

(1973) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 404 of 1973

Ramlal Babulal Chaurasia

APPELLANT

Vs

The Collector, Satna and Others

RESPONDENT

Date of Decision : 12-07-1973

Acts Referred:

Madhya Pradesh Municipalities (Election Petition) Rules, 1962 — Rule 16
Madhya Pradesh Municipalities Act, 1961 — Section 37, 44

Citation : AIR 1974 MP 38 : (1978) ILR (MP) 247 : (1973) JLJ 994 : (1973) 18 MPLJ 907

Hon'ble Judges : P.K. Tare, C.J;M.L. Malik, J

Bench : Division Bench

Advocate : R.S. Dabir, O.P. Namdeo and K. Rao, for the Appellant; K.K. Adhikari, Deputy Govt. Advocate (for Nos. 1, 2 and 4) and B.M. Lal, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Malik, J.

Petitioner Ramlal seeks a writ of certiorari to quash the calling of the meeting of the Municipal Council on 26-5-1973 for election of the President and Vice Presidents by the Sub-Divisional Officer, Maihar, vide Annexure "A" and to quash the notification of the Collector. Annexure "B" in so far it defines the term of office of the petitioner as President till 20th May, 1973.

The facts may be briefly stated. General election of the Municipal Council. Maihar, was held on 20-7-1970. Election of the President and the two vice-Presidents took place on 11-5-1971. The petitioner was elected President and the appointment was notified on 21-5-1971. The petitioner entered upon his office from the date of this notification.

The rival candidate Laxmi Narayan Saxena challenged the election of the petitioner as President before the District Judge having jurisdiction. His petition

was dismissed. He came up in revision to this Court which was partly allowed. One ballot paper was held invalid and, therefore, could not be counted. The result was that the two candidates had secured equal number of votes. This Court directed that the result must be declared in accordance with Rule 12 of the Madhya Pradesh Municipalities (President and Vice President) Election Rules, 1962. The Presiding authority under Rule 12, was required to draw lot and declare the result.

Though the revision was decided on 5-1-1973, the lots were drawn on 14-5-1973. The lot fell on the petitioner and he was declared elected. He became entitled to an appropriate notification in his favour as contemplated in Section 45 of the Madhya Pradesh Municipalities Act, 1961.

The petitioner's contention before us is that the decision of the High Court in revision, in consequence, wipes out the earlier notification dated 21-5-1971 where under the petitioner was appointed as the President; reopens the election process at the state where the presiding authority finding the candidates securing equal votes, has to resort to Rule 12 and draw lots for declaration of the result. The election process would validly come to an end only upon the lots being drawn. What was done earlier would be of no consequence. It was an invalid appointment and the High Court had declared it void.

According to the petitioner, he has been validly elected President on 14-5-1973 and under the provisions of Section 43 (2) he became entitled to hold Office for a period of two years from the date on which he entered upon his Office (the date of entry into Office would be the date of the fresh notification as contemplated by Section 45 of the Act).

The respondents, on the other hand, are contemplating to hold fresh elections of the President and Vice Presidents treating the term of their Office to have expired on 20-3-1973. The Annexures "A" and "B" are clear in their import. A meeting of the Council is being called to elect the President and the Vice Presidents.

The relevant provision of the M. P. Municipalities Act, 1961, may be reproduced below:

"43. Election and term of office of President and Vice-President:-- (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 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 the office.

(b) On the expiry of the term of the office of the President and the Vice-Presidents 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 un-expired term of the Council.

(c) The provisions of Sub-sections (2) and (3) of Section 55 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) x x x(4) x x x(5) x x x Casual vacancies in office of President or Vice-President:-- Upon the occurrence of any vacancy in the office of the President or Vice-President a new President or Vice-President shall be elected or appointed in the manner provided by Section 43 and any President or Vice-president so elected or appointed shall continue in office for the un-expired term of his predecessor.

Notification of election etc.:--Every election 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 question to consider is whether on election of the President being set aside, the vacancy so caused in the office of the President is a casual or temporary vacancy available to the successor for the un-expired term of his predecessor or whether the successor President should be treated as having been elected by the Council in its first meeting under the provisions of Section 43 (2) (a) and full two years" term would enure to his benefit after he entered upon his Office. The contention of the petitioner is that when an election is declared void, it is not an occurrence of a casual vacancy and Section 44 of the Act is not attracted.

We are of the view that the provisions of the Municipalities Act contemplate creation of a casual vacancy when the election of the President is set aside in an election petition. We may draw attention to the Rules framed u/s 23 of the Act (The Madhya Pradesh Municipalities (Election Petition) Rules, 1962 and Rule 16 in particular which is as under:--

"Rule 16: If an election or selection is declared void, the Judge may either declare that a casual vacancy has been created or that the petitioner or any other candidate has been duly elected or selected"

The Rule makes it abundantly clear that under the scheme of the Act where the election of a Municipal member or of the President is set aside by an Election Tribunal, the decision of the Tribunal has the effect of creating a temporary vacancy. That is the import of Section 37 of the Act as also of Section 44 of the Act. Section 44 of the Act is clear enough: upon occurrence of a vacancy in the Office of the President the new elected President continues in the office only for the un-expired term of his predecessor. No exception is made to the Rule. Whether the vacancy is created by death or by reason of the President becoming incapable of acting, or because his election has been set aside, the result would be the same. It would create only a casual vacancy.

Under Section 36 of the Act, the term of the Council is four years, whereas the term of the President elected in the first meeting of the Council is two years as per provisions of Section 43 (2) (a). On expiry of the term of office of the first elected President, the Council elects another President for the un-expired term of the Council u/s 43 (2) (b). The law thus contemplates two elections during the term of the Council. If arguments of the learned counsel for the petitioner were to prevail, the petitioner would continue as President for almost a term of four years frustrating the provisions of the Act contained in Section 43 (2) (b). It is the right of the Council to elect another President after two years of their first meeting: that right cannot be stultified. Those who contested the first election of the president knew that they had a term of two years to go and they were required to face re-election after that term. Setting aside of an election during that term, enures to the successor the unexpired term only because after two years, the law contemplates a fresh election. Imagine a situation when the election petition challenging the first election of the President comes to be decided after a period of two years and in the meantime the Council elects new office bearers. The result of the election petition would be rendered infructuous. The logic of the petitioner's argument would be found illusory. Likewise, if the election of the President for the second term is set aside, the new President cannot continue beyond the term provided in Section 43 (2) (c) despite the notification of his appointment u/s 45 after the result of the election petition.

It would be pertinent to attract attention to Section 80 of the Act:

"80. No act or proceeding of the Council or any of its Committees shall be invalid by reason merely of the existence of any vacancy in, or defect in the constitution of the Council or the Committee, as the case may be."

The intention of the statute is clear. The elected body must function despite existence of a vacancy or defect in its constitution. A President wrongly declared elected could legitimately function till the election was set aside by the Election Tribunal. The successor sets the remain-ins term is the obvious position. The

Election Tribunal who decides against the returned candidate, only declares a casual vacancy.

In the result, therefore. Section 44 of the Act is attracted, the petitioner's term of two years having expired, the respondents could notify under the impugned annexures the steps to be taken for a fresh election.

We are not inclined to consider the second contention of the respondents that under the provisions of Section 25 of the Act, the District Judge should have drawn lots to declare the results of the election; that the High Court's directions for drawing of lots by the Presiding authority under Rule 12 were in contravention of Section 25 and, therefore, illegal. We need not enter into academic discussions on this issue which would hardly serve any purpose.

In the result, the petition fails and is dismissed. Petitioner to Pay the respondents' costs Counsel's fee Rs. 100/-.