
(1989) 05 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 12126 of 1989

Ram Kumar Goyal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 10, 12C, 12D, 12E, 13C

Citation : (1989) 2 AWC 1243

Hon'ble Judges : S.K. Dhaon, J;H.C. Mittal, J

Bench : Division Bench

Advocate : Arun Tandon, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—The Petitioner, who is the President of the Municipal Board Fatehpur Sikri, Distt. Agra (hereinafter referred to as the Board) has approached this Court under Article 226 of the Constitution with the principal prayer that Smt. Sharda Devi alias Rama Rani and Bhagwan Das, the Respondents No. 4 and 5 respectively, should not be administered the oath of office as nominated members of the Board However, Learned Counsel appearing for the Petitioner confined this petition to Smt. Sharda Devi alias Rama Rani the Respondent No. 4 and has made a statement that no relief is being claimed against the Respondent No. 5.

2. The material averments are these. By a notification dated 12th January, 1989, the State Government in the purported exercise of powers u/s 9 of the U.P. Municipalities Act (hereinafter referred to as the Act) nominated Smt. Sharda Devi, wife of Sri Murari Lal Mittal as a member of the Board. On 2nd February, 1989, the Petitioner made a representation to the Special Secretary (Nagar Vikas Anubhag) stating therein that no lady by the name Sharda Devi wife of Sri Murari Lal Mittal was residing in Fatehpur Sikri A request was made that the nomination of Smt. Sharda Devi may be rescinded and in her place one Smt. Indra, wife of

Sri Padam Chand Agarwal may be nominated. On 2nd February, 1989, the District Magistrate, directed the Petitioner to convene a meeting of the Board for the purpose of administering oath to the nominated members. On 8th February, 1989, the Petitioner made a representation to the Chief Minister of Uttar Pradesh wherein he objected to the nomination of Respondents No. 4 and 5. On 10 February, 1989, the Minister concerned directed the Secretary of the Department concerned to call for a report from the District Magistrate and also directed the District Magistrate to stay further action in the meanwhile. On 16th February, 1989, the Secretary in the Government called for a detailed information from the District Magistrate in regard to the complaint that Smt. Sharda Devi was not residing within the limits of the Board and that her real name was Rama Devi. The operation of the notification dated 12th January, 1989, nominating the Respondents No. 4 and 5 was also stayed. On 27th February, 1989, the Petitioner addressed another communication to the Sub-Divisional Officer, Agra, reiterating that Smt. Rama Devi was not residing within the limits of the Board. On 11th April, 1989, a telex message was sent by the Secretary in the Government of Uttar Pradesh, Nagar Vikash Anubhag, to the District Magistrate, Agra. By this message a correction was made in the notification dated 12th January, 1989, to the effect that instead of Sharda Devi wife of Sri Murari Lal Mittal, Smt. Sharda Devi alias Rama Rani wife of Sri Murari Lal Mittal may be read. A direction was also given that the swearing in ceremony of Smt Sharda Devi alias Rama Rani as a nominated member of the Board may be arranged at once. On 12th April, 1989, the Sub-Divisional Magistrate, informed the Petitioner that he (the Sub-Divisional Magistrate; would reach the office of the Board in Fatehpur Sikri on 13th April, 1989, at 3 P.M. to administer oath to the nominated members. The legality of the telex message dated 11th April, 1989 is being impugned in the present petition.

3. It is to be remembered that a copy of the telex message dated 11th April, 1989, was forwarded to Smt. Sharda Devi alias Rama Rani, resident of Fatehpur Sikri. Annexure 7(iv) and 7(v) are true copies of an extract from the electoral roll of Fatehpur Sikri Assembly constituency prepared during the years 1975 and 1980. In the first extract at SI. Mo. 90 Rama Devi, wife of or daughter of Murari Lal is mentioned. In the second extract at SI. No. 96 Rama Rani wife of or daughter of Murari Lal is mentioned. Some receipts have been filed by the Petitioner. These receipts were issued to Rama Devi wife of Murari Lal. It is not the case of the Petitioner in this Court that Sri Murari Lal had more than one wife. It is also not the case of the Petitioner that Murari Lal had a daughter whose name was Rama Devi or Ram Rani. It is thus clear that Murari Lal had a wife by the name of Rama Devi or Rama Rani. There is no material on record to suggest that Murari Lal's wife was not Sharda Devi alias Rama Rani. The State Government was clear in its mind in so far as desirous all along to nominate the wife of Murari Lal as a woman member of the Board. As already indicated Murari Lal had only one wife. In all probabilities she was known as Sharda Devi alias Rama Rani. In any view of the matter, Rama Rani wife of Murari Lal was one of

the electors to the Legislative Assembly to the Fatehpur Sikri constituency. Therefore, there was material before the State Government to enable it to come to the conclusion that Sharda Devi alias Rama Rani wife of Murari Lal was residing within the limits of the Board. It cannot be said that the conclusion of the State Government that Smt. Rama Devi alias Rama Rani was residing within the limits of the Board was either perverse or irrational or arbitrary. No case, therefore, exists for interference by this Court.

4. The question is, is it the requirement of the provisions of the Act that a woman, who is nominated as a member of a particular Board, should ordinarily reside within the limits of that Board? The answer is in the negative. The argument to the contrary is based upon the provisions of Sections 12-C and 13-C of the Act. The first provision, inter alia, provides that every person who is ordinarily resident in the area of the ward shall be entitled to be registered in the electoral roll for the ward. This provision deals with the classification for electorates and it prescribes the age etc. with which we are not concerned. It is subject to the provisions of Section 12-D and 12-E with which too we are not concerned. The second provision, namely, 13-C, has the heading: "Qualifications for membership of the Board". However, it provides that a person shall not be qualified to be chosen to fill a seat on a board unless in the case of a seat reserved for the Scheduled Castes he is a member of any of these castes and is an elector for any ward in the municipality; and in the case of any other seat, he is an elector for any ward in the municipality. The expression "electorate" is defined in Section 8-A(d) to mean: "in relation to a ward means a person whose name is for the time being entered in the electoral roll of that ward". The key word in Section 13-C is "chosen". This expression has not been given any statutory definition. Therefore, it has to be given a dictionary meaning keeping in view the context and setting in which it has been used. In the provision under reference it has been used as a verb. It is a verb and is past participle of choose. Choose means to select; to make a choice; to decide, to exercise the power of choice, it is synonymous to select, pick out, prefer, cull, elect, adopt. It is to be seen that in Section 13-C a person is to be chosen to fill a seat, on a Board. The scheme of the Act is that a seat is filled up by electing a member. Therefore, Sections 12-C and 13-C combined deal with qualifications of a person to be elected as a member of the Board. These provisions do not have any relevance with the nomination of a woman member as a member of a particular Board.

5. Section 9 of the Act deals with the normal composition of the Board in contrast to the provisions of Section 10 which empowers the State Government to vary the composition of the Board. Section 9 provides that the elected members shall not be less than 10 and not more than 40 as the State Government may by a notification in the official gazette specify. The first proviso to this provision empowers the State Government to nominate a woman as member of the Board concerned only if none of the members elected is a woman. Therefore, the contingency to nominate a woman as a member of the Board will arise only after the election of the members of the Board has taken place and no woman has

been elected as one of the members. These features also indicate that the expression "chosen to fill a seat on a Board" as used in Section 13-C is confined to the election of a person as member of the Board.

6. Section 9 also provides that all the members of the House of People and the State Legislative Assembly whose constituencies include the whole or part of the limits of the Municipality shall be the ex officio members of a particular Board. It will be immediately seen that a member of the Legislative Assembly or of the Lok Sabha, who is an ex officio member of the Board may not be residing at all within the limits of the Board concerned. A judicial notice has to be taken of the fact that a Lok Sabha constituency as well as a Legislative Assembly constituency have many segments. Then, Section 9 also provides that all members of the Council of States and the State Legislative Council who have their residence within the limits of the Municipality shall be the ex officio members of the Board. This provision should be read in contrast to the one which make the members of the Lok Sabha and the members of the Legislative Assembly an ex officio members of the Board. The Legislature in its wisdom has provided that only those members of the Council of State and the State Legislative Council shall be ex officio members of a particular Board who have their residence within the limits of the Municipality whereas no such condition has been prescribed in the case of members of the Lok Sabha and the Legislative Assembly. A look at the first proviso to Section 9, which deals with the nomination of a woman as a member of the Board, will immediately indicate that like the cases of the members of the House of People and the State Legislative Assembly and unlike the members of the Council of States or the State Legislative Council no restriction as regards the residence within the limits of the Municipality has been laid down. Thus, it is evident that it is not the legislative intent that a woman nominated as member of the Board should necessarily have her residence within the limits or should necessarily reside within the limits of a particular Board. Emphasis can be laid on the provisions as contained in Sub-clause (f) of Sub-section (1) of Section 40 which provides that a member of the Board may be removed on the ground that he has abandoned his ordinary place of residence in or has voluntarily or otherwise transferred his residence from the municipal area concerned, unless the member himself resigns his seat within three months of such abandonment or transfer. Evidently this provision will have no application to the case of a woman nominated as a member of the Board under the first proviso to Section 9 of the Act.

7. The Act, as amended till April 1957, contained Section 13-C in the form as it stands today. Section 9, on the other hand, merely provided that a Board shall consist of a President and the elected members who shall not be less than 15 and not more than 50 as the State Government may by notification provide by U.P. Urban Local Self Amendment Act, 1976 (U.P. Act No. 41 of 1976). Section 9 of the Act was substituted by Section 20. It provided that the Board shall consist of (a) the President (b) the 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; (c) the ex officio members comprising all members of the House of People and the State Legislative Assembly whose constituencies include the whole or part of the limits of the Municipality. The first proviso provided that if none of the members elected under Clause (b), is, woman, the State Government may by a like notification nominate one woman as a member of the Board and thereupon, the normal composition of the Board shall stand varied to that extent. It will thus be seen that both with regard to the ex officio members and the nominated woman member no qualification as regards the residence in a particular municipality was laid down. Then, there was a further amendment which was inserted by U.P. Act No. 9 of 1977. By this amendment it was provided that all members of the Council of States and State Legislative Council, who have their residence within the limits of the Municipality will be the ex officio members. It is to be recapitulated that no corresponding change was ever made in Section 13-C The Legislative history of Section 9, therefore, also indicates that the legislature has drawn a distinction with regard to the qualification of residence within the limits of a particular Board in the case of ex officio members. Those who are members of the House of People and the Legislative Assembly need not have their residence within the limits of the Board, while those who are members Council of States or the State Legislative Council should have their residence within the limits of the Board. Again in the case of woman nominated as member of the Board no such restriction with regard to residence was laid down.

8. In view of the foregoing discussion the conclusion is inevitable that it is not the requirement of law that a woman nominated as a member of a Board should either have a residence within the limits of that Board and/or should be an ordinary resident of an area which falls within the limits of the Board.

9. This petition has no substance. It is dismissed summarily.