
(2012) 02 AHC CK 0248
In the Allahabad High Court
Case No : Misc. Bench No. 637 of 2012

Anoop Kumar Bajpai and Others

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Constitution of India, 1950 — Article 243(U)

Uttar Pradesh Municipal Corporation Act, 1959 — Section 15, 15(3)

Citation : (2012) 02 AHC CK 0248

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioners are the Chairman of Municipal Committees. Submission of Sri O.P. Srivastava learned counsel for the petitioner, is that the petitioners are entitled to continue and hold the charge occupying the Office of the Chairman of Municipal Committees till successor joins after election. Meaning thereby, the petitioners have right to continue beyond the period of five years for which they were elected.

2. Petitioners' counsel relied upon the interim order dated 13.12.2011, passed by a Division Bench of this Court at Allahabad in Writ-C No.65013 of 2011 and other connected writ petitions whereby, while passing the interim order dated 13.12.2011, the Division Bench has taken note of Section 15 of U.P. Municipal Corporation Act, 1959, which is reproduced as under:

15. Terms of Mayor. -(1) Except as otherwise provided in this Act,

(a) the term of office of a Mayor shall be co-terminus with the term of the Corporation;

(b) [* * *]

(2) The term of office of a Mayor or an elected to fill a casual vacancy shall be

the remainder of the term of office of his predecessor.

(3) A mayor shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor assumes office as Mayor as the case may be.

3. A plain reading of sub-section (3) of Section 15 of the U.P. Municipal Corporation Act, 1959 reveals that a Mayor shall unless he resigns or ceases to be qualified or becomes disqualified, continue in Office until his successor assumes office as Mayor as the case may be. At the threshold of sub-section (3) of Section 15 (supra), the Division Bench at Allahabad passed the interim order dated 13.12.2011 (supra), permitting the Mayor of respective Municipal Corporations to continue in Office till the election person in the forthcoming election resumes duty.

4. While deciding the writ petition with regard to Municipalities, by the judgment and order dated 5.12.2011 in Writ Petition No.11226 (M/B) of 2011, we have held that tenure of Chairman or members of Municipal Board cannot be extended beyond the period of five years while interpreting Article 243-U of the Constitution. A SLP has been filed before the Hon"ble Supreme Court and the Hon"ble Supreme Court has not stayed the judgment of this Court. Accordingly, there appears to be no good ground to entertain the present writ petition that too, on the ground which has already been settled by the Division Bench of this Court by the aforesaid judgment dated 5.12.2011 (supra).

5. So far as the interim order dated 13.12.2011 (supra), passed by the Division Bench at Allahabad is concerned, it relates to Mayor whose term has been interpreted keeping in view Section 15 (3) of 1959 Act. Accordingly, no parity can be extended to the petitioners who are admittedly, the Chairman of Municipalities and their cases are not covered by the aforesaid provisions of 1959 Act.

6. In Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, , Hon"ble supreme court held that while construing a statute it cannot be extended to a situation not contemplated thereby. entire statute must be first read as a whole then section by section, phrase by phrase and word by word. Interpretation of statute should not depend upon contingency but it should be interpreted from its own word and languages used. Accordingly, the provisions contained in Sub-section (1), (2) and (3) of Section 15 of 1959 Act should be read combinedly along with the Article 243-U of the Constitution. It is settled law that while interpreting statutory provisions, any portion of it, should not be made redundant or ignored. Accordingly, while considering sub-section (3) of Section 15 of 1959 Act, the provisions contained in sub-section (1) thereof, cannot be overlooked.

7. We have already decide the present controversy by the final judgment dated 5.12.2011 (supra) with regard to the tenure of the Municipalities and its office bearers. With profound respect we are of the opinion that by the interim order dated 13.12.2011 (supra), the final judgment and order dated 5.12.2011 (supra)

which is subjudged before the Hon''ble Supreme Court, cannot be overruled or modified by a Coordinate Bench.

8. It appears that while passing the interim order dated 13.12.2011 (supra), the Division Bench at Allahabad was impressed by the provisions of sub-section (3) of Section 15 of the 1959 Act. A plain reading of clause (a) of sub-section (1) of Section 15, reveals that term of Office of Mayor shall be co-terminus with the term of the Corporation. We have interpreted Article 243-U of the Constitution while delivering our judgment and order dated 5.12.2011 (supra). However, sub-section (3) of Section 15 provides that Mayor shall unless resigns or ceases to be qualified or becomes disqualified, continue in Office until successor assumes office as Mayor as the case may be. Provisions of sub-section (3) of Section 15 of the 1959 Act should be read in reference to context keeping in view the mandate of Article 243-U of the Constitution of India which provides that term shall not continue beyond the period of 5 years. Once, the term of the Corporation cannot continue beyond the period of 5 years, then there appears to be no reason to permit Mayor to continue beyond the period of five years awaiting the joining of another Mayor after election. Sub-section (3) should not be read in isolation but it should be read in reference to context keeping in view the provisions contained in sub-section (1) of Section 15 of 1959 Act as well as Article 243-U of the Constitution of India.

9. Unless the Division Bench judgment and order dated 5.12.2011 is set aside or modified in the Hon''ble Supreme Court in the pending special leave petitioner, it is binding on the authorities as well as on all Coordinate Benches. By the interim order, the finding recorded by a Coordinate Bench in final judgment and order, in our opinion, cannot be superseded or modified. Accordingly, it is for the State authorities to point out the finding of the final judgment dated 5.12.2011 (supra), before the Division Bench concerned.

10. In view of the above, we find no reason to interfere with the matter. The writ petition is barred by doctrine of finality. Once the issue has been settled by a Division Bench, then no parity can be extended keeping in view the interim order passed by the Division Bench at Allahabad. The interim order of the Division Bench is subject to final adjudication of the controversy at Allahabad and is not final.

11. In view of the above, the writ petition is devoid of merit and is accordingly dismissed.