
(1964) 09 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 17 of 1964

Jhaman Lal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-09-1964

Acts Referred:

Evidence Act, 1872 — Section 114
Rajasthan Municipalities (Appointment of Members Councillors by Co-option) Order,
1959 — Rule 3(1)
Rajasthan Municipalities Act, 1959 — Section 38

Citation : AIR 1965 Raj 86 : (1964) RLW 599

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : Ramesh Chandra Maheshwari, for the Appellant;

Final Decision : Dismissed

Judgement

Jagat Narayan, J.—This is a petition by an elected member of Municipal Board, Bhadra, challenging the validity of the co-option proceedings which took place on 14-1-64. The petition was filed on 11-1-64 and an application was made to stay the co-option proceedings. That stay application was rejected and the petitioner was asked to amend his petition after the co-option so as to challenge the co-option after impleading the co-opted members. No one has appeared to contest this petition.

2. The general election to the Municipality took place on 30-12-63, As no lady member had been elected two ladies were to be co-opted u/s 9 (5) of the Rajasthan Municipalities Act and a notice for holding co-option proceedings on 14-1-64 was issued by the Vikas Adhikari of the Panchayat Samiti, Nohar. It was issued on 4-1-64. The petitioner has alleged that it was served on him on 8-1-64. The first ground is that the co-option proceedings were vitiated as the notice was not served on him seven clear days before the meeting. Rule 3 (1) of the Rajasthan Municipalities (Appointment of Members Councillors by Co-option)

Order, 1959, runs as follows:--

"Soon after the election of members of a Municipal Board, Returning Officer shall convene at the office of the Municipal Board at the appointed time a meeting of members after giving them a notice in writing of not less than seven clear days for the co-option of members specified in Sub-section (5) of Section 9."

3. The expression "clear days" is defined in Rule 2(2) as follows :

" "Clear days" includes Sundays and ether holidays but does not include the date of receipt of a notice by a person to whom such notice is addressed or the date specified in it."

4. It is contended that the form of the language used in the rule goes to show that it is mandatory. In my opinion the rule is not mandatory but is merely directory as great Inconvenience -would be caused by treating it to be mandatory. For If it is so treated, some of the members may deliberately evade service of notice till such time that a period of seven clear days no longer remains between the date of the service and the date of the meeting. Another reason for taking this view is that Sub-rule (4) of Rule 3 specifically provides for the publication of notice by affixation on the notice board of the Municipal Board at its office which serves as notice of the meeting for co-option in addition. I may here refer to the following observations made by their Lordships of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*,

"When a statute uses the word "shall" prima facia, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

5. As the above provision is directory and it has not been shown that any prejudice was caused to the petitioner, the co-option proceedings were not invalidated by the service of notice on him only six clear days before the meeting. The notice was served on the petitioner on 8-1-64 and he could have attended the meeting on 14-1-64.

6. The next objection is that the Vikas Adhikarl, Panchayat Samiti, Nohar was not nominated by the Collector to act as Returning Officer for the purpose of co-option proceedings as envisaged under the Rajasthan Municipalities (Appointment of Members/councillors by co-option) Order 1859. The petitioner has made a bare assertion about it in para 11 of the petition. It has not been

indicated in the affidavit which has been filed in support of the petition how the petitioner is able to assert that the allegation contained in para 11 is true.

7. In para 3 of the affidavit the petitioner has asserted "I state that the statements made in paras 1 to 17 of my said petition are true and nothing therein is incorrect". There is a verification in the following words :

"I, Jhamanlal Sharma, elected member to the Municipal Board, Bhadra, District Ganganagar, state on solemn affirmation that I have stated the whole truth above and nothing therein is false and nothing material has been suppressed."

8. There is a presumption that official acts are regularly performed and this presumption cannot be displaced by an affidavit of the above nature.

9. I accordingly dismiss the writ petition.