

(1962) 08 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 111 of 1162

Sheo Kumar Shashtri

APPELLANT

Vs

Municipal Committee

RESPONDENT

Date of Decision : 17-08-1962

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 2(2), 32, 47(2), 57

Citation : AIR 1964 MP 195 : (1963) ILR (MP) 1053

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

Bench : Division Bench

Advocate : Ravindra Kumar, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.—By this application under Article 226 of the Constitution of India, the petitioner, who was the elected Vice-President of the Rajnandgaon Municipal Committee, seeks a writ of certiorari for quashing a motion of no-confidence passed against him at a meeting of the Committee held on 21st March 1962.

2. The material facts are that on 25th November 1961 Gyanchand Jain, a member of the Committee, gave to the petitioner a notice u/s 18-A(1) of the Central Provinces and Berar Municipalities Act, 1922, saying that he would move a motion of no-confidence against him on the expiry of the prescribed period of ten days from the date of the receipt of notice by the petitioner. The notice also asked the petitioner, who was then officiating as President of the Municipal Committee, to convene a meeting of the Committee for the purpose. A meeting was accordingly convened on 17th January 1962. As, however, there was no quorum for the meeting, the motion of no-confidence could not be moved and the meeting was adjourned sine die. On 1st February 1962 the Madhya Pradesh Municipalities Act, 1961 came into force. Thereafter on 13th February 1962 eight members of the Committee gave a notice to the Chief Municipal Officer of the Committee for summoning a meeting of the Committee for the purpose of taking

a decision on the motion of no-confidence against the [petitioner which was said to be under consideration of the Committee. On receipt of this requisition, the President of the Committee issued to the petitioner and other members of the Committee, a notice saying that a meeting of the Committee would be held on 31st March 1962 at 8 p.m. for the discussion of the motion of no-confidence against the petitioner. This notice narrated that a meeting for this purpose had been held on 17th January 1962 but that it had to be adjourned for want of quorum and that a requisition from eight members for the convening of a meeting for taking a decision on the motion of no-confidence had been received by the Chief Municipal Officer. Accordingly a meeting of the committee was held on 31st March 1962 and the impugned resolution was passed.

3. The petitioner's contention is that after the coming into force of the M. P. Municipalities Act, 1961, the motion of no-confidence could be moved and carried only in conformity with Section 47 of that Act; that according to Section 47(2) a meeting for the purpose of Sub-section (1) of Section 47 could be convened by the Chief Municipal Officer and not by the President; that the notice of such a meeting specifying the time and place thereof had to be despatched by the Chief Municipal Officer to every councillor ten clear days before the meeting; and that, therefore, the notice which was issued by the President on 24th March 1962 calling a meeting of the Committee on 31st March 1962 was illegal.

4. The reply of the opponent Municipal Committee is that, the no-confidence motion had been initiated while the C. P. and Berar Municipalities Act, 1922, was in force and was also to have been considered at a meeting on 17th January 1962, but the said meeting was adjourned sine die for want of quorum and thus the motion was actually pending for consideration before the Municipal Committee when the Act of 1961 came into force that Section 2 of the new Act saved these proceedings; that, therefore, no fresh notice u/s 47 of the new Act was necessary; that the notice which the eight members gave on 13th February 1962 to the Chief Municipal Officer was really, one u/s 57 of the Act of 1961 and not u/s 47 of that Act. It has been further stated in the return that u/s 57 the President is required to call a special meeting within fifteen days of the receipt of a written requisition signed not less than by one-fourth of the councillors and such a meeting has to be held within fifteen days from the date of the receipt of such a requisition; and that, therefore, the notice issued by the President on 24th March 1962 calling a special meeting on 31st March 1962 was in order and the motion of no-confidence was validly passed at that meeting.

5. In our judgment, this application must be granted. There is no dispute that the meeting summoned for 17th January 1962 at which the motion of no-confidence was to have been moved was adjourned sine die for want of quorum. It is settled law that where there is a power of adjournment and a meeting is adjourned, then the adjourned meeting is a continuation of the original meeting and no new notice of an adjourned meeting need be given unless the relevant statutory provisions or rules so require. But in the case of an adjournment sine

die a fresh notice is necessary, (See Scadding v. Lorant, (1851) 3 H. L. C. 418; and Wills v. Murray (1850) 4 Ex 843). The proviso to Section 32 of the C. P. and Berar Municipalities Act, 1922, laid down that

"if at any ordinary or special meeting of the committee a quorum is not present, the Chairman shall adjourn the meeting to such other day as he may think fit....."

under this proviso, a meeting could be adjourned to some fixed date and not sine die. Therefore, the sine the adjournment of the meeting convened on 17th January 1962 was illegal in itself. That meeting having been adjourned sine die a fresh notice of the adjourned meeting for a consideration of the motion of no-confidence was necessary. No such adjourned meeting was called before the coming into force of the Act of 1961. The meeting held on 31st March 1962 at which the motion of no-confidence was passed was held after the new Act became operative. But the notice given for the calling of that meeting was not in conformity with Section 47 (2) of the new Act. Quite apart from the fact, that the meeting was convened by the President and not by the Chief Municipal Officer as required by Sub-section (2), the notice for that meeting did not give the prescribed "ten clear days" time under Clause (ii) of Section 47 (2). After the coming into force of the Act of 1961 a motion of no-confidence could be moved only in accordance with the provisions laid down in Section 47. This is clear enough. It must, therefore, be held that the meeting, which was held on 31st March 1962, at which the no-confidence motion was passed, was not a validly convened meeting u/s 47. It follows, therefore, that the motion of no-confidence was not validly passed at that meeting.

6. Learned Additional Government Advocate said that the notice that was given for the meeting summoned on 17th January 1962 held good for the adjourned meeting as u/s 2 (2) (i) of the Act of 1961 the notices issued under the Act of 1922 would be deemed to have been issued under the new Act. This argument is of no assistance to the opponent. It is no doubt true that u/s 2 (2) (i) "notices issued" are deemed to have been issued under the new Act. But the notice given for the meeting of 17th January 1962 cannot be regarded as good for the adjourned meeting for the simple reason that the meeting held on 17th January 1962 was adjourned sine die and not to any fixed date. It was then urged that the requisition which the eight members sent to the Chief Municipal Officer on 13th February 1962 was not a notice u/s 47 of the Act of 1961 but was a requisition u/s 57. There is no substance in this contention. There being a specific provision in the Act of 1961 with regard to the moving of no-confidence motion, Section 57 could not be resorted to for supporting the validity of the meeting called for the purpose of moving a motion of no-confidence. Again, even if the requisition of eight members is regarded as nothing more than a reminder for the convening of an adjourned meeting and not a requisition u/s 47 for the calling of an initial meeting, yet a fresh notice was necessary as the meeting held on 17th January 1962 was adjourned sine die and a fresh notice had to be given in compliance with the requirement of Section 47 (2) of the new Act.

7. For all these reasons, our conclusion is that the motion of no-confidence passed at the meeting held on 31st March 1962 is utterly invalid. It is accordingly quashed. The petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 75/-. The out standing amount of security deposit shall be refunded to the petitioner.