Jai Charan Lal

Vs

State of U. P. & Ors

Civil Appeal No. 199 of 1967

(M.Hidayatullah, C. A. Vaidialingam JJ)

05.05.1967

JUDGMENT

HIDAYATULLAH, J.

This is an appeal by special leave against the judgment and order of the High Court of Allahabad. December 6, 1966, in civil Miscellaneous Writ Petition No. 4287 of 1966.

The appellant Jai Charan Lal Anal was elected as a member of the Municipal Board, Sikandrao in December, 1964. He was later elected as the President of the Board. On October 26, 1966 a notice of intention to move a motion of non-confidence in the appellant was presented by certain members of the Board to the District Magistrate, Aligarh. The District Magistrate issued notices to the members on November 17, 1966 fixing November 25, 1966 as the date for the meeting of the Board to consider the non-confidence motion. This was done under s. 87-A of the Uttar Pradesh Municipalities Act, 1916. On November 22, 1966, the petitioner filed a petition under Art. 226 of the Constitution in the High Court of Allahabad asking that the meeting be stopped. The case was listed before the High Court on December 1, 1966. Before this date the meeting of the Board was adjourned to December 5, 1966, under circumstances to which detailed reference will be made presently. The High Court directed that the petition should be listed for December 6, 1966. By that date the adjourned meeting was held on December 5, 1966, and the non-confidence motion was passed unanimously 10 out of 15 members who were present voted in its favour and none against it. The appellant thereupon asked the High Court to quash the resolution of the Board. The High Court by the order under appeal declined to do so on the ground that even if there were some irregularities in calling the meeting, the resolution, having been passed by the necessary majority, the case was not fit for the exercise of its discretionary powers.

In this appeal the question has been raised that the meeting itself was contrary to the provisions of s. 87-A of the U. P. Municipalities Act and the resolution therefore being ultra vires and illegal was void. This argument is based upon the procedure which is laid down in s. 87-A of the Act. we may now refer to those provisions. Section 87-A deals with motion if non- confidence against the President. It begins by stating that subject to the provisions of the section such a motion shall only be made in accordance with the procedure, laid down in the section. Sub-section (2) requires that a written notice of intention to make a motion of non-confidence on the President must be signed by such number of members of the Board as constitute not less than one-half of the total strength of the Board and must be accompanied by a copy of the motion which it is proposed to make and should be delivered in person by any two of the members signing the notice to the District Magistrate. This was done. Sub-sections (3), (4), (5) and (6) then provide as follows :-

" (3) The District Magistrate shall then convene a meeting for the consideration of the motion to be held at the office of the Board, on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty-five days from the date on which the notice under sub-section (2) was delivered to him. He shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and of the date and time appointed therefore, to every member of the board at his place of residence and shall at the time cause such notice to be published in such manner as he may deem it. Thereupon every member shall be deemed to have received the notice.

(4) The District Magistrate shall arrange with the District Judge for a stipendiary civil judicial officer to preside at the meeting convened under this section, and no other person shall preside, thereat. If within half an hour from the time appointed for the meeting, the judicial officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and the time to be appointed and notified to the members by that officer under sub-section (5).

(5) If the judicial officer is unable to preside at the meeting, he may, after recording his reasons adjourn the meeting to such other date and time as he may appoint, but not later than fifteen days from the date appointed for the meeting under sub-section (3). He shall without delay communicate in writing to the District Magistrate the adjournment of the meeting. It shall not be necessary to send notice of the date and time of the adjourned meeting to the members individually, but the District Magistrate shall give notice of the date and the time of the adjournment meeting by publication in the manner provided in sub-section (3).

(6) Save as provided in sub-section (4) and (5) a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned."

The contentions of the appellant are based upon the provisions of sub-s. (3) and (5) and it is contended that there has been a breach of provisions and therefore the resolution is void.

Three arguments in this connection have been raised before us and we shall mention them now. the First contention is that the notice which was sent out by the District Magistrate by registered post did not allow seven clear days before the date of the meeting as required by the latter part of sub-section (3). In advancing this argument the learned counsel for the appellant contends that the critical date is not the date on which the notice is despatched but the date on which the notice is received. Since the notice was despatched on the 17th and presumably reached the next day the learned counsel excludes the date of receipt of the notice and the date of the meeting and says that seven days did not intervene. In our judgment this is an erroneous reading of the sub-section. The sub-section says that the District Magistrate shall send the notice not less than seven clear days before the date of the meeting and the word "send" shows that the critical date is the date of the despatch of the notice. As the notice was sent on the 17th and the meeting was to be called on the 25th, it is obvious that seven clear days did intervene and there was no breach of this part of the section.

The next contention is that the District Magistrate had to convene the meeting for the consideration of the motion on a date which was not earlier than thirty days from the date on which the notice under sub-section (2) was delivered to him. As the notice was delivered to the District Magistrate on

October 26, the learned counsel contends that the date fixed for the meeting namely, November 25 was earlier than thirty days because according to him the 30th day should be excluded in addition to the date on which the notice was handed. In other words, the learned counsel wishes to exclude both the terminal days, i.e., October 26 and November 25 and wants to count thirty clear days in between. He contends that the expression "not earlier than thirty days" is equal to the expression "not less than thirty days and, therefore thirty clear days must intervene between the two terminal days. In support of his contention the learned counsel relies upon a ruling reported in Sm. Haradevi v. State of Andhra and Another in which the expression "not less than three days" that is to say, three clear days. He also relies upon certain other rulings which deal with the expression "not less than so many days". In our judgment the expression "not earlier than thirty days. " It is no doubt true that where the expression is "not less than so many days" both the terminal days have to be excluded and the number of days mentioned must be clear days but the force of the words "not earlier than thirty days" is not the same. "Not earlier than thirty days" means that is should not be the 29th day, but there is nothing to show that the language excludes the 30th day from computation. In other words although October 26 had to be excluded the date on which the meeting was to be called need not be excluded provided by doing so one did not go in breach of the expression "not earlier than thirty days. " The 25th of November was the 30th day counting from October 26 leaving out the initial day and therefore it cannot be described as earlier than thirty days. In other words, it was not earlier than thirty days from the date on which the under sub- section (2) was delivered to the District Magistrate. This reading is also borne out by the other expression "not later than thirty-five days" which is used in the section. In this Court the expression "not later than 14 days" as used in rule 119 under Representation of the People Act was held to mean the same thing as "within a period of fourteen days. " In that expression the number of days, it was held, should not exceed the number fourteen. In the sub-section we are dealing with the number of days that should not exceed thirty-five days. On a parity of reasoning not earlier than thirty days would include the 30th day but not the 29th day be regarded as earlier than thirty days. If the provision were "not earlier than thirty days and not later than thirty days" it is obvious that only the 30th day could be meant. This proves that the fixing of the date of the meeting was therefore in accordance with law. We respectfully disapprove of the view taken in the Andhra Pradesh case.

The third point arise under the following circumstances. The District Magistrate had arranged with the district Judge for a stipendiary judicial officer to preside, over the meeting to be convened on November 25. The District Judge had nominated one Mr. R. R. Agarwal, Additional Civil Judge, Aligarh for this purpose. Mr. R. R. Agarwal made an order on November 22, 1966 intimating that he was unable to preside over the meeting on November 25 and that the meeting would be adjourned to December 5. The District Magistrate sent out notices on the same day intimating the members of the change of date. It is contended that this action of Addl. Civil Judge, Aligarh violated the provisions of the fifty sub-section. The reason advanced is that the judicial officer is not empowered to adjourn the meeting in advance but he can only do so if he is unable to preside at the meeting that is to say, on the day on which the meeting is to be held. In support to this contention a ruling of the Allahabad High Court reported in Krishna Chandra Gupta v. Prayag Narain and others is cited where at page 229 a Divisional Bench said that the authority under sub-s. (5) to adjourn the meeting is exerciseable only on the date on which the meeting is convened and if that occasion does not arise the adjournment is improper. Here again we find it difficult to accept the view expressed in the Allahabad High Court. Sub-section (4) provides that if the presiding judicial officer does not attend the meeting, the meeting stands automatically adjourned after half an hour to a date and time to be appointed later and notified to the members by that officer under sub-section (5). It seems pointless therefore to think that if the judicial officer knows in advance that he would not be able to

attend the meeting that he had not the power to adjourn the meeting in advance. No visible profit results from such a construction. In fact, the words of sub-s. (5) are that if the judicial officer is unable to preside at the meeting he may, after recording his reasons, adjourn the meeting to such other date and time as he may point. This can happen not only at the meeting but also before the date of meeting if the judicial officer is in a position to say that he would be unable to preside at the meeting. If this were not so some unforeseen event which requires the presiding officer to be absent would frustrate the entire non-confidence motion because the judicial officer would be unable to adjourn it in advance. That the consequences under sub-section (4) would automatically flow also show that it should be possible for the presiding officer to adjourn a meeting which under the law would in any event be adjourned under sub-s. (4). In our opinion it is not necessary that the judicial officer should be present at the meeting and then adjourn it for purposes of sub-s. (5). He can take action in advance. This will be convenient all round because it will save members from attendance on that day. This was done in this case and in our opinion the action was correct. We do no read the word "adjourn" as being in any way different from the word "postpone" which is some times used. The word "adjourn" means that the officer can postpone the meeting to a subsequent date.

The High Court did not exercise its powers under Art. 226 of the Constitution and we must not be intended to have meant that where the High Court has refused to exercise its discretion this Court would always interfere. This case was admitted in this Court merely to clear a dispute about the law which seems to have evoked different interpretations in the High Courts.

On a consideration of the whole matter we are of opinion that the petition was devoid of merit and although it was dismissed because the High Court did not choose to exercise its discretionary powers the result would have been the same if the High Court had gone into the matter elaborately and correctly. The appeal must therefore be dismissed. We order accordingly.

The appeal shall stand dismissed with costs. One hearing fee.

V. P. S.

Appeal dismissed.

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