion i.e. 4.7.2002, the petitioners filed writ petition before this Court. The matter was listed before this Court on 28.6.2002 and on 1.7.2002. Since the petitioners in view of the order dated 28.6.2002 of this Court has not filed notices for respondent Nos. 1 to 3, the petitioner was directed to file the notices for respondent Nos. 1 to 3 and the learned Advocate General was asked to accept the notices on behalf of respondent Nos. 1 to 3. The matter was again adjourned to 3.7.2002.

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

6. Three issues were framed by the learned Single Judge i.e. (i) whether a motion of no confidence can be withdrawn after submitting it to the Collector concerned; (ii) whether motion of no confidence submitted to the Collector in terms of Rules, 1974 can be withdrawn by presenting application for withdrawal by presenting application for withdrawal to the Additional Collector; and (iii) whether after submission of the motion of no confidence against Chairman under the Rules, 1974, makers of the motion become functus-officio?

7. The learned Single Judge, after detailed discussion, has taken the view that ratio decided in the case of Ramhetlal v. Collector, Sawai Madhopur (1), and Ramchandra v. State of Rajasthan and Ors. (2), is fully applicable to the facts and circumstances of this case.

8. Heard learned counsel for the parties.

9. The facts are not in dispute that an application for no confidence motion has been moved against the Chairman on 11.6.2002 and on 14.6.2002, another application has been submitted to withdraw the application for no confidence motion. That was rejected on 21.6.2002 by the Collector and meeting was also convened on 4.7.2002.

10. The petitioner-respondents have challenged the order of Collector dated 21.6.2002 whereby their application dated 14.6.2002 has been rejected and also the order convening the meeting for no confidence motion. While concluding, the learned Single Judge has observed at page 34 of the order, as under:-

"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 be 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."

11. Learned counsel for the appellant submits that once the application for no confidence motion has been moved, the applicant become functus-officio and notice of no confidence motion has to be issued in that case. He placed reliance on the decisions in cases of Emperor v. C.A. Mathews (3), and State of Uttar Pradesh v. Singhara Singh and Ors. (4).

12. In case of Ramhetlal v. The Collector, Sawai Madhopur (supra), para 12 of the judgment which has been referred by the learned Single Judge reads as under: -

"What are contemplated to be the 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 the 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."

13. In *Smt. Pinki Rajoriya v. State of Rajasthan and Ors.* (5), 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 deemed that the District Collector, Dausa on December 31 (sic 21 7), 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".

14. The cases cited by the learned counsel for the appellant are not on the issue that when the author of the no confidence motion has submitted an application for withdrawing his earlier application of no confidence motion, whether Collector can reject that application for withdrawal, even the application for withdrawal has been moved prior to issue of notice of meeting by the Collector for no confidence motion or for convening the meeting. Therefore, the cases cited by the learned counsel for the appellant are of no help to the appellant.

15. Admittedly, while the application for no confidence motion has been moved on 11.6.2002 and application on 14.6.2002 has been submitted for withdrawal of the application of no confidence motion, before issue of notice or convening the meeting. No provision of the Municipal Act provides that once the application of no confidence motion has been given, notice has to be issued for meeting, even though the application has been given for withdrawal of no confidence motion before notice.

16. Even when there is no specific provision in the Act which empowers the Collector to reject the applications for withdrawal of motion if the application for withdrawal of the motion has been submitted before issue of notice of meeting nor there is any provision which empowers the Collector to accept that application for withdrawal of motion if that has been moved before issue of notice of meeting for considering the motion. In absence of both, the Court has no option but to take a reasonable view in the facts and circumstances of the case and in conformity with the object of the Act that the person who has majority with him should rule. In this case if we quash the order of Collector dated 14.6.2002, then the meeting called by the Collector by order dated 21.6.2002 will not be counted for the purpose of consideration of motion. In that case, subsequent motion which has been considered in view of motion, out of 15 votes, 14 votes are casted in favour of no confidence motion and against that only one vote has been casted. That means the appellant has only one vote in his favour. Thus, the appellant in the democracy has no right to rule when he got only one member out of 15 in his favour. If the meeting called by the Collector vide order dated 21.6.2002 scheduled to be held on 4.7.2002 if not counted, subsequent motion will be valid and that has decided the fate of appellant by passing no confidence motion with a majority of 14 votes in favour of no confidence motion.

17. At the cost of repetition, in the case in hand, the application for withdrawal of motion has been moved before any notice issued by the Collector for convening the meeting to consider the motion. In our view, in such case, if the application for withdrawal of the motion has been moved before such notice, the Collector should allow that application.

18. The Collector has wrongly rejected the application for withdrawal of the application for no confidence motion and has also wrongly issued the notice

thereafter for convening the meeting to consider the application for no confidence motion. On the facts of this case, we see no reason to interfere in the order of the learned Single Judge.

19. In the result, the appeal stands dismissed.