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The High Court Of Madhya Pradesh,
Bench At Indore

Case No.	W.A. No.522/2020
Parties Name	Basant Shrivaneekar and others Vs. The State of M.P. and others.
Date of Judgment	06/09/2021
Bench Constituted	<u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Shri Harshwardhan Sharma, learned counsel for the appellants. Shri Vivek Dalal, learned Additional Advocate General for the respondent/State. Shri Kamal Airen, learned counsel for the respondent No.2.
Law laid down	1. Section 47 of the Madhya Pradesh Municipalities Act, 1961 - The personal presence of councilors who have submitted the proposal/resolution before the Collector is not necessary. The Collector is best suited to decide the mode of verification but personal presence of councilors is not a statutory requirement. 2. Section 47(2) of the Madhya Pradesh Municipalities Act, 1961- 3/4 number of councilors moved a proposal for recalling the President. They attended the hearing before the Collector on two occasions but the Collector was busy elsewhere. On third occasion only ten out of fourteen councilors remained present. Since personal presence is not a statutory requirement, rejection of proposal on this ground alone cannot be upheld.

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	<p>3. Article 226 of the Constitution of India – The writ petition was filed assailing the said order of Collector by few of councilors who were signatories to the proposals. Few did not joined the petition. The validity of Collector's order can be examined in the petition filed by few councilors who are signatories to the proposal. Non-joining of petition by few of them will not defeat the writ petition.</p> <p>4. Validity of order of Collector – is to be judged on the basis of reasons assigned in the said order (constitution bench judgment of Mohinder Singh Gill followed).</p> <p>5. Practice and Procedure – The Learned Single Judge is bound by judgment of full bench – Distinction made by the learned Single Bench to distinguish the judgment of full bench is not based on the reasons on the strength of which the Collector has rejected the proposal.</p> <p>6. Verification of proposal – It is within the province of the Collector. The Collector did not reject the proposal on the ground that no single document has been filed by the councilors for the purpose of verification of their signatures before the Collector. The learned Single Judge was not justified in dismissing the petition on this ground.</p>
Significant paragraph numbers	11 to 16

J U D G M E N T
(06.09.2021)

This intra-court appeal assails the order dated 20.02.2020 passed in W.P. No.27794/2019 whereby challenge to the order of Collector dated 19.11.2019 was

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turned down by the learned Single Judge.

02. Shorn of unnecessary details, relevant facts are that 14 councilors submitted a proposal / resolution for recalling the President of Municipal Council, Maheshwar. Same was registered as Case No.C-144/2019-20. The Collector directed all the councilors to remain present on 25.10.2019 at 04 p.m. for verification of their signatures.

03. Indisputably, all such councilors remained present with their identity proof before the Collector on 25.10.2019 and 04.11.2019. On both the aforesaid dates, the Collector was busy elsewhere / in administration work and, therefore, could not take up the matter. Councilors represented the motion/proposal put their signatures on the order-sheet dated 25.10.2019. Thereafter, learned Collector posted the matter on 19.11.2019. On the said date, out of 14, only 10 councilors remained present before the learned Collector. Learned Collector passed the order dated 13.11.2019 by taking assistance of Section 47(2) of M.P. Municipalities Act, 1961 (Municipalities Act) and opined that out of 15 councilors, 3/4th councilors (12) should have remained present for the purpose of verification of signatures on the resolution / proposal. Since, only 10 councilors remained present, the resolution / proposal was declined. This order of learned Collector was unsuccessfully challenged by the appellant by filing W.P. No.27794/2019.

04. Shri Harshwardhan Sharma, learned counsel for the

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appellant submits that appellant relied upon the Full Bench Judgments of this Court before learned Single Judge in the case of **Naravadi Bai Choudhary and others Vs. State of M.P. and others**, 2005 (2) M.P.L.J., 306 and **State of M.P. Vs. Mahendra Kumar**, 2005(3) M.P.L.J., 578. Learned counsel for the appellant submits that learned Single Judge has dismissed the writ petition mainly for three reasons:-

- (i) All 14 councilors did not appear /remained present before the Collector for the purpose of verification of their signatures.
- (ii) Four out of 14 councilors remained absent before the Collector did not join the writ petition as petitioners, nor they filed any separate writ petition.
- (iii) The elected president against whom the resolution/proposal was made, was not impleaded as a party respondent whereas she was a necessary party.

05. Shri Harshwardhan Sharma, learned counsel for the appellant by taking assistance from the aforesaid Full Bench judgments and Section 47(2) of Municipalities Act urged that physical presence of the councilors was not the statutory requirement and therefore, learned Single Judge has erred in not following the *ratio decidendi* of Full Bench Judgment.

06. Even if, 4 councilors, who remained absent did not file writ petition this will not validate the order of the learned Collector, which cannot pass the litmus test of

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Section 47 (2) of the Municipalities Act. The elected president was not a necessary party because the plain reading of Section 47 nowhere shows that for the purpose of verification of signature, she was required to be heard. If the Collector would have been satisfied, at best, he would have sent proposal / resolution to the State Government. But, at this stage, elected president was not a necessary party.

07. Shri Vivek Dalal, learned Additional Advocate General supported the order of writ court and urged that a conjoint reading of Section 47 (2) of Municipalities Act and judgment of Full Bench in **Naravadi Bai Choudhary (supra)**, makes it clear that Collector is empowered to decide the mode on the strength of which he can record his satisfaction / verify all signatures mentioned in the resolution. If the order of Collector is not happily worded, it is only a technical mistake.

08. Learned counsel for the Election Commission submits that at this stage, the election commission has no role to play.

09. Parties have confined their arguments to the extent indicated above.

10. We have heard the learned counsel for the parties at length and perused the record.

11. Before dealing with the rival contentions, it is apposite to consider Section 47 of Municipalities Act, which reads as under:-

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“47. Recalling of President. - (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed :

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three fourth of the total number of (he elected Councillors and presented to the Collector :

Provided further that no such process shall be initiated :-

(i) within a period a two years from the date on which such President is elected and enters his office;

(ii) if half of the period of tenure of the President elected in a by-election has not expired :

Provided also that process for recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three fourth of the Councillors specified in sub-section (1) have signed the proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed. ”

12. The Full Bench in Naravadi Bai Choudhary (supra) has opined as under:-

“8. Whether the presence of Councillors who have signed the proposal, in person before the Collector is a legislative requirement or not depends upon the true construction and interpretation of proviso to sub-section (1) Of section 47 of the Act which has been reproduced in earlier part of this order. If we scan and put apart the two aspects regarding *signing* and *presentation* of the proposal, it appears in the following form:—

(i) signed by not less than $\frac{3}{4}$ th of the total members of the elected Councillors; and

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(ii) presented to the Collector.

Had the phrase “and presented to the Collector” as used in the closing part of the proviso, been placed immediately after the word “signed”, then the shape of this proviso would have been as under:—

“Provided that no such process of recall shall be initiated unless a proposal is signed (and presented to the Collector) by not less than $\frac{3}{4}$ th of the total members of the elected Councillors.”

9. Had the language of the proviso been as mentioned above, it would have meant that the proposal should not only be signed by not less than $\frac{3}{4}$ th of the total number of the elected Councillors but it should also be presented by them to the Collector. But this is not the case as we find from the language used by the Legislature in the proviso.

10. In view of the aforesaid, reconstruction of the proviso to sub-section (1) of section 47 we are of the firm view that the **two requirements of signing and presenting the proposal as provided in the proviso are different and it is not the requirement that presentation should also be by not less than $\frac{3}{4}$ th of the total number of the elected Councillors.**

11. Now comes the question as to whether verification of the signatures requires presence of the Councillors.

12. Again we have to refer to the language used in section 47 of the Act. Sub-section (2) of this section requires that the Collector, after satisfying himself and verifying that the $\frac{3}{4}$ th of the Councillors specified in sub-section (1) have signed the proposal of recall, shall send the proposal to the State Government. **The provision nowhere mandates that the verification shall be made in the presence of signatories.** Need not to say that verification of signatures of signatories after procuring their presence may be one of the modes for such verification but it is not the only or exclusively provided mode, because nothing can be read in the proviso itself to this effect, therefore, to put fetters on the discretion of the Collector in selecting the mode of verification by making the personal presence of signatories mandatory while the law is framed to give him more elbow room in the matter would be clearly against the legislative intent.

16. Therefore, we hold that proviso to section 47 of the Act

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does not contemplate that the proposal should be presented by the $\frac{3}{4}$ th of the Councillors in person or that for the purpose of verification of signatures of the signatories their personal presence is necessary.

(Emphasis supplied)

13. The relevant portion of the order of the learned Collector, which was subject matter of challenge before the writ court is as under:-

“मध्यप्रदेश नगरपालिका अधिनियम-1961 की धारा- 47 (2) में स्पष्ट है कि तीन चौथाई पार्षद कलेक्टर के समक्ष उपस्थित होकर वापस बुलाये जाने के प्रस्ताव पर हस्ताक्षर करेंगे तथा कलेक्टर के समाधान पश्चात प्रस्ताव राज्य शासन को भेजा जावेगा। इस प्रकरण में कुल पन्द्रह (15) पार्षदों के तीन चौथाई अर्थात् बारह (12) पार्षदों को उपस्थित होकर प्रस्तुत प्रस्ताव पर अपने हस्ताक्षरों का सत्यापन कराना था। जबकि केवल दस (10) पार्षदों ने ही उपस्थित होकर सत्यापन कराया है। इस प्रकार नगर परिषद महेश्वर के निर्वाचित अध्यक्ष को वापस बुलाने हेतु मांग पत्र अनुसार तीन चौथाई पार्षदों का संख्या बल नहीं होने से प्रस्ताव अमान्य किया जाता है उक्तानुसार रिपोर्ट राज्य शासन की ओर भी सूचनार्थ प्रेषित की जावे। संबंधित सूचित हो। प्रकरण समाप्त होकर दाखिल रेकार्ड हो।”

(Emphasis supplied)

14. A plain reading of Section 47 (2) of Municipalities Act and the judgment of Full Bench in the case of **Naravadi Bai Choudhary (supra)**, leaves no room for any doubt that there is no statutory requirement of personal presence of the councillors, who have presented proposal for the purpose of verification before the learned Collector.

15. Dichotomy between “signing” and “presentation” mentioned in Section 47 (2) has been dealt with comprehensively by the Full Bench in **Naravadi Bai Choudhary (supra)**. As per this judgment, there is no

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requirement of personal presence of the councilors for the purpose of the verification of signatures before the Collector. A microscopic reading of impugned order of learned Collector dated 19.11.2019 shows that learned learned Collector treated the requirement of personal presence of councilors for verification as mandatory requirement as per Section 47 (2). This clearly runs contrary to dicta of full Bench judgment in **Naravadi Bai Choudhary (supra)** and, therefore, we are unable to give stamp of approval to the order of the learned Collector, which was not disturbed by the learned Single Judge.

16. Learned single Judge opined that:-

“even if it is held that as per full Bench judgment, personal presence is not a requirement for verification of proposal, even then not a single document has been filed to verify their signatures before the Collector, therefore, the Collector had no option but to turn down the proposal.”

(Emphasis supplied)

The writ court was required to examine the decision making process adopted by the learned Collector. The validity of order of learned Collector was required to be adjudged on the basis of reasons mentioned therein and writ court was under no obligation to assign a reason, which did not find place in the impugned order dated 19.11.2019.

17. Putting it differently, a careful reading of the order of learned Collector dated 13.11.2019 shows that he has not disbelieved the proposal on the ground that no documents have been filed for the purpose of verification

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of signatures. On the contrary, singular reason assigned by Collector was that the councilors did not remain personally present for the purpose of verification of signatures. Thus, the reason assigned by the learned Single Judge for not following the Full Bench judgment cannot be countenanced. Reference may be made to the constitution bench judgment of the Apex Court in *Mohinder Singh Gill Vs. Chief Election Officer reported in (1978) 1 SCC 405*, wherein, it was held that validity of an order of statutory authority must be judged on the basis of reasons mentioned therein. Apart from this, as per section 47 of the Municipalities Act, the verification of signatures of councilors by the learned Collector is material and not their impleadment before this Court in the capacity of petitioner. Merely because all the councilors who have allegedly signed the proposal/resolution have not joined this petition, it cannot be a reason to dismiss this petition. It is noteworthy that verification of signatures of councilors before the Collector was only material and subject matter of adjudication. The presence of each one of them as councilors before this Court is totally immaterial. In other words, what is required to be examined is whether the learned Collector was justified in rejecting the proposal for the singular reason that all the signatories of proposal did not appear before him.

18. So far as the third reason i.e. the president was not made party is concerned, we find substance in the

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arguments of Shri Harshwardhan Sharma, learned counsel. Section 47 does not contemplate impleadment of the president. Learned Collector was only required to send proposal to the State Government. If the proposal was otherwise verified and found to be trustworthy.

19. In view of the forgoing analysis, the impugned order of learned Single Judge dated 20.02.2020 and the order of the Collector dated 19.11.2019 are set aside. The learned Collector shall undertake the exercise of the verification process afresh in accordance with law. It is made clear that learned Collector shall be guided by the law laid down by the Full Bench in **Naravadi Bai Choudhary (supra)** for verification of signatures.

20. With the aforesaid and without expressing any opinion on merits, writ appeal is allowed.

(Sujoy Paul)
Judge

(Anil Verma)
Judge

N.R.