

Ajit Singh Vs. Nagar Panchayat and ors.

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Court : Madhya Pradesh

Decided On : Jul-03-1995

Reported in : 1995(0)MPLJ774

Judge : T.S. Doabia, J.

Acts : Madhya Pradesh Municipalities Act, 1961 - Sections 47 and 47(2)

Appeal No. : W.P. No. 723 of 1995

Appellant : Ajit Singh

Respondent : Nagar Panchayat and ors.

Advocate for Def. : Arun Mishra, Adv.

Advocate for Pet/Ap. : R.D. Jain, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

T.S. Doabia, J.

1. Having lost the battle of ballot, the petitioner shifted the arena of the dispute. He has preferred a petition under Article 226 of the Constitution of India. He challenges a resolution by which a vote of no confidence was passed against him.

This is annexure P/1. This was passed on 18th of May, 1995. The challenge is made on the ground that the petitioner was not served with a notice in accordance with the provisions of Section 47 of the Madhya Pradesh Municipalities Act, 1961, (hereinafter referred to as the Act). It is further argued that meeting was not held in accordance with provision of the Act. It is worthwhile to notice that there are 15 members of the Nagar Panchayat, Bhitwar. A motion with a view to oust an office holder i.e. President or vice-president has to be carried out by 2/3rd majority. In this case, ten members voted in favour of the motion and as noticed above the resolution was duly carried out. The copy of this resolution as noticed above is annexure P/1.

2. Before noticing various contentions, it would be apt to notice the provision of Section 47 of the Act. This provision reads as under :

'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-third's of the elected Councillor 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 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

(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 removal of 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.'

Reliance is also placed on Section 59 of the Act. This provision be also noticed :

'Chairman of meeting - At every meeting of a Council, the President, if present, or in his absence or during the vacancy of his office, a Vice President and if there be no President or Vice President present then such one of their members as the Councillors present may elect, shall preside as Chairman.'

It is on the basis of the above statutory provisions following arguments have been raised :

(i) that, it was incumbent upon the Chief Municipal Officer to give ten clear days notice before holding the meeting where motion of no confidence was to be passed.

(ii) that, the meeting should have been presided over by the Vice-President and the fact that it was presided by one Sarnam Singh, who was elected as Chairman of the meeting the motion passed cannot be said to be passed in a meeting which was properly conducted.

(iii) that, notice under Section 47(2)(ii) of the Act was required to be dispatched. According to the petitioner, the service of notice by circulation is not sufficient compliance of law.

3. The counsel appearing for the respondents have submitted that the only requirement of law is to despatch the notice ten clear days before holding of the meeting. According to them it is not the requirement of law that between the service of the notice and the holding of the meeting, the period of ten days should intervene. It is the further case of the respondents that the Chairman of the meeting can always be elected by the House because the Vice-President is supposed to preside over the meeting when the President is not present. In a

meeting where no confidence motion is to be considered, the president is present and therefore, Section 59 which provides Vice-President would preside is not to apply. It has also been argued that the petitioner having participated in the meeting and having raised no objection to short notice or to any other matter is not within his rights to raise the objection with regard to short service of notice in the present petition.

4. With regard to despatch of notice and service thereof, the relevant provision which deals with Section 294 of the Act.

In the background of the aforementioned legal and factual position given by the parties, the matter may now be examined.

5. First of all, it would be apt to notice the effect 'participation of the petitioner' in the meeting in question. As per the respondents, once the petitioner participated in the meeting, he is debarred from raising the objection with regard to short service of the notice. For this reliance is being placed on the decision reported as K. Narasimhiah v. H. C. Singri Gowda and others, AIR 1966 SC 330. In this case, some of the councillors of the concerned municipality allegedly received short notice. It was less than three clear days. There were twenty councillors in all. Nineteen councillors attended the meeting. Fifteen voted in favour of the no confidence motion. The Supreme Court was of the view that the fact that person against whom no confidence motion was moved was present in the meeting, this factor could not be ignored. The fact that he raised no objection to short notice was held to be enough to non-suit him. In para 20 it was observed as under :-

'We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the 'irregularity in the service of notice.'

6. The learned counsel for the petitioner has tried to distinguish the above case by placing reliance on Full Bench judgment of Orissa High Court *Sarat Padhi v. State of Orissa*, AIR 1988 Orissa 116. The decision of the Orissa High Court does not go counter to the view expressed by the Supreme Court. The Full Bench reached at three conclusions. It held that merely because short notice is given is no ground to hold the meeting as invalid, In para 18 it was said :

'The scheme of the notice contemplated under Section 24(2) (c) may be divided into three parts - (i) requirement of giving the notice, (ii) fixing the margin of time between the date of the notice and the date of meeting and (iii) service of notice on the members, I am of the view, which is also conceded by the learned Advocate General, that the first two parts, namely, the duty to issue the notice and the margin of clear 15 days between the date of the notice and the date of the meeting, are mandatory. In other words, if there is any breach of these two conditions, then the meeting will be invalid without any question of prejudice. But the third condition, i.e., the mode of service or the failure by any member to receive the notice at all or allowing him less than 15 clear days before the date of the meeting, will not render the meeting invalid. This requirement is only directory. This is also based on a sound public policy as in that event any delinquent Sarpanch or Naib Sarpanch can frustrate the consideration of the resolution of non-confidence against him by tactfully dealing or avoiding the service of the notice on him and thus frustrate the holding of the meeting. The legislation has also accordingly taken care to provide in unequivocal terms a provision to obviate such contingencies by incorporating clause (e) to sub-section (2) of Section 24. The above case does not advance the argument raised on behalf of the petitioner.

7. The petitioner has also placed reliance on a decision of Karnataka High Court, reported as *Puttaswamy v. Smt. Prema*, AIR 1992 Karnataka 356. Again the Full Bench, decision is distinguishable. The petitioner challenged the meeting before it was held. The effect of participation in the meeting was not under consideration. As such, the above decision would not be attracted to the facts of this case.

8. As a matter of fact the view of a Division Bench of Punjab and Haryana High Court in *Attar Singh's case* (1973) 75 Punjab Law Reporter 402 is to the effect that

a person participating in the meeting cannot turn around and challenge the meeting on the ground of short notice. It was observed that:

'Where, upon the notice of meeting for co-option of members, all the primary members attended the meeting and participated in its business by proposing and seconding the candidates and by voting for them without raising any objection as to the validity of the notice, no member can subsequently be allowed to challenge in writ petition the co-option of members on the ground that the notice was short of three clear days.'

9. I am of the view that the Full Bench decision of Orissa High Court does not help the petitioner. The view expressed by Full Bench of Karnataka High Court is distinguishable. This decision shall not be attracted to the facts and circumstances of this case because in the present case the petitioner never objected in the meeting that the notice is short or that he was not given enough opportunity to canvass. Had he taken some objection the position might have been different. He having participated in the meeting without raising objections, it is difficult to say anything in his favour. The view of the Division Bench of Punjab and Haryana High Court is relied upon. On this short ground, the petition is liable to be dismissed.

10. However, the question as to whether the meeting is supposed to be presided over by the Vice-President or the notice is required to be despatched by post requires to be considered. These questions are again not res integra. This Court in *Bhaiyalal v. Gram Panchayat, Naurja and others*, 1983 MPLJ 367, was of the view that the notice is required to be despatched before the date when meeting is to be held. Its service is not material. When a notice is sent by registered post seven days before the meeting it was held to be sufficient compliance of law. Para 7 of the judgment is relevant and may be noticed.

'Rule 4 requires notices to be despatched to the Panchas 7 clear days before the meeting to consider the motion of no-confidence. Notices have to be despatched and not served 7 clear days before the meeting. Interpreting a similar provision under the U.P. Municipalities Act, 1966 the Supreme Court in *Jai Charan Lal v. State of U.P.* has held that notices have to be despatched 7 clear days before meeting.'

Thus, what was required to be done in this case was that the notice should have been despatched and the despatch should have been ten days before holding the meeting. Ten days are not required to be intervened between the service of the notice and holding of the meeting should be fifteen days. As such, there is no merit in this contention also. Notice is not required to be sent by post. The above view is supported by reading of Section 294 of the Act. Registered A.D. notice is required to be given in those cases only where a person resides out side Municipal Limits. See Section 294(1)(c) of the Act. Such is not the position in this case. The course adopted by the council was valid and no exception can be taken to the same.

11. It may again be seen that the words used in Section 47 is 'despatch'. It is nowhere mentioned that this despatch has to be through the postal agency. The despatch can be through any mode. The mode adopted in this case is circulation. This would equally be covered by the term despatch as used in Section 47 of the Act.

12. The word 'despatch' or 'despatched' has been attributed different meanings in 'New Webster's Dictionary And Thesaurus' and in 'The Oxford Large Print Dictionary' at pages 116 and 222 respectively.

In New Webster's Dictionary And Thesaurus the word has been defined as :

'to send away, esp. in haste; to execute promptly, something which is dispatched; speed; official message or document sent by special messenger; the sending out of mails, etc.'

In Oxford Dictionary the word has been defined as under :

'to send off to a destination or for purpose, promptness, speed, an official message or report sent with speed'.

Thus, sending a message through a special messenger by circulation would be covered by the term despatch.

13. The other argument with regard to the person who was to preside over the meeting be examined. No fault can be found even with regard to following of this

procedure. The Vice-President is to preside when the President is absent. When the President is present then the Vice-President cannot preside. In the present case, the President was present in the meeting. Therefore, the members rightly elected a member to preside over the meeting.

Thus, I am of the view :

(i) The petitioner having attended the meeting cannot complain of short notice when decision went against him. -

(ii) Notice sent by circulation is valid and is covered by the term despatch.

(iii) Requirement of law is that notice should be despatched and not served ten days before the meeting.

(iv) Members can elect one of them to preside over the meeting where no confidence motion is to be considered against the President.

This petition is thus, without merit, and the same is dismissed with no order as to costs.

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