

(1959) 08 MP CK 0007

Madhya Pradesh High Court

Case No: M.P. No. 204 of 1958

Murlidhar Sahdeo Chaube and
another

APPELLANT

Vs

Collector, Raigarh and others

RESPONDENT

Date of Decision: Aug. 25, 1959

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1960) JLJ 410 : (1959) MPLJ 315

Hon'ble Judges: T.C. Shrivastava, J; P.R. Sharma, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; H.L. Khaskalam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.C. Shrivastava, J.

This order governs the disposal of Miscellaneous Petition No. 277 of 1958 also.

This petition under Articles 226 and 227 of the Constitution has been filed by two Petitioners Murlidhar and Brijbhushan Sharma, who are the members of the Municipal Committee, Raigarh, for quashing the order of the Collector, Raigarh (Respondent No. 1) directing election of two members from the municipality for the Janapada Sabha, Raigarh,

The Janapada Sabha, Raigarh, consists of 26 councillors elected from rural circle and three members elected from urban circle. Two of the members from the urban circle are to be elected from the Municipal Committee, Raigarh and one from the Municipality of Kharsia. The general elections to the Janapada Sabha were completed on 13-4-1954 when the names of 26 councillors from the rural circle and one from Kharsia Municipality were notified in the Gazette. At that time, the

Municipality of Raigarh had been dissolved u/s 18-A (3) of the Central Provinces and Berar Municipalities Act, 1922. An officer was in charge of the municipality. The committee was later constituted on 22-11-1957. Although the Municipality of Raigarh was entitled to send two of its members to sit on the Janapada, this could not be done as the municipality was not in existence. After the formation of the municipality, the Collector, Raigarh, issued a programme for election of two councillors which is at Annexure B to the petition. The present petition is directed against the holding of the election. It may be mentioned that during the pendency of the petition the elections have been completed and two members Niranjanlal Sharma and Kanhaiyalal Pandey have been elected by the municipality. However, under orders of this Court, their names have not been notified and they are therefore not functioning as councillors of the Janapada Sabha.

These two members Niranjanlal Sharma and Kanhaiyalal Pandey have filed another Misc. Petition No. 277 of 1958 against the Chief Executive Officer and the Chairman of the Janapada Sabha, Raigarh, praying that the Janapada Sabha should not be allowed to form the Standing Committees and that the Standing Committees should not be allowed to elect their Chairman until they can take part in the proceedings of the Janapada Sabha. As already stated, this order governs the disposal of that petition also.

It may be mentioned that when the Janapada Sabha with 27 councillors was formed, it proceeded to elect its Chairman and Deputy Chairman. A petition under Article 226 of the Constitution was filed in this Court (Misc. Petition No. 209 of 195b) in which a writ was asked for to prevent the Sabha from electing the Chairman and the Vice-Chairman. That petition was dismissed on 26-6- 1956 by a single Judge of this Court (Annexure A to the petition). A Letters Patent Appeal No. III of 1956 was filed which was also dismissed on 24-7-1956. Accordingly, the Sabha elected its Chairman and Deputy Chairman and started functioning under the Local Government Act, 1948.

The contention of Shri Y. S. Dharmadhikari, Learned Counsel for the Petitioners, is that on the date when the general elections for the constitution of the Janapada Sabha were held, the Municipal Committee was not in existence and there were no members who could be elected to the Janapada Sabha from the urban circle of Raigarh. It was not, therefore, open to the Collector to order the election when the Municipal Committee was duly constituted two years after the general elections to the Janapada Sabha. He has referred to the Rules u/s 182(2) (iv) of the Local Government Act, printed on page 184 of the Madhya Pradesh Janapada Manual (Part I), prescribing the manner in which the electoral roll has to be prepared. These Rules have been framed in the context of general elections to the Janapada Sabha, but they also apply to the filling up of casual vacancies u/s 14 of the Local Government Act. Shri Dharmadhikari contends that as the preparation of the electoral roll has to be under (sic)seeks before the elections are to take place, the

roll could not be (sic)the urban circle of Raigarh when the Municipal Committee itself (sic)stence.

(sic)agree that it was not at that time possible to hold the election of (sic) from the Raigarh Municipality, as the municipality was not in existence. There were no members who could be brought on the electoral roll for voting at the election. The right is a personal right of the members of the Municipal Committee. It is true that the officer who is placed in charge of a Municipal Committee u/s 18 read with Section 57 of the Municipal Act can perform the functions of the Municipal Committee in several matters. However, as the right of voting is specifically granted under the Act and the Rules made thereunder to the members of the committee only, he could not act in the matter. Further, the councillors to be elected from the urban circle have to be members of the Municipal Committee. As there were no such members in existence, none was qualified to contest the election. It was incidentally argued that the State Government also had no power to fill up the vacancies u/s 11 of the Act. This point has been discussed in Letters Patent Appeal No. III of 1956, and the decision arrived at is that the State Government could not exercise the powers u/s 11 in the case of a Municipal Committee which was dissolved. Accordingly, it was not possible at the time of the general elections to fill in the vacancies.

However we do not agree with Shri Dharmadhikari's contention that if it was not possible to hold the elections of councillors from the Raigarh Municipality at the time of the general elections, the matter could not be taken up when the Municipality came into existence in 1957. The filling up of the vacancies after the constitution of the municipality would not be a part of the general elections of the Janapada Sabha. In our opinion, it would be filling up a casual vacancy u/s 14 of the Act and would thus be in the nature of a bye-election. It is true that normally a casual vacancy arises when a member dies, resigns, or is removed. The expression is, however, wide enough to cover all cases where the seat could not be filled in for any reason. In the present case, as the members who formed the electoral college came into existence two years after the general elections, they had a right to choose two councillors under the Local Government Act. The area within the charge of a municipality normally also lies within the area of the Janapada Sabha. The Janapada Sabha has certain supervisory powers over the Municipality and there are several functions in which both the Municipality and the Janapada Sabha are jointly interested. On all these considerations it has been found desirable to give representation to the Municipal Committee on the Janapada Sabha. If such representation is to be given to the municipality, there is no reason why a committee which had such a right at the time of general elections, but could not exercise it on account of dissolution, should not exercise it on coming into existence of the municipality. In our opinion, Section 14 of the Act should be so interpreted as to further the intention of the Legislature to give representation to the Municipal Committee, and we do not think that in interpreting it in the manner indicated

above we are unduly straining the language of that section. So far as the difficulty about preparation of electoral rolls is concerned, it will be seen that although the electoral roll for the rural circle remains in force for five years after its preparation (vide Rule 7), there is no such provision as regards the roll for urban circle. This is so because the members of the municipality change as soon as the elections of that body are held. That is why Rule 4 relating to preparation of electoral roll for urban circle provides for correction of the roll in cases where the elections to the municipality are held after the preparation of the roll and before the elections. The provisions for preparation of electoral roll of urban circle apply to elections which may be necessitated by casual vacancies. It would be necessary in such cases to prepare the electoral roll afresh. The Collector, Raigarh, has followed the proper procedure in directing preparation of the electoral roll as appears from the programme (Annexure B of the petition).

We do not consider that the election of the two councillors from the Raigarh Municipality after its constitution is contrary to law in any way. Accordingly the Petitioners are not entitled to any relief.

Turning now to Misc. Petition No. 277 of 1958, the councillors who have been elected by the Raigarh Municipality pray that the Janapada Sabha should be restrained from forming the Standing Committees and electing Chairman for them. The view taken in Misc. Petition No. 209 of 1956, decided on 16-6-1956, was that the election of the President and the Vice-President could not be stayed because the formation of the Janapada Sabha was incomplete. This view was upheld in the Letters Patent Appeal No. III of 1956 by the Division Bench. The following observations are pertinent:

The reasoning applies equally to the constitution of the Standing Committees for the election of Chairman of such committees. Indeed, it would be absurd to hold that if the election of members from one or two constituencies has not been completed for any reason, the functioning of the Janapada Sabha should be held up. Accordingly, we hold that these Petitioners are not entitled to restrain the Chief Executive Officer or the Chairman of the Janapada Sabha from forming the Standing Committees or electing their Chairman in accordance with the provisions of the Act in spite of the fact that by an order of this Court the notification about their election has been stayed and they are thus unable to take part in the affairs of the Sabha.

In the result, both the petitions are dismissed. We do not, however, make any order as to costs. The outstanding amount of the security deposit shall be refunded to the Petitioners in both cases.

Interim stay granted in both the cases is vacated.