
(1997) 09 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 31630 of 1997

Smt. Ishrat Bano

APPELLANT

Vs

Commissioner, Azamgarh and others

RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 10AA, 36(1), 48, 48(3), 54A

Citation : (1998) 1 AWC 704 : (1998) RD 201

Hon'ble Judges : M. Katju, J;J.C. Misra, J

Bench : Division Bench

Advocate : A.R. Dubey, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju and J.C. Misra, JJ.—Heard learned counsel for the parties.

2. This writ petition has been filed against the impugned order dated 12.9.1997. Annexure-1 to the writ petition by which an administrator has been appointed in place of the petitioner who was elected Chairman of Nagar Panchayat, Kopaganj, district Mau. By an amendment application, the order dated 15.9.1997 Annexure-1 to the affidavit in support of the said application has also been challenged. This order dated 15.9.1997 is only consequential to the order dated 12.9.1997.

3. The petitioner was elected as Chairman of the Nagar Panchayat, Kopaganj, district Mau, and the short question in this case is whether in the circumstances of the case, an Administrator could have been legally appointed. The order dated 12.9.97 purports to have been passed u/s 36 (1) of U. P. Municipalities Act, 1916. In our opinion, the said provision does not have any relevance because that only deals with the extraordinary powers of the District Magistrate in an emergency for providing for execution of any work or doing any act which the Municipal Board is empowered to execute or do for the safety, protection and convenience of the public. We cannot see how this provision entitles an

Administrator to be appointed on the facts of this case.

4. It is noteworthy that the removal of an elected President can be done u/s 48 of the Act by the State Government whereas the impugned order has been passed by the Commissioner. Earlier Section 48 (3) of the Act also provided for placing the President under suspension, but this provision has been deleted in 1994 by the Legislature. There is, thus, no power now to suspend an elected President.

5. Sri Mool Behari Saxena, learned counsel for the 11 members of the said Nagar Panchayat on whose behalf the complaint was made against the petitioner has contended that the impugned order was passed u/s 54A of the Act. Section 54A (1) reads as follows :

"(1) Where a person on being elected President fails or refuses to function or is otherwise not able to function, or a casual vacancy occurs in the office of the President within the meaning of Section 44A, and no Vice-President has been elected in accordance with this Act, or there is no Vice-President otherwise able to function, the powers and functions of the President shall, until a President or Vice-President is able to function, be exercised and performed by the District Magistrate or by a Gazetted Officer not below the rank of a Deputy Collector appointed by the District Magistrate in this behalf, and such officer shall be called the Administrator, and accordingly, the provisions of Section 10AA shall mutatis mutandis apply."

6. Sri Saxena submits that in this case, the President failed or refused to function, and hence the order can be sustained u/s 54A (1). We are not in agreement with this submission. A perusal of Section 54A (1) of the Act shows that this provision is meant only for an interim situation where the President is for some reason unable to function because of some temporary disability, e.g., illness, or he has gone temporarily abroad, or some such reason. This is evident from the words in Section 54A "shall, until a President or Vice-President is able to function....." This indicates that an Administrator can be appointed only for an interim period when the President is unable to function due to some temporary disability, but when the President is again able to function, the Administrator has to stop functioning, and then the President can again function. Obviously, Section 54A was not meant for contingencies for which Section 48 was meant. In our opinion, the fallacy in Sri Saxena's argument lies in the fact that he has only read the following words at the beginning of Section 54A (1) "where a person on being elected President fails or refuses to function or is otherwise not able to function....." but he has not seen the later words "..... shall, until a President or Vice-president is able to function." In our opinion, a provision has to be read as a whole, otherwise we will not understand its true purport and intention.

7. Hence, in our opinion. Section 54A deals with a situation where some temporary disability has arisen in the President because of illness or for some other reason. This is not a case where some temporary disability has arisen in

the President, rather it is a case where there are allegations against the President, and hence in our opinion only Section 48 of the Act could be invoked.

8. A perusal of the impugned order dated 12.9.97 shows that it contains serious allegations against the petitioner regarding alleged financial irregularities, failing to perform duties, refusing to obey orders, and allowing her father-in-law to function in her place. There is no allegation in the impugned order that there is a temporary disability in the petitioner. Hence, in our opinion the said order cannot be justified u/s 54A.

9. Sri Mool Behari Saxena submitted that the power of suspension contained earlier in Section 48 (3) has been taken away and now there is no other provision except Section 54A for suspending the President. He submits that there may be cases where there are serious allegations of irregularities against the President which may require his or her immediate suspension, and hence we should read this power of suspension in Section 54A. In our opinion, when the power of suspension which earlier existed in Section 48 (3) has been taken away by the Legislature in its wisdom, we cannot by a judicial order restore such power, Judicial legislation cannot transgress certain limits. It is for the Legislature to restore the power of suspension if it thinks fit and not for this Court. When the Legislature has taken away this power, we cannot restore it by the back door by a judicial order.

10. We are informed that proceedings u/s 48 are going on against the petitioner and we direct the State Government to complete the said proceedings within two months of production of certified copy of this order in accordance with law after affording opportunity of hearing to the petitioner. In the circumstances, the impugned order dated 12.9.97 and consequential order dated 15.9.97 are declared illegal and are hereby quashed.

11. The writ petition is allowed. No order as to costs.