

**(1992) 01 AHC CK 0116**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 16633 of 1990

Rajendra Prasad Pushpkar and  
Another

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

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**Date of Decision:** Jan. 29, 1992

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Municipalities Act, 1916 - Section 10A, 296(1), 43D, 43D(4), 46

**Citation:** (1992) 1 AWC 607

**Hon'ble Judges:** V.N. Khare, J; R.K. Gulati, J

**Bench:** Division Bench

**Advocate:** Ravi Kant, for the Appellant; K.N. Shukla, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

V.N. Khare, J.

Municipal Board Gopiganj is established and constituted under the U.P. Municipalities Act, 1916 (hereinafter referred to as "the Act"). After the Members and the president of the Board were elected the State Government by its Notification dated 21-11-1988 issued u/s 56 of the Act, declared that the Board has been constituted. On 29-11-1988 the Chairman of the Board took oath of the office and on 16-2-1989 the Members of the Board were administered oath of their office. 28-2-1989 was fixed for holding election for Senior and Junior Vice-President. On the date so fixed, Respondents No. 3 and 4, namely. Azad Akhar Siddiqui and Vinod Kumar Yadav were elected as Senior and Junior Vice President respectively. Petitioner No. 1 who is an elector and Petitioner No. 2 who is the Member of the Board, by means of this petition under Article 226 of the Constitution of India have challenged the election of Respondents No. 3 and 4 as Senior and Junior Vice-President, being illegal and void-

2. The argument of the learned Counsel for the Petitioner is that the election of Senior and Junior Vice-President under Sub-Section (I) of Section 54 of the Act has to be held within three months from the date of the constitution of the Board, and since the elections of Respondent No 3 and 4 as Senior and Junior Vice-President of the Board u/s 54(1) of the Act were held after expiry of three months from the date of constitution of the Board, their election is illegal. In substance, the argument is that in case the election of Senior and Junior Vice-President of the Board is held after three months of the date of constitution of the Board, it can only be held under the provisions of Section 54-A of the Act.

3. A Full Bench of that Court in *Kalyan Dutt Kaushik v. District Magistrate, Hardwar* 1991 (2) UP LB and EC 911, has held that in case election of Senior Vice-President and Junior Vice-President is not held within three months of the date of constitution of the Board, it can be held in accordance with the procedure laid down u/s 54-A of the Act; Admittedly, in the present case, the Senior and Junior Vice-Presidents were elected after three months of the date of constitution of the Board u/s 54(1) of the Act and, therefore, the said election is contrary to law.

4. Sri H.N. Shukla, who appears for Respondents No. 3 and 4, however, urged that the Board could not be said to be constituted from the date of Notification issued u/s 56 of the Act, but it is deemed to be constituted when the President takes oath of the office. According to him in the present case the President took oath of office on 29-11-1988 and the period of three months should be reckoned from that date. In substance, the argument is that unless the President is competent to convene the meeting he cannot convene the meeting under Sub-section (1) of Section 54 of the Act for holding the election of Senior and Junior Vice-President.

5. Section 56 of the Act provides that every election and nomination of a member or president of a Board, and due constitution of the Board and every vacancy in the office of Member or President, shall be notified in the official Gazette. Sub-section (4) of Section 43-D provides that as soon as may be after the constitution of the Board, the District Magistrate shall convene a meeting of the Board for the administration of oath or affirmation under this Section in the manner prescribed and such meeting shall be presided over by the District Magistrate or in his absence by a Deputy Collector nominated by him in this behalf. Further Section 46 of the Act provides that the term of the office of the President shall be co-terminus with the term of the Board. Section 10-A of the Act further provides that the term of the Board shall be five years from the date of issuance of the Notification u/s 56 of the Act.

6. Further, the Rules regarding convening of meeting for the administration of oath or affirmation to the Constitution of India for Chairman/President and Members of the Board (hereinafter referred to as the Rules), with reference to Clauses (a) and (b) of Sub-Section (i) of Section 296 and Section 43-D of the Act, provide that the District Magistrate shall, as far as possible within seven days after the constitution of the

Board, convince a meeting of the Board under Sub-section (4) of Section 43-D for the administration of oath or affirmation to the President and Members of the Board-

7. The aforesaid provisions make it clear that the Constitution of the Board by issuance of Notification u/s 56 of the Act constituting the Board and taking of oath by the President and Members of the Board contemplate two different situations. The constitution of the Board cannot be postponed till the date of taking of the oath or affirmation by the Member or the President of the Board. In fact, constitution of the Board has to precede administration of oath of office to the President and Members of the Board. As soon as the Notification u/s 56 of the Act is issued by the Government declaring the Board as constituted, the constitution of the Board stands completed, and nothing further is required so far as the constitution of the Board is concerned. In view of this we find no merit in the submission made by the learned Counsel for the Respondents. In view of the act that in the present case. Senior and Junior Vice-Presidents were elected after three months of the date of constitution of the Board, u/s 54(1) of the Act their elections suffer from legal infirmity. In fact, their elections ought to have held u/s 54-A of the Act.

8. We accordingly, quash the resolution of the meeting of the Board passed in the meeting held on 28-2 1989 wherein Respondents no 3 and 4 were elected as Senior and Junior Vice-President and by a writ of co warranto oust them from working as Senior Vice-President and Junior Vice-President-In view of the fact that there is no elected President and by our order the Senior and Junior Vice-President are being ousted we direct the District Magistrate, Varanasi, to convene the meeting u/s 54-A of the Act for electing a Junior and Senior Vice-President if possible, within two months from the date of service of a certified copy of this order upon him.

9. The writ petition succeeds and is allowed. There shall be no order as to costs.