

(1953) 04 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 423 of 1952

Shiv Dayal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-04-1953

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 10
Uttar Pradesh Municipalities Act, 1916 — Section 46, 46(1), 56, 87(14), 87A

Citation : AIR 1953 All 664 : (1953) 23 AWR 420

Hon'ble Judges : Mootham, J;Gurtu, J

Bench : Division Bench

Advocate : Shanker Sahai Verma, for the Appellant;

Final Decision : Dismissed

Judgement

Mootham, J.—This is a petition under Article 226 of the Constitution.

2. On 2-6-1951 the petitioner, who was a member of the Municipal Board of Lalitpur, was elected chairman of the Board in the casual vacancy caused by the removal of the former chairman, Sri B. N. Kiledar. On 14-7-1951, the election of the petitioner was notified in the official Gazette. On 5-6-1952, written notice of an intention to make a motion of non-confidence in the petitioner as chairman of the Board was presented to Sri C. M. L. Bhatnagar who on that date was officiating as District Magistrate and Collector, and on 8th July the non-confidence resolution was passed by the Board. By a notification published in the Official Gazette on 6-9-1952, the petitioner was removed from office. The petitioner now comes to this Court and seeks relief on the ground that his removal from office was in contravention of the provisions of the U. P. Municipalities Act, 1916, as amended by the U. P. Municipalities (Supplementary and Validation Act, 1951) hereinafter referred to as "the Act"--and is consequently of no legal effect.

3. The argument on his behalf is a twofold one. It is said, first that the notice of intention to make a motion of non-confidence was not delivered to the "District

Magistrate" within the meaning of Section 87A (2) of the Act and, secondly, that a period of twelve months did not elapse between the receipt of the motion of non-confidence and the petitioner's assumption of office as chairman as is required by Section 87A (14) of the Act.

4. Before proceeding to consider these two arguments I think it necessary to observe that the petition and affidavits which have been filed in this case on behalf of the petitioner have not been prepared in accordance with the rules to be found in Chap. 22 of the Rules of this Court. It is desirable to repeat again that affidavits must be restricted to matters of fact, and that they must not be used as vehicles for the expression of matters of argument or opinion.

5. In the early part of May, 1952, Sri Ahmad Hasan was the District Magistrate of Jhansi, and Sri C. M. L. Bhatnagar was the Additional District Magistrate. Sri Ahmad Hasan was then transferred, and on the afternoon of 26th May he, pursuant to the orders of Government handed over charge of the office of District Magistrate and Collector to Sri C. M. L. Bhatnagar, who officiated as District Magistrate and Collector until 18th June, when he in his turn made over charge of these offices to Sri S. R. D. Saxena.

6. The petitioner contends that Sri C. M. L. Bhatnagar was not a "District Magistrate" within the meaning of Section 87A(2) of the Act. His argument, as I understand it, is that the expression "District Magistrate" cannot include an officer who is designated as an officiating District Magistrate. I do not think this argument can be sustained. The word "officiating" is frequently used in more than one sense. "To officiate" means to act, or to discharge an office, but it is sometimes used with the meaning of to act "for", or to discharge an office "on behalf of, some other person: as, for example, in the expression Officiating Chief Justice. That, however, it is I think clear, is not the meaning which can be attributed to the appointment of Sri C. M. L. Bhatnagar; for this officer was not, between 27th May and 19th June, acting for or on behalf of the District Magistrate; the District Magistrate had been transferred, and both in fact and in law Sri C. M. L. Bhatnagar was for this period the District Magistrate. The provisions of Sub-section (2) of Section 87A of the Act were therefore, in my opinion, complied with.

7. It was argued that Sri C. M. L. Bhatnagar was an officer who had temporarily succeeded to a vacancy in the office of District Magistrate within the meaning of Section 11, Criminal P. C. Upon the facts of the case I do not think that this is so: but I should hesitate long before holding that an officer who succeeds temporarily to the chief executive administration of a district, and who is able to exercise all the powers and perform all the duties conferred and imposed by the Code of Criminal Procedure on a District Magistrate, is not a District Magistrate for the purposes of Section 87A of the Act.

8. The second argument advanced on behalf of the petitioner is that although he was elected chairman on 2-6-1951, and although he, in fact, assumed office as

such on 3rd June, he did not in the eye of the law become the chairman until the following 14th July when his election as chairman was notified in the official Gazette, and that in consequence there has been a contravention of Sub-section (14) of Section 87A which provides that

"No notice of a motion of non-confidence under this section shall be received within twelve months of the assumption of office by a Chairman."

In my judgment this argument has no foundation. The question is whether the date upon which a chairman assumes office is one of fact, or whether it is dependent upon the issue of some notification by the Government. It is conceded that there is no provision in the Act which lays down that a notification is required. The notification which was in fact issued (No. 3371/XXIII-179 (49-50), dated 14-7-1951) merely states that the Lalitpur Municipal Board has elected the petitioner to be chairman to fill the vacancy caused by the removal of Sri B. N. Kiledar. It makes no reference to the petitioner's assumption of office. Mr. S. S. Verma has drawn our attention to Sections 56 and 46(1) of the Act. The former provides that every election and nomination of a member or chairman of a board, and every vacancy in the office of member or Chairman, shall be notified in the official Gazette; and it was pursuant to that section that the notification of 14th July was issued. Section 46(1) provides that "The term of office of a chairman shall begin from the date on which he is elected or nominated or from the date upon which the vacancy occurs which he is elected or nominated or to fill if the vacancy occurs subsequent to the election or nomination."

9. I am unable to see how this section assists the petitioner, for the date to be determined is not that upon which his term commenced but upon which he assumed office. In the absence of any provision in the Act as to the manner in which this date is to be determined, I have no doubt it must be determined on the facts. In this case it is now common ground that the petitioner took over charge and acted as chairman on 3-6-1951, the day following his election and I am clearly of the opinion that it was on that date that he assumed office within the meaning of Section 87A, Sub-section (14) of the Act.

10. For these reasons this petition in my opinion must fail, and I would dismiss it with costs.

11. There remains one further matter to which reference must be made. On 18-10-1952, the State Government published in the official Gazette a notification that Sri C. M. L. Bhatnagar had been appointed an officiating Magistrate and Collector, Jhansi, from May 27 to June 18, 1952. Mr. S. N. Misra, who also appeared for the petitioner stated that this notification had been published by the Government maliciously, and for the express purpose of defeating this petition. The statement was presumably made on the instructions of the petitioner, but Mr. Misra was unable to point to any evidence whatever in support of this very serious allegation other than the fact that the notification was published in the Gazette about five weeks after the petition had been filed in this Court. In my

opinion this is an allegation which counsel should not have made.

Gurtu, J.

12. It is not necessary for me to deal at length with the questions which arise in this petition as my brother has already considered them in detail. I, however, desire to add a few remarks.

13. The principal contention is that the written notice of intention to make a motion of non-confidence was not delivered to ""the District Magistrate" when it was handed over on 5-6-1952 to Sri C. M. L. Bhatnagar. In my view, the notice was delivered to the "District Magistrate". It appears from the charge certificate which has been filed that Sri Ahmad Hasan who held the office of the District Magistrate and Collector, Jhansi transferred the same on the afternoon of 26-5-1952 to Sri C. M. L. Bhatnagar. This transfer of office was effected pursuant to a Government order of appointment and a subsequent wireless message asking that the transfer should be quickly effected. After Sri C. M. L. Bhatnagar had held the office of District Magistrate from 27th May to 18th June, 1952, a notification appeared in the official Gazette of 13-10-1952. No doubt the official notification states that Sri Bhatnagar had been appointed en officiating Magistrate and Collector, but I have no doubt in my mind that this was an appointment u/s 10, Criminal P. C. The fact that the word "officiating" was used does not take the appointment out of Section 10.

14. To my mind, the scheme of both Sections 10 and 11- Criminal P. C. is absolutely clear. So far as I can see, Section 11 only comes into play when a person succeeds to the chief administrative office of the District without being ""appointed" a District Magistrate. Occasions arise when the State Government cannot at once appoint or does not see the necessity to appoint any one for a short term in the office of the District Magistrate which falls vacant. In such a case, some Magistrate of the District generally holds charge of the current duties but without his being specially appointed u/s 10. When he does so, Section 11 empowers him to perform certain duties. When, however, a person is appointed District Magistrate, whether he be appointed for a short or a long period and whether he be called a District Magistrate or officiating District Magistrate, the appointment is, nonetheless, u/s 10. The term "officiating Magistrate" does not find a place in Section 10 or anywhere else, so far as I have been able to see, in the Criminal Procedure Code. The term has probably been introduced in Government Notifications to cover the case of Magistrates not yet confirmed in the cadre of District Magistrates, but who officiate for short periods as such so that they may become entitled to draw the pay which District Magistrates are entitled to. In my view, in this case, Sri Bhatnagar was a "District Magistrate" within the meaning of the Criminal Procedure Code and thus also within the meaning of the U.P. Municipalities Act.

15. The Municipalities Act, of course, does not define the term "District Magistrate." If the definition contained in the Criminal Procedure Code be not

accepted, then clearly the meaning which must be given to the words "District Magistrate" under the Municipalities Act is the meaning which popularly attaches to those words. In popular parlance, a District Magistrate is undoubtedly understood to mean the chief executive administrator of the district for the time being. There can be no doubt that Sri Bhatnagar occupied that capacity on the relevant date.

16. The next argument is that there was no assumption of office by the petitioner within the meaning of Clause (14) of Section 87A until the date when his election was notified in the U.P. Gazette.

17. When a person offers himself for election, he obviously does so with the intention of entering upon his duties immediately, if elected. Unless there is anything to the contrary in the statute applicable, a person so elected is entitled to enter upon his office immediately he is elected. It may be that he himself postpones entering upon his office in which case naturally it is the date on which he started to perform his duties that is the date on which he can be said to have assumed office. Quite obviously, the word "assumption" has been used in Section 87A, Clause (14) to enable the person elected to enjoy immunity for a period of twelve months from the date he started functioning as President. In this case, the evidence was clear that the petitioner entered upon the performance of his duties and assumed his office on 3rd June. The notice was served in the subsequent year on 5-6-1952 and thus more than twelve months had expired since assumption of the office.

18. In my view, there is no force in the contention of the petitioner that the requirements of Section 87A., as they stand at present in the Municipalities Act after the amendments effected by item 26 of the Schedule to the Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951, have not been fulfilled.

19. My brother has made certain observations in regard to the oral allegations made by the petitioner, through Mr. Misra, that the Notification dated 13-10-1952 and published in the official Gazette of 18-10-1952 was a mala fide Notification. There is absolutely no evidence in support of this allegation. Allegations of this nature should not lightly be made in Courts.

20. I concur in the order of my brother.