
(1992) 12 AHC CK 0049

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 12487 and 13225 of 1992

Suresh Chandra Agarwal

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 23-12-1992

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 14A, 34A, 34A(2), 34A(6), 54A
Uttar Pradesh Town Areas Act, 1914 — Section 3A(6), 4, 8B(4)

Citation : (1993) 2 AWC 909

Hon'ble Judges : B. Dikshit, J;A.P. Misra, J

Bench : Division Bench

Advocate : M.K. Gupta, for the Appellant; Bhagwati Prasad, for the Respondent

Final Decision : Allowed

Judgement

B. Dikshit, J.—These two writ petitions are in respect of dispute to the office of Vice-Chairman of Town Area jhashi nsi, District Allahabad (in short "Vice-Chairman"). As the subject matter of dispute is office of the Vice-Chairman and common questions of facts and law arise, the two petitions were heard together and are being disposed of by a common order. The Writ Petition No. 12487/1992 is the leading case.

Writ Petition No. 12487/1992.

2. The essential facts are that after general election in November 1988 a new Town Area Committee of Town Area jhashi (in short Town Area Committee) was constituted. The Town Area Committee constituted had Petitioner Ramesh Chandra Agarwal as Chairman, 9 elected members and three nominated members, thus the initial strength of Town Area Committee was thirteen. Subsequently, one of the members died and Ramesh Chandra Agarwal resigned from the office of Chairman on 10-7-1991 after bringing of a motion of no confidence. This reduced the strength of Town Area Committee to eleven members. The resignation of Chairman Ramesh Chandra Agarwal also gave rise

to vacancy in the office of Chairman, which vacancy still exists as no election to fill up the vacancy has been held. At the time of resignation of Chairman Ramesh Chandra Agarwal Petitioner was holding the office of Vice-Chairman and therefore he had to discharge duties of Chairman, which he started in accordance with Section 8-B(4) of U.P. Town Area Act, 1914 (in short "Town Area Act"). It is admitted case of the parties that Petitioner was entitled to discharge duties of Chairman till expiry of his term as Vice-Chairman. The term of Petitioner in respect of office of Vice-Chairman expired on 13-4-1992 as he was elected Vice-Chairman on 14-9-1991. Before expiry of term of Petitioner as Vice-Chairman of the Town Area, the District Magistrate, Allahabad on 28-3-1992 passed an order purporting to be in exercise of power u/s 54-A of U.P. Municipalities Act, whereby he authorised Sub-Divisional Officer Phulpur Allahabad in accordance with Section 3-A(6) of the Town Area Act to discharge the functions of Chairman until Vice-Chairman is elected. The District Magistrate indicated in the order that period of one year of Petitioner was going to expire on 14-4-1991. The present controversy has arisen as the District Magistrate) authorised Sub-Divisional Officer Phulpur to perform functions and discharge duties of Chairman. The Sub-Divisional Officer Phulpur on 8-4-1992, being approached by Petitioner that Petitioner has been elected Vice-Chairman for a further period "of one year, expressed that he will be performing functions of Chairman in view of order of District Magistrate. As Petitioner claims that he has been elected Vice-Chairman by Town Area Committee on 28-3-1992 for a further period of one year and he is entitled to continue in office as Vice Chairman for another year with effect from 14-4-1992, while the Respondents did not accept said claim of Petitioner that filing of this petition became inevitable. To justify his election for another year the Petitioner's claim is that the Town Area Committee resolved to hold election of Vice-Chairman on 10-3-92 for next one year but on 10-3-1992 the meeting for election has to be adjourned for want of quorum and 28-3-1992 was fixed as the next date for election. According to Petitioner the election to the office of Vice-Chairman on 28-3-1992 by Town Area Committee at which Petitioner was elected for next year. The Petitioner claims that the order dated 28-3-1992 was passed by District Magistrate in anticipation that no election of Vice-Chairman will be held by 13-4-1992, but when Petitioner apprised Sub-Divisional Officer, Phulpur on 8-4-1992 about himself being elected as Vice Chairman by Town Area Committee on 28-3-1992, the Sub-Divisional Officer "expressed that as there was specific direction of the District Magistrate, therefore, he had no option but to take over charge of Chairman from Petitioner on 14-4-1992. Thus the expression of Sub-Divisional Officer to take charge from Petitioner of Chairman has given rise to this writ petition which was filed on 13-4-92.

3. The Petitioner has claimed in Writ Petition that he is elected Vice-Chairman for next year and therefore he is entitled to discharge duties of Chairman even after 13-4-1992 till Chairman is elected. The Petitioner has filed writ petition seeking relief for quashing of the order of the District Magistrate dated 28-3-1992 whereby he authorised the Sub-Divisional Officer, Phulpur, Allahabad to discharge

the functions of Chairman till Vice-Chairman is elected. The Petitioner has also prayed for issue of Writ of Mandamus to restrain the Respondents from interfering in his functions as Vice-Chairman on the basis of order of District magistrate dated 28-3-1992.

4. In this petition the Petitioner impleaded District Magistrate, Allahabad, sub-divisional b-divisional Officer Phulpur, Allahabad, and Additional District Magistrate (Rural Area) Allahabad as Respondents. No private party has been impleaded as Respondent in writ petition. The Respondents have contested the claim of the Petitioner. The case set up by Respondents is that Petitioner was elected Vice-Chairman for one year on 14-4-1991 and vacancy in the office of Chairman occurred on 10-7-1991 when he was Vice-Chairman and therefore by virtue of his office as Vice-Chairman the Petitioner started discharging functions of Chairman from the date of occurrence of vacancy. The Respondents case further is that the term of Petitioner as Vice-Chairman expired with efflux of time on 13-4-1992 with the end of his term as Vice-Chairman Respondents claim the alleged election of 28-3-1992 set up by Petitioner to the office of Vice-Chairman of Town Area Committee was invalid and therefore the Petitioner was not entitled to exercise power and discharge functions of Chairman. It is admitted case of parties that no election to the office of Chairman has been held since occurrence of vacancy on 10-7-1991. The Respondents have justified their stand that the order of District Magistrate, Allahabad dated 28-3-1992 is liable to be implemented as according to them the election of Vice-Chairman dated 28-3-1992 set up by the Petitioner is invalid and therefore the Sub-Divisional Officer Phulpur is entitled to discharge/perform the functions of the Chairman of Town Area Committee.

Writ Petition No. 13225/1992

5. This petition has been filed by a member of Town Area, namely Mohammad Hanif. seeking issue of writ of Mandamus to District Magistrate, Allahabad and Additional District Magistrate, (Rural Area) Allahabad, for holding fresh election to the office of Vice-Chairman of the Town Area Committee. The Writ Petition was filed on 16-4-1992 claiming that the term of Vice-Chairman expired on 14-4-1992 and as election process has not started as yet, the election of Vice-Chairman is to be held by Respondents in accordance with Section 54-A(2) to (9) of the U.P. Municipalities Act. Besides District Magistrate and Additional District Magistrate, Allahabad, the Petitioner did not implead anyone else as Respondent to the writ petition. During the course of hearing an application was moved by Suresh Chandra Agarwal to implead him as Respondent. The application for impleadment as party was moved by Suresh Chandra Agarwal on the ground that he has been elected Vice-Chairman on 28-3-1992 and has also taken over charge of the office on 14-4-1992, therefore, he be impleaded as Respondent and permitted to contest the Writ Petition. As the case set up by the parties in Writ Petition No. 12487 of 1992 was argued for determining same controversy, the learned Counsel for parties relied on facts set out in that petition, therefore

No. order has been passed on the application for impleadment at earlier stage and the application for Impleadment is being disposed of at this stage.

6. First, we would like to dispose of the application for impleadment as parties, moved in the two petitions. In the application moved for impleadment by Ram Lakhan Yadav and Ram Chandra Gupta in Writ Petition No. 12487/1992, the applicants have not disclosed the parentage and address to determine their identity. The applicants have stated in the application for impleadment that it was being filed in view of facts and circumstances stated in the accompanying affidavit, but as affidavit has been filed in support of the application. A counter-affidavit in reply to the averments made in the writ petition has been filed by the said applicants but even in that Counter-affidavit nothing has been stated which could justify the Impleadment of Appellants. In the absence of particulars in respect of the identity of the persons as well as in the absence of averments in the application for justifying impleadment, it is not possible to implead said applicants as Respondents to oppose the writ petition. The application for impleadment moved by Ram Lakhan Yadav and Ram Chandra Gupta, is, therefore, rejected. As the subject matter of dispute involved Interest of residents of a Town Area and Counter-affidavit and Rejoinder Affidavit were exchanged even before hearing the application for impleadment, we permitted Sri Bhagwati Prasad, Counsel for Ram Lakhan Yadav and Ram Chandra Gupta to assist the court by arguing the case on merits. The arguments advanced by him were similar to those advanced by the learned Standing Counsel, who represented the Respondents. We have considered the arguments of Counsel for the applicants on merits also. So for Writ Petition No. 13225/1992 is concerned as Sri Suresh Chandra Agrawal, who is Petitioner in Writ Petition No. 12487/1992, has claimed himself to be elected Vice-Chairman holding the charge of the office of Chairman, his application for impleadment is allowed, No notice has been issued on this writ petition but as complete facts are on record of writ petition No. 12487/1992 and according to Counsel for parties this writ petition can also be disposed of finally on facts set out therein, therefore, this petition has been heard with the other writ petition without having separate counter-affidavit and Rejoinder Affidavit.

7. On merits, the learned Counsel for Petitioner argued that Petitioner was elected Vice-Chairman of Town Area on 28-3-1992 for next one year and therefore the order dated 28-3-1992 of District Magistrate, Allahabad passed in exercise of power u/s 54-A of U.P. Municipalities Act whereby he directed holding of election of Vice-Chairman and nominating Sub-Divisional Officer, Phulpur to perform functions of Chairman of Town Area can not be given effect and it is liable to be quashed.

8. The learned Standing Counsel and Sri Bhagwati Prasad, Counsel for Ram Lakhan Yadav and Ram Chandra Gupta argued that the District Magistrate, passed order in accordance with law which has to be given effect and it did not require interference by, this Court as there is no infirmity in it. It has been argued that the alleged meetings in respect of election of Vice-Chairman were

invalid as despite specific direction of District Magistrate, information about said meetings were not sent to the District Magistrate. It has also been argued that the meeting at which Petitioner was elected is invalid as Petitioner was in the chair and conducted meeting despite the fact that he himself was candidate. The argument is that he could not preside over the meeting dated 28-3-1992 in respect of election of Vice-Chairman as he was a candidate for that office and the District Magistrate alone could have held the meeting for election of Vice-Chairman in accordance with Section 34-A(2) to (6) of U.P. Municipalities Act. The learned Counsel farther argued that the District Magistrate, Allahabad called for the papers in respect of said meeting from the Secretary of the Town Area to ensure if members were informed and meeting was also held in accordance will law but the papers were not produced before the District Magistrate, and therefore the Respondents were fully justified in proceeding to give effect to the impugned order.

9. In reply to the arguments advanced on behalf of Respondents, the Counsel for Petitioner disputed the power of District Magistrate, to ignore the election of Petitioner as Vice-Chairman held on 28-3-1992 as invalid and to give effect to impugned order despite election as Vice-Chairman.

10. The main question which requires determination in this case in view of arguments advanced is to as whether there is an implied power vested in the District Magistrate, u/s 54-A(1) of U.P. Municipalities Act to determine validity of an election of Vice-Chairman. This question for determination has arisen as the argument advanced on behalf of Respondents is that the election was invalid due to want of notice of meeting of election to the members of Town Area Committee as well as due to fact that the election was held at a meeting which was presided over by Petitioner despite the fact that he was candidate for the, office of Vice-Chairman. The Petitioner besides claiming service of notice on all the members in accordance with law raised legal objection that it was beyond the scope of power of District Magistrate to consider the validity of election while exercising power u/s 54-A(1) of U.P. Municipalities Act.

11. Section 14A of the Municipalities Act is as follows:

54-A (1) where a person on being elected Chairman fails or refuses to function or is otherwise not able to function, and a Vice-Chairman has not been elected in accordance with the Act, the powers and functions of the Chairman except presiding at a meeting of the Committee shall, until a Vice-Chairman has been elected, be exercised and performed, if the District Magistrate so directs and subject to such condition as he may specify, by the officer-in-charge of Sub-division in which the town area is situated, to whom power may have been delegated u/s 4 of the U.P. Town Area Act, 1914, and the following procedure shall be followed for decision of Vice-Chairman.

12. The object of enacting such a provision is to meet a particular eventuality arising due to vacancy in the office of Vice-Chairman at a time when none is

there to perform the functions and discharge duties of the Chairman. By enacting said provision the legislature has provided for performance of functions and discharge of duties of the Chairman by an official so that the functions of local body is not jeopardised due to want of Vice-Chairman to discharge the duties of Chairman, which are essential for a Town Area to discharge its statutory obligations. To illustrate, duties of chairman u/s 54-A(i) of U.P. Municipalities Act are some of the duties the non-performance of which can bring the functioning of a Town Area to stand still. The provision has been enacted to meet a particular contingency arising due to vacancy in the office of Vice-Chairman and it is not to provide a forum to examine if the election of Vice-Chairman is valid. It has not been enacted to confer power on the District Magistrate to determine an election dispute, which is a vested right to be specifically provided by or under a statute. There is nothing directly or indirectly by or under the U.P. Municipalities Act whereby such a power to consider the validity of election of a Vice-Chairman with the District Magistrate could be culled out. We are not inclined to accept such an implied power in the District Magistrate. u/s 54-A(1) of U.P. Municipalities Act the only requirement for exercise of power by the District Magistrate is to see that whether a Vice-Chairman is there or not. Once he comes to the conclusion that there is a Vice-Chairman in the office then it is not open for him to exercise power to direct an Officer-in-charge of sub-division to discharge functions of the Chairman of Town Area and therefore so far present case is concerned, the Sub-Divisional Officer cannot be allowed to perform functions and duties of the Chairman.

13. The principle of law and the interpretation given by us in respect of Section 54-A of U.P. Municipalities Act finds support from following observations of a Division Bench of this Court in the case of Rishi Kumar Gupta v. Nanhamal Yadav 1976 (2) ALR 210.

Section 54-A does not authorise District Magistrate to make Inquiry with regard to the fact that whether the election of Vice-President was valid or not this section will apply only to a case where as a matter of fact there is no President or Vice-President functioning as such. The question of validity of his election is outside the domain of the inquiry of the District Magistrate If the submissions of the Appellant is correct the same would result in converting Section 34-A into a machinery for challenging the election of the office of Vice-President. This is however, not the purpose of section It empowers the District Magistrate to appoint a Gazetted Officer authorising him to discharge functions of the President when there is no Vice President till selection are not held. The submission, therefore, made on behalf of the Appellant is that as the District Magistrate, has found that the election of Respondent No. 1 was illegal, therefore he could not appoint an officer to discharge functions of President, is void.

14. The said view was expressed while considering validity of an election for the reason that notice of meeting was not sent to every member of a Municipal Board at which the Vice-President was elected. The view expressed in the case of

Rishi Kumar Gupta has been followed by another Division Bench of this Court in Civil Misc. Writ Petition No. 17324 of 1991 Prem Mohan Verma and Ors. v. State of U.P. and Ors. decided on 20-12-1991.

15. Applying aforesaid principles to the facts of present case, we find that the stand of Respondents that the election of Petitioner to the office of Vice-Chairman at the meeting of Town Area Committee on 28-3-1992 is Invalid is unsustainable. The Respondents have claimed that the election of Petitioner was invalid as notice of meeting was not given to all the members of Town Area Committee as well as Petitioner presided over meeting of the Town Area Committee at which he was candidate is unsustainable stand as we are of the view that validity of election cannot be gone into by District Magistrate to justify enforcement of his order dated 28-3-1992. As the defence of Respondents on very first arguments falls, the Petitioner is entitled for relief in this petition so that sub-Divisional Officer Phulpur, Allahabad does not interfere in performing the functions and discharging duties of Chairman of the Town Area as Vice-Chairman unless Chairman is elected or his term expires with passage of time.

16. There is another relevant aspect due to which the defence of Invalidity of election set up by Respondents is liable to be rejected. The District Magistrate, passed impugned order on 28-3-1992 which was about a fortnight before the expiry of term of Petitioner as Vice-Chairman on the basis of election dated 14-4-1991 Section 54-A(1) of U.P. Municipalities Act contemplates exercise of power by a District Magistrate when there is no elected Vice-Chairman It contemplates exercise of power under a particular State of affairs at a particular time which may require passing of the order by the District Magistrate u/s 54-A(1) for performance of functions and discharge of duties of Chairman. In present case the District Magistrate pre-determined the whole matter by passing Impugned order on 28-3-1992. Under law he had to wait till 13-4-1992 to see if Town Area Committee elects a Vice-Chairman by that date or not. He could not pass an order in anticipation that no Vice-Chairman will be elected by Town Area Committee by 13-4-1992. There has been no occasion for District Magistrate in this case even to apply his mind as to whether Petitioner was elected Vice-Chairman or not. It is in counter affidavit alone that Respondents have claimed election of Petitioner as invalid had he considered necessary to apply his mind to this question then he would have heard the Petitioner also, who could have had his full say in the matter effecting his civil rights. As the District Magistrate did not apply his mind to the question as to whether Petitioner was elected as Vice-Chairman or not. The plea set-up in Counter-Affidavit by Respondents that the election of Petitioner was invalid is unsustainable for want of application of mind by District Magistrate. The question whether there is an elected Vice-Chairman or not is relevant as absence of elected Vice-Chairman is condition precedent for the exercise of power u/s 54-A(1) of the Act. As the order of District magistrate is being given effect without determining as to whether Petitioner was elected on 28-3-1992, the impugned order is liable to be quashed.

17. Another argument advanced on behalf of Respondent which requires consideration is that despite demand the District Magistrate was not supplied with the register of meeting and other proceedings asked by him, by the Secretary of the Town Area Committee concerned and therefore the election of Petitioner is to be taken as invalid. The non-production of the register of meeting by the Secretary Town Area Committee, can not affect the election of the Chairman of Town a Area Committee. It cannot entitle the District Magistrate, to consider that the election of the Charirman of Town Area Committee was invalid. The District Magistrate had ample power to compel the Secretary to produce the relevant record. It is not the case of Respondents that the election has not taken place at all. The Respondents have disputed the election in the Counter-affidavit to be invalid for want of notice to some members of the Committee as well as on the ground that the Petitioner could not have presided over the meeting. As we are of the view that the District Magistrate could not go into the question of validity of election the non-production of papers by Secretary in no way affects the outcome in the case.

18. As we are of the opinion that validity of an election can not be gone into by the District Magistrate, while exercising power u/s 54-A(1) of U.P. Municipalities Act and the Petitioners election to the office of Vice-Chairman is being challenged only on the ground that it is invalid. Even if the election of Petitioner is not according to law, as Vice-Chairman on 28-3-1982, and is invalid, no relief can be given to Mohammad Hannef Petitioner in Writ Petition No. 13225 of 1992 unless the Petitioners election is set aside by taking recourse to relief in appropriate forum for setting aside the election and therefore said writ petition of Mohd. Haneef is liable to be dismissed.

19. For aforesaid reasons we allow writ petition No. 12487 of 1992 and quash the order dated 28-3-1992 passed by District Magistrate, Allahabad (Annexure-4 to Writ petition) and dismiss the Writ Petition No. 13225 of 1992. The Petitioners will be entitled for cost in Writ Petition No. 12487/1992.

20. A copy of this order will be placed on the record Writ Petition No. 13225 of 1992.