

A.F.R.

W.A. No.960/2014

(Smt. Sangeeta Bansal v. State of M.P. & others)

14.01.2015

Shri Rajendra Tiwari, Senior Advocate with Shri Manikant Sharma, Advocate for the appellant.

Shri Piyush Dharmadhikari, Government Advocate for the respondent Nos.1 and 2/State.

Shri V.S. Shroti, Senior Advocate with Shri Ashish Shroti, Advocate for the respondent No.3.

Shri Siddharth Seth, Advocate for the respondent No.4.

Shri V.K. Shukla, Advocate for the intervenor.

Heard counsel for the parties.

This appeal takes exception to the decision rendered by the learned Single Judge dated 20th December, 2014 in Writ Petition No.14819/2014.

The learned Single Judge has rejected the argument of the appellant that for reckoning the number of three-fourth of the elected Councillors, referred to in the first proviso to Section 47(1) of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as “the Act of 1961”), the person holding the post of President,

should also be taken into consideration, being elected Member of the Council.

The learned Single Judge has examined this challenge in *extenso* with reference to the provisions contained in the Act of 1961 as also reported decisions pressed into service by both the parties including the decision in the case of **Laxmi Narayan Garg vs. Municipal Council Sardarpur and others**¹. The learned Single Judge has distinguished the exposition in the case of **Laxmi Narayan Garg** as can be discerned from paragraphs 18 and 19 of the impugned judgment. The view so taken, in our opinion, is just and proper. That decision deals with the provision as obtained prior to amendment of 1994. After amendment, Section 47 of the Act reads thus:-

“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

¹ (1997) JLJ SN 63

by not less than three fourth of the total number of the elected Councillors and presented to the Collector:

Provided further that no such process shall be initiated:--

(i) within a period of 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 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.”

(emphasis supplied)

The moot controversy is about the purport of expression “elected Councillors” occurring in the first proviso to sub-section (1). According to the appellant, it would include the President as well. For that, reliance is

now additionally placed on the definition of “Councillor” prescribed in Madhya Pradesh Municipalities (Election of Vice President) Rules, 1998 which provides that the expression “Councillors” means the President and the elected Councillors of the Council. Reliance is also placed on Section 55 of the Act of 1961 to point out that the President must be reckoned as elected Councillor of the Council. Reliance is also placed on page 60 of the petition part of Annexure P-2, being proceedings of election of Vice President dated 23rd November, 2011, which indicates that the appellant had participated in that process.

Having considered the rival submissions, we are in agreement with the opinion recorded by the learned Single Judge that what is relevant to keep in mind is the express provision contained in Section 47 as amended, to be read with the definition of Councillor in Section 3(7) of the Act of 1961. The definition of Councillor in Section 3(7) of the Act prescribes that “Councillor” means any person who is legally a member of the Council. This, however, will have to be read in the context of Section 19 of the Act of 1961 which provides for the composition of the Council - as defined in Section 3(8) of the said Act. Section 19(1)(b) explicitly

refers to the “Councillors elected by direct election from the wards”, in contrast to the other constituents, *inter alia*, the President of the Council as specified in Section 19(1)(a) to be the Chairperson to be elected by direct election from the Municipal area. The amendment to Section 19 was effected alongwith amendment to Section 47. Keeping in mind the definition of Councillor in the Act and that the composition of the Council is of Councillors elected by direct election from the wards - (Sec.19 (1) (b), which is separate constituent than the President elected by direct election from the Municipal area – (Sec.19 (1) (a); coupled with the expression used in the first proviso to sub-section (1) – “elected Councillors”, the same is ascribable to the constituent of the Council specified in Section 19 (1) (b) alone. Thus, the process for recall of President can be initiated only by the Councillors elected by direct election referred to in Section 19 (1) (b), by virtue of the first proviso to Section 47 of the Act as amended.

Notably, prior to amendment of 1994 the President was indirectly elected from amongst the elected Councillors of the Council. The fact that the President is part of the Municipal Council, therefore, does not make him an elected Councillor within the meaning of Section

19(1)(b) and 47. Similarly, the fact that the President is qualified to participate in the election of Vice-President as provided in the Act and Rules framed thereunder, does not make him an elected Councillor within the meaning of Section 19 (1) (b) and 47. The definition of “Councillors” in the Rules of 1958 are for the purposes of that Rules – for election of Vice-President. For initiating the process of recall of President, only the specified number of “elected Councillors” of the Council need to be reckoned as has been held by the learned Single Judge. We are in agreement with that view. The decision of the Division Bench in the case of **Laxmi Narayan Garg**, as aforesaid, has been distinguished by the learned Single Judge and, in our opinion, rightly in paragraphs 18 and 19 of the impugned judgment.

The provisions contained in Rules of 1998 pressed into service or for that matter, Section 55 and the proceedings of the Council Annexure P-2, will be of no avail for construing the requirement of first proviso to Section 47 (1) of the Act of 1961. For that, it is only the elected Councillors, referred to in Section 19 (1) (b), who must initiate the proposal to be signed by not less than three-fourth of the total number of elected

Councillors, as per first proviso to Section 47 (1) of the Act.

As a result, we find no merits in this appeal. The same is **dismissed**.

(A. M. Khanwilkar)
Chief Justice

(C.V. Sirpurkar)
Judge

psm