

(1956) 01 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 61 of 1955

Telu Ram Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-01-1956

Acts Referred:

Cantonments Act, 1924 — Section 20(3), 52, 52(1)

Citation : AIR 1956 P&H 147

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : A.N. Grover and H.S. Doabia and Rajindar Sachar, for the Appellant;
S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Bishan Narain, J.—The facts which have led Telu Ram Jain to make this petition under Article 226 of the Constitution are not in dispute and are these. The petitioner was elected unopposed on 22-10-1954 as a member of the Cantonment Board, Jullundur Cantonment. This Board consists of eight official and seven elected members.

The other six members were elected during October and November 1954. A meeting of the Board was held on 31-12-1954, to elect Vice-President of the Board u/s 20(3), Cantonments Act (Act 2 of 1924).

In that meeting all the seven elected members and six out of eight official members were present. Telu Ram Jain, the petitioner before me, was elected as Vice-President. It appears that some of the members objected to the procedure adopted in this meeting.

On 23-2-1955, Lt. General K. SECTION Thimayya, G. O.C.-in-Chief, Western Command, acting u/s 52 of the said Act directed that action on the decision contained in the resolution of the Board declaring Telu Ram Jain as Vice-President should remain suspended for a period of two months and called upon the Board

to show cause against this order within 15 days.

Thereupon this Court was moved under Article 226 of the Constitution to quash this order of suspension. Notice was issued on this petition by a Division Bench of this Court but the application for stay was refused.

Thereafter on 22-4-1955, the G.O.C.-in-Chief acting u/s 52(1)(b) of the Act ordered that the resolution in question should not be carried into effect and directed the Board to hold another election for this purpose. The petitioner then applied to this Court to stay proceedings relating to fresh election and this petition was granted by this Court on 3-5-1955.

2. Shri A. N. Grover has argued on behalf of the petitioner that the election of a Vice-President u/s 20(3), Cantonments Act, and the rules made thereunder is neither a decision nor a decision of the Board. He further urged that the G.O.C.-in-Chief had no power to suspend the resolution as the election of the Vice President was not covered by the supervisory authority given to him u/s 52.

In the end the learned counsel submitted that in any case the order of suspension and the cancellation of this resolution could not be passed without giving sufficient notice to the petitioner who alone was aggrieved with the order.

3. Now, 8 52(1) (b) under which the Officer Commanding-in-Chief, the Command, has suspended and then directed that the election of the Vice-President in the meeting held on 31-12-1954, should not be carried into effect, reads --

"The Officer Commanding-in-Chief, the Command, may at any time direct the suspension, for such period as may be stated in the order, of action on any decision of a Board, other than a decision which has been referred to him under Sub-section (1) of Section 51, and thereafter cancel the suspension or after giving the Board a reasonable opportunity of showing cause why such direction should not be made, direct that the decision shall, not be carried into effect or that it shall be carried into effect with such modifications as he may specify".

It was argued that the words "on any decision of a Board" should be read as "ejusdem generis" to the words used in Section 51 of the Act. There is no substance in this argument. Section 51 gives supervisory powers to the President of the Board and to the District Magistrate to override the decisions of the Board on conditions laid down therein if they are considered to be prejudicial to the health, welfare and discipline of the troops or to the health, welfare and convenience of the public, respectively.

Section 52 gives wider powers to the Officer Commanding-in-Chief, the Command, and these powers extend to all the decisions of the Board. The powers to be exercised u/s 51 are limited to those decisions of the Board which affect health and welfare, etc., of the army or of the public. But u/s 52 there is no such restriction. It is, therefore, clear that u/s 52 the authority mentioned therein can pass orders irrespective of the nature of the decision of the Board.

4. Under this section it is open to the authority concerned to suspend the order for a specified period but the order of suspension and the final order can be made only after giving a reasonable opportunity to the Board to show cause why this power should not be exercised.

It was admitted before me that the Board was given this opportunity and it was also admitted by the learned counsel for the petitioner and the petitioner himself, who was present in Court at the time of arguments, that he was present in the meeting of the Board in which this matter was considered and steps were taken to show cause against the proposed order.

It was also conceded before me that the G. O. C.-in-Chief in passing the order of suspension and the final order observed the procedure laid down in the section and that if the order was within his jurisdiction, it could not be challenged in these proceedings. It was, however, argued that a notice was not given to the petitioner who was vitally interested in the matter.

The section does not provide for such an individual notice. The petitioner is a member of the Board" and had full knowledge and that also in time to enable him to make any representation through the Board or independently of it to the officer concerned if he considered it fit. He actually made a representation to the officer as is admitted in para 11 of the petition.

In such circumstances it cannot be held that the petitioner had any real and genuine grievance in the matter if it be held that such an -individual notice was necessary. I am, therefore, of the opinion that the order in question cannot be challenged on this ground.

5. The point that now remains to be decided is whether the election of a Vice-President can be considered to be a decision and that of the Board. Now, as I have already stated, the Jullundur Cantonment Board consists of eight official and seven elected members. u/s 39 of the Act the quorum necessary for the meetings of this Board is eight,

Under Section 20(3) this Board has to have a Vice-president who has to be elected by the elected members from their number. This election has to take place in accordance with the rules prescribed by the Central Government for this purpose. These rules have been produced by the respondents in this case.

Under these rules the election is to be held at a meeting of the Board and the elected members shall "vote on the question by ballot" if there is a contest, and in case of equality of votes the election shall be determined by drawing lots. The wording of these rules suggests that the election of a Vice-President is a question to be determined by the Board. Section 43 of the Act provides --

43. (1) All .questions coming before a meeting shall be decided by the majority of the members present and voting.

(2) In the case of an equality of votes, the President shall have a second or

casting vote.

(3) The dissent of any member from any decision of the Board shall, if the member so requests, be entered in the minutes, together with a short statement of the grounds for such dissent"..

It was argued that the appointment of a Vice-President is a matter of choice from amongst the elected members and not a matter of decision or a matter of decision by the Board. The word "decision" is not defined in the Act and it cannot be considered to be a technical word. It means only a concluded opinion.

The opinion of the Board is to be gathered from the majority of the votes cast in the matter. When one has to choose one out of many, it must necessarily be done by a decision. In the present case a decision had to be made by votes. When "A" or "B" has to be selected as Vice-President and the matter has to be decided by votes, then its result is obviously a decision and that decision has been arrived at by the majority of votes.

The question at the Wine of the meeting that had to be decided was as to who out of the seven elected members should be selected as Vice-President and the decision to that question was arrived at by counting of votes. If there is no contest, then, of course, the decision is deemed to be unanimous.

I, therefore, have no doubt in my mind that the selection of the Vice-President in accordance with Sub-clause (3) of Section 20 of the Act is a decision.

6. In my opinion it is also a decision of the Board. A Vice-President of the Board has to be elected. Under the rules this election has to take place at a meeting of the Board. No special meeting is to be called for this purpose and u/s 39 of the Act the quorum for the meeting is eight. Other business can also be transacted at this meeting. The selection is, therefore, obviously by the Board.

It is true that u/s 20(3) only elected members could cast votes and these votes are to be cast in favour of one of them. This special procedure of election does not make it anything but a decision of the Board.

It was argued by Mr. Grover that a person who is not entitled to vote cannot be considered to be present in the meeting for the purposes of quorum and, therefore, it must be held that only seven elected members with the President were present in the meeting and consequently the decision cannot be said to be a decision of the Board or by the Board in a meeting of the Board.

I am unable to accept this position. Whether at the time of the meeting there was a quorum or not, need not be decided) in this case as this question has not been raised in the petition, nor does it arise in view of the fact that 13 out of 15 members were present in the meeting. Even If the official members are excluded, the seven elected members and the President constitute quorum.

In this connection I may point out that u/s 32 of the Act members, who have any pecuniary interest in a matter, cannot vote on that matter in the meeting. All the

same, the decision when arrived at remains that of the Board. Similarly in a matter u/s 30(3), simply because official members cannot vote, the decision does not cease to be that of the Board.

Obviously this matter has to be decided by the majority of the members present in the meeting and entitled to vote on the particular question. It is true that u/s 43(3) the President has a casting vote while under the rules u/s 20(3) lots are to be drawn, but I fail to see how the difference of this nature makes the decision anything but a decision of the Board.

It cannot be, to my mind, said that this decision is a decision by only some of the member when under the rules the matter has to be decided in a meeting by the Board. I am, therefore, of the opinion that the selection of a Vice-President by the votes of elected members in a meeting of the Board is a decision of the Board over which Officer Commanding-in-Chief has full supervisory control u/s 52(1)(b) of the Cantonments Act.

7. This being so, this petition falls, and is dismissed but in the circumstances of the case the parties are left to bear their own costs.