

Prabhakar Narayan Kelkar and ors. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Sep-18-1998

Reported in : 1999(2)MPLJ608

Judge : S.P. Srivastava, J.

Acts : Madhya Pradesh Municipal Corporation Act, 1956 - Sections 23A and 24;
Madhya Pradesh Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 1997

Appeal No. : W.P. No. 1368 of 1997

Appellant : Prabhakar Narayan Kelkar and ors.

Respondent : State of M.P. and ors.

Advocate for Def. : K.B. Chaturvedi, Govt. Adv. for Respondents Nos. 1 to 3 and
;J.P. Gupta, Sr. Adv. and ;Tapan Trivedi, Adv. for Respondent No. 5

Advocate for Pet/Ap. : R.D. Jain, Sr. Adv. and ;K.N. Gupta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.P. Srivastava, J.

1. Feeling aggrieved by the order dated 7th October, 1996 passed by the Commissioner and the order dated 23-8-1997 passed by Sanyukta Sanchalak, Sanchanalaya, Nagar Prashashan, Madhya Pradesh, Bhopal, as well as the consequential order passed by the Collector dated 30-8-1997, the petitioners have now approached this Court seeking redress praying for the quashing of the aforesaid orders and issuance of a direction for holding the meeting to consider the motion of no-confidence brought against Shri Ramniwas Singh Gurjar, Deputy Mayor/Speaker of Municipal Corporation, Gwalior.

2. It may be noticed that under the order dated 7-10-1996 the Mayor had cancelled the proposed meeting scheduled to be held on 8-10-1996 for considering the motion of no-confidence against the aforesaid Shri Ramniwas Singh Gurjar, the Deputy Mayor, the requisition for which had been received on 6-9-1996. Vide the order dated 23-8-1997 the Sanyukta Sanchalak had informed the Collector Gwalior that the requisition dated 4-8-1997 for holding a meeting for consideration of motion of no-confidence against the Speaker was not entertainable. Vide the order dated 30-8-1997 the Collector, district Gwalior, acting on the aforesaid order of the Sanyukta Sanchalak had declined to entertain the motion of no-confidence.

3. I have heard the learned counsel for the petitioners as well as the learned counsel representing the respondents Nos. 1 to 3 and the learned counsel representing the respondents Nos. 4 and 5 and have also carefully perused the record.

4. The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. Shri Ramniwas Singh Gurjar, a Parshad (Councillor), in the Nagar Nigam, Gwalior, had been elected as Deputy Mayor of the Corporation on 4-1-1995. While he was holding the post of Deputy Mayor a requisition for holding a meeting for considering the no- confidence motion against him signed by 34 councillors was presented on 6- 7-1996. This requisition was proposed by Shri Shammi Sharma, a Parshad and was approved/seconded by Shri Pooransingh Palaiya. It was signed by several other Parshads. On the aforesaid requisition, finding that the number of councillors, who had signed on the requisition, was more than 1/6th of the total number of councillors, the Commissioner, Nagar

Nigam, Gwalior, vide his order dated 25-9-1996 requisitioned a special meeting for the consideration of the motion of no-confidence which was to be held on 8th of October, 1996. However, before the date scheduled for holding the meeting, Shri Shammi Sharma, the 'Prastavak' of the requisition and Shri Pooransingh Palaiya, the 'Samarthak' of the requisition, moved an application on 5th of October 1996 informing the Commissioner that the aforesaid requisition was withdrawn. Receiving the intimation regarding withdrawal of the requisition the Commissioner passed an order dated 7th October, 1996 cancelling the meeting scheduled to be held on 8-10-1996 for consideration of the motion of no-confidence.

5. The provisions contained in Section 24 of the Municipal Corporation Act, 1956, relating to a motion of no-confidence against a Deputy Mayor under the Act, as in force on the relevant dates, was to the following effect:-

'24. Removal of Mayor and the Deputy Mayor. - A motion of no- confidence may be moved against the Mayor or the Deputy Mayor 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 (elected) councillors constituting the Corporation for the time being, the office of the Mayor or the Deputy Mayor, as the case may be, shall be deemed to have become vacant forthwith.

Provided that no such motion shall be moved against the Mayor or Deputy Mayor within a period of-

(i) one year from the date on which the Mayor or Deputy Mayor, as the case may be, enters upon his office;

(ii) six months, from the date on which previous motion of no- confidence was rejected.'

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

(i) the meeting shall be convened by the Commissioner on a requisition signed by not less than one-sixth of the total number of councillors constituting the Corporation for the time being;

(ii) the notice of such a meeting specifying the time and place shall be despatched by the Commissioner to every councillor ten clear days before the meeting;

(iii) the Mayor or Deputy Mayor, as the case may be, against whom the motion of no-confidence is to be moved shall not preside over the meeting.'

6. The learned counsel for the petitioners has strenuously contended that the order dated 7th October, 1996 cancelling the meeting for considering the motion of no-confidence is without jurisdiction as once having summoned the meeting acting upon the requisition the Commissioner could not set the clock back and create a situation wherein the proposed motion of no- confidence could not be considered by the electorate.

7. The learned counsel for the contesting respondent, however, has urged that the present writ petition seeking to challenge the order dated 7th October 1996 passed by the Commissioner was filed quite belatedly as it was presented on 8th of September, 1997 and since the petitioner had not acted with utmost despatch this Court may decline to interfere as it was not a fit case for exercising the discretionary jurisdiction envisaged under Articles 226/227 of the Constitution of India warranting an interference in the aforesaid order specially when the Act had been amended on 21-4-1997. It has further been contended that in any case the requisition for holding the meeting for consideration of the motion of no-confidence having been itself withdrawn, there could be no occasion to hold the meeting exercising the jurisdiction envisaged under Section 24 of the Act.

8. So far as the aforesaid question is concerned, it should not be lost sight of that the entire edifice raised on the foundation of the requisition crumbles to the ground in case the requisition itself is withdrawn. In the present case, a perusal of the letter signed by Shri Shammi Sharma, the Prastavak, and Shri Pooransingh Palaiya, the Samarthak, of the requisition indicates that both the aforesaid Parsahads had in unequivocal terms withdrawn their requisition. The provisions

contained in Section 24(2) of the Act which vest the Commissioner with the jurisdiction to call the meeting for consideration of the motion of no-confidence is made dependant upon the existence of a valid requisition. No particular form of the requisition contemplated under Section 24(2) of the Act has been prescribed. The requisition in the present case was of a peculiar nature. It could not be taken to be a requisition of 34 Parshads. It was proposed by one councillor and approved by an other councillor. On this requisition several other councillors had appended their signatures without specifying as to whether they were approvers of the requisition proposed by Shri Shammi Sharma or were themselves the requisitionists. The contention is that the requisition having been withdrawn, and there being no impediment or legal prohibition preventing the withdrawal of such a requisition before the holding of the meeting; in the presence of the withdrawal which had resulted in a situation where the requisition itself ceased to exist, the Commissioner could not proceed to hold the meeting for the consideration of the motion of no- confidence.

9. I am of the considered opinion that the existence of a valid requisition is a condition precedent for holding the meeting for the consideration of no-confidence motion and the legislative intent is that the requisition must be of that number of the councillors which constitutes atleast 1/6th of the total number of the councillors. The expression 'signed by not less than one-sixth of the total number of councillors constituting the Corporation' signifies that the required number of the councillors should themselves be the requisitionists. Once the requisition ceases to be a requisition before the meeting could take place the Commissioner has no jurisdiction to proceed further acting upon a requisition which ceases to exist in the eye of law. I must, however, hasten to add that the situation would be otherwise in case the meeting is actually held pursuant to the valid requisition as in that event the jurisdiction to hold the meeting consequent upon receiving a valid requisition would be taken to be exhausted and any subsequent withdrawal of the requisition cannot nullify the effect of the meeting or its validity in any manner whatsoever.

10. It must further be not lost sight of that a requisition validly constituted cannot be deemed to have been withdrawn at the instance of any number of Parshads or councillors over and above the minimum required number that is 1/6th of the total

number of the councillors constituting the Corporation. The decision in regard to the motion of no-confidence has to be taken in the manner prescribed under the Act under Section 24(1) thereof. In this view of the matter the withdrawal of support of the requisition by one or more councillors over and above the minimum of the 1/6th indicated above will not have any effect on the requisition which continues to be valid at the time of its presentation. The motion of no-confidence could fall or could be taken to have been carried only in accordance with the decision reached in the meeting for consideration of the no-confidence motion strictly adhering to the statutory provision referred to hereinabove. But, in a case where the requisition is withdrawn by the councillors who had initiated it and ceased to be a requisition by the minimum requisite number of councillors, before the holding of the actual meeting, there will be left nothing to be considered and the meeting even if called will have to be cancelled.

11. In the aforesaid circumstances I am clearly of the opinion that the order dated 7-10-1996 cancelling the meeting was well within the jurisdiction.

12. It may further be noticed that the exercise of discretion by this Court even where the writ petition has been filed belatedly has to be governed by the objectives of promoting public interest and good administration and on that basis it cannot be said that the discretion would not be exercised in favour of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. Further like all the equitable principles the doctrine of laches applies where it would be unjust to give remedy to the petitioner who is disentitled to the grant of the same by his conduct, including creation of third party rights during the intervening period which are attributable to the laches of the petitioner. Further, it may also be noticed that the test is not the physically running out of the time but the real test to determine in such cases is that the petitioner should come to the writ Court before a parallel right is created.

13. Considering the facts and circumstances of the present case, I am of the considered opinion that the laches on the part of the petitioners in challenging the order of the Commissioner dated 7-10-1996 cannot be ignored. The proposer and the seconder of the requisition had withdrawn the requisition. No fresh requisition

had been submitted and there was no grievance by any of the electorate (councillors) representing the general body at least till 4-8-1997 indicating that the Deputy Mayor had lost their confidence. None of the signatories to the requisition had tried to submit any fresh requisition indicating that the respondent No. 5 had lost their confidence upto 4-8-1997. The other requisition for holding the meeting for consideration of no-confidence motion was submitted on 4-8-1997. It is a clear indication of the fact that at least upto that date there was no grievance against the respondent, Deputy Mayor, and he could be safely taken to have continued to retain the confidence of the electorate reposed in him.

14. In the circumstances I am of the clear opinion that no justifiable ground can be said to have been made out for any interference in the order of the Commissioner dated 7-10-1996, and no case for the intervention of equity is made out so far as the aforesaid order is concerned.

15. The writ petition, so far as the relief against the aforesaid order is concerned deserves to be and is hereby dismissed.

16. The other contention urged and pressed by the learned counsel for the petitioners is that the impugned order holding that the requisition dated 4-8-1997 for holding a meeting for the consideration of the motion of no- confidence to be not entertainable in view of the provisions contained in Section 23-A of the Act, which came into effect with the enforcement of the M. P. Act No. 18 of 1997, is manifestly erroneous and the respondent- authority could not, under the law, refuse to convene the special meeting for consideration of motion of no-confidence on the basis of the aforesaid requisition.

17. The learned counsel for the contesting respondents have urged that in view of the amendments bringing into effect the provisions contained in the proviso to Section 23-A of the M.P. Municipal Corporation Act, 1956 vide the Amending Act No. 18 of 1997 a motion of no-confidence against a Speaker could not be entertained within a period of two years from the date on which the Speaker entered upon his office. Strong reliance is placed on the proviso to Section 23-A(I) of the Act which clearly mandates that no such resolution regarding the motion of no-confidence could lie against the Speaker within a period of two years from the

date on which the Speaker entered upon his office and one year from the date on which the previous motion of no-confidence was rejected. It is, therefore, urged that since the Speaker has to be taken to have entered upon his office under the new provisions w.e.f. the date of enforcement of M.P. Act No. 18 of 1997, which is 21-4-1997, the requisition having been submitted on 4-8-1997 fell within the period stipulated in Section 23-A of the Act as indicated above with the result that the prohibition contained in regard to the entertainment of any such requisition had to be taken as operative and consequentially the impugned order being in accordance with the aforesaid statutory provisions cannot be held to be without jurisdiction or vitiated in law in any manner so as to warrant an interference by this Court.

18. I have given my anxious consideration to the aforesaid rival contentions and have carefully perused the provisions contained in the M.P. Municipal Corporation Act, 1956 as well as the implications arising under the amended provisions in question.

19. The M.P. Act No. 18 of 1997 was published in the M.P. Gazette Extra Ordinary dated 21-4-1997. As stipulated in the amended Section 9 of the Act it was stipulated that the Municipal Corporation shall consist of Mayor that is Chairperson elected by direct election from the Municipal area; Councillors elected by direct election from the wards; and not more than six persons having special knowledge or experience in the municipal administration, nominated by the State Government.

20. The provisions contained in Section 18 of the Act stipulated that the Mayor and the elected councillors of the Corporation shall within fifteen days from the date of the notification of the election under Section 22, of the Act in the prescribed manner, elect a speaker from the elected councillors.

The provisions contained in Section 23-A as amended provides as follows :-

'23-A. No-confidence motion against Speaker.- (1) A motion of no- confidence may be moved against the Speaker 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 in the meeting and if such majority is more than half of the total number of elected Councillors constituting the Corporation, the office of the Speaker, shall be deemed to have fallen vacant forthwith :

Provided that no such resolution shall lie against the Speaker within a period of-

(i) two years from the date on which the speaker enters upon his office.

(ii) one year from the date on which the previous motion of no- confidence was rejected.

(2) For the purpose of sub-section (1) a meeting of the Corporation shall be convened and presided over by the Collector in the following manner, namely :-

(i) the meeting, shall be convened forthwith on a requisition signed by not less than one sixth of the total number of elected Councillors constituting the Corporation for the time being,

(ii) the notice of such a meeting specifying the date, time and place shall be despatched to the Mayor and every Councillor ten clear days before the meeting,

(iii) the no-confidence motion moved under this section shall be decided through secret ballot.'

The transitory provision contained in the M. P. Act No. 18 of 1997 published in M. P. Gazette Extra Ordinary dated 21-4-1997, is to the following effect:-

'Transitory provisions - (1) All the Mayors and the Deputy Mayors of the Corporation and President and Vice-President of the Municipal Council and Nagar Panchayat existing immediately before the commencement of Madhya Pradesh Nagar Palik Vidhi (Sanshodhan) Adhiniyam, 1997 (hereinafter referred to as the said Adhiniyam) shall continue to function till the expiration of the duration of the existing Corporation or the Council, as the case may be;

Provided that if a vacancy occurs due to any reason as provided in the Act, it shall be filled in accordance with the provisions of the said Adhiniyam:

Provided further that the Deputy Mayor shall be designated as Speaker of the Corporation.'

21. It may be noticed that prior to the enforcement of the M. P. Act No. 18 of 1997, in the Act which was in force at the time when the respondent No. 5 had been elected as a Deputy Mayor, the term of office of the Deputy Mayor, was secured for a period of two and a half years from the date on which he was elected to his office provided that notwithstanding the expiration of his term he was to continue to hold office until his successor entered upon his office. The total period, however, could not exceed 5 years as every Municipal Corporation, unless sooner dissolved, could continue for a period of 5 years only from the date appointed for its first meeting and no longer. This is clear from the provision contained in Sections 20 and 23 of the Act as they stood at the relevant time. A motions. of no-confidence could be brought against the Mayor or the Deputy Mayor but not before the expiry of two and a half years from the date of election.

22. As envisaged under the Transitory provisions, referred to hereinabove, the Deputy Mayor of a Municipal Corporation existing immediately before the commencement of the Madhya Pradesh Nagar Palik Vidhi (Sanshodhan) Adhiniyam, 1997, (M.P. Act No. 18 of 1997), was to continue to function till the expiration of the duration of the existing corporation or the council as the case might be. The second proviso to clause (1) of the Transitory provision clearly stipulated that the Deputy Mayor shall be designated as Speaker of the Corporation.

23. The question which, therefore, arises for consideration is as to whether the respondent No. 5, Shri Ramniwas Singh Gurjar, continued to hold the office of Deputy Mayor as envisaged under the M. P. Municipal Corporation Act, 1956, as it stood immediately preceding the enforcement of the M. P. Act No. 18 of 1997 with the designation of the Speaker of the Corporation or had to be taken as a 'Speaker' who had entered upon his office on the date of the enforcement of the M.P. Act No. 18 of 1997, as contemplated under Section 18 of the Act as amended. It has, therefore, to be determined as to whether the transitory provisions have the effect of securing the tenure of office of a Deputy Mayor, who

had entered upon his office on the strength of his election under the provisions of the unamended Act providing only a change in the designation of the Deputy Mayor to that of a Speaker or the office of Deputy Mayor stood dispensed with and substituted with an office of Speaker created instead with the protections envisaged under Section 23-A as brought in to effect with the enforcement of the M. P. Act No. 18 of 1997.

24. The contention of the learned counsel for the petitioners is that the office of the Deputy Mayor with all the security of tenure attached to it as available prior to the enforcement of the M.P. Act No. 18 of 1997 was protected under the Transitory provisions in spite of the re-designation of the office of the Deputy Mayor to that of a Speaker with the result that the provisions contained in Section 23-A which specifically regulated the tenure of a speaker who entered upon his office with his election as contemplated under Section 18 of the Act could not be said to have been attracted in the cases of the Deputy Mayors who were allowed to continue for the remaining period of their tenure as secured under the provisions of the old Act with the re-designation of Speaker.

25. In the present case, there is no dispute that the respondent No. 5 had been elected as a Deputy Mayor on 4-1-1995 in accordance with the provisions of the Act as they stood prior to the enforcement of the M. P. Act No. 18 of 1997. It is further not in dispute that the aforesaid respondent had a security of tenure as provided under the provisions contained in Section 23 read with Section 20 of the Act. It is further not disputed that the respondent No. 5 did not face any election for holding the office of the Speaker as contemplated under Section 18 of the M. P. Municipal Corporation Act as amended in the year 1997. It is, therefore, obvious that no occasion ever arose for his having entered upon the office of Speaker as envisaged under the amended provisions. The transitory provisions permitted the existing Deputy Mayor to continue to function till the expiration of the duration of the existing corporation. This in unmistakable term indicated that a Deputy Mayor who had already entered upon his office by virtue of his election as contemplated under the provisions of the unamended Act was to continue to hold his office till the expiration of the duration of the existing corporation. The only difference made for such Deputy Mayors was a change in the designation. After the amendment a

Deputy Mayor had to carry a designation of a Speaker of the Corporation and not the designation of a Deputy Mayor. It seems to me that this change of designation did not and could not result in altering the security of tenure to which a Deputy Mayor was entitled by virtue of his having been elected as a Deputy Mayor and he could be dislodged from his office on which he had entered upon under the provisions of the unamended Act only strictly adhering to the provisions contained under the unamended Act without being affected by the changes brought into effect in the matter relating to the removal of a Speaker with the enforcement of the M. P. Act No. 18 of 1997 which could be attracted only in case of a Speaker elected in accordance with Section 18 of the Act as amended and who had entered upon the said office after having been elected as contemplated under the aforesaid provision.

26. The learned counsel for the contesting respondents, however, have strenuously tried to urge that under the scheme brought into force vide the amendments effected by the M.P. Act No. 18 of 1997 there were clear alterations in the nature of the duties and functions attached to the office of a Deputy Mayor as compared to the office of the Speaker. These alterations in the nature of the duties, it is pointed out, led to an inference that the office of the Speaker was an office which was entirely different from the office of a Deputy Mayor, and, therefore, it had to be taken that the office of the Deputy Mayor stood abolished and in its place a new office of Speaker was brought into existence. The contention is that the respondent No. 5 had to be taken to have entered upon this new office of Speaker with altered duties and functions as compared to the office of Deputy Mayor by fiction of law from the date of enforcement of the M. P. Act No. 18 of 1997.

27. Having examined the various provisions of the M. P. Municipal Corporation Act and the implications arising under the M. P. Amending Act No. 18 of 1997, I am of the considered opinion that the aforesaid submission of the learned counsel for the respondents is clearly devoid of merits and is not at all acceptable.

28. While it is true that there has been alteration in the nature of the duties and functions of a Deputy Mayor and a Speaker yet by and large the duties assigned

to the Deputy Mayor and the duties assigned to the Speaker are identical in nature with minor differences. These alterations in the nature of the duties or the exercise of the jurisdiction cannot, in my opinion, be taken to be of any significance in view of the clear mandate in the transitory provision contained in the M. P. Act No. 18 of 1997 which required and permitted a Deputy Mayor of the Corporation to continue to function till the expiration of the duration of the existing corporation. The expression 'shall continue to function' is more than sufficient to indicate that the Deputy Mayor who had entered upon the office in accordance with the provisions contained in the Act as in force prior to the enforcement of the M. P. Act No. 18 of 1997 had to be taken to be holding the said office for the rest of the period till the expiration of the duration of the existing corporation subject to the conditions contained in Section 24 of the said Act. It is the same corporation wherein the respondent No. 5 had been elected as a Deputy Mayor which is still continuing. The change of designation, therefore, in the circumstances of the case, will not and could not attract the bar contained in Section 23-A of the Act so as to render the requisition for the consideration of the motion of no-confidence not entertainable for a period of two years w.e.f. 21-4-1997 that is upto 21-4-1999 as asserted by the contesting respondents. The submission of the learned counsel for the contesting respondents, therefore, to the effect that no-confidence motion dated 4-8-1997 did not lie and was not entertainable at all, is clearly without any substance and is not at all acceptable.

29. A perusal of the requisition dated 4-8-1997 indicates that it is signed by 11 Parshads (councillors). It has been asserted in para 5.4 of the writ petition that the number of councillors, who had signed the aforesaid requisition was more than 1/6th of the total number of councillors. Correctness of this assertion of fact has not been disputed in the counter affidavit/return filed by the respondents. This requisition is in accordance with the provisions contained in Section 24 of the M. P. Municipal Corporation Act, 1956, which was in force before the enforcement of the Amending Act No. 18 of 1997 and in view of my conclusions indicated hereinabove had to be dealt with in accordance with the aforesaid provisions. In the requisition dated 4-8-1997 the councillors had described the respondent No. 5 as a 'Speaker'. Such a description so far as the respondent No. 5 was concerned was in consonance with the transitory provisions referred to hereinabove. The

respondent No. 5, who had been elected a Deputy Mayor was to continue to function with the fresh designation of Speaker of the Corporation. The description of respondent No. 5 as a Speaker, therefore, had to be read in the light of the transitory provisions. Merely on the ground that the respondent No. 5 had been described as 'Speaker' it was not open to the respondent-authorities to treat the aforesaid requisition to be a requisition for considering the motion of no-confidence against a Speaker, who had entered upon the office after having been elected in accordance with the provisions contained in Section 18 of the Act as brought into effect with the enforcement of the M. P. Act No. 18 of 1997. In the circumstances, therefore, the Bar contained in Section 23 of the Act could not be deemed to have been attracted.

30. In the facts and circumstances of the present case and in view of my conclusions indicated hereinabove, sufficient ground has been made out for interference by this Court so far as the remaining reliefs prayed for by the petitioners are concerned.

31. In the result, this writ petition succeeds insofar as the reliefs in regard to the impugned orders dated 23-8-1997, a true copy of which has been filed as Annexure P-13 to the writ petition, and so far as the impugned order dated 30-8-1997, a true copy of which has been annexed as Annexure P-12 to the writ petition, as well as the relief contained in para 7 (II) of the writ petition are concerned. The aforesaid orders are hereby quashed with a direction to the Commissioner, Municipal Corporation, Gwalior, and the respondent No. 4 to proceed further treating the requisition dated 4-8-1997 to be entertainable and hold the meeting for considering the motion of no- confidence against respondent No. 5 in accordance with law.