

(1966) 07 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 300 of 1966

Nauranglal, Sakti

APPELLANT

Vs

Shri Bhanu Pratap and Others

RESPONDENT

Date of Decision : 22-07-1966

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 2(2)(ii)

Citation : (1966) JLJ 740

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : P.C. Pathak, for the Appellant; Y.S. Dharmadhikari for respondent No. 1, P.S. Gothwal for respondent Nos. 2 and 3, A.P. Sen, Advocate-General and K.K. Dube, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—This is a petition under Articles 226 and 227 of the Constitution for the issue of a writ of quo warranto questioning the validity of the appointment of respondent No. 1, Bhanu Pratap, as Vice-President of the Sakti Municipal Council, by the second respondent, namely, the President of the Council.

2. The Sakti Municipal Council is a body constituted under the Central Provinces and Berar Municipalities Act, 1922 and continued by section 2(2)(ii) of the Madhya Pradesh Municipalities Act, 1961, after the coming into force of that Act repealing inter alia the C. P. and Berar Municipalities Act, 1922. After the general election to the Council in 1956 under the Act of 1922, one Shri Sahu was appointed as the Vice-President of the Council. He resigned on 12th August 1964. The casual vacancy thus occurring in the office of the Vice-President was required to be filled in accordance with the provisions of the repealed Act, namely, the C. P. and Berar Municipalities Act, 1922, as provided by section 2(2) (ii) of the 1961-Act. Section 19 of the 1922-Act laid down that upon the occurrence of any vacancy in the office of the President or Vice President, a new President or Vice-President shall be appointed or elected in the manner provided

by section 18. Section 18, as originally enacted, empowered the President to appoint two Vice-Presidents from amongst the members of the Committee, or from other persons residing in the Municipality possessing the qualifications of a voter u/s 12 (1) and not disqualified u/s 15. This section was amended by Act No. 14 of 1958, and thereafter, according to the amended provision, the Vice-Presidents had to be elected by the members of the Committee. After the amendment, the President had no power to appoint any Vice-President. It was this amended section 18 which was operative when the 1961-Act came into force. The vacancy caused by the resignation of Shri Sahu could, therefore, be filled in 1964 only by the process of election and not by nomination by the President. But on 19th August 1964 the President of the Council, purporting to act u/s 18 of the Act of 1922, as it stood before it was amended by Act No. 14 of 1958, appointed the respondent No. 1, Bhanu Pratap as the Vice-President. This appointment was notified by the Collector, Bilaspur, on 25th December 1964, and the notification expressly mentioned that the President "has been pleased to appoint Shri Bhanu Pratap son of Shyam Sundar as Vice-President of the Municipal Council, Sakti, in exercise of his powers conferred by section 18 (before its amendment in 1953) of the Central Provinces and Berar Municipalities Act, 1922".

3. The petitioner, who claims that he resides in ward No. 6 of Sakti and has been enrolled as a voter in the Voters' list of the Sakti Municipality, now attacks the validity of

the appointment of respondent No. 1 as the Vice-President on the ground that it was contrary to and in violation of the amended section 18 of the 1922-Act, and consequently the said respondent has no right whatsoever to hold the office of the Vice-President of the Council. In the return filed by the Collector, it has been stated that the appointment of the Vice-President by the President was done in the same manner as the appointment of Shri Sahu was made, and that the appointment was notified by the Collector taking it to be a legal appointment. The other respondents have in their return said that the President had power to appoint the respondent No. 1 as the Vice-President. But during the course of arguments addressed before us by the learned counsel appearing for the parties, it was not disputed that the vacancy caused by the resignation of Shri Sahu could be filled in 1961 only by an election in accordance with the amended section 18 of the Act of 1922 and that on 19th August 1964 the President had no power to appoint Bhanu Pratap as the Vice-President.

4. In our judgment, the appointment of Bhanu Pratap as the Vice-President of the Council on 19th August 1964 was patently illegal. Section 2(2)(ii) of the 1961-Act *inter alia* provides that a casual vacancy in the office of the Vice-President may be filled in the manner provided in the relevant repealed Act and the rules made thereunder. Here, the relevant repealed Act was the C. P. and Berar Municipalities Act, 1922, as it stood when the 1961-Act came into force and not as it was when originally enacted. That being so, the suggestion that as Shri

Sahu was appointed as Vice "resident by the President in the exercise of his powers u/s 18 (2) of the 1922 Act, as it was before the amendment effected therein by Act No. 14 of 1958, therefore, the vacancy caused by his resignation could also be filled on 19th August 1964 in the same manner, even though section 18 was amended by Act No. 14 of 1958 is altogether untenable. The appointment of Bhanu Pratap as Vice-President being thus contrary to the amended provisions of section 18 was clearly illegal and he has no legal right whatsoever to hold that office.

5. The emphasis in the return filed by the respondents and in the arguments advanced by Shri Dharmadhikari on behalf of the respondent No. 1 was on the locus standi of the petitioner to file this application for the issue of a writ of quo warranto. It was said that the petitioner is a cousin of Tejlal, the President of the Municipal Council, and resides in the same building where Tejlal lives; that ten out of fifteen Councillors of the Municipal Council sent a requisition u/s 47 of the 1961-Act to the Chief Municipal Officer for convening a meeting of the Council for discussing a motion of no-confidence against Tejlal, the President; that on 29th June 1966 a meeting of the ten Councillors was held and the motion of no-confidence against Tejlal was passed thereat; and that the applicant filed this petition on 20th June 1966 and prayed for an interim direction restraining Bhanu Pratap from functioning as a Councillor just for the purpose of "protecting his cousin" and for preventing Bhanu Pratap from participating in the meeting of the Councillors which was then about to be held for discussing the motion of no-confidence. Learned counsel proceeded to say that the appointment of Bhanu Pratap was made on 19th August 1964 and this petition was filed nearly eighteen months after the appointment was notified in the Gazette; that if there was any illegality in the appointment, the petitioner was all along aware of it as both he and his cousin, the President Tejlal, resided in the same building; and that this delay disentitled the applicant to any relief and his motives in filing this application were suspicious. In support of his argument, learned counsel relied on the statement contained in paragraph 281 at pp. 148-149 of volume 11 of the Halsbury's Laws of England (3rd edition).

6. We are unable to accept this argument of the learned counsel for the respondent No. 1. It has not been denied by the opponents that the petitioner resides within the limits of the Sakti Municipal Council and is a registered voter. As a person residing within the limits of the Municipal Council and as a voter, the applicant is clearly entitled to question the election of the respondent No. 1, Bhanu Pratap as Vice-President. It is true that a writ of quo warranto is not a writ of right. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The Court may refuse to issue a writ of quo warranto in case it would be vexatious, where the petitioner is guilty of laches, or where he has acquiesced or concurred in the very act against which he complains, or where the motive of the relator is suspicious, or where the result of granting a quo warranto in the matter of election to a corporate office would be to disturb the peace and quiet of the corporation. Here, it cannot be said that the

petitioner in any way acquiesced in the appointment to which he is objecting now. He is not a Councillor, and it has not been shown that he was an aspirant for the office of the Vice-President. Merely because the petitioner happens to be a cousin of Tejlal, the President who appointed the respondent No. 1 as the Vice-President, and lives in the same building as Tejlal does, it cannot be inferred that the applicant acquiesced in the appointment made by his cousin Tejlal, the President of the Council. The statement of law contained in paragraph 285 of the Halsbury's Laws of England, which deals with the subject of impeaching qualification of relator where he has acquiesced or concurred in an election, is, therefore, of no assistance to the respondent No. 1.

7. There is also no ground for thinking that the applicant is guilty of laches inasmuch as though aware of the infirmity in the appointment of Bhanu Pratap as Vice-President, he kept quiet for nearly eighteen months after the appointment was notified and then filed this petition on 20th June 1966. That the applicant was all this time aware of the fact that the appointment of the respondent No. 1 Bhanu Pratap as Vice-President was illegal is mere speculation. If the petitioner's cousin Tejlal, the President of the Council who made the appointment of the Vice-President, bona fide and sincerely believed that he could make the appointment under the provisions of section 18 of the Act of 1922, as it stood before it was amended in 1958, then when the appointment was made and thereafter published in the Gazette by the Collector giving it imprimatur of legality, the petitioner could have had no reason to think that the appointment of the Vice-President was illegal. If, on the other hand, it be taken that Tejlal made the appointment knowing fully that he had no power to nominate any Vice-President and that somehow or other he succeeded in getting the appointment notified by the Collector, then it is very unlikely that Tejlal went about telling everybody and the petitioner about the illegal appointment he had made. The petitioner cannot be attributed the knowledge of this illegality merely because of his relationship with Tejlal and his residing in the same building where Tejlal resides. There is, therefore, no ground for discarding the statement of the petitioner that he came to know of the illegal appointment only in the month of May, 1966.

8. There is also no ground for impugning the motives of the petitioner in maintaining this application. As it is difficult to fathom the thought and mind of a man, the question of deciding the motives operating in the mind of a man in taking a particular course of action, always presents difficulty. It has not been alleged by the respondents that the present proceedings were commenced by the petitioner with the primary motive of resentment or revenge against the respondent No. 1, Bhanu Pratap, or that he entertained any rancorous feelings towards Bhanu Pratap. The petitioner himself had no private interest to serve by maintaining this petition. It may be that by filing this petition the applicant helped his cousin Tejlal in meeting the situation of the no-confidence motion which was then about to be moved against him. But from this it does not follow that in challenging the appointment of Bhanu Pratap as Vice-President, which is manifestly illegal, the applicant was not prompted by any instincts of public duty.

Even if it be regarded that the primary motive of the petitioner in filing this application was to affect the discussion and voting on the motion of no-confidence against Tejlal, still it cannot be held that his motives for that reason are suspicious, A discussion of a no-confidence motion against the President or Vice President of a municipal council, and the voting on it, always disturbs the peace and quiet of the council. If, therefore, for maintaining the peace and quiet of the Council the petitioner adopted the course of challenging the validity of the non-applicant No. 1's patently illegal appointment as Vice-President, then it cannot be said that the petitioner was inspired by improper motives in maintaining this petition.

9. In our judgment, when the illegality of the appointment of the respondent No. 1, Bhanu Pratap as Vice-President has been brought to the notice of this Court and when that appointment is manifestly illegal, a writ of quo waranto cannot be refused either on the ground that the said respondent has been functioning as "de facto Vice-President" for some time or on the ground of any supposed suspicion against the petitioner in challenging the appointment. [See Kashinath Laxman Bhide and Others Vs. The State of Bombay, .]

10. For these reasons, this petition is allowed. The appointment of the respondent No. 1, Bhanu Pratap, as Vice-President of the Municipal Council, is declared to be illegal and he is restrained from functioning as Vice-President of the Council. The petitioner shall have costs of this application from the respondent No. 1. counsel's fee is fixed at Rs. 150. The outstanding amount of security deposit shall be refunded to the petitioner.