

(1967) 01 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1288 of 1966

Vishwanath Tripathi and another

APPELLANT

Vs

The State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 27-01-1967

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 87A(3)

Citation : (1968) 38 AWR 114

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Pathak, J.—Vishwanath Tripathi, the first Petitioner, was elected President of the Municipal Board of Gaura Barhaj in December, 1964. Mewa Lal, the second Petitioner, is a member of the Board. Upon receipt of a written notice of intention to make a motion of non-confidence on the President, the District Magistrate convened a meeting of the Board for consideration of the motion for March 27, 1966. The temporary Civil and Sessions Judge, Deoria, presided over the meeting and the motion was passed by ten votes to five. The second Petitioner was absent from the meeting.

2. The Petitioners pray for certiorari quashing the proceedings of the meeting and for mandamus directing the Respondents, who include the District Magistrate, Deoria and other members of the Board, from interfering with the first Petitioner functioning as President.

3. The only contention raised by the Petitioners is that the meeting was not validly constituted inasmuch as no notice of the meeting had been served or can be deemed to have been served upon the second Petitioner and therefore the entire proceedings of the meeting are a nullity.

4. Section 87-A(3) lays down the duties imposed upon the District Magistrate in the matter of convening such a meeting. He is required to convene the meeting

at the office of the Board on the date and at the time appointed by him which must not be earlier than thirty and not later than thirty five days from the date on which the notice of intention to make the motion of non-confidence is delivered to him. Then follows a provision of some importance to this petition.

He (the District Magistrate) shall send by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time appointed therefor, to every member of the board at his place of residence and shall at the same time cause such notice to be published in such manner as he may deem fit. Thereupon every member shall be deemed to have received the notice.

It is not disputed between the parties that the notice of the meeting was not actually served upon the second Petitioner. The question is whether the second Petitioner can be deemed to have received the notice by reason of the fiction enacted in the aforesaid provision. The statute declares that if the District Magistrate sends by registered post not less than seven clear days before the date of the meeting a notice of such meeting to a member of the Board at his place of residence and also cause such notice to be published in such manner as he may deem fit then such member shall be deemed to have received the notice. It is necessary in order that the fiction should operate that both steps be adopted by the District Magistrate. He must send the notice by registered post to the member at his place of residence, and at the same time cause the notice to be published in the manner he deems fit. It will not do if he adopts merely one of the two steps. The fiction operates only upon the composition of the two steps. When the Legislature devises a fiction, the result which is the creature of the legislative artifice can be brought about only if all the components necessary to its birth are in existence. If any one or more of the components are absent, the legal fiction will not operate at all. That the adoption of one or the other step will not suffice to bring the legal fiction into existence is clear from the requirement in the provision that publication of the notice is contemplated "at the same time" at the occasion when the District Magistrate sends the notice by registered post.

5. Now it appears from the material before me, including the record which has been produced by the learned Junior Standing Counsel for the State, that the District Magistrate directed the notice to be published by pasting it on the notice boards of the Municipal Board, the Tahsil office, the Police Station and the Collector's Office. Upon an examination of those records, I have been unable to find any material indicating that the notice was affixed in all the four places directed by the District Magistrate. It is not established that the direction of the District Magistrate directing publication in the manner required by him was carried out. It would, therefore, appear that one of the two steps contemplated by Section 87-A(3) was not completed. Consequently, I am unable to hold that every member of the Board must be deemed to have received the notice.

6. In the result, the conclusion is inescapable that the second Petitioner neither received the notice nor can be deemed to have received it.

7. Upon that conclusion, the question is whether it can be said that the meeting was validly constituted. A municipal Board is, by virtue of Section 6, a body corporate. It enjoys perpetual succession and a common seal. It can acquire, hold, and transfer property and enter into contracts. It is vested with the capacity of suing and being sued in its corporate name. A corporate body is a legal entity. The members constituting it cannot in law be confused with the entity. The members meet and upon their deliberations a resolution emerges. That resolution, notwithstanding that it is the result of the expression of opinion by a plurality of voices, is nevertheless the single voice of the entity. It is the disembodied voice with which a corporate body speaks.

8. Since a corporate body is an artificial entity, known merely by virtue of the law, it can act only in accordance with certain well-defined principles. It can do corporate acts only at a corporate meeting unless a special procedure is sanctioned by its constitutional document or by statute. The corporate meeting must be duly constituted, and:

To be duly constituted a corporate meeting must be convened by the proper authority, and must be held upon notice which gives, every member of the corporation entitled to attend, an opportunity of attending.... A corporate meeting may be valid where notice of it has not been given, provided all the members of the corporation are present and consent to the meeting being held. Where no specific day is fixed by the constitution and the object for which the meeting is required may be carried out at a meeting held at any time, it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate. If a member whom it is reasonably possible to summon is not summoned, the meeting will not be duly convened, even though the omission is accidental, or due to the fact that the member has informed the office whose duty it is to serve notice that he need not serve notice on him. A member who is out of reach need not be served with notice"--(Halsbury's Laws of England 3rd Edn. Vol. 9, p. 46, Para 91). To the same effect are the principles extracted from the law obtaining in the United States--(Corpus Juris Secundum Vol. 62, p. 753, Para 397). It seems to me that upon the finding that notice had not been served upon the second Petitioner and cannot be deemed to have been served upon him, there is no escape from the conclusion that the meeting of 27-3-1966 was a wholly invalid proceeding.

9. The Respondents urge that the Petitioner attended the meeting of the District Congress Committee on 26-3-1966 convened for discussing the motion of non-confidence intended for consideration by the Board the next day, and that the notice convening the meeting of the Congress Committee specifically mentioned the purpose and the time and place of the meeting of the Board. There was considerable controversy on the question whether the notice convening the meeting of the Congress Committee mentioned those particulars when the second Petitioner signed it or were interpolated later. It seems to me unnecessary to resolve the controversy because even if the second Petitioner can

be said to have had information thereby of the meeting of the Board, that is not the method contemplated by Section 87-A(3) and it cannot be said that notice of the meeting was served, or can be deemed to have been served upon him. And even if he can be fastened with knowledge of the meeting, he was under no obligation to take any notice of the meeting (Corpus Juris Secundum: *ibid*). There was no obligation to attend a meeting which was not duly constituted. The Respondents rely upon *Shri Radhey Shyam Maheshwar v. The District Magistrate Hardoi* Special Appeal No. 11 of 1966 : Decided by Desai, C.J. and Lakshmi Prasad, J. on Feb. 9, 1966 but in that case relief was refused to the Appellant in the exercise of the Court's discretion, and the Appellant who complained of the invalidity of the notice was the sole Petitioner in the writ petition out of which the special appeal arose. In the instant case, there are two Petitioners, and relief cannot be refused to the first Petitioner merely because of the conduct of the second Petitioner. As the first Petitioner is entitled to relief it is not necessary to consider whether relief should be granted to the second Petitioner.

10. The petition is allowed in favour of the first Petitioner. The proceedings of the meeting, including the result of the voting on the motion of non-confidence, are quashed. The first Petitioner is entitled to continue to function as President of the Board and the Respondents are restrained from interfering with him in that office merely because of the passing of the motion of non-confidence. The first Petitioner is entitled to his costs. The second Petitioner shall bear his own costs.