
(1964) 01 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 403 of 1963 (J)

Sojharmal

APPELLANT

Vs

Mun. Council, Kharsia

RESPONDENT

Date of Decision : 15-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Municipalities Act, 1961 — Section 47, 47(1), 62, 62(3), 81

Citation : (1964) JLJ 139

Hon'ble Judges : P.V. Dixit, C.J.; S.P. Bahrgava, J

Bench : Division Bench

Advocate : A. Razak and C.K. Sharma, for the Appellant; Y.S. Dharmadhikari and M.V. Tamaskar, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—By this application under Articles 226 and 227 of the Constitution, the petitioner Sojharmal who was the Vice-President of the Municipal Council, Kharsia, Raigarh District, seeks a writ of certiorari for quashing a resolution of no-confidence which was passed against him at a meeting of the Municipal Council held on 5th November 1963.

2. Before the commencement of the meeting, the petitioner made a proposal to the President that voting on the no-confidence motion should be "free" and not by ballot. One Councillor, Mahavirprasad, moved a counterproposal. Ultimately, the President decided that voting on the motion would be by ballot. It is not disputed by the opponents that voting on the resolution was by ballot. As a result of the count it was found that twelve Councillors voted for the motion of no confidence against the petitioner and five against it. The Council consists of eighteen members and seventeen of them were present at the meeting at which the motion of no-confidence was moved. u/s 47(1) of the Madhya Pradesh Municipalities Act, 1961, (hereinafter referred to as the Act), if a motion of no-confidence is carried by a majority of two-thirds of the Councillors present and

voting and if such majority is more than half of the total number of the Councillors constituting the Council for the time being, then the office of the President or the Vice-President, as the case may be, is deemed to have become vacant forthwith. The motion of no-confidence against the petitioner was carried with the majority mentioned in section 47(1) . The result of the passing of that motion was that the office of Vice-President of the Council which the petitioner held, became vacant forthwith.

3. In this petition, the applicant has raised several grounds questioning the legality of the proceedings of the meeting held on 5th November 1963 and of the resolution of no-confidence passed against him thereat. He has also made allegations and suggestions in the petition that votes were not properly taken, that the ballot boxes were tampered with, that there was substitution of ballot papers, and that the counting of ballot papers was not done openly but secretly. The petitioner's main contention, however, is that the mode of voting adopted at the meeting, namely, by ballot, was illegal and for that reason the resolution expressing no-confidence in him could not be said to have been validly carried.

4. In the return, it has been admitted that voting on the motion of no confidence was by ballot and in that method it was not possible for anyone to know as to who voted for the motion or against it. It is, however, averred that this method was adopted in order to prevent undue influence being brought on the Councillors in the matter of voting and that the bye laws framed by the Council permitted voting for any motion by the method of ballot.

5. The question, therefore, that arises for determination is whether the ballot-mode of voting on the motion of no-confidence, which was adopted in the case, was legal. Now, the settled rule in regard to mode of voting is that where a statute prescribes the mode in which the vote of a body is to be taken, then that method must be followed and failure to comply with the same is fatal to any action taken; and that if the mode of voting is not prescribed, then the method of voting by show of hands followed, if necessary, by poll, must prevail. It has been stated in Halsbury's Laws of England (3rd edn, vol. 9. p. 52, paragraph-106), in regard to mode of voting to be followed at corporation meetings, that:

At common law votes at all meetings are taken by a show of hands followed, if necessary by a poll; and, in the absence of any special provision to the contrary in the constitution of a particular corporation, the common law method must prevail Voting by show of hands means counting the persons present entitled to vote and who choose to vote by holding up their hands.

The above proposition stated in Halsbury's Laws of England is supported by the decision in *Faulkner Vs. Elger*, 107 English Reports 1127-4 *Barnewall Cresswell* 449, and *Edenborough Vs Archbishop of Canterbury*, 38 English Reports 271-2 *Russell* 93. In *Faulkner's* case (*supra*), the question arose as to the legal method of election for filling the office of the curate when no special provision was

provided in any statute or law. The method adopted there was that every parishioner was given a card containing only the name of the candidate for whom he voted. It was held that this mode of election was illegal. Bayley J., said-

I do not mean to apply my observation to a case where each person inserts his name in a book, but to that species of election where the voter gives his vote in such a manner that no person but himself can know for whom he voted. The common law mode of election is by show of hands, or by poll, and the party electing is then said to have a voice in the election. The objection to the mode of voting by ballot is, that it presents an insurmountable difficulty to a scrutiny, because no person can tell for whom a particular individual voted. Another objection to election by ballot is, that the taking of votes in this secret and private manner has a tendency to encourage perjury.

Littledale J., expressed the view that -

It is clear that at common law, where parties have the right of voting, the restriction of voting by ballot cannot be imposed. The writing of the name of the candidate on a card is not strictly an election by ballot. The great objection to such a mode of election is, that there can be no effectual scrutiny, because if it be afterwards discovered that a given individual has voted who had no right to vote, it is impossible to say on which side he voted. I think that the mode of election adopted in this case was illegal.

In the other case, namely. *Edenborough Vs. Archbishop of Canterbury* (supra), Lord Chancellor Eldon also expressed the same opinion. These two cases were referred to by Bacon, V. C in *Shaw Vs. Thompson*, 3 Ch. D. 233, who said -

Acts of Parliament regulating municipal and parliamentary elections which have introduced voting by ballot, have at the same time introduced regulations which have freed voting by ballot from the objections which were felt in *Faulkner Vs. Elger*, 4 B & C 449 Now you can trace with perfect accuracy by the machinery which is adopted the persons who vote and everything that is necessary to ensure the validity of the vote.

The point to be noted is that in all these three cases a method of voting which did not provide for effectual scrutiny and did not enable anyone to know as to who voted for whom or for which side was not held to be legal. Bacon, V. C, had obviously in mind the provisions of the Ballot Act, 1872 (35 & 36 Vict. c. 33) which prescribed precautions for ballot voting when he made the observations reproduced above.

6. Now, the M. P. Municipalities Act, 1961, nowhere provides that voting on any question, motion or resolution of no confidence shall be by ballot, that is, by secret voting S. 47(1) only prescribes the majority that must exist for the passing of a motion of no-confidence. It does not say anything as to the method which should be pursued for voting on a motion of no-confidence. It is section 62(3) of the Act which throws light on the method of voting to be adopted when

any question or motion of no-confidence is brought up before any meeting of the Council for discussion and decision. Section 62 is as follows

62. (1) Minutes of the proceedings at each meeting of a Council of any of its Committees shall be drawn up in Hindi written in Devanagiri Script and recorded in a book to be kept for the purpose separately for the Council and each of its Committees and shall be signed by the Chairman of the meeting or of the next ensuing meeting.

(2) The minutes of the Council shall be published in the manner prescribed and shall at all reasonable times and without charge be open to the inspection by any inhabitant of the Municipality.

(3) The minutes of the proceedings recorded under sub-section (1) shall include-

(i) the names of the Councillors present;

(ii) the decision of a meeting on every question considered; and

(iii) when such decision is not unanimous, the number of votes and the names of Councillors voting for and against such question and the names of those who have remained neutral, whether votes have been taken by division or otherwise.

* * * * *

It will be seen that sub-section (1) of S. 62 speaks of "minutes of the proceedings at such meeting of a Council." thus drawing no distinction between a meeting called for the purpose of discussion of a motion of no-confidence and a meeting of the Council in the ordinary course for transacting its business. According to sub-section (3) of S. 62, where on any subject the decision is not unanimous and there is voting, then the number of votes and the names of the Councillors voting for and against such question and the names of those who remain neutral have to be recorded in the minutes. The minutes of the Council are open to inspection by any inhabitant of the municipality S. 62 clearly applies to the minutes of the proceedings of a meeting specially convened for discussion on a motion of no-confidence. The result of its application is that the minutes of the proceedings of a meeting at which a no-confidence motion is moved and put to vote must show the names of Councillors voting for and against the motion. This requirement would be impossible of compliance if voting on a motion of no-confidence were to be by the method of ballot. In determining whether the mode of election by ballot is permissible and regard to a motion of no-confidence or in regard to any question before the Council required to be decided by a majority of the votes of the Councillors, it is legitimate to take into consideration the provisions of section 62. It is well established that the true meaning, exact scope and significance of any provision occurring in a statute may be found not merely in the words of that particular provision but on a comparison of the same with other provisions of the statute and the intention of the Legislature ascertained in that way-see *The River Wear Commissioners Vs. William Adamson*, (1877) 2 AC 743, and *Eastman Photo graphic Materials Co. Vs. Comptroller General of Patents*

etc. (1898) AC 571. So also the different provisions of the same statute cannot be read in a manner so as to make one provision contradict or nullify the other point. Having regard to the provisions of section 62, it is impossible to hold that voting on a motion of no-confidence moved u/s 47 can be by ballot. Section 62 impliedly prohibits such a method of voting. It makes no difference whether the provisions contained in section 62 (3) with regard to the maintenance of the minutes of the proceedings of the Council are mandatory or directory, Even if they are treated as directory, that cannot negative the intention of the Legislature that the minutes of the proceedings shall contain inter alia the number of votes and the names of Councillors voting for and against the question put to the vote of the Council. It would be against all canons of interpretation to construe other provisions in the Act in a manner defeating this intention of the Legislature and making it impossible for the Council to keep the minutes in the manner laid down in section 62(3) of the Act. In our judgment, the Act, for from expressly or impliedly authorising the mode of voting by ballot, prohibits that mode as a necessary implication of section 62.

7. The opponent Municipal Council relies on bye-law 16 of the Bye-laws framed by it to justify the method of voting adopted at the meeting held on 5th November 1963. That bye law is as under-

16 (a) Every motion or amendment shall be decided by a majority of votes of the members present and voting thereon. In the case of equality of votes, the Chairman (of the meeting) shall have a second or a casting vote. Voting by proxy is prohibited. Any member may decline to vote on any motion without assigning any reason for abstaining from voting

(b) Vote shall be taken by show of hands, if so demanded by any member; by poll, provided that the Chairman may, if he considers the demand frivolous or vexatious, decline the poll.

(c) The decision on every motion or amendment pressed to a division with the number of votes for and against each motion or an amendment shall be recorded in the minutes of the meeting. The names of the members voting for and against it shall also be recorded if votes have been taken by poll

(b) When votes are taken by ballot the members shall record their votes in writing in such manner as the Presiding Officer may prescribe. Such writing shall not be signed and shall not be seen by any person except the Presiding Officer and two scrutineers to be appointed by him. Such papers shall be destroyed immediately after the result of the Voting is declared.

Bye-law 11(b) gives to the Chairman the power to regulate the course of all business at a meeting. It is no doubt true that these bye-laws read together enable the President to decide whether voting on any motion should be by ballot in the secret manner indicated in clause (d) of bye-law 16. But clause (d) of bye-law 16 is clearly not in conformity with the provisions of section 62 which provides that the minutes must show the names of the persons voting for and

against any motion. The provisions of section 62 cannot be given effect to if the method of voting indicated in bye law 16 (d) is adopted. That bye-law cannot, therefore, be held to be intra vires the Municipal Council which made it, and it cannot be enforced. It is well settled that a bye-law framed by a corporation under a power conferred by a statute must be intra vires the authority which makes it and must not be repugnant to the law of the country and repugnant to the statute conferring on the authority the power to make bye-laws-see *Dukhuram Vs. Co-op. April. Assn, Kawardha*, 1960 J.L.J. 340, and *Provincial Government Vs. Nemichand Beharilal*, AIR 1941 Nag. 203. The arguments advanced on behalf of the Municipal Council that the mode of voting by ballot adopted at the meeting was valid as it was sanctioned by bye-law 16 (d), cannot, therefore, be accepted.

8. Learned counsel for the Municipal Council also referred us to section 81 of the Act which says in effect that until the contrary is proved, proceedings in meetings of the Council shall be deemed to be good and valid. The provision is not relevant here, as no question of any kind stated in clause (i) or (ii) of section 81 is involved in the present case. Here, on the undisputed fact that the method of voting on the motion of no-confidence, which was adopted at the meeting held on 5th November 1953, was by ballot, the question requiring consideration is only as to the legality of the method of voting. In our judgment, the mode of voting by ballot for the motion of no confidence said to have been carried at the meeting held on 5th November 1963 was clearly illegal and contrary to the provisions of the Act. That being so, it must be held that the motion of no-confidence was not validly passed at the meeting held on 5th November 1963.

9. In this view of the matter, it is not necessary to say anything in regard to the allegations and suggestions made in the petitioner's application that there were several irregularities in the conduct of the meeting, that ballot papers were substituted, that the ballot boxes were tampered with, and that the counting of ballot papers was done secretly and not openly. Any comment on the denial and reply of the Municipal Council to these allegations is also equally unnecessary.

10. For these reasons, this petition is allowed, the resolution passed by the respondent Municipal Council at its meeting held on 5th November 1963 expressing no confidence against the applicant is quashed, and it is declared that the petitioner still continues to be the Vice-President of the Municipal Council. The respondents are restrained from giving effect in any manner to the aforesaid resolution. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.