

(1976) 08 AHC CK 0011

In the Allahabad High Court

Case No : Sp. A. No. 202 of 1976 in CMW No. 40 of 1976

Devi Prasad Gupta

APPELLANT

Vs

Abdul Khaliq and Others

RESPONDENT

Date of Decision : 30-08-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Town Areas Act, 1914 — Section 6, 8A

Citation : (1976) AWC 815

Hon'ble Judges : K.C. Agrawal, J;G.C. Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.C. Mathur and K.C. Agrawal, JJ.—This special appeal is directed against the judgment of a learned Single Judge dated May 12, 1976 allowing the writ petition filed by the Respondents Nos. 1 to 5.

2. Gopiganj Town, District Varanasi, has a town area consisting of ten members including a Chairman. At the general election held in 1971, Devi Prasad Gupta the Appellant, Abdul Khaliq, Jamuna Prasad, Basarat Ali, Mahadeo and Raja Ram Respondents Nos. 1 to 5, and Mewa, Ganda Lal and Mata Din, who were arrayed Respondents Nos. 5 to 7 in the writ petition, were elected as members of the Town Area Committee. Panna Lal Gupta, Respondent No. 8 of the writ petition was elected as its Chairman. The term of office of the members and the Chairman u/s 6 read with Section 8-A of the Town Area Act (briefly stated as the Act) is four years. This term of four years can, however be extended u/s 6 of the Act from time to time by the State Government subject to the condition that the total extension does not in aggregate exceed two years. u/s 8-B of the Act every Town Area Committee is entitled to elect a Vice Chairman from among its members. The term of office of the Vice Chairman is one year from the date of his election. In the absence of the Chairman his duties can be discharged by the Vice Chairman.

3. In the instant case, Devi Prasad Gupta was elected as Vice Chairman on December 21, 1974. His term was to expire on December 20, 1975. Accordingly it became necessary to convene a meeting for the purposes of electing a Vice Chairman. As Panna Lal Gupta, the Chairman of the Town Area Committee had been arrested and the Appellant was also performing the duties of the Chairman, accordingly, he issued notices to the members of the Committee convening a meeting for the 18th of December 1975 for the said purpose. Accordingly to the Respondents Nos. 1 to 5, as the Appellant did not turn up to attend the meeting on that date, the same, was held under the Chairmanship of Basarat Ali, Respondent No. 3 and a resolution proposing the name of Abdul Khaliq Respondent No. 1 was presented by five members including Raja Ram, Respondent No. 5.

4. The meeting was, however, adjourned for the 20th December 1975 without transacting any other business. The Respondents Nos. 1 to 5 have further alleged in the writ petition that the meeting, thereafter took place on the 20th December, 1975 and was attended by nine members of the Committee. They have further alleged that in this meeting the Respondents Nos. 1 to 5 moved a written resolution proposing the name of Abdul Khaliq, Respondent No. 1, for the office of the Vice Chairman. This resolution was presented by the five persons, who constituted the majority, but the Appellant took away the agenda proceeding book and attendance register and left the meeting. With the result that the Respondents Nos. 1 to 5 held another meeting immediately thereafter and passed another resolution electing Abdul Khaliq Respondent No. 1 as Vice Chairman. According to these Respondents, although Abdul Khaliq was entitled to function as Vice Chairman but Devi Prasad Gupta, the Appellant, was not permitting him to do so on the false representation that he has been elected as Vice Chairman on that date. These Respondents alleged that the Appellant was never elected by the members of the Town Area and the papers on the basis of which the Appellant claimed to be elected were forged and subsequently manufactured. On these facts, the Respondents Nos. 1 to 5 sought the relief of certiorari quashing the proceedings alleged to have been held in favour of the Appellant and mandamus directing the District Magistrate, Varanasi and the Prescribed Authority to treat Abdul Khaliq as the Vice Chairman of the Town Area.

5. The writ petition was contested by the Appellant and the facts stated in the writ petition were alleged to be false and incorrect. Setting up altogether a different story about the meeting held on December 20, 1975, than one narrated by the Respondents Nos. 1 to 5 in the writ petition, the Appellant alleged that in the said meeting, the Appellant was elected by the majority as Vice Chairman and, therefore, he was entitled to function as such. He reputed that the Respondents Nos. 1 to 5 had passed any resolution electing Abdul Khaliq Respondent No. 1 and that the papers electing Abdul Khaliq Respondent No. 1 had been removed by him. The Appellant asserted that Raja Ram, Respondent No. 5 in fact, cast his vote in his favour and thus by securing five votes out of nine he was declared elected as Vice Chairman. According to him the meeting

convened for the 18th December, 1975 had to be adjourned as he could not attend the same due to the illness of his mother-in-law.

6. The facts stated above would show that the controversy which arose for decision before the learned Single Judge and which still arises in the appeal is as to who was in fact elected as Vice Chairman at the meeting of the Town Area held on December 20, 1975. This is indubitable that the decision of this controversy would require us to find as to which out of the two versions is correct. Both the parties have filed affidavits in support of their respective cases. Both of them have not only filed papers showing that the resolutions were passed electing their respective candidates, but have also accused each other of being guilty of forgery and manufacturing false documents. These disputes, in our opinion, raise questions of fact of a complex nature, which may for their determination not only require oral evidence to be taken but also examination of handwriting experts and others. It is true, as urged by the learned Counsel for the Respondents Nos. 1 to 5 that in a petition under Article 226 of the Constitution the High Court has jurisdiction to decide both questions of fact and law, but as we are definitely of the opinion that the points involved can be effectively and appropriately decided in a suit and not in these proceedings, we think that neither was it possible for the learned Single Judge nor for us in the appeal to go into these disputed questions. The proper remedy of the Respondents was to have filed a suit and to have their grievance tried. As observed by the Supreme Court in *D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others*, in a case where basic facts are disputed and complicated fact depending on evidence are involved the writ court is not the proper forum for seeking relief. Article 226 was not intended to provide an alternative method of redress to the normal process of a suit. If the submission of the learned Counsel for Respondent that since no case can be decided by any court of law without going into and investigating facts, therefore, this should be done in each case including the present case, was to be accepted the same would necessarily result in abrogating the entire judicial system and the machinery set up for the administration of justice in the State. We do not think that Article 226 can be construed in this manner. This confers discretion on the High Court to reject a writ petition, if the petition raises complex questions of facts which may for their determination require oral evidence to be taken.

7. Sri V.C. Misra, counsel for the Respondents Nos. 1 to 5 also urged in the alternative that since the evidence produced by these Respondents demonstrated unhesitatingly that Abdul Khaliq, Respondent No. 1 had been duly elected on December 20, 1975, therefore, the present writ petition could not be dismissed on the ground that the same involved disputed questions of fact for its decision. In this connection he invited our attention to the resolution dated 20th December 1975 found on the record of the District Magistrate, Varanasi, showing that Abdul Khaliq was elected as Vice Chairman on the aforesaid date. This document purports to bear the signature of Devi Prasad Gupta, the Appellant According to the learned Counsel this document clinched the controversy in favour of the

Respondents Nos. 1 to 5 and no other point was required to be investigated. After hearing counsel for the parties, we demote find -any substance in the same. Devi Prasad Gupta filed an affidavit denying the signature to be his. As a result of this denial, it is not possible for us to hold that this resolution was signed by Devi Prasad Gupta. We could not in the absence of expert evidence decide this controversy either in favour of the Appellant or the Respondents Nos. 1 to 5.

8. It was next contended that the fact that the papers showing that Abdul Khaliq was elected on December 20, 1975 were found on the record of the District Magistrate, Varanasi while those relating to the alleged election of Devi Prasad Gupta were not available with the District Magistrate shows that Abdul Khaliq had in fact been elected as Vice Chairman. The submission made is devoid of merit. It appears that under Rule 8 of the Rules framed under the Act, it is provided that within ten days of the passing of a resolution by the Town Area Committee a copy of the proceeding has to be sent to the District Magistrate. It may be true that the proceedings relating to the election of Devi Prasad Gupta, therefore, ought to have been sent to the District Magistrate in compliance with this rule. We, however, fail to see merely because the papers of the election of Abdul Khaliq were available and not that of Devi Prasad how could it positively be said that Devi Prasad Gupta was not elected on 20th December, 1975. If the proceedings relating to an election of a Vice Chairman are not sent to District Magistrate concerned that cannot necessarily lead to the conclusion that such a person was not elected. The fact of a person having been elected at an election is to be proved by direct evidence. We, accordingly, are of the opinion that this circumstance would also not help the Respondents Nos. 1 to 5.

9. Another circumstance, to which considerable importance was attached by the learned Single Judge as well, pointed out by the learned Counsel for the Respondents was that even in the meeting held on December 18, 1975, five out of nine members had moved a resolution proposing the name of Abdul Khaliq for the post of Vice Chairman. Relying on this circumstance, counsel urged that those five persons voted for Respondent no, 1 on December 20, 1975. Although the fact that any such resolution as pleaded by Respondents Nos. 1 to 5 was moved by the Respondents 1 to 5 in the meeting on December 18, 1975 was disputed by the Appellant assuming it to be so, we find it difficult to accept on the basis of this circumstance that these very five persons voted for Abdul Khaliq on December 20, 1975. This assumed that the members could not or did not change their mind on December 20, 1975. As observed above, what was required to be found in the instant case was as to whether Respondent No. 1 was elected on the aforesaid date and, therefore merely because five persons passed a resolution proposing the name of Abdul Khaliq on December 18, 1975 could not be of any assistance to the said Respondent.

10. Counsel for the Respondents Nos. 1 to 5 contended in the last that even if this Court was not in a position to decide that Abdul Khaliq was elected as Vice

Chairman it could set aside the election of D.P. Gupta as Vice Chairman inasmuch as the same was illegal. We do not find it possible to accept this contention either.

11. In fact we have not gone into the merits of this case, therefore, are not in a position to say as to who out of the two candidates was elected. Accordingly the occasion to set aside the election of D.P. Gupta on the grounds suggested by the learned Counsel for the Respondents does not arise. Moreover, D.P. Gupta has set up a different version in the counter affidavit about the manner in which he has been elected. This controversy also is not one which can be decided without examining evidence--oral and documentary.

12. Before parting with judgment we must notice that the present writ petition is also liable to be rejected on the ground that on the facts and in the circumstances of the case, this cannot grant any relief to the Respondents 1 to 5. One of the reliefs claimed is for quashing the resolution dated 20th of December 1975. This resolution according to the allegations of the Respondents, was forged and fabricated by the Appellant was not passed by the Committee on the aforesaid date. Assuming it be so we are unable to see as to how can a writ of certiorari be issued quashing a document of this nature, which is alleged to have been manufactured by an individual in his private capacity, if the Appellant acted with an indirect oblique or ulterior motive in procuring the resolution, for his personal gain, he cannot be said to have done it in discharge of judicial or quasi judicial powers conferred upon him by the U.P. Town Area Act. In these circumstances it passes our comprehension how a writ in the nature of certiorari would lie for quashing the resolution and if so against whom?

13. Equally the prayer for mandamus made in the writ appears to be misconceived. In accepting one party as the elected Vice Chairman and not accepting the other party, the authority cannot be said to have exercised any statutory duty. The U.P. Town Area Act is a self contained Act and we are unable to find any provision in the same by virtue of which the District Magistrate or the Prescribed Authority may be directed either to forbear from giving effect to the election or cancel the same. In the whole of the Act there is no such provision. In respect of writ of mandamus, the well settled rule is that no writ or order in the nature of mandamus may issue when there is no failure to perform a mandatory duty of a public nature. As a matter of fact, if the office is full, the remedy of the aggrieved person is to take proceedings by way of a suit for injunction, if maintainable or election petition to oust the party in possession. In view of the above, the learned Single Judge was not, in our opinion, right in issuing a writ of mandamus directing Respondents Nos. 6 and 7 to treat Abdul Khaliq as the Vice Chairman of the Town Area Committee, and also in holding that the resolution electing Devi Prasad Gupta as Vice Chairman was null and void.

14. For these reasons, the appeal succeeds and is allowed. The writ petition is dismissed. The Appellant would be entitled to get his costs of the appeal as well as that of the writ petition from Respondent Nos. 1 to 5.