
(2008) 01 MP CK 0092
In the Madhya Pradesh High Court

Smt. Satya Prakashshi Parsadia

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) ILR (MP) 1092 : (2008) 3 MPHT 264 : (2008) 1 MPJR 308 :
(2008) 2 MPLJ 372

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.

Petitioner who is the elected President of Municipal Council, Dabra feels aggrieved by the action taken by the respondents in proposing to recall her u/s 47 of the MP. Municipalities Act, 1961 (hereinafter referred to as "the Act of 1961") and the direction issued to the State Election Commissioner for holding the election for recall of the petitioner.

Facts in brief necessary for disposal of this petition are that election to the Municipal Council, Dabra for electing councillors and President was held on 20th November, 2004, the results were declared on 24th November, 2004 and petitioner was elected as a President by the State Government. Grievance of the petitioner in this petition is 20 councillors are alleged to have submitted a representation to the Collector on 3rd November, 2007 u/s 47 of the Act for recalling her. It is stated that this proposal for recall has been accepted by the Collector and the Collector in accordance with Section 47(2) of the Act of 1961 has forwarded the same to the State Government and the State Government accepted the same and has made reference to the State Election Commission and the State Election Commission on such reference is arranging to take steps for election on the proposal to recall the petitioner. Inter alia contending that action initiated in the matter and powers exercised by the Collector is contrary to

the requirement at Sub-section (2) of Section 47 of the Act, petitioner has filed this petition.

Shri V.K. Bhardwaj, learned Counsel for the petitioner taking me through the procedure followed by the Collector for forwarding the proposal to the State Government, points out that the Collector has not himself arrived at the satisfaction required under Sub-section (2) of Section 47 of the Act and has acted on the basis of recommendations made by the Project Officer of District Urban Development Agency (DUDA). Taking me through the note-sheet available at Annexure R-1, Shri Bhardwaj tried to demonstrate that the Collector after receiving the proposal from the Councillors on 3-11-2007 forwarded the same to the Project Officer, DUDA for taking action. The note-sheet was prepared and it is the Project Officer who judged the satisfaction with regard to compliance of the requirement of Sub-section (1) of Section 47 of the Act and recommended for forwarding the proposal to the State Government. It is argued by Shri Bhardwaj that this recommendation made by the Project Officer is approved by the Collector and the entire action is taken on the basis of aforesaid procedure. Emphasising that the statutory requirements of Sub-section (2) of Section 47 of the Act is that Collector himself is to satisfy and verify the proposal and this procedure is not followed in the present case, the Collector has delegated his powers under Sub-section (2) of Section 47 of the Act of 1961 to the Project Officer, DUDA, which is impermissible under the law, Shri Bhardwaj prays for interference in the matter on the ground that statutory requirements under the law is not complied with.

That apart, Shri Bhardwaj has referred to certain irregularities committed in the matter and attributing mala fide on the action taken to be at the instance of a State Minister it was argued that the proposal was submitted to the Collector at his house and the Chief Municipal Officer, Dabra was ready with the various information, he has questioned the bonafide of the Chief Municipal Officer, Dabra in coming alongwith councillors at the time of presentation of the proposal to the Collector and submits that the Dabra is about 40 km. away from the Gwalior, there is nothing to show that the Collector had summoned the Chief Municipal Officer, Dabra, Shri Bhardwaj emphasised that presence of the Chief Municipal Officer, Dabra at Gwalior at the time of presentation of the proposal alongwith the councillors is doubtful and attributing malafide and political inference into the matter. Shri Bhardwaj prays for interference.

Placing reliance on the following judgments, Shri Bhardwaj argues that when the statutory requirements are not followed in the manner prescribed any action taken in violation of the statutory requirements, is illegal and cannot be sustained. It was further argued by him that from the return, additional return of the respondents, it is seen that Collector forwarded the proposal to the Project Officer in pursuance to the certain recommendations and observations contained in Annexure R-7, dated 2nd September, 2000, it is argued by Shri Bhardwaj that recommendations and observations made in this letter are only recommendatory

in nature and even if such a direction is assumed to be in existence, the same being contrary to the statutory provisions cannot be given effect too and therefore the action taken by the Collector by referring the matter to the Project Officer, DUDA being contrary to the statutory provisions, is unsustainable. The judgments relied upon by Shri Bhardwaj in this regard are:

(i) Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , (ii) Feroz Ahmad Vs. Delhi Development Authority and Others, , (iii) V.C., Banaras Hindu University and Others Vs. Shrikant, , (iv) Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others, and (v) a judgment of the Punjab High Court in the case of Faqir Chand Sultani Ram and Another Vs. Bhana Ram Mansa Ram and Others, .

Accordingly, Shri Bhardwaj submits that action taken in this particular case is clearly contrary to the requirement of law and therefore the entire proceedings initiated being vitiated and is liable to be quashed.

Refuting the aforesaid contentions and trying to justify the action of the respondents, it was submitted by Shri S.B. Mishra, learned Additional Advocate General by referring to the documents and affidavits available on record that on 3-11-2007 all the 20 councillors appeared before the Collector at 11.15 a.m., Collector received the proposal, made endorsement as contained in Page 23 of the paper books and thereafter the Chief Municipal Officer, Dabra who was also present there was directed to verify the signatures of the 20 councillors, the same was verified in the presence of the Collector and thereafter the Collector directed the Project Officer, DUDA to proceed in the matter. By referring to the note-sheet Annexure R-1, Shri Mishra tried to emphasise that action is taken by the Collector only after he was satisfied with regard to requirement of Sub-section (1) of Section 47 being complied with. Shri Mishra emphasises that the Collector is only required to see that the requirements of Sub-section (1) of Section 47 of the Act are complied with and as the said compliance is established from the note-sheet Annexure R-1, there is no illegality in the matter. Taking me through the affidavits filed of 20 councillors as contained in Annexure R-2, emphasising that Collector has performed his function in accordance with the provisions of law, Shri Mishra learned Additional Advocate General sought for dismissal of this petition. In support of this contention, he invites my attention to a judgment of Full Bench of this Court in the case of State of M.P. and Another Vs. Mahendra Kumar Saraf and Others, , to submit that as the mandatory requirement of Section 47(1) of the Act is complied with, no case is made out for interference. I le also invites my attention to another judgment of this Court in the case of Smt. Anuhha Munjare v. State Election Commission and Ors. ILR 2007 MP 1203 to submit that the Collector having satisfied himself about the proposal being submitted by the 20 councillors, no case is made out for interference. It was further submitted by him by placing reliance on a judgment of this Court in the case of Gaya Prasad Modi Vs. State of M.P. and Others, , that a writ petition directly before this Court is not maintainable and petitioner are

required to challenge the election after it is held. On the ground of no jurisdiction under Article 226 of the Constitution reliance is also placed on another judgment rendered by a Division Bench of this Court in the case of *Gopat Yadav v. State of M.P.* and Ors. 2002(4) MPLJ 369.

I have heard learned Counsel for the parties at length and perused the record.

Before advertng to decide the controversy in question, it would be appropriate to take note of the provisions of Section 47 of the M.P. Municipalities Act, 1961. The said provision reads as under:?

47. Recalling of President.-- (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed : Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three-fourth of the total number of the elected Councillors and presented to the Collector : Provided further that no such process shall be initiated:

(i) within a period of two years from the date on which such President is elected and enters his office;

(ii) if half of the period of tenure of the President elected in a by-election has not expired:

Provided also that process for recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three-fourth of the Councillors specified in Sub-section (1) have signed the proposal of recall shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed.

For the purpose of deciding this petition, Sub-section (2) of the aforesaid provision is important. A perusal of Sub-section (2) indicates that it provides for action to be taken by the Collector on the proposal received by him for recalling of the President. The section mandates the Collector to satisfy himself and verify that 3/4th of the councillors have submitted the proposal. The requirement of Sub-section (1) have to be complied with, it is only then that the proposal can be forwarded to the State Government for further action. The word "the Collector after satisfying himself and verifying" in Sub-section (2) are the important words and the main thrust of the argument of Shri Bhardwaj was that in the present case Collector himself has not arrived at the satisfaction but the satisfaction has been arrived at by a delegated authority, satisfaction and recommendation of the said authority is accepted by t he Collector. At this stage, it would be appropriate

to refer to some of the judgments which are applicable, even though no judgment directly on the question is brought to notice of this Court but certain observations are available in the case of Smt. Anubha Munjare (supra), relied upon by Shri S.B. Mishra. In the said case, Division Bench of this Court in Para 14 has observed as under:

14... On a reading of Section 47 in entirety and especially Sub-section (2) of Section 47 there can be no scintilla of doubt that the Collector has to satisfy himself with regard to the conditions precedent engrafted u/s 47(1), namely, that the proposal has been signed by not less than 3/4th of total number of elected councillors, the proposal has not been initiated within a period of two years from the date on which such President is elected and enters his/her office;; that half of the period of tenure of the President elected in by-election has expired; and that the process for recall is the first proposal in the whole term of the elected candidate and he must verify the proposal that 3/4th of the total number of elected councillors have signed the proposal for recall....

(Emphasis supplied)

It is clear that the Division Bench of the aforesaid case has clearly emphasised that it is the Collector who is to Satisfy himself with regard to compliance with the conditions prescribed in Section 47 (1) for proceedings under Sub-section (2). Similarly another Division Bench of this Court while considering the true meaning of Section 47 in the case of Narayan Nagina Vs. State of Madhya Pradesh and Others, , in Para 10 has observed that proceedings for recall are initiated when the Collector himself is satisfied that the proposal is signed by 3/4 th of the councillors after verification. It is therefore, clear that emphasis in the Sub-section (2) and requirement of law is that, it is the Collector who is required to arrive at the satisfaction and the subjective satisfaction is that of the Collector concerned.

The question as to whether in the present case, subjective satisfaction arrived at is of the Collector himself or this satisfaction is based on the opinion and recommendation of a third person ? In this regard if note-sheet Annexure R-1 and the endorsement made by the Collector in the proposal submitted on 3-11-2007 and the facts stated in the return, additional return and affidavits are taken note of the following factual scenario emerges:

When the proposal was presented to the Collector on 13-11-2007, he made an endorsement to the effect that he has received the proposal today on 3-11-2007 at 11.15 a.m. and forwarded the same to the Project Officer, DUDA. Available on record at Page 22 of Annexure R-1 is a typed note-sheet wherein the fact of receiving the proposal by the Collector is indicated and the matter is placed before the Project Officer. This note-sheet is typed and does not bear signatures of the Collector or any other person. Thereafter a handwritten note-sheet is available which is prepared by the Project Officer and this note-sheet indicates that Project Officer after verifying the proposal submitted for recall of the

petitioner by the 20 councillors, has indicated that councillors have affixed their signatures and signatures are verified by the Chief Municipal Officer, Dabra thereafter in Para 2, he says that the Chief Municipal Officer, Dabra vide letter No. 6026, dated 3-11-2007 has informed by him that the President was elected in November, 2004, the result was notified in the Gazette on 20th November, 2004 and the President assumed office on 12-1-2005, thereafter the Project Officer indicates that requirement of Section 47 are such and such, he says that all the requirement of the rules are complied with and therefore proposal can be accepted and forwarded to the State Government. He says that it would be appropriate to forward the proposal to the State Government and thereafter he places the matter before the Collector for further action. The Collector had accepted the proposal and thereafter the matter is sent to the State Government not by the Collector but by the Project Officer as evident from the note-sheet Annexure R-1.

It is, therefore, clear that in the present case, the Collector has not himself conducted the verification and the satisfaction arrived at with regard to the proposal is not the subjective satisfaction of the Collector, it is based on the recommendations of the Project Officer, DUDA.

At this stage, it would be appropriate to take note of the affidavit filed by the State Government alongwith the additional return. The additional return submitted by the State Government on 4-12-2007 is supported by the affidavit of Project Officer, District Urban Development Authority, Gwalior. This Officer seems to be the same officer who had prepared the note-sheet Annexure R-1. In the aforesaid, additional return in Para 2 it is so stated by the respondents:

2... Merely perusing the documents, i.e., the application submitted by the councillors, it is clearly revealed that the application was duly submitted before the Collector at 11.15 a.m. and the Collector after receiving the same endorsed to the Project Officer, District Urban Development Agency (for brevity "P.O. DUDA") for initialing the action u/s 47.

(Emphasis supplied)

It is further stated in the said additional return that the signatures of 20 councillors has been duly verified by the CMO as is evident from the endorsement made on the 26th page, i.e., last page of the application. It is further stated in Page 4 of the additional return that in the instant case when the application alongwith affidavit was submitted by the councillors before the Collector, the same was verified by the CMO. In Page 6 of the additional return it is so stated:

after receiving the request letter by the Collector, the Collector forwarded the matter to the P.O. DUDA, who is under the control of Collector. It is also respectfully submitted that the State Government has already issued certain direction to the Collectors that any matter pertaining to Urban Administration should be forwarded to the Collector through P.O. DUDA. Copy of the direction

issued by the Commissioner, Urban Administration and Development, Bhopal is enclosed herewith and marked as Annexure R-7. In these facts and circumstances, the Collector has rightly forwarded the matter to P.O. DUDA and the P.O. DUDA has started the proceedings as revealed in Annexure R-1 and accordingly it was produced before the Collector and the Collector approved the note sheet on 3-11-2007. So, there is no irregularity or infirmity in the matter.

From the aforesaid narration made by the respondents, it is clear that on the basis of delegation of powers and as per the directions contained in Annexure R-7, the matter was sent to the Project Officer, DUDA and the entire action has been taken by the Project Officer, DUDA and the Collector has only approved the action taken by the Project Officer, DUDA.

At this stage, it may be relevant to consider the direction contained in Annexure R-7. Annexure R-7 is not a delegation of powers to any officer u/s 47 of the M.P. Municipalities Act, 1961, it is only the recommendatory letter issued by the Commissioner, Public Administration and Development, Bhopal to various Collectors expressing his opinion that Collectors would be right in case that they forwarded all the proposals pertaining the urban development to the Project Officers, DUDA and papers are proceeded and routed through this office. In this letter, apart from making some opinion, there is nothing which amounts to delegating the powers u/s 47 to any other authority. In the case relied upon by Shri V.K. Bhardwaj, particularly in the case of Commissioner of Police, Bombay (supra) and in the case of Feroz Ahmad (supra), it is laid down by the Supreme Court that the statutory provisions cannot be substituted by supplementary of executive order, they also lay down a principle that if statutory powers is vested on an authority it is for that authority only to exercise that power and if the powers are exercised by some other authority the action stands vitiated. In the case of Punjab Water Supply and Sewerage (supra), relied upon by Shri Bhardwaj, directions given by the State Government contrary to the statutory rules were held to be unsustainable and unenforceable under law. That being so, contentions of the respondents based on delegation letter Annexure R-7 cannot be accepted as it amounts to circumventing to the said provisions.

As already indicated hereinabove, the statutory requirement under Sub-section (2) of Section 47 of the Act of 1961 is that Collector himself should satisfy and verify. The purpose of giving powers to the Collector is to ensure that proper verification is done and satisfaction of the Collector with regard to propriety genuineness of the proposal is arrived at. When the statutory requirement is that Collector himself has to arrive at the satisfaction and verification, satisfaction arrived at by a third person and acceptance of the same by the Collector will not be compliance with the requirement of law. If the procedure followed in the present case is evaluated, it would be seen that Collector at the first instance forwarded the papers to the Project Officer, DUDA, the Project Officer verified the signatures on the basis of certificate given by the Chief Municipal Officer, Dabra thereafter based on the communication received from the Chief Municipal Officer,

Dabra recorded his satisfaction and recommended to the Collector for forwarding the proposal to the State Government. The Collector accepted this proposal. It is the considered view of this Court that in following the aforesaid procedure, it cannot be said that Collector himself has arrived at the satisfaction, on the contrary, the procedure followed is such that the Collector has accepted and approved the satisfaction arrived at by the Project Officer, DUDA. This being not in accordance with provisions of statute, i.e., Sub-section (2) of Section 47 of the Act. Contentions advanced by Shri Bhardwaj, learned Counsel for the petitioner has to be accepted and it has to be held that in accepting and forwarding the proposal to the State Government u/s 47(2), the Collector has delegated his powers to the Project Officer, DUDA and has not conducted the procedure for initiating the process of recall in accordance with law.

Objections raised by Shri S.B. Mishra, learned Additional Advocate General for the respondents/State with regard to maintainability of this petition is also to be addressed by this Court. Normally in a matter pertaining to recall of an elected representative or passing a motion of no-confidence when the statutory remedy are available interference is not made by this Court exercising jurisdiction under Article 226 of the Constitution, but at the same time, it is a well settled principle of law that if breach of the statutory provision, violation of fundamental rights and action taken to be contrary to law, are Pointed out, interference in a petition under Article 226 of the Constitution can be made. In this regard reference may be made to a judgment rendered by a Division Bench of this Court in the case of P.C.C. Construction Co. and Ors. v. Debts Recovery Tribunal and Anr. 2003(1) MPJR 260 and the Life Insurance Corporation of India Vs. Ramji Kewat and Others, , where it has been held that any action which is violative of the principle of natural justice or contrary to the statutory provisions can be interfered with in a petition under Article 226 of the Constitution and the normal rules of refusal to interfere, when the statutory alternate remedy is available is not to be enforced in such cases. Accordingly, as in the present case statutory provisions is found to have been breached and violated, the entire action stands vitiated and, therefore, the bar of entertaining in a writ petition directly without resorting to the statutory remedy will not apply and this Court can exercise jurisdiction in this petition under Article 226 of the Constitution.

Before parting with the case, this Court is also required to consider some contentions advanced by Shri Bhardwaj. Record indicates that when the proposal was brought to the Collector on 3-11-2007 at 11.15 a.m. at Gwalior, the Chief Municipal Officer, Dabra is present. Dabra is about 40 km. away from Gwalior and there is nothing in the proceedings to indicate that Collector had summoned the CMO, Dabra to be present before him in person alongwith councillors when the proposal is presented at Gwalior, the question with regard to presence of CMO, Dabra at Gwalior remains unanswered. That apart, a further peculiar fact to be noted is that when the proposal is forwarded to the Project Officer, DUDA for satisfaction and verification, the CMO, Dabra is ready with the letter bearing No. 6026, dated 3-11 -2007 containing details about the requirement to be fulfilled u/

s 47(2) of the Act. It is not known as to why the CMO, Dabra came to Gwalior with the prepared letter indicating the details which are required to be taken note of for compliance of Sub-section (1) of Section 47 of the Act. Presence of the CMO, Dabra ready with all these materials at Gwalior at the very relevant time indicates that Shri Bhardwaj is right in submitting about presence of extraneous consideration.

Accordingly, taking note of the totality of the facts and circumstances of the case and the illegality which is apparent from the face of the record, this petition is allowed. Action initiated against the petitioner on the basis of the proposal and recommendation made by the Collector are quashed. It is held that the State Government and the Chairman, State Election Commissioner shall not proceed with the recommendations made by the Collector u/s 47(2) of the Act.

Petition stands allowed and disposed of with the aforesaid without any order so as to cost.