
(2002) 03 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1009 of 2002

Munnalal Arya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Madhya Pradesh Municipalities (the Conduct of Business of the Mayor-in-Council/ President-in-Council and the powers and Functions of the Authorities) Rules, 1998 — Rule 4

Citation : (2005) ILR (MP) 1211 : (2002) 3 MPHT 118 : (2002) 2 MPJR 334 : (2002) 3 MPLJ 193

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Seema Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The petitioner is challenging the constitution of the President-in-Council of Municipal Council, Tikamgarh. The President-in-Council was re-constituted on 24-10-2000. Out of the councillors, seven members were taken in President-in-Council as reflected in the notification (Annexure P-5). One person was taken from the Scheduled Castes, one from Other Backward Classes. Two women were included as Members. The constitution of the President-in-Council is governed by M.P. Municipalities (The Conduct of Business of the President-in-Council and the Power and Function of the Authorities) Rules, 1998. Rule 4 provides for constitution of President-in-Council which is quoted below:--

"Rule 4. Constitution of President-in-Council.-- (1) In every Municipal Council and every Nagar Panchayat, the President-in-Council shall consist of President and seven members in case of Municipal Council and President and five members in case of Nagar Panchayat.

(2) All the seven members in the Municipal Council and all the five members in Nagar Panchayat, as described in Sub-rule (1), shall be taken by the President from the elected councillors of the Council, in which atleast one member from the women category, atleast one member from Other Backward Classes and atleast one member from Scheduled Caste or Scheduled Tribe category, each in case of Municipal Council and Nagar Panchayat shall be necessary to include. Simultaneously the Vice-President shall also be included as one of the members. All these members may remain as members of the President-in-Council during the pleasure of the President."

As per Rule 4 of the Rules out of seven members, five members have to be taken from the elected members of the Council in which atleast one member from the women category, one member from Other Backward Classes and atleast one member from Scheduled Castes or Scheduled Tribes category is required to be taken. The Vice-President shall also be included as one of the members. All these members may remain members of the President-in-Council at the pleasure of the President.

Learned Counsel for the petitioner submits that Shri Virendra Rai was taken as Vice-President; though he is of Scheduled Castes, he can not be treated as member of the Scheduled Castes in President-in-Council for the reason that Sub-rule (2) of Rule 4 of the Rules prescribes that in addition to Vice-President, another person of Scheduled Castes as a member has to be inducted, as such constitution of President-in-Council is violative of Sub-rule (2) of Rule 4 of the Rules. As per petitioner's submission, there should be one more person of the Scheduled Castes.

Learned Counsel for the petitioner submits that representation was filed and a direction was issued by Government to reconstitute President-in-Council as per rules, still the reconstitution has not been made as per the requirement of Rule 4 of the Rules in the manner aforesaid.

Reading of the Rule 4 makes it clear that Vice-President has to be included as one of the members. The caste of the Vice-President has not been specified. It is not the requirement of the Sub-rule (2) of Rule 4 of the Rules that of which caste Vice-President may be, only requirement is with respect to the members that one member should be of Other Backward Classes, one should be of Scheduled Castes or Scheduled Tribes and one should be woman. Since the Vice-President has to be inducted in the capacity of a member which is mentioned in the rule itself, if he is Scheduled Castes, the rule that one member from Scheduled Castes is required to be included as member stands complied with. The requirement of Rule is of induction of members. 3 members are special category, one woman, one O.B.C. and one out of S.C. or S.T. Thus any one of them can be Vice-President also as Vice-President's induction is prescribed as member only. Any of the members can be Vice-President as a person can not be inducted as Vice-President directly. Only a member can be inducted. The special mention in the rule that Vice-President shall be included as member only, clearly indicates

that out of members inducted in President-in-Council anyone may be the Vice-President. Any person on being appointed as Vice-President does not lose the character as a member; basically he is a member then a Vice-President. The Rule 4 aims at representation of various classes such as of women, O.B.C. and S.C. or S.T. which stands fulfilled on inclusion of such persons in array of 7 members. Thus the constitution of Mayor-in-Council as per Annexure P-5 which includes two women members of general category, one person of Scheduled Caste, one person of O.B.C. Class and three members of general category can not be said to be in violation of Rule 4 of Rules of 1998. I find no merit in the writ petition. In my opinion the constitution of President-in-Council is proper.

Writ petition is without merit and is dismissed. Costs on parties.