
(1974) 04 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 888 of 1973

Niranjan Prasad Kesharwani

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 30-04-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 12, 14, 5

Citation : (1977) ILR (MP) 1189 : (1974) JLJ 466 : (1974) MPLJ 624

Hon'ble Judges : P.K. Tare, C.J; M.L. Malik, J

Bench : Division Bench

Advocate : P.C. Pathak, for the Appellant; M.V. Tamaskar, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, C.J.

In this petition under Articles 226 and 227 of the Constitution of India, the petitioner, a former President of the Municipal Council, Mungeli, seeks a writ of Mandamus restraining the respondents from giving effect to the order, dated 17-11-1973 (Petitioner's Annexure-B) ordering the Tahsildar, Mungeli, to take charge of the Municipal Council u/s 328 (6) (b) of the Madhya Pradesh Municipalities Act, 1961 as the term of the Municipal Council expired on 14-5-1973, as per section 36 (3) of the Act. The petitioner also seeks quashing of the order, dated 17-11-1973 on the ground that the said order was beyond the powers conferred on the State Government. It is further prayed that the State Government, by a writ of Mandamus, be directed to extend the term of the Municipal Council, as per the proviso to section 36 (1) of the Act.

This Municipal Council has rather had a chequered career. The general elections were held on 16-12-1968. The first meeting of the Municipal Council was convened on 15-5-1969, in which the petitioner was elected as the President. He took over charge of the office of the President OK 21-6-1969. Thereafter on

30-6-1971, that is, after about two years and a week, the State Government dissolved the Municipal Council in exercise of powers conferred by section 328 of the M. P. Municipalities Act, 1961. Against the order of dissolution the petitioner had filed Miscellaneous Petition No. 380 of 1971. A Division Bench of this Court, by order, dated 3-12-1971, allowed the writ petition and quashed the order of the State Government dated 30-6-1971. In consequence the petitioner again took over charge of the office of the President on 6-1-1972.

Thereafter on 5-10-1972, the Municipal Council, Mungeli, was again dissolved for the second time u/s 328 of the Act. Against that order of dissolution the petitioner again filed Miscellaneous Petition No. 855 of 1972. A Division Bench of this Court by order, dated 12-9-1973 allowed the writ petition and again quashed the order of dissolution, dated 5-10-1972. In consequence, the petitioner again took over charge of the office of President on 27-9-1973.

Thereafter, the State Government issued the impugned order (Petitioner's Annexure-B) on 17-11-1973 holding that the term of the Municipal Council had already expired on 14-5-1973, as per section 36 (1) of the M. P. Municipalities Act, 1961, because the first meeting of the Municipal Council had been convened on 15-5-1969, as per section 55 (2) of the Act. As the term automatically expired and the Councillors and the office-bearers could not function, the State Government, by the impugned order, appointed an Administrator or a reliever to take charge of the affairs of the Municipal Council during the interim period till fresh elections were held. It is this order that the petitioner now challenges in this writ petition.

The main contention of the learned counsel for the petitioner is that sub-section (1) of section 36 of the Act provides for continuance of the Council for a period of four years from the date appointed under sub-section (2) of section 55 for its first meeting. The suggestion, therefore, is that the Municipal Council should actually be allowed to function for a period of four years and if there be any disturbance or interference in the shape of passing of illegal or unconstitutional orders by the State Government, the period so spent should be excluded and the Council should be allowed to function for the full period of the term of four years by excluding such periods. In this connection we might observe that there is a difference between similar provision in the Central Provinces and Berar Municipalities Act, 1922, and the present provision as contained in section 36 of the M. P. Municipalities Act, 1961. u/s 16 of the 1922 Act, the State Government had been given power to fix the term of the Municipal Council, which could, in no case exceed the period of three years. However, in the present Act, the term is fixed by the Legislature. Thus, there is no statutory provision for extending that term except under the proviso, which vests discretion in the State Government to extend the term for a period not exceeding one year in the aggregate. It may be relevant to reproduce section 36 (1) of the Act, which is as follows:

Section 36.--Term of Council and office of Councillors: (1) Every Council shall continue for four years from the date appointed under sub-section (2) of section

55 for its first meeting.

Provided that the State Government may, by a notification, for reasons to be stated therein extend the term of the Council, from time to time, for a total period not exceeding one year in the aggregate.

The implication of the wording of the section is very clear to indicate that the term of a Municipal Council automatically expires after the period of four years subject to extension that may be granted by the State Government under the proviso. There is no statutory provision for extending this term further or for exclusion of the period that may have been wasted on account of illegal interference, either by the State Government or by any other authority. For example, it might be assumed that the members of the Municipal Council are restrained from functioning by an order of a Court of law for some period. Is it open to the Municipal Councillors to say that the period during which they were restrained from functioning should be excluded from the term of four years prescribed by section 36 (1) of the Act? We may only observe that for extension of the term, there must be a statutory provision such as is to be found in the Limitation Act. Say, sections 5, 12 or section 14 of the Limitation Act, 1963. But, in the absence of any such statutory provision empowering extension of the term, the term set by the Legislature will automatically and at the expiry of the period mentioned in the statutory provision and by no stretch of imagination can such term be extended. There is a statutory provision, which vests the discretion in the State Government in the matter of extending the term for a period not exceeding one year. However, the provision is discretionary and no party, or for the matter of that no Municipal Councillor or office-bearer would have a vested right for claiming extension as of right. We do not think that a writ of Mandamus can be issued in such a case directing the State Government to extend the term of a Municipal Council. Of course, such a writ could have been issued if a vested statutory right had been created, either in the office-bearers or in the Municipal Councillors.

It is necessary to analyse the provisions of section 36 of the Act. Subsection (2) provides that notwithstanding the expiry of the term of the Council under sub-section (1), every Council shall continue to function till the date appointed under sub-section (2) of section 55 for the first meeting of the Council newly constituted in its place, or till the expiry of six months from the date of expiration of its term under sub-section (1), whichever is earlier. This sub-section contemplates fresh elections and in the event of a fresh election being held the old Municipal Council continues till such date as is appointed under sub-section (2) of section 55 of the Act for the first meeting of the Council newly constituted in its place, or till the expiry of six months from the date of expiration of its term under sub-section (1), whichever is earlier. Sub-section (3) further provides that if within the period mentioned in sub-section (2) the Council is not newly constituted, the Council shall on the expiry of such period be deemed to have been dissolved and the provisions of section 328 shall apply in respect thereof.

Further on, sub-section (4) provides that the term of office of every Councillor shall be co-terminus with the term of the Council of which he is a Councillor. It is sub-section (3) with which we are concerned. According to sub-section (1) of the said section, the term of the Council ended on the expiry of four years from the date of the first meeting, which was held on 15-5-1969. As such, the term would end on 14-5-1973. Now the fresh elections are proposed to be held and steps have been taken in that behalf. Consequently, sub-section (3) will be applicable, because no new Council has been constituted. The implication is that the present Council is deemed to have been dissolved and the provisions of section 328 of the Act will be applicable.

However, the learned counsel for the petitioner urged that the office-bearers of the Municipal Council will continue till the new office-bearers are elected. That will be the position as per sub-section (2) of section 36 of the Act. But, where sub-section (3) is attracted, the result is that the Council is deemed to have been dissolved u/s 328 of the Act. It is, therefore, necessary to examine the provisions of section 328 of the Act about dissolution. The effect of dissolution or supersession as provided for in sub-section (6) of section 328 of the Act, which is as follows:

Section 328 (6).--If the Council is dissolved or superseded as provided in the preceding sub-sections, the following consequences shall ensue:

- (a) all the Councillors of the Council shall, as from the order, vacate their offices as Councillors;
 - (b) all powers and duties of the Council under this Act may, until the Council is reconstituted, be exercised and performed by such person or a Committee of persons as the State Government may appoint in that behalf;
 - (c) all properties vested in the Council shall, until the Council is reconstituted, vest in the State Government;
 - (d) when more than one person are appointed under clause (b) any one of them, duly authorised in this behalf by a resolution passed by them, may sue or institute or defend any action at law by or against the council.
- (7) Any person or persons appointed by the State Government to exercise and perform the powers and duties of a Council during the period of its dissolution or supersession may receive payment if the State Government so directs, for his or their services from the Municipal fund.

Thus, the effect of the section is that not only all Councillors vacate their offices as Councillors but all powers and duties of the Council have to be performed by a person or a Committee of persons to be appointed by the State Government. Consequently, the elected office-bearers, such as the Vice-President, President etc. have no power to act during the interim period till the Council is reconstituted. In this view, the petitioner has no right or power to function as President after the Council is deemed to have been dissolved as per section 36

(3) of the Act. We have already negated the petitioner's contention that the period of four years provided by sub-section (1) of section 36 of the Act can be extended on the ground of interference by other authorities. That period can in no case be extended except under the proviso to section 36 (1) of the Act and in the absence of extension to be granted by the State Government, the petitioner has no right to function as President of the Municipal Council as the Council would stand dissolved as per section 36 (3) of the Act and the elected office-bearers would become *functus officio* and it is only the person or persons appointed by the State Government, who can exercise the powers of the Council in the interim period till the new Council is reconstituted. Thus, there is no substance in the contention of the learned counsel for the petitioner that the petitioner is entitled to function as President till the new Council is reconstituted and a new President is elected. That contention is based on sub-section (2) of section 36 of the Act, which is not attracted and this contention is advanced by ignoring the implication of sub-section (3) of section 36 of the Act.

The last contention raised on behalf of the petitioner was that the action of the first respondent is *mala fide*. It was found so on two earlier occasions when the dissolution u/s 328 of the Act was set aside by this Court in Miscellaneous Petition No. 380 of 1971, dated 3-12-1971 and Miscellaneous Petition No. 855 of 1972, dated 12-9-1972. We may observe that this Court did find on those two occasions that the action of the State Government was illegal. However, as regards the term of the Council as per section 36 of the Act, there is no question of *mala fides* or *bona fides* because the operation of section 36 is automatic and sub-section (3) of the said section read with sub-section (1) has to be given effect to irrespective of any motives. Therefore, we would reject the contention that the period can be extended and the refusal of the State Government to extend the period is *mala fide*. We may observe that where discretion is vested in a public authority, no writ of *Mandamus* can be issued directing the authority to exercise its discretionary power.

As a result of the discussion aforesaid, all the contentions raised on behalf of the petitioner fail and as such, this petition deserves to be dismissed. Accordingly, it is dismissed. However, under the circumstances, we direct that there shall be order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioner.