
(1996) 03 MP CK 0100
In the Madhya Pradesh High Court
Case No : Writ Petition No. 751 of 1995 (I)

Rakesh Jhalani

APPELLANT

Vs

Ayukta Nagar Palika Nigam, Ratlam

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 46, 47(4)

Citation : (1997) 1 MPJR 212

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : S.L. Bagdi, for the Appellant; A.M. Mathur, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.

The petitioner seeks quashing of resolution dated 5.6.95, whereby no confidence motion removing him from the office of the Chairman of Public Works Committee (hereinafter referred to as the Committee) of Ratlam Municipal Corporation has been passed.

Facts of the case lay in a narrow compass. According to the petitioner, he was elected as a councilor of Ratlam Municipal Corporation (hereinafter referred to as the Corporation) and was also elected as a member of the Committee as also the Chairman of the said Committee. By the impugned resolution dated 3.6.95 he has been removed from the office of the Chairman of the Committee. The petitioner submits that under the scheme of the Act, there is no provision for passing any no confidence motion against a Chairman of the Committee.

Shri Bagdi learned counsel for the petitioner submits that filling of the post of a Chairman of the Committee being governed by the provisions of M.P. Municipal Corporation Act, 1956 (hereinafter referred to as the Act) and no provisions having been made for passing a no confidence motion against the Chairman of the Committee, the impugned motion removing petitioner from the office of the

Chairman is clearly illegal and completely without jurisdiction.

Shri Mathur appearing on behalf of the respondents submits that power to elect a Chairman given under the provision of the Act shall imply power to remove him also by passing a no confidence motion. S.46 of the Act inter alias provides for constitution of various posts including the post of Public Works Committee. S.46 of the Act reads as under :-

46. Special Consultative Committees, their term, election and filling of casual vacancies:

(1) there shall be seven special consultative Committees, each consisting of not less than 5 and not more than 9 Councilors, namely :

(a) a public works committee to which may be referred for enquiry and report, or for opinion, any matter connected with roads, buildings, lighting public parks and gardens leases and acquisition of property ;

(2) the terms of office of every committee mentioned in sub-sec. (1) shall be one year.

(3) At the first meeting in every year the Corporation shall elect from amongst its councilors members to serve on the Committee in Subsection (1).

(4) If any casual vacancy occurs in the office of a member of committee appointed under Sub-section (1) the Corporation shall, as soon as may be after the occurrence of such vacancy appoint one of its members to fill the vacancy and every councilors so appointed shall continue in office for unexpired terms of his predecessor.

A plain reading of the aforesaid provision makes it clear that at the first meeting in every year the Corporation shall elect from among its councilors members to serve on the Committees mentioned in sub-sec. (1) of S.46 Sec. 46 (2) provides for terms of the office every committee S.47 (4) of the Act provides for:-

Every committee appointed under S.46 or 48 shall at first meeting elect one of its members to be its Chairman.

It is the case of the petitioner that he being councilors elected to the committee of the Corporation as also its chairman and the term of the committee being fixed and there being no provision in the scheme of the Act for passing of a no confidence motion against Chairmen of the committee, the impugned action is clearly illegal and completely without jurisdiction. In support of the aforesaid submission, reliance has been placed on a decision of Apex Court in the case of Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, . My attention has been drawn to paragraph 2 of the decision which read as follows:-

Democracy is a concept, a political philosophy an ideal practiced by many nations culturally advanced and politically nature by resorting a governance by representatives of the people elected directly or indirectly. But electing

representatives to govern is neither a "Fundamental right" nor a "common law" but a special right created by the statutes, or a "political right" or "vested right". Concepts familiar to common law and equity must remain stranger to election law unless statutorily recognised. Right to remove an elected representative too, must stem out of to statute as "in the absence of a constitutional restriction it is within the power of a legislature to enact a law for the recall of officers, (emphasis supplied)

As stated earlier, Shri Mathur very fairly states that although no specific provision has been made in the Act, for removal of the Chairman of the committee, but he submits that the power to elect shall include power to remove and that is possible only by way of passing no confidence motion. My attention has been drawn to a decision of Delhi High Court in the case of Bar Council of Delhi Vs. Bar Council of India, . Particular has been drawn to following passage of the aforesaid decision on (Para 11) which reads as under:-

Quite irrespective of the question whether the office of the Chairman of a State Bar Council is held at pleasure or for the same period for which the Bar council is elected, the common law relating to the removal of the holder of an office is that the body which has the authority to elect its chairman has the inherent and implied power to remove the chairman.

My attention has been further drawn to following passage of the said decision which reads as under:-

The view expressed by the majority of the Bar Council of India that a rule cannot be made under S. 15 of (he Advocates Act for the removal of the Chairman of the State Bar Council leads to the resell that once elected such chairman is irremovable. He would go out of office only when the State Bar Council does at the expiry of its statutory tenure. Such a result can be justified only if the common law stated above has been changed by the statute. The view of the Bar Council of India is, on the other hand, based on the very silence of the the statute on this point. We arc of the opinion that such silence indicates that common law regarding the removal of the holder of an office remains unchanged.

(Emphasis supplied)

Shri Mathur has also drawn my attention to a decision of Delhi High Court in the case of Ghanshyam Singh Vs. Union of India and Others, . Relying on the provision of General Clauses Act, the High Court held as under:-

The nomination of a person as Director by the Government cannot be construed as an "employment" under the Government. Even if the nomination is to be equated with the word "appointment" it cannot be held that it is an "employment" under the Government. The scheme of the Act and the Rules / bye-laws negatives such interpretation. Nomination of any official or non-official on the Board of Directors of a Multi-State Cooperative Society, is at the will of the Government. The Government has an inherent power to remake the same as

per S. 16 of the General Clauses Act.

The Delhi High Court in the case of Bar Council of Delhi v. Bar Council of India (supra) found that power of recall is permissible under common law and the Ghanshyam Singh's case (supra) the Delhi High Court took the aid of provisions of General Clauses Act.

Another decision on which the learned counsel for the respondents placed reliance is the case of Kuttor Vengayil Rayarappan Nayanar V. Kuttor Vengayil Valia Mahdevi Amma (AIR 1937 F.C. 140) wherein after considering the provisions of S. 15 of the General Clauses Act it has been held under :-

S. 16 has codified the well understood rule of general law that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, the power; the authority to call an officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of this functions or for other causes shown.

Thus, in the case relied on by learned counsel for the respondents power to remove was inferred by invoking the principal of common law as also from the provision of General Clauses Act. In my opinion, so far as elected bodies are concerned, the controversy has been set at rest by the decision of the Apex Court in the case of Mohanlal Tripathi (supra). In the words of Supreme Court right to remove an elected representative too, must stem out of the statute as "in the absence of constitutional restriction." It is within the power of legislature to enact a law for the recall of officers.

In view of authoritative pronouncement of the Supreme Court in the case of Mohanlal Tripathi (supra) I have not hesitation in holding that there being no provision for passing any no confidence motion against a Chairman of the Committee, the impugned resolution is clearly illegal and completely without jurisdiction.

In the result, the impugned resolution dated 3.6.95 is quashed. In the facts and circumstances of the case, however, there shall be no order as to costs.