

(1959) 04 MP CK 0009

Madhya Pradesh High Court

Case No: M.P. No. 96 of 1958

Thakur Budheshwar
Singh

APPELLANT

Vs

State of M.P. and
another

RESPONDENT

Date of Decision: April 25, 1959

Acts Referred:

- Local Government Act - Section 34, 35, 36

Citation: (1959) MPLJ 1097

Hon'ble Judges: G.P. Bhutt, C.J; N.M. Golvalkar, J

Bench: Division Bench

Advocate: S.C. Dube, for the Appellant; H.L. Khaskalam, Additional Government Advocate,
for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.M. Golvalkar, J.

This is a petition filed by Takur Budheshwarsingh under Articles 226 and 227 of the Constitution challenging the resolution passed by Respondent No. 2 in its meeting held on the 19th January 1958 expressing no confidence in the Petitioner and the order of the State Government, dated 26-4-1958 removing the Petitioner from the chairmanship of the Respondent, Janapada Sabha.

The Petitioner has urged that he had incurred the displeasure of the Congress party for having successfully sought election to the Madhya Pradesh State Assembly in the year 1957 against an official Congress candidate when not adopted as a candidate by the said party. It is urged that since then there have been regular concerted plans to oust him from the chairmanship of the Sabha, a post held by him since his

election to the same in the year 1955. He, therefore, urges that the impugned resolution expressing no confidence in him was mala fide inasmuch as the same was passed without any prior notice of charges levelled against him. He further urges that the State Government too lent its support to the aforesaid plan to oust him and without making due enquiries and giving him any reasonable opportunity to show cause against the proposed action abused the powers vested in it under the Local Government Act by passing the order, dated 26-4-1958 removing him from the chairmanship. He claims that both, the resolution, dated 19-1-1958 as also the order of the State Government, dated 26-4-1958 being illegal and without jurisdiction ought to be set aside.

It appears true that all was not well as between the Petitioner and his colleagues in the Sabha and attempts were being made to dislodge him from the chairmanship. But such a state of affairs is inevitable in democracy and one has to bow down to the wishes of the majority. The conduct of the Petitioner also was not correct. Although not empowered to do so, he proceeded to decide that 4 members of the Sabha had incurred disqualification subsequent to their election to the Sabha and declared their seats vacant. Similar provisions in the Jabalpur Corporation Act were interpreted by this Court and the decision as reported in *Bhavani Prasad Tiwari v. Corporation of City of Jabalpur* 1955 NLJ 254 : ILR 1955 Nag. 315 completely negatives the assumption of such powers as the Petitioner proceeded to exercise. It will be pertinent and significant to note that the Petitioner did all this just two days prior to the meeting of the Sabha notified to be held on 9-10-1957, wherein motion of no confidence against the Petitioner was the subject for consideration. What happened in the said meeting and how the motion despite objections and prayer for adjournment by majority as contemplated by Section 36 of the Local Government Act came to be lost is detailed in the proceedings, copy of which is on record as Annexure "E". We have adverted to all these facts just to show that the Petitioner was also adopting certain tactics to secure his own position. He cannot, therefore, be permitted to make any grievance of the attitude of his other colleagues in the Sabha, if they made attempts to oust him. It must be borne in mind that motives attributed to the members for expressing no confidence in the Petitioner are irrelevant and of no consequence, if the Petitioner was not able to carry with him the majority in the Sabha, he would have to suffer the consequences of their loss of confidence in him.

Then comes into the picture the resolution, dated 19-1-1958. Here again we are satisfied that the Petitioner did not play the correct and proper role. The relevant provisions in the matter of meetings of a Sabha are contained in Sections 34 and 35 of the Local Government Act. Admittedly the meeting sought to be called for 19-1-1958 was a requisition i.e., a special meeting and the requisition for the same was in order as provided in Section 35 of the Act as it was made by not less than 1/5th of the Councillors. But he refused to call the meeting on the ground that he was not satisfied with the genuineness of the desire of the signatories to requisition

inasmuch as in his view they displayed a vacillating mind in the matter and, besides, the signatories did not form a 2/3rd majority as required by Clause (b) of the Sub-section (3) of Section 18 of the Local Government Act. Both the reasons, on their very face, were untenable. It was not necessary to have a 2/3rd majority for calling the requisition, for, as already stated, the majority required for the purpose was only 1/5th. The 2/3rd majority was required for purposes of expressing their opinion on the undesirability of the Petitioner to continue to hold the post of the Chairman. Thus his avoidance to call the meeting as per requisition amounted to "his being incapable of acting" within the meaning of the Sub-section (2) of Section 34 of the Local Government Act, entitling the Deputy Chairman to call the meeting as was done. There is, therefore, no force in the contentions raised by the Petitioner to challenge the validity of the meeting.

Then it was contended by the Petitioner that he had no prior notice of charges against him on the basis of which the members had proposed to express no confidence in him. In our opinion there was no necessity for this. It was enough that he was informed that a resolution of no confidence against him would be moved in the meeting for which requisition was made. Then it was for him to attend the meeting and understand the charges from the allegations that were to be made by the mover and supporters of the resolution. Having remained absent, he cannot complain that he had no notice of the charges. Thus the contention raised by the Petitioner on this score is also untenable.

Although the charges were not mentioned in the requisition for the meeting, they were duly categorised and incorporated in the minutes of the meeting. It appears from his letter, dated 31-1-1958, to the Secretary Local Government, Government of M.P. that he had notice of the charges but yet he failed to make any submissions thereon in his letter. Thus it is evident that the Petitioner himself was to blame if he allowed the Government to proceed to take decision one way or the other on the recommendation of the Janapad Sabha for removing him from the Chairmanship. It cannot also be said that there was no material before the Government for the action ultimately taken by it. The Annexures "L", "M" and "N" to the return of the Respondent No. 2 speak volumes on the subject.

Then it was urged by the Petitioner that the Government passed the order of his removal without making enquiries. The relevant provisions in the matter are contained in Sub-sections (3) and (4) of Section 18 of the Local Government Act. A perusal thereof would indicate that the power which the State Government exercises thereunder is purely administrative in nature. The principal guiding factor is the recommendation of the Sabha, which appears to be reasonable and proper as no Sabha can conduct business through the office-bearers unless they have the confidence of the majority of the members. If, therefore, the Sabha itself feels that the continuance of any particular Councillor or a member or the Chairman or Deputy Chairman in office is not desirable, the members have been empowered to

give expression to that feeling. This however, has been duly circumscribed in that such a feeling should be expressed by a majority of 2/3rd members. There is also a further safeguard that the ultimate decision is left to the State Government, so that the Government may be in a position to examine the recommendation of the Sabha and see for itself whether or not the recommendation is genuine and worthy to be accepted and given effect to. Such scrutiny on the part of the Government, however, is not of a judicial nature, and, therefore, it is not necessary that it should give a hearing to the person concerned. We are fortified in this view by the decision of the Supreme Court reported in [Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others](#), and that of this Court in *Singhai Khemchand Jain v. State of M.P.* L.P.A. No. 42 of 1957 decided on 9-5-1957. In fact, the latter decision concludes the entire petition.

In the view we have taken of all the facts placed before us, we find no substance in the claim of the Petitioner to induce us to exercise our high prerogative powers. The petition is, therefore, dismissed. Costs, however, shall be borne as incurred. The outstanding amount of the security deposit shall be refunded to the Petitioner.