
(1990) 08 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 1902 and 1626 of 1990

Ramesh and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-08-1990

Acts Referred:

COMPANIES ACT, 1956 — Section 144
Constitution of India, 1950 — Article 226

Citation : (1990) 2 RLW 247 : (1990) WLN 319

Hon'ble Judges : Milap Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Milap Chandra, J.—This first writ petition was filing by a member, Municipal Council, Churu on April 5,1990 for quashing the notice, Annexure 1, dated March 31, 1990 issued by the Collector Churu (respondent No. 2) Under Rule 3(2), Rajasthan Municipalities (Motion of Non-Confidence against Chairman or Vice Chairman) Rules, 1974 (hereinafter to be called "the Rules"), fixing April 9, 1990 for the consideration of the motion of non-confidence against the Chairman of the Municipal Council, Churu, Shri Ram Gopal Behad, for restraining the Collector, Churu (respondent no. 2) and Shri Kishan Singh, Pariyojna Prabankdhak, Anusuchit Jati Vikas Nigam, Churu (respondent No. 3) from holding the meeting for consideration of the motion of non-confidence and for quashing the entire proceedings of the said meeting, if it is held. The second writ petition was filed on April 12, 1990 against the same respondents by another member of the Municipal Council, Churu for quashing the non-confidence motion dated March 19, 1990, notice issued in pursuance thereof by the Collector, Churu and the entire proceedings of the meeting held on April 9, 1990 and for declaration that the said non-confidence motion brought against the Chairman could not be legally brought before the expiry of six months from March 20, 1990-the date on which the result of first motion of non-confidence was declared.

2. The petitioner's case may be summarised thus. The Municipal Council, Churu consists of 32 Members including coopted members. The Chairman is Shri Ram Gopal Behad. On March 19, 1990, 22 members of the Municipal Council, Churu sent a written notice of the non-confidence in the Chairman together with a copy of the motion to the Collector, Churu. He fixed April 9, 1990 for holding meeting for consideration of the said motion and notices were sent to all the members by registered A.D. post on March 31, 1990. He appointed Shri Kishan Singh, Pariyojna Prabandhak, Anusuchit Jati Nigam, Churu (respondent No. 3) to preside the said meeting. The meeting was held on April 9, 1990. On the stay application moved in the first writ petition, it was ordered on April 6, 1990 that the meeting would be held on April 9, 1990 but its result would not be declared till further orders.

3. Prior to the said motion of non-confidence, a motion of no-confidence was moved earlier against the Chairman and July 6, 1989 was fixed for the meeting to consider it. Before the result could be declared, some members of the Municipal Council filed a civil suit in the Court of Munsif, Churu along with an application for temporary injunction. The same days the application was allowed and order was passed restraining the Presiding Officer from declaring the result of the meeting and directing him to keep the proceedings of the meeting in a sealed cover. In default of appearance, the suit was dismissed on February 1, 1990. The sealed envelope was returned to the Presiding Officer to declare the result of the said meeting. On March 20, 1990, the result of the meeting (held on July 6, 1989) was declared that motion of no-confidence was not carried out. According to the provisions of Sub-rule (10) of Rule 3 of the Rules, the date of the said second motion of no-confidence against the Chairman could not be brought till the expiry of the period of six months from March 20, 1990, the date on which the result of the first motion of no-confidence was declared. The meeting notionally continued till the result of the poll was declared. Ascertainment of the Poll was part of the said meeting. The second motion of no-confidence could not be brought on March 19, 1990 and notice issued and proceedings held in pursuance thereof are illegal and void.

4. In both the writ petitions, 23 members of the Municipal Council, Churu moved applications for impleading them as respondents. Their application were allowed. All of them were impleaded as respondents in the writ petitions. No reply was filed by the State of Rajasthan, Collector, Churu and Pariyojna Prabandhak, Anusuchit Jati Vikas Nigam, Churu (respondents no. 1 to 3). These respondents have filed their replies. Their case is follows. The Chairman, Municipal Council, Churu, Shri Ram Gopal Behad had lost the confidence of more than 2/3rd members of the Council. He is trying hard to somehow stick to his office. The basic intention behind the litigation is to defeat the very basis of the democratic process and thwart the will of the majority. They (respondents no. 4 to 26) were present in the meeting held on April 9, 1990 and voted in favour of the motion of no-confidence and expressed no-confidence in the Chairman. This Court should not exercise its extra-ordinary jurisdiction to help an unscrupulous person who is

piling technicalities upon technicalities to cling to his office, even after losing confidence of 22 members out of 32 members of the Municipal Council, Churu. He is neither working in the interest of the Council nor of the public at large. There is a wide spread dis-satisfaction against him because of his various illegal acts and omissions. The writ petitions deserve to be dismissed as the material facts about presence of only 13 members out of 32 members in the meeting held on July 6, 1989 has been concealed. Motion of no-confidence could be passed by 2/3rd members are not present in the meetings. If the 2/3rd members are not present in the meeting. It is deemed to have been lost as provided in Sub-rule (8) of rule 3 of the Rules. The result of the meeting held on July 6, 1989 was known to all. There was question of the ascertainment of the result. The motion of no-confidence dated March 19, 1990 has been brought long after the said meeting held on July 6, 1989 for the consideration of the first motion no-confidence. The word "date" appearing in Sub-rule (10) of rule 3 of the Rules is very significant. It is qualified by the words "of meeting". It is nothing to do with the formal declaration of the result. Admittedly, the meeting was held on July 6, 1989 and not on any other date. The Rules do not admit of any adjournment on any ground except on the ground of the absence of the Collector or the continuation of the meeting beyond the date fixed for the said purpose. The meeting held on April 9, 1990 is valid and the Chairman Shri Ram Gopal Behar is to vacate the office. He has lost confidence of 2/3rd majority. In a democratic set up, such person cannot be allowed to continue on the post. Both the writ petitions deserve to be dismissed with costs.

5. During their arguments, the learned Counsel for the parties reiterated all the averments which have been made in the writ petitions and the replies. The learned Counsel for the petitioners relied upon *Devdutt Sharma v. Collector, Ajmer* RLW 1961 SC 122, *Homes v. Keys* 1958 (2) All England Law Reports 129 & *Birad Mal Singhvi Vs. Anand Purohit*, . The learned Counsel for the respondents relied upon *Radheyshyam v. Shri Vijay Singh* ILR 1972 Raj. 22 968, *Hukam Singh v. State of Rajasthan* RLW 1984 SC 94, *Bhure Khan v. State of Rajasthan* RLW 1976 SC 48, *Bhure Khan v. State of Rajasthan* RLW 1975 SC 591 and *Bhawani Singh v. State of Rajasthan* RLW 1977 SC 158. They also relied upon *Devdutt Sharma v. Collector, Ajmer* RLW 1961 SC 122.

6. The only question for consideration in this case is whether the period of six months as required Under Sub-rule (10) of rule 3 of the Rules is to be counted from July 5, 1989 (the date on which the first motion of no-confidence was considered) or from March 20, 1990 (the date on which the result of the first motion of no-confidence was declared). If it is counted from July 6, 1989, both the writ petitions will fail and if it is counted from March 20, 1990 the writ petitions will succeed. Section 72 of the Rajasthan Municipalities Act (hereinafter to be called "the Act") runs as under:

72. Motion of no-confidence against Chairman-Motion expressing non-confidence in the Chairman or the Vice Chairman shall be made and considered in the

manner prescribed.

7. The Rajasthan Municipalities (Motion of Non-confidence against Chairman or Vice Chairman) Rules, 1974 consists of three rules only. The first rule deal with the short title and commencement of the rules and the second rule with the definitions. Rule 3 deals with the procedure. It is necessary to quote it here in extension. It runs as under:

3. Procedure etc. (1) A written notice of intention to make a motion of no-confidence in the Chairman or Vice-Chairman signed by one third members of the Board together with a copy of the motion which is proposed to be made, shall be sent to the Collector of the District who shall thereupon 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 late thirty days from the date of the receipt of the notice.

(2) The Collector shall sent by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time fixed therefore to every member of the Board.

(3) The Collector or his nominee shall preside at such meeting and if within half an hour from the time appointed for the meeting Collector or his nominee is not present or is unable for any unavoidable cause to preside at the meeting, the meeting shall stand adjourned to the date and the time to be fixed and notified to the members.

(4) A meeting convened for the purpose of consideration of the motion of no-confidence under these rules shall not for any reason except stated at Sub-clause (3) be adjourned.

(5) As soon as the quorum is present, the Collector or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion. No meeting for the consideration of motion of no-confidence shall be held unless the quorum is present. One-third of the whole number of members shall form the quorum.

(6) Such discussion shall not be adjourned and shall automatically terminate on the expiry of four hours from the time fixed for the commencement of the meeting unless it is concluded earlier.

(7) On the conclusion of the debate or upon the expiry of the said period of four hours, as the case may be, the motion shall be put to the vote of the Board and the Collector or his nominee shall neither speak on the merits thereof nor vote thereon.

(8) If the motion is not carried by a 2/3 majority of the whole number of members, or if any meeting cannot be held for want of quorum, the motion of no-confidence against Chairman or Vice-Chairman, as the case may be, shall be deemed to have been lost.

(9) If the motion is carried by a majority of 2/3 number or whole number of members, the motion shall be deemed to have been passed against the Chairman or Vice-Chairman as the case may be and such Chairman or Vice-Chairman shall forthwith be deemed to have vacated his office.

(10) No notice of any subsequent motion of no-confidence against the Chairman or Vice-Chairman, as the case may be shall be made until expiry of the period of six months from the date of meeting referred to in Sub-rule (8) and for a period of 6 months computed from the date of election of the Chairman or Vice-Chairman, as the case may be.

8. "Meeting" has not been defined either in the Act or in the Rules. In *S. Seetha Ramaiah Naidu Vs. Ongole Co-operative Bank Ltd. and Another*, various authorities have been quoted defining "meeting". Paras 28, 29, 30 and 31 run as under:

28. Now what do we mean by "meeting". The word "meeting" by its etymology can have myriads of meanings. The meaning of this word has a comprehensive sweep. Shorter Oxford Dictionary defines the word "meeting" to mean "an assembly of a number of people for entertainment: discussion or the Like." Corpus Juris Secundum, Vol. 57, page 1044 puts it as follows:

"Meeting"-As a noun-A number of people having a common duty or function who have come together for any legal purpose, or the transaction of business of a common interest; and assemblage.

29. In *Sharp v. Dawes* (1876) 2 QBD 26 it is held:

A meeting means coming together of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest.

30. In *ILR* (1958) AP 17 it was held that:

Meeting implies the coming together of persons for certain purposes of consultations, if it is an assembly and is not continued every time a subject is introduced. The entire assembly as such transacting the business before it, is the meeting and the fact that the number of members meeting and the fact that the number of members present fluctuates during the meeting does not make any difference to the nature of the meeting itself.

31. Frank Shackleton in his *Law and Practice on Meeting* defines a meeting as follows:

A meeting is gathering or assembly of a number of people for purposes in intercourse, entertainment, discussion, legislation and the like or for the purposes of the discussion of matters of public interest or for the purpose of the expression of views on such matters.

9. It is not the case of any petitioner that the members of the Municipal Council, Churu also assembled on March 20, 1990-the day on which the result of the

motion of no-confidence was formally declared. It is clear from the letter (Annexure 2) dated April 20, 1990 of the respondent No. 3 that on March 20, 1990 the sealed envelope was simply opened and the result of the meeting held on July 6, 1989 was declared. It cannot thus be said that the meeting was held on March 20, 1990 as defined above and contemplated Under Rule 3 of the Rules.

10. There is a reference of "Date of Meeting" in Sub-rules (1), (2) and (3) of Rule 3. According to them, July 6, 1989 was the only date of the meeting and March 20, 1989 was not and could not be the date of meeting Sub-rule (4) of Rule 3 clearly says that meeting shall not be adjourned except on the ground of the absence of the Collector or his nominee. Sub-rule (6) provides that discussions shall not be adjourned and shall automatically terminate on the expiry of four hours of the time fixed for the commencement of the meeting unless it is concluded earlier. Sub-rule (8) enshrines that if a motion is not carried by the 2/3rd majority of the members, it shall be deemed to have been lost. In both the writ petitions, a copy of the proceedings of the meeting held on July 6, 1989 has been filed by the respondents along with their reply. In the first writ petition, it is Annexure R/24 and in the second writ petition, it is Annexure R/1. Admittendly, only 13 members out of 32 were present in this meeting. In the absence of 2/3rd majority, the motion of no-confidence was not carried out. If more than 2/3rd members i.e. more than 22 members, had been present in the meeting, then the question of voting and ascertainment of its result had arisen. Absence of 22 members was itself sufficient to show that the motion of no-confidence would be lost. For the purpose of Sub-rule (10), it is immaterial whether the meeting was held or not. It mentions the meeting referred to in Sub-rule (8) which also contemplates that the meeting may not be held for want of quorum as provided in Sub-rule (5). It seems that what the rule making authority contemplated in using the expression "Date of Meeting" is the date of meeting fixed by the Collector Under Sub-rule (1) for the consideration of the motion of no-confidence and for which the notices are sent Under Sub-rule (2) to the members of the Board and not the date of formal declaration of the result of the poll.

11. Rules have fixed two termines for the calculation of period of six months. Admittedly, second motion of no-confidence was moved on March 19, 1990. This is one terminus. The present dispute is about the other terminus i.e. the date of meeting referred to in Sub-rule (8). This terminus having been fixed by the Collector Under Sub-rule (1), by issuing notice sub-rule (2), by reading out motion of no-confidence Under Sub-rule (5) and by the failure of the motion Under Sub-rule (8), it could not be altered by any subsequent event or by the vicissitude through which the meeting passed. In *Dev Dutt Sharma v. Collector, Ajmer*, 1961 RLW 122 at pages 125 and 126, it has been observed as follows:

The words "date of meeting" are explicitly clear and, to my mind, there is nothing in the context or in the general scheme of the law to give them the meaning which is sought to be put by the petitioner. On the other hand, a perusal of

Sections 65 and 72 of the Act together shows that the idea of the continuation of the meeting was clearly ruled out by the legislature. Sub-section (6) of Section 72 lays down that as soon as the quorum (of the meeting) is present, the prescribed authority or his nominee should read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion. Sub-section (7) then provides that such discussion shall not be adjourned and shall automatically terminate on the expiry of four hours from the time appointed for the commencement of the meeting unless it is concluded earlier. Then, Sub-section (8) provides that upon the conclusion of the debate or upon the expiry of the period of four hours, as the case may be, the motion shall be put to the vote of the Board. This makes it quite clear that the debate on the vote of no-confidence is expressly prohibited by law to extend beyond the period of four hours. If the debate concludes before the expiry of four hours.

then the prescribed authority must put the motion to the vote of the board at once and even if it does not conclude within four hours, the prescribed authority has to bring the debate to a close as soon as the period of four hours expires and then he must put the motion to the vote of the Board. Now, if the motion is put to the vote of the board after the expiry of four hours (at the most it would at once appear on that very day whether it is carried out or not carried out. The question of taking a poll on a subsequent day does not arise in this case as it can arise in the case of the meetings of a company about which learned Counsel for the petitioner had cited the cases referred above. Section 65(9) of the Act further lays down that if a resolution expressing want of confidence is passed by the votes of a majority of the whole number of members at a special general meeting convened for the purpose, then every Chairman or every Vice-chairman against whom such a motion is passed shall forthwith be deemed to have vacated his office.

..... It is a well known principle of judicial interpretation that when the words of the statutes are in themselves precise and unambiguous, then they should be understood in their natural and ordinary sense and the words themselves should be taken as best declaring the intention of the legislature. So interpreted, the date of meeting in the present case would be 27-11-59 and not 13-4-60 and the period of six months should be computed from the former date.

12. The facts of and law applicable in *Homes v. Keys*, 1958 (2) All England Law Reports 129 are quite different from the instant case. Article 63 of the Articles of Association had given the power to the Chairman to adjourn the meeting from time to time vide para "D" page 133. Section 144 of the Companies Act provided "where a resolution is passed at an adjourned meeting of a company (that is the material case) the resolution shall for all purposes be treated as having been passed defined to have been passed on the date which it was in fact passed and shall not be on any earlier date "vide para "A" page 134. It has been observed in para "G" at page 138" in my judgment the ascertainment of the result should be

considered as a part of the Poll, and, consequently, there can be no appointment of a Director by a general meeting until the result of the poll is ascertained. It is only then that appointment can become in any sense effective. In fact the meeting should be treated as continuing until the result of the voting on the poll is ascertained." It has been observed in para "H" at page 138-"it also seems contrary to principles to place a man under a duty to acquire qualified shares on the footing that he has been elected as Director at a period when it is not known whether the resolution appointing him a Director has been carried or not." At the risk of repetition, it may be mentioned that the Rules do not contemplate adjournment on any ground except on the ground of the absence of the Collector or his nominee and the discussions must be over within four hours of the commencement of the meeting. In the instant case, there was no question of discussion as only 13 members were present in the meeting, the requisite number of members for carrying out no-confidence motion was 22, 13 members only were present and automatically the motion of no-confidence failed. There was no question of ascertainment of the result of poll.

13. It is thus clear from the aforesaid discussions that July 6, 1989 was the date of meeting and not March 20, 1990. Admittedly, the second motion of no-confidence was moved on March 19, 1990. It was thus after six months from July 6, 1990, both the writ petitions fail.

14. There is yet another aspect of the matter. Admittedly, 22 members of the Municipal Council, Churu have given notice dated March 31, 1990 (Annexure 4) to the Collector, Churu of their intention to make a motion of no-confidence in the Chairman. In the replies to the writ petitions, the respondents no. 4 to 26 (23 members of the Municipal Council) Churu have categorically stated that all of them have voted in favour of the motion of no confidence against the Chairman and expressed no-confidence in him in the meeting held on April 9, 1990 for this purpose. All these 23 members-respondents have enclosed their affidavits stating these facts. No rejoinder affidavit has been filed by the petitioners. Despite it, the Chairman Ram Gopal Bahad is clinging to his post. In a democratic set up, the Chairman remains in office only so long as he enjoys the confidence of the majority of members. It has been observed in *Radhey Shyam v. Vijay Singh* ILR 22 Raj 968 at page 981, as follows:

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.

In *Hukum Singh v. State of Rajasthan* 1984 RLW 94, *Bhure Khan v. State of Rajasthan* 1976 RLW 148, *Bhure Khan v. State of Rajasthan* 1975 RLW 591 and *Bhawani Singh v. State of Rajasthan* 1977 RLW 158 similar observations have been made. On this ground also, the writ petitions deserve to be dismissed.

Consequently both the writ petitions are dismissed with costs which are assessed at Rs. 2,000/- in each case.