
(1992) 08 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4861 of 1992

Gopal Krishan Jindal

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Cantonments Act, 1924 — Section 18, 44
Constitution of India, 1950 — Article 226

Citation : (1992) 2 WLC 594 : (1992) 2 WLN 544

Hon'ble Judges : S.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This writ petition, under article 226 of the Constitution, has been filed by Gopal Krishan Jindal for declaring the Rules 3 and 4 of the Rules, 1985 framed under the Cantonments Act, 1924. These rules are reproduced below. They were framed u/s 44 of the said Act.

Rule-3 Presence of F of the Board without the express leave of the Board.

Rule-4 Leave of absence by the Members

A member shall seek prior leave of absence from the Board by applying, in writing, to the President who shall obtain the orders of the Board on the application:

Provided that, in exceptional circumstances, the President may grant leave to a Member subject to confirmation by the Board at the next meeting.

Explanation;

For the purpose of this rule exceptional circumstances will include sudden illness, exigencies of service and personal compulsions, to be established by the Member to the satisfaction of the President.

2. The petitioner was elected as Member of the Nasirabad Cantonment Board at an election held on 2nd February, 1992. The elected members of the Cantonment Board were notified in the Extra-ordinary Gazette Notification dated 3.3.1992.

3. The Executive Officer of the Cantonment Board, according to the petitioner, illegally and unlawfully held and convened two special meetings on 3rd March, 1992 and 7th March, 1992. He challenged the legality of the convening of the said meetings by means of writ petition No. 2256/1992. The writ is still pending in this Court.

4. On 26th March, 1992, the Cantonment Executive officer issued a notice for holding of a meeting on 30th March, 1992. This was called as a special meeting and its agenda was as follows:

1. Oath. the following newly elected Members to take oath of allegiance as required u/s 18 of the Cantonment Act, 1924 (amended):

(a) Shri Gopal Krishan

(b) Shri Swaroop Raj.

5. The petitioner applied for leave of absence as he had to attend an appeal in the Income Tax Department on 30th March, 1992. The President of the Board did not pass any order on the petitioner's application nor sent any reply thereto. While two members, namely, Ram Chand Babani and Swaroop Raj Beera, who applied for granting them leave of absence for the special meeting to be held on 30th March, 1992, they were permitted to abstain. The Board, there after passed a resolution for being sent to the Central Government.

6. In the next meeting held on 1.6.1992, the petitioner was called upon to take oath, but the same was objected to by Rajendra Goyal, Vice President and few others. They submitted that the petitioner had disqualified himself to continue as a Member u/s 18(2) of the Cantonment Act having remained absent in two meetings held for the purposes of administering oath to him. The Board, thereafter, resolved to send a resolution to the Central Govt. The relevant portion is quoted below:

Therefore the Board unanimously resolved that a detailed factual report be forwarded to the Central Government and a clear directions of the Central Government be sought as to whether Shri Jindal can be allowed to take oath or whether the Central Govt. would like to notify the seat of Shri Jindal as vacant in accordance with Section 18(2) of the Cantt. Act.

Shri Swaroop Raj took the oath of allegiance as required u/s 18 of the Cantonment Act, 1924.

7. The Central Government has not taken any decision on the communication sent to it.

8. Having heard counsel for the parties, we are of the opinion that the challenge

to the validity of the Rules as well as remitting the report to the Central Govt. by passing the resolution on 1.6.1992 are not valid. Counsel for the petitioner could not illustrate as to how Rules 3 and 4 which have been quoted above are against the provisions of the Act and ultra vires.

9. The Cantonment Board Act being a self contained enactment so far as elections are concerned which means that whenever we have to ascertain the true position in regard to any matter connected with the elections, we only have to look at the Act and Rules framed there under. Rules 3 and 4 carry out the purpose of the Act. It is wrong to say that they are discretionary. Under Rule 3, the requirement is that no member shall absent himself from the meetings of the Board without the express leave of the Board. Under Rule 4, a member is required to obtain prior permission.

10. Since taking of oath is a necessary condition for holding of office, none of the two rules requiring the same to be given effect to are against the provisions of the Act. We could not understand as to how could the counsel for the petitioner argue that they are discriminatory. Argument which he could elaborate was that whereas leave had been granted to two persons to abstain from taking oath on a particular date, such a leave was not given to the petitioner. It was for the Officer presiding over the meeting to consider the ground given for obtaining leave as to whether it was substantial or vague. The petitioner was not required to attend the Income Tax Office. Hence, if the Presiding Officer, thought that the application made for prior leave was a lame excuse or not sustainable, this Court cannot regard the rejection of granting of prior leave as arbitrary. Moreover, the Act confers power on the Central Government to condone the default of the petitioner to take oath on the date fixed. The Central Government has not yet taken any decision. The writ petition is pre-mature. The Board has simply communicated to the Central Government about what had happened on the date fixed for oath. The ultimate authority to condone the default of the petitioner is the Central Government. No cause of action has accrued to the petitioner to file the present writ petition.

11. The essential function of delegated legislation is to carry out the purpose of the enabling Act. The reasons for delegation have been dealt with at page 151 of the Statutory Interpretation Francis Bennion Second Edition.

Reasons for delegation—There are many reasons why Parliament finds it necessary to delegate legislative power. These may be summarised as follows:

(1) Modern legislation requires for more detail than Parliament itself has time or inclination for.

(2) To bring a complex legislative scheme into full working operation, consultation with affected interests is required. This can best be done after Parliament has passed the outline legislation, since it is then known that the new law is indeed to take effect and what its main features are.

(3) Some details of the overall legislative scheme may need to be tentative or experimental. Delegated legislation affords an easy means of adjusting the scheme without further recourse to Parliament:

(4) Within the field of a regulatory Act new developments will from time to time arise. By the use of delegated legislation the scheme can be easily altered to allow for these.

(5) If a sudden emergency arises it may be essential to give the executive wide and flexible legislative powers to deal with it whether or not Parliament is sitting.

Unless the contrary intention appears from the enabling Act, the power to make delegated legislation may be exercised from time to time as occasion requires.

12. Erskine May has dealt with this subject in his book on Parliamentary Practice (21st edn. 1989) p. 538. The observations made by the learned author are worth quoting in this judgment, therefore, we are doing so.

It has been recognised that the greater number of details of an essentially subsidiary or procedural character which can be withdrawn from the floors of both Houses, the more time will be available for the discussion of major matters of public concern. Consequently, legislative power is often conferred upon the executive by statute, and various arrangements are made for parliamentary scrutiny of its exercise.

13. The word used conferring the power of the Government gives discretion to it to condone the default of the petitioner or not to do so. However, it will consider the same on merits and if the ground given for absence was justified, it would be within its power to condone the default, but at the same time if the ground given is vague, it will be fully justified in passing the order which may affect the petitioner.

14. In the result, the writ petition fails and is dismissed.