

islam Jung and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-13-1998

Reported in : 1998(2)AWC1501

Judge : R.R.K. Trivedi and ;D.K. Trivedi, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 10AA, 44A, 54(1) and (4), 54A, 54A(1), (2) and (9) and 56

Appeal No. : C.M.W.P. No. 12464 of 1998

Appellant : islam Jung and Another

Respondent : State of U.P. and Others

Advocate for Def. : S.C., ;N.C. Rajvanshi and ;M.K. Rajvanshi, Advs.

Advocate for Pet/Ap. : R.K. Awasti and ;Ravi Kiran Jain, Advs.

Judgement :

R. R. K. Trivedi and D. K. Trivedi, JJ.

1. In this petition, counter and rejoinder-affidavits have been exchanged. Learned counsel for the parties have agreed that this petition may be disposed of finally at this stage.

2. The facts giving rise to this petition are that the election of Nagar Palika Parishad, Kandhia, district Muzaffarnagar was held on 24.11.1995 in which Smt. Tahira Begum was elected as Chairman. Election of the Vice-President took place on 22.3.1997. Chairman, Smt. Tahira Begum left India on 26.2.1998 for her Haj pilgrimage. During her absence, the term of one year of the Vice-President expired on 22.3.1998. As the Chairman of the Nagar Palika Parishad was away from the country, the District Magistrate, by order dated 23rd March, 1998 appointed Dy. District Magistrate, Budhana as the Administrator of the Nagar Palika Parishad. A copy of the order has been filed as Annexure-'3' to the writ petition. The order is in Hindi, the relevant extract of which translated in English reads as under :

'Smt. Tahira Begum, Chairman Nagar Palika Parishad, Kandhia had proceeded for her pilgrimage on 27th February, 1998 and she is expected to come back by 10th of April, 1998.'

It is not disputed that the Chairman came back on 13.4.1998. In the order Annexure-'3', it has also been noted that the term of Sri Shaukat Jung, Vice-President shall come to an end on 22.3.1998 and in such circumstances, there will be neither the Chairman nor the Vice-President available to discharge the function of the Chairman of the Nagar Palika Parishad and on the aforesaid two reasons, the Administrator was appointed. It appears that an application was moved before the Administrator on 28th March, 1998 requesting him to hold the election for electing Vice-President by invoking the provisions of Section 54A of U. P. Municipalities Act, 1916 (hereinafter referred to as the 'Act'). On this application, an order was passed by the District Magistrate on 1.4.1998 fixing 11th April, 1998 for convening the meeting of the Board to elect senior and junior Vice-Presidents for the Nagar Palika Parishad at 11 a.m. Aggrieved by the aforesaid order, the petitioners, who claimed themselves to be the members of the Nagar Palika Parishad, have filed this petition.

3. Sri Ravi Kiran Jain, learned Senior Advocate appearing for the petitioners, has submitted that under Section 54, sub-section (4) the outer limit of three months from the date of vacancy, has been fixed by the Legislature, for holding election of Vice-President. The District Magistrate while passing the order dated 23.3.1998

appointing the Administrator, had noted in the order that the Chairman is likely to come back on 10th April, 1998. In the circumstances, it could not be said that the Chairman was not available to hold the election of Vice-President within the period provided under sub-section (4) of Section 54. The impugned order of the District Magistrate directing to convene the meeting of Board on 11.4.1998 for electing senior Vice-president was illegal, arbitrary and mala fide. It has further been submitted that Section 54A contains special provision for holding election of Vice-President at the Instance of the District Magistrate only in exceptional circumstances. In the present case, such circumstances were not at all present, sub-section (2) of Section 54A clearly provides that the District Magistrate may fix a date for convening the meeting of Board for the election of Vice-President, but it is subject to the provisions of sub-section (4) of Section 54. The learned counsel has submitted that from conjoint reading of sub-section (2) of Section 54A and Section 54 (4) of the Act, it is clear that the District Magistrate could not have convened the meeting of the Board for the election of Vice-President if the Chairman of the Nagar Palika Parishad was likely to be available to hold the election within the period fixed by sub-section (4) of Section 54. Learned counsel for the petitioners has placed reliance on a Full Bench decision of this Court in case of Kalyan Dutt Kaushik v. District Magistrate, Haridwar, 1991 ALJ 910.

4. Sri N. C. Rajvanshi, learned senior counsel appearing for the respondents, on the other hand, submitted that the Impugned order of the District Magistrate dated 1.4.98 does not suffer from any illegality or want of authority as the provisions of Section 54A of the Act had been lawfully invoked and the administrator was appointed as the Chairman and the Vice-President both were not available to discharge the functions of the Chairman during that period. Once the circumstances were present for invoking the provisions of Section 54A of the Act, it was also open for the District Magistrate to exercise powers provided under sub-section (2) of Section 54A of the Act. The learned counsel has further submitted that an application, for convening the meeting of the Board for electing Vice-President passing special resolution was moved by majority of the members of the Board which was rightly respected by the District Magistrate and no Interference is called for by this Court under Article 226 of the Constitution as the election has already been held on 11.4.1998.

5. We have thoroughly considered the rival submissions of the learned counsel for the parties. As the determination of the controversy involved in this petition depends on the interpretation of Section 54 (4) and Section 54A (1) and (2) of the Act, for convenient perusal, they are being reproduced below :

'54. (4) The election of a Vice-President under sub-sections (1), (2) and (3) shall be completed within three months from the date of the due constitution of the Board as notified under Section 56 or from the date of occurrence of the vacancy, as the case may be.

54A. (1) Where a person on being elected President fails or refuses to function or is otherwise not able to function, or a casual vacancy occurs in the office of the President within the meaning of Section 44A, and no Vice-President has been elected in accordance with this Act, or there is no Vice-president otherwise able to function, the powers and functions of the President shall, until a President or Vice-president is able to function, be exercised and performed by the District Magistrate or by a Gazetted Officer -not below the rank of a Deputy Collector appointed by the District Magistrate in this behalf, and such officer shall be called the Administrator, and accordingly, the provisions of Section 10AA, shall mutatis mutandis apply.

54A. (2) Subject to the provisions of sub-section (4) of Section 54, the meeting for the election of the Vice-President shall be held at the office of the Board and on the date and time appointed by District Magistrate. The notice of the meeting and the date and time appointed therefor shall be sent to every member of the Board at his place of residence seven clear days before the date fixed for the meeting. A copy of such notice shall also be published in such manner as the District Magistrate may direct, and upon such publication, every member shall be deemed to have received the notice.'

6. From perusal of sub-section (1) of Section 54A of the Act, it is apparent that powers and functions of Chairman shall be exercised and performed by the District Magistrate or by the administrator appointed by him, until the Chairman or the Vice-President is not able to function. It is also clear that the power conferred on District Magistrate, to convene a meeting of Board for the election of Vice-

President, under sub-section (2) of Section 54A of the Act is Independent power and its exercise is not dependent on Invoking the provisions of Section 54A (1) of the Act. In other words. If the Chairman neglects or is not otherwise able to discharge his primary function of convening meeting of Board under Section 51 of the Act for electing the Vice-President within the period provided under Section 54 (4), the District Magistrate may initiate the process under Section 54A (2) of the Act. But exercise of the power is subject to sub-section (4) of Section 54 of the Act. Thus, the submission of the learned counsel for the respondent that once the circumstances were present for appointment of an administrator under Section 54A (1) of the Act. the power under sub-section (2) of this Section could also be Invoked is not correct. The two are entirely different powers and can be exercised Independently. Power under sub-section (2) of Section 54A of the Act can be exercised by District Magistrate even when Chairman is available to exercise powers and functions, but he has failed to convene a meeting within the period stipulated under sub-section (4) of Section 54.

7. Now in the fact of present case. It has to be seen, whether District Magistrate was justified in Invoking the power conferred on him under subsection (2) of Section 54A of Act, for this purpose, the contents of the order dated 25.3.1998, Annexure-'3' to the writ petition, are very material. The order says that the Chairman of the Nagar Palika Parishad has left India for doing Haj pilgrimage on 27.2.98 and she is expected to come back by 10th April. 1998. The office of the Chairman was likely to fall vacant on 22.3.98. Thus, there was a total gap of 19 days for which appointment of Administrator became necessary for discharging the powers and functions of the Chairman. But there could hardly be any justification for the District Magistrate to convene a meeting of the Board on 11.4.1998 for electing Vice-President when on his own assessment, Chairman was likely to resume function on 10.4.1998. The Legislature has assigned this function to the democratically elected Chairman to convene a meeting of Board and preside the same for electing Vice-President. In the fact and circumstances of the case, District Magistrate ought to have avoided to convene the meeting of Board during temporary absence of the Chairman. He should have waited for the return of the elected Chairman. The power given to the District Magistrate under sub-section (2) of Section 54A is subject to subsection (4) of Section 54. The

Legislature has fixed three months from the date of vacancy as an outer-limit to complete the election of Vice-Chair man. In the present case, the Chairman has admittedly come back on 13th April, 1998. Thus her total absence was for 22 days from the date of vacancy in the office of Vice-President. The District Magistrate has already appointed the Administrator to meet the exigency arising out of temporary absence, but there was no urgency before him to act under sub-section (2) of Section 54A of the Act and to bypass the Chairman whose date of return was known to him. Such a temporary absence, where the return was certain and known and it was well within the period fixed by statute, cannot be termed to be the failure on the part of the Chairman so as to Invoke the provisions of sub-section (2) of Section 54A. In our opinion, the short absence of the Chairman could not entitle the District Magistrate to discharge this Important statutory function which under law is the primary function of elected Chairman. A Full Bench of this Court in the case of Kalyan Dutt Kaushik v. District Magistrate, Haridwar (supra), answered this question in para 22 in the following words :

'For the above reasons, we answer question No. 1 referred to us, in the following words ; within three months of the constitution of the Board as notified under Section 56 or within three months from the date of occurrence of vacancy in the office of the Vice-President, as the case may be, the election of Vice-President has to take place in accordance with subsection (1) of Section 54 and not in accordance with the procedure prescribed in sub-sections (2) to (9) of Section 54A. If , however, the President fails or omits to have the Vice-President elected within theaforesaid period, the Vice-President has got to be elected in accordance with the procedure prescribed in sub-sections (2) to (9) of Section 54A. Moreover, even in a situation attracting the provisions contained in subsection (1) of Section 54A, i.e., in a situation where no Vice-President has been elected in accordance with the Act, a Vice-President has to be got elected in accordance with sub-sections (2) to (9) of Section 54A. We make it clear that mere failure of the President to get the Vice-President elected" within a period of three months aforesaid does not by it self attract the action under Section 54A (1), it only means that the Vice-President has got to be elected in accordance with sub-sections (2) to (9) of Section 54A.'

8. From the aforesaid answer given by the Full Bench, it is clear that the provisions of sub-section (2) of Section 54A could not be invoked during the period of three months provided under sub-section (4) of Section 54 of the Act. In the circumstances, the Impugned order dated 1st April, 1998 (Annexure-6 to the writ petition) passed by the District Magistrate is liable to be quashed.

9. Sri N. C. Rajvanshi has, in the end, submitted that on the last occasion also the Chairman omitted to hold the election of Vice-President under sub-section (4) of Section 54 of the Act for a period of fifteen months and ultimately the District Magistrate Intervened and elections were held under Section 54A. The learned counsel further submitted that there is serious apprehension that the Chairman Smt. Tahira Begum will again act in the same fashion and will not hold election of the Vice-President within reasonable time. In reply, Sri Ravi Kiran Jain learned counsel for the petitioner has submitted that to avoid this apprehension, the Court it self may direct the Chairman to hold election within a specified time.

10. For the reasons stated above, we allow the writ petition and quash the Impugned order dated 1.4.98 (Annexure-'6' to the writ petition) passed by the District Magistrate, Muzaffarnagar. We further direct the respondent No. 3, Nagar Pallka Parishad, Kandhla, district Muzaffarnagar through it s Chairman to convene a meeting of members of Board to hold election of the Vice-President within 15 days from the date of service of this order and to complete election in accordance with the provisions of Section 54 of the Act on or before 31st May, 1998. There will be no order as to costs.