SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Raees Ahmad Vs. State of U.P. and Others

Raees Ahmad Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/472240

Court : Allahabad

Decided On : Dec-04-1998

Reported in : 1999(2)AWC1305

Judge : M. Katju and ;S.L. Saraf, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 9, 9(1) and 87A (12); Uttar Pradesh Municipalities (Amendment) Act, 1994

Appeal No. : C.M.W.P. No. 35246 of 1998

Appellant : Raees Ahmad

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;Arjun Singhal, Adv.

Advocate for Pet/Ap. : S.K. Yadav and ;T.P. Singh, Advs.

Judgement :

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 14.10.1998 (Annexure 1 to the petition) and for a mandamus directing the respondents not to interfere with the petitioner's working as the President of the Nagar Panchayat, Jalalabad, district Muzaffarnagar.

2. We have heard learned counsel for the parties.

3. The facts of the case are that the petitioner was elected President of Nagar Panchayat, Jalalabad. Thereafter a no-confidence motion is alleged to have been carried out against the petitioner on 14.10.1998 which is challenged in this writ petition. It is alleged in paragraph 3 of the petition that the Nagar Panchayat, Jalalabad consists of 21 members of which 15 members were elected members and 2 were ex officio and 3 members were nominated by the State Government. In this connection, true copy of the letter of the Executive Officer, Nagar Panchayat, Jalalabad, district Muzaffamagar to the District Magistrate, Muzaffamagar dated 24.9.1998 is Annexure-2 to the petition. In paragraph 7 of the petition, it is alleged that 13 members voted against the petitioner and the respondent No. 3 declared the motion to have been carried. The submission of learned counsel for the petitioner is that if the three nominated members are taken into account, the total number of members including the 3 nominated members is 21 and hence the motion must be deemed to have failed as it cannot be said to have been carried out by 2/3rd of the members. The short controversy, therefore, in this case is whethernominated members are to be taken into account by calculating the 2/3rd majority under Section 87A (12) of the U. P. Municipalities Act.

4. Learned counsel for the petitioner has relied upon the Full Bench decision of this Court in Mangala Prasad Jaiswal v. District Magistrate and others, AIR 1971 All 77 and the decision of the Supreme Court in Jivendra Nath Kaul, etc. v. Collector/D.M,, Lucknow and another. 1992 (2) UPLBEC 1052, wherein it was held that total number of members of the Committee means the total members initially in the Committee. The aforesaid two decisions of the Full Bench of Allahabad High Court and the Supreme Court were based on the unamended provisions of Section 9 of the Act which permitted voting at a meeting of the Municipality by all the members of the Board elected or nominated. However. Section 9 of the Municipalities Act. 1916 has now been substituted by U. P. Act No. XII of 1994. By the said amendment, nominated members have been made ineligible for voting in the meetings of the Municipality vide proviso to Section 9 (1) (e) of the Act- Hence it is submitted by the learned counsel for the respondent that nominated members cannot be taken into consideration. If the nominated members are excluded, then

the total number of members of the Nagar Panchayat are only 18, and hence the motion must be deemed to have been carried.

5. We are in agreement with learned counsel for the respondents, since Section 9 of the Act has been substituted. The decisions of the Full Bench of this Court in AIR 1971 All 77 and of the Supreme Court in 1992 (2) UPLBEC 1052, are hence no longer applicable. Hence, in our opinion, the 3 nominated members cannot be taken into consideration as they are ineligible to vote in view of the first proviso to the new Section 9 (1) (e). Hence for the purpose of the no-confidence motion, we have to calculate 2/3rd majority by excluding the nominated members. In this way, for the purpose of Section 87A (12), we have to treat the Nagar Panchayatas having only 18 members. Since 13 members voted against the petitioner, hence the motion must be deemed to have been validly carried.

6. Thus, there is no force in this writ petition. It is accordingly dismissed. Interim order if any is vacated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com