
(2002) 07 MP CK 0047

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3114 of 2002

Smt. Saraswati Bai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 43A(2)

Citation : (2003) 1 MPHT 415

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : R.P. Khare, for the Appellant; Shashank Shekhar, for Respondent Nos. 1 and 3, G.R. Deshmukh and P.C. Paliwal, for Respondent Nos. 4 to 13, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner is assailing the resolution of No Confidence Motion passed on 12-6-2002 by Nagar Panchayat, Barela, District Jabalpur against the petitioner.

2. No Confidence Motion has been carried out by 2/3rd majority of the elected Councillors of the Nagar Panchayat. Petitioner was holding the post of Vice-President of Nagar Panchayat. In all 10 votes were cast in favour of No Confidence Motion and 5 against it. It is not in dispute that it has been carried out by requisite majority as mentioned in Section 43-A of the Municipalities Act.

3. Two grounds have been taken to assail the No Confidence Motion, resolution Annexure P-4 dated 12-6-2002. First ground is under Sub-section (2) of Section 43-A the SDO was authorized to preside over the meeting by the Collector, District Jabalpur. Notice of meeting, petitioner submits, ought to have been issued by the Presiding Officer. The Notice of the meeting has been issued as per order and direction of Presiding Officer by CMO, Nagar Panchayat, Barela as per Annexure P-3 on 1-6-2002. Thus, the petitioner submits that convening of the

meeting is illegal and is not in the prescribed manner. Second submission is that while considering No Confidence Motion, the petitioner was not allowed to speak.

4. Section 43-A (2) of the Municipalities Act provides that meeting shall be convened and presided over by the officer authorized by the Collector, in the case of Nagar Panchayat. It is not in dispute that the SDO has been appointed in the case as Presiding Officer. It is also clear from the notice Annexure P-3 that the meeting has been convened as per order passed by the SDO, Revenue. There is note appended to that effect on the notice Annexure P-3. Thus, it cannot be said that the meeting has been convened by the CMO. It has to be inferred from the notice P-3 that the meeting has been convened as per direction of the SDO. Thus, it is to be held that the meeting has been convened as per order passed by the SDO. It is also not in dispute that he presided over the meeting. Simply, intimation/notice has been issued by CMO as per order of convening meeting passed by the SDO, no infirmity has been caused in the resolution. It is at the most a case of irregularity. It has to be inferred that no prejudice has been caused to the petitioner by issuance of notice by CMO, it cannot be said that the meeting has been held illegally. Full Bench of this Court in Smt. Bhulin Dewangan Vs. State of M.P. and Others, has held that when a No Confidence Motion has been passed even though rule requiring dispatch of notice of the meeting to the member is mandatory, yet in every case of challenge to the proceeding of No Confidence Motion, it would still be open to find out whether in a given case non-compliance of any part of the rule has in fact resulted in any failure of justice or has caused any serious prejudice to any of the parties. In my opinion Sub-section (2) of Section 43-A only convening meeting has to be done by SDO. He has ordered convening of the meeting. Notice has been issued under his authority by the CMO. Sub-section (2) of Section 43-A does not provide that notice has to be issued by the Presiding Officer.

5. This Court has also considered in Sukhnandan Patel v. State of M.P. and Anr., W.P. No. 1916/2002, decided on 14-5-2002, the effect of non-compliance of such provision and held that-

"8. First question for consideration is of effect of non-compliance of Rule 4 of the Rules. The question and effect of non-compliance of mandatory provision/rule was considered by Full Bench of this Court in Bhulin Dewangan (supra), wherein it has been held that the general rule is that a mandatory provision of law requires strict compliance and the directory one only substantial. But even where the provision is mandatory, every non-compliance of the same need not necessarily result in nullification of the whole action. In the given situation even for non-fulfilment of mandatory requirement the authority empowered to take decision may refuse to nullify the action on the ground that no substantial prejudice has been caused to the party effected.

9. In Shankarlal Patidar v. State of M.P. and Ors. 1975 MPLJ 116, Their Lordships considered the question of non-compliance of provisions of public duty. The guiding principle even in cases of non-performance of a public duty is pointed out

in *Montreal Street Railway Company v. Normandin* AIR 1917 PC 142 :

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

10. In *Motilal Ramchandra v. Gram Panchayat, Jamburdisarvar*, 1983 MPLJ Short Note 8, this Court considered validity of No Confidence Motion resolution, moved against the Sarpanch of the Gram Panchayat. The Gram Panchayat consisted of 23 members at the relevant time. In the meeting 22 members were present. 18 members supported the no confidence resolution and 4 voted against it. The no confidence resolution was carried by overwhelming majority. The Sarpanch challenged the legality of the resolution on the ground that the notice of the meeting was not served personally on him. It has been held that as the no confidence resolution was carried by an overwhelming majority, the case was not a fit one in which an interference was called for under Article 226 of the Constitution of India, even if there was some irregularity in the service of the notice personally on the petitioner as that resulted in no prejudice being caused to the Sarpanch.

11. Counsel for the petitioner has further relied upon a decision in *Bal Krishan Patel v. Brijendra Patel and Ors.* 1985 MPLJ 332, wherein it has been held that it is the settled view of this Court that if there is substantial compliance of the provision, a motion cannot be defeated for technical reasons and it is undemocratic to keep a person on the post when he has lost majority. In *Jagdish Prasad Bhunjwa Vs. The State of Madhya Pradesh and Others*, this Court held that once no-confidence motion is passed, it cannot be said to be an arbitrary action simply if a directly elected Sarpanch by voters is removed by majority of the Panchas.

12. In *Dhumadandhin Vs. State of Madhya Pradesh and Others*, Rule 3 (3) came for consideration, question arose whether failure on part of the prescribed authority to fix the meeting within the time stipulated shall render the Motion of No Confidence vitiated in the eye of law. Rule 3 (3) of the Rules casts duty on the prescribed authority to call meeting within prescribed period, the members who have given the notice for consideration of the No Confidence Motion, has no control over the same, resolution was upheld."

6. Coming to the second submission that the petitioner was not allowed to speak, suffice is to observe that it has been mentioned in the resolution that the petitioner was allowed to speak. Recording is final and there is nothing to disbelieve that the petitioner was allowed to speak and expressed her point of view at the time of meeting as recorded in resolution P-4. Both the aforesaid

grounds fail.

7. Resultantly, the writ petition is dismissed. No order as to costs.