

State of M.P. and anr. Vs. Mahendra Kumar Saraf and ors.

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Court : Madhya Pradesh

Decided On : Nov-04-2004

Reported in : 2005(4)MPHT185; 2005(3)MPLJ578

Judge : Rajeev Gupta, ;S.L. Jain and ;S.S. Kemkar, JJ.

Acts : Madhya Pradesh Municipalities Act, 1961 - Sections 24, 24(1), 36, 36(1), 36(4), 41, 45, 47, 47(1), 47(2), 49, 49(1), 55, 323 and 331; Madhya Pradesh Municipalities (Amendment) Act, 1999 - Sections 47; Madhya Pradesh Municipalities (Amendment) Act, 1997 - Sections 36(1) and 55

Appeal No. : Letters Patent Appeal No. 411/2003

Appellant : State of M.P. and anr.

Respondent : Mahendra Kumar Saraf and ors.

Advocate for Def. : U.K. Sharma, Sr. Adv., ;Suyash Tripathi, Adv. for Respondent Nos. 3, 4, 7, 9, 10, 14 to 16, 19 to 21, 25 and 29 to 31, ;Mirgendra Singh, Adv. for Respondent No. 1 and ;P.M. Pathak, Adv. for Responden

Advocate for Pet/Ap. : R.S. Jha, Dy. Adv. General

Disposition : Appeal allowed

Judgement :

ORDER

S.L. Jain, J.

1. Being aggrieved by the order dated 11-2-2003 passed in Writ Petition No. 1491/2002, appellant has filed this Letters Patent Appeal under Clause 10 of the Letters Patent.

2. A brief resume of the facts required to be stated for disposal of this appeal is thus :--

3. Respondent No. 1 Mahendra Kumar Saraf is the President of Municipal Council, Shahdol having been elected on 28-12-1999. First meeting of the Municipal Council was held on 11-1-2000. Out of the 30 elected Councillors, 26 moved a proposal of recall of President under Section 47 of the Municipalities Act (hereinafter referred to as 'the Act'). This proposal was presented before the Collector on 9-1-2002 by one of the Councillors, Rakesh Katare. The proposal was forwarded by the Collector to the State Government on the same day.

4. On the next day Le., on 10-1-2002, 12 Councillors filed affidavits before the Collector to the effect that they did not present the proposal of recall and that their signatures on the alleged proposal were obtained by misrepresentation on the pretext that the said proposal was to be submitted in the party office.

5. The State Government remitted the proposal to the Collector for proper verification. Those 12 Councillors reiterated before the Collector that they did not present the proposal of recall. They also submitted that their signatures were obtained by misrepresentation. One of the Councilors, Rajendra Singh informed the Collector that his signatures were obtained when he was intoxicated. Collector, Shahdol, again forwarded the proposal to the State Government stating that the proposal sent by him earlier was proper. Collector also disqualified the Councillor, Rajendra Singh under Section 41 of the Act.

6. Petitioner challenged the proposal on the ground that it was not presented to the Collector by 3/4th of the Councillors and was presented by only one Councillor. It was also submitted that the Collector did not verify the signatures of the Councillors. The proposal was submitted within two years from the date on which

the President entered his office which was against the express provisions contained in Clause (i) of second proviso to Section 47 of the Act. It was also averred that 12 Councillors alleged to be the signatories informed the Collector that they never intended to recall the President. It was also a ground of writ petition that the proposal ought to have been passed in a meeting of the Councillors. Without holding any formal meeting the proposal could not have been moved.

7. By the impugned order it was held that the proposal was presented to the Collector by only one Councillor and it could not have been forwarded unless the same was presented in person by 3/4th of the Councillors. It has also been found that the first meeting of the Councillors was held on 11-1-2000 and the proposal was forwarded on 9-1-2002, i.e., within two years from the date of first meeting which is against the express provisions contained in Clause (i) of second proviso to Section 47 of the Act. It has further been found that the satisfaction of the Collector regarding the genuineness of the signatures of the proposal was not properly arrived at. On the above findings the writ petition was allowed and the proposal of recall and forwarding of the same by the Collector was quashed.

8. We have heard Shri R.S. Jha, learned Deputy Advocate General appearing on behalf of the State. Shri Mirgendra Singh, learned Counsel for respondent No. 1. Shri U.K. Sharma, learned Senior Counsel with Shri Suyash Tripathi for respondent Nos. 3, 4, 7, 9, 10 and 14 to 16, 19 to 21, 25 and 29 to 31 and Shri P.N. Pathak, learned Counsel for respondent Nos. 2, 5, 6, 8, 11 to 13, 17, 18, 22 to 24 and 26 to 28.

9. Before advertng to the rival contentions raised by the learned Counsel for the parties it is necessary to refer to Section 47 of the Act as substituted by Amending Act No. 11 of 1999 which is relevant is quoted hereinbelow:--

'47. Recalling of President.-- (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed :

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three fourth of the total number of the elected Councillors and presented to the Collector :

Provided further that no such process shall be initiated :--

(i) within a period of two years from the date on which such President is elected and enters his office;

(ii) If half of the period of tenure of the President elected in a by-election has not expired :

Provided also that process for recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three fourth of the Councillors specified in Sub-section (1) have signed the proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed.'

10. On analysis of Section 47 of the Act we find that following are the requirements for initiating the process of recall:--

(1) Proposal is to be signed by not less than 3/4th of the total number of elected Councillors.

(2) The proposal must be presented to the Collector.

(3) The process of recall can not be initiated :

(a) within a period of 2 years from the date on which such President is elected and enters his/her office.

(b) unless half of the tenure of President elected in a by-election has not expired.

(4) Process of recall of the President shall be initiated only once in his/her whole term.

(5) The Collector shall satisfy himself and verify that 3/4th of the total number of the elected Councillors have signed the proposal of recall.

(6) After such satisfaction and verification, the Collector shall send the proposal to the State Government.

(7) The State Government shall make a reference to the State Election Commission which shall arrange for voting on the proposal of recall in the prescribed manner.

11. Learned Counsel appearing for the State vehemently submitted that the law does not require that the proposal of recall should be presented by 3/4 of the total number of elected Councillors. Even if it is presented by any one of them, it is sufficient compliance of Section 47 of the Act, therefore, the order impugned whereby proposal and forwarding thereof has been quashed is not sustainable.

12. This issue has been considered in Paragraph 16 of the order impugned and it has been observed as under :--

'First proviso to Sub-section (1) of Section 47 of the Municipalities Act provides that 'provided that no such process of recall shall be initiated unless a proposal is 'signed' by not less than 3/4th of the total elected Councillors and 'presented' to the Collector. Proviso leaves no room for doubt read with Sub-section (2) of Section 47 that the provision requires that proposal of recall has to be 'signed' by not less than 3/4th of the elected Councillors and 'presented' to the Collector. The word 'presented' is qualified by 3/4th Councillors. Proviso requires 'signing' and presentation' both by not less than 3/4th of the Councillors. Thus, the requisite number of Councillors must put the signatures on the proposal of recall and signatories must present it to the Collector. 'Presentation' can not be made by one of the Councillors or by a person who is not a Councillor. The 'signatories' comprising not less than 3/4th of the Councillors must also present it to the Collector. If it is not so done proviso to Section 47 (1) mandates that 'no such

process of recall shall be initiated' unless the aforesaid requirements exist Section 47 of the Municipalities Act is pari materia to Section 24 of the Municipal Corporation Act. Same is the interpretation of first proviso of Sub-section (1) of Section 24 of the Municipal Corporation Act. In my opinion, proposal which is not 'presented' in the manner prescribed by the first proviso to Sub-section (1) of Section 47 of the Municipalities Act or first proviso to Section 24 (1) of the Municipal Corporation Act, no process of recall shall be initiated by the Collector or the Commissioner, as the case may be.'

13. Whether the presence of Councillors who have signed the proposal in person before the Collector is a legislative requirement or not depends upon the; true construction and interpretation of proviso to Sub-section (1) of Section 47 of the Act which has been reproduced in earlier part of this order. If we scan and put apart the two aspects regarding signing and presentation of the proposal, it appears in the following form :--

(i) signed by not less than 3/4th of the total members of the elected Councillors; and

(ii) presented to the Collector.

Had the phrase 'and presented to the Collector' as used in the closing part of the proviso, been placed immediately after the word 'signed', then the shape of this proviso would have been as under :-- .

'Provided that no such process of recall shall be initiated unless a proposal is signed (and presented to the Collector) by not less than 3/4th of the total members of the elected Councillors.'

14. Had the language of the proviso been as mentioned above, it would have meant that the proposal should not only be signed by not less than 3/4th of the total number of the elected Councillors but it should also be presented by them to the Collector. But this is not the case as we find from the language-used by the Legislature in the proviso.

1:5. In view of the aforesaid reconstruction of the proviso to Sub-section (1) of Section 47, we are of the firm view that the two requirements of signing and presenting the proposal as provided in the proviso, are different and it is not the requirement that presentation also should be by not less than 3/4th of the total number of the elected Councillors.

16. Now comes the question as to whether verification of the signatures requires presence of the Councillors.

17. Again we have to refer to the language used in Section 47 of the Act. Sub-section (2) of this Section requires that the Collector after satisfying himself and verifying that the 3/4th of the Councillors specified in Sub-section (1) have signed the proposal of recall, shall send the proposal to the State Government. The provision nowhere mandates that the verification shall be made in the presence of signatories. Need not to say that verification of signatures of signatories after procuring their presence may be one of the modes for such verification but it is not the only or exclusively mode, because nothing can be read in the proviso itself to this effect. Therefore, to put fetters on the discretion of the Collector in selecting the mode of verification by making the personal presence of signatories mandatory while the law is framed to give him more elbow room in the matter would be clearly against the Legislative intent.

18. The authorities, entrusted with the task of verification of signatures, being responsible, are expected to conduct themselves in an independent and unbiased manner. The process of verification may be akin to the one adopted by the bank authorities regarding genuineness of signatures of the drawer on a cheque.

19. If the physical presence of the Councillor concerned is made a sine qua non for verification of the signatures, at times it may defeat the purpose. There may be a situation where a Councillor may not be able to appear before the authority concerned due to old age, infirmity, serious illness etc., though he/she was certainly in a position to put his/her signatures on the proposal. In such a situation if the authority can not forward the proposal to the State Government for want of personal appearance though sufficient materials is placed before the authority for his satisfaction regarding the genuineness of the signatures, such as filing of the

affidavit or submission of specimen signature of the Councilor duly attested then the same will defeat the proposal itself and in turn the democratic process.

20. In the case of *Gopal Yadav v. State of M.P. and Ors.*, (2002) 4 MPLJ 369, referred in the impugned order the petitioner, who was Sarpanch of Municipal Council, Sabalgarh, challenged his recall (under Section 47 of the Act) by way of writ petition. The petition was allowed against which in L.P. A. an objection was raised to the maintainability of the writ petition as the petitioner had an alternative remedy of filing election petition. The objection found favour with the Division Bench and the petition was dismissed as not maintainable. In this case, the question whether presentation of the proposal of recall should be made in person by the Councillors was nowhere raised nor it was considered or discussed, therefore, any observation made in this respect may not be of much help in deciding the above question.

21. Therefore, we hold that proviso to Section 47 of the Act does not contemplate that the proposal should be presented by the 3/4th of the Councillors in person or that for the purpose of verification of signatures of the signatories their personal presence is necessary.

22. Learned Deputy Advocate General for the State also submitted that the finding given in the impugned order that the proposal was submitted within two years from the date on which President entered his office is not sustainable as in fact, the proposal was initiated after two years from the date on which President was elected and entered his office.

23. Second proviso to Sub-section (1) of Section 47 of the Act in clear terms prohibits that the process of recall against the President shall not be initiated within the period of two years from the date on which such President is elected and enters his office. The third proviso provides that process of recall of the President shall be initiated only once during the whole term. Therefore, the Collector whose duty it is to send the proposal to the State Government, before sending the same must satisfy himself that the aforesaid conditions have been satisfied.

24. This brings us to the question as to from which date the period of two years shall be reckoned which ultimately depends upon the interpretation of Clause (i) of second proviso to Section 47 (1) of the Act, which is as under:--

'47. Recalling of President.-- (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed;

*** ** Provided further that no such process shall be initiated :--

(i) within a period of two years from the date on which such

President is elected and enters his office :*** **

This provision lays down a condition for initiating a proposal of recall of the President to the effect that proposal of recall shall not be initiated within a period of two years from the date on which such President is elected and enters his office. The true interpretation of the phrase 'elected and enters his office' holds the key to the controversy.

25. Sections 36 (1), 36(4), 45, 49 and 55 of the Act, which also have some bearing in this connection, are also reproduced hereunder :--

'36. Duration of the Municipality.-- (1) Every Municipality unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer.

*** ** (4) Subject to the provisions of this Act, the term of President and every Councillor shall be co-terminus with the term of the Council.'

'45. Notification of election of President and Councillors.--

Every election of the President and Councillors from wards shall be notified by the State Election Commission in the official gazette.'

'49. Penalty for refusal to handover charge by outgoing office bearers.-- (1) The President and the Vice-President shall be deemed to have entered their respective offices from the date of their election and outgoing President or Vice-President, as the case may be, shall cease to function as President or Vice-President respectively.

(2) The outgoing President or Vice-President shall forthwith handover, all papers and property, if any, to his successor, failing which the Collector may by order in writing direct such outgoing President or Vice-President, as the case may be, to handover the required papers and property forthwith.

(3) If the outgoing President or Vice-President to whom a direction has been issued under Sub-section (2) does not comply with such direction, he shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both.

(4) No prosecution shall be instituted under this Section without the previous sanction in writing, of the State Government.'

'55. First meeting after general election.-- (1) The Chief Municipal Officer shall, with the approval of the prescribed authority, within one month of every general election, call a meeting of the elected Councillors for the purpose of electing a Vice-President.

(2) The first meeting of the Council called under Sub- section (1) shall be presided over by such officer not below the rank of Deputy Collector in the case of Municipal Council and not below the rank of Tehsildar in the case of Nagar Panchayat, appointed by the Collector and all provisions contained in this Chapter regarding meetings of the Council, shall, as far as may be, apply in respect of such meeting:

Provided that the Presiding Officer shall not have right to vote at such meeting and in case of equality of votes, the result shall be decided by lot.'

26. A close look at the aforesaid provisions at once makes it clear that the phrase 'elected and enters his office' as used in Sections 47 (1) (i) of the Act has the

genesis in the provisions of Section 49 (1) which says that the President and the Vice-President shall be deemed to have entered their respective offices from the date of their election and the outgoing President or the Vice-President, as the case may be, shall cease to function as President or Vice-President, respectively.

27. It has been strenuously argued on behalf of the respondent No. 1 that the deeming fiction regarding entering into office by President is only for the purpose of Section 49 itself which deals with the handing over of charge by outgoing office bearers and in case of failure to hand over the charge penalty therefor. As such, this provision has nothing to do with the phrase 'elected and enters his office' as used in Section 47 of the Act.

28. The line of argument is that Section 36 (1) of Municipalities Act prescribes the term of Municipal Council as five years from the date of its first meeting. As per Section 36 (4) the term of President is co-terminus with the term of the Council, therefore, the term of the President shall be five years which shall commence from the first meeting of the Council as contemplated under Section 55 of the Act. The thrust of the argument appears to be that the period of two years as provided in Sections 47 (1) (i) of the Act shall commence from the first meeting of the Council irrespective of the election or entering into office of the President, by the elected person. It was also submitted that Section 49 (1) should not be made basis for determining the period of two years as prescribed in Section 47 (1) (i) of the Act and Section 36 should form the sole basis for this purpose.

29. Before proceeding further, it must be stated here that as laid down by the Supreme Court in a catena of cases, a reference of which is also found in the impugned order, the deeming provision in a statute should be confined to the limited purpose for which it has been made. (See CIT Central, Calcutta v. Moon Mills Ltd., AIR 1996 SC 870).

30. In the light of the aforesaid, the scenario may be viewed from three angles, firstly whether the deeming fiction as provided in Section 49 (1) regarding entering into office by the President is limited only for the purpose of ensuring handing over of charge and has nothing to do with remaining provisions of the Act, secondly, whether the word 'co-terminus' as found in Section 36 (4) has the impact of

governing the term of the President from the commencement to the end point; and thirdly, whether the Legislature used the phrase 'elected and enters into his office' with some specific purpose behind it.

31. The first point relating to Section 49 (1) has to be examined in the light of the provisions of Section 45 of the Act which provides that every election of the President shall be notified by the State Election Commission in the Official Gazette. Section 49 (1) creates the deeming fiction that President shall be deemed to have entered his office from the date of his election. The provisions of Section 45 do clearly indicate that the election shall become final with the notification in Official Gazette. That exactly should be the commencement of the term of the President which is further made clear by the specific provision of Section 49 (1).

32. No doubt, Section 49 bears the title 'Penalty for refusal to handover charge by outgoing officer bearers' but that heading should not mislead us in interpreting the provisions of Section 49 because it is a settled law that the title of a section may not be a guiding factor for interpreting that section.

33. The placement of Sub-section (1) which creates the deeming fiction before Sub-section (2) of Section 49 which provides for handing over of charge forthwith gives a clear indication of the scheme and the intention of the Legislature in this respect. Had the intention of the Legislature been otherwise, then Sub-section (2) of Section 49 should have been the opening part of Section 49 and, thereafter, it could well have been added that for the purpose of taking and handing over charge the President shall be deemed to have entered his office from the date of his election. This being not the case here, it can not be said that Sub-section (1) of Section 49 is only surplusage of Sub-section (2). On the contrary, what is very much clear from the aforesaid placement of Sub-sections (1) and (2) is that for the purpose of the Act, the entering into office of the President shall be deemed from the date of its election which invariably, shall be the date of notification of election as contemplated by Section 45 of the Act. Any other interpretation to Sub-section (1) would definitely amount to an interference in the scheme which the Legislature intended to provide thereby rendering the effect of Sub-section (1) of Section 49 totally meaningless.

34. In fact, no rider is there in Sub-section (1) of Section 49 so as to make it applicable only for the purpose of Sub-section (2). Had Sub-section (1) been a proviso to Sub-section (2), then definitely the interpretation could have been taken that the deeming fiction is for limited purpose. Therefore, the argument to the contrary can not be accepted.

35. Section 36 of the Municipalities Act in effect provided about the term of the Municipal Council. Sub-section (4) of Section 36 says that the term of President shall be co-terminus with the term of the Council. The word 'co-terminus' is quite significant. As we have discussed earlier, the commencement of the term of the President has been specifically provided in Section 49 (1) of the Municipalities Act, therefore, Section 36 (4) which is a provision prior to the provisions which deal with the election, term, powers etc. of the President may not have provided about the term or its commencement.

36. The question which at once arises, therefore, is what ultimately is the object of Sub-section (4) of Section 36. This, of course, depends upon the contextual meaning of term 'co-terminus' as used in Section 36 (4).

37. In Chambers 21st Century Dictionary (2001 Edition), the term 'terminus' means : the end of railway line or bus route and extreme and final point. According to Law Lexicon, by P. Ramanathan Aiyar (1997 Edition) the word 'co-terminus' means co-incident or co-extensive in range, scope, limit, time or duration,. The word 'terminus', as per Law Lexicon means the point to which motion or action tends, goal, finishing point; something that from which it starts; starting point, an end; extremity; the point at which something comes to an end. In Blacks Law Dictionary (Sixth Edition), the word 'co-terminus' has not been defined, but the word 'terminus' has been defined as boundary, a limit, either of space or time.

38. In the Central India Spinning and Weaving and . v. The Municipal Committee, Wardha, : [1958]1SCR1102 , the Apex Court had an occasion to interpret the word 'terminus' though in a different context and in Paragraph 26, of the judgment the Supreme Court referred to the meaning as given to it in Law Lexicon.

39. In the background of the aforesaid connotations of words 'terminus' and 'co-terminus' it flows that usually word 'terminus' implies the terminal or end point or finishing point and when used with prefix 'co', it should mean to imply two things or objects having the same end, same finishing point or same terminating point. Therefore, in the context in which word 'co-terminus' has been used in Section 36 (4) it has to be given the meaning that the term of the President shall end with the term of the Council, meaning thereby the moment the term of the Municipal Council comes to an end, the term of the President shall also come to an end irrespective of the fact whether or not the office bearer has completed five years in office. In the case of bye-election to the post of President the term of the office of the President elected in bye-election may be shortened and in that case it can never be co-terminus, if we interpret the word 'co-terminus' in the sense of commencement and termination, with the term of the Council because in that eventuality the term of the Council shall commence with the first meeting of the Council while the term of the President who has been elected after recall in bye-election, shall commence afresh and not from the date of the first meeting.

40. It is quite understandable from the provisions of Section 36 (1) of the Municipalities Act that the term of the Municipality unless sooner dissolved, shall be five years from the date of its first meeting. Here it is noteworthy that the Municipalities Act has been amended by Amending Act No. 18 of 1997. Before the amendment the President of the Municipality was to be elected as per provisions of Section 55 by the Councillors in the first meeting of the Municipal Council. A corollary of this would have been that the term of the President could not have commenced prior to the first meeting of the Council because the President itself was to be elected in the first meeting. However, after the amendment the position is completely changed. Now, the president has to be elected directly by the people and not by the elected Councillors. This very clearly implies that the election of the President which was previously to be made in the first meeting of the Council now has nothing to do with the first meeting because it stands already concluded prior to the first meeting. Therefore, the term of the President shall have to commence from the date of election as notified under Section 45 of the Act and not from the date of first meeting. Thus, after the amendment it can not be said that because of the provisions of Section 36 (4) of the Municipalities Act the term of the President

of the municipality shall commence from the first meeting of the Council.

41. In view of the aforesaid analysis, the argument advanced on behalf of the respondent Mahendra Saraf, can not be accepted.

42. In this connection, the third and the last point as specified earlier also has significance. While bringing Section 47 (1) (i) of the Act in the enactment for the purpose of recall of the President the provisions of Sections 49 (1), 36 (4) and 55 of the Municipalities Act, as extracted above, were well within the knowledge of the Legislature and it was upto the Legislature to choose appropriate phraseology for deciding the commencement of period of two years for the purpose of initiating proposal of recall. The Legislature could have well provided that the period of two years shall be counted from the date of first meeting of the Council or Corporation, as the case may be. The Legislature simultaneously, had the option to use the phraseology as used in Section 49 (1) to the effect that the period of two years shall commence from the date on which President is elected and enters his office. The date of election and entering into office is a date referred to only in Section 49 (1). It can not be disputed that the Legislature was aware of the aforesaid situation.

43. In our view, the Legislature has deliberately used the phrase 'elected and enters his office' in Section 47 (1) (i) of the Act which has its genesis in Section 49 (4). Therefore, to subscribe a different meaning to this phrase, other than one which is subscribable under Section 49 (1) of the Municipalities Act would amount to inflicting violence to the scheme which the Legislature had in its mind while incorporating Section 47 (1) (i) in the Act. This again fortifies our view that the word 'co- terminus' as used in Section 36 (4) has nothing to do as far as the commencement of the period of two years for the purpose of Section 47 (1) (i) is concerned.

44. Thus, we are of the firm view that the period of two years for initiating the proposal of recall shall have to be computed from the date of election of the President as notified under Section 45 of the Municipalities Act which in turn, under deeming fiction contemplated by Section 49 (1), be the date of his entering into the office.

45. Learned Counsel for the State also submitted that as the proposal is forwarded to the State Government, State Government has power to consider the matter and if necessary, to remand the matter for reconsideration.

46. Propriety demands that there must be an end to every proceedings. When the Collector after satisfying himself that the proposal is in accordance with the requirement of Section 47 of the Municipalities Act has forwarded the same to the State Government, then thereafter the proceedings can not be allowed to be reopened by the Collector.

47. Therefore, we are in complete agreement with the learned Single Judge that after having sent the proposal to the State Government, Collector becomes functus officio.

48. Section 47 of the Act does not give any authority to the State Government to entertain any objection to the proposal sent by the Collector to it. Therefore, the State Government can not entertain any objection to the proposal duly forwarded by the Collector. In the absence of any express provision to that effect in Section 47 of the Act. State Government can not sit over the finding of the Collector.

49. If the State Government entertain such objections and hold a roving enquiry in the matter, it may delay the process and the very purpose of incorporating Section 47 shall stand frustrated. Therefore, we are in complete agreement with the finding recorded by the learned Single Judge in this regard. For the same reason the State Government can not be allowed to remit the matter to the Collector for the purpose of entertaining the objections and decide the same.

50. When the law requires the satisfaction of the Collector, the same can not be interpreted in a manner so as to substitute it by the satisfaction of the State Government. Once the proposal has been sent by the collector after verification and satisfaction the State Government has no role but to forward the same to the State Election Commission.

51. Keeping in view the laudable object behind the provisions of Section 47, the matter must proceed expeditiously and therefore, the State Government is under

an obligation to forward the proposal to the State Election Commission post haste. The State Government has no authority to defeat the proposal simply by delaying the matter in the garb of considering or entertaining the objections and deciding the same leisurely or by remanding the matter to the Collector for entertaining the objections and giving decision thereon after a long drawn enquiry. It is, therefore, obligatory for the State Government to send the proposal to the State Election Commission expeditiously without any delay.

52. Shri R.S. Jha, learned Counsel for appellant elaborating his argument contended that power of revision has been conferred on the State Government under Section 331 of the Act and in exercise of this power the State Government can interfere in the matter and consider the legality, propriety and correctness of the satisfaction arrived at and verification made by the Collector by using its own discretion in the matter or remand the case to the collector to reconsider the matter according to the directions given by it.

53. The contention is devoid of merit. The forwarding of the proposal by the Collector to the State Government is not an order as contemplated under Section 331 above. Section 47 is a complete code in itself. When this section does not speak of any revision or any power to entertain the objections at the level of State Government, the same can not be read therein.

54. It was also contended that Section 323 of the Act gives power to the State Government to suspend the execution of any order passed by the Municipality and in exercise of this power, State Government can interfere.

55. This contention is also sans substance. As the recommendations of the Collector are not an order or resolution of the Council or of any Committee, the satisfaction reached and verification made by the Collector can not be interfered with by the State Government.

56. Upshot of the above discussion is that the proposal can be presented to the Collector by all or any of the signatories of the proposal, therefore, it can not be said that the proposal was not properly presented. For the reasons stated above, the period of two years for the purpose of second proviso to Section 47 (1) of the

Act has to be computed from the date on which such President is elected and enters his office, i.e., from the date as notified under Section 45 of the Municipalities Act, and not from the date of the first meeting of the Council.

57. The Collector forwarded the proposal of recall to the State Government after satisfying himself and verifying that the 3/4th of the elected councillors have signed the proposal and that it was initiated after a period of two years from the date on which President was elected and entered his office, therefore, no fault can be found with the sending of the proposal to the State Government. So far as the finding of the learned Single Judge that the order of the State government, Annexure 6 directing the Collector to make an enquiry is without jurisdiction and the enquiry held by the Collector .subsequent thereto is illegal because Collector had no jurisdiction to make an inquiry into the allegation after forwarding the proposal of recall to the State Government is concerned, we do not find any reason to take a different view. Consequently, the order of the Collector, Annexure P-6, being non-est has to be ignored.

58. Resultantly, this appeal is allowed and the impugned order dated 11-2-2003 passed in Writ Petition No. 5940/2002 quashing the proposal of recall and its forwarding by the Collector to the State Government can not be allowed to stand and the same is set aside.

59.No order as to costs.