
(1991) 08 AHC CK 0054

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16344 of 1990

Naresh Kumar Maheshwari

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 30, 31A, 43AA, 44A, 47

Citation : AIR 1992 All 18 : (1992) 1 UPLBEC 380

Hon'ble Judges : S.K. Dhaon, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Pankaj Mithal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dhanon, J.—The petitioner, a President of a Municipal Board (hereinafter referred to as the Board) approached this Court with this petition at a stage when a motion of no-confidence in him was about to be considered. On 2nd July, 1990, this Court passed an interim order, the relevant portion of which runs as follows :--

"..... Accordingly, I direct that if the motion of no confidence is carried out against the petitioner in the meeting scheduled for today, the same shall not be given effect to till 10.7-1990....."

2. On 10th July, 1990, this Court passed another interim order to the following effect :--

".....In case no confidence motion is going to be passed or has been passed, the same shall be provisional and shall be subject to further orders passed by this Court in the present writ petition....."

3. On 1st December 1990, the District Magistrate, Ghaziabad, informed the petitioner that by a communication dated 30th November, 1990, received from

the Secretary, Government of Uttar Pradesh, he (District Magistrate) had been directed that the petitioner should be relieved from the office of the President of the Board and the Vice-President may be given the charge of the office of the President. He, therefore, directed the petitioner to hand over charge to the Vice-President. This communication of the District Magistrate was challenged by the petitioner by means of Writ Petition No. 34495 of 1990.

4. In writ petition No. 34495 of 1990 the sheet anchor of the case of the petitioner was that, in view of the interim order passed by this Court on 10th July, 1990, in this petition, the State Government had no jurisdiction to divest him from the office of the President. That petition came up for hearing before us. We felt some difficulty in interpreting the said order dated 10th July, 1990. We, therefore, on 5th December, 1990, directed that the petition may be listed before the Hon"ble Judges who passed that order. On 7th December, 1990, the Hon"ble Judges passed the following order :

"This petition was placed before us in view of the order dated 5-12-1990. Having heard learned counsel for the petitioner, we feel that the order dated 10-7-1990 is very clear that the no confidence motion which has been passed will be provisional and subject to the final decision by this Court at the stage of final hearing. We never meant to stay the operation of no confidence motion since this case was to be taken up at an early date. We are informed that this set of cases is also listed again in Court No. 40 on 20-12-1990 and is likely to be heard. In view of the this no further clarification is needed. The writ petition is again sent back to the Court concerned for passing appropriate orders."

5. In view of the aforequoted order dated 7th December, 1990, we dismissed the writ petition No. 34495 of 1990 by a detailed order. We took the view that in view of the provisions as contained in Section 47 A of the U. P. Municipalities Act (hereinafter referred to as the Act) the petitioner ceased to hold the office of the President on the expiry of three days after the receipt of the communication that a motion of no-confidence in him had been carried out. It appears that our order has become final.

6. The question is : Whether any relief can be granted to the petitioner? Our answer is in the negative because, according to us the intention of the draftsman in Sections 47A and 87A is to that effect.

7. A combined reading of the orders dated 10th July, 1990 and 7th December, 1990, shows that this Court did not stay the operation of the no-confidence motion in the petitioner. However, this Court did say that the act of the passing of the no-confidence motion will be provisional and subject to the final orders of this Court.

8. Section 87A of the Act deals with the calling of the meeting, the actual holding of the meeting and the conduct of the meeting. It also deals with as to what is to follow the termination of the meeting. It is enough for the purposes of this petition to indicate that u/s 87A a judicial officer presides at the meeting of the

Board when a motion of no-confidence is being considered. Section 47A has the marginal note: "Resignation of President on vote of no-confidence". By the U. P. Municipalities (Amendment) Act, 1964 (No. 26 of 1964 (hereinafter referred to as the Amending Act) minor changes were made in Section 87A and drastic changes were made in Section 47A. We shall first consider the two provisions as before the Amending Act. For the purposes of this petition sub-sections(11) and (11-A) of Section 87A are relevant and are being extracted :--

"(11) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall on the termination of the meeting, be forwarded forthwith by the judicial officer to the President and the District Magistrate."

"(11-A) As soon as may be after three days of the receipt of the copies mentioned in subsection (11), the District Magistrate shall forward the same to the State Government, together, in the event of the motion of no-confidence having been carried, with a report whether or not the President has forwarded his resignation in accordance with the provisions of Sections 47 and 47-A."

9. Section 47 has remained unchanged. It provides that a President wishing to resign may forward his written resignation through the District Magistrate where he is the President of the Board of a city to the State Government and where he is the President of any other Board to the Prescribed Authority. It also provides that on receipt by the Board of information that the resignation has been accepted by the State Government or the Prescribed Authority, as the case may be, such a President shall be deemed to have vacated his office.

10. Section 47A as before the Amending Act may be extracted in its entirety :--

"47-A(i) if the motion of no-confidence in the President has been passed by the Board and communicated to the President in accordance with the provisions of Section 87A, the President shall :

(a) within three days of the sending of such communication, either resign his office or represent to the State Government to dissolve the Board, stating his reasons therefore; and

(b) on the expiry of three days after the date of sending of such communication, stop working as President and shall be deemed to be incapacitated from functioning as President within the meaning of Section 55.

(2) in the event of failure of the President to act in accordance with clause (a) subsection (1) within the time allowed under that sub-section, the State Government shall remove him with effect from a date to be specified in the order and any person so removed shall notwithstanding anything in Section 43-AA be not eligible for re-election to fill any casual vacancy occurring before the general election next following.

(3) if a representation has been made in accordance with sub-section (1), the

State Government may after considering the same either ask the President to resign or dissolve the Board including the President.

(4) if the State Government asks the President to resign under sub-section (3) he shall within three days of the receipt of the order resign the office of the President.

(5) in the event of failure to resign within the time allowed in sub-section (4) the President shall be removed by the State Government and shall not be eligible for re-election at the next election of the President or to fill up any casual vacancy occurring before the next general election of the Board.

(6) if the State Government dissolves the Board under sub-section (3) the consequences mentioned in Section 31-A shall follow as if there had been a dissolution u/s 30."

11. The scheme in brief is that on receipt of the communication by the President, in accordance with Section 87A, that a motion of no-confidence in him has been passed, the President shall within three days of the dispatch of the communication either resign his office or represent to the State Government to dissolve the Board. It is also provided that on the expiry of three days after the date of the sending of the communication u/s 87A the person concerned shall stop acting as President and he shall be deemed to be incapacitated from functioning as the President. It is also provided that if the President fails to either resign his office or represent to the State Government to dissolve the Board within three days of the sending of the communication u/s 87A, the State Government shall remove him with effect from a date to be specified in the order. The other penalty incurred for not taking an action under clause (a) of sub-section (1) of Section 47A within the time specified therein is that the President, if removed, shall, in spite of Section 43AA, be not eligible for re-election to fill in any vacancy occurring before the general elections next following. The scheme also is that if a representation has been made by a President in accordance with sub-section (1) the State Government after considering the same shall either ask the President to resign or dissolve the Board, including the President. The President is enjoined to resign the office of the President within three days of the receipt of the order of the State Government asking him to do so. If the President fails to resign within the time allowed, namely, within three days of the receipt of the order of the State Government, he shall be removed by the State Government and shall be disqualified for re-election at the next election of the President. He shall also be disqualified to fill up any casual vacancy occurring before the general election of the Board. It is thus evident that the Legislature in Section 47A had attached great significance to a loss of confidence in a President. It did not permit him to function as President within three days of the sending of the notice to him u/s 87A and we have also seen that in Section 87A the judicial officer is required to send the notice to the President and the District Magistrate "forthwith" that is without any loss of time. It is also evident that even during the pendency of the representation of the President, as envisaged in

clause (a) of sub-section (1) of Section 87A, he (the President) had to stop acting as such on the expiry of three days after the date of the sending of the communication u/s 87A.

12. We may emphasise that in clause (b) of sub-section (1) of Section 47A it is mandated that on the expiry of three days after the date of sending of communication u/s 87A a President shall not only stop acting as such but shall be deemed to be incapacitated from functioning as President within the meaning of Section 55, Section 55 prescribes that the Vice-President shall, in the absence of President from a meeting of the Board, preside etc. at the meeting. It also provides that he shall, during the incapacity of the President, perform any other duty and if occasion arises exercise any other power.

13. In *Sohanlal Vs. The Union of India (UOI)*, it was held (Para 7) :--

"..... So far as election to an office is concerned, a mandamus to restore, admit or elect to an office will not be granted unless the office is vacant. If the office is in fact full, proceedings must be taken by way of injunction or election petition to oust the party in possession and that a mandamus will only go on the supposition that there is nobody holding the office in question....."

14. Let us now examine Sections 47A and 87A as after the Amending Act in the back drop of the aforequoted declaration of law by the Supreme Court. No appreciable change has been introduced in Section 87A except that a proviso has been grafted to sub-section (11). According to the proviso, if the President refuses or avoids to take delivery of the copies forwarded by the judicial officer, the same shall be affixed at the outer door of the last known residence of the President and he shall be deemed to have received the same at the time such an affixation is made. Thus, it may be seen that the period of three days as specified in Section 47 A, to which we shall refer hereinafter, will commence from the time of the affixation of the copies. The Amending Act has not brought about any change in the enacting part of sub-section (1) of Section 47A. However, there have been changes in the other provisions, which are being extracted :--

"(a) within three days of the receipt of such communication either resign his office or represent to the State Government to supersede the Board stating his reasons therefore, and

(b) unless he resigns under clause (a), ceases to hold office of President on the expiry of three days after the date of receipt of such communication, and thereupon a casual vacancy shall be deemed to have occurred in the office of the President within the meaning of Section 44A.

provided that if a representation has been made in accordance with clause (a) the Board shall not elect a President until an order has been made by the State Government under sub-section (3).

(3) If a representation has been made in accordance with sub-section (1), the State Government may after considering the same either supersede the Board

for such period, not exceeding the remainder of the term of the Board, as may be specified, or reject the representation.

(6) If the State Government supersedes the Board under sub-section (3) the consequences mentioned in Section 31 shall follow as if there had been a supersession u/s 30."

Sub-sections (2), (4) and (5) have been deleted. The scheme of the amended Section 47A appears to be that within three days of the receipt of the communication the President has a choice either to resign his office or represent to the State Government to supersede the Board. If he resigns, he ceases to hold the office of the President forthwith; if he does not resign, he shall cease to hold the office of the President on the expiry of three days after the date of receipt of the communication, in spite of the fact that he has exercised his option of sending his representation within three days. The emphasis is that he cannot function as President after a period of three days from the date of receipt of the communication u/s 87-A. The making of a representation by him or pendency of the same will not arrest the running of the time limit of three days. If he does not make a representation within three days, the same may not be considered at all. The only rider is that the Board shall not elect a President so long as a representation is pending and has not been disposed of by the State Government under sub-section (3). The other consequence is that upon the resignation of the President or upon the expiry of a period of three days from the date of receipt of the communication by the President a casual vacancy shall come into existence by the operation of a fiction for the purposes of Section 44A. We may read Section 44A at this stage. It provides that if a casual vacancy occurs in the office of the President owing to death or resignation or any other cause the President shall be elected, as soon as may be thereafter but not later than three months from the date of occurrence of the vacancy in the manner provided in sub-section (1) or subsection (2) of Section 43, as the case may be. We are not concerned with Section 43 here. It will be seen that in Section 44A a casual vacancy may occur amongst other, owing to "any other cause". This cause is referable to the second part of clause (b) of sub-section (1) of Section 47A namely, that the person has ceased to hold the office of the President on the expiry of three days after the date of receipt of the communication u/s 87A. The other cause, namely, the resignation Referred to in Section 44A is to be found in the first part of clause (b). In both the situations, the election u/s 44-A has to take place within a period of three months from the date of occurrence of the vacancy. The ban of holding of the election as envisaged in the proviso to sub-section (1) of Section.47A is not because either the resignation has not become effective or the person has not ceased to be the President on the expiry of a period of three days from the date of receipt of the communication u/s 87A. The embargo is because of the pendency of the representation before the State Government upon which an order has yet to be passed. The order, which has to be passed by the State Government is also specified in sub-section (3). It may either accept the representation and supersede the Board or may reject the

representation. The State Government has no other power. It follows that the State Government cannot prevent the legal consequences which will flow from the resignation of a President or from the fact that a person has ceased to hold the office of the President after the expiry of three days from the date of receipt of the communication u/s 87A. The idea of the acceptance of the resignation, therefore, is foreign to the scheme of Section 47 A, The resignation becomes effective, the moment it is tendered by the President. It is thus evident that on account of the mandate in Section 47A a person will cease to be the President of a Board upon the passing of a motion of no-confidence in him. If he or she likes a breathing time of three days after the date of receipt of the communication may be taken.

15. The policy of the Legislature as evidenced in Section 47-A appears to be wholesome and sound. In a democratic polity, no one, who has lost the confidence of his electorate, should be allowed to hold the office to which he had been elected. Such a course will instill confidence in the democratic process. This also sounds reasonable from the stand point of the common man who is directly affected by the affairs of the local body of which he is the inhabitant. The legislative scheme as envisaged in Section 47A cannot be said to be either harsh or unreasonable even from the stand point of the President in whom no-confidence has been ex-pressed. There is no provision in the Act, either express or implied, which may debar him from seeking re-election to the office of the President. He is given a chance to reestablish his popularity and demonstrate to the public at large that the majority of the members of the local body concerned have reposed confidence in him.

16. In Sohan Lal's case (supra) their Lordships of the Supreme Court, in the passage aforequoted, approved of the common law. In Section 47A, as inserted by the amending Act, the legislature has emphasised that a person shall cease to hold the office of the President upon a motion of no-confidence in him or her being passed. It, therefore, intends to modify the common law and posits that the office of the President shall be deemed to be full the moment a person ceases to hold that office by operation of law. It is trite law that in the event of a conflict between a statutory law and the common law the former will prevail. We have, therefore, no hesitation in coming to the conclusion that there should be no interference in the exercise of jurisdiction u/s 226 of the Constitution where a person has ceased to be the President of the Board on account of the operation of the statutory provisions as contained in Section 47A.

17. In N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, it is held that although under Article 226, the High Courts have power to entertain a petition for certiorari and to quash an order passed by the Election Tribunal, but having regard to the amendment in 1956 to the Representation of the People Act by insertion therein of Section 116-A it is proper exercise of discretion under Article 226 of the Constitution that the High Court should decline to interfere with interlocutory orders since the intention of the Legislature in enacting Section

116A was that proceedings before the Tribunal should go on with expedition and without interruption and what any error in its decision should be set right in appeal under that section. It will be thus seen that the scheme as contained in Section 47A should be taken into account while exercising discretion under Article 226 in this petition.

18. It is well settled that even where the Court has the power to issue a mandamus or certiorari, it will not do so if the grant of these writs will work injustice in a broad sense. It is also well settled that no writ of mandamus can be issued to an inferior authority or tribunal not to enforce the law.

19. It has been strenuously urged that acceptance of the resignation of a President is implicit in Section 47A and, therefore, automatic cessation of the holding of the office of the President is not envisaged in that provision. We may revert to Section 87A. In subsection (11-A) the District Magistrate is required to report to the State Government whether or not the President has forwarded his resignation in accordance with Sections 47 and 47A. The emphasis, therefore, is whether the President has forwarded his resignation in accordance with Section 47. We have already noticed Section 47 and we may do so again. It is in two parts. In the first part (sub-section (1)) it is provided that a President wishing to resign may forward his resignation through the District Magistrate to either the State Government or the Prescribed Authority, as the case may be. Therefore, for the purposes of sub-section (11-A) of Section 87A the resignation has to be sent by the President through the District Magistrate either to the State Government or to the Prescribed Authority. Once this is done, the compliance of sub-section (11-A) of Section 87A is complete. The second part of Section 47 (subsection (2)) provides that the President shall be deemed to have vacated his office from the date of receipt of the information by the Board that his resignation has been accepted by the State Government or the Prescribed Authority, as the case may be. We have already emphasised that sub-section (11-A) of Section 87A attracts only first part of Section 47. The second part of Section 47 will have no application at all once the ball starts rolling in Section 47A.

20. Let us suppose that a President has resigned u/s 47A and his resignation requires acceptance. Then, the natural corollary will be that he will continue to hold the office of the President till his resignation is accepted and the acceptance is communicated to him. Suppose a President does not choose to resign and he only sends his representation under clause (b) of sub-section (1) of Section 47A. He will, as already indicated above, cease to hold the office of the President on the expiry of three days after the date of receipt of the communication u/s 87A. Such an anomalous position is clearly not intended by the Legislature. If the argument of the petitioner is accepted, any President can manipulate his continuance in office for an indefinite period by merely sending his resignation. In our opinion, the legislative intent is clear that the resignation, if given, will take immediate effect and if not given the person concerned shall cease to hold the office of the President after expiry of the period of three days from the date

of communication u/s 87A.

21. Counsel for the petitioner has referred to a number of decisions of this Court wherein motions of no-confidence in a President have been quashed and appropriate directions or orders in the nature of mandamus have been issued not to interfere with the working of such a person as President. We have examined those cases and we find that in all of them this Court had issued positive interim orders that effect shall not be given to the motion of no-confidence as against the petitioners in those cases. In the instant case no such interim order had been issued.

22. As a result of the foregoing discussion, we consider it a sound exercise of discretion under Article 226 of the Constitution not to grant any relief to the petitioner.

23. The petition is dismissed, but without any order as to costs.

24. Petition dismissed.