

Shiv Kumar Vs. Union of India

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Court : Delhi

Decided On : Dec-29-1970

Reported in : 7(1971)DLT270

Judge : S. Rangarajan, J.

Acts : Himachal Pradesh Municipal Act, 1968 - Sections 19(1)

Appeal No. : Civil Writ Petition No. 102 of 1970

Appellant : Shiv Kumar

Respondent : Union of India

Advocate for Def. : Shri. Inder Singh

Advocate for Pet/Ap. : S. Malhotra,; Inder Singh and; Bhawam Singh, Advs

Judgement :

S. Rangarajan, J.

(1) The petitioner seeks a direction quashing the order of the Lieutenant-Governor dated 7th July, 1970 appointing Shri Bhagwan Singh (fourth respondent) as the President of the Municipal Committee, Paonta, under proviso to section 19(1) of the Himachal Pradesh Municipal Act (19 of 1968), which was passed in the following circumstances.

(2) Under the Punjab Small Towns Act, 1921 a Small Town Committee for Paonta Sahib was formed, five persons including the petitioner and the fourth 'respondent having been elected to the said committee on 28th February, 1968 On 3rd February, 1989 the Himachal Pradesh Municipal Act of 1968, which will hereafter be referred to as 'the Act', came into force By virtue of section 285 (1) (a) of the Act all the small towns declared as such under the Punjab Small Towns Act, 1921 were deemed to be municipal of the second class within the meaning of the Act.

(3) On 6th May, 1970 the Himachal Pradesh Administration, acting under section 13 and 21 of 'the said Act, removed two of the five members' namely, Sarvshri Jugal Kishore and I. C. Goel, not only from their membership of the said committee but also from the offices held by them as President and Vice President respectively. Questioning the said orders removing both of them. Civil Writ Petition 08 and 59 of 1970 were filed in this Court by Jugal Kishore and I. C. Goel, respectively. On I. C. Goel's application interim stay was granted by this Court on 1st July, 1970 with reference to the order removing them from the membership but not that portion of the order removing I. C. Goel from the office of the Vice President. An order in similar terms mutates mutants was passed on the application of Jugal Kishore on 3rd July, 1970. Meantime on 1st June, 1970 there was a meeting of the Committee which the petitioner did not attend At the said meeting the fourth respondent Shri Bhagwan Singh was elected as President and Shri Sumer Chand as Vice President. This resolution was suspended by the Deputy Commissioner, acting under section 24, on 9th June, 1970. On 7th July, 1970 the Lieutenant-Governor appointed Shri Bhagwan Singh (fourth respondent) as the President acting under the proviso to section 19(1) of the Act, which order is now being challenged.

(4) The short question which arises for decision in this case is whether the fourth respondent was validly appointed as President under the proviso to section 19 (1) of the Act, which reads as follows :-

'EVERY committee shall from time to time elect one of its members to be president, and the members so elected shall become president of the committee. Provided that the committee, instead of electing a president, may apply to the

State Government to appoint a president from among its members, and that the State Government may, by notification, exclude any committee from the operation of this sub-section, and that in either of these cases, or if no election has been made within one month from the occurrence of a vacancy in the office of president, the State Government may, if it shall think fit, appoint one of the members of the committee to be president.'

The only portion of the said proviso, which is material for the present case, is the third of the eventualities, namely, whether this is a case where no election had been made within one month from the occurrence of a vacancy in the office of the president. If the answer to this question is that there was an election on 1st June, 1970, at least a pretended one, then there would be no scope for any further appointment on the basis that there was no election at all. Another aspect of this question is that since the Deputy Commissioner had only suspended the resolution dated 1st June, 1970 relating to the election of the fourth respondent as president, the vacancy could not be said to arise even in the view most favorable to the respondents earlier than 9th June, 1970 for one month had not elapsed on 7th July, from that date, for the Lieutenant-Governor to exercise the power under the proviso to section 19 (1) of the Act, appointing the fourth respondent as the president.

(5) On the first aspect it is not disputed that a meeting in fact did take place on 1st June, 1970 at which meeting the fourth respondents. Bhagwan Singh was elected as president and Sumer Chand as Vice President. It is also not disputed that the only other person who was present at the said meeting, in addition to those persons, was Shri R K. Sharma, S D.O. No. 11, the official (nominated) member of that committee. It is not disputed by Shri Inder Singh appearing for the respondents that the said Sharma was departmentally instructed not to participate in any election to the said committee ; for that reason he abstained himself from taking part in the election. The net result was that there were only two members of the committee who were present at the said meeting, namely, the fourth respondent Bhagwan Singh who was elected as the president and Sumer Chand was elected as Vice President. According to section 10 of the Act there shall be established for each municipality a committee having authority over the

municipality and consisting of such number of members, not less than five, as the State Government may fix in this behalf. The only five members, in addition to the nominated member, of this committee were the petitioner, Jugal Kishore, I C. Goel, the fourth respondent and Sumer Chand. Section 19 of the Act itself provides that every committee shall from time to time elect one of its member to be the president and that it may elect one or two of its members to be Vice President or Vice Presidents, There is no provision in the Act which really lays down the mechanics of such election. Mr. Inder Singh has brought to my notice bye-law 16 which reads as follows:-

'IF any member wishes to move a motion in respect of any item on the agenda he shall read out his motion and if any other member thereupon seconds the motion, the motion shall be deemed to be before the house, and the mover of the motion shall then, if he so desires, speak in support thereof and shall be followed by the seconder of the motion if such seconder wishes to speak at this stage and if no member seconds a motion which has been moved such motion shall be deemed to have been rejected by the committee.'

The first aspect to be noticed concerning the said bye-law is that it merely refers to how a proposal should be made by the committee while transacting business of the said committee. In other words, it does not apply specifically with reference to the election of any member. A resolution, it is common knowledge, can, in the absence of any specific provision to the contrary, emanate from the person who presides at the said meeting. Another aspect of the matter is that when there were only two contestants each for one of the two offices of President and Vice President and the third member who was present was disabled in the above said manner from participating in the election it would not suit the context to insist on there being a proposer and seconder because no person could either propose or second his own name. There is no difficulty about there being no quorum in this particular case because there was the third member who was present who could normally vote at a committee meeting, he being only prevented from participating in any election. In any case the said meeting on 1-6-1970 has not been challenged on the ground of want of quorum. It seems to me, therefore, that this is not a case where it can be asserted that the resolution which was passed on 1st June,

1970 was void ab-initio. Even the Deputy Commissioner who exercised the power granted under section 247 of the Act did not say that the resolution dated 1st June, 1970 was void ab-initio', per contra he only stated that the resolution was suspended. This only means that the resolution pertaining to the fourth respondent as president and Sumer Chand as Vice President was suspended with effect from the date of the said order, namely, 9th June, 1970. It is worth recalling that the Lt. Governor made the appointment of the fourth respondent as president even on 7th July, 1970, i. e. a few days before the expiry of the period of one month from the date of the above said order, namely, 9th June, 1970 or on the ground that one month had not elapsed after 9th June, 1970, the order of the Lt. Governor dated 7th July, 1970 could not be sustained.

(6) Looking at the terms of the proviso to section 19 (1), it seems to me that the third eventuality contemplated therein, namely, the absence of an election within one month from a vacancy arising in V. e office of the president, clearly indicates a case where no election at all, in fact, is held. To so read the provision would be, in my view, to interpret it with due regard to the functioning of the democratic process. This power of the State Government to make the appointment of president is in the nature of an emergency or break-down provision which has to be made when the committee does not even care to elect one of themselves as president and more than a month elapses after the office of the president falls vacant. There was need to make such a provision to cover an eventuality of that kind because, as has been explained to me by Mr. Inder Singh, the bills for payment to the staff would have to be drawn up by the president and one of the members. It is not the obvious intention of the said proviso for the State Government to intervene when there has, in fact, been an election, at least a pretended one, without in the first instance making it clear that there was no valid election at all. This result seems to follow from a combined reading of section 247 and 250 of the Act which read as follows:

'247, The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the

committee in the exercise of its powers under the Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons.'

'250 When the Deputy Commissioner makes any order under section 247, section 248 or section 249 he shall forthwith forward to the State Government, a copy thereof, with a statement of the reasons for making it, and with such Explanationn, if any, as the committee may wish to offer; and the State Government may thereupon confirm, modify or rescind the order.'

When the Deputy Commissioner ordered on 9th June 1970 that he was suspending the resolution electing President and Vice President it might have been open to the State Government, under section 250, to say, if it was of that view, that the Deputy Commissioner was not correct in merely suspending the said resolution but it should have gone further and stated the the resolution was itself void ab inito. The Deputy Commissioner did not purport to do so and this order of the Deputy Commissioner was not either rescinded or modified by the State Government under section 250 of the Act. The net result of this is that there has been no declaration as such that the vacancy in the office of the president arose even on 6th May, 1970 which vacancy continued despite the resolution pertaining to the said election on 1st June 1970. In no view of the matter, thereforee, could the appointment of the fourth respondent as the President of the committee be justified.

(7) As a result of the aforesaid discussion, the order of the Lt. Governor dated 7th July 1970 appointing the fourth respondent as president of the committee and the notification issued in that connection (copy of which is annexure 'G') are quashed. In view of the fact that it is brought to .my notice that the appointment by the Lt. Governor was itself made for the outer limit of six months and that the said period is going to expire in a few days from to-day, I make no order as to costs. The writ petition is accepted accordingly.

