
(1960) 04 MP CK 0048
In the Madhya Pradesh High Court
Case No : M.P. No. 137 of 1959

Radheshyam Khare

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-04-1960

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 53A, 57

Citation : (1961) JLJ 1109

Hon'ble Judges : T.C. Shrivastava, J;N.M. Golwalkar, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; H.L. Khaskalam, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Shrivastava, J.—By this petition under Article 226 of the Constitution of India the petitioners challenge the validity of the Notification issued by the State Government on 25-5-1959 (Ex. P-9) by which the Municipal Committee, Dhamtari, has been dissolved u/s 57 of the Central Provinces and Berar Municipalities Act, 1922 (hereinafter referred to as the Act). They pray for a writ of certiorari to quash the notification and for a writ of mandamus against the respondents prohibiting them from interfering with the exercise of their functions under the Act.

2. Petitioner No. 1 Radheshyam Khare was elected as President of the Municipal Committee, Dhamtari, on 10-7-1955. His term of office expires on 26-7-1960. Petitioner No. 2 is the Municipal Committee, Dhamtari, itself. Petitioner No. 3 Mohammad Bhai is a member and a vice-president of the Municipality. The remaining petitioners are elected members of the Municipality. Respondent No. 1 is the State Government, respondent No. 2 is the Under Secretary in the Local Self Government Department and respondent No. 3 is the Executive Officer appreciated by the State Government.

3. Petitioner No. 1 Radheshyam Khare contends that the State Government is annoyed with him, as he left the Congress Party after the last elections and also as he prosecuted one Dhurmala Daga for evading octroi duty on 7-8-1956. On these facts, the petitioners who formed one party in the Municipality, challenge the order of the State Government as mala fide.

4. By a notification issued on 18-11-1957 the State Government had appointed an Executive Officer u/s 53-A of the Act. That order was challenged by the petitioners Nos. 1 and 2 and the matter was taken up to the Supreme Court. The order was held valid by the High Court and the decision was confirmed by the Supreme Court. (See Radheshyam Khare and Another Vs. The State of Madhya Pradesh and Others, . The term of the Executive Officer was for 18 months from 1-12-1957.

5. On 27-4-1959 the State Government issued a notice to the Municipal Committee calling upon it to show cause why it should not be dissolved u/s 57 of the Act. A list of 17 charges was enclosed with the notice (Ex. P-2): The Executive Officer called a special meeting of the Municipal Committee, which was held on 29-4-1959. A resolution was passed in that meeting accepting the correctness of the charges and requesting the State Government to dissolve the Municipal Committee. On this reply of the Committee, the State Government issued the impugned notification on 25-5-1959 dissolving the Committee and ordering fresh elections.

6. The petitioners allege that the meeting which was held on 29-4-1959, was illegal for several reasons and the proceedings are not binding on them. They contend that on 8-5-1959 they held a separate meeting which was attended by 8 of the petitioners and in which a resolution was passed contesting the truth of the charges levelled against the Committee and an explanation was sent to the State Government (Ex. P-6). The petitioners contend that the State Government did not give a hearing to them and did not allow a chance to them to adduce evidence to show that the charges were baseless. Accordingly, they contend that the provisions in Section 57 of the Act have not been complied with and the notification issued under that Section is invalid.

7. The first point which arises for consideration in this petition is whether a notice served on the Committee to show cause why it should not be dissolved u/s 57 of the Act requires to be served on all the members, of the Committee individually, Shri R.K. Pandey for the petitioners referred to Section 10 of the Act which provides that the Committee is composed of elected members and selected members. He contends that the Committee is nothing but a collection of these members and therefore action against the Committee u/s 57 of the Act cannot be taken without serving the individual members with the notice required under that Section. We do not find any substance in this contention. Section 37 of the Act provides that "Every Committee shall be a body corporate by the name of the municipal committee of its municipality, and shall have perpetual succession and a common seal." This provision implies that the Committee as such has a

separate corporate existence apart from the persons who are members of the Committee. The Committee is a legal person and any decision of the Committee must be arrived at in a meeting convened in accordance with the Act and after following the procedure prescribed by the rules and byelaws thereunder. The word "Committee" used in Section 57 of the Act refers to the committee as a "corporate body" and can, in no sense, refer to the members individually. Accordingly, we hold that the notice issued to the Committee was sufficient.

8. The petitioners have attacked the validity of the proceedings of the meeting held on 29-4-1959 on three grounds, viz.,

- (i) That the convening of the meeting by the Executive Officer was illegal.
- (ii) That notices were not properly served on all members of the Committee; and
- (iii) That there was no quorum at the time of the meeting as required by Section 30 (2) of the Act.

9. On the first ground, it is pointed out that u/s 31 of the Act it is only the President or the Vice-president who can convene a meeting of the Committee. We find that in the notification which was issued u/s 53-A of the Act and which was in force at the material time, the powers u/s 31 had been vested in the Officer-in-Charge by virtue of the notification (Ex. P-I). In *Radheshyam vs. State of M. P.* (cit. sup), in which the implications of the notification (Ex. P-I) issued u/s 53-A of the Act in the context of Section 31 were considered. it was observed as follows in paragraph 41.

A great deal of stress was laid by the appellant's counsel on the withdrawal of the powers of the municipality and particularly u/s 31 and it was contended that the Committee would not be able to hold its monthly meetings as required under that Section. It is difficult to interpret the notification in this manner, because so interpreted it would mean that the Executive Officer alone will meet for the transaction of business at least once a month which would amount to an absurdity. The reference in the notification must be to sub-section (2) of Section 31 which deals with the power of the President etc. to call a meeting suo motu on the requisition of a fifth of the members.

The notification issued u/s 53-A gives the power to the Executive Officer, in certain matters, to the exclusion of the President or the Vice-president. Accordingly, we hold that the Executive Officer could validly call the meeting without any authority from the President, and consequently there is no substance in the contention that the meeting was not validly convened.

10. The next point which has been urged Shri R. K. Pandey to attack the validity of the meeting is that the notices issued were not validly signed. According to his contention, Section 168 of the Act requires that the notice should be signed by the President or by any other person specially authorised by him in this behalf. Sub-section (1) of that Section is as follows:

168 (1) Every notice issued by a Committee under this Act or under any rule or byelaw made thereunder shall be in writing and signed by the President (Vice-president or Secretary or by any other officer or member) specially authorised to this behalf, and may be served on the person to whom it is addressed, or delivered or left at his usual place of abode or business with some adult male member or servant of his family, or, if it cannot be so served, may, be affixed to some conspicuous part of his usual place of abode or business or served by post."

Primarily the provisions about notice in this section appear to deal with the notices issued by the Committee against outsiders. The expression "every notice issued by a Committee expressly used in sub section (1) of Section 168 supports this conclusion. However, assuming that the notice for calling a meeting is covered by that Section, the contention that the notice can be signed by the Secretary or by an other officer or member only when he has been specially authorised in this behalf has no force. The words "specially authorised in this behalf" qualify only "by any other officer or member." They do not go with the words "Vice-president or Secretary." The absence of a comma after the words "Vice-president or Secretary or by any other officer or member" indicates nothing, as it is not usual to put a comma when two words are disjoined by "or". Further, the repetition of the pre position "by" before "any other officer or member" makes it clear to us beyond doubt that the words "specially authorised in this behalf" go with "any other officer or member". Accordingly, we hold that the signing of the notices by the Secretary was valid.

11. It is then contended that five of the members including the President Radheshyam, on whose houses the notices were affixed, have not been properly served. These notices (Exhs. D-22 to D-27) were affixed to the houses of the members, as they were not found there at the time. Shri R. K. Pandey contends that these persons may have been absent temporarily from their houses and so the peon should have waited till their return at their houses. He points out that the provision about affixing the notices to the places of abode or business in Section 168 can be resorted to, if the notices cannot be served personally. It is pertinent to observe that in paragraph 12 of the petition where this ground has been taken the petitioners have contended themselves by merely saying that the notices had not been properly served in accordance with the provisions of the Act. No details have been given. It has not been alleged that the petitioners were temporarily absent at the time when the notices were taken to their houses. We find that the notices were being served on 27-4-1959 for a meeting which was to take place on 29-4-1959 and it was not therefore possible for the peon to wait till the arrival of the members concerned. We hold that the service was good.

12. The third ground taken by the petitioners to attack the validity of the meeting is that there was no quorum as required by Section 32 of the Act. There were only 8 members present, whereas according to the petitioners the Municipal Committee consists of 17 members. Shri R. K. Pandey supports this contention in two ways. Firstly, he argues that the president and the Vice President are not

members and could not therefore be counted to form the quorum. Amongst the 8 members present in the meeting, one was a Vice president, who was not an elected or a selected member. Thus, according to Shri Pandey, there were only 7 members present when the committee consisted of 15 members excluding the president and the Vice-president. Secondly, he contends that if the President and the Vice-president are counted as members, then there were only 8 members in a Committee of 17 members.

13. The first contention is obviously incorrect in view of the provision in Section 18 (4) of the Act which provides that "The President and Vice presidents shall in all cases be deemed to be members under this Act". The fiction created by this provision is applicable to all proceedings which arise under the Act. Shri R. K. Pandey has referred to the decision in *Mahadeosa vs. Deputy, Commissioner Amravati* 1954 NLJ 173 in which it has been held that the President and the Vice president are not enabled by this fiction to take part in the selection of members u/s 10 of the Act. The reason why they cannot take part in the selection of members is that u/s 10 the power is given only to "elected members" and although the President and Vice president may be members by fiction, they certainly cannot be "elected members". However, it has been accepted in that decision that they are deemed to be councillors for the purposes of all Sections where the word "member" has been used. Accordingly, they could take part in the meeting held on 29-4-1959.

14. The answer to the second contention is that one of the members Mohammad Bhai a Vice-president: had been disqualified by the Deputy Commissioner for having been in arrears of municipal taxes. The power has been given under rule 3 framed under Sections 22-A (3), 22-B and 176 of the Act (page 180 of the *Madhya Pradesh Municipal Manual, Reprint 1953*) to the Deputy Commissioner to declare the President or the Vice-President, disqualified for holding office. Such a declaration has been made by the Collector (Ex. D-30). Accordingly, Mohammad Bhai was disqualified from taking part in the meeting; on 29-4-1959. According to Section 32, the, quorum for a special meeting "shall be one half of the members of the committee actually serving at the time". Mohammad Bhai was not serving at the time. There were thus only 16 members left, and the quorum of 8 was sufficient. This attack on the validity of the meeting also fails.

15. The meeting which was held on 29-4-1959 was thus valid and the resolution passed therein was also a valid expression of the Committee on the question before it. If the Committee chose to accept the charges and did not wish any further enquiry to be made, no more opportunity was necessary. The State Government could accept the reply of the Committee as a corporate body without any further enquiry. The action of the State Government u/s 57 of the Act cannot be challenged on the ground of detail of opportunity.

16. Shri R. K. Pandey has referred to the meeting of the dissenting members which, took place on 8-5-1959 and the reply they sent to the charges. This meeting could, in no sense, be a meeting of the Municipal Committee. as it was

not held in accordance with the provisions of the Act. Further, as we have already said, the individual members had no right to be served with a notice to show cause as contemplated by Section 57 of the Act and therefore it was not necessary for the State government to give them a chance for hearing. We hold that they have no locus standi to challenge the order of the State Government on the ground of want of reasonable opportunity.

17. Shri R. K. Pandey has further pointed out that the first ten charges are identical with the charge which were served on the Committee before action u/s 53-A of the Act was taken. He contends that these very charges cannot now form the basis of the second action u/s 57 of the Act. He also urged that the charges were vague and the time of 15 days allowed by the State Government was insufficient. It is not necessary for us to go into these questions in view of the fact that we consider the reply of the Committee to the State Government sufficient to sustain the order passed by it.

18. In the result, the petition is dismissed. The costs of the respondents shall be paid by petitioners nos. 1 and 3 to 10 personally. The liability for the costs shall not be on the municipal fund. Hearing fee is fixed at Rs. 150/- only. The outstanding amount of security, if any, shall be refunded to the petitioners.