

(1967) 09 MP CK 0005
Madhya Pradesh High Court
Case No: M.P. No. 371 of 1967

Akbarali Arif, Advocate, Ratlam

APPELLANT

Vs

The Government of Madhya
Pradesh, Bhopal and Others

RESPONDENT

Date of Decision: Sept. 20, 1967

Acts Referred:

- Madhya Bharat Municipalities Act, 1954 - Section 14(3)

Citation: (1971) ILR (MP) 30 : (1968) JLJ 1 : (1967) MPLJ 949

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

Bench: Division Bench

Advocate: M.A. Khan, for the Appellant; K.K. Dubey, Govt. Advocate and A.B. Saifi, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution the Petitioner, who is the President of the Ratlam Municipal Council, seeks a writ of certiorari for quashing an order passed by the State Government in August 1967 suspending the operation of its earlier order made on 16th May 1967 declaring that the Respondent No. 3 Shabbirkhan had ceased to be a member of the Council on account of his absence from the meetings of the Municipal Council during three successive months without obtaining leave of the Municipal Council.

The matter arises thus. The existing Ratlam Municipal Council is a body constituted under the Madhya Bharat Municipalities Act, 1954. It is a body which is continuing u/s 2 (2) of the Madhya Pradesh Municipalities Act, 1961, which repealed inter alia the Madhya Bharat Municipalities Act, 1954. The Petitioner and the Respondent No.

3 Shabbirkhan were elected as Councillors when the Ratlam Municipal Council was constituted under the Madhya Bharat Act. After the coming into force of the 1961 Act they continued to remain members of the Council by virtue of Section 2 (2) of the 1961 Act. Section 14 of the Madhya Bharat Act provided that if any Councillor during the term for which he has been elected or appointed absents himself during three successive months from the meetings of the Municipality except with the leave of the Municipality, then he shall subject to the provisions of Sub-section (3) be disabled from continuing to be a Councillor and his office shall become vacant. Sub-section (3) of Section 14 was in the following terms:

In every case, the authority competent to decide whether a vacancy has occurred under this section shall be the Government in the case of a city municipality and the Inspector-General of Municipalities in the case of other municipalities. The decision may be given either on any application made by any person or *auo motu*. Until the Government or the Inspector-General of Municipalities, as the case may be, decides that, the vacancy has arisen, the councillor shall not be disabled under Sub-section (2) from continuing to be a councillor:

Provided that no order shall be passed under this Sub-section against any councillor without giving him a reasonable opportunity of being heard.

On 16th May 1967 the Government passed an order in the exercise of its powers u/s 14 (3) declaring that the non-applicant No. 3 Shabbirkhan had ceased to be a Councillor on account of his absence during three successive months from the meetings of the Municipality without the leave of the Municipality and that a vacancy had arisen.

It appears that in August 1967 Shabbirkhan filed an application before the Government for a review of its order dated 16th May 1967. On this review application being filed the Government passed the following order which has been impugned in this petition:

This order stayed the operation of the order dated 16th May 1967 and also said that till the final decision of Shabbirkhan's review petition, he would continue to be a Councillor of the Ratlam Municipal Council. The applicant contends that under the Madhya Bharat Municipalities Act, 1954, the Government has no power to review an order passed u/s 14 (3), much less to stay the operation of the order disabling the person concerned from continuing to be a Councillor and creating a vacancy. The Petitioner says that the impugned order was passed without any authority and just for the purpose of altering the party position at the time of the election of the President of the Council which was to have been held on 22nd August 1967; that he intended to contest the election for the office of the President and that his prospects at the election have been prejudicially affected by the impugned order permitting the Respondent No. 3 to function as a Councillor till the disposal of his review petition.

The petition has been opposed by the Respondent No. 1, the State Government, and by Shabbirkhan, Respondent No. 3. In the return filed by the State it - has been claimed that the Government has, u/s 332 of the M.P. Municipalities Act, 1961, the power to review the order passed on 16th May 1967 in regard to the Respondent No. 3 as also the power to suspend the effect of the order dated 16th May 1967 "as an incidental power" to the power of review conferred by Section 332 of the Act of 1961. In. his return, the Respondent No. 3 has supported the stand taken by the State Government. On behalf of the Respondent No. 2, the Municipal Council, Ratlam, the Vice-President has filed a return supporting the Petitioner and praying that this petition be allowed.

Having heard Learned Counsel for the parties we have formed the view that this application must be granted. The short question that arises for determination is whether pending the disposal of the review petition filed by the Respondent No. 3 Shabbirkhan the Government has the power to suspend the operation of the order dated 16th May 1967 so as to discontinue till the disposal of the review petition the legal effect and consequence u/s 14 (3) of the Madhya Bharat Municipalities Act, 1954, of the order dated 16th May 1967. In our opinion, the Government has no such power. This is plain from Sub-sections (2) and (3) of Section 14 of the Madhya Bharat Municipalities Act, 1954. Under Sub-section (2) if any Councillor absents himself during three successive months from the meetings of the Municipality except with the leave of the Municipality, then he is subject to the provisions of Sub-section (3) disabled from continuing to be a Councillor and his office becomes vacant. By Sub-section (3) the power to decide whether a vacancy has occurred because of any disability under Sub-section (2) has been given to the Government in the case of a City Municipality. Sub-section (3) expressly provides that until the Government decides that the vacancy has arisen, the Councillor shall not be disabled from continuing to be a Councillor. Reading Sub-sections (2) and (3) together, it is clear that when the Government takes a decision that a Councillor has incurred a disability under Sub-section (2) and that a vacancy has arisen, then from the date of that decision the person ceases to be a Councillor. The cessation of the membership of the Council from the date of the decision of the competent authority is the consequence of the statutory provision contained in Sub-section (3) of Section 14. This statutory consequence cannot be arrested or discontinued after the competent authority has taken a decision that the Councillor has incurred a disability and a vacancy has arisen so long as the decision stands.

This being the correct legal position, the Government cannot claim that it has the power to suspend the operation of its decision taken u/s 14 (3) and prevent the statutory consequence of its decision taking effect. To concede such a power to the Government would be nothing but to hold that the Government has the power to suspend the operation of the statutory provision contained in Section 14 (3) with regard to the consequence of the decision of the competent authority that a Councillor has incurred a disability and has, therefore, ceased to be a Councillor and

a vacancy has arisen. Surely, it cannot be contended with any degree of force that the Government has the power to suspend the operation of any statutory provision such as the one contained in Section 14 (3). So long as the decision of the Government stands, its effect and consequence which flows from the statutory provision contained in Section 14 (3) must also stand. It may be that the Government may review the order dated 16th May 1967 and set it aside thinking that it has that power u/s 332 of the M.P. Municipalities Act, 1961. If and when the order dated 16th May 1961 is legally and validly set aside, then no doubt the Respondent No. 3 would be able to function as a Councillor, but till then the Government cannot permit him to function as a Councillor by just suspending the order dated 16th May 1967 till the disposal of the review petition filed by the Respondent No. 3. The question whether the Government has or has not the power to review the order dated 16th May 1967 u/s 332 of the Act of 1961 does not arise for consideration in this petition. It may well come up before us when the review petition is decided and the aggrieved party approaches this Court. It is sufficient to say that Section 332 does not contain anything even to suggest that pending the review of the order dated 16th May 1967 the Government has the power to stay the operation of that order.

For all these reasons, our conclusion is that the order passed by the Government in August 1967 suspending the operation of the order dated 16th May 1967 and permitting the Respondent No. 3 Shabbirkhan to function as a Councillor is wholly illegal and invalid. That order must be quashed. The result is that this petition is allowed and the order passed by the Government in August 1967 staying the operation of the order dated 16th May 1967 and permitting the Respondent No. 3 to function as a Councillor is quashed. The Petitioner shall have costs of this application from the Respondents Nos. 1 and 3. Counsel's fee is fixed at Rs. 100 which shall be paid in equal proportion by the Respondents Nos. 1 and 3. The outstanding amount of the security deposit shall be refunded to the Petitioner.