

(1972) 09 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1615 of 1971

Radhey Shyam

APPELLANT

Vs

Vijai Singh, District Magistrate and Others

RESPONDENT

Date of Decision : 22-09-1972

Acts Referred:

Constitution of India, 1950 — Article 167, 226

Citation : (1972) WLN 772

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Tyagi, J.—Petitioner Radhey Shyam has filed this writ petition under Article 226 of the Constitution to challenge the vote of non-confidence passed by the Municipal Council of Shri Ganganagar on 18th of September, 1971, against the petitioner who was holding the office of the Vice-Chairman of the said Council.

2. The petitioner was the elected Vice-Chairman of the Municipal Council, Sri Ganganagar which was constituted after general elections held in, the month of October, 1970. It is alleged that there were two rival groups in the said Council, one backed by the party in power and the other by Shri Sugan Chand respondent No. 20 who had held the office of the Chairman just before the present Board was constituted. A motion of non-confidence was sponsored by a group opposing the petitioner's group and a notice thereof was given to the Collector. It is said that notice contained the signatures of 17 persons, namely, non-petitioners Nos. 4 to 20. The Collector, Sri Ganganagar, in compliance with the requirements of Section 72 of the Rajasthan Municipalities Act, 1959 (hereinafter called the Act) issued under Sub-section (3) of that section notices to all the members of the Council on 11th of September, 1971, informing each one of them that a meeting to consider the motion of non-confidence in the Vice Chairman shall be held on 18th of September, 1971. These notices were despatched from the Collector's office on 11th of September and they were sent through the post office under

registered cover. Petitioner's contention is that he did not receive any such notice till 20th of September, 1971 and like him many other members of the Board also did not receive such notices with the result that a motion of non-confidence was adopted by 16 persons who attended the meeting on the 18th of September, 1971. Though the motion was adopted by a majority of votes, as there were only 30 members of the Municipal Council, the petitioner's content, on is that the resolution adopted was ab initio void as the meeting was convened on the 18th of September, 1971, in clear violation of the mandatory provisions of Sub-section (3) of Section 72 of the Act which requires the prescribed authority, that is, the Collector, to send a notice by registered post not less than seven clear days before the date of meeting. It is also contended that the notices sent by the Collector were also ambiguous as first of all the Collector fixed 20th of September, 1971, as the date of the meeting and thereafter this date was cut and 19th of September, was written and it so appears that after fixing 19th it was again cut and 18th was inserted in place of 19th. The petitioner has placed certain original notices, which have been received by the members of the Council and they are all cyclostyled showing date 20th as cyclostyled and thereafter the change was made there in by inserting 19th and then 18th. The main ground on the basis of which a challenge has been thrown to the validity of the motion of non-confidence adopted by 16 members of the Council on 18th of September, 1971, is that the non-compliance of the mandatory provisions of the law has vitiated the motion and the resolution adopted by the Municipal Council. It is, therefore, prayed that by issuing an appropriate writ, order or direction it may be declared that the meeting convened in pursuance of a notice which was issued in clear violation of the mandatory provision of the law was illegally convened and the resolution adopted should, therefore, be quashed,

3. Respondents Nos. 5, 6, 7,8, 9, 12, 14,15, 16, 17, 20, 27, 28 and 29 have filed a joint reply to the writ petition and have averred that the petitioner is a member of the official ruling Congress group in the Municipal Council supported by Shri Manphool Singh Ex-Minister and inspite of the fact that all the Congressmen, including the said Minister, used their utmost influence to gather support for the petitioner, the motion of non-confidence was adopted by the majority of votes and as such it is clear that the petitioner even now does not command majority in the house. In support of this averment, 18 affidavits of the members of the Municipal Council have been filed declaring that the deponents have no confidence in the petitioner. Mr. Guman Mal Lodha, appearing on behalf of these-respondents, while addressing the Court strenuously urged that in the name of healthy conventions the Court should not assist such person who has lost confidence of the house to retain the office under the plea that the non-confidence motion suffers from certain technicalities.

4. As regards the non-compliance of the provisions of Sub-section (3) of Section 72 of the Act, it is averred that the provision of Sub-section (3) is a directory provision and even if there has been some irregularity in the despatch of notice by the Collector, it should not go to vitiate the validity of the resolution adopted

by the Municipal Council expressing its non-confidence in the petitioner.

5. The petition has been hotly contested from both the sides. These rival contentions give rise to a very important question of the interpretation of Sub-section (3) of Section 72 of the Act.

6. Section 72 is a section which deals with the motion, of non-confidence against the Chairman or Vice Chairman and it prescribes a special procedure for adopting such motion by the House. Sub-section (1) states that a motion expressing non-confidence in the Chairman (or Vice-Chairman) shall be made only in accordance with the procedure laid down in this section. Sub Section (2) contemplates a written notice of intention to make a motion of non-confidence in the Chairman, (or Vice-Chairman) signed, by such number of members of the Board as constituted not less than one third of the whole number of such members together which a copy of the motion which it is proposed to make, and it is to be sent to the prescribed authority, who is the Collector in the present case, who is required to convene a meeting for the consideration of the motion to be held at the office of the Board on the date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

7. Sub-section (3) is a crucial section on which reliance has been placed by both the parties in support of their respective contentions and which needs interpretation by this Court to resolve the controversy in the case and, therefore, it will be relevant to re-produce this sub-section verbatim:

(3) The prescribed authority shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and the date and time appointed therefore to every member of the Board;

8. The procedure contained for convening the meeting in this section need not be reproduced here as that procedure has no relevance to the controversy in this case.

9. The contention of Mr. Agarwal, appearing on behalf of the petitioner is that the Collector issued notices to the members of the Council under Sub-section (3) of Section 72 on 11th of September, 1971 and called the meeting to be held on 18th of that month. The notices so sent by the Collector, according to learned Counsel, did not comply with the mandatory Requirements of Sub-section (3) as seven clear days did not pass between the date of the despatch of the notice and the date on which the meeting was to be held. According to Mr. Agarwal, the date of the despatch as well as the date of the meeting shall have to be excluded while computing seven clear days as is required under Sub-section (3) of Section 72 of the Act and since only six days passed between these two crucial dates, the notice cannot be said to have been despatched in accordance with the said provision of the law. In the opinion of Mr. Agarwal, this provision is a mandatory provision and the non-compliance thereof would affect the validity of the meeting and would vitiate the motion adopted in such a meeting which was not convened

in accordance with the provisions of law.

10. Mr. Guman Mal, on the other hand, contended that the provision of Sub-section (3) are mere directory and not mandatory and if there is a defect in the compliance with the procedure laid down in Sub-section (3), then it cannot go to vitiate the motion adopted in a meeting held on the 18th of September, 1971. Mr. Lodha also placed reliance on the definition of "clear days" as given in Section 3(6) of the Act which says "clear days" used with reference to the period of notice under any provision of this Act, includes Sundays and other holidays but does not include the date of receipt or such notice by the person to whom it is addressed or the date specified in the notice. According to this definition of "clear days", the argument of Mr. Lodha is that only one day shall have to be excluded, that is either the date on which the notice is despatched or the date on which the meeting was summoned while computing seven clear days between the two crucial dates. Mr. Lodha also placed reliance on Section 79(3) of the Act which saves the resolution of a Board or a Committee appointed under the Act from being declared as invalid on account of any irregularity in the service of the notice upon any member provided that the proceedings of the Board or the Committee were not prejudicially affected by such irregularity. According to Mr. Lodha, even if any irregularity was committed by the Collector in the despatch of the notice to the members of the Council, this provision would save the resolution of the Board expressing non confidence in the petitioner as the petitioner has not pleaded that the irregularity in the despatch of the notice has prejudicially affected the petitioner's rights.

11. Let me first discuss whether the provisions of Sub-section (3) of Section 72 of the Act are mandatory or not. The requirement of Sub-section (3) of Section 72 is that the Collector shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and the date and time appointed therefore to every member of the Board. Sub-section(1) of section 72 lays down that a motion of non-confidence in the Chairman shall be made only in accordance with the procedure laid down in this section which means that the prescribed authority on whom a duty has been cast by the Act to summon and convene a meeting to discuss the vote of non-confidence must call that meeting strictly in accordance with the procedure laid down in Section 72 of the Act. The essence of subSection (3) of Section 72 is that (he prescribed authority shall send the notice of meeting to every member of the Board at least seven clear days before the date of the meeting. The law givers wanted a particular time to be given to each member of the Board, including the one against whom the non-confidence is moved before they assemble in a meeting to discuss such a vital motion which may have a far-reaching effect on the administration of the municipality. The law givers considered that at least seven clear days time must elapse between the despatch of the notice and the date of the meeting. It may be mentioned here that the service of notice is not essential. It is only the despatch of notice on which stress has been laid by the legislature because service may be effected on different members on different dates and it

may be that in order to avoid the fateful day for the consideration of such important motion some members may evade service and take advantage of their own actions to challenge the result of the consideration of a motion in the meeting. In these circumstances, the legislature thought it reasonable to fix the days between the date of despatch and the date of the meeting and it was from that point of view that Sub-section (3) prescribed that at least seven clear days must elapse between the date of despatch of the notice and the date of the meeting.

12. This question came up for the consideration of various Courts whether such a provision which requires certain number of days to pass between the two events, that is, the despatch of notice and the convening of the meeting, is a mandatory provision or is only directory. In the U.P. Municipalities Act, exactly similar provision was enacted by the U.P. Legislature in Section 87-A and that provision came up for the consideration of the Allahabad High Court in a Full Bench case in Mahesh Chandra and Another Vs. Tara Chand Modi, whether Section 87-A was mandatory in nature or not. In that case an objection was raised that after the motion was adopted the presiding officer did not comply with the requirements of the provisions of Section 87-A in sending the copies of the motion to different authorities and it was argued that since the provisions of Section 87-A were mandatory in character, non compliance thereof had vitiated the motion of non-confidence passed against the Chairman. The learned Judges while analysing the provisions of Section 87-A divided that section into two portions, one dealing with the provisions which related to the calling and the actual holding of the meeting as also the conduct of the meeting itself and the other dealing with that is to follow the termination of the meeting. Mukerji J. with whom Sahai J. had agreed, while expressing the majority opinion, observed as follows:

In my view, the first portion of this section is mandatory in its scope, but not the second portion. The words "a motion expressing non-confidence in the President shall be made only in accordance with the procedure laid down below" in Section 87A (1) can and do refer only to the calling of the meeting and holding of the meeting and not to acts which have to be performed subsequent to the meeting.

The act of sending a copy of the minutes of the meeting along with a copy of the motion and the result of voting thereon after the termination of the meeting is not par of the making of a "motion expressing non-confidence in the President.

13. Section 72 of the Act has been drafted on the same pattern as Section 87A of the U.P. Municipalities Act. The language of Sub-section (1) of Section 72 lends a mandatory character to the entire procedure to be followed by the prescribed authority to call and convene a meeting for considering a vote of non-confidence in Chairman or Vice-Chairman because the mandate of the legislature is that a motion expressing non-confidence in the Chairman or Vice-Chairman shall be made only in accordance with the procedure laid down in this section. The word "only" is an indicator of the intention of the legislature. I am in respectful agreement which the observations of the learned Judges in the Full Bench

authority of the Allahabad High Court referred to above that the procedure which has been laid down to call and convene a meeting for considering the vote of non-confidence is mandatory.

14. It was next argued by Mr. Lodha that "clear days" have been defined in Section 3(6) of the Act and this definition makes it abundantly clear that while computing seven clear days for the purpose of Section 72(3) of the Act only one terminal day either the date of despatch of notice or the date of the meeting shall be excluded.

15. The expression "clear days" is defined as follows.

Section 3(6) "clear days," used with reference to the period of notice under any provision of this Act, includes Sundays and other holidays but does not include the date of receipt of such notice by the person to whom it is addressed or the date specified in the notice.

16. In the instant case, the date of the receipt of notice shall, according to Mr. Lodha, be taken as the date of the despatch of the notice u/s 72 of the Act. His contention is that either the date of the despatch of the notice or the date specified in the notice, i.e. the date of meeting shall be excluded while counting seven days for the purposes of Section 72(3) of the Act. Mr. Lodha wants us to read the word "or" as used in the definition of "clear days" to mean that only one day of the two terminal days shall be excluded to count seven clear days to intervene between the despatch of the notice and the holding of the meeting. It appears that the use of the word "or" has provided a handle to Mr. Lodha to advance this argument but the interpretation that he wants to give to this word "or" is against all principles of English grammar. The word "or" has been used by the Legislature after the negative expression which requires not to include the date of the receipt of the notice (in this case the date of despatch of notice) or the date of the meeting which precedes it, then it is invariably read as "nor. The definition of clear days lays down that clear days would not include the date or receipt (date of despatch) or the date as specified in the notice (meaning thereby the date of meeting) which expression means that neither the date of the receipt of notice nor shall the date mentioned therein be included while calculating the clear days" to intervene between the two crucial dates. When the legislature uses the language "that it does not include this or that" it means that both "this" or "that" shall have to be excluded therefrom. The use of the word "or" in the definition of "clear days", in my opinion, does not in any manner suggest that only one days namely, the day of the receipt of the notice or the day which has been specified therein is to be excluded. In Sub-section (3) of Section 72 of the Act, the legislature has used the expression "not less than seven clear days" to intervene between the date of despatch of the notice and the date of meeting which clearly means that seven complete days must intervene between these two crucial dates, i.e. the date of the despatch of notice and the date of the meeting. Both these expressions "not less than" and "clear days" go to suggest that full seven days must intervene between the date of the despatch and the

date of the meeting If the legislature had not used the expression "clear days" in Section 72(3) of the Act even then the expression "not less than seven days" would have led us to the same meaning.

17. The Supreme Court in *Jai Charan Lal Vs. State of U.P. and Others*, had specifically laid down that where the expression used is not less than so many days then both the terminal days shall have to be excluded. When the legislature uses "not less than so many days" then, according to Halsbury's Laws 6f England. Vol, 37, both the terminal days are to be excluded (See Article 167, Halsbury's Laws of England, Volume 37, page 95) which reads as follows:

In so many statutes, statutory rules and bye-laws the intention to exclude both days and to give the person affected a clear interval of time between the two is put beyond all doubt by the insertion of words such as "clear days, or "not less than" so many days, or so many days "at least.

18. Maxwell in his book on the Interpretation of Statutes, 9th Edition at page 350 has stated:

Again, when so many "clear days" or so many days "at least", are given to do an act, or not less than so many days are to intervene, both the terminal days are excluded from the computation.

19. Mr. Lodha relying on the authorities of this Court in *Bhagwan Dass and Anr. v. Collector, Bikaner and Ors.* ILR 1962 Raj. 778. *Jhamanlal v. State of Rajasthan* 1964 RLW 599 and *Preman and Ors. v. Ram Niwas and Ors.* ILR 1961 (11) Raj. 924 has argued that there appears to be no public policy behind the provision requiring an interval of seven clear days to elapse between the date of the despatch of the notice and the date of the meeting and, therefore, this provision should not be taken to be a mandatory provision and should not be allowed to vitiate the proceedings of the meeting held to consider the vote of non-confidence. In my opinion, the views expressed by the learned Judges in the aforesaid authorities cannot have a bearing on the issue raised in the present case as in those cases a provision analogous to the provision contained in Sub-section (1) of Section 72 of the Act were missing to govern the requirements of a notice. In the present case, Sub-section (1) of Section 72, as is discussed above, lends a different colour to the entire procedure prescribed to summon and convene the meeting for the consideration of the non-confidence motion and, therefore, the above referred decisions of this Court will hardly have any relevance to consider the question that has been raised in the instant case that the procedure to issue notices and to convene the meeting to consider the vote of non-confidence is mandatory and the non-compliance thereof would vitiate the result of the meeting.

20. Supreme Court in *Pratap Singh v. Shri Krishna Gupta and Ors.* AIR 1956 SC 14 has, however, said that the tendency of the Courts towards technicalities should be deprecated and it is the substance that counts and must take precedence over mere form. Their Lordships have further observed that some

rules are vital and go to the root of the matter and, therefore, they should not be broken; others are only directory & a breach of them can be overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues: and when the legislature does not itself state which is which judges must determine the matter and exercising a nice discrimination, sort out one class from the other along broad based, commonsense lines.

21. These general observations of the Supreme Court relied up on by Mr. Lodha, in my opinion, do not go to assist this Court to find out whether the procedure laid down in Section 72 of the Act to call and convene a meeting is of mandatory nature or not. As observed above, this Court has agreed with the views expressed by the Full Bench of the Allahabad Court that the procedure which has been prescribed by the legislature to call and convene the meeting to consider the vote of non-confidence is mandatory. I am constrained to hold that the non-compliance of the procedure in the despatch of notices by the Collector should go to vitiate the result of the meeting.

22. Mr. Lodha has strenuously urged that from the day to day reporting of the activities of the members of the petitioner's group, it is clear that all attempts were made by the petitioner and Shri Manphool Singh who was then a Minister, and tried his level best, to tilt the balance in favour of the ruling party, but inspite of all their efforts they could not succeed to register majority in their favour and, therefore, the petitioner should not be allowed now to take shelter under certain technicalities and should not be allowed to stay in office even though the majority has in unequivocal terms expressed non-confidence in the petitioner. It was also urged by Mr. Lodha that the petitioner has not come with clean hands to this Court and, therefore, he should not be given any protection by this Court. The charge levelled against the petitioner is that he has mentioned in his petition that he came to know of the non-confidence motion only after service of the notice was effected on him on 20th of September, 1971 I find it difficult to accept this averment of the petitioner especially under this circumstance When the non-confidence motion had become the talk of the town as is evident from the paper cuttings produced by the respondents. Mr. Lodha argues that even a child of Ganganagar town knew on the 18th September, 1971, that the hotly contested non-confidence motion Was adopted by the Municipal Council, and according to learned Counsel for the respondents, when the petitioner's group members came to know that it was impossible for them to collect majority they purposely boycotted the meeting and now the petitioner wants to take the advantage of that boycott by saying that he did not know anything about the non-confidence motion being discussed in the meeting of the Council on 18th September, 1971. In this connection, it will be relevant to refer to the documents Annexures R/1, R/3, R/4, R/5, R/6, R/7, R/8, R/13 and Annexure H". From the perusal of these documents, it is crystal clear that all efforts were made by both the sides to create majority, but ultimately the petitioner's party failed to procure majority with a result that the vote of non confidence was adopted against the petitioner by 15 votes. It is not disputed that

the petitioner at that crucial moment was working as a Chairman It is also not denied that a general notice of this important meeting was pasted on the notice board of the Municipal Council by the Collector on 11th September, 1971. The atmosphere of Ganganagar town was surcharged with the activities of the two rival groups as is apparent from the despatches of the newspapers published during that period. In these circumstances, I cannot believe "his averment of the petitioner that he came to know on 20th September, 1971 that a motion of non-confidence was moved against him by the opposite group and that it was adopted on 18th of September. The petitioner has taken the shelter under this falsehood simply because he wanted to challenge the resolution of non-confidence in him on the ground of the non-compliance of the mandatory provisions of Section 72 which are undoubtedly of technical nature.

23. It is clear from the resolution adopted at the meeting of the Municipal Council, Sri Ganganagar held on 18th of September, 1971, that 16 members of the Council voted in favour of the motion of non-confidence against the petitioner. The respondents while filing their reply to the writ petition have filed the affidavits of 18 members of the Council stating that they still do not have any confidence in the petitioner. In such circumstances, I find force in the contention of Mr. Lodha that the petitioner wants to stick to his office through the aid of this Court only on a technical ground that the notice despatched by the Collector was defective as it did not comply with the mandatory requirements of Sub-section (3) of Section 72 of the Act. It is true that when the mandatory provisions of the law have been violated while despatching the notice to hold the meeting on 18th of September, 1971, it would go to vitiate the result of the meeting, but I cannot forget that I am entertaining the petition of the petitioner in the exercise of a jurisdiction which is entirely discretionary. The traditions of democracy require that a person who wants to Hold the elected office of a local body must give due respect to the wishes of the majority of the members of that body and if he has lost the confidence of that majority then he should not try to stay in that office even for a moment and should not come forward to seek the protection of this Court under the extraordinary jurisdiction conferred by Article 226 of the Constitution. This jurisdiction is of an equitable nature and in equity if a petitioner does not come with clean hands he is not entitled to seek any remedy from the Court. The petitioner has undoubtedly spoken a lie when he mentioned that he did not know anything about the non-confidence motion till he received on 20th September, 1971, the notice of the Collector through the post office to convene a meeting of the Municipal Council on 18th of September, 1971. It is not the case of the petitioner that he and the members of his group could not attend the meeting because they did not know that the meeting was to be convened for considering the motion of non-confidence in the petitioner on the 18th of September, 1971, In such circumstances, no prejudice of any kind can be said to have been caused for the petitioner and he cannot say that, but for this defect in the notices he could have established in the meeting that the majority was still with him. In order to create healthy conventions for the functioning of democracy

in the country, it is necessary that this Court should be slow to help the person who attempts to stick to his elected office even after the unequivocal declaration of the majority that he had lost their confidence. The court should show its reluctance to allow such persons to invoke this extraordinary jurisdiction. In such circumstances I refuse to interfere even though I am of opinion that in despatching the notices under Sub-section (3) of Section 72 of the Act the Collector did not comply with the mandatory requirements of that provision of the law.

24. The petition is, therefore, dismissed. No order as to costs.