

(1995) 09 MP CK 0039
In the Madhya Pradesh High Court
Case No : L.P.A. No. 118/95

The State of M.P. and Others

APPELLANT

Vs

Beni Pd. Rathore and Others

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 62

Citation : AIR 1996 MP 101 : (1995) J LJ 769 : (1996) 41 MPLJ 158 : (1996) MPLJ 158

Hon'ble Judges : U.L. Bhat, C.J.; V.K. Agarwal, J.; S.K. Dubey, J

Bench : Full Bench

Advocate : Anoop Choudhary, A.G. and R.S. Jha, for the Appellant; N.C. Jain and L.S. Baghel, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

Respondents 1 and 2 herein who are Municipal Councillors, were elected as President and Vice President respectively at the election held on 12-2-1995. 12 Councillors gave requisition for moving resolution expressing no confidence in them. The Chief Municipal Officer convened a meeting on 6-5-1995 for consideration of the motions. The President was absent at the meeting, but the Vice President was present. The Councillors unanimously elected third appellant, one among the Councillors, to preside over the meeting. Resolutions expressing no confidence in the President and Vice President respectively were taken up separately for consideration and both the resolutions were passed in the presence of 29 Councillors, 23 Councillors voting in favour of the resolutions. The President and Vice President jointly filed the writ petition challenging the legality of the resolutions on the ground that proceedings were illegal inasmuch as the Vice President ought to have presided and the Councillors could not have elected a Councillor to preside over the meeting and that minutes of meeting had not been recorded as required u/s 62 of the M.P. Municipalities Act 1961 (for short

the Act.).

The learned single Judge held that the provisions of Section 47 should be followed strictly, that as per Section 47(2)(iii) when motion of no confidence is moved against the President, he could not preside but the Vice President should have presided, that the pendency of motion against the Vice President did not render his office vacant, that only after lawful motion is passed against him, his office shall fall vacant and, therefore, at the time of passing of the motion against the President, an elected Councillor could not have presided and the conduct of the meeting was illegal and the motion has to be quashed. The learned Judge also held that the minutes were not recorded in accordance with Section 62 inasmuch names of the Councillors voting were not recorded and this also vitiated the proceedings. It appears that in view of the peculiar situation of resolutions having been presented against both the President and the Vice President, the learned Advocate General suggested that fresh meeting could be held under the Chairmanship of the Collector and this was agreed to by the learned single Judge who directed a meeting to be convened on 19-7-1995 Under the Chairmanship of the Collector to consider the no confidence motions afresh. The State Government, the Chief Municipal Officer and the Councillor who presided over the meeting have filed the present appeal challenging the order of the learned single Judge.

In view of the importance of the legal questions involved in this appeal, the Division Bench which admitted the appeal, referred the case to a Full Bench. We may incidentally mention that the respondents have filed an appeal challenging the specific directions issued by the learned single Judge in regard to the fresh meeting. That appeal is not before us.

The first question which arises for consideration is whether the fact that the Vice President did not preside over the meeting when it considered the resolution against the President and the third appellant was elected to preside over the meeting vitiates the resolution passed against the President.

Section 51 of the Act which deals with the powers and duties of President, lays down that it shall be the duty of the President to preside over meetings unless prevented by reasonable cause from doing so. Section 52 deals with functions of the Vice President. In the absence of President, it shall be the duty of the Vice President to preside at the meeting unless prevented by reasonable cause from doing so. Section 55 deals with first meeting after general election for election of President and Vice President. The meeting shall be presided over by Collector in case of Municipalities and by Sub-Divisional Officer in case of Nagar Panchayats. Section 56 deals with convening of meetings. The date of every meeting, except the meeting referred to in Section 47 and in Section 55, shall be fixed by President or in the event of the President being incapable of acting, by the Vice President and in the like event in his case, by the Chief Municipal Officer. It also prescribes the requisite period of notice, Section 57 deals with power of the President and Vice President to call special meeting. Section 59 relates to

Chairman of meeting. At every meeting of the Council, the President if present, or in his absence or during the vacancy of his office, the Vice President and if there be no President or Vice President present, then such one of the members as the Council may elect shall preside as Chairman. Section 81, inter alia, declares that until the contrary is proved, every meeting of the Council shall be deemed to have been duly convened and held when the minutes of the meeting have been signed in accordance with the provisions of this Act.

Section 47 relates to no confidence motion against President or Vice President. The Provision reads thus:

"47. No confidence motion against President or Vice President -

(1) A motion of no confidence may be moved against the President or the Vice President by any (elected) Councillor at a meeting specially convened for the purpose under Sub-section (2) and if the motion is carried by a majority of two-thirds of the (elected) Councillors present and voting and if such majority is more than half of the total number of the (elected) Councillors constituting the Council for the time being, the office of the President or the Vice President, as the case may be, shall be deemed to have become vacant forthwith.

(2) For the purpose of Sub-section (1), a meeting of the Council shall be held in the following manner, namely:--

(i) the meeting shall be convened by the Chief Municipal Officer on a requisition signed by not less than one-sixth of the total number of (elected) Councillors constituting the Council for the time being;

(ii) The notice of such a meeting specifying the time and place thereof shall be despatched by the Chief Municipal Officer to every Councillor ten clear days before the meeting;

(iii) the President or Vice President, as the case may be, against whom the motion of no confidence is to be moved, shall not preside over the meeting;

(iv) a copy of the notice shall be sent to the prescribed authority.

(3) If the office of the President becomes vacant under this section, all powers and duties of the President may, until the election or appointment of his successor, be exercised and performed by the Vice President and if there be no Vice President, by such Councillor as the State Government may, appoint in this behalf.

(4) The fact of the removal of the President or the Vice President under Sub-section (1) and the appointment of his successor shall be notified in the Gazette by the State Government."

Examination of the above provisions shows that in regard to Chairman of meeting, various possibilities and contingencies have been taken note of by the Legislature. The first meeting after general election for election of President and

Vice President shall be presided over by the Collector. This is a special provision for the first meeting. The General Provisions are contained in Sections 51, 52 and 59. If the President is present, he shall preside unless prevented by reasonable cause from doing so. In the absence of President or during vacancy of office of President, the Vice President shall preside unless prevented by reasonable cause from doing so. If there be no President or Vice President present, one of the Councillors elected for the purpose shall preside over the meeting. In the very nature of things, these provisions should not be understood in a literal hypertechnical manner. President may be present and he may not have reasonable cause, or he may be prevented by reasonable cause for presiding; he may refuse to preside or he may refrain from presiding over the meeting. The "presence" of the President or Vice President referred to in Section 59 is not mere physical presence, but presence coupled with readiness to preside over the meeting. In the absence of the President or in the event of his declining or refraining from presiding over the meeting, it is for the Vice President to preside.

The statutory provision in Section 59 that "if there be no President or Vice President present" should not also be understood in the literal or hypertechnical sense. These words should be understood in a common sense manner. The Legislative intention could not be to refer to the mere physical presence of the President or Vice President, but to the presence, coupled with readiness to preside. If both of them are absent, certainly one of the Councillors could be elected to preside over the meeting, but if both are present and decline to preside or are not ready to preside or refrain from presiding or do not preside, it cannot be that the meeting shall not take place; though they are physically present, they are not presiding over the meeting. Such a contingency is implied in Section 59 and can be met by one of the Councillors present being elected to preside over the meeting. The concept of democracy at the grass-root level is sought to be realised by various provisions of the Act and parallel provisions of other Acts relating to Local Self-Government. The Provisions must receive an interpretation which would subserve the object of preserving and nurturing the concept of democratic self-Government. It should not be left to the caprices of the President or Vice-President to immobilize the functioning of the Municipal Council, by their arbitrary conduct or failure to preside over the meeting of the Council. It is, therefore, necessary to understand these general provisions in a common-sense or realistic manner as indicated above.

Section 47 requires meeting to specially convened for consideration of no-confidence motion against the President or Vice-President as the case may be. Section 47 contemplates "a motion of no-confidence" which may be moved against the President or the Vice-President at a "meeting specially convened" for the purpose. If the motion 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 Councillors constituting the Council for the time being, the office of President or the Vice-President as the case may be, shall be deemed to have become vacant forthwith. The Provision does not contemplate a joint motion of

no-confidence to be moved against both the President and the Vice-President. Understood liberally, the Provision also does not contemplate separate motions against the President and the Vice-President being moved at the same meeting. The legislative scheme contemplates that separate meetings should be convened for the purpose. It should not be difficult to do so as the two meeting could be convened to be held on the same day at a short interval of time. But where out of ignorance or having regard to practicalities of the situation, a single meeting is purported to be convened for the purpose of considering separate motions against President and Vice-President, the Court without taking a hyper-technical view, must deem that in the eyes of law, two separate meetings are convened and held. It is in this light that the facts of the case have to be appreciated.

Clause (iii) of Sub-section (2) of Section 47 of the Act makes it amply clear that the President or Vice-President, as the case may be, against whom the motion of no-confidence is to be moved, shall not preside over the meeting. If the motion is moved against the President, the Vice President has to preside. If he is prevented from doing so by reasonable cause or if he is not "present" in the active sense of the expression as indicated by us earlier, namely, he is physically present, but declines to or is not prepared to or does not preside over the meeting, Section 59 of the Act would come to the rescue and a Councillor elected for the purpose shall preside over the meeting. The same is the position where motion of no-confidence is to be moved against the Vice-President. The President, unless prevented from doing so by reasonable cause, shall preside over the meeting. In his absence or even if he is present, but declines to or is not prepared to or does not preside over the meeting, Section 59 will come to the rescue and a Councillor elected for the purpose shall preside over the meeting. This is the only reasonable manner in which the Statutory provision can be understood. Otherwise, President or Vice-President could collude and ensure that motion of no-confidence against one of them is not considered by the Council for a period of time.

We shall now advert to the decisions placed before us. In *Baboo Lal Choubey Vs. The Municipal Council*, this Court had to consider the legality of a no-confidence motion against the President of a Municipal Council passed at a meeting presided over not by the Vice-President, but by a Councillor elected for the purpose. The President and the 2 Vice-Presidents were present at the meeting. In view of Section 47(2)(iii) of the Act which prohibits the President or Vice-President, as the case may be, against whom motion of no-confidence is to be moved from presiding over the meeting, the Vice-President could have presided and the Councillor could not have presided over the meeting. The Court observed:

"One of the Vice-Presidents of the Council could have, no doubt, taken the Chair, but if he did not and the Council elected one of the Councillors for presiding over the meeting, it cannot be held that the meeting was illegal."

Section 52 casts a duty on the Vice-President to preside over the meeting in the absence of President unless prevented by reasonable cause. The Court observed

that the provision would not apply since the President was present at the meeting. The Court found that Section 59 did not, in terms, apply to a case since the President was present and there was no vacancy in the office of the President. This decision is in accord with the view taken by us, though there was no logical reasoning in the decision.

In *Tejilal v. Nandkishore*, 1966 MPLJ 1014, Councillors gave requisition to the Chief Municipal Officer to convene a meeting for consideration of the motion of no-confidence which they proposed to move against the President. The Chief Municipal Officer did not convene the meeting. The request of the Councillor made to the President to convene a meeting was of no avail since the President had no power to convene a meeting for such a purpose. Thereupon, the Councillors themselves convened a meeting and purported to pass a motion of no-confidence against the President, Referring to Section 47(2) of the Act which required a meeting to be convened by the Chief Municipal Officer on a requisition by not less than 1/6 of the total number of elected Councillors, the Court held that the provision was mandatory and not directory, failure of the Chief Municipal Officer to convene a meeting did not clothe the Councillors with authority to convene a meeting and since the meeting was not validly convened, the resolution was legally ineffective. This decision is not helpful for us in this case.

In *Rajendrasingh v. N. K. Shejwalker*, 1971 MPLJ 639, this Court considered the provisions of M. P. Municipal Corporation Act, 1956. The case related to election of Mayor. It was held that Section 23(1) of the Corporation Act relating to the term of office of Mayor was directory and substantial compliance would be sufficient. The meeting was presided over by the Mayor who himself was a candidate for election. This was, challenged as in violation of principles of natural justice. The Court repelled this contention holding that principles of natural justice could not prevail over statutory provisions. The Court held that on the date of the meeting, the Mayor had not ceased to be Mayor and, therefore, he was ineligible to contest and quashed his election. This decision is also not helpful for us in this case.

Learned counsel for the appellants contended that the provisions in Section 47(1) requiring the President or Vice-President as the case may be, to preside over the meeting is mandatory and any violation of the statutory requirement would render the proceedings null and void. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience and it is the duty of Courts to try to get at the real intention of the Legislature by carefully attending to the whole scope to be considered. (See *Liverpool Borough Bank v. Turner*, (1861) 30 LJ Ch 379. The question depends upon the intention of the Legislature and not on the language. The intent of the Legislature must be ascertained not only from the phraseology of the provision, but also by- considering its nature, its design and the consequences which would follow from construing it one way or the other. See *State of U.P. Vs. Manbodhan Lal Srivastava*, . The Court must, inter alia,

consider the nature and design of the Statute and the consequences which would follow from construing it one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for contingency of the non-compliance with the provisions; the fact that non-compliance with the provision is or is not visited by some penalty; the serious or the trivial consequences that flow therefrom, whether the object of the legislation would be vitiated or frustrated. See *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . If the object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of the enactment the same would be construed as directory. See *Montreal Street Railway v. Normandin*, AIR 1927 PC 142 (sic).

The Act has considered several contingencies and made provision to meet those contingencies in regard to matter of Chairman of the meeting. Apart from the first meeting of general election to be held for election of President and Vice-President, in either special or ordinary meetings, the President or the Vice-President, as the case may be, shall preside. That is the statutory requirement. The Act has also taken care to indicate that where President is not present, Vice-President shall preside and if he is not present, a Councillor elected for the purpose shall preside. The President may be present, but may be prevented from reasonable cause from presiding; so also in case of Vice-President. In such contingency also, a member elected for the purpose shall preside. The statutory scheme requires that except in the case of first meeting after general election, the President or Vice-President or a Councillor elected for the purpose shall preside. The Act does not provide that non-compliance is or is not visited by some penalty. It is unthinkable that a meeting of the Council can be presided over by somebody who is not authorised to do so under law. The consequences of an unauthorised person presiding over the meeting will be to reduce the entire democratic process of Local Self-Government to a farce. To construe the scheme of statutory provisions directory, would lead to very anomalous results. Considering the nature and design of the Act, the consequence which would follow from construing the provisions as mandatory or directory, absence of provision providing for non-compliance of the provision being visited with some penalty would be that the scheme provided under the statutory provision is mandatory. But the scheme has to be understood not in a literal or pedantic manner as we have already indicated, but in a practical and realistic manner. The presence of President or Vice-President, as the case may be, cannot be merely physical presence, but presence with the readiness to preside over the meeting. The President, if present and is not prevented from presiding on account of reasonable cause and is prepared to preside over the meeting, occupies the Chair and starts deliberations; it is not for him to wait for somebody to call upon him to preside over the meeting. Where he does not occupy the Chair for some reason or the other, it would ordinarily mean that he is not prepared to preside

over the meeting and his "presence" would not be meaningful presence, as contemplated in the provision; so also in case of Vice-President. If either is prepared to preside and is prevented from presiding over the meeting, that would, be a violation of the mandatory requirement of the provision and the same will be visited with the necessary legal consequence of invalidity.

Though a single meeting was held to consider the two motions of no-confidence, in the eyes of law, it must be deemed that two separate meetings were held, the first meeting in which the motion of no-confidence against the President was considered and the second meeting in which motion of no-confidence against Vice-president was considered. The President was absent and in any event, could not have presided over the first meeting. The Vice-President was physically present. It is not the writ petitioner's case that the Vice-President did not decline or was prepared to preside over the meeting. The fact remains that he was present at the meeting and did not preside over the meeting. It is nobody's case that he was prevented from presiding over the meeting. It was as per the unanimous decision of all the Councillors present including the Vice-President, that the third appellant was elected to preside over the meeting. This would clearly mean that the Vice-President was not prepared to preside over the meeting, though physically present. This may amount to failure on his part to discharge his statutory duty, but that cannot invalidate the proceedings. It may be, as suggested by learned counsel that since a single meeting had been convened and motion of no-confidence was to be considered against him also in that meeting, he was under an impression that he could not or should not preside over the meeting. Whatever be the motive which impelled him not to preside over the meeting, the fact remains that he was not prepared to preside and did not preside over the meeting. In our considered opinion, this is a contingency which attracts the provision infection 59 of the Act. It was absolutely legitimate for the Councillors present to elect one among themselves to preside over the meeting. The view taken by the learned single Judge that passing of the motion of no- confidence against the President is vitiated on account of the fact that the third appellant was elected to preside over the meeting, is unsustainable on a proper understanding of the statutory provisions.

We now proceed to consider the second contention, urged on behalf, of the appellants, namely invalidity of proceedings in view of minutes not being recorded according to Section 62 of the Act. Section 62 of the Act reads thus:

"62. Minutes of proceedings -

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

(2) The minutes of the Council shall be published in the manner prescribed and

shall at all the reasonable times and without charge be open to the inspection by any habitant of the Municipality.

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

(i) the name of Councillor present;

(ii) the decision of 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 name of those who have remained neutral, whether votes have been taken by division or otherwise."

We are in this case concerned only with subsection (iii) of Section 62. This provision requires the minutes to contain record the names of the Councillors present and the decision of the meeting on every question considered. If the decision is not unanimous, the minutes should record the number of votes and the names of councillors voting for and against the question and names of those who remained neutral, whether votes have been taken by division or otherwise.

The learned single Judge had occasion to look at the original minutes. We have perused the authenticated copy of the minutes. The minutes contain record of names of Councillors present and the decision On each of the resolutions. The record indicates that out of 29 Councillors present, 23 voted in favour of each of the resolutions. There is no record that any of the Councillors voted against the resolutions. The respondents herein never raised a contention that any of the Councillors voted against the resolutions or that they remained neutral and such fact was deliberately or accidentally not recorded in the minutes. It must necessarily follow that the remaining six Councillors did not participate in the voting. In the writ-petition, it is admitted that after the counting of votes was over, the third appellant declared that 23 Councillors had voted in favour of the resolutions and that the resolutions had been passed. There is no dispute that 23 votes being cast in favour of the resolutions, satisfies the requirement of Section 47, i.e., majority of 2/3rd of the elected Councillors present is voting and more than half the total number of Councillors constituting the Council. Once the result of voting is declared and the resolutions are passed by operation of subsection (1) of Section 47 of the Act, the office of the President and subsequently the office of the Vice-President is deemed to have become vacant forthwith.

In the grounds raised in the writ petition, there is an averment that only less than 23 Councillors voted for the resolutions. The first petitioner (President) was not present at the meeting, but the second petitioner (Vice-President) was admittedly present at the meeting. If 23 Councillors did not vote for the resolutions and a lesser number of Councillors voted for the resolutions, the petitioners would have been in a position to state in the writ petition as to the exact number of Councillors who voted for the resolutions. They did not choose to furnish such data in the writ petition. The Court must, therefore, proceed on

the basis that 23 voters voted for the resolutions.

Learned single Judge held that the requirement regarding particulars to be mentioned in the minutes u/s 62, namely, recording names of Councillors is mandatory and since names of the 23 Councillors who voted for the resolutions are not recorded in the minutes, the minutes are illegal and proceedings are vitiated.

We have already referred to the general principles which guide a Court in deciding whether a particular provision is mandatory or directory. The intention of the Statutory scheme is to provide for effective and democratic Local Self Government and power is vested in a body of persons. It is absolutely necessary that clear decisions are taken and a clear and correct record of decisions is maintained. It is necessary to avoid all future disputes regarding nature of the decision arrived at. If the decision is vague or is not correctly recorded, it becomes ineffective irrespective of whether the provision is mandatory or directory. If the decision improperly recorded and the factum of the decision having been taken is recorded in the minutes, that would subserve efficacious functioning of the Council. Non-recording of number of votes cast either way may not have much importance except in case of matters in regard to which a particular majority is required as in the case of no confidence motions. In such cases, it should be absolutely necessary to record the number of votes cast either way so that the matter rests beyond all doubt. In this view, it appears to us that recording number of votes cast either way in regard to motion of no confidence is mandatory. But the requirement of recording names of Councillors does not have the importance or significance which is attached to record number of votes cast either way. Of course record of names provides a way of verification regarding identity of Councillors who voted either way, but the absence of record of names does not go to the root of the matter and does not frustrate any discernible intention of Legislature. In the circumstances, we are of the opinion that recording of names of Councillors is directory and not mandatory.

In any event, on the facts of the present case, no fatal consequences can be attached to the non-recording of names of Councillors. That is because in substance, there is no dispute about the fact that the motions received favourable votes of 2/3rd majority of the Councillors present in the voting and more than half the total number of elected Councillors constituting the election. There is substantial compliance with the requirements of law and no one, Councillor or public, or the Institution, suffered any detriment on account of failure in the instant case to record the names of the Councillors.

Learned single Judge has observed that "in a situation which is prevailing in our country," it is imperative that these provisions of the Act should be followed strictly so as to provide authenticity to the meeting of such public body or other bodies. Learned single Judge has not indicated which particular aspect of the situation prevailing in the country warrants strict adherence to the provision requiring recording of names of the Councillors who voted either way. The

situation prevailing in the country is that there are thousands of Panchayat Bodies and Municipalities where officers at various levels are appointed as Executive Officers and this body officers may include people ignorant in all aspects of the functions and duties of the executive officers and Presidents, Vice-Presidents and Chairmen may not be literate, at least literate in law. In such circumstances, to require strict adherence to recording of names of Councillors voting for and against with the consequence of decisions arrived at being rendered nugatory, would definitely frustrate the administration of the body. For the effective functioning of the bodies of the Local Self Government, substantial compliance with the statutory requirement should suffice. Of course, in a given case where it is found that non-recording of names of Councillors was deliberate or actuated by extraneous reasons or if in a given situation, non-recording of names of Councillors has led to serious disputes leading to injustice, different considerations will arise. The Court can always step into strike down the minutes of the proceedings on the ground that there is no substantial compliance of the provisions in the light of adverse consequences of non-compliance. We hold that having regard to the facts of the present case, the minutes and the proceedings cannot be struck down on the ground that the names of Councillors voting for the resolutions have not been recorded.

In the result, we set aside the findings of the learned single Judge as indicated above and find that there are no grounds to strike down the proceedings or decisions arrived at the meeting. The impugned order is set aside, and the writ petition is dismissed. In the circumstances, parties shall bear their own costs throughout.