

(1966) 07 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.P. No. 315 of 1966

Tejlal	Vs	APPELLANT
Nandkishore and Others		RESPONDENT

Date of Decision : 22-07-1966

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 47

Citation : (1966) J LJ 930

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhave, J

Bench : Division Bench

Advocate : R.S. Dabir and P.C. Pathak, for the Appellant; Y.S. Dharmadhikari for respondents Nos. 1 to 10 and K.K. Dube, Govt. Advocate for respondents Nos. 16 and 17, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhave, J.—The petitioner is the President of the Municipal Council, Sakti, District Bilaspur. On 2-6-1986, the respondents Nos. 2 to 4 and 6 to 10 and 14, who are councillors of the Municipal Council, gave a requisition to the respondent No. 15, the Chief Municipal Officer, to convene a meeting of the council for moving a motion of no-confidence against the President as is required u/s 47 of the Madhya Pradesh Municipalities Act, 1961. It appears that the Chief Municipal Officer failed to convene the meeting on one pretext or other. It also appears that the said councillors brought the fact of the failure of the Chief Municipal Officer to summon the meeting to the notice of the President and he was requested to convene the said meeting. The President, however, expressed his inability to convene the meeting, as he was not authorised under law to do so. When the Chief Municipal Officer failed to convene the meeting, the councillors on their own convened the meeting and passed a resolution of no-confidence against The petitioner. In this petition under Articles 226 and 227 of the Constitution The petitioner seeks a writ of certiorari for quashing the Resolution, dated 29-6 1966, and further seeks a writ of mandamus restraining the

respondents and the State Government from giving any effect to the above-said resolution.

2. Shri R. S. Dabir, learned counsel for The petitioner, submitted before us that the only manner in which, a meeting for moving a motion of no-confidence against the President can be called is the manner prescribed under sub-section (2) of section 47 of the Municipalities Act, 1961. Under that sub-section the meeting can only be convened by the Chief Municipal Officer on the requisition signed by not less than one-sixth of the total number of the Councillors constituting the Council. A meeting not so convened is not a meeting valid under the Municipalities Act and any action taken in that meeting is ineffective and null and void. Shri Dabir urges that the provisions of section 47(2) are mandatory and non-compliance of those provisions renders any action taken unenforceable in law.

3. After hearing the parties, we have reached the conclusion that the contention of The petitioner must be upheld. In the case of *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, at p. 888 their Lordships, of the Supreme Court observed:

.....though an incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its roles require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views.

From these observations it is clear that when the statute lays down a manner in which a meeting can be called for deciding any specific question, the meeting must be called in that manner and in no other. In the case of *Sheokumar Shastri v. Municipal Committee, Rajnandgaon* 1964 M P L J 197 this Court held that after coming into force of the Act of 1941 a motion of no-confidence could be moved only in accordance with the provisions laid down in section 47. In that case, it was also held that as the notice for calling the meeting was not in conformity with section 47(2) of the Act, the meeting was not validly convened and that the motion of no-confidence was not a validly passed motion.

4. Shri Y. S. Dharmadhikari, learned counsel for respondents 1 to 10, did not seriously challenge the proposition that the proper authority to convene the meeting was the Chief Municipal Officer. He, however, urged that the provisions of section 47(2) of the Municipalities Act, 1961, are not mandatory but are only directory. When the Chief Municipal Officer failed to convene the meeting within a reasonable time, the respondents could convene the meeting on their own initiative and the resolution passed in such a meeting could not be questioned. The Municipal Councillors have a right to pass a resolution expressing no-

confidence in the President and this right cannot be denied to them by the inaction of the Chief Municipal Officer. If the provisions of sub-section (2) of section 47 are treated as mandatory, the inaction of the Chief Municipal Officer would render the rights conferred on the councillors under sub-section (1) of section 47 nugatory. Shri Dharmadhikari therefore, says that the provisions of sub-section (2) of section 47 should be treated as directory and not as mandatory. It is no doubt true that if the Chief Municipal Officer does not carry out his functions properly, the calling of the meeting may be delayed. But the aggrieved persons are not rendered without any remedy. They can move the State Government for removal of the Chief Municipal Officer or they can come before this Court for issuance of a writ of mandamus against the Chief Municipal Officer. The failure of the Chief Municipal Officer cannot, however, clothe the respondents with, an authority to call the meeting on their own initiative. As has been pointed by the Supreme Court, the statutory bodies can express their opinions only in the manner prescribed. When the Secretary calls a meeting a clear record is maintained as to on whose requisition the meeting was called and whether a notice of the requisite period was given or not. What transpires in the meeting is also faithfully recorded. These are all safeguards necessary to avoid controversy and fraud. We are, therefore, satisfied that the provisions of section 47(2) of the Municipalities Act are mandatory and not directory.

5. Shri Dharmadhikari also drew our attention to a decision of the Supreme Court in *K. Narasimhiah Vs. H.C. Singri Gowda*, wherein it was held that where some of the councillors of the municipality received less than three clear days' notice of a special meeting to discuss a resolution to express no-confidence in the President and in the strength of 20, 15 out of 19 councillors who attended the meeting voted for the resolution, the proceedings of the meeting were not prejudicially affected by the irregularity in the service of the notice and the resolution passed there was not invalidated. It may be noted that, in that case, the meeting was convened by the proper authority and the notices were also served on the councillors concerned. The only defect pointed out was that some of the councillors had not received three clear days' notice. In the Municipalities Act under consideration before the Supreme Court section 36 of the Act provided that no resolution of the municipal council shall be deemed invalid on account of any irregularity in the service of notice upon any councillor or member provided that the proceedings of the municipal council or committee were not prejudicially affected by such irregularity. Because of this provision their Lordships of the Supreme Court considered the matter from the view point of irregularity of the notice and the prejudice that could have been caused. That decision can be of no help for deciding the question before us. The provisions of section 47(2) of the Municipalities Act are mandatory and their strict compliance is necessary.

6. Shri Dharmadhikari also urged that it was the duty of The petitioner as the President of the Municipal Council to direct the Chief Municipal Officer to convene the meeting when it was pointed out to him that the Chief Municipal Officer was not discharging his duties properly. For this reliance was placed on the provisions

of section 51. We are of the opinion that section 47 is a special provision for the purpose of moving a resolution of no-confidence against the President. The duties imposed on the Chief Municipal Officer are Special duties imposed under that section and they do not come within the general supervisional powers of the President. No fault can be found with The petitioner. It is also suggested that the Chief Municipal Officer was mixed up with The petitioner and that he deliberately delayed the calling of the meeting. We are not here to express our opinion one way or the other as to whether the Chief Municipal Officer acted in the manner he did with the ulterior motive of helping the President or not; but we must record our opinion that we do not find any justification for the failure of the Chief Municipal Officer to convene the meeting.

7. We, therefore, conclude that the meeting held on 29-6-1966 was not a validly called meeting and the Resolution passed in that meeting is ineffective. The Resolution is hereby quashed. We also direct that the said Resolution shall not be given effect to by any of the respondents. The petition is allowed with costs. Hearing fee Rs. 100. The costs shall be paid by the respondents 1 to 10. Other respondents shall bear their own costs. The outstanding amount of the security deposit shall be refunded to The petitioner.