

Devendra Bahadur Singh Vs. State of Uttar Pradesh and Another

Devendra Bahadur Singh Vs. State of Uttar Pradesh and Another

SooperKanoon Citation : sooperkanoon.com/447678

Court : Allahabad

Decided On : Aug-27-1991

Reported in : AIR1992All14

Judge : S.K. Dhaon and ;D.S. Sinha, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 9, 9-A, 10-AA, 56, 87-A(2) and 87-A(14); Uttar Pradesh Ordinance, 1990; Uttar Pradesh Urban Local-self Government Laws (Amendment) Act, 1976 - Sections 20; Uttar Pradesh Urban Local-self Law (Amendment) Act, 1977

Appeal No. : Civil Misc. Writ No. 9451 of 1990

Appellant : Devendra Bahadur Singh

Respondent : State of Uttar Pradesh and Another

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.P. Goyal, Adv.

Judgement :

ORDER

S.K. Dhaon, J.

1. The petitioner, the President of a Municipal Board, approached this Court on 19th April 1990, as a motion of no-confidence in him was to be considered in the meeting of the Board which was scheduled to be held on 21st April, 1990. On 19th March, 1990, a motion of no-confidence, which was signed by 10 members of the Board, along with the notice to move the same, was presented to the District Magistrate upon an application made by the said signatories, they have been impleaded as respondents to this, petition. A counter-affidavit has been filed on their behalf. A rejoinder-affidavit too has been filed. Though the petition has not been admitted as yet, with the consent of the learned counsel for the parties, we heard it with a view to dispose it of finally and we are proceeding to do so.

2. It is common case of the parties that some time before, when the notice together with the motion of no-confidence was presented to the District Magistrate the total membership of the Board was 20. The membership of the two nominated members had been done away with by the State Government. Therefore, two casual vacancies, it will be presumed, occurred upon the cessation of the membership of the two nominated members. This means that actually the total membership of the Board was reduced to 19. It is not in dispute that 10 members of the Board had signed the motion taking into account the fact that there were two casual vacancies and, therefore, the total membership continued to be 20, the motion as presented to the District Magistrate was in order as it was in accordance with the provisions of sub-s. (2) of S.87-A of the U. P. Municipalities Act (hereinafter referred to as the Act) which inter alia, required that the motion of no-confidence in the president should be signed by not less than one half of the total members of the Board.

3. The Governor of Uttar Pradesh promulgated the U. P. Ordinance No. 2 of 1990 and thereafter repromulgated the U. P. Ordinance No. 8 of 1990, which was replaced by the U. P. Act No. 19 of 1990. We are concerned with the amendment introduced into S. 9 of the Act by the U. P. Ordinance No. 2 of 1990 in so far as the substitution of the first proviso to S. 9 is concerned. On the basis of the contents of the substituted first proviso it is contended that the constitution of the Board either came to an automatic end or its membership automatically stood raised from 20 to 21 and, therefore, the motion having been presented by less

than half of the members of the total membership of 21 the same was invalid and inoperative. We shall examine the contents of the substituted proviso a little later. For understanding its intent and purpose it is necessary to go a little backwards. Section 9 of the Act, as material to the present controversy and as stood in 1955, inter alia, provided that a board shall consist of a President and the elected members who shall be not less than 15 and not more than 50 as the State Government may, by notification in the official Gazette, specify Section 9-A with which we are really not concerned, talked of reservations of certain seats for Scheduled Castes in each Board. By S. 20 of the U. P. Urban Local-self Government Laws (Amendment) Act, 1976 (U. P. Act No. 41 of 1976) S.9 was substituted. It was provided that a Board shall consist (a) the President, (b) the elected members, (c) the ex officio members and a proviso was inserted which may be extracted :

'Provided that if one of the members elected under clause (b) is a woman, the State Government may, by notification, nominate one woman as a member of the Board and thereupon the normal composition of the Board shall stand varied to that extent.'

4. The language used in the proviso made it abundantly clear that the normal composition of the Board as envisaged in S. 9 was the President, the elected members and the ex officio members. The proviso merely enabled the State Government to nominate one woman as a member. It was not imperative upon the State Government to make such a nomination. The proviso also made it clear that the normal composition of the Board shall stand varied only upon the happening of one event, namely, the nomination of a woman as a member by the State Government. The word 'thereupon' furnished a key to the solution of the controversy, if raised, that the normal composition of the Board, stood automatically varied even in the absence of the exercise of the power of nomination by the State Government. The expression 'thereupon' according to the Shorter Oxford Dictionary page 2169 means: upon that, i.e., on that being done. In Black's Law Dictionary (Fourth Edition) the said expression has been assigned the meaning 'of or in consequence of'. Therefore, in the context of the controversy it is clear that the composition of the Board shall be changed following upon or in consequence

of the act of nomination of a woman as a member of the Board. It follows that so long as a woman was not nominated as a member the total membership of the Board or the composition of the Board remained unaffected.

5. By the U. P. Urban Local-self Laws (Amendment) Act, 1977 (U. P. Act No. 9 of 1977) certain changes were again introduced in S. 9. An addition was made to the class of ex officio members. To the proviso extracted above, another proviso was added, with which we are not concerned. Yet another proviso was added in which the phraseology used by the Legislature was exactly the same as in the proviso extracted above except that instead of a woman, Safai Mazdoor class was introduced. In other words, the amendment again enabled the State Government to nominate a person belonging to Safai Mazdoor class as a member of the Board. Again, discretion was left in the State Government either to nominate or not to nominate. By using the same language, as used in the aforequoted proviso, the Legislature again intended that the normal composition of the Board would stand varied only upon the action of the nomination of a person belonging to the Safai Mazdoor class as a member of the Board.

6. Now, we may consider the proviso as substituted by the Ordinance. It reads:

'Provided that if none or only one of the members elected under clause (b), is a woman, the State Government may, by notification, nominate, two members or one more woman member, as the case may be, so that the number of women members in the Board is not less than two and thereupon the normal composition of the Board shall stand varied to that extent.'

It will be immediately seen that the Legislature has not departed from the phraseology employed by it in the proviso as inserted by U. P. Act No. 41 of 1976 and the proviso as inserted by U. P. Act No. 9 of 1977. Therefore, the conclusion is inescapable that in spite of the substituted proviso the composition of the Board will remain unaffected or unchanged so long as the act of nomination by the State Government is not performed. The only change brought about by the proviso is that instead of nominating one woman as a member the State Government is now empowered to nominate two women as members provided that none of the elected members of the Board under (b) is a woman. The emphasis laid in the

proviso is that there shall not be less than 2 women members in a Board. It follows that if there are 2 women already elected as members the right to nominate under the substituted proviso shall not come into existence. It also follows that if there is only one elected woman member, it will be open to the State Government to nominate one woman as a member of the Board. It is also apparent that if and when the power of nomination is exercised by the State Government it shall see to it that there are at least two woman members in a Board. We have, therefore, no hesitation in repelling the contention that the composition of the Board in question does not stand automatically changed or varied or its membership automatically stood raised at 21 on the mere force of the contents of the proviso as substituted by the Ordinance. We, therefore, hold that the total membership of the Board, in the absence of the exercise of the power of nomination, as conferred by the substituted proviso continued to be 20.

7. Section 56 of the Act provides that every election and nomination of a member of (or?) President of a Board, the due constitution of the Board, and every vacancy in the office of the President or a member, would be notified in the Official Gazette. We are concerned, in the present case, with the notification of the due constitution of the Board in question. It is not the case of the petitioner that the notification of the due constitution of the Board was not in existence. If the contention of the petitioner that upon the promulgation of the Ordinance, whereby the proviso, under discussion, has been substituted, the composition of the Board automatically came to an end is accepted, it will lead to anomalous results: The working of the Board will come to a stand-still. The notification issued under S. 56 will stand automatically nullified or rescinded. Such a drastic consequence cannot be inferred in the absence of any express or implied mandate of the Legislature in the substituted proviso. Having read and re-read the contents of the proviso we have not been able to discern any such intendment.

8. Section 10-A A of the Act provides for the functioning of the Board in a situation where the term or the extended term of the Board has expired and a new Board has not been constituted and till the due constitution of the New Board. Sub-section (2) of this provision lays down that where the number of the members of the Board, for the time being, is reduced to less than one half of the total number

of members by reason of casual vacancies having occurred for any reason whatsoever, then the Board shall be deemed to be dissolved and thereafter the District Magistrate shall, with effect from the date of dissolution, in law, be the Administrator. Section 11 also provides for temporary provisions, namely, the administration of the Board in certain cases. Therefore, a combined reading of the provisions as contained in Ss. 10-AA and 11 will indicate that the Legislature took good care to provide for the smooth functioning of the Board in the happening of certain contingencies. If by inserting the substituted proviso, the Legislature intended that the consequence, as suggested on behalf of the petitioner was to ensue, one should have expected some corresponding amendments in Ss. 10-A A and 11 if nothing was said about it in the substituted proviso itself. We are, therefore, driven to the conclusion that there is no force in the contentions advanced on behalf of the petitioner.

9. On 29th Nov., 1988, the petitioner assumed the office of the President. On that date it was provided by sub-s. (14) of S.87-A that no notice of the motion of no confidence shall be received within two years of the assumption of office by a President. The U. P. Ordinance No. 2 of 1990 reduced the period of two years to one year in the said provision. This change, according to the petitioner, is unconstitutional. We may indicate that till some time in 1976 the period in sub-s. (14) of S.87-A was twelve months by U. P. Act No, 41 of 1976 two years was substituted for twelve months. Obviously the Ordinance has restored the position as it stood before the endorsement of U. P. Act No. 41 of 1976.

10. It is not the case of the petitioner, nor can it be, that the Governor lacked the legislative competence to introduce the impugned amendment. None of the fundamental rights of the petitioner as enshrined in Part III of the Constitution has been infringed. The change cannot be said to be arbitrary also. Indeed, no serious argument was advanced on behalf of the petitioner to question the validity of the impugned amendment.

11. The petitioner has sought the amendment of this petition on the basis of some facts asserted in the supplementary-affidavit accompanying the application. Those facts relate to the proceedings of the meeting of the Board held on 21st April 1990.

This Court by means of an interim order passed on 19th April 1990, permitted the holding of the meeting on 21 st April 1990 but directed that the result of the meeting on the motion shall not be declared until further orders. The interim order continues to operate even now. In our opinion, the amendments sought are rather premature as the result of the voting has yet to be declared. If the motion is defeated that will be the end of the matter so far, as the petitioner is concerned. Then, the petitioner will not be in a position to assert that the meeting was illegally held. On the other hand, if the motion is carried, it will give rise to a fresh cause of action. Then, it will be open to the petitioner to challenge the proceedings of 21st April 1990 by means of a separate writ petition. It goes without saying that it will be open to the petitioner to raise all possible pleas which are available to him under the law for the purpose of assailing the proceeding of 21st Apr., 1990. For these reasons, we have rejected the application filed by the petitioner.

12. The petitioners lacks merit and is dismissed with costs. The interim order dt. 19th Apr., 1990, is discharged.

13. Petition dismissed.