
(1992) 01 AHC CK 0094

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 25028 of 1990

Ram Saran and Others

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision: Jan. 24, 1992

Acts Referred:

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Municipalities Act, 1916 - Section 11, 87A, 87A(3), 9
- Uttar Pradesh Town Areas Act, 1914 - Section 5

Citation: (1992) 1 AWC 432 : (1992) RD 216

Hon'ble Judges: V.K. Khanna, J; R.A. Sharma, J

Bench: Division Bench

Advocate: R.P. Goyal, for the Appellant;

Final Decision: Allowed

Judgement

R.A. Sharma, J.

Petitioner Nos. 1 to 4 were elected as members of the Town Area Committee, Radhakund District Mathura (hereinafter referred to as the TAC) in November, 1988. Petitioners Nos. 5 to 7 were nominated as members of the TAC by the State Government. All the Petitioners served a notice of motion of no confidence against the Chairman of the TAC. Sri Bhagwat Prasad, Respondent no 3 on 20-8-1990 on the District Magistrate Mathura As the Petitioners apprehended that the District Magistrate may not convene a meeting on account of the pressure of the Minister for Nagar-Palika, U. P.. they filed a writ petition on 6-9-1990 before this Court for writ of mandamus directing the District Magistrate, Mathura to convene a meeting of the TAC for consideration of the motion of no confidence against the Chairman in accordance with Section 87-A (3) of the U.P. Municipalities Act (hereinafter referred to as the Act). This Court on 7-9-1990 issued an interim order directing the District Magistrate to convene the meeting of the TAC in accordance with the provisions of

Section 87-A of the Act. The District Magistrate, Mathura accordingly convened the meeting of the TAC for 22-9-1990 for consideration of the motion of no confidence.

2. Two days before the date of meeting, the Government of U.P. by order dated 20-9-1990 cancelled the nominations of the Petitioners Nos. 5 to 7. On 22-9-1990 the meeting of the TAC was held, which was presided over by the learned Civil Judge, Mathura in which all the Petitioners participated and voted in favour of the motion of no confidence against the Respondent No. 3. As the nominations of Petitioners Nos. 5 to 7 have been cancelled by the Government by the impugned order dated 20-9-1990, their votes cast in favour of the motion of no confidence were not taken into account, with the result the presiding officer declared the motion as defeated on the ground that only four persons (after excluding the votes of Petitioners Nos. 5 to 7) have voted in favour of the motion, whereas five persons have voted against it. Petitioners have filed this writ petition challenging the order of the State Government dated 20-9-1990. cancelling the nominations of Petitioners Nos. 5 to 7 as well as the order of the learned Civil Judge rejecting the votes of Petitioners Nos. 5 to 7 and declaring the motion as defeated.

3. The Respondents have filed counter affidavit and Petitioners have filed rejoinder affidavit in reply thereof. We have heard the learned Counsel for the parties.

4. Section 9 of U.P. Municipalities Act and Section 5 of the U.P. Town Area Act, which provide for composition of Municipalities and the Town Area Committees, were amended by the State of U.P. providing for nomination of a woman as a member, if none of the elected members is a woman. Provisions for nomination of a person belonging to Safai Mazdoor class as a member were also made. By the amendment introduced in 1990, provision was made for nomination of two woman members, if none of the elected member is a woman. A further provision was made to the effect that the nominated members shall hold office during the pleasure of the State Government. In view of these amendments declaring the nominated members to hold office during the pleasure of the State, Government, the Government of U.P. assumed the power of cancelling the nominations of the woman and Safai Mazdoor Sanghs' nominees and of replacing them by new members of those classes. The aforesaid provisions were challenged before this Court by means of various writ petitions, the leading case being writ petition No. 11114 of 1990 Dr. Smt. Rama Misra v. State of U.P. decided on 9-12-1991. The Division Bench of this Court in the above case declared the aforesaid provisions as ultra vires and quashed the notification issued in pursuance thereof cancelling the nominations of the Petitioners in those cases. The concluding paragraph of the said judgment is reproduced below:

To sum up: the Legislature is impliedly prohibited to enact that the members nominated to the three local bodies will hold the office during the pleasure of the State Government, the failure of the Legislature to provide definite guidelines in the offending provision has resulted in the conferment of wide, uncanalised and

unbridled power upon the State Government thereby violating Article 14 of the Constitution, and the impugned notification is a typical example of the exercise of an arbitrary power.

The petition succeeds and is allowed. Section 2(b), Section 7(b) and Section 15 of the U.P. Act No. 19 of 1990 are declared ultra vires. The impugned notification dated 19th February, 1990 is also quashed. The Respondents are directed not to interfere with the working of the Petitioner as a nominated member of the Municipal Board, Faridpur.

In view of the decision of the Division Bench in the case of Dr. Smt. Rama Misra (supra) the provisions under which the nominations of the Petitioners 5 to 7 were cancelled have been declared ultra vires. The post constitutional law when declared ultra vires on the ground of contravention of the provisions of Part III of the Constitution of India is a nullity from its inception and is a still born law. Such a law is dead from the very beginning, as if it was never enacted. A reference in this connection may be made to the two decisions of the Supreme Court in [Deep Chand Vs. The State of Uttar Pradesh and Others](#), , para 13 and [Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others](#),

5. The law, which is declared as ultra vires, being a still born law, any action taken in pursuance thereof falls to the ground automatically. The result of the decision of this Court in the case of Dr. Smt. Rama Misra (supra) is that the law under which the Government issued the order dated 20-9-1990 cancelling the nominations of Petitioners 5 to 7 was a nullity and was a dead law right from its inception, with the result that the order dated 20-9-1990 falls to the ground automatically having no legal sanctity. As the impugned order dated 20-9-1990 cancelling the nominations of Petitioners Nos. 5 to 7 is a nullity, the Petitioners Nos. 5 to 7 were entitled to vote in the meeting of the TAC held on 22-9-1990 and the order of the learned Civil Judge declaring their votes as invalid is illegal and is liable to be quashed. When the three votes cast by the Petitioners Nos. 5 to 7 are taken into account, as they are bound to be, in view of the aforesaid discussion, the total votes in favour of the motion of no confidence against Respondent no 3 are seven, whereas only five members have voted against it, with the result the motion of no confidence stands carried out and passed by majority. As such, the Respondent No. 3 cannot function as Chairman of the TAC.

6. For the reasons given above, the writ petition is allowed -with costs. The impugned order dated 20-9-1990 (Annexure II to the writ petition), cancelling the nominations of Petitioners Nos. 5 to 7 is quashed. That part of the order of the learned Civil Judge, who presided over the meeting of the TAC on 22-9-1990 whereby he has directed for not counting the votes of Petitioners Nos. 5 to 7 and declared the motion as defeated is also quashed. In view of the aforesaid position the motion of no confidence stands passed against the Respondent No. 3, who shall cease to function as Chairman of the Town Area Committee, Radhakund, Mathura

forthwith. The District Magistrate, Mathura will now take appropriate action under Sub-section 11(a) of Section 87-A of the Act.