
(1963) 09 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 190 of 1963 (J)

K.G. Ansari

APPELLANT

Vs

Collector, Bilaspur

RESPONDENT

Date of Decision : 25-09-1963

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 38, 38(1)(b)

Citation : (1963) 09 MP CK 0002

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.K. Tankha and P.C. Pathak, for the Appellant; Ravindra Kumar Verma, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—By this application under Articles 226 and 227 of the Constitution, the petitioner questions the validity of an order made by the Collector of Bilaspur on 1st April 1963 u/s 38 (1)(b) of the Madhya Pradesh Municipalities Act, 1961, (hereinafter referred to as the Act) declaring that the petitioner has ceased to be councillor of the Municipal Committee. Bilaspur, as he absented himself during three consecutive months from the meetings of the Committee without obtaining its leave. The order of the Collector was upheld by the Commissioner, Bilaspur Division in an appeal preferred by the applicant. The prayer of the petitioner is that the orders of the Commissioner and the Collector be quashed by the issue of a writ of certiorari.

2. The material facts are that the petitioner was elected in 1959 as a member of the Municipal Committee, Bilaspur, under the provisions of the Central Provinces and Berar Municipalities Act, 1922, (hereinafter referred to as the repealed Act) for a term of five years as provided by section 16 (2) of that Act. On the coming into force of the M.P. Municipalities Act, 1961, the C.P. and Berar Municipalities Act, 1922, was repealed. The repealed is subject to the "savings" stated in section 2 of the Act. Clause (ii) of sub-section (2) of section 2 is as follows:

2 (2) Notwithstanding such repeal-

(i).....

(ii) Unless the State Government otherwise directs the Committees, Councils, subcommittees and Boards referred to in clause (i) and the Presidents, Vice-Presidents; members and councillor hereof shall continue to functions until the expiry of their term under the repealed Act applicable to them before the commencement of this Act and any vacancy occurring in their office before the expiry of their term shall be filled in the manner provided in such repealed Act;

Section 38 of the Act provides Inter alia that-

38, (1) If any Councillor-

(a).....

(b) absents himself during three consecutive months from the meetings of the council, except with the leave of the Council.

He shall subject to the provisions of sub-section (2) cease to be a Councillor and his seat shall become vacant with effect from a date to be notified by the State Government.

The petitioner's contention is that the Collector made the impugned order without holding any enquiry and without affording a reasonable opportunity to him of showing that his seat could not be declared vacant: and that even if he had absented himself during three consecutive months from the meetings without obtaining leave of the Committee, he could not for that reason be unseated as having been elected a member of the Committee under the repealed Act he was as of right entitled u/s 2 (2) (ii) to function as a member until the expiry of his term of five years, under the repeated Act, which nowhere provided for the seat of a member being declared vacant on account of his absence from the meetings of the Committee. On behalf of the Municipal Committee, it was urged that clause (ii) of section 2 (2) did not rule out the applicability of section 38 of the Act to the Councilors "continued" u/s 2 (2) (ii) of the Act; and that such a Councilor was no doubt entitled to on tinue till the expiry of the term of his membership under the repealed Act but after the coming into force of the Act his functioning was under the Act and subject to the provisions of that Act.

3. In our judgment, this petition must be granted. It cannot be disputed that the right which the petitioner had of being elected to the Municipal Committee under the repeated Act and of being a member of the Committee under that Act was a right created by the repealed Act itself and was subject to its provisions what clause (ii) of sub-section (2) of section 2 does is to continue in office the Presidents, Vice-Presidents, Members and Councillors of the bodies mentioned in clause (I) till the expiry of heir term under the repealed Act applicable to them It say that "they shall continued to function until the expiry of their term under the repealed Act". The words "continue to function" are important and significant.

Under the repealed Act, a person has a right to function as a member of a Municipal Committee until the expiry of his five years' term without the condition of his seat becoming vacant because of any absence from the meetings of the Committee. That right was not qualified by any condition such as the one imposed by section 38 (1) (b) of the Act. There is nothing in section 38 to indicate that the right which a member of a Municipal Committee had under the repealed Act to continue to function till the expiry of his term under the repealed Act without the risk of his being unseated for any absence from the meetings of the Committee has been destroyed. Indeed, on the other hand, the saving provision contained in section 2 (2) (ii) indicates that the right has been expressly preserved. It is noteworthy that clause (ii) of section 2 (2) further provides that any vacancy occurring in the office of Presidents, Vice-Presidents Members and Councillors before the expiry of their term shall be filled in the manner provided in the relevant repealed Act. This again points to the fact that in the case of a casual vacancy occurring in the office of a member before the expiry of his term, the right of being nominated to stand as a candidate for election for the purpose of filling that vacancy or of being elected is the one conferred by the repealed Act. It is thus clear that the functioning of a continued member till the expiry of his term under the repealed Act is subject only to those restrictions and conditions which are mentioned in the repealed Act. The membership of a person elected under the repealed Act cannot clearly be put into peril by restrictions and conditions provided for the first time in the Act of 1961. In our judgment, section 38 (1) (b) is not applicable to a member elected under the repealed Act and who is continued in office by virtue of section 2 (2) (ii). The decision of the Collector declaring the petitioner's seat as vacant u/s 38 (1) (b) was, therefore, invalid.

4. For these reasons, this petition is allowed and the orders of the Collector, Bilaspur, and the Commissioner, Bilaspur, dated 1st April 1963 and 4th May 1963 respectively, are quashed. The petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 100. The outstanding amount of security deposit shall be refunded to the petitioner.