

(1988) 02 AHC CK 0022
In the Allahabad High Court
Case No : Civil Misc. Writ No. 18359 of 1986

R.P. Dhyani

APPELLANT

Vs

The President Cantonment Board and Others

RESPONDENT

Date of Decision : 25-02-1988

Acts Referred:

Cantonments Act, 1924 — Section 21, 21(2), 21(3), 254(1), 38
Constitution of India, 1950 — Article 226

Citation : (1988) 2 AWC 815

Hon'ble Judges : Palok Basu, J;A.N. Varma, J

Bench : Division Bench

Advocate : K.N. Tripathi, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—The Petitioner who was elected as the Vice President of the Cantonment Board, Lansdowne, Pauri, is aggrieved by a resolution dated September 22, 1986, passed by the members of the Cantonment Board under Clause (3) of Section 21 of the Cantonments Act, 1924, removing him from the office of Vice President. The resolution is challenged on the ground that it has not been passed in accordance with the regulations framed under the aforesaid Act in that behalf.

2. In order to appreciate the contention, it will be necessary to have a brief look at the relevant statutory provisions. Section 21 of the aforesaid Act provides that the term of office of a Vice President shall be five years. Sub-section (3) of Section 21 lays down:

(3) A Vice President may be removed from his office, at a special meeting convened for the purpose on a requisition for the same by not less than one-half of the elected members of the Board holding office, by a resolution passed by a majority of not less than two-thirds of the total number of elected members then holding office and attending and no member other than an elected member, shall

have the right to vote on the resolution.

3. u/s 41(1) a Board is empowered to make regulations consistent with the Act and with the rules made thereunder to provide for all or any of the matters mentioned therein which include, inter alia;

(a) the time and place of its meetings;

(b) the manner in which notice of the meeting shall be given;

(c) the conduct of proceedings at meetings and the adjournment of meetings.

4. In the exercise of the powers u/s 44(II), the Cantonment Board has framed regulations laying down the manner in which notice of the meetings shall be given. Two kinds of meetings are provided for in these regulations--ordinary and special. For the removal of Vice President u/s 21(2) a special meeting is required. Regulation 7 lays down the procedure for calling and convening of special meetings of the Board. It provides that the notice and agenda for a special meeting shall be sent to every member not less than 24 hours before the date and hour fixed for the meeting. Since Regulation 7 was the subject of considerable debate, the same may be extracted here:

(7) Subject to the proviso of Section 38 of the Cantonment Act, 1924, which requires that in certain cases not less than 7 days previous notice shall be given, and the notice and agenda shall be sent to every member not less than--

A - 3 days before the date fixed for an ordinary meeting,

B - 24 hours before the date and hour fixed for a special meeting.

5. The question is whether the Petitioner was given the notice and Agenda of the meeting requisitioned by three elected members for considering the resolution for removing him from office in accordance with Clause (b) of Regulation 7.

6. It is not disputed that the President had fixed a special meeting on the request of 3 elected members for considering the matter of removal of the Petitioner at 12.00 hours on September 22, 1986. A copy of the notice which is dated September 21, 1986 circulated to the members is annexure 2 to the petition. The case of the Petitioner is that this notice was not personally served on the Petitioner but was handed over to Rajesh Dhyani, his minor son, at 5.00 p.m. on September 21, 1986, who handed over the same to the Petitioner only at 8.00 p.m. on that date when the Petitioner returned home. The contention, therefore, was that he was not given the mandatory 24 hours notice of the date and hour fixed for the meeting in question.

7. The case of the Respondent Board, on the other hand, is that three out of the four elected members, namely, Sarvsri M.S. Rawat, N.S. Bisht and M.P. Khandelwal had given a signed requisition dated September 21, 1986 for a vote of no-confidence against the Petitioner on the basis of which the meeting was requisitioned for September 22, 1986 at 12.00 hours. Notices of this meeting

along with a copy of the Agenda were sent to all the members of the Board including the Petitioner before 11.00 a.m. on September 21, 1986. The notice along with the Agenda meant for the Petitioner was served on his son who received the same and signed the despatch register before 11.00 a.m. on September 21, 1986. Thus the requirements of Regulation 7 had been fully complied with. Indeed the Petitioner not only attended the meeting at which the resolution of no-confidence was passed against him on September 22, 1986 without raising any objection as to the adequacy or legality of the service of notice on him, but after the resolution was passed against him, he himself proposed the name of Sri M.P. Khandelwal for the Vice Presidentship of the Board.

8. On the pleadings of the parties the first question which falls for determination is whether the notice in question was delivered to the Petitioner's son Rajesh Dhyani before 11.00 a.m. as asserted by the Respondents or at 5.00 p.m. as averred by the Petitioner. In order to resolve this controversy the learned Counsel for the Cantonment Board produced before us the despatch register maintained by it. The entries made on September 21, 1986 indicate that the notice was served on September 21, 1986 on N.S. Bisht at 10.30 a.m. on M.P. Khandelwal at 10.35 a.m. and on M.S. Rawat at 10.45 a.m. In the counter affidavit of the Executive Officer of the Cantonment Board filed on behalf of the Respondents it is asserted that the notice along with the Agenda and a copy of requisition dated September 21, 1986 signed by the three elected members of the Board meant for the Petitioner was received by his son Rajesh Dhyani before 11.00 a.m. on September 21, 1986. We find no reason to disbelieve this assertion as the same finds support from the despatch register which indicates that the notices on the other three members, namely, N.S. Bisht, M.P. Khandelwal and M.S. Rawat were all served between 10.30 a.m. and 10.45 a.m. These members have mentioned the hour at which they received the notices below their signatures. In the ordinary course, therefore, it is quite probable that the notice must have been tendered at the Petitioner's residence at about the same time, i.e., before 11.00 a.m. It is true that the Petitioner's son who received the notice did not note below his signature the¹ exact time at which he received the notice. However, the balance of probability is in favour of the Respondent's assertion that notices were delivered to all the four members before 11.00 a.m. The Petitioner himself alleges that Rajesh Dhyani was not at that time an adult. It is hence possible that he omitted to note down the hour at which he received the notice. On a totality of the facts and ^circumstances established on the record we have no hesitation in accepting the version of the Executive Officer of the Cantonment Board that the notices had been duly delivered at the Petitioner's residence and was received by his son before 11.00 a.m. on September 21, 1986.

9. Sri K.N. Tripathi, learned Counsel for the Petitioner, submitted that service of notice on the minor son of the Petitioner was no service in the eye of law as the legal requirement u/s 254(1)(b) of the Cantonments Act, 1924 is that if the person on whom the notice is required to be served, cannot be found, it can be

served by the alternative mode of tendering it to some adult male member or servant of that person's family. It was urged that Rajesh Dhyani being a minor there was a clear breach of Clause (b) of Section 254(1).

10. We are unable to agree. In the first place, the Petitioner has simply alleged that Rajesh Dhyani is a minor without bothering to give his precise age. If the Petitioner was relying on Clause (b) of Section 254(1), he should have in all fairness stated the precise age of Rajesh Dhyani. Secondly, Clause (b) of Section 254(1) speaks of "adult male member". "Adult" is not a term necessarily synonymous with "major". Adult means grown up or mature person. There is nothing to indicate that Rajesh Dhyani is not a mature or grown up young man. Third and more importantly, it is significant that the Petitioner admittedly did receive the notice and attended the meeting on 21st without raising any objection whatever to the adequacy of the notice or regularity of the meeting. Not only this, after the resolution of no confidence was passed against him at a meeting he went on to propose the name of Sri M.P. Khandelwal for the Vice-Presidentship which name, however, could not go through because the proposal was not seconded. The significant omission of the Petitioner to raise any objection at the meeting itself as to the validity of the notice, in our opinion, clearly lends support to the assertion of the Respondent Board that the notice had been duly served on the Petitioner as required by Regulation 7.

11. In the case of *Sardar Gyan Singh Vs. District Magistrate and Others*, , a Full Bench of this Court considered a somewhat identical situation and held vide paragraphs 15 and 16 of the judgment that in a case where the Petitioner is found to have acquired knowledge of the meeting but he wilfully abstains from participating in that meeting, this Court would be perfectly justified in declining to exercise its discretionary powers under Article 226 of the Constitution. It was observed that the conduct of a Petitioner is a relevant consideration in exercising the discretionary powers conferred under Article 226 of the Constitution. The dictum laid down by their Lordships of the Full Bench applies with equal if not greater, validity to the case in hand. Here the Petitioner not only participated in the meeting without any objection whatever but also went on in acceptance of the resolution of no-confidence passed against him to propose the name of another member for the Vice-Presidentship of the Board. This is an added ground for our declining to interfere with the impugned resolution.

12. Lastly, learned Counsel for the Petitioner made a feeble attempt to submit that the date on which the notice was despatched had to be excluded in computing the time laid down under Regulation 9 which requires 24 hours notice before the date and hour fixed for the meeting. Learned Counsel stressed that the requirement is of 24 hours notice before the date and hour fixed for the special meeting and consequently 24 hours must elapse before both the date as well as the hour fixed for the meeting.

13. The submission is devoid of any merit. The term "date" appearing in Clause (7) has to be read in association with the words "and hour". What, therefore,

seems to have been aimed at is that the person who is required to be served, must be given 24 hours time before the time fixed for the meeting. If clear 24 hours time is given to the person prior to the hour fixed for the meeting, in our opinion, the requirement both as regards the date and hour shall be deemed fulfilled.

14. In the premises, the petition fails and is dismissed.