

(1963) 04 AHC CK 0025

In the Allahabad High Court

Case No : Special Appeal No's. 654 and 763 of 1962

Haji Abdul Qayum

APPELLANT

Vs

Keshav Saran and Others

RESPONDENT

Date of Decision : 04-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 46, 48, 87A(15), 9

Citation : AIR 1964 All 386

Hon'ble Judges : V. Bhargava, J;B.D. Gupta, J

Bench : Division Bench

Advocate : S.C. Khare, V.N. Khare and S.N. Kakkar, for the Appellant; V.K. Mehrotra, S.N. Misra Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

V. Bhargava, J.—These are two cross appeals arising out of one single petition under Article 226 of the Constitution which was numbered as Writ Petition No. 2081 of 1962. The writ petition related to the passing of no-confidence motion in respect of the President of the Municipal Board of Amroha. The Municipal Board of Amroha consisted of 31 members including the President. General elections for the Municipal Board of Amroha were held in the year 1957 and, at that time, one Muhammad Mian was elected as President. Subsequently, a vote of no confidence was passed against Muhammad Mian. He ceased to be the President and a casual vacancy in the office of the President was declared. This casual vacancy was filled up by an election held on 8th February, 1961. Haji Abdul Quyyum, one of the opposite-parties in the writ petition and the appellant in Special Appeal No. 654 of 1962, was the person elected as President in this casual vacancy. On 4th June, 1962, 16 members of the Municipal Board, who filed the writ petition No. 2081 of 1962 and who are respondents in Special Appeal No. 654 of 1962 and are appellants in Special Appeal No. 763 of 1962, gave a notice of a motion of no confidence against Haji Abdul Qayyum u/s 87A of the U. P. Municipalities Act, to the District Magistrate. On nth June, 1962, the District Magistrate passed an

order directing that the meeting for consideration of the motion be held on 7th July, 1962, to be presided over by a judicial officer, the judicial officer being a Munsif. One day before the date of the meeting, i.e., on 6th July 1962, Haji Abdul Qayyum filed Suit No. 54 of 1962 in the court of the Civil Judge of Moradabad in which he joined all the other 30 members of the Municipal Board as defendants. The relief claimed in the suit was for a declaration that the motion of no-confidence was ultra vires and void and, in addition, a permanent injunction was sought restraining the 30 members from holding a meeting for consideration of that no-confidence motion. On the same date, i.e., 6th July 1962, an application was made in connection with the suit for a temporary injunction. The injunction was sought against the District Magistrate of Moradabad restraining him from convening the meeting on 7th July, 1962, or onwards for consideration of the motion of no-confidence, and a further direction was sought against the District Magistrate to stop the meeting from being held on 7th July, 1962, in the office of the Municipal Board of Amroha for the consideration of the motion of no-confidence. The Civil Judge heard this application and passed an ex parte order on the same date, i.e., on 6th July, 1962. The prayer, which was made in the application for temporary injunction in the form in which it was put, was refused on the ground that the Civil Judge could not issue any injunction to the District Magistrate who had not been impleaded as a party in the suit. The Civil Judge, however, proceeded to issue an interim injunction against the 30 defendants in the suit who were all the 30 members of the Municipal Board besides the plaintiff, Haji Abdul Qayyum, restraining the defendants from holding the meeting on 7th July, 1962, for discussion of the no-confidence motion or thereafter till further orders of the court. The Civil Judge added a sentence directing that a copy of the order of the interim injunction be sent to the District Magistrate, Moradabad, and Munsif, Moradabad, for their information and necessary action in accordance with the law. The result of the issue of this temporary injunction was that no meeting was held for the consideration of the no-confidence motion on 7th July, 1962, even though the temporary injunction order was actually served on the defendants after 5 P. M. which was a time one hour later than the time of 4 P. M. fixed for the meeting. It appears that the members got information that the issue of such a temporary injunction had been directed by the court, so that they did not come for the meeting. The Munsif, who was to preside at the meeting, also did not come.

2. On 9th July, 1962, 16 of the defendants in the suit, who later filed this writ petition No. 2081 of 1962 and who were the 16 members who had given notice of the no-confidence motion, presented an application to the Civil Judge for vacating the interim order. On that application, the Civil Judge fixed 10th August, 1962 as the date for hearing. Then on 9th July, 1962, an application was made to the Civil Judge by Panna Lal, one of the writ petitioners that the hearing of the application be expedited whereupon the date of hearing of the application was brought forward to 21st July, 1962. On nth July, 1962 another writ petitioner, Radhey Shyam, moved one more application for still earlier hearing, but that

application was rejected. On 21st July, 1962, the application could not be heard as three of the defendants in the suit had not been served and the date was changed to 31st July, 1962. Thereupon this writ petition No. 2081 of 1962 was filed by the 16 petitioners in this Court on 25th July, 1962 .praying for issue of three writs.

3. The first prayer was for a writ of certiorari quashing the order of the Civil Judge dated 6th July, 1962, issuing the interim injunction. The second prayer was for the issue of a writ of prohibition restraining the Civil Judge from proceeding with the suit, and for a direction to him to dismiss that suit. The third prayer was for issue of writ of mandamus directing the District Magistrate of Moradabad to convene a meeting for the consideration of the no-confidence motion at the office of the Braid on such date and time as may be appointed by him and to arrange with the District Judge for a stipendiary civil judicial officer to preside over the said meeting. This petition was admitted by a learned Single Judge of this Court on 25th July, 1962, and ad interim order was passed suspending the operation of the interim injunction order made by the Civil Judge on 6th July, 1962. On 27th August, 1962, the petition itself was allowed to the extent that the Civil Judge's interim injunction order dated 6th July, 1962, was quashed and a direction was issued to the District Magistrate to hold a meeting for the consideration of the no-confidence motion. The learned Single Judge remained silent with regard to the prayer for issue of a writ of prohibition to the Civil Judge not to proceed with the suit pending before him, and also refrained from making any mention of the prayer that the Civil Judge be directed to dismiss the suit. Special Appeal No. 654 of 1962, in these circumstances, has been presented by Haji Abdul Qayyum against the judgment of the learned Single Judge dated 27th August, 1962, issuing the two writs which were sought by the petitioners in the petition, viz., the writ of certiorari quashing the Civil Judge's order dated 6th July, 1962, and the writ of mandamus directing the District Magistrate to hold the meeting for consideration of the no-confidence motion. The cress appeal No. 763 of 1962 has been filed by the petitioners of the writ petition praying that a writ of prohibition be also issued by this Court directing the Civil Judge not to proceed with the suit pending before him on the ground that he had no jurisdiction to deal with that suit. We may mention that the learned Single Judge, in his judgment dated 27th August, 1962, came to the finding that the Civil Judge had no jurisdiction to entertain the suit because his jurisdiction was barred u/s 87A (15) of the U. P. Municipalities Act but chose to grant only two out of the three prayers that were sought.

4. The first point, which was urged before us by learned counsel for Haji Abdul Qayyum appellant in Special Appeal No. 654 of 1962, was that the petition should not have been entertained by this Court and no relief should have been granted at all under Article 226 of the Constitution because the petitioners in the writ petition had not impleaded as parties all the persons who were defendants in the suit pending before the Civil Judge. We have already mentioned earlier that that suit was instituted by Haji Abdul Qayyum, and there were 30 defendants in

the suit, these being all the members of the Municipal Board of Amroha. Only 16 of these defendant-members of the Municipal Board of Amroha filed this writ petition and Haji Abdul Qayyum was impleaded as a party in the writ petition. Fourteen members of the Municipal Board, who were defendants in the suit, were not impleaded as parties in the writ petition. The submission of learned counsel was that, since writs were sought from this Court in respect of proceedings pending before the Civil Judge in suit No. 54 of 1962, no writ could be issued by this Court unless and until all the parties to the suit were impleaded in this petition also. We do not think that there is any force in this submission because the powers of this Court that were invoked were to be exercised to the advantage of the 16 writ petitioners at their request and to the detriment of Haji Abdul Qayyum plaintiff alone. The other fourteen members of the Board, who were defendants in the suit, were unnecessary parties because the prayer made in the writ petition was, in no way, against their interest or against any claim put forward by them in the suit. Those fourteen members were persons who had not joined in the no-confidence motion but, at the same time, they had not challenged the proceedings which were going to be taken in pursuance of the no-confidence motion. They were persons who had merely a right to attend the meeting to be held for consideration of the motion, to participate in it and to cast their votes on one side or the other. This right they could exercise if a meeting was actually held. They at no stage, took up the case that the meeting to be held was invalid and should not be held. The claim that the meeting, if held, would be invalid was put forward by Haji Abdul Qayyum alone and, in the circumstances, in that suit itself, they were impleaded more or less, as pro forma defendants who were not resisting the claim of Haji Abdul Qayyum put forward in that suit. At the same time, they were not claiming the relief which Haji Abdul Qayyum was claiming, so that the quashing of the proceedings in the suit or the orders made in the suit, in no way, affected their interest. Then there is the fact that, even under the rules applicable to writ petitions, a writ petition is not necessarily to be dismissed on the mere ground of non-joinder of certain persons. The provision, on the other hand, is that the writ petitioners have to seek issue of the notice of the petition and its service on such parties as may be found to be interested in the dispute. There is a further provision that, if, at any time during the hearing of a petition for the issue of a writ, the court is of the opinion that any person, who ought to have been served with the notice of the petition, is not so served, the court may order that notice may also be served on such person, and may adjourn the hearing upon such terms, if any, as the court may consider proper. In this case, even when the writ petition came up for final hearing this objection of non-joinder on behalf of some persons was taken as a technical objection but it was not urged that, for the purpose of doing proper justice, it was necessary to issue notice to them on the ground that this court might pass orders adverse to their interest. In fact, in the special appeal before us, learned counsel, in his arguments on behalf of Haji Abdul Qayyum, at no stage, urged that the issue of any writs in connection with this writ petition is adversely affecting the interest of any of these fourteen persons, so that we hold that they

were unnecessary parties.

5. The second point urged, though very feebly, by learned counsel was that this petition should not have been allowed as it had been filed jointly by more than one person. The objection, on the face of it, has no force. All the 16 writ petitioners had a common cause of action and were seeking a common relief arising out of identical facts. There was no reason why they should not all join together and seek issue of one single writ so as to serve the object of all the petitioners.

6. The third and the main point urged before us was that, on merits, the learned Single Judge was incorrect in holding that the Civil Judge had no jurisdiction to entertain suit No. 54 of 1962 and, consequently, he was not right in granting any relief at all to the writ petitioners. In the suit filed before the Civil Judge, the prayer made by Haji Abdul Qayyum was for a declaration that the motion of no-confidence dated 4th June 1962 and the meeting dated 7th July, 1962, convened in pursuance thereof for consideration of the motion of non-confidence, were ultra vires illegal and null and void. The further prayer was a consequential one for issue of a mandatory injunction to the defendants restraining them from holding or participating in the meeting of 7th July, 1962, or onwards for the consideration of the no-confidence motion dated 4th June, 1962. These two reliefs were claimed on two grounds mentioned in the course of the pleadings in the plaint. One ground was that the copies of the notice of the meeting which were served on three of the members of the Municipal Board had ink split over the place, date and time of the meeting which had become blurred, so that there was no service of any valid notice on those three members. The second ground was that no motion of no-confidence could be moved against a president of the municipal board elected in a casual vacancy on the ground that the provisions of Section 87-A of the U. P. Municipalities Act were applicable only to a president elected in a regular election. Learned Counsel, arguing the case on behalf of Haji Abdul Qayyum before us, also urged only these two points in support of his case to challenge the correctness of the order made by the learned Single Judge, and did not rely on any other point. On the basis of these points, the further submission by learned counsel was that, since, in the suit, Haji Abdul Qayyum had prayed for a declaration that the motion of non-confidence and the meeting were ultra vires, illegal and null and void, the jurisdiction of the Civil Judge was not barred by Section 87-A (15) of the U. P. Municipalities Act.

7. Section 87-A (15) of the U. P. Municipalities Act lays down that:

"Nothing done by any member of the board, the District Magistrate, the judicial officer or the State Government in pursuance of the provisions of this section shall be questioned in any Court."

The validity of the no-confidence motion was challenged on only one ground, viz., that, under the provisions of the U. P. Municipalities Act, there was no provision for a no-confidence motion being moved against a president elected in

a casual vacancy and that the provisions of the various sub-sections of Section 87-A could only be applied to the case of a president elected in a general election. In terms, we find that there is nothing in the language of Section 87-A of the U. P. Municipalities Act which may lead to any such conclusion. Section 87-A, in its various sub sections, uses the word "president" without laying down any qualification that the president must be a person who was elected in a general election and cannot be one elected as president in a casual vacancy. On the face of it, therefore, if Section 87-A of the U. P. Municipalities Act is read by it self, it would be clear that the claim that the no-confidence motion was ultra vires, illegal and null and void was without any substance at all and would have to be treated as frivolous. In such a case, the provisions of Section 87-A (15) of the U. P. Municipalities Act would apply and it would have to be held that such a suit would not be entertainable by a Civil Court. In these circumstances, it was for the appellant to show that there was some other provision in the Municipalities Act which barred the bringing of the no-confidence motion under Section 87-A of the Act against a president elected in a casual vacancy. Only by relying on some such provision in some other part of the Act itself, could Haji Abdul Qayyum claim that Section 87-A of the U. P. Municipalities Act was not applicable to him at all, so that his suit was maintainable and was not barred u/s 87-A of the Act. The burden, therefore, lay on Haji Abdul Qayyum to point out the provision under which there was a bar to bringing a no-confidence motion against a president elected in a casual vacancy. In these circumstances, the preliminary submission made by learned counsel for Haji Abdul Qayyum before us that this Court should not have entered into this question of jurisdiction at all has no force. On the face of it, a reading of Section 87-A of the Act showed that the Civil Judge had no jurisdiction and, consequently, prima facie this Court was entitled to interfere with the exercise of jurisdiction by the Civil Judge unless it could be shown that because of some other provisions of the Act jurisdiction was vested in him. The circumstances that, in order to show that jurisdiction was vested in the Civil Judge, Haji Abdul Qayyum had also, in fact, to establish the main ingredient of his claim before the Civil Judge in the suit itself, appears to us to be immaterial. If a question goes to the root of a case in determining the jurisdiction of the Court to deal with it, it is always competent for the supervisory Court like the High Court, acting in exercise of its jurisdiction under Article 226 of the Constitution to examine and see whether the inferior Court does or does not possess jurisdiction and, for that purpose, to determine what is the correct interpretation of the law applicable. This preliminary objection thus fails and we consider that the learned Single Judge was quite right in going into the question whether Haji Abdul Qayyum had succeeded in showing that the U. P. Municipalities Act contained a bar to the moving of a motion of no-confidence u/s 87-A of the Act against a president elected in a casual vacancy.

8. Learned counsel appearing on behalf of Haji Abdul Qayyum relied on the provisions of Section 46 of the U. P. Municipalities Act and urged before us that no motion of non-confidence could be brought against a president elected in a

casual vacancy. Section 46 of the U. P. Municipalities Act lays down:

"46. The term of office of a President elected in a casual vacancy shall commence from the declaration of his election under the Act and shall be the remainder of the term of the board."

Learned counsel's submission was that, this section having laid down that the term of office of a president shall be the remainder of the term of the board, that term, could not be curtailed by means of a no-confidence motion and other proceedings taken u/s 87-A of the U. P. Municipalities Act. It appears to us that this submission must be rejected on two grounds: The first ground is that even Section 46 of the Act itself does not lay down any fixed term by laying down years, months and days of the term in that section. It only describes the term as the remainder of the term of the board and we do not think that there is any sanctity attached to such a term. A president, even though elected in a casual vacancy, may die before the term of the board expires. It will not be possible to contend that Ms term will still continue as long as the board continues. Similarly, a president elected in a casual vacancy may render himself liable to removal from his office u/s 48 of the U. P. Municipalities Act. We are not prepared to accept the submission that a president elected in a casual vacancy is immune from any action being taken against him even though he may be guilty of the various misconducts mentioned in Section 48 of the Act, or may have incurred some disqualifications. In the same manner, we think that Section 87-A of the U. P. Municipalities Act would also apply to a president elected in a casual vacancy.

9. The more important reason, which we may, however, mention for not accepting the submission of learned counsel, is that we see no material difference between the provision of the term of office of a president elected in a casual vacancy mentioned in Section 46 of the Act and the provision of the term of a president elected in a general election as it is to be inferred from Sections 9 and 10-A of the Act. u/s 9 of the U. P. Municipalities Act, a board consists of a president and elected members whose number is to be specified. u/s 10-A of the Act, the term of every board is laid down to be four years. The president, who is a part of the board u/s 9, also, therefore, holds his office as president for the same period of four years for which the board is constituted. The term of a president elected in a general election by virtue of the provisions of Section 9 of the Act is also, therefore, coterminous with the term of the board. It has been conceded by learned counsel for Haji Abdul Qayyum that the provisions of Section 87-A of the U. P. Municipalities Act do apply to the president elected in a general election which implies that it will apply to the case of a president whose term is the term of four years coterminous with the term of the board itself. Section 46, in the case of a president elected in a casual vacancy, also makes the term of such an elected president coterminous with the term of the board, so that there is, in fact, no distinction at all between the term of a president elected in a general election and the term of a president elected in a casual vacancy. The date of assumption of office in the two cases may differ but the termination of

the term is identical, viz., the date when the term of the board expires. That being so, we see no reason at all for holding that the provisions of Section 87-A of the Act would not apply to the case of a president elected in a casual vacancy. This is the interpretation to which we are led on the language used in the various sections of the U. P. Municipalities Act.

10. We may add, however, that, if we were to accept the submissions made by learned counsel that the provisions of Section 87-A would not apply to a president elected in a casual vacancy, it would leave a scope for abuse of rights by members of a majority party in an election. Those members may deliberately set up a dummy candidate for the general elections. He, having been elected, can then be persuaded to tender resignation with the result that a casual vacancy occurs u/s 44-A of the Act. A casual vacancy having occurred, the election of the president subsequently would be under the provisions of Section 46 of the Act. At that stage, that party can ensure that the real candidate, whom they wanted, is elected as the president, and then the result would be that he would work as president for practically the whole of the term of four years and would be altogether immune from any vote of no-confidence during that term. It may also be added that, if we were to hold that Section 87-A does not apply to a president elected in a casual vacancy, the further logical conclusion would be that, even the provisions of Section 48 of the Act would not apply to such a president, so that even the Government would not be able to remove the president, however, grossly he may be abusing his powers, or however, undesirable his conduct may be as judged on the basis of the provisions contained in Section 48 of the Act. We do not think that such an interpretation can possibly be accepted by us.

11. Our finding that Haji Abdul Qayyum was not exempt from a motion of no-confidence, as claimed by him, necessarily leads to the conclusion that the no-confidence move against him by 16 petitioners in the writ petition was valid. In the suit, no other ground was taken for challenging the validity of the no-confidence motion, so that the Civil Judge had no jurisdiction to entertain that suit. The motion itself had been made by the 16 members under the provisions of Section 87-A of the Act and, being covered by those provisions, the bar of Section 87-A (15) of the U. P. Municipalities Act became applicable.

12. The second relief related to a declaration that the meeting dated 7th July, 1962, convened in pursuance of the no-confidence motion for consideration thereof was also ultra vires, illegal and null and void. For this relief, one of the contentions was that the no-confidence motion itself was outside the scope of Section 87-A of the U. P. Municipalities Act on the ground which we have already dealt with above. The only other contention for challenging the validity of the meeting was that ink had been split over the date, time and place entered in the copies of the notices sent to three of the members of the Municipal Board, It is to be noticed that none of those three members made any grievance that the date, time and place of the meeting were illegible. There was also no assertion that

they had no notice of the time, date and place of the meeting. In fact, the meeting was never held and Haji Abdul Qayyum very well knew that, by instituting the suit and seeking the interim injunction from the Civil Court, he was preventing the holding of the meeting on that date, so that the alleged invalidity of that notice, on the mere ground of some blurring in it, did not, in fact, give rise to any effective relief. The relief, if at all, could have been claimed by those three members only and, should have been claimed, if at all, after the meeting had been held, when it may have been possible to hold that the meeting was invalid because no proper notice had been received by any of the three members. There was a possibility that those three members might themselves have actually attended the meeting in which case the question of the date, time and place being blurred could not possibly affect the validity of the meeting. The claim was, therefore, in any case, premature and such a claim could also not give any jurisdiction to the Civil Court.

13. On these findings, we have to hold that the learned Single Judge was perfectly right in granting the reliefs sought in the writ petition which he did grant. The suit itself not being maintainable before the Civil Judge, the interim injunction issued by him had to be quashed and, since the meeting, in fact, had not taken place on the 7th of July, 1962, it was quite appropriate for this Court to issue a direction to the District Magistrate to hold another meeting for consideration of that no-confidence motion. Further, we think that the petitioners were also entitled to the relief of a writ of prohibition, restraining the Civil Judge from further proceeding with the suit on the ground that he had no jurisdiction to entertain it, so that Special Appeal No. 634 of 1962 fails while Special Appeal No. 763 of 1962 succeeds.

14. As a consequence, we dismiss Special Appeal No. 654 of 1962 with costs. Special Appeal No. 763 of 1962 is allowed with costs with a direction that a writ of prohibition shall issue to the Civil Judge not to proceed with Civil Suit No. 54 of 1962 on the ground that he has no jurisdiction to entertain that suit.