

(1969) ILR (MP) 609 : (1973) JLJ 79 : (1971) MPLJ 206

Madhya Pradesh High Court

Case No: M.P. No. 67 of 1964

Bansilal

APPELLANT

Vs

State of Madhya
Pradesh and others

RESPONDENT

Date of Decision: Aug. 31, 1965

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1969) ILR (MP) 609 : (1973) JLJ 79 : (1971) MPLJ 206

Hon'ble Judges: N.M. Golwalker, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: G.L. Oza, for the Appellant;

Final Decision: Dismissed

Judgement

Krishnan, J.

This is a petition under Article 226 of the Constitution filed by the member of the municipal council of Shajapur against the State Government as well as certain others on the allegation that the order removing him from the municipal council, and disqualifying him for a term of four years made by the Government on 19-8-1964 u/s 41(1) and (4) of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the "Madhya Pradesh Act") is illegal. The Petitioner prays that this Court should direct the State Government and the other authorities mentioned in the petition not to implement it but to allow him to continue in the membership till the end of the term for which he had been elected under the Madhya Bharat Municipalities Act of 1954 (hereinafter referred to as the "Madhya Bharat Act"). The real controversy centres round whether the removal was proper on the basis of the recommendatory resolution of the council with a bare majority (7 to 6) that is sufficient under the present (Madhya Pradesh). Act or whether it could have been only on the recommendation by a resolution of a two-third majority in the manner provided in Section 16(1)(b) of the Madhya Bharat Act. The solution would

depend on whether the recommendation is saved by Section 2(2)(i) of the Act, or whether, the member's term being saved by Section 2(2) (ii) of the same Act, the recommendation itself should have been valid under the old Act. These sections have been interpreted in connection with other topics, but it is urged by the applicant that there is a broad analogy, which of the two Sub-sections would prevail in which set of circumstances is of great importance in a number of cases during the transitional period.

Before discussing these Sub-sections, it would be convenient to set out briefly the immediate occasion for the Petitioner's removal. The Petitioner was elected to the Municipality Shajapur in April 1961 when the law in force was the Madhya Bharat Municipalities Act of 1954. He continued as a member when the new Act, namely, the Madhya Pradesh Act came into force. Sometime in 1963 it was detected that he was guilty of a piece of impropriety involving moral turpitude. Some uniforms were to be made for the employees of the municipality and as usual tenders were called. The Petitioner applied in the name of a "darjee" who was no other than one of his shop-assistants and managed to secure the contract really in his own favour but nominally in that of the servant in contravention of the lowest tender principle. This led to the usual bickerings in the municipal council till ultimately a resolution was passed recommending his removal, not by a two-thirds majority as was necessary u/s 16(1)(b) of the Madhya Bharat Act but by a bare majority of 7 to 6 which is sufficient u/s 41(1) of the Madhya Pradesh Act. This resolution being forwarded to the Government, it gave the Petitioner an Opportunity to show cause, and after considering it for what it was worth, ordered his removal from the membership of the council with a further disability u/s 41(4). Now the Petitioner has come to this Court asking for writ or direction to the effect that this order should not be implemented because u/s 2(2) (ii) of the Madhya Pradesh Act, his membership is under the Madhya Bharat Act and Government could not act except on a recommendatory resolution passed with a two-third majority required by section 16 (1) (b) of that Act.

Against this, Government could conceivably have contended that it was acting u/s 16(1)(a) of the Madhya Bharat Act for which no recommendation by the municipality was necessary. But that is not the Government's position. It admittedly acted on the recommendation in the manner provided in Section 41(1) of the Madhya Pradesh Act under which (unlike under the Madhya Bharat Act) a recommendation is always necessary for the purpose of removal of one with a bare-and not necessarily a two-third majority. The contention accordingly is that this member was deemed to have been elected under the new Act itself and was, therefore, liable to removal u/s 41(1) with no reference to Section 16(1) of the old Act. In brief, while the Petitioner has taken his stand on Section 2(2) (ii), the non-applicant has on Section 2(2)(i) which provisions, they urge, are at least in apparent conflict that has to be resolved by this Court.

The "saving" provisions, based on the principle of the continued Validity of an action taken under the older Act is simple: in the instant case the problem has become difficult because of the somewhat prolix and confusing wording of the two Sub-sections concerned and the difference in their field of operation. The portions that arise for

consideration here, are-

Repeal and savings.

(1)

(2) Notwithstanding such repeal-

(i) all Municipal Committees, Municipal Councils, Municipal Boards and Notified Area Committees constituted, and any action taken under the said Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been respectively constituted, appointed.....under this Act;

(ii) unless the State Government otherwise directs the Committees, Councils, subcommittees and Boards referred to in Clause (i) and the Presidents, Vice-Presidents, members and councillors thereof shall continue to function until the expiry of their term under the repealed Act applicable to them before the commencement of this Act and any vacancy occurring in their office before the expiry of their term shall be filled in the manner provided in such repealed Act;.

The position taken by the Petitioner is that the two saving provisions are mutually exclusive. When we are dealing with the municipal committee, council, board as a body or of administrative action taken by the body, we should look at the new Act. On the other hand, when we are dealing with the term of office either of these committees, councils and boards or of individual member or individual office-holders we should look at the older Act, in this case, the Madhya Bharat Act. It is pointed out that while the reference to the committee, councils and boards is found in both the Sub-sections there is no mention of the President, Vice-President, Members and Councillors in the former Sub-section. Again when it is a case of functions exercised and steps taken and appointments made we are to look at the first Sub-section. But where we are dealing with the term of office, whether of a body or of an individual, we should look at the second Sub-section. On this view the law applicable to the term of office of the member or councillor is the older Act and since the Government has acted on the recommendation of the municipal council a two-third majority was necessary and not a bare majority as would be sufficient for a recommendation under the new Act.

A number of rulings by this High Court on analogous cases have also been cited. For example, in K.G. Ansari v. Collector, 1964 M.P.L.J. 40 : 1964 J.L.J., it was held:

The functioning of a continued member till the expiry of his term under the repealed Act is subject only to those restrictions and conditions which are mentioned in the repealed Act. The membership of a person elected under the repealed Act cannot be put into perii by restrictions and conditions provided for the first time in the Act of 1961.

The ruling in *Municipal Council, Kota v. State* 1965 M.P.L.J. 505, interprets both the Sub-sections:

Under Section 2(2)(i) all municipal committees, councils, boards etc. constituted under the repealed Act were deemed to have been respectively constituted under the Act of 1961. The functions which these bodies continued to perform under the repealed Act are clearly those which are imposed on them u/s 2(2) (ii) of the Act of 1961 which enjoins that they should continue to function under the repealed Act.

The Petitioner's argument here, is that the effect of the recommendation is to shorten the term of his office that, being governed u/s 2 (2) (ii) by the old Act, the recommendation itself, though made by a council deemed to be functioning under the new Act, should still conform to require needs of the old. According to him, whether or not the council functions under the new Act, his terms cannot be touched except by action in accordance with the old Act because his membership is under it.

On the other hand, if we look from the council's view-point, we are sure its functions are under the new Act. In fact it is deemed to have been constituted under it. Thus, its resolution by a bare majority is a valid recommendation to Government. Obviously it cannot be expected to function under the repealed Act, while its constitution itself is deemed to be under the new.

In the ultimate analysis, the removal of the Petitioner is for a disability that has not been newly introduced so that there is no analogy with the case (sic) by *K.G. Ansari v. Collector* (supra). This removability for the impropriety concerned, has been there all the time. But mechanism or giving effect to the disability has been slightly varied. Broadly speaking, the modus operandi is also the same, namely, a resolution passed by the municipal council and sent to Government. However, while under the older Act, a two-third majority was provided for, under the (sic) new, it may be a bare majority only. Thus we are dealing primarily with the validity of the recommendatory resolution passed by the municipal council functioning or deemed to be functioning under the new Act, Secondly, we are dealing with its consequences, namely, the removal of the Petitioner from membership. The former at all events comes under subclause (1) ; in other words, the validity of the recommendatory resolution has to be tested by the new Act.

Thus, balancing the two Sub-sections and giving attention to what comes foremost, namely the resolution of the council, we would hold that the recommendation was a valid one since it has to be deemed to have been made u/s 2(2)(i) of the new Act.

Accordingly, we hold that the removal was valid even though it has got a consequential effect that would, if it had stood by itself, have attracted Section 2(2) (ii). We, therefore, dismiss the petition; but in the special circumstances of the case there will be no order as to costs.