

**(1959) 01 MP CK 0011**

**Madhya Pradesh High Court**

**Case No:** M.P. No. 47 of 1958

Narmadaprasad and others

APPELLANT

Vs

State of M.P. and another

RESPONDENT

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**Date of Decision:** Jan. 6, 1959

**Acts Referred:**

- Central Provinces and Berar Local Government Act, 1948 - Section 104(1)
- Constitution of India, 1950 - Article 226, 227

**Citation:** (1959) MPLJ 407

**Hon'ble Judges:** G.P. Bhutt, C.J; P.K. Tare, J

**Bench:** Division Bench

**Advocate:** Y.S. Dharmadhikari, for the Appellant; S.B. Sen, Government Advocate, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

G.P. Bhutt, C.J.

This petition under Articles 226 and 227 of the Constitution of India is directed against the order of the State of Madhya Pradesh, Respondent No. 1, superseding the Narsimhapur Janapada Sabha and appointing Shri U.S. Bajpai, Respondent No. 2 as its administrator.

The Petitioners are the Chairman and councillors of the Janapada Sabha and include the Chairmen of the standing committees. The State Government framed six charges against the Janapada Sabha and by notice dated 14th September 1957 asked it to show cause why it should not be superseded under Sub-section (1) of Section 104 of the C.P. and Berar Local Government Act, 1948 (XXXVIII of 1948). This notice was signed by the Under Secretary to the Government of Madhya Pradesh, Local Self Government (Rural) Department and purported to have been issued by

order of the Governor, Madhya Pradesh. The notice along with a statement of allegations giving the particulars on which the charges were based was served on the Chairman of the Janapada Sabha. The notice was placed by the Chairman in a meeting of the Sabha which submitted a reply to the charges on 4th October 1957. The State Government, however, was not satisfied with the explanation and by an order dated 11th February 1958 superseded the Janapada Sabha and appointed Respondent No. 2 as the administrator until the Sabha was reconstituted. This order was signed by the Secretary to the Government of Madhya Pradesh in the Local Self Government Department and purported to be issued by order of the Governor, Madhya Pradesh.

In the petition various objections were raised to the legality of the charges that were framed against the Janapada Sabha. Inter alia, it was contended that they had no reference to Section 104 of the Local Government Act and could not be operative against the Janapada Sabha as a corporate body as distinct from the office-bearers responsible for the impugned actions. These contentions, however, were not pressed during the course of the arguments.

The points which were urged in support of the petition were the following:

- (1) that the notice of charges and the order of supersession were not duly authenticated;
- (2) that the notice of charges which was served on the Chairman of the Janapada Sabha could not be made the foundation for the order of supersession, and
- (3) that the order of supersession being repugnant to the corporate nature of the Janapada Sabha and its perpetual succession is not valid in law.

We shall take these points seriatim.

Point No. (1): The contention on this point is that since the formation of the new State of Madhya Pradesh no rules seem to have been made by the Governor as provided in Clause (2) of Article 166 of the Constitution of India, and, therefore, the Under Secretary and the Secretary were not competent to sign respectively the notice of charges and the order of supersession on behalf of the Governor. It was not disputed that formerly there were rules authorising the Under Secretary or the Secretary to sign the orders in the name of the Governor. It was, however, urged that those rules ceased to be effective after the formation of the new State of Madhya Pradesh and since it was not known that new rules were framed by the Governor, the notice of charges and the order of supersession were not effective.

There is a presumption of legality in the orders issued in the name of the Governor by the Under Secretary or the Secretary. This presumption has only been doubted in the petition, but nothing definite was urged to satisfactorily rebut it. Accordingly we are not in a position to declare the order of supersession to be invalid on a ground which has not been substantiated by positive averment.

Point No. (2): It is true that the notice of charges was served on the Chairman of the Janapada Sabha. It was contended that since the Chairman was not an elected councillor, he could not represent the Janapada Sabha for purposes of service of the notice. In this connection, our attention was drawn to Section 173 of the Local Government Act which requires how a notice of a suit in writing has to be served. Such a notice is required under that section to be delivered or left at the office of the Sabha. However, u/s 13(2) of the Local Government Act, the Chairman of a Sabha is deemed in all cases to be a councillor under the Act, that is, whether he is elected from the councillors or from other persons qualified to be councillors. Therefore, the Chairman of the Sabha in question would be deemed to be a councillor for purposes of the Act, even though he was not elected from the body of the councillors. It is true that the constitution of a Sabha as defined in Section 6 of the Act includes the councillors elected by the electoral divisions in the rural circle and those elected by the Municipal Committees and Notified Area Committees comprised in the urban circle together with such councillors who are selected or appointed in the manner laid down in the Act. However, since the Chairman of the Sabha is deemed to be a councillor under the Act, he must by fiction be classified as one of the three categories of councillors mentioned in Sub-section (1) of Section 6 of the Act. Accordingly, it cannot be said that he was a stranger to the Janapada Sabha and had no authority to accept the notice of charges on behalf of that body. However, apart from this aspect of the case, the notice had actually reached the office of the Sabha which had authorised the issue of a reply to the charges that were framed against it. Consequently, the notice must be deemed to have been validly served on the Janapada Sabha and accordingly the proceedings taken with reference to the charges cannot be said to be invalid.

Point No. (3): There is no doubt that u/s 60 of the Local Government Act, every Sabha is a body corporate and has perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and, subject to the provisions of the Act or of any rules made thereunder, to transfer any property held by it, and to contract and to do all other things necessary for the purposes of carrying out the provisions of the Act. That section also gives it power to sue or be sued in its corporate name. Similar provisions are to be found in the C.P. and Berar Municipalities Act, 1922: see Section 37. That Act also contains Section 57 which is analogous to Section 104 of the Local Government Act. In *Damodar v. Municipal Committee, Nagpur 1951 NLJ 354*, it was held that supersession of a Municipal Committee has not the effect of dissolution and that when another committee is constituted in the place of the superseded committee, it is a revival of the old corporation and not the creation of a new one. This is also the view that was held by the Federal Court in *Lahore Municipality v. Daulat Ram AIR 1942 F.C. 14*. The provisions relating to supersession, therefore, do not affect the corporate character of the Janapada Sabha or its perpetual succession. Viewed in this light, Clause (c) of Sub-section 2 of Section 104 of the Local Government Act, which provides that until

the Sabha is reconstituted all property vested in it vests in the State Government for the purposes of the Janapada, does not conflict with the corporate character of the Sabha or its perpetual succession; nor under that provision, the right of the corporation to that property is destroyed since it is only temporarily shifted to the State Government for the purposes of the Janapada. The provision is, therefore, only intended to keep alive the activities of the Janapada Sabha and cannot be construed as depriving it of its corporate character or perpetual succession. All that the continuity of a corporation implies is that the original member or members and his or their successors are one and that once a liability or obligation has become binding on a corporation, whether sole or aggregate, it will bind the successors, even though they are not expressly named: See Halsbury's Laws of England, Third Edition, Simonds, Vol. 9, Para. 10. The provisions of Section 104 of the Local Government Act do not offend the continuity of the Janapada Sabha as expressed above. This contention, therefore, has also no force.

Under Sub-section (1) of Section 104 of the Local Government Act, the authority to decide whether action should be taken is the State Government. The action of supersession can be taken by the State Government if it appears to it that the Sabha is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under the Act or any other law for the time being in force or exceeds or abuses its power to a grave extent. The words "it appears" or the equivalent words "is satisfied" were construed in *In re Jayantilal A I R 1949 Bom. 319 (FB)* in which it was held that where such words are used, what the Courts have got to see is whether there was the subjective satisfaction of the authority which made the order and not whether there were grounds upon which a reasonable person could be satisfied that it was necessary to make the order. Unless, therefore, the opinion is arrived at mala fide or for a collateral purpose, the Courts cannot substitute their own opinion for that of the Government: see [Hubli Electricity Co., Ltd. Vs. Province of Bombay](#), The charges in the instant case have relevance to the provisions of Sub-section (1) of Section 104 of the Local Government Act and as it is not shown that the action of the State Government was mala fide or motivated by a collateral purpose, the order of supersession cannot be impugned in these proceedings.

In the above view, the petition fails and is dismissed; but, in the circumstances of the case, there shall be no order as to costs. The amount of the security deposit shall be refunded to the Petitioners.