
(1976) 01 AHC CK 0018
In the Allahabad High Court
Case No : Special Appeal No. 408 of 1975

Shyam Murari Lal Saxena	Vs	APPELLANT
The District Magistrate and Others		RESPONDENT

Date of Decision : 30-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1977 All 198

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : Mohd. Asif Ansari and R.K. Jain, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The members of the Municipal Board, Kaimganj, passed a motion of no-confidence against the President. The term of the senior Vice-President, namely. Sri R. K. Agar-wal, was to expire on 11th July, 1975. He, however, submitted his resignation to the District Magistrate on 7th July, 1975. On 8th July. 1:975, Shyam Murari Lal Saxena, the appellant, made a representation to the District Magistrate that he was a duly elected junior Vice-President and so was entitled to function as the President of the Municipal Board. The District Magistrate, however, passed an order on 8th July 1&75 directing that the Sub-Divisional Magistrate can function and perform the duties of the President of the Municipal Board, Kaimganj, tinder Section 54-A of the U. P. Municipalities Act. It appears that the representation filed by the appellant reached the District Magistrate subsequently whereupon he asked the appellant to appear before him on 14th July 1975 to substantiate his case that he was the duly elected junior Vice-President. The appellant however, did not appear before the District Magistrate. He gave notice of a writ petition to the Standing Counsel on 14th July 1975 and instituted the same in this Court on 15th July 1975.

2. On 15th July 1975 the District Magistrate passed an order rejecting the

appellant's representation holding that the appellant was not validly elected junior Vice-president,

3. The appellant challenged the order appointing the Sub-Divisional Magistrate on the ground that the appellant being the duly elected Junior Vice-President was entitled to function as President, the District Magistrate had no jurisdiction to place the Sub-Divisional Magistrate on the Board. In the alternative it was submitted that the resignation of the Senior Vice-president could be accepted by the Board alone u/s 54 (3) of the U. P. Municipalities Act. Since the same had not been accepted by the Board, the Senior Vice-president continued to be in office and for this reason also the Sub-Divisional Magistrate could not be directed to function as the President.

4. At the hearing of the writ petition an objection was taken on behalf of the Standing Counsel with regard to the right of the appellant to be heard in support of the writ petition on the ground that he had violated the interim order passed in the writ petition. The interim order was that in the meantime the petitioner may continue to function as Junior Vice-President, but he will so function under the supervision of the Sub-Divisional Officer, who has been appointed by the District Magistrate to discharge the functions of the President so that he shall not "be entitled to take any action without the prior approval of the Sub-Divisional Officer.

It was alleged that the appellant has suspended some members of the staff without prior approval of the Sub-Divisional Officer and so he had violated the Interim order. The learned single Judge went into this controversy and ultimately held that the appellant had passed the order of suspension without taking the approval of the Sub-Divisional Magistrate. It was further held that since the petitioner had disobeyed the direction of this Court as embodied in the interim order dated 9-10-1975, he was not entitled to any relief. On this ground the writ petition was dismissed.

5. Learned counsel for the appellant has challenged the correctness of the view that if the petitioner disobeys an interim order, he is not entitled to be heard on merits for grant of relief, if he makes out a case for it. The law on the subject has been succinctly stated by Lord Denning in *Hadkinson v. Hadkinson* (1952 (2) All BR 567 (574)). He observed:--

"It is a strong thing for a court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance."

Similarly in *Halsbury's laws of England*. Simond's Edition, page 42, paragraph 73, Volume 8 it has been stated that "even the plaintiff in contempt has been allowed to prosecute his action when the defendant had not applied to stay the proceedings" In the present case there was no application to stay the proceedings. At the most the proceedings could have been stayed but the writ

petition could not be dismissed on the ground that the petitioner had violated the interim order of the Court, specially in the absence of a finding that by the alleged contempt the course of justice had been impeded and there was no other effective way of enforcing his obedience. We are unable to share the view taken by the learned single Judge and we call upon the parties to state the case on the merits.

6. On the merits the principal questions are:

(2) Whether the appellant was elected Junior Vice-President on 14th June 1975 and (2) whether the senior Vice-President had in law ceased to be so by reason of his resignation. The second question is really not of much importance. Assuming for the sake of argument that the Senior Vice-President's resignation could not be accepted or acted upon by the District Magistrate with the result that he continued to function as such on 8th July 1976 when the District Magistrate passed an order appointing the Sub-Divisional Magistrate to function as the President yet this will not be a fit case for interference because admittedly the Senior Vice-President's term expired on 11th July 1975. If it is held that the appellant was not elected as Junior Vice-president, the position will be that on 11th July 1975 there was no Vice-President in office. The District Magistrate could validly pass an order appointing the Sub-Divisional Magistrate to function as the President on or after the 11th July 1975. This position continues till now because we have not been informed that any Senior or Junior Vice-president has been elected afresh. It is, therefore, futile to issue a writ to quash the order of the District Magistrate because in any case we cannot direct that the petitioner will function as the President of the Board. In these circumstances we are not inclined to go into the merits of the question whether the Senior Vice-President did not in law cease to function as such on 8th July 1975.

7. The petitioner's case is that he was elected as Junior Vice-President in the meeting of the Board held on 14th June 1975. In the counter-affidavit it has been stated that the District Magistrate went through the original record of the Municipal Board and was satisfied that the appellant was not elected at that meeting. The counter-affidavit also refers to an application made by five out of seven members of the Board, who were present at the meeting held on 14th June 1975, stating that at that meeting the petitioner was not elected as the Junior Vice-president because this item of the agenda was postponed. On the materials before the District Magistrate it could not be said that he committed any manifest error of law in coming to the conclusion that the appellant was not duly elected.

8. Another difficulty in the way of the appellant is that even though the District Magistrate granted him an opportunity to appear and satisfy him that he had been elected, he chose not to appear before him. Since he did not avail of the opportunity afforded by the District Magistrate, the petitioner is not entitled to the discretionary relief under Article 226 of the Constitution on the vague and controversial allegations made for the first time in the rejoinder affidavit. In the

rejoinder affidavit copies of certain minutes of the meeting held on 14th June 1975 have been filed. They are at best doubtful in view of the application made by five out of the seven members to the District Magistrate. On the materials on the record of the writ petition the most that can be said is that the question whether the petitioner was duly elected on 14th June 1975 is highly controversial. The question is one of fact. This Court does not normally go into disputed questions of fact in a writ petition. Under the circumstances it cannot be held that the District Magistrate committed any manifest error of law in taking the view that the appellant was not a duly elected Junior Vice-President.

9. It was submitted that the reasons given by the District Magistrate in his order dated 15th July 1975 are not correct. Be that as it may, since his ultimate conclusion could not be said to be manifestly erroneous, no case has been made out for the grant of relief.

10. In the result the appeal fails and is dismissed with costs.