
(2016) 05 AHC CK 0241

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22350 of 2016

Maviya Ali and 2 Others

APPELLANT

Vs

State Of U.P. and 4 Others

RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

Constitution of India, 1950 — Article 243

Uttar Pradesh Municipalities Rules, 1916 — Section 13DD

Citation : (2016) 5 ADJ 755 : (2016) 119 ALR 597

Hon'ble Judges : Arun Tandon and Yashwant Varma, JJ.

Bench : Division Bench

Advocate : Narendra Kumar Pandey and Mohd. Kalim, Advocates, for the Appellant; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. Facts in short are as follows. Petitioner No. 1 Maviya Ali was elected as the Chairman, Municipal Board, Deoband, District Saharanpur in the elections held in 2012. The petitioner No. 2 is stated to have been elected as a Corporator in the said election while the petitioner No. 3 claims to have been elected as President of the Municipal Board, Deoband, Saharanpur. The petitioner Maviya Ali is stated to have been subsequently elected as a Member of the Legislative Assembly (M.L.A.) in the by-elections held in the month of February 2016. Because of the election of Maviya Ali as a Member of the Legislative Assembly the post of Chairman of the Municipal Board, Deoband has been declared vacant as Sri Maviya Ali is stated to have been disqualified to continue as the Chairman. The State Government issued a notification on 16 March 2001 stating that Maviya Ali must resign from the post of Chairman and in his place an Administrator be appointed till the resultant vacancy occurring on the post of Chairman is filled in accordance with the provisions applicable. As a consequence thereto, the Prabhari Adhikari, Local Bodies/Additional District Magistrate (Administration) Saharanpur had requested Maviya Ali to act in accordance thereto. It is against these two orders that the present writ petition has been filed with a further

challenge to the vires of Section 13-DD as added to U.P. Act No. 2 of 1916. For the purposes of appreciating the challenge to the vires, it would be necessary to reproduce the provision which reads as follows:-

"13-DD. Bar of legislators becoming or continuing as President or Member -

Notwithstanding anything to the contrary contained in any other provision of this Act.-

(a) a person shall be disqualified for being elected as, and for being a President or Member, if he is a Member of Parliament or of the State Legislature;

(b) if a person, after his election as President or Member, is subsequently elected or nominated to any of the offices referred to in clause (a) he shall on the date of first publication in Gazette of India or of the Uttar Pradesh of the declaration of his election for nomination, within a period of fourteen days from such notification, intimate by notice in writing signed by him and delivered to any person authorised by the Government in this behalf, submit his option, in which office he wishes to serve and any choice so intimated shall be conclusive, failing which he shall upon the expiry of the said period, cease to hold the office of the President or Member and casual vacancy shall thereupon occur in the office of the President or Member as the case may be."

2. From a simple reading of the aforesaid provision, it shall be amply clear that a person after being elected as a member of the municipal Board on being subsequently elected and nominated to any of the offices referred to in sub clause (a) i.e. member of Parliament or the State Legislature shall be required to submit an option within fifteen days as to which of the two offices he proposes to retain. In case such an option is not exercised he shall cease to hold the office of President or member of the Municipal Board and a casual vacancy thereupon shall occur in the office concerned.

3. From the records, it appears that Maviya Ali did not exercise the option as required under Section 13 DD. At least there is no averment in that regard in the present writ petition. However, it has been orally stated by the counsel for the petitioner, Sri N.K. Pandey, that Sri Maviya Ali has resigned from the office of Chairman after the issuance of the impugned order.

4. The vires of the aforesaid provision is challenged on the ground that amendments in the Constitution were brought into force by insertion of Chapter IXA by the Constitution 74th Amendment Act of 1994. The constitutional scheme provides for composition of three tier local bodies namely, Gram Panchayats, Kshetra Panchayats and finally the Nagar Panchayats. According to the petitioner Part IXA does not contain any provision where under an elected member or the President of a Panchayat would stand disqualified on his subsequent election as a member of the Legislative Assembly or as a Member of Parliament. It is therefore submitted that insertion of Section 13-DD by U.P. Act No. 9 of 2013 is ultra vires the constitutional scheme and is therefore unsustainable. Learned counsel has

referred to a Division Bench judgment of this Court in the case of Yogesh Mittal v. State of U.P. And Others, 2014 (10) ADJ 76(DB). in support of his submissions.

We have heard the learned counsel for parties and examined the record.

5. At the very outset, we may notice that under Article 243B, disqualifications for membership to the municipalities have been provided for and clause (b) of the said Article declares that a person shall be disqualified to be a member if it is so provided for by or under any law made by the legislature of a State. In our opinion, these constitutional powers confer the legislative competence upon the State Legislature to frame laws to provide for disqualifications which may attach to a person in the matter of holding the office of President of a municipality. We are therefore of the opinion that U.P. Act No. 9 of 2013 which introduces and incorporates Section 13-DD in U.P. Act No. 2 of 1916 is well within the legislative competence of the State. Even otherwise, the subject "local bodies" falls within Entry 5 of List II of the Seventh Schedule to the Constitution and therefore also the State Legislature has the legislative competence to frame a law upon the subject.

6. The other ground on which the vires of a statutory provision can be challenged is whether it breaches any other provision of the Constitution or not. In our opinion the amendment introduced by addition of Section 13-DD does not violate any of the constitutional provisions. As already noted above, Article 243 B confers power upon the State Legislature to provide for disqualifications for the office of a member or President of a municipality and if the State Government has decided to provide that on becoming a member of the Legislative Assembly/Parliament subsequent to the earlier election as Chairman of the Municipal Board the incumbent would be required to exercise an option as to whether he would like to continue as a President or a Member of State Legislature/Parliament and in case of non-exercise of such an option within fifteen days, he shall cease to hold the office of President or a member of Municipal Board, cannot be said to be in violation of any constitutional provision. We may record that in respect of persons who are members of the Legislative Assemblies of States and are subsequently elected as members of Parliament there exists a similar bar on holding two offices simultaneously in Articles 101 and 102 of the Constitution of India and therefore, in our opinion the scheme under the Constitution and the law framed by the State Legislature appears to be that a person may not be permitted to perform the duties of two elected offices pertaining to various stages of the democratic setup simultaneously and in this background a restriction has been imposed on a person holding more than one office at the same time. This restriction imposed by the Legislature quite far from being in violation of the constitutional scheme appears to be in accord with the same.

7. So far as the judgment relied upon by the counsel for the petitioner in the case of Yogesh Mittal (supra) is concerned, we find that the same is clearly distinguishable inasmuch as the Division Bench in the same has specifically noticed that the law which had been framed by the State Government by adding

Section 6(1) to the Municipalities Act was contrary to Article 243 R and therefore ultra vires. In the facts of the present case, we do not find that Section 13 DD violates any of the constitutional provisions.

8. The petition being devoid of merit is accordingly dismissed.