

**Kanta Devi and anr. Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** Nov-13-1956

**Reported in :** AIR1957Raj134

**Judge :** Wanchoo, C.J. and; Dave, J.

**Acts :** Rajasthan Town Municipalities Act, 1951 - Sections 9, 14 and 18; Rajasthan Town Municipalities Rules - Rule 45; [General Clauses Act, 1897](#) - Sections 16 and 21

**Appeal No. :** Civil Writ Petn. No. 40 of 1956

**Appellant :** Kanta Devi and anr.

**Respondent :** State of Rajasthan and ors.

**Advocate for Def. :** Kan Singh, Deputy Govt. Adv.

**Advocate for Pet/Ap. :** J.G. Chhangani, Adv.

**Disposition :** Application allowed

**Judgement :**

Wanchoo, C.J.

1. This is an application by Smt. Kanta Devi and Kriparam under Article 226 of the Constitution against the State of Rajasthan for a writ, direction or order in

connection with the nomination of members to the Municipal Board of Pokaran. (2)  
Brief facts alleged by the applicants are these:

There is a municipality in the town of Pokaran governed by the Rajasthan Town Municipalities Act (No. XXIII of 1951) (hereinafter called the Act). The membership of the Board consists of eight elected and two nominated members. The election to the Board took place sometime before January, 1956 and eight persons were duly elected thereto. Thereafter on 28th January, 1956, the Government of Rajasthan made two nominations in exercise of the powers conferred on them by Section 9 of the Act. These two persons are the two applicants before us.

The District Magistrate then issued a notice fixing a date, place and time for election of the Chairman of the Board. The date was the 7th of March, 1956. Information of this was sent to the applicants also. It may also be mentioned that before this meeting of the 7th of March, 1956, another meeting of the Board was called by the Sub-Divisional Magistrate, Pokaran for taking oath by the members and this was fixed for the 1st of March, 1956. Notice of this was also sent to the two applicants.

This meeting of the 1st of March, 1956 was, however, postponed to the 4th of March, 1956. In the meantime another notification was issued by the Government on 24th February, 1956, In this notification two other persons, viz.. Smt. Hiradevi and Damaram were notified as having been nominated and the notification dated 28th January, 1956 nominating the two applicants was cancelled. Thereupon the present application was made by the applicants on the 8th of March, 1956. They also got a stay order issued and though the Board has started functioning, neither the first set of nominated members, viz. the applicants nor the second set of members, viz., opposite parties Nos. 4 and 5 have taken oath.

3. The case of the applicants is that after the Government had nominated them to the Board on the 28th of January, 1956, it was not open to the Government to cancel that notification and nominate other persons instead. Reliance in this connection is placed on Section 14 of the Act and it is urged that it is only in the manner provided in that section that the Government can remove any member from the membership of the Board.

4. The application has been opposed by the opposite parties and two main contentions have been raised by them in this connection. In the first place, it is urged that no one can become a member of the Board unless publication is made in the official gazette according to Section 18 of the Act. In the second place, it is contended that no one can be a member of the Board till he takes the oath of office as required by Rule 45 of the Rajasthan Municipalities Election Rules, 1951 (hereinafter called the Rules).

The contention, therefore, is that as no publication of the names of the applicants was made in the official gazette and as they had not taken the oath of office upto the date on which the Government cancelled the earlier notification, they were not members of the Board and, therefore, Section 14 had no application to the case and it was open to the Government to cancel the earlier notification and nominate some other persons in their place as members of the Board.

5. These are the two contentions which require determination in this case. So far as the first is concerned, it can be shortly disposed of. This Court has held in -- 'Chautimal v. The State of Rajasthan'. ILR (1952) 2 Raj 786 (A), that publication under Section 18 of the Act is not a condition precedent to the members holding office. We may say at once that Section 18 is a directory provision meant for the information of the public and its language shows that publication in the Rajasthan gazette is not necessary before the members of the Board can begin to function. The first contention, therefore, must fail.

6. We now turn to the next contention, viz., that a person cannot become a member of the Board till he takes the oath prescribed under Rule 45 and, therefore, as these two applicants had not taken the oath till the date of the second notification, they were not members of the Board and it was open to Government to cancel the earlier notification without taking action under Section 14 of the Act. In a recent case before this Court -- 'Chairman of the Municipal Board Shri Dungarga-rh v. State of Rajasthan', Civil Writ Petn. No. 124 of 1956, D/- 23-10-1956: (AIR 1957 Raj 87) (B), a question had arisen as to when the term of members of the Board begins.

It was held in that case that Section 15 of the Act was unhappily worded and that on, a consideration of that section read with Rule 45 and certain rules relating to the election of Chairman, it was clear that the term of the Board began on the date on which the first meeting of the Board was held and in which the members took oath of office. It was also held that the term of the members was co-terminous with the term of the Board.

It was also pointed out that if a member happened to be absent on the first meeting of the Board when others took oath of office, his term as member nevertheless began on that very date because it was co-terminous with the term of the Board, even though he had not taken oath of office on that date and took it on a subsequent date. The reason for this was that it could not be the intention of the Legislature that the term of different members of the Board should begin and end on different dates. We may point out further that Rule 45, so far as its language goes, does not lay down that no one can become a member of the Board before he takes oath of office. All that is laid down is this:

'Every person who is elected or nominated to be a member of any Municipal Board shall, before taking his seat take an oath etc. ....'

7. Thus the oath which has to be taken under Rule 45, is merely for the purpose of taking the seat and functioning as member of the Board. But his membership as such does not depend upon his taking the oath of office. This is, as pointed out in the case just cited above, bound to be so for if this was not so, each member of the Board under Section 15 of the Act would claim a different period of three years as his term of the membership, depending upon the date on which he took oath of office.

Therefore taking an oath under Rule 45 is also not a necessary condition before a person becomes a member of the Board. The second point, therefore, which has been raised on behalf of the opposite parties, also fails in the manner in which it has been raised.

8. But this, in our opinion, does not dispose of the matter. The question still remains whether the Government can change its mind in the manner in which it

has been done in this case and say that the earlier notification is cancelled and nominate other persons in place of the persons nominated previously.

The argument in this connection is that the Government can always do so till the term of the membership of the Board begins, that is, till the first meeting of the Board is held and that upto that time neither the elected members nor the nominated members are members of the Board and Section 14 has no application to them.

The argument that the members of the Board whether elected or nominated are not members till the first meeting is held on which date the term of the Board begins and till then it is open to the Government to change its mind is plausible but we have no doubt, as we shall show just now, that it cannot be sustained in law.

9. What is the nature of the order nominating a person to be a member of the Board? The contention on behalf of, the opposite parties is that it is a mere notification and that under Section 21 of the [General Clauses Act, 1897](#), the power to issue a notification includes the power to add to, amend, vary or rescind it. we are of opinion, however, that Section 21 has no application to such a case.

It applies to those cases of notifications, which are in the nature of orders, rules or bye-laws or are of a general nature. The present is a notification which, in our opinion, comes under Section 16 of the [General Clauses Act, 1897](#) because the nomination of certain persons to a Municipal Board amounts to their appointment as members of the Board.

Now under Section 16 of the General Clauses Act, which applies to the Act which we are consider-ing, the power to appoint includes the power to suspend or dismiss unless a different intention appears in the law or order relating to the appointment. We have, therefore, to see whether a different intention appears in the Act. Under Section 9 of the Act, a Municipal Board consists of elected and nominated members. The proportion of elected and nominated members is fixed by the Government under Section 1ft of the Act.

Thereafter the election is held and the quota of elected members is completed. The usual practice is that after the election is over and the quota of the elected members is complete, the Government appoints the nominated members and this is generally done before the first meeting of the Board.

After the election has been held, there is no power in the Government to stop the elected members from taking their seats in the Municipal Board and functioning as members of the Board after subscribing to the oath prescribed under Rule 45. The question is whether there is anything in the Act which treats the nominated members in a different manner after their nomination has been made under the Act.

No provision has been brought to our notice which lays down that after a nomination has once been made by the Government there is anything to prevent a nominated member from taking oath of office. Rule 45, as we have already said, applies equally to elected and nominated members and provides that every person, who is elected or nominated to be a member, shall take an oath before taking his seat.

We see no reason why we should assume a power in the Government to cancel the appointment of a nominated member, unless that power is conferred by law. The only provision, as we have already pointed out, is Section 16 of the [General Clauses Act, 1897](#) which gives power of dismissal and- which will include removal by the appointing authority; but the power under Section 16 is subject to a different intention appearing in the law or order under which the appointment is made.

10. Now what is the intention of the Act with which we are concerned? That intention in our opinion, can be gathered from Section 14 of the Act. That section gives power to the Government to remove any member elected or nominated under this Act after giving him an opportunity of being heard and after such inquiry as it deems necessary, if such member has been guilty of mis-conduct etc. The intention of the Legislature obviously was that no member of the Board should be arbitrarily removed and that the removal should only take place after a certain procedure had been gone into.

In so far as an elected member- is concerned, It would not be possible for the Government to remove him unless the procedure provided by Section 14 of the Act is gone through, whether the elected member has taken the oath and whether the term of the Board has begun or not. The same section viz., Section 14 applies also to nominated members, and we fail to see why we should put the nominated member in a less advantageous position and why we should hold that there is a reserve in Government to change the nomination before the term of the Board begins or the member takes the oath of office.

If it was the intention of the Legislature to make a difference between an elected member and a nominated member in this connection, we should have found Section 14 in two parts -- one providing for elected members and the other providing for nominated members, and there should have been a specific provision that a nomination of a member may be cancelled by the Government before he takes the seat of office or before the term of the Board begins.

We have no doubt that after the appointment is made and a member is nominated to the Board by the Government under Section 9, he becomes a 'member nominated under this Act', and just as 'a member elected under the Act', cannot be stopped from taking his seat after subscribing to the oath, so also 'a member nominated under the Act' must have the same rights under Section 14 of the Act.

The two applicants, therefore, became 'members nominated under this Act' when they received the orders of nomination on or about the 28th of January, 1956. The publication of that order of nomination in the gazette was, as we have already said, a directory matter and would in no way affect the validity of the order of nomination. We are, therefore, of opinion that the Government having exercised its power under Section 9 to make a nomination once exhausts that power and cannot nominate another person to the same, seat.

A second order nominating some other person and cancelling an earlier order of nomination would, therefore, be beyond the jurisdiction of the Government and the first order must take effect unless it is shown that the first order was issued by mistake of fact, as for example, where the Government nominates A and B as members and somebody in the office issues an order in favour of C and D.

Barring such a case, where the first order would amount to no order at all, it is not open to the Government to change the order of nomination once made under Section 9. This is so because the person nominated immediately on the passing of such order becomes 'a member nominated under this Act' and thereafter he cannot be prevented from taking his seat after subscribing to the oath and can only be removed under Section 14.

This section clearly provides a different intention and, therefore, it is not open to the Government to exercise the power of removal implied in the power of appointment under Section 16 of the General Clauses Act without recourse to procedure under Section 14 of the Act.

11. We, therefore, allow the application and declare that the two applicants are 'members nominated under the Act' and are entitled to take their seats on the Municipal Board, Pokaran after subscribing to the oath prescribed in B. 45. This second notification of the Government dated the 24th of February, 1956 is beyond their power and is hereby declared to be of force and effect. The applicants will get their costs from the State.

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