

Inder Kumar Vs. the State of Rajasthan and ors.

Inder Kumar Vs. the State of Rajasthan and ors.

SooperKanoon Citation : sooperkanoon.com/758308

Court : Rajasthan

Decided On : Jul-25-1972

Reported in : 1972WLN521

Judge : V.P. Tyagi, J.

Appeal No. : S.B. Civil Writ Petition No. 2 of 1972

Appellant : Inder Kumar

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

V.P. Tyagi, J.

1. This writ petition filed by Inder Kumar under Article 226 of the Constitution arises out of the following circumstances.

2. Petitioner was elected as a member of the Municipal Board, Nohar, in October 1970 According to the allegations made by the petitioner he belonged to the opposition camp and that the motion of no confidence had been tabled against the Chairman which was likely to be taken up for consideration of the house But before this the tenor of the petition shows that a notice was issued by the Director of Local Bodies that the petitioner absented himself in the meetings of the Board

held on 13th January 1971, 24th February, 1971 and 6th March, 1971, and as such he had incurred a disqualification to continue as a member of the Board under the provisions of Section 63(1)(a) of the Rajasthan Municipalities Act, 1959 (hereinafter called the Act). The petitioner filed a reply to the notice issued to him by the Director wherein he raised two main objections viz. (1) that even if it is admitted that he did not attend the meetings on the date as shown in the notice, he cannot be said to have remained absent for more than three consecutive months, and (2) that the notice of the last meeting which is said to have been held on 6th of March, 1971, was received by the petitioner along with his other six colleagues on that very day and, therefore, in the absence of a valid notice, he cannot be treated as absentee in a meeting held on 6th of March, 1971. After receiving this reply, the Director passed an order Annexure 2 on 3rd of December, 1971 removing the petitioner from the membership of the Board under the provisions of Section 63(1)(a) of the Act. This order of the Director has been challenged by the petitioner, inter alia, on the ground that Section 63(1)(a) of the Act has not been properly construed by the Director while issuing the impugned order and in the absence of any valid notice to attend the meeting of the Board alleged to have been held on 6th of March, 1971, he cannot be deemed to be absent from that meeting. In these circumstances, it is prayed that the order passed by the Director of Local Bodies (Annexure 2) be quashed.

3. No reply has been filed by any of the respondents. The Municipal Board, Nohar, has also been made a party to this petition but the Board has not cared to file a reply though the Board is duly represented by a counsel Mr. R.C. Maheshwari.

4. Since the averments made in the writ petition have not been controverted by the respondents, this Court is left with no alternative but to accept the facts as mentioned in the petition.

5. It may be mentioned that out of the five meetings as specified in the notice (Annexure 1) issued by the Director, in which the petitioner did not take part, two meetings held on 13th of January, 1971 and 16th of February, 1971, were special meetings and the rest three were ordinary general meetings. The meeting, which is said to have been summoned on 6th of March, 1971, was a general meeting.

According to the provisions of Section 70(5) of the Act, four clear days' notice is necessary to be given to the member asking him to attend the general meeting of the Board. In this case, as is apparent from the reply given by the petitioner in response to the notice received from the Director along with the envelope which contained the notice and also in view of the averments made in the petition, the petitioner received the notice of the meeting, on the very day on which it was summoned. Therefore, according to the petitioner the meeting was not called in accordance with the provisions of law and it cannot, therefore, be counted as a valid meeting for the purpose of applying the provisions of Section 63(1)(a) of the Act. The contention of the petitioner has some force and I feel that for the reasons given by the petitioner he cannot be taken to be an absentee member in the meeting of 6th March, 1971 for incurring disqualification Under Section 63(1)(a) of the Act.

6. Section 63(1)(a) of the Act is as follows:

Section 63. Removal of members-1) The State Government may, subject to the provisions of Sub-sections (2) and (3), remove a member of a Board on any of the following grounds, namely-

(a) that he has absented himself from the meetings of the Board for more than three consecutive months or three consecutive ordinary general meetings, whichever is the longer period, without leave of the Board.

7. This provision of the law can be construed that before a member incurs a disqualification to continue as a member Under this provision he must remain absent from the meetings of the Board for more than three consecutive months which cannot be interpreted to mean that if the member remains absent for three months only then he will incur disqualification. If he remains absent in a meeting held in the fourth month, it is then and then only that he incurs the disqualification. The period of three consecutive months should be computed forward from the date of the first failure. In the present case, the petitioner's first failure to attend the meeting falls on 13th of January, 19(sic)1. It is averred that the petitioner had attended the meeting of the Board on 3rd of April, 1971, which meeting falls within a period of consecutive three months and, therefore, the petitioner cannot be said

to have incurred disqualification to warrant his removal under the provisions of Section 63(1)(a) of the Act.

8. For the reasons mentioned above, the writ petition is allowed. The order passed by the Director of Local Bodies dated 3rd December, 1971 (Annexure 2) is quashed. Petitioner shall get his costs from the respondents.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com