

(1965) 10 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 361 of 1965

Ramabai and Another

APPELLANT

Vs

The Sub-Divisional Officer and Others

RESPONDENT

Date of Decision : 20-10-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 19, 20(2), 43, 43(1), 43(2)

Citation : AIR 1966 MP 151 : (1968) ILR (MP) 228 : (1966) JLJ 167 : (1966) 11 MPLJ 72

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.J. Bhawe, Government Advocate for Nos. 1 and 2 and R.S. Dabir, for Nos. 3, 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

In this application under Article 226 of the Constitution the question raised is as regards the validity of the election of the respondents Ramniklal Trivedi, Vasantrao Kelkar and Kodumal as the President and two Vice-Presidents respectively of the Balaghat Municipal Council. The petitioners, one of whom was elected to the Council at the General Election and the other was selected as a councillor u/s 19 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act), pray for the issue of a writ of certiorari for quashing the proceedings of the meeting at which the three respondents were elected as the President and the Vice-Presidents, and a writ in the nature of quo warranto against them for ousting them from the office they hold.

By Section 3(8) of the Act a council has been defined as meaning "Municipal Council constituted by or under the Act". The preceding clause of Section 3(8) says that "Councillor" means a person who is legally a member of a Council. Section 19(1) of the Act lays down that except as otherwise provided in the Act

each Council shall consist of (a) elected Councillors and (b) selected Councillors. The selection of the prescribed number of Councillors has to be done at a meeting of the elected Councillors convened after the General Election as laid down in Section 55(1) of the Act which requires that within one month of every General Election a meeting of the elected Councillors for the purpose of selecting Councillors u/s 19 shall be called by the Chief Municipal Officer with the prior approval of the authority prescribed u/s 32. Section 43 deals with the election of the President and two Vice-Presidents. Subsections (1) and (2) (a) of Section 43 run as follows:

"43 (1) A Council shall elect-

(a) a President from its members or from other persons residing in the Municipality possessing the qualifications of a candidate for election u/s 34 and not disqualified u/s 35 or any other provision of this Act;

(b) two Vice-Presidents to be designated as Senior Vice-President and Junior Vice-President from amongst its members: Provided that no person shall be eligible for being elected as a President or Vice-President of a Council if he holds such or similar office in any other local authority.

(2) (a) After every general election the Council shall elect the President and the Vice-Presidents at its first meeting held under Subsection (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.

* * * *

Section 55(2) lays down that 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 Councillors, to elect the President and Vice-Presidents. Section 45, which is very material here, is in the following terms:

"45. Every election or selection of a Councillor and every election or appointment of the President or Vice-President of a Council shall be notified in the Gazette by the prescribed authority and such persons shall enter upon their respective offices from the date of such notification:

"Provided that notwithstanding that no such notification has been published a Councillor shall, for the purpose of selection of Councillors u/s 19 and election of a President or Vice-President u/s 43 be deemed to have entered on his office from the date of his election."

The selection of Councillors u/s 19 to the Balaghat Municipal Council was held on 24th July 1965. According to the return filed on behalf of the respondents Nos. 1 and 2, the notification about selection of certain persons as Councillors was sent to the Government Press on 27th July 1965 for publication in the Gazette, but the notification was not published in the Gazette even till 17th August 1965 when

the meeting of the Council at which the President and two Vice-Presidents were elected was held. At the meeting called for the election of the President and Vice-Presidents an objection was raised by one of the Councillors that the selected members could not participate in the election of the President and two Vice-Presidents by nominating or seconding a candidate for the offices, or by voting in the election, as their names had not been notified and consequently they could not be regarded as having entered upon their offices as Councillors. The Officer, who presided at the meeting called for the election of the President and two Vice-Presidents, upheld this objection and disallowed the selected Councillors from proposing or seconding a candidate for election as President or Vice-President or from voting at the election. He, however, held that selected Councillor could himself contest the election even though his selection as a Councillor had not been notified as required by Section 45. Accordingly, the respondents Nos. 3, 4 and 5 were elected as the President and Vice-Presidents on the basis of nominations made or seconded by the elected Councillors and on the votes cast only by the elected Councillors.

The petitioners contend that under the Act the right of electing the President and Vice-Presidents has been given to the Municipal Council consisting of elected Councillors and selected Councillors and not to elected Councillors alone; that, therefore, selected Councillors were entitled to participate in the election of the President and two Vice-Presidents even though their selection had not been notified in the Gazette as required by the substantive part of Section 45; and that the proviso to Section 45 itself permitted them to participate in the election notwithstanding the fact that no notification about their selection had been published in the Gazette.

In our judgment, this contention must be given effect to in part. That the election of the President and Vice-Presidents of a Municipal Council has to be by the elected and selected Councillors is plain enough from Sections 19(1), 43(1) and (2) and 55(2) of the Act. According to Section 19(1) each Council consists of elected Councillors and selected Councillors. A person selected as a Councillor is legally as much a member of the Council as a person elected as a Councillor. Now, Section 43(1) and (2) both say that the Council shall elect a President and two Vice-Presidents from its members or from persons residing in the Municipality possessing the requisite qualifications at its first meeting held u/s 55(2). As a Council consists of both the elected and selected Councillors, Section 43(1) and (2) clearly mean that the President and the Vice-Presidents are to be elected by the elected and selected Councillors. This conclusion is reinforced by Section 55(2) which provides that the authority prescribed therein "shall call the first meeting of the Council soon after the election and selection of Councillors, to elect the President and Vice-Presidents". The meeting spoken of by Sub-section (2) of Section 55 is to be called after the election and selection of Councillors for the purpose of electing the President and Vice-Presidents. Thus, Subsection (2) of Section 55 makes it abundantly plain that the President and Vice-Presidents have to be elected by the elected and selected Councillors. There can, therefore,

be no doubt on reading Sections 19 (1), 43 (1) and (2) and 55(2) together that the selected Councillors have a right to participate in the election of the President and the Vice-Presidents.

Now, the substantive provision of Section 45 no doubt, "inter alia" says that every election or selection of a Councillor shall be notified in the Gazette and the Councillors shall enter upon their offices from the date of the notification. Unless, therefore a person's election or selection as a Councillor has been notified, he cannot exercise the rights and privileges of a Councillor under the Act. This is not disputed. The controversy, however, centres round the effect of the proviso to Section 45 which says that notwithstanding that no such notification has been published a Councillor shall, for the purpose of selection of Councillors, u/s 19 and election of a President or Vice-President "be deemed to have entered on his office from the date of his "election." (Underlining (here into " ") is ours).

Shri Dharmadhikari, learned counsel for the petitioners, argued that the word "Councillor" as used in the proviso meant an elected as well as a selected Councillor and the expression "from the date of his election" occurring in the proviso should be construed in a wide sense so as to mean "from the date of his election or selection" and, so construed, the proviso meant that an elected Councillor could participate in the selection of Councillors and the selected and elected Councillor could participate in the election of the President or Vice-President notwithstanding the fact that no notification with regard to him had been issued as required by the substantive part of Section 45. Learned counsel said that there was no reason or principle for excluding the selected Councillor from the purview of the proviso.

On the other hand, it was submitted by Shri Dabir, learned counsel appearing for the respondents Nos. 3, 4 and 5, that though the word "Councillor" meant an elected or a selected Councillor, the word had been used in the proviso as meaning only an elected Councillor as indicated by the reference to Section 19 in the proviso and the use of the words "from the date of his election" occurring at the end of the proviso. It was said that there was no ambiguity of any kind in the proviso and there was no justification whatsoever for reading the expression "from, the date of his election" as meaning "from the date of his election or selection" when in the Act itself the words "election" and "selection" have been used differently, one in connection with an elected Councillor and another in connection with a selected Councillor. Learned counsel for the respondents further said that the proviso enabled the election of the President and Vice-Presidents to be held only by the elected Councillors in the event of there being no notification about the selection of certain persons as Councillors.

In our opinion, the plain meaning of the proviso is that an elected Councillor shall, for the purpose of selection of Councillors and election of the President and Vice-Presidents be deemed to have entered on his office from the date of his election. The word "Councillor"" no doubt means an elected Councillor as well as a selected Councillor. But the words "for the purpose of selection of Councillors u/

s 19" and "from the date of his election" occurring in the proviso unmistakably point to the fact that as used in the proviso the word "Councillor" means only an elected Councillor. It is only an elected Councillor who comes into the picture "for the purpose of selection of Councillors u/s 19" The expression "from the date of his election" has reference to an elected Councillor. In various sections of the Act a distinction has been drawn between a Councillor elected and a Councillor selected. In face of this distinction it would not be proper to read the expression "from the date of his election" as obliterating the distinction between an elected Councillor and a selected Councillor and meaning "from the date of his election or selection". The proviso has been clearly enacted with the intention that the selection of Councillors and the election of the President and the Vice-Presidents should not be held up because of delay in the publication of notification of the election of a Councillor. The reason for not deeming a, selected Councillor as having entered on his office from the date of his selection, even if his selection has not been notified, may not be apparent. But whatever may be the reason, when the language of the proviso is clear it would not be proper to read into the expression "from the date of his election" the additional words "or selection" and widen the scope of the proviso. So to do would be to legislate and not to construe the proviso.

The fact that under the proviso to Section 45 the absence of issue of a notification is no bar to an elected Councillor participating in the election of the President or the Vice-Presidents does not, however, lead to the conclusion that the President or the Vice-Presidents can be elected only by elected Councillors if the names of selected Councillors have not been notified. The proviso in no way cuts down the effect of Sections 43(1) and (2) and 55(2) of the Act which in clear terms say that the President and the Vice-Presidents shall be elected by the Council, that is, by the elected and selected Councillors. The proviso must be read in accord with the provisions contained in Sections 43 (1) and (2) and 55 (2) of the Act and to carry out those provisions. So read, it is clear that if after the election and selection of Councillors the election or selection has not been notified, then the first meeting to be held u/s 65(2) for the election of the President and Vice-Presidents cannot be called unless and until the names of the selected Councillors at least have been notified. The notification of selection of Councillors is necessary for enabling the selected Councillors to exercise their right of participating in the election of the President and the Vice-Presidents which Sections 43(1) and (2) and 55(2) confer on them. The petitioners have, in the alternative, raised in Clause (h) of paragraph 15 of their petition the ground that unless the names of the selected Councillors are notified in the Gazette the Council cannot be said to have been constituted u/s 19 and no election of the President and the Vice-Presidents can be held u/s 55(2) read with Section 43 of the Act. This alternative submission must be accepted.

Shri Dabir, learned counsel for the respondents Nos. 3, 4 and 5, has drawn our attention to the decision of the Supreme Court in *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, . We are unable to

see how that case has any bearing at all on the question of the construction of the proviso or on the view taken by us that the notification of selection of Councillors is essential before the calling of the first meeting of the Council of elected and selected Councillors for the purpose of holding the election of the President and the Vice-Presidents.

It was also contended by Shri Dabir that the petitioners had the remedy of filing an election petition for calling in question the election of the President and the Vice Presidents; and, therefore, in view of the decision of this Court in *Thakur Prasad Vs. V.S. Mehta and Others*, this application should be dismissed. The contention that the petitioners have the remedy of an election petition for assailing the election of the respondents Nos. 3, 4 and 5 as President and Vice-Presidents is not sound. Section 20(1) of the Act no doubt says that no election or selection under the Act shall be called into question except by a petition presented in accordance with provisions of that section. But according to Sub-section (2) of Section 20 a petition challenging the election of a person as President or Vice-President can be filed only by any candidate at the election. The petitioners not being candidates at the presidential or vice-presidential election have not, therefore, the right of filing an election petition.

For these reasons, this petition is allowed. The election of the respondents Nos. 3, 4 and 5 as President and Vice-Presidents respectively of the Balaghat Municipal Council is declared to be invalid and it is further declared that the said respondents have no right to hold the offices to which they were elected. The respondents Nos. 1 and 2 are commanded to notify in the Gazette on or before 20th November 1965 the names of the selected Councillors and thereafter to call as early as possible a meeting of the elected and selected Councillors for the purpose of electing the President and Vice-Presidents.

The petitioners shall have costs of this application from the respondents Nos. 3, 4 and 5. Counsel's fee is fixed at Rs. 100/-The outstanding amount of the security deposit shall be refunded to the petitioners.