

Ramzan Ali Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-01-1976

Reported in : AIR1977All105

Judge : D.M. Chandrashekhar and ;R.M. Sahai, JJ.

Acts : Uttar Pradesh Town Areas Act, 1914 - Sections 38(1); Uttar Pradesh Municipalities Act, 1916 - Sections 47A, 87A, 87A(12) and 87(12)

Appeal No. : Civil Misc. Writ No. 4120 of 1976

Appellant : Ramzan Ali

Respondent : State of U.P. and ors.

Advocate for Def. : A.P. Singh and ;Girdhar Nath, Advs.

Advocate for Pet/Ap. : V.N. Khare, ;Krishna Ji and ;P.L. Agyan, Advs.

Disposition : Petition allowed

Judgement :

D.M. Chandrashekhar, J.

1. In this petition under Article 226 of the Constitution, the petitioner has prayed for quashing the proceedings of the meeting of the Town Area Committee, Bharatganj, (hereinafter referred to as the Committee), held on 25-9-1976. He has

also prayed for issue of a writ in the nature of mandamus directing the District Magistrate, Allahabad, not to interfere with his (the petitioner) functioning as the Chairman of the Committee.

2. The material facts necessary for the decision of this writ petition, are briefly these: Bharatganj Town Area, Committee was constituted under the U. P. Town Areas Act, 1914, (hereinafter referred to as the Act). The Committee consists of ten members including the Chairman. The petitioner was elected as the Chairman of the Committee, Some members of the Committee presented to the District Magistrate, Allahabad, on 26-4-1976 a notice of their intention to move a motion of no-confidence against the petitioner who was the Chairman. The District Magistrate convened a meeting of the Committee to be held on 25-9-1976 for consideration of that motion and appointed the Judge, Small Causes Court, Allahabad, (respondent 2) to preside over that meeting. On that day the motion of no-confidence was put to vote and six members of the Committee voted in favour of that motion. The President declared that resolution as having been passed by a majority of the members present.

3. The petitioner has contended that as the requisite majority of members had not voted for the motion of no-confidence, it could not be regarded as having been passed, that hence he is entitled to continue as the Chairman of the Committee and that respondent 1 cannot prevent him from functioning as the Chairman.

4. On the other hand, it was contended for the respondents that since six members who voted in favour of the motion of no-confidence, constituted a majority of members of the Committee, the motion must be held to have been passed as rightly declared by the Presiding Officer.

5. The short question for determination in this petition, is whether the motion of no-confidence was passed by the requisite majority. For this purpose it is necessary to set out the relevant provisions of the Act and of certain other statutes.

6. Sub-section (1) of Section 38 of the Act provides that the State Government may, by notification in the official gazette, extend to all or any Town Areas or any part of a Town Area any enactment for the time being in force in any municipality

in Uttar Pradesh and declare such extension to be subject to such restrictions and modifications, if any, as it (the State Government) thinks fit.

7. In exercise of the powers conferred by Sub-section (1) of Section 38 of the Act, the Government of U. P. issued a notification on 2-5-1956 extending to Town Areas the provisions of Sections 47-A and 87-A of the U. P. Municipalities Act, 1916 (hereinafter referred to as the Municipalities Act).

8. The relevant portions of Section 87-A of the Municipalities Act, before it was amended by the U. P. Urban Local Self-Government Laws (Second Amendment) Ordinance, 1976 (U. P. Ordinance No. 28 of 1976), (hereinafter referred to as the Amending Ordinance), read as follows:

'87-A (1). Subject to the provisions of this section, a motion expressing non-confidence in the President shall be made only in accordance with the procedure laid down below.

(2) Written notice of intention to make a motion of no-confidence on its President signed by such number of members of the Board as constitute not less than one-half of the total number of members of the Board, together with a copy of the motion which it is proposed to make, shall be delivered in person together by any two of the members signing the notice to the District Magistrate.

(3) The District Magistrate shall then convene a meeting for the consideration of the motion to be held at the office of the board, on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty-five days from the date on which the notice under Sub-section (2) was delivered to him. He 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 notice to be published in such manner as he may deem fit. Thereupon every member shall be deemed to have received the notice.

(12) The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the

board.'

9. The amending Ordinance which came into force with effect from 15-9-1976, amended Sub-sections (2), (12), (13) and (14) of Section 87-A of the Municipalities Act by substituting new Sub-sections (2), (12), (13) and (14). In both Subsections (2) and (12) of Section 87-A the fraction 'one-half' was substituted by 'two-thirds'. The result of such amendment is that a motion of no-confidence shall be deemed to have been carried only when it has been passed by a majority of more than two-thirds of the total number of members.

10. Shri S. C. Khare, learned counsel for the petitioner, contended that the amendment to Section 87-A of the Municipalities Act effected by the Amending Ordinance, would operate in the application of that section to Town Areas also and that since Sub-section (12) of Section 87-A of the Municipalities Act had been amended before voting on the motion of no-confidence took place on 25-9-1976, that motion could not be said to have been carried unless it was passed by a majority of more than two-thirds of the total number of members of the Committee, Shri Khare maintained that since the total number of members of the Committee was ten and only six members voted in favour of the motion, it was not passed by the requisite majority of more than two-thirds of the total number of members of the Committee.

11. On the other hand, Shri A. P. Singh, learned counsel for the respondents, contended that the amendment of Section 87-A of the Municipalities Act effected by the Amending Ordinance, did not apply to the Town Areas since what had been extended to Town Areas was Section 87-A as it stood at the time when it was so extended and that any subsequent amendment of Section 87-A would not be applicable to Town Areas.

12. In support of his contention Shri Singh relied on several decisions. Suffice it to refer to a few of them.

13. In *Secy. of State v. Hindustan Co-operative Insurance Society Ltd.*, the Privy Council explained thus the legal position in regard to repeal and amendment of the provisions of an earlier Act which had been incorporated into a subsequent Act.

'It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.'

14. The above statement of law by the Privy Council was quoted with approval by the Supreme Court in *Chairman of the Municipal Commrs. of Howrah v. Shalimar Wood Products (Pvt.) Ltd.* : [1963]1SCR47 and several subsequent decisions.

15. The above enunciation by the Privy Council was followed by this Court in several decisions including the decision of the Full Bench in *Mani Ram v. State* : AIR1952 All40 .

16. But, Shri Khare relied on the recent decision of the Supreme Court in *State of Madhya Pradesh v. M. V. Narasimhan* : 1975 CriLJ1639 in which the effect of the amendment of the provisions of an earlier enactment incorporated in a later enactment has been considered more fully. S. M. Fazl Ali, J., who spoke for the Bench, summed up the legal position thus at p. 1841:

'On a consideration of these authorities, therefore, it seems that the following proposition emerges:

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

(a) Where the subsequent Act and the previous Act are supplemental to each other;

(b) Where the two Acts are in *pari materia*;

(c) Where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual, and

(d) Where the amendment of the previous Act, either expressly or by necessary intendment applies the said provisions to the subsequent Act.'

17. Shri Khare submitted that the Municipalities Act and the Town Areas Act are in pari materia since both of them relate to urban local bodies and that hence by the application of the special rule set out in Clause (b) of the aforesaid enunciation of law by the Supreme Court, the amendment of Sub-section (12) of Section 87-A of the Municipalities Act should be held to apply to Town Areas also.

18. On the other hand, Shri Singh contended that the enunciation of law by the Supreme Court in *State of Madhya Pradesh v. M. V. Narasimhan*, : 1975 CriLJ1639 was in direct conflict with that in the earlier decision of the Supreme Court in *Chairman of the Municipal Commrs. of Howrah v. Shalimar Wood Products (Private) Ltd.* : [1963]1SCR47 , and that since the earlier decision was by a Bench of three Judges whereas the later decision was by a Bench of only two Judges we should follow the ruling of the larger Bench in the earlier case and not the ruling of the smaller Bench in the later case, in support of his contention Sri Singh relied on the decision in *Mattulal v. Radhey Lal* : [1975]1SCR127 in which the Supreme Court said that where there is a conflict between two decisions of the Supreme Court, the decision of a larger Bench should be preferred to that of a smaller Bench.

19. It appears to us that there is no real conflict between the enunciation of law by the Privy Council in *Hindustan Co-operative Insurance Society's case* (which was approved by the Supreme Court) and the enunciation of law in the *State of Madhya Pradesh v. M. V. Narasimhan* : 1975 CriLJ1639 (supra). In *Narasimhan's case* the Supreme Court has approved the general rule enunciated by the Privy Council in *Secy. of State v. Hindustan Co-operative Insurance Ltd.* (supra) that where a subsequent Act incorporates the provisions of a previous Act, any repeal or amendment of the previous Act would not affect the later Act. But the Supreme Court added that this general rule is subject to exceptions stated in Clauses (a) to (d) set out above. When a general rule enunciated in an earlier decision is qualified in a later decision by stating certain exceptions to that general rule, it cannot be said that there is any real conflict between the two decisions.

20. Strictly speaking, this is not a case of incorporation of the provisions of an earlier Act into a later Act. As stated earlier, in exercise of the power conferred by Section 38 (1) of the Town Areas Act, the State Government has extended to Town Areas, Section 87-A of the Municipalities Act and this section has not been incorporated in the Town Areas Act. To determine whether after amendment of Section 87-A of the Municipalities Act by the Amending Ordinance, it is Section 87-A as it stood on 2-5-1956 (the date on which it was extended to Town Areas) or amended Section 87-A, that applies to Town Areas, we can derive guidance from the Amending Ordinance itself. The title itself of the Amending Ordinance indicates that it (the Ordinance) is for amending the laws relating to Urban Local Self-Government bodies and not merely, the laws relating to Municipalities. As Town Areas are also Urban Local Self-Government bodies, it is in our opinion, reasonable to infer that the Legislature which was aware of the fact that Section 87-A of the Municipalities Act had been extended to Town Areas, intended that the amendment of that section should be effective even in its application to Town Areas also.

21 . However, Shri Singh submitted that if we are inclined to take the view that after amendment of Section 87-A the amended section applies to Town Areas, that view would conflict with the view expressed by the Full Bench of this Court in *Mani Ram v. State* : AIR1952 All40 and that hence we should refer to a larger Bench the question whether unamended or amended Section 87-A applies to Town Areas.

22. In *Mani Ram's case* : AIR1952 All40 the facts were these: The Notified Area of Mahoba was constituted in the year 1917 by the State Government under a notification issued under Section 337 of the U. P. Municipalities Act. That section empowers the State Government to declare, inter alia, any local area other than a Municipality or a Town Area as a Notified Area. Section 338 of the Municipalities Act empowers the State Government to apply or adapt to such Notified Area the provisions of any section of the Municipalities Act or of any Act which may be applied to a Municipality, subject to such restrictions and modifications, if any, as it (the State Government) may think fit. Under that notification the State Government had extended to that Notified Area Sections 178 to 196 except Section 182 of the

Municipalities Act. Section 178 of the Municipalities Act was amended in the year 1919. The question that arose for determination by the Full Bench was whether such amendment of Section 178 applied to the Notified Area of Mahoba after 1919. Relying on the ruling of the Privy Council in Hindustan Co-operative Insurance Society's case (supra), the Full Bench held that amended Section 178 of the Municipalities Act did not apply to that Notified Area. The present case is distinguishable from Mani Ram's case : AIR1952 All40 inasmuch as the Amending Ordinance by which certain provisions including Section 87-A of the Municipalities Act, were amended, manifested an intention of the Legislature that such amendments should be applicable to the Urban Local Self-Government bodies to which the provisions of the Municipalities Act had been extended. Hence we do not consider it necessary to refer to a larger Bench the question arising in this case.

23. Since the total number of members of the Committee including the Chairman, was ten and only six members voted in favour of the motion of no-confidence against the Chairman, that motion cannot be said to have been passed by a majority of more than two-thirds of the total number of the members. Hence we accept the contention of Shri Khare that the motion of no-confidence was not passed in accordance with law and that the petitioner is entitled to continue as the Chairman of the Committee.

24. In the view we have taken it becomes unnecessary to consider the second contention of Shri Khare that the requirement of Sub-section (2) of Section 87-A had not been complied with inasmuch as the members of the Committee who gave a written notice to the District Magistrate of their intention to move a motion of no-confidence against the Chairman, did not deliver along with such notice, a copy of the motion which they proposed to move.

25. In the result we allow this petition and hold that no valid motion of no-confidence has been passed against the petitioner. We also issue a mandamus directing the respondents not to interfere with the petitioner functioning as the Chairman of the Town Area Committee, Bharatganj, until his term of Chairmanship expires or he is removed from Chairmanship before expiry of such term in

accordance with law.

26. In the circumstances of the case we direct the parties to bear their own costs in this petition.

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