
(1972) 10 AHC CK 0008
In the Allahabad High Court

Case No : Sp. A. No 582 of 1972 connected with Sp. A. No. 457 of 1972

Jagdish Shah

APPELLANT

Vs

The State of U.P. and others

RESPONDENT

Date of Decision : 03-10-1972

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 10, 43

Citation : (1973) 43 AWR 178

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : S.K. Dhaon, for the Appellant; V.K. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—These two special appeals raise the question whether nominated members of the Municipal Board, Nainital, were entitled to vote at the election of the President of the Board.

2. In 1971 the Municipal Board, Nainital, consisted of 4 nominated members and 11 elected members--Elections for this Municipal Board were held on 30th May, 1971. At these elections 11 persons were declared elected. On June 7, 1971, the State Government nominated four persons to the Board. By a notification dated 8th June 1971, the State Government fixed 22nd June, 1971, for holding the election of the President. An elected member as well as an elector filed writ petition No. 4032 of 1971 challenging the nomination of the four members.

3. The election of the President was, however, held on the date fixed and Sri Kishan Singh Taragi was declared elected President of the Board. On August 4, 1971, the State Government published a notification constituting the Municipal Board of Nainital. Another elected member of the Board, who was a rival candidate for the Presidentship, filed writ petition No. 5174 of 1971 challenging the election of K.S. Taragi. These two writ petitions proceeded on a variety of grounds, none of which found favour with a learned Single Judge who dismissed

both of them. Hence the present appeals.

4. In the present appeals, Mr. S.C. Khare appearing for the Appellants raised only one point. This point was set out in the writ petitions but for some reason, was not pressed at their hearing before the learned Single Judge. But since learned Counsel for the Respondents did not object, we entertained the point and heard counsel thereon. The point raised by Mr. Khare is that in view of the provisions of the U.P. Municipalities Act, 1916, nominated members do not constitute the electoral college and hence were not entitled to vote at the election of the President of the Municipal Board, Nainital. It was also urged that the notification dated 18th December, 1964, issued by the State Government u/s 296(2) read with Section 10 of the U.P. Municipalities Act authorising, inter alia, the nominated members to elect a President was ultra vires the powers of the State Government.

5. Sections 9 and 10 provide for the composition of Municipal Boards. u/s 9 a Municipal Board is to consist of a President and elected members who shall not be less than 10 and not more than 40, as the State Government may, by notification in the Official Gazette, specify. This section, however, operates "except as otherwise provided by section 10". Section 10 applies where the State Government is satisfied that the Municipality is one which is subject to substantial seasonal variations of night population and where the State Government is also satisfied that the circumstances of the Municipality render inadvisable the application thereto of the provisions of Sec 9. In such cases the State Government acting u/s 10 can by notification declare that the Board shall be constituted as follows, namely:

(a) Nominated members--Such member or members to be nominated by the State Government as may be specified;

(b) Elected members--Such number of elected members to be elected in such manner and by such persons or class of persons as may be specified ; and

(c) President--The President, who shall possess such qualifications, and be elected in such manner, as the State Government may prescribe.

Acting Under Clause (c) of Section 10, the State Government on 18th December, 1964, issued a notification stating that the President of a Board constituted u/s 10 shall possess the same qualifications as are necessary for a President of any other Board constituted u/s 9. In paragraph 2 it was stated that as soon as may be, after the election and nomination of the members of a Board constituted u/s 10 is completed at a general election or a casual vacancy occurs in the office of the President of such Board the elected and nominated members shall elect a President in the same manner as a President of any other Board constituted u/s 9.

6. Section 43 deals with election or nomination of President. It provides:

43. Election or nomination of President.--

(1) As soon as may be, after the election of members of a board is completed at a general election the members shall elect a President of the Board in accordance with the system of proportional representation by means of a, the single transferable vote and the voting at such election shall be by secret ballot.

(2) For the purposes of the election of President, the election of the members of the board shall, notwithstanding any seat remaining unfilled, be deemed to be completed if at least four-fifths of the total number of members fixed u/s 9 have been elected.

7. Mr. Khare submitted that the term "the members" occurring in Section 43(1) does not embrace nominated members and so the nominated members are not entitled to vote at the election of the President. In regard to Section 10, the submission was that Under Clause (c) the State Government can prescribe the manner of the election of the President. It has no power to prescribe the person or class of persons who are entitled to vote at the election of the President.

8. It has been seen that Under Clause (a) of Section 10 the State Government is authorised to nominate the specified number of persons as nominated members of a Municipal Board constituted u/s 10. Mr. Khare submitted that the opening clause of Section 43(1), namely, "As soon as may be, after the election of members of a Board is completed at a general election" does not include the process of nomination of the specified number of members Under Clause (a) of Section 10. The election of the President is, u/s 43(1), to take place as soon as the election of members is completed; without awaiting the completion of the nomination of members. This shows that nominated members were not intended to be within the purview of this section. It was also urged that grammatically speaking, the term "the members" occurring immediately after the aforesaid opening clause, would refer to the category of members specified in the earlier opening clause. There the specification is of the elected members only. In this view also the nominated members were excluded. In the third place, Mr. Khare drew our attention to Sections 31 and 31-A of the Act where in Clause (a) of Section 31 the term used is "all members" in order to include the nominated members as well. Similarly in Clause (a) of Section 31-A the nominated members are included in the provision by using the phrase "all members". In this context the use of the term "the members" in Sec 43 would not include nominated members.

9. The learned Advocate-General, appearing for the Respondents, urged that the opening clause of Section 43 refers to an event namely the completion of the process of election of members. It does not refer to any kind of member. So, if the article "the" in the phrase "the members" is according to the rules of grammar to refer to the category of members mentioned somewhere earlier in the Act, the reference should be taken to Section 10 where nominated as well as elected members are mentioned. In this view, the phrase "the members" would include both the categories of members. The learned Advocate-General invited our attention to Sections 39, 40 and 82 of the Act where the phrase used is "a

member" in context which includes reference to elected as well as nominated members. He drew our attention to Sections 92 and 94 of the Act where the legislature used the phrase "the member" while referring to each one of the members including nominated ones, if any. The learned Counsel urged that in view of the language used in the various sections, no specific legislative intent can be deemed that the phrase "the members" refers only to elected and not to nominated members in Section 43(1).

10. We deem it unnecessary to discuss these attractive submissions made on either side. In our opinion, Section 43 was confined to election of President of a Municipal Board constituted u/s 9. It has no application to a Municipal Board constituted u/s 10.

11. u/s 43(1) the process of election of the President is to start as soon as may be after the election of members is completed. Sub-section (2) of Section 43 defines as to when is the election of members deemed to be completed. Under Sub-section (2) the election of members is deemed to be completed when atleast four-fifths of the total number of members fixed u/s 9 have been elected. This specific reference to the total number of members fixed u/s 9 clearly excludes the election of members of a Board constituted u/s 10. By no rule of construction can the figure "9" occurring in Sub-section (2) be read as "9 and 10". The fact that in Municipal Boards constituted u/s 9 the process of election of members is deemed completed when four-fifths of the total number of members have been elected, shows that the point of time of the completion was not left to be gathered by the realities of a given situation namely when each of the members has been actually elected. An artificial definition of the completion of the process of election of members having been specified by Sub-section (2), and the artificial definition of the process having been confined to Section 9, Section 43(1) could not apply to Boards constituted u/s 10 because the necessary condition precedent of the time of completion of the election of members of Boards constituted u/s 10 could not be determined. Till that event is determined, the process of election of the President cannot commence. It appears to us that Section 43 was not intended to apply to Boards constituted u/s 10, namely to Boards which had a mixed membership consisting of elected as well as nominated members. It will be remembered that u/s 9 all members are only elected ones.

12. In this situation the only provision which provides for the election of President is Clause (c) of Section 10. Under this clause the State Government is to prescribe the qualifications for the office of President and the manner of the election of the President. For the Appellants it was suggested that the word "manner" occurring in Clause (c) refers to the procedure of election; it will not include power to specify the suffrage.

13. The term "manner" has been defined to mean "mode of handling", "the way in which something is done or takes place" (Shorter Oxford English Dictionary), 3rd Edn. vol. 1, page 1201). In the new International Dictionary, Vol. 2, page

1376, "manner" has been defined to mean the nature, the character, the condition.

14. In Words and Phrases, Permanent Edition, Vol. 26, P. 541, it has been stated:

...the term "manner" had been given by lexicographers a broader meaning than the word "method", the derivation of the word "manner" being from the Latin "manus", the hand. The term "manner" literally means the handling of a thing, and has a wider sense, embracing both "method" and "modi".

On page 540 it has been stated that the word "manner" in Constitution Article 4 Section 8, providing that the Legislature shall prescribe the "manner" in which public officers shall be elected, includes the agent or person who may appoint, as well as the formality by which the appointment is to be made. The word "manner" in the phrase the manner of election "would include the power of specifying the category of persons who will form the electoral college.

15. Mr. Khare submitted that there is a clear differentiation in the delegated powers. Under Clause (b) the State Government can declare not only the manner in which the elected members be elected but also specify the persons or class of persons who shall elect them; but in Clause (c) there is no delegation of power in regard to the persons or class of persons who may elect the President. Since Under Clause (b) in addition to specifying the manner of election of members power was expressly conferred to specify the electoral college, it must be held that in Clause (c) the omission to expressly delegate the power to specify the electorate for the President's election was deliberate and with an intent not to leave this matter to the State Government.

16. Section 10 applies to Municipalities which are subject to substantial seasonal variation of night population. Election of members to such Municipalities involves the entire territory of the Municipality and affects the population at large. In view of the diverse elements constituting the population of such Municipalities, the Legislature may have thought it proper, by way of abundant caution, to expressly authorise the State Government to specify the persons or class of persons who will elect members of such Boards. But in the case of the President, such an eventuality was not likely to arise. In the past the President was elected directly, i.e., by the entire electoral college of the Municipality, but that practice was given up when the Act was amended in 1949. After that the general legislative policy was that the President be elected by the members. Since in a Board constituted u/s 10 there were two classes of members, it may not have been thought necessary to expressly authorise the State Government to specify the class of members who may elect the president, because the term "manner of election" was wide enough to include such specification. We are hence not inclined to accept this submission based upon the difference in the language of Clauses (b) and (c).

17. The construction suggested on behalf of the Appellants leads to the position that there is no specification of the persons or class of persons who are entitled

to elect the president. Section 43, which makes some provision in this regard, does not apply to Boards constituted u/s 10. There being no specification of the class of persons who are entitled to elect a president, the position can be that either the president will be elected directly as was the case in the past, namely by all the electors on the electoral rolls of the Municipal Board or he will be elected by the members of the Board. The former alternative does not appear to be available because of the past legislative history. In the past the president of a Board constituted u/s 10 was elected directly but that provision was deleted. That would leave only the members of the Board as the persons entitled to elect the president. If that be so, and in the absence of any exclusion of the nominated members, the nominated members, like the elected members, would be equally entitled to exercise the right of vote, as members of the Board. This is on the hypothesis that a member of the Board has the right to elect its President. Each member will be presumed to have the same rights.

18. Mr. Khare argued that the distinction between Clauses (b) and (c) was intensified when we refer to Section 12-A of the Act. Section 12-A provides that except as provided in Section 10, the election of members of the Board shall be on the basis of adult franchise. Learned Counsel argued that if it was intended that Clause (o) of Section 10 conferred power upon the State Government to provide for the electoral college for the election of the President, then a similar exception would have found place in Section 43. There are more than one difficulties in accepting this submission. As held above, Section 43 does not apply to Boards constituted u/s 10 at all. There was hence no occasion to make an exception in Section 43.

19. In the next place, Section 10 in the present form entered the statute book by the U.P. Municipalities (Amendment) Act No. 7 of 1949. See. 12-A was for the first time enacted by the U.P. Municipalities (Amendment) Act No. 7 of 1953. So, during the period between the commencement of the 1949 and 1953 Acts there being no Section 12-A, Clause (b) of Section 10 prevailed without there being any exception in its favour elsewhere in the Act. The result is that Clauses (b) and (c) when originally re-enacted by the Act of 1949 had no distinguishing feature from this point of view.

20. One of the cardinal principles of legislation is that as far as possible no vacuum may be left in the working of a statute or in the operation of the powers conferred by it. The construction of Clause (c) suggested for the Appellants leaves a vacuum inasmuch as there is no provision for prescribing the electoral college for the President. Such a construction should not normally prevail. In our opinion, the phrase "and be elected in such manner" occurring in Clause (c) is wide enough to include the prescribing whether the election of the president will be by the elected members only or by elected and nominated members. The prescribing of the electoral college being within the purview of Clause (c), the State Government was within its authority in prescribing the notification dated December 18, 1964, that the elected and nominated members shall elect the

President.

21. In our opinion, the nominated members validly participated in the election of the President held on June 22, 1971.

22. In the result, both the appeal fail and are accordingly dismissed with costs.