

(1965) 11 MP CK 0005
Madhya Pradesh High Court
Case No: M.P. No. 435 of 1965

Manaklal Lila Sao

APPELLANT

Vs

Collector, Seoni and others

RESPONDENT

Date of Decision: Nov. 23, 1965

Acts Referred:

- Constitution of India, 1950 - Article 226, 352
- Madhya Pradesh Municipalities Act, 1961 - Section 19, 19(1), 19(1)(a), 19(1)(b), 2

Citation: (1968) ILR (MP) 695 : (1966) JLJ 444 : (1966) MPLJ 359

Hon'ble Judges: P.V. Dixit, C.J; R.J. Bhawe, J

Bench: Division Bench

Advocate: A.P. Sen and N.C. Mishra, for the Appellant; K.K. Dubey, Deputy Govt. Advocate for Respondent No. 1 and Y.S. Dharmadhikari and M.V. Tamaeker for Respondents Nos. 2 to 5, 7, 11 to 16, 18, 19, 21 to 24, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution, the Petitioner, who is a rate-payer and a voter in Bhaironganj ward of Seoni Municipality, and a sitting Councillor, seeks a direction restraining the Collector, Seoni, from giving effect to the notifications dated the 8th October 1965 and 11th October 1965 issued u/s 45 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act), notifying the election and selection of the Respondents 2 to 25 the new Councillors. He also prays for the issue of writs of quo warranto against the Respondents Nos. 2 to 25 for ousting them from the office of councillors.

The material facts are that the Municipal Council, constituted for Seoni under the Central Provinces and Berar Municipalities Act, 1922, was functioning when the Act

of 1961, repealing inter alia the Act of 1922, came into force, and continued to function thereafter u/s 2(2)(i) of the Act as a body deemed to have been constituted under the Act of 1961. The term of this "deemed" Council expired on 9th October 1963. But since then it has continued to function by virtue of Clause (b) of the proviso to Section 2(2)(ii) of the Act, which provides that the term of a municipal committee or a municipal council, constituted under any Act repealed by the Act of 1961, shall, notwithstanding the expiration of its term, be deemed to extend to and expire with, the day immediately preceding the date appointed u/s 55(2) of the Act of 1961 for the first meeting of the Council constituted under the Act for the first time in its place. The new Municipal Council, under the Act of 1961, consists of twenty elected Councillors and five selected Councillors, including a woman. After the publication of electoral rolls on 20th May 1965, polling for election of Councillors was held on 20th August 1965. The selection of Councillors, as required by Sections 19 and 55(1) of the Act and the rules made thereunder, was held on 21st September 1965. Thereafter the names of the elected and selected Councillors were notified on 8th and 11th October 1965 by the impugned notifications as required by Section 45 of the Act.

On 20th September 1965, the Governor promulgated Ordinance No. 6 of 1965 entitled the Madhya Pradesh Sthaniya Pradhikaran (Nirvachan Sthagan) Adhyadesh, 1965, See 1965 MPLJ 184 (hereinafter called the Ordinance), providing for the postponement of elections to local authorities in the State. Section 2 (1) of the Ordinance defines "General Election" thus-

(1). "General Election in relation to a local authority means an election to fill the office of a Councillor, member, Sarpanch or Panch, as the case may be,-

(i) consequent on the expiry of the normal term fixed for-

(a) the local authority, or

(b) the office of the Councillor, member, Sarpanch or Panch, as the case may be; or

(ii) on account of the supersession or dissolution of a local authority; or

(iii) for the constitution of a local authority for the first time;

under the law relating to local authority.

By Sub-section (2) of the Ordinance, the expression "Law relating to local authority" has been defined to mean, in the case of a Municipal Council, the Madhya Pradesh Municipalities Act, 1961. A {Municipal Council, "constituted under any Act repealed by the Act of 1961, functioning when the Act came into force and deemed to have been constituted under that Act, is included in the definition of "Local Authority" given in Sub-section (3) of Section 2. Section 3 of the Ordinance is as follows-

3.(1) Notwithstanding anything contained in any law relating to a local authority and the rules made thereunder,;no general election of a Councillor, Member, Sarpanch

or Panch of a Local authority shall be held during the period, the Proclamation of Emergency issued by the President of India under Article 352 of Constitution of India remains in operation and for such period thereafter, not exceeding one year, as the State Government may, by notification, direct:

Provided that the State Government may, by notification, for reasons to be specified therein, direct a general election in respect of any local authority which may have been or may be superseded or dissolved under the law relating to such local authority.(2) Where the term of office of any local authority of (sic) the office of the Councillor, Member, Sarpanoh or Panch, as the case may be,-

(i) has, immediately before the coming into force of this Ordinance already expired; or

(ii) is, during the period specified in Sub-section (1), due to expire; then, notwithstanding anything contained in any law relating to a local authority, the said term shall, for all purposes of such law, be deemed to be and always to have been extended till the expiry of the period specified in Sub-section (1):

Provided that, notwithstanding anything contained in this section, every Councillor, Member, Sarpanch or Panch, as the case may be, shall, unless the State Government otherwise directs, continue to hold office until his successor enters upon his office.

Section 4 prohibits the filling of any casual vacancy during the period specified in Sub-section (1) of Section 3 of the Ordinance. Then comes Section 5, which is in the following terms-

5. If immediately before the coming into force of this Ordinance any election proceedings were in progress in connection with general election or a bye-election for filling a casual vacancy or (sic) and local authority, all such proceedings shall lapse and all moneys deposited by way of deposit for filling nomination paper shall be returned to the person concerned.

It may be mentioned here that there are obviously printing errors in the text of Sections 3 (2) and 5 of the Ordinance, as published in the Extra-ordinary Gazette dated the 20th September 1965. For the word "or" the word "of" has been printed in the first line of Section 3 (2), and for the word "of" the word "or" has been printed in the fourth line of Section 5 of the Ordinance.

It was argued by Shri Sen, Learned Counsel appearing for the Petitioner, that the process of general election for the Municipal Council started when the electoral rolls were published on 20th May 1965 and was still continuing when the Ordinance came into force on 20th September 1965; that the issue of notifications u/s 45 of the Act was but a stage in the general election and connected therewith; and that as the Ordinance came into force on 20th September 1965, the notifications issued on 8th and 11th October 1965 were in violation of the provisions of Section 3(1) of the Ordinance. Learned Counsel also submitted that as the term of the old Council

deemed to be constituted under the Act of 1961 was extended by virtue of Section 3 (2) of the Ordinance till the expiry of the period specified in Sub-section (1) of Section 3, no election or selection of Councillors could at all be held; and that, therefore, the election and selection of the Respondents Nos. 2 to 25 was invalid. It was further contended that the effect of Section 5 of the Ordinance was that all steps or proceedings taken for the election and selection of Councillors for a new body under the Act of 1961 lapsed with the result that the election and selection of the Respondents Nos. 2 to 25 was of no effect and validity at all and the old Municipal Council, constituted under the Act of 1922 and deemed to be functioning under the Act of 1961, would continue to function until the expiry of the period specified in Sub-section (1) of Section 3 of the Ordinance.

In reply, Shri Dharmadhikari, Learned Counsel appearing for the Respondents Nos. 2 to 5, 7, 11 to 16, 18, 19 and 21 to 24, contended that the expression "general election", as used in the Ordinance, means the process by which the "elected Councillors", spoken of in Section 19(1)(a) of the Act, are returned, and does not include proceedings for selecting the Councillors referred to in Section 19(1)(b); that the general election concluded when, after the counting of ballot papers, the Supervising Officer certified the result of the election as required by Rule 41 (b) or Rule 45 (5) of the Madhya Pradesh Municipalities (Preparation, Revision and Publication Electoral Rolls, Election and Selection of Councillors) Rules, 1962 (hereinafter referred to as the Rules); that the notification of the result of election u/s 45 of the Act, read with Rule 46 of the Rules, was not a part of "general election" as understood in the sense referred to earlier; and that, therefore, the Ordinance did not bar in the present case the selection of Councillors after 20th September 1965 and the notification u/s 45 of the Act read with Rules 46 and 53 of the Rules, of the elected and selected Councillors. Learned Counsel referred us to Section 55(1) of the Act to show that the expression "general election" did not include the selection of Councillors u/s 19 (I) (b). It was also said that Section 39(1) of the Act pointed to the conclusion that the process of general election did not embrace the step of notifying the declaration of the election u/s 45. Learned Counsel for the aforesaid Respondents further submitted that in fact the Ordinance had no applicability in the case of general election of Councillors of a municipal body, such as the one in the present case, constituted under the C.P. and Berar Municipalities Act, 1922, and continued u/s 2(2)(i) of the Act of 1961 as a body deemed to have been constituted under that Act. In this connection, it was urged that the expression "general election", as defined in Section 2 (1) of the Ordinance, meant an election to fill the office of a Councillor consequent on the expiry of the normal term fixed for the local authority under the law specified in Sub-section (2) of Section 2 relating to the local authority; and that the normal term of the "deemed" Municipal Council, Seoni, was fixed under the repealed Act of 1922 under which it was constituted, and the expression "law relating to local authority", as defined by Section 2 (2), did not include the C.P. and Berar Municipalities Act, 1922. The contention advanced on

behalf of the Petitioner that as Section 3 (2) of the Ordinance extended the term of the Municipal Council, Seoni, till the expiry of the period specified in Sub-section (1) of Section 3, therefore, there could be no question of holding any election or selection of Councillors, was sought to be answered by the Learned Counsel for the said Respondents by saying that the term of the deemed Municipal Council, Seoni, expired on 9th October 1963, long before the Ordinance came into force, and that, therefore, it could not be said that the term of this Municipal Council expired "immediately before the coming into force of the Ordinance" so as to attract Sub-section (2) of Section 3 and result in the extension of the term of the Municipal Council till the expiry of the period specified in Section 3 (1) of the Ordinance.

On the arguments addressed by the Learned Counsel for the parties, the main question that arises for consideration in this case is as regards the meaning of the term "general election" occurring in the Ordinance. The Ordinance being a measure providing for the postponement of elections to local authorities, which include a municipal council, the meaning of the words "general election" must be ascertained in the context of the law governing the constitution of the local authority. Now, the Madhya Pradesh Municipalities Act, 1961, draws a clear distinction between election of councillors and selection of councillors. A Municipal Council, as provided by Section 19(1) of the Act, consists of elected councillors and selected councillors. Sub-section (2) of Section 19 contemplates the making of different rules by the State Government regulating (a) the mode or methods of election of councillors, and (b) the mode or method of selection of councillors by single transferable vote. The distinction between "election" and "selection", and "elected" and "selected" Councillors, runs through Sections 20, 21, 22, 24, 25, 34, 35, 39, 45, and 55(1) of the Act. It is to be found also in the Rules. Parts II and III contain rules for election of Councillors, and Part IV contains rules for the selection of Councillors. Section 55(1) pointedly brings out the difference between a "general election" held for electing Councillors and "selection" of Councillors. It says that the prescribed authority shall, within one month of every general election, call a meeting of the elected Councillors for the purpose of selecting Councillors as required by Section 19. Thus it is abundantly plain that general election of Councillors does not include the selection of Councillors, and the term "general election" embraces the procedure whereby elected Councillors are returned. This meaning of the term "general election" is in no way affected by the definition of that term given in Section 2 (1) of the Ordinance. Section 2(1) of the Ordinance defines "general election" with reference to the time of election of Councillors so as to distinguish "general election" from "bye-election". Sections 3 (1) and 5 of the Ordinance, which deal with the postponement of general elections to local authorities and set out the consequences of postponement of general election and bye-elections, do not, therefore, in terms apply to selection of Councillors.

The term "general election" embracing the whole procedure whereby elected Councillors are returned does not also include the notification in the Gazette u/s 45

of the Act of elected Councillors. It is clear from the Rules that the process of election of Councillors ends when, after the counting of ballot papers under Rule 41 or recounting of votes under Rule 45, the Supervising Officer prepares and certifies a return in Form XIX setting forth, inter alia the name of the candidate declared elected from the ward concerned, that is, the result of the election. It is the result of the election that is notified u/s 45 of the Act. The notification is not a step towards the election of a Councillor. But it is a step taken after election for the purpose of fixing the date from which the elected Councillor can be said to have entered upon his office as a Councillor. This is evident from Rule 4(5 and Section 45. The rule prescribes that the result of the election shall be immediately communicated by the Supervising Officer to the authority prescribed for the purposes of Section 45, who shall notify the names of elected Councillors in the Gazette. Section 45 says that "Every election shall be notified in the Gazette". What is thus notified is the "election". That being so, it is utterly impossible to contend that "election" includes also the notification by which it is notified. The provision in Section 45 that "such persons shall enter upon their respective offices from the date of such notification" shows the purpose of notifying every election. Likewise, it is manifest from Rule 53 and Section 45 that the notification of selection of Councillors is also not a step in the process leading to their selection.

If, as we think, the matter of general election of Councillors is quite distinct from the selection of Councillors after general election, and "general election proceedings" do not include the notification u/s 45 of the Act of elected Councillors, then, where a general election has already been held before the commencement of the Ordinance, Section 3(1) cannot stand in the way of the selection of Councillors and the notification of the elected and selected Councillors. The effect of Section 3(1) is that after the coming into force of the Ordinance no general election can be held during the period the Proclamation of Emergency issued by the President under Article 352 of the Constitution remains in operation and for such period thereafter not exceeding one year as the State Government may by notification direct. Where, before the coming into force of the Ordinance, a general election was in progress and had not completed, then u/s 5 of the Ordinance all proceedings which were in progress in connection with the general election lapse. Section 5 also does not touch the selection of Councillors or the issue of a notification of elected and selected Councillors. Here, the general election, by which the elected Councillors to the Municipal Council, Seoni, were returned, was completed before the Ordinance came into force. The selection of Councillors was held after the Ordinance was promulgated and the names of the selected and elected Councillors were also notified after the coming into force of the Ordinance. The general election having been thus completed before the Ordinance came into force neither Section 3 nor Section 5 barred the selection of Councillors or the notification u/s 45 of the Act of elected and selected Councillors. The argument, therefore, that the notifications issued on 8th and 11th October 1965 u/s 45 of the Act notifying the names of

selected and elected Councillors are invalid and that the Respondents Nos. 2 to 25 have usurped office, cannot, therefore, be accepted.

The argument of the Learned Counsel for the Petitioner, based on Section 3 (2) of the Ordinance, that as the term of the decreed Municipal Council, Seoni, expired on 9th October 1963 before the coming into force of the Ordinance, it must be taken to have been extended till the expiry of the period specified in Sub-section (1), and consequently so long as the extended term did not end there could be no question of holding any general election or selection of Councillors or the notification of the names of elected and selected Councillor"s, cannot be acceded to. The argument assumes that Sub-section (2) of section" 3 is a provision quite independent of Sub-section (1) extending the term of local authorities till the expiry of the period specified in Sub-section (1), irrespective of the fact whether the term expired before the coming into force of the Ordinance or expires during the period specified in Sub-section (I). This is an erroneous assumption. Sub-section (2) only refers to a local authority, Councillor, Member etc. whose term of office "(i) has, immediately before the coming into force of this Ordinance, already expired; or (ii) is, during the period specified in Sub-section (1), due to expire". It will be seen that in the case of a local authority falling u/s 2(2)(i) of the Act, if no general election was held and completed before the Ordinance came into force, then none, can be held or continued under Sections 3(1) and 5 of the Ordinance, and that in the case of a local authority falling u/s 2(2)(ii) no general election can be held because of Section 3 (1) of the Ordinance. If no general election can be held in the case of such local authorities, then virtually their life is pro-longed till the expiry of the period specified in Sub-section (1) of Section 3 of the Ordinance. Sub-section (2) does not really extend the term of these local authorities. What it does is to create a fiction providing that the term of such bodies shall be deemed to be and always to have been extended till the expiry of the period specified in Sub-section (1). Where a general election of any local authority has already been held or where the State Government, in the exercise of the powers given to it by the proviso to Section 3 (1) of the Ordinance, directs a general election, there can be no question of the life of the local authority being prolonged till the expiry of the period specified in Sub-section (1), or of the fictional extension of the term of the local authority. Sub-section (2) comes into play only where Section 3 (1) is attracted and the general election is postponed till the expiry of the period specified in Sub-section (1). It is not a provision independent of Sub-section (1) but is inter-connected with it. In essence, Sub-section (2) merely states the effect and consequence of the substantive part of Section 3(1). The construction of Section 3 (2), for which Learned Counsel for the Petitioner contends, makes Section 3 (1) in its entirety otiose and a surplusage. It is a well settled rule of construction of statutes that "such a sense is to be made upon the whole as that no clause, sentence or word shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent" (see *The Queen v. The Bishop of Oxford* (1). No superfluity or absurdity, however, arises if Sub-section (2) is read with Sub-section

(1) and is construed as a provision merely stating the effect of Section 3 (1) where the election has been postponed by virtue of the provision till the expiry of the period specified therein. There is, therefore, no force in the contention advanced on behalf of the Petitioner that the term of the deemed Municipal Council, Seoni, has been extended under Sub-Section 3 of the Ordinance till the expiry of the period specified in Sub-section (1) and consequently the general election held, the selection of the Councillors made, and the notification of the names of the elected and selected Councillors during the currency of that extended term are all invalid.

In the view we have taken of the effect of Sub-section (2) of Section 3, it is not necessary to consider the argument of Shri Dharmadhikari, Learned Counsel for the aforesaid Respondents, centering round the words "immediately before the coming into force of this Ordinance" occurring in Section 3 (2) (I) and suggesting that the first clause of Sub-section (2) applied only to those cases where "the term of office" expired the precise moment when the Ordinance itself came into force and that Sub-section (2) had no applicability to the deemed Municipal Council, Seoni, as its term expired in October 1963, long before the Ordinance came into force.

For these reasons, our conclusion is that the Respondents Nos. 2 to 25 have been validly elected and selected as Councillors of the Municipal Council, Seoni, and the notifications issued on 8th and 11th October 1965 notifying their election and selection are valid. This petition must, therefore, be and is dismissed with costs of the Respondents Nos. 2 to 5, 7, II to 16, 18, 19, 21 to 24. Counsel's fee is fixed at Rs. 150. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the Petitioner.