

Chauthmal Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-12-1952

Reported in : AIR1953Raj73

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : Rajasthan Town Municipalities Act, 1951 - Sections 15 and 203;
[Constitution of India](#) - Article 226

Appeal No. : Civil Misc. (Writ) Petn. No. 35 of 1952

Appellant : Chauthmal

Respondent : State of Rajasthan and ors.

Advocate for Def. : Kan Singh, Dy. Government Adv.

Advocate for Pet/Ap. : Hastimal, Adv.

Disposition : Petition dismissed

Judgement :

Bapna, J.

1. This is a petition under Article 226 of the [Constitution of India](#).

2. A Municipal Board at Nawa, District Nagaur, existed when the Rajasthan Town Municipalities Act, 1951 (Act No. XXIII of 1951) came into force on 22nd December 1951, By notification No. F. 1 (c) (5)/L.S.G/51-1 dated 5th March 1952 published in Rajasthan Rajpatra of 29th March 1952, the Government dissolved the Municipal Board, Nawa, and appointed an ad hoc Committee consisting of five persons who are respondents Nos. 2 to 6 in this case. The petitioner was a member of the Municipal Board before its dissolution and he has challenged the validity of the Government order dissolving the Municipal Board of Nawa as also the appointment of the Ad hoc Committee.

3. It was alleged that in the last municipal elections, the congress group of members was defeated and the group of independent members had been elected. The Congress group of members having been frustrated, started making complaints against the Municipal Board and the Government dissolved the Board without making any enquiry into the truth or otherwise of the said complaints. It was alleged that the order of the Government and the Notifications were vitiated by irregularities and the members of the Ad hoc Committee be called upon by a writ of 'quo warranto' to show the validity of their appointment and in case they are unable to satisfy the court as to the validity of their appointment, they may be restrained from exercising the duties and powers of the Board.

4. On behalf of the Rajasthan State a reply was submitted on 4th August 1952 that a report had been received by the Government regarding irregularities committed by the Municipal Board, Nawa, and the Regional Inspector was deputed for enquiry on the spot and his report revealed a sorry state of affairs. The Government thereupon gave notice to the Board as to why it should not be dissolved and the reply sent by the Municipal Board was considered by the Government before dissolving the Board as it did. It was stated that the Government had acted bona fide in the matter and was not actuated by party considerations. On 26th August a further reply was submitted by the Government that the period for which the Ad hoc Committee was appointed was to expire on 31st of August 1952 and the Government had appointed the Tehsildar of Nawa to carry on the day to day administration of the Board on 2nd August 1952 in place of the Ad hoc Committee. It was also pointed out that the members of the Municipal

Board took charge on 1st August 1949 and the normal term of members had expired, meaning thereby that the petitioner Chouthmal's term of office had expired on 1st August 1952.

5. On behalf of the petitioner it was urged that the Notification of election of the members of the Municipal Board, Nawa, was published in the Rajasthan Rajpatra of 27th May 1950 and therefore the term of office would expire on 27th May 1953.

6. The power of the Government to dissolve a Municipal Board is given in Section 203 of the Rajasthan Town Municipalities Act, 1951, and we will have to examine the notification with reference to the provisions of that section. Section 203 is as follows: --

'Power of Government to dissolve or supersede municipal board in case of incompetency:--

1. If in the opinion of the Government any municipal board is not competent to perform or persistently makes default in the performance of, the duties imposed on it by or under this Act or otherwise by law, or exceeds or abuses its powers, the Government may by an order published, with the reasons for making it, in the Rajasthan Gazette, declare the municipal board to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and may dissolve such municipal board or supersede it for a period to be specified in the order.

2. When the municipal board is so dissolved or superseded, the following consequences shall ensue:--

(a) all members of the municipal board shall, in the case of dissolution as from the date specified in the order of dissolution and in the case of supersession as from the date of the order of supersession, vacate their offices as such members;

(b) all powers and duties of the municipal board shall, during the period between dissolution and reconstitution or of supersession, be exercised and performed by such person or persons as the Government from time to time appoints in that behalf;

(c) all property vested in the municipal board shall, during the period between dissolution and reconstitution or of supersession, vest in the Government.

3. After the issue of an order under Sub-section (1) the municipal board shall by the election or appointment of members be reconstituted -

(i) in the case of dissolution on the date specified in the order, or

(ii) in the case of supersession, on the date specified in the order under Sub-section (1) or Subsection (4), as the case may be.

4. If after enquiry made, the Government so directs, the period of supersession with all the consequences aforesaid shall, from time to time, be continued by an order published as aforesaid until such date as may be fixed by the Government for the re-establishment of the municipal board.'

The Notification the validity whereof has been challenged in this petition is as follows:

'No. F. 1(c) (5)/L.S.G/51-1:-- In view of constant complaints being received regarding gross irregularities committed by the President and the members of the Municipal Board, Nawa, it is hereby notified for general information that Government have, in exercise of powers conferred under Sub-section (1) of Section 203 of the Rajasthan Town Municipalities Act, 1951, been pleased to dissolve the said Municipal Board, upto the end of August 1952.'

This notification is followed by another notification of the same date by which the Ad hoc Committee was constituted to carry on the administration of the Municipal Board, Nawa.

7. A careful examination of Section 203 shows that there are certain conditions pre-requisite to the order of dissolution. First of all the Government has to form an opinion that any municipal board is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under the Act or otherwise by law, or exceeds or abuses its powers. On coming to this opinion, the Government has to declare the municipal board to be incompetent of in

default, or to have exceeded or abused its powers, as the case may be, by an order to be published in the Rajasthan Gazette and the reasons for such declaration have to be given in the Gazette, and thereafter the Board can be dissolved or superseded.

8. When we look at the notification, it is apparent that the provisions of Section 203 (1) have not been followed. The notification mentions that constant complaints were received by the Government regarding gross irregularities committed by the President and the members of the Municipal Board, Nawa. But whether the Government was satisfied as to the truth of the complaints is not mentioned in the notification. According to Sub-section (1) of Section 203 it is not the receipt of complaints by the Government alone which can authorise an order of dissolution, of the Board but it is the satisfaction of the Government as to matters mentioned in the subsection which can be the foundation for an order of dissolution. It is also apparent that a declaration that the municipal board was incompetent, or in default, or exceeded or abused its powers together with reasons for making such declaration is also wanting in this case.

9. An affidavit has been produced in this Court saying that on the receipt of complaints, the Regional Inspector was deputed for enquiry on the spot and his report also revealed a sorry state of affairs; and that a notice was given by the Government to the Board why it may not be dissolved and the reply by the President was considered by the Government, and that the order of dissolution was passed after taking into consideration all the facts and circumstances of the case. Now, if this procedure had been gone through, the person responsible for notification of 5th March 1952 had obviously not cared to draft it in the manner required by law inasmuch as mention should have been made that the complaints had been enquired into and in the opinion of the Government, the municipal board was not competent to perform or made persistent default in the performance of the duties imposed on it by or under the Act or otherwise by law, or exceeded or abused its powers. Not only this, the municipal board should have been declared to be incompetent or in default, or to have exceeded or abused its powers as the case may be, and the reasons for that order should also have been mentioned, and the order of dissolution was to come in the last. As it happens,

the notification only mentions that certain complaints had been received by the Govt. and the Government ordered thereupon that the Municipal Board of Nawabe dissolved. It is rather curious that such gross errors and irregularities are to be found in the notification issued under the authority of the Government.

10. A point of minor importance also arises inasmuch as the dissolution notified up to the end of August 1952. What it means is not clear. The consequences of dissolution are mentioned in Sub-section 2 of Section 203 and in Clause (a) it is provided that all members of the municipal board shall, in the case of dissolution as from the date specified in the order of dissolution vacate their offices as such members. In the notification the date from which the dissolution was to take place is not specified; instead thereof the date up to which the dissolution shall continue is mentioned. Clause (b) mentions the powers of the Government to appoint a person or persons to exercise the powers of the Board during the period between dissolution & reconstitution. Sub-section (3) relates to the reconstitution of the Board & under Sub-clause (i) the Board is to be reconstituted by election or appointment in the case of dissolution on the date specified in the order. The order must, therefore, specify the date on which the Board is to be reconstituted. This date is also not mentioned in the notification.

The mention of dissolution up to the end of August 1952 seems to have been based on a misunderstanding of the last clause of Sub-section (1) of Section 203 which mentions the power of the Government to 'dissolve such municipal board or supersede it for a period to be specified in the order'. The phrase 'for a period to be specified in the order' goes with supersession and not with dissolution. While this is a grammatical interpretation, it is supported by the scheme of the section, as in Sub-section (4) it is mentioned that the Government may direct the period of suspension to be continued from time to time by an order published in the manner provided in the section. But a municipal board if ordered to be dissolved dissolves once for all.

11. We are of opinion that the notification of 5th March 1952 dissolving the municipal board of Nawa was not in accordance with the provisions of Section 203 of the Rajasthan Town Municipalities Act, 1951, and while it may be that e

Government was satisfied that certain complaints regarding gross irregularities committed by the President and the members of the Municipal Board had been proved, the Government had still to come to the opinion that the Municipal Board was either not competent to perform, or made persistent default in the performance of the duties imposed upon it by or under the Act or otherwise by law, or that it exceeded or abused its powers; and further the Government should have declared the Municipal Board to be incompetent or in default, or to have exceeded or abused its powers as the case may be, together with reasons for making the order before directing its dissolution. As the Government did not comply with the requirements laid down in Section 203 of the Act, the appointment of the Ad hoc Committee under Clause (b) of Sub-section 2 was also invalid.

12. It was urged on behalf of the State that the Government have on the 2nd of August 1952 appointed the Tehsildar of Nawa to carry on the day to day administration of the Municipal Board in supersession of the Ad hoc Committee. Learned counsel for the petitioner contended that the same considerations would apply in the case of appointment of the Tehsildar if appointed under Clause (b) of Sub-section 2 of Section 203.

13. It is, however, unnecessary to go into that question as one more aspect of the case has been brought to our notice by learned Deputy Government Advocate. In the supplementary affidavit it was mentioned that the members of the municipal board of Nawa took office on the 1st of August 1949 and their term of office according to Section 15 of the Rajasthan Town Municipalities Act was three years unless extended by an order of the Government to a period not exceeding four years in the aggregate. And therefore the members of the erstwhile Municipal Board of Nawa including the petitioner vacated their offices as such members on the 1st of August 1952 and that the Collector of the District had already been directed to hold elections as early as possible and had appointed the Sub-Divisional Officer Parbatsar as the Returning Officer in this behalf.

14. Learned counsel for the petitioner contended that the Rajasthan Town Municipalities Act, 1951, did not repeal the law under which the Municipal Board of Nawa was constituted. This law was stated to be the Marwar District Municipal

Boards (Constitution) Act, 1949. The argument was that under Section 2 of the Rajasthan Town Municipalities Act, the laws and enactments repealed by the Act were mentioned in the first schedule to that Act, but the Marwar District Municipal Boards (Constitution) Act, 1949 was not included in that list. This is so. But the Marwar District Municipal Boards (Constitution) Act only provided for constitution of municipal boards in district towns. It did not provide for term of office of the members or the functions to be exercised by the boards when constituted. It appears that the Marwar District Municipal Boards (Constitution) Act was a step towards the framing of a comprehensive legislation in respect of the district towns municipal boards but the attempt remained abortive owing to integration of the covenanting State of Marwar in the United State of Rajasthan six weeks later.

The substantive law empowering the municipal boards of towns to function in Marwar was the Marwar Town Areas Regulation 1924 but the provisions of the Regulation were to be made applicable to any town by a notification by the Darbar to that effect. It was conceded by learned counsel appearing for both parties that no such notification had been issued and therefore the Mar-war Town Areas Regulation 1924 was not applicable to the Municipal Board of Nawa. Learned counsel for the parties were unable to say under what authority of law the Municipal Board of Nawa had been functioning. Learned counsel for the petitioner at one stage stated that the Municipal Board of Nawa perhaps, as in other towns, had been functioning and exercising powers on the analogy of the Jodhpur Municipal Act, 1943. That Act applied to the city of Jodhpur or such adjoining areas as may be declared to be included in the Municipality and could not authorise the constitution or functioning of the municipal boards in towns other than Jodhpur.

In the preamble to the Marwar District Municipal Boards (Constitution) Act the purpose of the legislation is stated to be that it was expedient to provide for the constitution, in place of the existing municipal boards in the district towns, of municipal boards elected on a ward-wise basis. The preamble seems to indicate that there were municipal boards in District towns functioning from before and constituted in a particular manner, but that manner was desired to be changed on the lines provided for in the Marwar District Municipal Boards (Constitution) Act,

1949. If any presumption is to be made as to the law under which the Nawa Board had been functioning, the Marwar Town Areas Regulation would be appropriate and it may be assumed that the notification referred to in Sub-section (3) of Section 2 of that Regulation had been made. In that case, there can be no difficulty in holding that the said Marwar Town Areas Regulation had been repealed by the Rajasthan Town Municipalities Act, 1951 as the said Regulation is mentioned in the first schedule in the list of laws repealed by this Act.

The other alternative to the aforesaid presumption would be that the Municipal Board had been functioning under some executive order of the Government of Jodhpur which is now untraceable and the exact scope of that order and the powers, functions and duties of the municipal board of Nawa cannot be discovered. If that be so, such an executive order would occupy the status of law in Marwar under which the Municipal Board of Nawa came to be constituted and had been functioning. Such an undiscovered law would also be deemed to have been repealed by the Rajasthan Town Municipalities Act 1951 as would follow from a consideration of some of the provisions of that Act. Under Sub-section (2) of Section 1, the Rajasthan Town Municipalities Act is to extend to the whole of Rajasthan. Under Sub-section 8 of Section 4, 'municipal board' has been defined to mean the board of a town municipality. Under Sub-section 9, 'municipality' has been defined to be any local area which is at present a town municipality and any local area which may hereafter be constituted or declared as a town municipality under Section 5, if such municipality has not ceased to be a town municipality. Under Sub-section 3 of Section 5, certain duties are imposed on the municipal board of every town municipality already existing and of every town municipal board newly constituted under the Act. Under Section 8 every municipal board is declared to be a body corporate by the name of the municipal board of the place by reference to which the municipality is known and to have perpetual succession and a common seal. Section 21 declares that the municipal government of a municipality vested in the municipal board except in certain cases provided for in the Act. Section 23 declares the functions of the chairman. Chapter III relates to conduct of business of the municipal board. Chapter IV authorises the municipal board to make rules and by-laws for various matters mentioned in the chapter. Chapter V relates to municipal property and fund. Chapter VI describes the

primary and secondary functions of the municipal board, chapter VII relates to the power of imposing taxes, chapter VIII to recovery of municipal claims, chapter IX to municipal powers and offences, chapter X to prosecutions, suits and powers of police, chapter XI to municipal accounts and administration reports, and chapter XII to control of municipal boards. The last chapter XIII relates to the appointment and powers of executive officers and other staff.

15. As will be seen from above, the Act is a self contained one and according to Sub-section 2 of Section 1, it extends to the whole of Rajasthan and therefore governs the powers, functions and duties of all municipal boards in Rajasthan as from the date of the commencement of this Act. Therefore, even if there be no express repeal of the undiscovered law which created the Municipal Board of Nawa, this is a case where the previous law if any would be deemed to have been repealed by implication. Quoting from Dr. Lushington in *The India* (1864) 33 L. J. Adm 193 Craies mentions in his book on Statute Law (Craies on Statute Law) 4th Edition, 317.

'What words will establish a repeal by implication it is impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that the intention to repeal, if any had existed, would have been declared in express terms, so, on the other hand it is not necessary that any express reference be made to the statute which it is intended to repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject matter were taken away by the subsequent statute.'

In the present case the entire subject-matter of what would have been in the previous law is covered by the subsequent statute and if the two laws were to be held to stand together there will be a patent absurdity inasmuch as the very intention of the enactment of the Rajasthan Town Municipalities Act, 1951 would be undermined as the preamble says that this law was enacted to consolidate and amend the law relating to town municipalities in Rajasthan and was sent up to the President of India for his assent before its promulgation. Then again it extends to

the whole of Rajasthan. It could not, therefore, be imagined for a moment that the Municipal Board of Nawa could exercise any powers or function in a manner otherwise than in accordance with the Rajasthan Town Municipalities Act, 1951, after its promulgation.

16. The consequences of the implied repeal are the same as of express repeal and under Section 24 of the General Clauses Act, the appointment of members of the Municipal Board under the old law will be deemed to have been made under the re-enacted law, which in this case was the Rajasthan Town Municipalities Act, 1951. Under Section 15 of this Act, the term of office of members is stated to be three years except in certain cases with which we are not concerned in this case. The affidavit of the Government that the members of the Municipal Board of Nawa took office on the 1st of August 1949 is not contradicted. But it was urged that the notification of the election of the members was made as late as 27th of May 1950 and their term of office should be counted from that date. The contention is without force as the publication of the names in the Rajpatra is not a pre-requisite to the members holding office and in this case the affidavit is that the Board began to function from the 1st of August 1949 and not later as contended by learned counsel for the petitioner. Under Rule 3 of the Rules framed by the Government under Section 205 of the Rajasthan Town Municipalities Act, 1951, the chairman of the Board has to intimate to the District Magistrate not less than six months before the expiry of office of its members under Section 15 of the Act, the date on which such term shall expire and this sets the ball of election rolling and a person who is elected or nominated to be a member of any municipal board becomes a member on taking an oath under Rule 45 of the said Rules, The petitioner in this case having vacated his office on the 1st of August 1952 has no interest left in the defunct municipal board of Nawa as a member of that Board, and is not therefore entitled to any relief as a member of that Board in this petition. The Ad hoc Committee appointed by the Government has already been superseded by appointment of the Tehsildar to carry on the day to day administration and this petition for a writ of quo warranto in respect of the Ad hoc Committee has become infructuous. We do not propose to express any opinion on the validity or otherwise of the appointment of the Tehsildar to carry on the day to day administration of municipal affairs of Nawa in this case.

17. The petition is therefore dismissed. Noorder as to costs.

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