



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

WRIT APPEAL No. 2294 of 2024

SAROJ KATARIYA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Piyush Mathur, learned Senior Counsel assisted by Shri Harshwardhan Sharma, learned counsel for the appellants.

Shri Sudeep Bhargava, learned Deputy Advocate General for the respondents / State.

Shri Akash Rathi, learned counsel for respondent No.4 / Writ Petitioner.

Heard on : 21st October, 2024

Delivered on : 05th November, 2024

O R D E R

Per : Justice Vivek Rusia

With the consent of the parties, heard finally.

The appellants have filed the present writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam against the order dated 23.09.2024 passed by the learned Single Judge in Writ Petition No.25895 of 2024, whereby the writ petition filed by respondent No.4 has been allowed by quashing the impugned notice of No-Confidence Motion dated 27.08.2024



moved by the respondents.

FACTS OF THE CASE

02. In the month of July 2022, general elections of the Councillors / Ward Members were held in the Municipal Council, Rajgarh. The elected Councilors elected the President of the Municipal Council, Rajgarh on 20.08.2024 i.e. respondent No.4 (hereinafter referred to as 'the writ petitioner'). After the expiry of two years from the date of election of the present appellants, who are three in number moved a No-Confidence Motion against the writ petitioner.

2.1. In exercise of the power conferred under Section 43A of the Madhya Pradesh Municipalities Act, 1961 vide order dated 24.08.2024, the Collector, District – Rajgarh (Biaora) authorized the Additional Collector to conclude the proceedings of the No-Confidence Motion in accordance with the provisions of the M.P. Municipalities Act and the Rules made thereunder.

2.2. In compliance with the order above, vide notice dated 27.08.2024 issued to all the councillors, the Additional Collector scheduled the meeting in relation to the No-Confidence Motion on 07.09.2024 at 11:00 am in the auditorium of Jila Panchayat, Rajgarh.

2.3. Being aggrieved by the aforesaid notice, the elected president approached the Writ Court by way of W.P. No.25895 of 2024 challenging the No-Confidence Motion *inter alia* on the ground that the Hon'ble Governor of the State of Madhya Pradesh has passed an ordinance, which is published in the Gazette of M.P. dated 27.08.2024, whereby Section 43A of the M.P. Municipalities Act has been amended to the effect that word 'two-third' is substituted by the word 'three – fourth' and period 'two years' is substituted by 'three years' in Clause (i) of the proviso to sub-section (1) of Section 43A. According to the writ



petitioner, in view of the said amendment, no resolution of the motion of No-Confidence can be brought against the President or Vice President within three years from the date of their election.

2.4. The present appellants appeared in the writ petition by filing Caveat Application No.925/2024. Vide order dated 06.09.2024, notices were issued to the remaining respondents and by way of interim relief till the next date of hearing further proceedings of No-Confidence Motion against the writ petitioner were stayed. After the appearance of the respondents, writ petition was finally heard and vide order dated 23.09.2024, the Writ Court allowed the petition by quashing the impugned notice dated 27.08.2024. The Writ Court has placed reliance upon a judgment passed by the Co-ordinate Bench of this Court (Single) at Principal Seat, Jabalpur in the case of *Manju Rai v/s The State of Madhya Pradesh & Others (Writ Petition No.25382 of 2024)* dated 06.09.2024. The Writ Court also held that the Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024 (in short 'the Ordinance of 2024') has the retrospective operation and would apply to all those cases whereby although the No-Confidence Motion might have been moved before the promulgation of the Ordinance, still the meeting to consider the No-Confidence Motion was fixed after the promulgation of the Ordinance. Therefore, no meeting can now be convened as per the aforesaid amendment. In the present case, the writ petitioner was elected on 12.08.2022 as per *the Ordinance of 2024*, the motion could not have been moved before the period of three years from the date of the election. Hence, the present writ appeal is before this Court.

SUBMISSIONS OF APPELLANTS

03. Shri Piyush Mathur, learned Senior Counsel appearing for the



appellants submitted that the Writ Court has erred in relying upon the judgment passed in the case of *Manju Rai (supra)* while holding that *the Ordinance of 2024* has retrospective operation and according to him it would apply to all those cases, where No-Confidence Motion has been moved, but the meeting is not convened. It is further submitted by the learned Senior Counsel that the present appellants have moved the No-Confidence Motion against the writ petitioner before the date of issuance of *the Ordinance of 2024*, such motion is liable to be considered immediately after completion of two years from the date of election against the President or Vice President as the law, prevailing at that relevant point of time would apply. Since the Collector vide order dated 24.08.2024 had entertained the motion and appointed the Additional Collector to complete the procedure under the provisions of the Madhya Pradesh Municipalities Act, thereafter, the same authority had issued the notice to all the Councillors to participate in the meeting scheduled on 07.09.2024, therefore, vested right in favour of the appellants cannot be taken away by way of *the Ordinance 2024* which has a prospective effect.

3.1. Shri Mathur, learned Senior Counsel further submitted that the State Government by filing a reply came up with a specific plea that *the Ordinance of 2024* is having prospective effect, therefore, the impugned order has been passed without considering the aforesaid reply. In support of the aforesaid contentions, learned Senior Counsel has placed reliance upon a judgment delivered by the Apex Court in the case of ***Rafiquennessa & Another v/s Lal Bahadur Chetri (Since Deceased) Through Legal Representatives & Another reported in 1964 SCC OnLine SC 87***, in which it is held that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express



works in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable; as a matter of law, no objection can be taken to them.

3.2. Reliance has also been placed upon a judgment delivered by the Apex Court in the case of *M. Surender Reddy v/s State of Andhra Pradesh & Others reported in (2015) 8 SCC 410*, wherein the Apex Court has held that the State Government cannot pass any order amending a procedural law regarding reservation in the matter of selection to posts, with retrospective effect, once the procedure of selection starts.

3.3. Learned Senior Counsel has further placed reliance upon the judgment delivered in the case of *Noorunissa Begum v/s Brij Kishore Sanghi reported in (2015) 17 SCC 128*, in which the Apex Court has held that in the absence of anything in the enactment to show that the amendment is to have retrospective operation it cannot be so construed to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. The 'statute' should be interpreted, if possible, to respect the vested right.

3.4. Learned Senior Counsel has also placed reliance upon a judgment delivered in the case of *Vipulbhai M. Chaudhary v/s Gujarat Cooperative Milk Marketing Federation Limited & Others reported in (2015) 8 SCC 1*, in which the Apex Court has taken a similar view by holding that there is no quarrel with the well-settled proposition that a right to elect is not a fundamental right nor a common law right; it is a statutory right, and any question relating to the election has to resort within the four corners of the Act.

3.5. Learned Senior Counsel submits that a similar view has been



taken by the Apex Court in the case of *Sree Sankaracharya University of Sanskrit & Others v/s Dr Manu & Another reported in 2023 SCC OnLine SC 640*, wherein It has been held that the presumption against retrospective operation does not apply to declaratory statutes. A clarificatory amendment of this nature will have a retrospective effect, and therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law.

3.6. Learned Senior Counsel argued that in the present case, the amendment is not procedural in nature, therefore, it will not affect the vested right of the appellants who have moved the No-Confidence Motion before *the Ordinance of 2024* came into operation. Shri Mathur has placed reliance upon a judgment passed by the Division Bench of this Court in the case of *Narayan Nagina v/s The State of Madhya Pradesh & Others reported in 2004 (1) M.P.L.J. 341*, in which it has been held that the language of Section 47 of the Municipalities Act is clear and specific as the procedure will be initiated only after three-four Councillors have signed the proposal and verified by the Collector to its satisfaction. Merely submission of the proposal is not sufficient, unless the Collector has satisfied and verified that three – fourth of the elected Councilors have signed the proposal for recalling voluntarily and once the Collector is satisfied and has forwarded the proposal to the State Government, then it will amount to initiation of the process of recall.

3.7. Lastly, reliance has been placed by learned Senior Counsel upon a recent judgment passed by the Division Bench in the case of *Ruchi Soya Industries Limited (Export Unit) (Now Known as Patanjali Foods Limited) v/s The State of Madhya Pradesh & Others (Writ Petition No.50 of 2009) Neutral Citation No.2024:MPHC-IND-*



25117, in which it has been held that generally, an Act should always be regarded as prospective in nature unless the legislature has intended the provisions of the said Act to be made applicable with retrospective effect.

3.8. To criticize the judgment passed in the case of *Manju Rai (supra)*, Shri Mathur, learned Senior Counsel argued that the Writ Court has wrongly held that the right to elect, right to contest the election and right to hold an elected post is a statutory right and cannot have to be substantive or vested right, hence, same can be taken away by the statute. The Writ Court has wrongly held that the right to hold an elected office bearer is merely a statutory right and the law regulating the election, working and tenure of such elected office bearer would be a procedural law and any amendment in procedural law has to be treated as retrospective in operation. It is further submitted that as per paragraph – 2 of *the Ordinance of 2024* which was made effective only during the period of operation of this Ordinance, not prior to the date of issuance of *the Ordinance 2024*, hence, the same is prospective in nature. Therefore, the impugned order be set aside and the respondents be directed to proceed with the No-Confidence Motion.

SUBMISSION OF RESPONDENT / THE WRIT PETITIONER

04. Shri Akash Rathi, learned counsel for the respondent / the writ petitioner rebutted that by way of amendment, the period of protection from No-Confidence Motion has been extended from two years to three years, therefore, now no No-Confidence Motion up to three years from the date of election can be passed. The Writ Court has rightly taken a view that No-Confidence Motion is a procedural law and it should be given a retrospective effect. The appellants, being Councilors have no vested right or fundamental right to move No-Confidence Motion



against the elected President, hence, the present writ appeal is liable to be dismissed.

4.1. In support of the aforesaid contention, Shri Rathi, learned counsel has placed reliance upon a judgment passed by the Division Bench of Allahabad High Court in the case of *Anuj Kumar & Another v/s The State of U.P. & 03 Others (Writ C. No.31153 of 2022)* decided on 28.02.2023, in which on identical facts and circumstances it has been held that the right to carry out a motion of No-Confidence brought by the elected members against the Pramukh of Kshetra Panchayat under Section 15 which is a procedural provision has to be exercised within the framework of the statute. By way of Ordinance No.8 of 2022 w.e.f. 04.10.2022, the time frame prescribed under sub-section (13) has been substituted from one year to two years and the Division Bench has held that these two years would operate prospectively. The right to move the No-Confidence Motion has been curtailed by the substituted period from one year to two years and this amendment will relate to the date of the assumption of the office by the Pramukh.

4.2. Shri Rathi learned counsel further placed reliance upon couple of judgments delivered by the Karnataka High Court & Apex Court in the cases of *Geetha Pandit Rao v/s The State of Karnataka & Others reported in 2020 SCC OnLine Kar 4552* and *Zile Singh v/s The State of Haryana 7 Others reported in AIR 2004 SC 5100* respectively.

SUBMISSION OF STATE'S COUNSEL

05. Shri Sudeep Bhargava, learned Deputy Advocate General appearing for the respondents / State submitted that the Writ Court has rightly set aside the No-Confidence Motion relying upon the judgment passed in the case of *Manju Rai (supra)*. The legislature intends to give three years' protection to the elected President or Vice President of local



bodies from moving the No-Confidence Motion against them. Hence, no case for interference is made out and the intra-court appeal is liable to be dismissed.

APPRECIATION & CONCLUSION

06. For ready reference Section 43A of the M.P. Municipalities Act is reproduced below:-

"43A. No confidence motion against the Speaker or Vice-President. (1) A Motion of no confidence may be moved against the Vice-President by any elected Councilors at a meeting specially convened for the purpose under sub-section (2) and if the motion is carried by a majority of two-thirds (*now three – fourth*) of the elected Councilors present and voting in the meeting and if such majority is more than half of the total number of elected Councilors constituting the Council, the office of the Vice-President, shall be deemed to have become vacant forthwith. A copy of such motion shall be sent by the Chief Municipal Officer to the Collector forthwith for filling up the vacancy ;

Provided that no such resolution shall lie against the Vice-President within a period of

- (i) two years (*now three years*) from the date on which the Vice-President enters upon his office;
- (ii) one year from the date on which the previous motion of no-confidence was rejected.

(2) For the purpose of sub-section (1), a meeting of the Council shall be convened and presided over by the Collector or a Class I Officer in case of a Municipal Council and a Class II Officer in case of Nagar Panchayat as nominated by him, in the following manner, namely:-

- (i) the meeting shall be convened forthwith on a requisition signed by not less than one-sixth of the total number of elected Councilors constituting the Council for the time being;
- (ii) the notice of such a meeting specifying the date, time and place shall be dispatched to the President and every Councilor ten clear days before the meeting;
- (iii) the no-confidence motion moved under this section shall be decided through secret ballot.”

[Emphasis Supplied]

07. By way *the Ordinance of 2024*, the words 'two years in Clause (i) of proviso' have been replaced by the words 'three years' and



the word two – third in the sub-section (1)' has been replaced by the word 'three – fourth' without touching another procedural part. ***The Only issue which is under consideration is whether these replacements will apply prospectively or retrospectively ?*** As per the language of sub-section (1), a motion of No-Confidence may be moved against the Vice President by the elected Councilors **at a meeting specifically convened** for the purpose under sub-section (2). In the said meeting, if the majority of three – fourth of elected Councilors are present and if the majority is more than half of the total number of elected Councilors' vote in the meeting in favour of No-Confidence Motion, the President / Vice President shall be deemed to have vacant. Therefore, the actual effect of a No-Confidence Motion will have to be seen in a meeting specially convened for that purpose. On that day no such resolution shall lie against the President or Vice President who has not completed two years (now three years) from the day he / she enters the office. In this matter, before the date on which the meeting was to be convened the period of two years has been changed to three years hence, on the date when the meeting is to be convened such resolution shall not lie against the petitioner he did not complete **three years** period from the date on which he entered into the office.

08. Admittedly, in the present case although the motion was moved and the Additional Collector has fixed the date for convening the meeting before it could be passed in the meeting, but the period of two years has been replaced by three years by way of amendment. The intention of the legislature is to give protection to the President or Vice President to the No-Confidence Motion for a period of three years.

09. The Apex Court in the case of *Rafiquenessa (supra)* has held that *a statutory provision is held to be retrospective either when it is so*



declared by express terms, or the intention to make it retrospective follows from the relevant words and the context in which they occur. Here the purpose of changing the period from two years to three years is the intention to protect the elected President.

10. The Apex Court in the case of ***Corporation Bank v/s Saraswati*** reported in **(2009) 1 SCC 540** has held that *the principle of purposive construction should be applied in a case of this nature to find out the object of the Act. When a statute cannot be considered in such a manner which would defeat its object, the legislature is presumed to be aware of the consequences flowing therefrom. The statute should be considered in such a manner so as to hold that it serves to seek a reasonable result.*

11. On other grounds raised by learned Senior Counsel appearing for the appellants, we are satisfied with the reasoning given in the matter of *Manju rai (supra)* which the Writ Court has rightly followed. We are not inclined to take a different view that the right to move a motion by elected Councillors is only a procedural law and not a vested right which has rightly been held by the Writ Court. Hence, we do not find any ground to interfere with the order passed by the Writ Court.

12. In view of the above, the Writ Appeal stands dismissed. No order as to costs.

(VIVEK RUSIA)
J U D G E

(BINOD KUMAR DWIVEDI)
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