

(1997) 12 AHC CK 0101
In the Allahabad High Court
Case No : C.M.W.P. No. 42856 of 1997

Arun Kumar Dubey

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 15-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 243, 243ZF

Uttar Pradesh Municipalities Act, 1916 — Section 15(3), 43, 87A, 87A(15), 87A(4)

Citation : (1998) 2 AWC 983 : (1998) RD 251

Hon'ble Judges : Palok Basu, J;D.K. Seth, J

Bench : Division Bench

Advocate : R.K. Awasthi and Ravi Kiran Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Palok Basu and D. K. Seth, JJ.—Arun Kumar Dubey, petitioner has filed this writ petition under Article 226 of the Constitution of India with the prayer that a writ in the nature of certiorari should issue quashing the notice dated 3.12.1997 (Annexure-2) and all proceedings consequential thereto. The other two prayers are that even the notice of intention dated 2.12.1997 (Annexure-3) may also be quashed and further that Section 87A of the U. P. Municipalities Act. 1916 be declared ultra vires the provisions of the Constitution of India.

2. Sri Ravi Kiran Jain, learned senior advocate assisted by Sri R- K. Awasthi, has been heard at considerable length in support of this writ petition. Sri S. K. Lal has appeared on behalf of the opposite party No. 4.

3. The facts are that on 30.11.1995, the petitioner took oath as Adhyaksha, Nagar Palika Parishad, Mirzapur after having been elected in the elections held for that post. On 2.12.1997 it is alleged that a motion of no-confidence against the petitioner was signed in accordance with the provisions contained u/s 87A of the U. P. Municipalities Act, 1916 (as amended from time to time). The District Magistrate, Mirzapur passed an order on 3.12.1997 on receiving said notice

fixing a meeting to consider the motion of no-confidence against the petitioner on 2.1.1998 at 11 a.m. in Nagar Palika Parishad Office. Mirzapur. Aggrieved, the petitioner has come up to this Court under Article 226 of the Constitution of India.

4. Three points have been canvassed by Sri Jain in his elaborate arguments. It was contended that after the seventy-third and seventy fourth amendments brought about in the Constitution of India through which Article 243 in Chapter IX and Chapter 1XA were added, it is no more permissible to sustain Section 87A in the Statute book. The argument proceeded that if a correct interpretation is made of the provisions contained in Article 245 of the Constitution of India it must be held that since there is no provision with regard to vote of no-confidence in Chapter IXA, the said Section 87A is in conflict with the constitutional provisions, therefore, it should be struck down.

5. Second argument was that by no stretch of imagination should vote of no-confidence be separated from the process of election even if it is not connected with the initiation of election of the petitioner as Member and as Adhyaksha thereafter of the Municipal Board by operation of law (Section 43 of the Act). This argument also further proceeded that a Forum must necessarily have been created for challenging the resolution of no-confidence motion because it is a part of the election process. Since there was no Forum provided under the U. P. Municipalities Act much less in proceedings u/s 87A, the section itself will become ineffective in view of the directions/observations of the Hon''ble the Supreme Court made in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Reliance has also been placed on the directions/observations of the Hon''ble Supreme Court in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, .

6. The third point was that the no-confidence motion was not properly circulated by the District Magistrate because copy of the resolution as received by the District Magistrate was not sent by him to the members along with notice convening the meeting.

7. The genesis of the aforesaid argument of Sri Jain is that when Mohan Lal Tripathi's case (supra), came to be decided by Hon''ble the Supreme Court whereby the validity of Section 87A was specifically upheld, neither Chapter IX nor Chapter IXA was incorporated in the Constitution of India. Since this was done, later, the observations of Hon''ble the Supreme Court about validity of Section 87A need not be adhered to any more particularly because Chapter IXA makes no provision whatsoever for removal of a Chair-person of a Municipal Board when constituted in accordance with law.

8. It may be pointed out that Hon''ble the Supreme Court in Mohan Lal Tripathi's case has made the following declaration of law :

"Therefore, the validity of otherwise of a no-confidence motion for removal of a President, would have to be examined on applicability of statutory provision and not on political philosophy. The Municipality Act provides in detail the provisions

for election of President, his qualification resignation, removal etc. Constitutional validity of these provisions was not challenged, and rightly as they do not militate, either, against the concept of democracy or the method of electing or removing the representative therefore, so long it is in accordance with law cannot be assailed on abstract notions of democracy."

9. Sri Jain obviously relied upon the last part of the aforesaid declaration of law and said that after the amendment brought about in Constitution by Part IXA "Recall of elected representative, therefore, so long it is in accordance with law cannot be assailed on abstract notions of democracy" shall have to be interpreted only by reference to the provisions contained in Chapter IXA of the Constitution of India. In this process, he argued that the term of Municipal Board, etc. have all been provided inasmuch as the mandate of the provisions is that State Legislature must come out with necessary law in accordance with the provisions contained in Chapter IX and Chapter IXA.

10. It is true that there is no specific reference in Chapter IXA with regard to moving a vote of no-confidence against Chairman or a Member. However, according to the understanding of the provisions as also the law laid down by Hon"ble Supreme Court, the House must be held to be Supreme and the democratic process by which member is elected whereafter the member wishes to continue, it must be held that his continuance must be in accordance with the vote of majority of the members present. If the Adhyaksha has lost confidence, the Adhyaksha has to resign from the Office.

11. It may be pointed out that in Chapter IXA itself, there is provision contained in Article 243ZF which for ready reference is quoted below :

"243ZF. Continuance of existing laws and Municipalities notwithstanding in this part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act. 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier;

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State."

12. Though Sri Jain wanted to argue that the provisions which are inconsistent with provisions of this Part, it should be confined to the period of one year which has been used in the closing part of that Article; however, a complete reading of the said provisions makes it incumbent to hold that Section 87A which talks of removal of President or Adhyaksha of the Municipal Board is no more to be held as inconsistent with the provisions of Chapter IXA. Had it been so, there could

have been a positive provision saying that no vote of confidence shall be entertainable against the Chairman. In the absence of any such positive provisions and in view of upholding of law which was already in existence prior to 74th Amendment, the provisions contained in Section 87A of U. P. Municipalities Act must be upheld.

13. Coming to the question that Forum is not available to the President in case vote of no-confidence was passed by the House, the argument is misconceived. Judicial Scrutiny of an action which affects rights is available by so many methods. This Court has already held that such a decision which affects rights can be examined even under Article 226 of the Constitution of India should the petitioner point out flagrant violation of law. In a given situation, a civil suit may be entertainable but in Municipal Board matters, such a suit will not be available because of the provisions contained in sub-section (15) of Section 87A of the Act. It may be repeated that Sri Jain's argument was that there is process of election after vote of no-confidence motion is held and, therefore, it must stand a test of fair play as held by the Hon''ble Supreme Court in Mohinder Singh Gill's case and also in the case of Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, . Sri Jain has placed reliance on several paragraphs particularly the one numbered paragraph 201.

14. As stated above, the conduct of election process which is a must for removing a man has obviously its own limitations. It is during the term of continuity of President that he loses the confidence. If such an occasion arises. Section 87A empowers the same elected body to move against the President under the provisions contained therein. Complete safeguard is provided as to holding of meeting, its conduct and declaration of the result.

15. One may advert to the provisions of sub-sections (4) and (5) of Section 87A which provides that the District Magistrate shall arrange with the District Judge for a stipendiary Civil Judicial Officer to preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour from the time appointed for the meeting, the judicial officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and the time to be appointed and notified to the members by that officer under subsection (5). In view of the safeguards available, and further that in a sense making Section 87A as a full force of law of removing a President, it must be said that Hon''ble Supreme Court decision in Mohon Lal Tripathi's case (supra), would be binding as a good law and requires no deviation from being followed by this Court. It is reasonable to think that the law laid down in Mohan Lal Tripathi's case still holds the field inspite of bringing in Chapters IX and IXA.

16. The third argument with regard to the notice having not been accompanied with the copy of the motion of no-confidence forwarded to the District Magistrate, it may be pointed out that Sri Jain placed reliance on a decision of the division Bench of this Court in Ram Nath Tripathi v. Commissioner, Lucknow Division, Lucknow. 1992 (2) UPLBEC 1181. This was a decision interpreting the

provisions of Section 15 of U. P. Kshetra Panchayat and Zia Panchayat Adhintyam, 1961 which had sub-section (3) therein which specifically provides two sub-clauses (i) and (ii). The reported decision has interpreted the aforesaid Section 15 (3) which in turn is different from the language used in the provisions of Section 87A of the Municipalities Act. Apart from this, the notice issued by the District Magistrate to the members for holding a motion of no-confidence has full compliance of the provisions contained in Section 87A of the Act.

17. There is no error of procedure adopted by the District Magistrate in calling a meeting of no-confidence.

18. The writ petition fails and is hereby dismissed.