

Shabbir Khan and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-11-2001

Reported in : (2002)1UPLBEC293

Judge : Sudhir Narain and; V.M. Sahai, JJ.

Acts : Uttar Pradesh Municipality Act, 1916 - Sections 43D and 43D(1), (2) and (4); Uttar Pradesh Municipality Rules, 1916 - Rules 4 and 5

Appeal No. : C.M.W.P. No. 24984 of 2001

Appellant : Shabbir Khan and Another

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Vinod Sinha and ;S.P. Singh, Advs.

Disposition : Writ petition dismissed

Judgement :

Sudhir Narain and V. M. Sahai, JJ.

1. The petitioners seek writ of quo warranto declaring that respondents No. 5 to 15 have ceased to be members of Nagar Palika Parishad, Khurja.

2. Briefly stated the facts are that the election of members of Nagar Palika Parishad, Khurja, district Bulandshahr (in short the Parishad) took place in November, 2000. In this election, 25 persons were elected as members of the Parishad from different wards of the Nagar Palika. Smt. Razia Salim was elected as the President. The Parishad was constituted on 2.12.2000. The President and 14 members of the Parishad took oath of allegiance on 2.12.2000. The oath was administered by Sri P. K. Srivastava, Sub-Divisional Magistrate, Khurja. The remaining eleven members protested against the Sub-Divisional Magistrate and did not take oath of allegiance.

3. The next meeting of the Parishad took place on 11.12.2000. In these meeting remaining members, who have been impleaded as respondents No. 5 to 15, took their oath under Chairmanship of the President of the Parishad.

4. The learned counsel for the petitioners submitted that respondents No. 5 to 15 had taken oath administered by the President and not by District Magistrate or by the Deputy Collector nominated by him and, therefore, the oath taken by them was without authority of law and invalid and they are not entitled to continue as members of the Board after three months of its constitution.

5. Section 43D of the Act provides that the President and every member of a Board shall, before taking its seat, make and subscribe at a meeting of the Board an oath or affirmation of his allegiance to the Constitution in the form prescribed therein. Sub-section (2) provides that if the President and the members who fails to make, within three months of the date on which his term of office commences or at any one of the first three meetings of the Board, held after the said date, whichever is later, unless this period is extended by the District Magistrate, the oath or affirmation laid down in and required to be taken by sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

6. In this respect, rules have been framed known as 'Rules regarding convening of meeting for administration of oath or affirmation to the President and Members of the Board'. Rules 4 and 5 of the said Rules read as under :

'4. The District Magistrate or the Deputy Collector, as the case may be, shall at the meeting administer the oath or affirmation to the President and every member of the Board.

5. The oath or affirmation to a President or member who fails or is otherwise unable to attend the meeting convened by the District Magistrate under sub-section (4) of Section 43D shall, subject to the provisions of sub-section (2) of said section, be administered at a subsequent meeting of the Board by the person presiding at such meeting.'

7. The first meeting of the Board took place on December 2, 2000 and in the said meeting, the President and some of the members took oath. Respondents No. 5 to 15 did not take oath on the said date but they took oath in next meeting, i.e., on 11.12.2000. Under sub-rule (5) any person presiding in the meeting was entitled to administer oath to these respondents. The President of the Board was presiding over the meeting and she administered oath to respondents No. 5 to 15. The respondents have duly taken oath in the meeting held on December 11, 2000 and there was no legal infirmity. They have taken oath as provided under Section 43D of the Act.

8. We do not find any merit in the writ petition. It is accordingly dismissed.