

(1955) 12 AHC CK 0002
In the Allahabad High Court
Case No : Sp. A. No. 182 of 1955

Shri Ganesh Prasad Chaturvedi

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 02-12-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 60
Uttar Pradesh Municipalities Act, 1916 — Section 296, 47A, 49, 81, 87A
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Uttar Pradesh Municipalities Act, 1916 — Section 296, 47A, 49, 81, 87A
Constitution of India, 1950 — Article 226, 60

Citation : (1956) 26 AWR 790

Hon'ble Judges : Mootham, C.J.;Agarwala, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Mootham, C.J.—This is an appeal from a judgment of Mr. Justice Mehrotra dated 26-7-1955, dismissing a petition Under Article 226 of the Constitution.

2. The Appellant was elected president of the Municipal Board of Konch in the district of Jalaun in October 1953. The Municipal Board consists of the president and twenty members. On or about 21-11-1954, notice of a proposal to make a motion of no confidence in the Appellant accompanied by a copy of the motion which it was proposed to make was sent to the District Magistrate. On the 26th November the District Magistrate issued a notice convening a meeting of the Board to be held on 29-12-1954. The Appellant thereupon filed a writ petition (No. 1106 of 1954) challenging the validity of the District Magistrate's order, but as the Court declined to make an interim order postponing the holding of the meeting the petition became infructuous.

3. At the meeting held on the 29th December a resolution of no confidence in the

Appellant was passed. Thereafter on 25-1-55, the District Maoist ate acting u/s 47-A of the U.P. Municipalities Act, 1916, required the Appellant to resign from his office, and informed him that he must cease to act as president after 28-1-1955. Thereupon on 31-1-1955, the petition out of which this appeal arises was filed and on 26-7-1955, that petition and the earlier petition No. 1406 of 1954 were dismissed.

4. In the petition cut of which this appeal arises the Appellant challenged the validity of the no confidence resolution. The reliefs which he sought were, first, the issue of a writ in the nature of mandamus directing the District Magistrate, Jalaun, Respondent No. 1, to withdraw the orders contained in his letter dated 25-1-1955; secondly, an order quashing the proceedings which took place at the meeting of the Municipal Board held on 29-12-1954, and thirdly, a within the nature of mandamus directing the District Magistrate and the State Government, Respondent No. 3, not to give effect to the declaration that the motion of no confidence against the Appellant had been passed at the meeting of the Board held on 29-12-1954. No relief was sought from the second and fourth Respondents who were respectively the Munsif, Orai, and Sri Ambika Prasad.

5. The procedure which must be followed when a motion expressing no confidence in the president is made is laid down in considerable detail in Section (sic) of the Act. Sri S.C. Khare, who appears for the Appellant, has raised three points in this appeal. His first argument is that the written notice of intention to make a motion of no confidence which Sub-section (2) of Section 87-A requires to be sent to the District Magistrate was invalid, as it was not signed by one-half the total number of the members of the Board. The total number of members of the Board, including the president, was twenty one; the notice was signed by eleven persons of whom admittedly ten were members. The eleventh signatory was the fourth Respondent, Sri Ambika Prasad, and it is contended that he was not, on the date upon which the notice was sent to the District Magistrate, that is on 21-11-1954, a member of the Board, for although he had on 27-9-1954, been declared by an election tribunal to have been duly elected he did not take the prescribed oath of allegiance to the Constitution until the ensuing 7th December. We do not think this argument is well founded. The rule in question which was made by the State Government u/s 296 of the Act on 22-9-1951, provides that--

The Chairman/President of Municipal Board shall, before taking his seat for the first time as Chairman/President, make and subscribe before the members of the Board an oath or, at his option, an affirmation and similarly the Chairman/President shall administer the oath, or at their option an affirmation to the members, in the form set out below:

and then follows the form of oath or affirmation. Learned Counsel for the Appellant concedes that there is no provision in the Act itself which requires an oath to be taken by the president or other member of a Municipal Board, and although the Act came into force in 1916 no rule requiring an oath to be taken existed, so far as we have been able to ascertain, prior to 22-9-1951. In our

opinion, a person who is elected a member of a Municipal Board becomes a member of that Board on the date upon which he is declared to have been duly elected, although he may not be entitled under the rule in question to take his seat for the first time as a member until he has taken the prescribed oath. Sri Khare has referred us to the case of *Sunil Kumar Boss v. West Bengal Government* AIR 1950 Clause 274 in which it was held that the President of the Union could not discharge any of the functions of the President until he had made and subscribed an oath or affirmation in the form prescribed in Article 60 of the Constitution. We think however that that case is distinguishable from the one we have before us as Article 60 provides that the President shall make and subscribe the oath or affirmation "before entering upon his office". There is, as we have said, no corresponding provision in the Municipalities Act, and we are of opinion therefore that the rule upon which the Appellant relies is not a bar to a person elected a member of the Municipal Board signing a notice under Sub-section (2) of Section 87-A prior to his taking his seat for the first time on the Board.

6. It is convenient at this stage to refer to a submission made by learned Counsel for the fourth Respondent that the president is not a member of the Board, and that consequently ten members would constitute half the total number of members of this particular Board. We think however that the answer to this contention is to be found in Section 49 of the Act which expressly provides that--

When the President of a Board is not otherwise a member of the Board he shall ex officio be a member of the Board so long as he continues to be President.

7. Sri Khare's second submission is with regard to an undoubted departure from the procedure laid down in Sub-section (7) of Section 87-A which provides that--

As soon as the meeting convened under this section has commenced, the judicial Officer shall read to the Board the motion for the consideration of which it has been convened and declare to be open for discussion.

8. The District Magistrate had arranged with the District Judge for the meeting in question to be presided over by the Munsif of Orai but he had omitted to hand over to the Munsif the resolution which had accompanied the notice sent to him on 21-11-1954. What happened at the meeting can perhaps best be described in the words of the Munsif in his subsequent report to the District Magistrate:

A meeting of the Municipal Board Konch was held under my presidentship on 29-12-1954 in the office of the Board for the consideration of the no confidence motion. The meeting started at 11 a.m. At first I explained to the members orally the purpose for which the meeting had been convened. In the absence of any written motion before me I invited the proposal, for the no confidence motion orally. Sri Kali Gharan Baseria then proposed that he has no confidence in the present president of the Board. This motion was seconded by Sri Janhwi Kumar Shukla. After this the motion was put up for discussion.

The discussion concluded at about 12 O'clock when the motion was put to vote.

Eleven members voted for the motion while ten including the President Sri Ganesh Prasad Chaturvedi voted against it. The motion was, therefore, carried.

9. It is said by the Respondents that the motion which was in fact proposed at the meeting by Sri Kali Charan Baseria was in exactly the same terms as that which had been sent to the District Magistrate. There is some conflict of evidence as to whether that was so, but on the whole we are prepared to accept the fourth Respondent's statement on this point as correct. The matter was not strongly contested by learned Counsel for the Appellant, the basis of whose argument was not that the motion proposed at the meeting differed from that sent to the District Magistrate but that there had been a failure to comply with the explicit provisions of Sub-section (7). That there had been such a failure is clear, but the jurisdiction we exercise Under Article 226 of the Constitution is discretionary, and in our opinion that discretion should not be exercised in favour of the Appellant in a case such as the present if we are satisfied, as in fact we are, that the failure of the Munsif to comply with the provisions of Sub-section (7) has not result in any prejudice at all to the Appellant.

10. The last submission on behalf of the Appellant is that the resolution of no confidence was not passed by the Board by the requisite majority. The relevant provision is Sub-section (12) which provides that--

The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the Board.

11. Sri Khare's argument is that where, as in the present case, the total number of the members of the Board is twenty one, half of the total number must be taken to be eleven (as half a member is an impossibility), and that as the majority must be more than half the no confidence resolution could not be passed unless the minimum number of members voting for it was twelve. The Sub-section is somewhat ambiguously worded, for if it was the intention of the legislature that a bare majority of the total number of the members of the Board would suffice for the purpose of passing a no confidence resolution it was unnecessary to add after the word "majority" the words "of more than half".

12. The argument is at first sight attractive, but we do not think that it is right. The word "majority" may refer either to the total number of votes cast in favour of the resolution or it may refer to the difference in number between the votes cast for and those cast against the resolution. If the Sub-section had provided that motion of no confidence shall be deemed to have been carried only when it has been passed by a majority of, say, five votes then it would be clear that the word "majority" is used in the latter sense and that the resolution would not be passed unless the votes in favour of it exceeded those against it by at least five. If the word "majority" has however been used in that sense in the present Sub-section then it would follow that a no confidence resolution can, in a case where the total number of member of the Board is twenty one, be passed only when the number of members voting for it is greater by eleven than the number voting

against it. This in our opinion cannot have been the intention of the Legislature. A parallel is, we think, to be found in the Indian Companies Act, Sub-section (1) of Section 81 of which provides that a resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as and present at the meeting. It has, so far as we are aware, never been doubted that an extraordinary resolution is passed by the requisite majority if three-fourths of the members present vote for it; it is not necessary that the difference in number between the members voting for the resolution and those voting against it should be not less than three-fourths of the total number of persons present. In our judgment the words "'of more than half" in this Sub-section are redundant.

13. In the result, therefore, we are of opinion that this appeal fails and it is dismissed with costs which we fix at one hundred rupees payable in equal parts to the third and fourth Respondents.