



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 6th OF SEPTEMBER, 2024**

WRIT PETITION No. 25382 of 2024

SMT. MANJU RAI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Shri Vivek Krishna Tankha – Senior Advocate through video conferencing
with Shri Harshit Bari – Advocate for petitioner.*

*Shri Prashant Singh – Advocate General with Shri Amit Seth – Additional
Advocate General for respondents Nos.1 to 4/State.*

Reserved on : 03/09/2024

Pronounced on : 6th/09/2024

ORDER

This Petition under Article 226 of Constitution of India has been
filed seeking the following relief (s) :

- (i) Pass an appropriate Writ, Order or Direction in the nature of certiorari, or any similar Writ setting aside the impugned order dated 23.08.2024 passed by Respondent No.4, in the light of Policy decision dated 20.08.2024 of the cabinet and order dated 23.08.2024 passed by the Collector, District - Sagar in a similar case. AND/OR
- (ii) Pass an appropriate Writ, Order or Direction in the nature of Mandamus, or any similar Writ directing the Respondent no.3 to pass appropriate in accordance with the policy decision dated 20.08.2024 of the cabinet and order dated 23.08.2024 passed by the Collector, District - Sagar in a similar case.



(iii) Pass any other writ or direction as the Hon'ble Court may deem fit, in favor of the Petitioner.

2. It is submitted by Counsel for Petitioner that during the pendency of the writ petition, an ordinance has been promulgated by the State Govt., thereby amending Section 42-A(1)(a) and in the opening paragraph, for the words "two thirds", the words "three fourths" have been substituted and (b) in clause (i) of the proviso, for the words "two years", the words "three years" have been substituted.

3. It is submitted that Petitioner is holding the Post of President, Municipal Council, Damoh from 5-8-2022. It appears that after the completion of tenure of two years, a no confidence motion was moved and accordingly, by order dated 23-8-2024, the Collector, Damoh authorized the Add. Collector, Damoh. Accordingly, the Add. Collector, Damoh convened the meeting to consider the no confidence motion on 4-9-2024. It is submitted by Counsel for Petitioner, that in view of **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024**, no confidence motion cannot be considered as clause (i) of proviso to Section 43-A(1) of M.P. Municipalities Act has now been amended and the words "two years" have been substituted by words "three years". It is submitted that the aforesaid ordinance is Retrospective in operation or in alternative it is Retroactive in operation, but it is not Prospective in operation. It is further submitted that in various other Districts, where no confidence motion was moved against the sitting President, the Collectors have dropped the proceedings by treating the Ordinance as Retrospective in nature, therefore it is clear that the Petitioner is also entitled for the same treatment. To buttress his contentions, the Counsel for Petitioner has relied upon the Judgments passed by Supreme Court in the case of **Ramesh Kumar Soni Vs. State of M.P.** reported in (2013) 14 SCC 696,



SEBI Vs. Classic Credit Ltd. reported in (2018) 13 SCC 1, **T. Kalamurthi and another Vs. Five Gori Thaikkal Wakf and others** reported in (2008) 9 SCC 306, **SEBI Vs. Rajkumar Nagpal and others** reported in (2023) 8 SCC 274, **Shyabuddinsab Mohidinsab Akki Vs. Gadag-Betgeri Municipal Borough and others** reported in 1955 SCC OnLine SC 25, **Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others** reported in (1994) 4 SCC 602, **Videocon International Ltd. Vs. SEBI** reported in (2015) 4 SCC 33, **Shanti Conductors (P) Ltd. and another Vs. Assam SEB and others** reported in (2019) 19 SCC 529, **Gottumukkala Venkata Krishanmraju Vs. Union of India and others** reported in (2019) 17 SCC 590 and **Allahabad High Court in the case of Anuj Kumar and another Vs. State of U.P. and others** reported in 2023 SCC OnLine All 66 and **District Board, Muzaffarnagar Vs. The Upper India Sugar Mills Ltd., Khatauli** reported in AIR 1957 All 527.

4. It is further submitted by Counsel for Petitioner, that in view of pendency of this petition, the Collector, Damoh has suspended the meeting which was to be held on 4-9-2024.

5. *Per contra*, the Petition is vehemently opposed by Counsel for the Respondent/State. It is submitted that if Collectors of other Districts have dropped the no-confidence motion under misconceived notions, then it does not mean that the petitioner is entitled for the similar treatment by applying the principle of Negative Equality. It is submitted that two wrong orders cannot make one order correct. It is submitted that Section 43-A of M.P. Municipalities Act, gives an immunity to the President/Vice-President from his/her removal from the post for a particular period. As soon as the statutory period is over, the Councilors get a substantive right to move a no-confidence motion. It is submitted



that the election to the post of President is by way of indirect election, and the President is elected amongst the Councilors. It is further submitted that by the Ordinance, the period of immunity has been extended from two years to three years, therefore, such Ordinance has to be treated as Prospective in operation as there is no provision contrary to it. It is further submitted that so far as the law laid down by Division Bench of Allahabad High Court in the case of **Anuj Kumar (Supra)** is concerned, since, the Division Bench of Allahabad High Court has not considered that by the Ordinance, a new right is being introduced, i.e., to hold the post of President, Municipal Council for a period of three years in place of two years, therefore, unless and until, it is otherwise provided, the Ordinance has to be treated as Prospective in Nature. It is further submitted that Statutory Right is always Substantive Right. To buttress his contentions, the Counsel for the State has relied upon the Judgment passed by Supreme Court in the case of **Harla Vs. State of Rajasthan** reported in **AIR 1951 SC 467**, **Rajendra Agricultural University Vs. Ashok Kumar Prasad and others** reported in **(2010) 1 SCC 730**, **Messrs. Hoosein Kasam Dada (India) Ltd. Vs. The State of M.P. and others** reported in **AIR 1953 SC 221**, **M/s Punjab Tin Supply Co., Chandigarh and others Vs. Central Government and others** reported in **(1984) 1 SCC 206**, **Shanti Conductors (P) Ltd., Vs. Assam SEB** reported in **(2019) 19 SCC 529** and Judgment passed by Division Bench of Bombay High Court in the case of **Mahindra and Mahindra Employees' Union and others Vs. Commissioner of Labour and Others** reported in **2007 SCC OnLine Bom 63**.

6. Heard the learned Counsel for the parties.
7. The only question which requires consideration is that whether **The Madhya Pradesh Municipalities (Second Amendment)**



Ordinance, 2024 is Prospective, Retrospective or Retroactive in operation?

Whether right to contest Election is a Statutory Right or Substantive Right

8. A Statutory Right is a right which is created by a Statute, which can be taken away, created etc. by the Statute, whereas the Substantive Right are rights that are inherent and Fundamental. The Supreme Court in the case of **J.S. Yadav v. State of U.P.**, reported in **(2011) 6 SCC 570** has held as under :

20. “17. The word ‘vested’ is defined in *Black’s Law Dictionary* (6th Edn.) at p. 1563, as:

‘Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.’

Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In *Webster’s Comprehensive Dictionary* (International Edn.) at p. 1397, ‘vested’ is defined as:

‘[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.’ ”

(See *Bibi Sayeeda v. State of Bihar* at SCC p. 527, para 17.)

21. The word “vest” is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word “vest” has also acquired a meaning as “an absolute or indefeasible right”. It had a “legitimate” or “settled expectation” to obtain right to enjoy the property, etc. Such “settled expectation” can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a “settled expectation” or the so-called “vested right” cannot be countenanced against public interest and



convenience which are sought to be served by amendment of the law. (Vide *Howrah Municipal Corpn. v. Ganges Rope Co. Ltd.*)

22. Thus, “vested right” is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course.

9. Now, the next question is “as to whether the right to contest is a Statutory Right or is a Vested/Substantive Right?”

10. The Supreme Court in the case of **Vishwanath Pratap Singh Vs. Election Commission of India and others** decided on **9-9-2022** in **S.L.P (c) No. 13013/2022** has held as under :

5. We find that the writ petition before the High Court was entirely misconceived and so is the present special leave petition. The right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. In *Javed v. State of Haryana*, (2003) 8 SCC 369, this Court held that:-

'22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right - a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

23. Reiterating the law laid down in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* [AIR 1952 SC 64 : 1952 SCR 218] and *Jagan Nath v. Jaswant Singh* [AIR



1954 SC 210 : 1954 SCR 892] this Court held in *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691] : (SCC p. 696, para 8)

'8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.'

6. In a later judgment reported as *Rajbala v. State of Haryana*, (2016) 2 SCC 445, this Court held that the right to contest for a seat in either of the two bodies is subject to certain constitutional restrictions and could be restricted further only by a law made by the Parliament. It was held as under:-

'39. Insofar as the Rajya Sabha and the Legislative Councils are concerned, such rights are subject to comparatively greater restrictions imposed by or under the Constitution. The right to vote at an election to the Lok Sabha or the Legislative Assembly can only be subjected to restrictions specified in Article 326. It must be remembered that under Article 326 the authority to restrict the right to vote can be exercised by the 'appropriate legislature'. The right to contest for a seat in either of the two bodies is subject to certain constitutional restrictions and could be restricted further only by a law made by Parliament.'

11. The Supreme Court in the case of **Kuldip Nayar v. Union of India**, reported in (2006) 7 SCC 1 has held as under :

298. In *People's Union for Civil Liberties (PUCL) v. Union of India* this Court treated the right to vote to be carrying within it the constitutional right of freedom of expression. But the same cannot be said about the right to stand for election, since that is a right regulated by the statute.

299. Even without going into the debate as to whether the right to vote is a statutory or constitutional right, the right to be elected is indisputably a statutory right i.e. the right to stand for elections can be regulated by law made by Parliament. It is pure and simple a statutory right that can be



created and taken away by Parliament and, therefore, must always be subject to statutory limitations.

300. In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* this Court noticed with approval the decision of the Privy Council in *Joseph Theberge v. Phillippe Laundry* and held that the right to stand as a candidate for election is not a civil right, but is a creation of statute or special law and must be subject to the limitations imposed by it. It was observed in AIR para 18 of the judgment as under: (*N.P. Ponnuswami case*, SCR p. 236)

“The points which emerge from this decision may be stated as follows:

(1) The right to vote or *stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.*

(2) Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.”

(emphasis supplied)

301. In *Hari Prasad Mulshanker Trivedi* it was reiterated that: (SCC p. 422, para 24)

“The right to stand for election is a statutory right and the statute can therefore regulate the manner in which the right has to be enforced or the remedy for enforcing it.”

302. Similar view was expressed by this Court once again in *Jyoti Basu v. Debi Ghosal* in the following words: (SCC pp. 696-97, para 8)

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. *It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and*



applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a straitjacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So *the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute.*”

* * *

362. We do not agree with the above submission. It is clear that a fine distinction was drawn between the right to vote and the freedom of voting as a species of freedom of expression, while reiterating the view in *Jyoti Basu v. Debi Ghosal* that a right to elect, fundamental though it is to democracy, is neither a fundamental right nor a common law right, but pure and simple, a statutory right.

363. Even otherwise, there is no basis to contend that the right to vote and elect representatives of the State in the Council of States is a constitutional right. Article 80(4) merely deals with the manner of election of the representatives in the Council of States as an aspect of the composition of the Council of States. There is nothing in the constitutional provisions declaring the right to vote in such election as an absolute right under the Constitution.



12. Thus, the right to elect, the right to contest election and right to hold an elected post is a Statutory Right and cannot be held to be a Substantive Right or Vested Right. Therefore, such a right can always be created or taken away. In the other words, the Right to contest election is always regulated by Statute.

13. The next question would be “whether **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024**, which deals with the Statutory Rights of the parties, is Prospective in nature or it is Retrospective/Retroactive in nature?”

14. **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024** merely enhances the period of bringing no confidence motion from Two Years to Three Years, therefore, it cannot be said that any new right has been created. The right to move no-confidence motion was already in the Statute book, but by the Ordinance in question, it has been provided that the no-confidence motion can be moved after a period of three years, in place of two years. **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024**, merely regulates the Statutory Right to move the no-confidence motion, therefore, it is merely a Procedural Law, as it has changed the procedure only.

15. It is well established principle of law that unless expressed otherwise, all amendments in Procedural Laws would be retrospective in nature and all amendments in Substantive Laws would be Prospective in nature.

16. The Supreme Court in the case of **T. Kaliamurthi (Supra)** has held as under :

40. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The



exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right.

17. The Supreme Court in the case of **Hitendra Vishnu Thakur v. State of Maharashtra**, reported in (1994) 4 SCC 602 has held as under :

26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.



(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

What is the meaning of Restrospective and Retroactive operation of law

18. The Supreme Court in the case of **Swami Vivekanand College of Education v. Union of India, reported in (2012) 1 SCC 642** has held as under :

35. In *State Bank’s Staff Union (Madras Circle) v. Union of India* the Supreme Court noticed and defined the expression “retrospective” as under: (SCC pp. 592-93, paras 19-21)

“19. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes the power to give it retrospective effect. *Craies on Statute Law* (7th Edn.) at p. 387 defines ‘retrospective statutes’ in the following words:

‘A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.’

20. *Judicial Dictionary* (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word ‘retrospective’ when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. *Words and Phrases*, Permanent Edn., Vol. 37-A, pp. 224-25, defines a ‘retrospective or retroactive law’ as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.



21. In *Advanced Law Lexicon* by P. Ramanatha Aiyar (3rd Edn., 2005) the expressions ‘retroactive’ and ‘retrospective’ have been defined as follows at p. 4124, Vol. 4:

‘*Retroactive*.—Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past.—Also termed retrospective. (*Black’s Law Dictionary*, 7th Edn., 1999)

“‘*Retroactivity*’ is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called ‘true retroactivity’, consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as ‘quasi-retroactivity’, occurs when a new rule of law is applied to an act or transaction in the process of completion. ... The foundation of these concepts is the distinction between completed and pending transactions....” T.C. Hartley, *Foundations of European Community Law*, p. 129 (1981).

* * *

Retrospective.—Looking back; contemplating what is past. Having operation from a past time.

“‘Retrospective’ is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing.” (*Halsbury’s Laws of England*, 4th Edn., Vol. 44, p. 570, para 921.)”

19. The Supreme Court in the case of **Panchi Devi v. State of Rajasthan**, reported in (2009) 2 SCC 589 has held as under :

8..... A right or a liability which was created for the first time, cannot be given a retrospective effect.



20. The Supreme Court in the case of **SEBI v. Rajkumar Nagpal**, reported in **(2023) 8 SCC 274** has held as under :

99. We are of the opinion that the SEBI Circular has retroactive application. In *Principles of Statutory Interpretation* by Justice G.P. Singh (14th Edn., 2016 at p. 583), it is stated that:

“The rule against retrospective construction is not applicable to a statute merely because “a part of the requisites for its action is drawn from a time antecedent to its passing”. If that were not so, every statute will be presumed to apply only to persons born and things which come into existence after its operation and the rule may well result in virtual nullification of most of the statutes.”

(emphasis

supplied)

100. In *Vineeta Sharma v. Rakesh Sharma* this Court described the nature of prospective, retrospective, and retroactive laws : (SCC p. 53, para 61)

“61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events.”

101. The terms “retrospective” and “retroactive” are often used interchangeably. However, their meanings are distinct. This Court succinctly appreciated the difference between these concepts in *State Bank’s Staff Union (Madras Circle) v. Union of India*:

“ “Retroactivity” is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called “true retroactivity”, consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as “quasi-



retroactivity”, occurs when a new rule of law is applied to an act or transaction in the process of completion....The foundation of these concepts is the distinction between completed and pending transactions....” [T.C. Hartley, *The Foundations of European Community Law* 129 (1981).]

102. Many decisions of this Court define “retroactivity” to mean laws which destroy or impair vested rights. In real terms, this is the definition of “retrospectivity” or “true retroactivity”. “Quasi-retroactivity” or simply “retroactivity” on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been completed and is in the process of completion. Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective.

21. The Supreme Court in the case of **Shanti Conductors (P) Ltd. v. Assam SEB**, reported in (2019) 19 SCC 529 has held as under :

64. The opinion of Gowda, J. dated 31-8-2016 although holds that the Act is not retrospective but he holds the Act retroactive. The word “retroactive” has been defined in *Black’s Law Dictionary* in the following words:

“**Retroactive**, adj.(17c) (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past.—Also termed *retrospective*. Cf. PROSPECTIVE (1).—retroact, vb.”

65. The two-Judge Bench of this Court in *State Bank’s Staff Union (Madras Circle) v. Union of India*, had occasion to examine the concept of retroactive and retrospective. In paras 20 and 21 of the judgment the following has been laid down: (SCC p. 593)

“20. *Judicial Dictionary* (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word “retrospective” when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. *Words and Phrases*, Permanent Edn., Vol. 37-A, pp. 224-25, defines a



“retrospective or retroactive law” as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

21. In *Advanced Law Lexicon* by P. Ramanatha Aiyar (3rd Edn., 2005) the expressions “retroactive” and “retrospective” have been defined as follows at p. 4124, Vol. 4:

Retroactive.—Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. —Also termed retrospective. (*Black’s Law Dictionary*, 7th Edn., 1999)

“Retroactivity” is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called “true retroactivity”, consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as “quasi-retroactivity”, occurs when a new rule of law is applied to an act or transaction in the process of completion ... The foundation of these concepts is the distinction between completed and pending transactions ... [T.C. Hartley, *The Foundations of European Community Law*, p. 129 (1981)].

* * *

Retrospective.—Looking back; contemplating what is past.

Having operation from a past time.

“Retrospective” is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing.’ (Vol.



44, *Halsbury's Laws of England*, 4th Edn., p. 570, para 921.)”

66. Further in *Jay Mahakali Rolling Mills v. Union of India*, explaining retroactive and retrospective the following has been laid down: (SCC p. 200, para 8)

“8. “Retrospective” means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights.”

67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

22. When the right to hold an elected office is merely a statutory right, then the law regulating election, working and tenure of such elected office, would be a procedural law and therefore, any amendment in procedural law has to be treated as retrospective in operation, unless it is otherwise provided in the Ordinance or Amendment Act.

23. **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024** reads as under :

[First published in the “Madhya Pradesh Gazette (Extraordinary)” dated the 27th August, 2024]

Promulgated by the Governor in the Seventy-fifth year of the Republic of India

An Ordinance further to amend the Madhya Pradesh Municipalities Act, 1961.

Whereas, the State Legislature is not in session and the Governor of Madhya Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the



Governor of Madhya Pradesh is pleased to promulgate the following Ordinance :-

1. This Ordinance may be called the Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024.
2. During the period of operation of this Ordinance, the Madhya Pradesh Municipalities Act, 1961 (NO. 37 of 1961) (hereinafter referred to as the principal Act), shall have effect subject to the amendment specified in Sections 3.
3. In Section 43-A of the principal Act, in sub-section (1) –
 - (a) In the opening paragraph, for the words “two third”, the words “three fourths” shall be substituted.
 - (b) In clause (i) of the proviso, for the words “two years”, the words “three years” shall be substituted.

24. From the plain reading of the aforementioned Ordinance, it is clear that there is nothing to indicate that the Ordinance has been given prospective effect.

25. Under these circumstances, it is held that **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024** would certainly have retroactive operation and would apply to the ongoing proceeding which was initiated under Section 43-A of Municipalities Act, by moving a motion of no-confidence against the President, Municipal Council, Damoh.

26. My view is fortified by an order passed by Division Bench of Allahabad High Court in the case of **Anuj Kumar Vs. State of U.P.** reported in **2023 SCC OnLine All 66** which reads as under :

31. The dispute is that whether the substitution of words “two years” in place of “one year” would operate prospectively or retrospectively. The argument of learned counsels for the petitioners is that once the motion of No Confidence has been received by the Collector, having been moved by the elected members in accordance with the



provisions of sub-section (1) & (2) of Section 15, there was no option before the Collector but to proceed, to carry out the motion, in accordance with the provisions of sub-section (5) to (11) of Section 15, as the date fixed by the Collector, after scrutiny of the written motion, to consider the motion of No-Confidence had been adjourned and the amendments were brought in between. The submission is that with the moving of the motion of No-Confidence, the elected members have exercised their right to vote in the meeting to be convened by the Collector in accordance with the procedure prescribed in the Section 15. With the right exercised by the elected members created a further right in favour of them which is a “vested right” or “right accrued/acquired”. The effect of repeal without any saving clause of the existing provisions, would imply the application of the substituted provisions as prospective. With the substitution of the old provisions, the normal rule is to give prospective effect to the new provisions and the retrospectivity, by implication is an exception. There is presumption against implied retrospectivity, with the effect of repeal, the ‘accrued right’ would survive by virtue of Section 6 of the General Clauses Act, unless they are taken away expressly. We are, thus, required to consider the effect of the right exercised by the petitioner/elected members, which is a statutory right, by bringing the motion of No-Confidence, before the Collector in the prescribed format.

32. Having noted above that the provisions of Section 15 are based on democratic principles, in order to preserve the rule of self-governance at the grassroot level, and that they are procedural in nature, we are first required to consider the principles of application of procedural amendments.

33. It is fundamental rule that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction. A statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. Generally, there is strong presumption that a legislature does not intent



to impose a new liability in respect of something that has already happened, because generally it would not be reasonable for a legislature to do that. But this presumption may be overcome not only by express words in the Act but also by circumstances sufficiently strong to displace it.

34. The principle applied by the Court in construing legislation as expressed in *Craies on Legislation* 9th Edition is that retrospective application is to be rebuttably presumed not to be intended, that retrospectivity should be avoided except where necessary. However, this rule both fundamentally and in a straightforward manner cannot be applied as a number of difficulties arise in determining its precise extent and how to apply it. One of such is in determining whether a statute is retrospective concerns the possibility of action under a statute which has effect not only for the future but is brought about in part by reference to past events i.e. future action in relation to past events. A further necessary distinction is that retrospective operation is one matter, interference with existing rights is another. As noted in the *Craie on Legislation* 9th Edition at placitum 10.3.7 in Chapter 10:—

“Distinction between retrospectivity and affecting existing rights A further necessary distinction between what is and is not retrospectivity is illustrated in the following passage of the judgment of Buckley L.J. In *West v. Gwynne* Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case As a matter of principle an Act of Parliament is not without sufficient reason taken to be retrospective. There is, so to speak, a presumption that it speaks only as to the future. But there is no like presumption that an Act is not intended to interfere with existing rights. Most Acts of Parliament, in fact, do interfere with existing rights.”



35. However this rigid rule against retrospectivity does not apply in relation to procedural provisions. There is distinction between procedural and substantive provisions for the purpose of application of rule relating to retrospectivity. As noted in ‘Craise at placitum 10.3.9 at page No. 436,’ the nature of exception and its justification are clearly encapsulated in the passage from the speech of Lord Brightman in noted in *Craise on Legislation* (9th Edition):—

“Apart from the provisions of the interpretation statutes, there is at common law a prima facie rule of construction that a statute should not be interpreted retrospectively so as to impair an existing rights or obligation unless that result is unavoidable on the language used. A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past. There is, however, said to be an exception in the case of a statute which is purely procedural, because no person has a vested right in any particular course of procedure, but only a right to prosecute or defend a suit according to the rules for the conduct of an action for the time being prescribed.”

36. The general rule against the retrospective operation of statute does not apply to procedural provisions. Indeed, a general presumption is that the statutory change in procedure applies to pending as well as future proceedings.

37. The distinction between the substance and procedure is, however, not always easy to ascertain or apply as stated by Lord Brightman in his speech noted at placitum 10.3.9 at page ‘437’ in *Craise on Legislation* (9th Edition):—

“But these expressions ‘retrospective’ and ‘procedural’, though useful in a particular context, are equivocal and therefore can be misleading. A statute which is retrospective in relation to one aspect of a case (e.g. because it applies to a pre-statute cause of action) may at the same



time be prospective in relation to another aspect of the same case (e.g. because it applies only to the post-statute commencement of proceedings to enforce that cause of action); and an Act which is procedural in one sense may in particular circumstances do far more than regulate the course of proceedings, because it may, on one interpretation, revive or destroy the cause of action itself.”

38. The general proposition outlined above in *Craie on Legislation* is that for the consideration of retrospectivity, there is no substitute for consideration of the substance of the provisions concerned, and taking all the circumstances into account, considering what result the legislature can reasonably be presumed to have wanted or not wanted to achieve.

39. As stated by Lord Denim in *Blyth and Blyth*²³, the rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affects vested right. It does not apply to statute which only alter the form or procedure or the admissibility of evidence or the effect which the courts give to evidence.

40. In stating the principle that “a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective” the Supreme Court has quoted with approval the reason of the rule as expressed in Maxwell:— In *Anand Gopal v. State of Bom*

“No persons has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament, the mode of procedure is altered, he has no other right than to proceed according to the altered mode”.

41. In *Commissioner of Police, Delhi v. Dhaval Singh*, it has been said that:—

“The law relating to forum and limitation is procedural in nature whereas law relating to right of action and right of



appeal even though remedial is substantive in nature; that a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligation or to impost new duties in respect of transaction already accomplished; that statute which not only changes the procedure but also creates new right and obligation shall be construed to be prospective, unless otherwise provided either expressly or by necessary implication.”

42. It was, thus, expressed that in deciding the question of applicability of a particular statute to past events, the language used is no doubt the most important factor to be taken into account but the real issue in each case is as to the dominant intention of the legislature to be gathered from the language used, the object indicated, the nature of rights affected, and the circumstances under which the statute is passed.

43. Keeping in mind of the above legal principles, we are required to examine the nature of amendments in the instant case, considering the arguments of Sri. Rakesh Pande one of the learned Senior Counsel for the petitioner that the effect of “substitution” of the words “two years” in place of “one year” would be to apply the amendments prospectively. This argument is plainly based on the general principle of presumption against retrospectivity.

44. As noted above, general rule against retrospective operation of statute does not apply to amendments in procedural provisions/statute. If simplistic interpretation of amendment with the words “substitution” of the old provisions, as asserted, is applied, the result would be that an elected Pramukh in the last election, against whom the motion of No Confidence has not been brought till the amendment enforced in sub-section (13) will be able to continue for a period of ‘two years’ from the date of assumption of his office. Whereas another Pramukh who is elected in the same election, against whom the motion of No Confidence has been brought prior to the amendments



i.e. 04.10.2022, may be removed before expiry of period of 'two years' from assumption of his office, if the motion is carried out in the meeting called by the Collector.

45. It would be quixotic to suppose that the State legislature intended to curtail the right of members to move No-Confidence motion against a Pramukh for a period of 'two years' of the assumption of office, only of such members who did not or could not bring such a motion after expiry of period of one year, under the pre-existing provisions. And simultaneously, it will allow the elected members to carry out or vote on the motion of No-Confidence brought by them within the period of 'two years' (as per the amended provisions), simply because the motion was moved prior to the amendment. It is settled rule of interpretation that any interpretation of statute which leads to absurdity should be avoided. It is presumed that the legislature does not intend an absurdity, or that absurd consequences shall follow from its enactment. Such a result will, therefore, be avoided, if the terms of the Act admit it, by reasonable construction of the statute. It is applicable, like all other presumptions, thus if by applying the literal rule of interpretation, the construction is being absurd then it should be avoided.

46. In our considered opinion, having gone through the object and substance of the provision concerned, the legislature can reasonably be assumed to have wanted to curtail the right of an elected members to bring motion of No-Confidence within a period of 'two years' of the assumption of office by a Pramukh, by bringing amendment in sub-section (13) of Section 15.

47. The arguments against retrospectivity of the amendments by applying the normal rule of prospectivity or rule of presumption against implied retrospectivity, are liable to be turned down.

* * *

55. The exercise of such a right by moving a motion of No-Confidence as conferred under sub-section (1) and (2) of



Section 15, in our considered opinion, is only an expression of intention to bring the motion. The intention to make the motion, does not confer any ‘vested right’ with the elected members to carry-out the motion of No-Confidence in the meeting convened by the Collector. The obligation cast upon the Collector for compliance of mandatory provisions of subsection (3) of Section 15, would have no bearing on the right of an elected members to bring the motion. No “vested right” or “accrued right” can be said to be created in favour of elected members for consideration of motion by mere fixing a date to convene the meeting in accordance with sub-section (3) and (4-B) of Section 15.

27. So far as the submissions made by Counsel for the Respondent, that in the democracy, every holder of elected office, has to work efficiently, and if it is found that such person is not performing well, then the elected Councilors have a right to move no-confidence motion, therefore, the removal of an inefficient elected office bearer is in the interest of Democracy is concerned, the same cannot be accepted.

28. The President of Municipal Council is elected indirectly by the elected Councilors. Therefore, the elected President of Municipal Council would hold the office so long it enjoys the confidence of three fourths of the elected councilors present and voting in the no-confidence meeting. The confidence of three fourths of the elected councilors has nothing to do with the quality of performance of work by the elected President.

29. So far as the contention of the Counsel for the respondents, that in case, the President is not performing efficiently, then he can be removed by moving a no-confidence motion is concerned, it is suffice to mention here, that the State Govt. can remove a President under Section 41-A of M.P. Municipalities Act, if it is found that his continuation is not in the interest of Council or general public or if he is working against the provisions of the Act or any rules made thereunder or if he is incapable of performing his duties. Thus, the assessment of performance of work is not a *sine qua non*



for moving a motion of no-confidence under Section 43-A of M.P. Municipalities Act.

30. Before parting with this order, this Court would like to comment upon the state of uncertainty which was prevailing in the State of M.P. with regard to the Retrospective/Retroactive/Prospective operation of **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024**. For Municipal Council, Devari, Distt. Sagar, the Add. Collector withdrew the letter of convening the meeting to consider no confidence motion, merely on the basis of decision taken by the Cabinet, whereas in other Districts, the meeting was cancelled after the Ordinance was promulgated. Whereas in the present case, the Collector, Damoh had decided to go ahead with the meeting to consider the no-confidence motion. It is true that principle of Negative Equality cannot be applied by the Courts, but in a democratic set up, where there is an element of uncertainty amongst various officers of the State, then it was expected from State Govt. to clarify the situation, so that every no confidence motion could have been dealt with by various officers in the similar manner.

31. Considering the totality of the facts and circumstances of this case, this Court is of the considered opinion, that **The Madhya Pradesh Municipalities (Second Amendment) Ordinance, 2024** has retroactive operation and would apply to all those cases, where although the no-confidence motion might have been moved prior to promulgation of the Ordinance, but still the meeting to consider the no-confidence motion was fixed after the promulgation of Ordinance. Therefore, the order dated 23-8-2024, issued by Collector and Add. Collector, Damoh, thereby, fixing the meeting on 4-9-2024 for considering the no-confidence motion (Annexure P-1) is hereby **Quashed**.



32. The Petition succeeds and is hereby **Allowed**.

(G.S. AHLUWALIA)
JUDGE

Arun*