
(1967) 09 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 169 of 1967

Raghuvans Prasad

APPELLANT

Vs

Mahendra Singh and Others

RESPONDENT

Date of Decision : 18-09-1967

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 43(2), 43(3), 43(4)

Citation : (1968) JLJ 125 : (1967) MPLJ 941

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

Bench : Division Bench

Advocate : B.K. Tankha, for the Appellant; P.C. Pathak, R.K. Shrivastava and K.K. Dubey, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

The Petitioner in this case, who is a Councilor of Rewa Municipal Council, challenges the legality of the election of the non-applicant No. 1 Shri Mahendra Singh as the President and of the non-applicants Nos. 2 and 3 as the Vice-Presidents of the Council. He seeks a declaration that the election is invalid and prays that it be quashed by the issue of a writ of certiorari and the Respondents be restrained from giving effect to the elections.

Before stating the facts and dealing with the contentions advanced on behalf of the parties it is necessary to refer to the material provisions of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act). Sub-sections (2), (3) and (4) of Section 43 contain provisions for the election of the President and the Vice-Presidents. They run as follows:

43 (2) (a) After every general election the Council shall elect the President and the Vice-Presidents at its first meeting held under Sub-section (2) of Section 55 and the President and the Vice-Presidents so elected shall hold office for a period of two years from the date on which they enter upon their offices.

(b) On the expiry of the term of the office of the President and the Vice-President elected under Clause (a), the Council shall, at a meeting convened for the purpose within one month thereof, elect new President and Vice-Presidents who shall hold office for the unexpired term of the Council.

(c) The provisions of Sub-sections (2) and (3) of Section 65 shall, so far as may be, apply to the meeting under Clause (b), as they apply to the first meeting of a Council;

Provided that the President and the Vice-Presidents shall continue in office until their successors enter upon their respective offices in accordance with the provisions of this Act.

(3) If the Council fails to elect a President or Vice-President in accordance with this section, the State Government may, by order, direct the Council to elect the President or Vice-Presidents within the period specified therein and on failure of the Council to do so appoint any person eligible under Sub-section (1) to fill the vacancy.

(4) The State Government may make rules for regulating the mode and time of election of the President and the Vice-Presidents.

Section 45 lays down that every election of the President or Vice-President shall be notified in the Gazette and persons elected shall enter upon their respective offices from the date of the notification. The provisions of Sub-sections (2) and (3) of Section 55 referred to in Clause (c) of Sub-section (2) of Section 43 are as follows:

56 (2). The Collector, in the case of Class I and Class II Municipalities and the Sub-Divisional Officer, in the case of Class III and Class IV Municipalities shall call the first meeting of the Council soon after the election and selection of Councilors, to elect the President and Vice-Presidents.

(3) The first meeting of the Council called under Sub-section (2), shall be presided over by the Collector or the Sub-Divisional Officer, as the case may be, for the purpose of conducting the election of the President and the Vice-Presidents and all provisions contained in this Chapter shall, regarding meetings of the Council as far as may be, apply in respect of the said meeting:

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Section 66, which is concerned with the convening of meetings, is in the following terms:

50. (1) A meeting of the Council shall be either ordinary or special.

(2) The date of every meeting, except the meeting referred to in Section 47 and

in Sub-section (2) of Section 56, shall be fixed by the President, or in the event of his being incapable of acting, by the Vice-President, and in the like event in his case, by the Chief Municipal Officer.

(3) Notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be dispatched to every Councilor and exhibited at the Municipal Officer seven clear days before an ordinary meeting and three clear days before a special meeting.

(4) No business other than that specified in the notice relating thereto shall be transacted at a meeting.

A special meeting is one which is convened by the President or the Vice-President in accordance with Section 57. The State Government has also framed rules u/s 43(4) intitled the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962. A reference to the relevant rules will be made later.

The election under challenge was held on the expiry of the term of the office of the persons elected in 1965 as the President and Vice-Presidents of the Council. These elections were notified in the Gazette dated 5th March 1965 in accordance with Section 45. On 30th March 1967 the Collector directed the issue of a notice convening a meeting of the Council on 8th April 1967 for the election of the President and two Vice-Presidents. According to the applicant, the notice of the meeting was dispatched on 31st March 1967 and served on him on 2nd April 1967. That notice specified the time and place for the receipt of nomination papers, the date for scrutiny of nomination papers and the date of withdrawal of candidature. The nomination papers were invited on 7th April 1967 between the hours 11 in the forenoon and 4 in the afternoon; the scrutiny of nominations was fixed for 7th April 1967 at 4 p. m. At the election held on 8th April 1967 the Respondent No. 10 Shri Balbadhra Prasad also voted as a Councillor. The Respondent No. 1 Shri Mahendra Singh and the Respondent No. 5 Shri Madhusudan Prasad, who contested for the office of the President, each secured 15 votes. As there was equality of votes, the authority presiding at the meeting decided by lot the result of the election for the office of the President. The lot turned in favour of the Respondent No. 1 who was accordingly declared as elected.

Shri Tankha, Learned Counsel appearing for the Petitioner, assailed the validity of the election first on the ground that the two years' term of the office of the persons elected as President and Vice-Presidents in 1965 expired on 4th March 1967 as their elections were notified in the Gazette u/s 45 on 5th March 1965; and that, as provided by Section 43(2)(b), a meeting for the election of the new President and Vice-Presidents should have been convened within one month of 4th March 1967; this was not done. It was said that the meeting for the election of the President and Vice-Presidents, according to the dates specified in the notice issued by the Collector, commenced on 7th April 1967, the date fixed for the receipt of the nomination papers; that thus the meeting convened for the

election of the aforesaid, office-bearers was beyond the time prescribed by Section 43(2)(b) and was, therefore, illegal. Learned Counsel proceeded to say that the time-limit fixed by Section 43(2)(b) for convening of a meeting for the election of the President and the Vice-Presidents was mandatory in character and the Respondents Nos. 1, 2 and 3, who had been elected to the three offices at an invalid meeting, could not in any sense be regarded as elected or appointed pursuant to the provisions contained in Sub-section (3) of Section 43.

It is no doubt true that the two years' term of office of persons elected as President and Vice-Presidents in 1965 expired on 4th March 1967 as their elections were notified u/s 45 in the Gazette dated 5th March 1965. It cannot also be disputed that u/s 43(2)(b) a meeting for the purpose of electing new President and Vice-Presidents should have been held within one month of the expiry of the term of the outgoing President and Vice-Presidents. The meeting which was convened by the Collector was plainly not convened within one month of 4th March 1967. But, for that reason, the election of the Respondents Nos. 1, 2 and 3 at the meeting convened cannot be held to be invalid. Section 43(2)(b) no doubt imposes a duty on the Municipal Council to elect new President and Vice-Presidents at a meeting convened for the purpose within one month of the expiry of the term of the outgoing President and Vice-Presidents. For enabling the Council to fulfill this duty, a meeting must be convened within the prescribed time. Now, the power to call a meeting for the purpose of electing the President and Vice-Presidents has not been given to the Municipal Council; but it has been given to the Collector in the case of Class I and Class II Municipalities and to the Sub-Divisional Officer in the case of Class III and Class IV Municipalities as is clear from Section 43(2)(b) read with Section 55(2). If the Collector fails to call a meeting within the time-limit fixed by Section 43(2)(b), then the Council is not in a position to discharge the obligation imposed on it by Section 43(2)(b) of electing new President and Vice-Presidents. That obligation has been imposed on the condition that a meeting for the purpose of electing new President and Vice-Presidents is called within the prescribed time. Therefore, even if the time-limit condition is regarded as imperative, its non-compliance can be excused when the authority competent to convene a meeting for the purpose of electing new President and Vice-Presidents does not convene the meeting within the prescribed time. It is well settled that if a statute imposes a duty on a person or a body to be carried out when certain formalities or requirements are fulfilled and if the performance of those formalities or requirements is rendered impossible by circumstances over which the person or body on whom the duty has been imposed had no control, then the non-compliance with the formalities or requirements can be excused. This principle has been stated in Maxwell on Interpretation of Statutes, 11th Edition, at pages 372 and 373 thus:

A section may be imperative as regards the voluntary action of parties, but not so where such events happen that its provision cannot be attended to.

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Enactments which impose duties on conditions are, when these are not conditions precedent to the exercise of a jurisdiction, subject to the maxim that *lex non cogit ad impossibilia aut inutilia*. They are understood as dispensing with the performance of what is prescribed when performance of it is idle or impossible.

So also in Craies on Statute Law, 6th Edition, it has been stated at page 268:

Under certain circumstances compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, *Lex non cogit ad impossibilia*, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control,...

On the application of these principles, it must be held that when, in the present case, the Collector convened a meeting beyond the time prescribed by Section 43(2)(b), then the election by the Council of the President or Vice-Presidents at such a meeting is not rendered invalid. In those circumstances, the time-limit condition prescribed by Section 43(2)(b) cannot be considered as being indispensable. It must be noted that Sub-section (3) of Section 43 does not come into play if the competent authority fails to convene a meeting for the purpose of electing new President and Vice-Presidents within the time prescribed by Section 43(2)(b). Under Sub-section (3) it is only when the Council fails to elect a President or Vice-President in accordance with Section 43(2)(b) that the State Government can direct the Council to elect the President or Vice-Presidents within the time specified therein. If the Council again fails to elect the office-bearers, then the Government has the power to appoint any person eligible to fill the vacancy in the office of the President and the Vice-Presidents. When no meeting is called by the competent authority within the time as laid down by Section 43(2)(b), then it cannot be said that there has been a failure on the part of the Council to elect a President or Vice-President. The failure of the Council spoken of in Sub-section (3) is the failure which occurs at a meeting called by the competent authority, no matter whether the meeting is convened within the time-limit fixed by Section 43(2)(b) or beyond it. Sub-section (3) of Section 43 cannot, therefore, be resorted to for supporting the validity of the election held at the meeting convened in the present case by the Collector. Its validity rests on the position that it is not within the control of the Municipal Council to convene a meeting for the purpose of electing new President or Vice-Presidents; that being so, if a meeting is convened by the competent authority beyond the prescribed time and the Council elects new President and Vice-Presidents at such a meeting, then the non-compliance of the time-limit for the holding of the meeting can be said to have been dispensed with.

The second ground on which Learned Counsel for the Petitioner attacked the validity of the election is that u/s 43(2)(c) read with Section 52(3) and Section 56(3) of the Act, seven clear days" notice of the meeting should have been given to every Councilor and that this provision about seven clear days" notice was

mandatory. It was said that according to the notice given by the Collector, the meeting for the purpose of electing the office-bearers commenced on 7th April 1967, the date fixed for the receipt of the nomination papers; that this notice was served on the Petitioner on 2nd April 1967; and that consequently the Petitioner did not have seven clear days" notice of the meeting. Learned Counsel referred us to *Rambharoselal v. The State* 1956 NLJ 124 : I L R 1955 Nag. 1 : AIR 1955 Nag 35 for the proposition that in the computation of seven clear days, both the terminal days should be excluded.

This contention must be given effect to. By virtue of Section 43(2)(c), the provisions of Sub-section (3) of Section 55 have been made applicable to a meeting under Clause (b) of Section 43(2). The effect of Section 55(3) read with Section 43(2)(c) is to apply all provisions contained in Chapter III regarding meetings of the Council to a meeting held u/s 43(2)(b). Sub-section (3) of Section 56, which is contained in Chapter III, prescribes that notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be dispatched to every Councilor seven dear days before an ordinary meeting. A meeting convened u/s 43(2)(b) is an ordinary meeting and not a special meeting within the meaning of Section 57.

In the present case, the notices of the meeting which the Collector convened, were dispatched on 31st March 1967. In the return filed by the Collector, there is no categorical denial of the averment made by the Petitioner that the notices were dispatched on 31st March 1967. All that has been said on this point in paragraph 8 of the return is that the notices were dispatched within the period prescribed. The election meeting clearly commenced on 7th April 1967, the date fixed for the filing of the nomination papers and their scrutiny, for it was on that date that the process of election commenced. See *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . The provision about seven clear days" notice for the meeting is a mandatory one and in the computation of that period both the terminal days have to be excluded. See *Rambharoselal v. The State* (supra). It is thus manifest that the mandatory provision contained in Section 56(3) about seven clear days" notice of the meeting was not complied with. It is true that Rule 3 of the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962, which provides that the presiding authority shall specify in the notice of the meeting the time and place so fixed, is silent about the period of notice for the meeting at which the election is to be held. But this rule does not in any way override Section 56(3). It has to be read with Section 56(3) and, so read, it necessarily follows that the presiding authority must dispatch to every Councilor notice of meeting seven clear days before the meeting. As this was not done in the present case, the election meeting which commenced on 7th April 1967 was invalid and so also was the election held at that meeting which continued even on 8th April 1967, the election of the Respondents Nos. 1, 2 and 3 must, therefore, be declared to be invalid on this ground.

The further submission which Learned Counsel for the Petitioner made was that the Respondent No. 10 Shri Balbadhra Prasad alias Rajjan Shrivastava tendered his resignation on 18th November 1966 and from that date he ceased to be a Councilor and was, therefore, incompetent to participate in the election held on 7th and 8th April 1967. There is no substance in this contention. u/s 40(1) of the Act it is provided that any Councilor may resign his office by tendering his resignation, in writing, to the President, and his seat shall thereupon become vacant. Here, what happened was that on 18th November 1966 a communication purporting to bear the signature of the Respondent No. 10 was received by the Chief Municipal Officer. Therein the writer said that he was resigning his office. On 19th November 1966 the then President while accepting the resignation observed:

With great regret and profound sorrow and having failed in all possible efforts to persuade him to withdraw his resignation, I have no alternative but to accept the resign-nation of Shri Rajjan Shrivastava, Councilor Ward No. 19 of Municipal Council, Reba. Therefore I accept the resignation. He may be intimated accordingly. The Collector should also be informed of this vacancy for non-applicant u/s 40 (2) of the Municipal Act.

When the Respondent No. 10 received the communication informing him that resignation had, been accepted by the President, he wrote a letter to the President on 21st November 1966 expressing his surprise at the intimation. He said; that he had never tendered his resignation and the question of accepting any resignation of his did not arise. The Collector did not notify the resignation u/s 40 (2) as, in his opinion, there was no valid resignation.

It is not necessary to examine whether the letter which the Chief Municipal Officer received on 18th November 1966 really bore, the signature of the Respondent No. 10 and whether the statement made by the then President on 19th November 1966 that he had failed in his attempts to persuade the Respondent No. 10 to withdraw his resignation is correct, or whether the true position was as stated in the Respondent No. 10's letter dated 21st November 1966 addressed to the President. Even if it be assumed that the communication which the Chief Municipal Officer received was really from the Respondent No. 10 about his resignation from the office of a Councilor, that communication cannot be regarded as a valid resignation of the Respondent No. 10. Section 40 (1) requires a Councilor desiring to resign his office to do so "by tendering his resignation, in writing, to the President". Now, "to tender" means "to make a formal offer". A Councilor may offer his resignation in writing to the President personally or he may convey that offer to the President through post or by a messenger. Where the writing containing the resignation is sent by post or by a messenger, it should at least be addressed to the President in order to make it a valid resignation u/s 40 (1). In the present case, the communication dated 18th November 1966 relied on by the Petitioner as containing the Respondent No. 10's resignation was neither addressed to the President nor delivered to him in

person. It was addressed to the Chief Municipal Officer and sent to him. It cannot, therefore, be held that there was a valid tender of resignation in writing to the President.

Learned Government Advocate appearing for the Respondent No. 4 urged that the Petitioner was not entitled to any relief in this petition as no election under the Act could be called into question except by a petition presented in accordance with Section 20. This contention cannot be accepted. u/s 20(2) of the Act, an election petition can be presented on one or more of the grounds specified in Section 22 by any candidate at such election or selection; or, in the case of an election of a Councilor, by any voter of the ward concerned, or in the case of a selection of a Councilor, by any Councilor. The election under challenge is that of the President and of the Vice-Presidents. The Petitioner himself was not a candidate at this election. He was, therefore, not entitled to file any election petition questioning the election of the Respondents Nos. 1, 2 and 3. That being so, this petition cannot be thrown out on the ground that the applicant should have filed an election petition calling into question the election of the Respondents Nos. 1, 2 and 3.

For all these reasons, this petition is allowed. The proceedings of the election meetings held on 7th and 8th April 1967 are quashed and the election of the Respondent No. 1 Shri Mahendra Singh as President and of the Respondents Nos. 2 and 3 Shri Ali Akhtar Husani and Shri Mahadeo Pradhan as Vice-Presidents is also declared to be invalid and quashed. The Petitioner shall have costs of this application from the Respondents Nos. 1, 2, 3 and 4. Counsel's fee is fixed at Rs. 150, the burden of which shall be shared equally by the Respondents Nos. 1, 2, 3 and 4. The outstanding amount of the security deposit shall be refunded to the Petitioner.