

ALLAHABAD HIGH COURT

District Board

Vs

Kailashi Nath Kapoor

(W Ullah, J.)

05.09.1947

JUDGMENT

Wali Ullah, J.

1. This is an appeal by the defendant. It arises out of Suit No. 10 of 1941 instituted by one Kailashi Nath Kapoor, since deceased, who was the Secretary and Assessing Officer of the District Board, Shahjahanpur, for a number of years.

2. It appears that on 29th January 1940 the District Board of Shahjahanpur, which is the defendant appellant before us, passed two special resolutions, one of dismissal of the Secretary and the other of suspension of the Secretary forthwith until the disposal of the appeal by the Secretary to the Provincial Government against the resolution of dismissal. It may be added here in passing that the Secretary's appeal to the Provincial Government was dismissed by his Excellency the Governor on 19th December 1940. In consequence of the resolutions passed by the District Board mentioned above, on 16th August 1940, Kailashi Nath Kapoor instituted Suit No. 10 of 1941 in the Court of the Civil Judge, Shahjahanpur claiming various reliefs. In substance, these were to the effect that the two resolutions passed by the District Board dismissing and suspending him be declared to be illegal and 'Ultra vires' of the Board and that he be declared to be the Secretary of the Board. He further claimed an injunction against the Board restraining it from preventing the plaintiff from discharging his duties as the Secretary and Assessing Officer of the Board. He claimed a substantial sum as arrears of salary together with interest thereon and contribution to his provident fund, up to the date of the suit as well as pendente lite. In the alternative, he claimed a substantial sum of money as compensation for his illegal dismissal and suspension.

3. Another suit - suit No. 3 of 1941 - was filed against the District Board claiming a permanent injunction restraining the Board from carrying out and giving effect to, the two special resolutions which were the basis of suit No. 10 of 1941. This suit was filed by a member of the

Board, namely Zabir Hasan Khan and a taxpayer Both the suits were heard and disposed of together by the learned Civil Judge' In the result, Suit No 3 of 1941 was dismissed with costs and no appeal appears to have been filed against the decree in that suit. We are, therefore, no longer concerned with it. Suit No. 10 of 1941, however, has been partly decreed and the parties have been directed to pay and receive costs proportionate to their success and failure in the suit. The defendant Board has come up in appeal to this Court and cross-objections have been filed on behalf of the plaintiff-respondent in respect of the portion of the claim which has been dismissed by the Court below.

4. The plaintiff's case, as set out in the plaint, was to this effect : He was appointed the Secretary of the Board in January 1924 and was also made the Assessing Officer of the Board in 1929. B. Prakash Narain Saxena, the present Chairman of the Board and one Pt. Deo Narain, a prominent member thereof, owing to their grudge against the plaintiff managed to get two resolutions passed by the Board on 29th January 1940. It was alleged by the plaintiff that both the resolutions of dismissal and suspension were unjust, illegal, ultra vires, unreasonable, ineffective and void for various reasons set out at length in paras 5 and 7 of the plaint. In substance, it was alleged that no proper notice as required by the District Boards Act and the rules passed thereunder was ever given for the consideration and passing of the special resolutions on 29th January 1940. It was further alleged that the voting on the two resolutions in question was not free and voluntary, but was under undue influence, misrepresentation, fraud and coercion exercised on, and inducements offered to, the members. Again, it was alleged that the plaintiff had not been given a reasonable opportunity of putting forward his defence before the Board and his explanation was not properly put either before the Board or considered by it, before the two resolutions were passed against him. Lastly, it was urged that the resolution of suspension ' could not be legally passed as Section 90 Sub-clause (3), District Boards Act under which it purports to have been passed, was not applicable to the case of the plaintiff.

5. The suit was contested by the District Board It was pleaded, in the first place, that the resolutions of dismissal and suspension in question, could not be challenged by the plaintiff in any Civil, Court, hence the suit was not legally maintainable. On the merits, it was contended that both the resolutions of dismissal and suspension were passed after all the formalities prescribed by law had been properly observed and that the proceedings of the meetings of the Board at which the resolutions were passed were perfectly legal and the voting was free and voluntary and there was no question of the exercise of undue influence, misrepresentation fraud coercion or inducement of any kind whatsoever. It was asserted that the plaintiff had, and was afforded, full opportunity of defending himself before the Board. The allegations of the plaintiff to the effect that B Prakash Narain Saxena and Pt. Deo Narain bore a grudge against the plaintiff and managed somehow to brag about the dismissal and suspension of the plaintiff were denied and characterised as unfounded and false. Finally, it was contended' that the suit was barred by time. It was further contended that the suit was also barred by Order 2, Rule 2 Civil P.C. inasmuch as the plaintiff had brought a suit, suit No. 4 of 1941, in the Court of the Civil Judge,

Shahjahanpur, in respect of the Board's contribution to his provident fund alleging it to have been illegally forfeited and in that suit he had failed to claim the reliefs which, he claimed in the present suit.

6. The learned Civil Judge framed a number of issues in respect of the various contentions of the parties. As the result of the trial, the learned Civil Judge recorded a finding that the suit was cognisable by the civil Court and that it was not barred by Order 2 Rule 2, Civil P.C. nor was it, barred by time. On the crucial issue in the case, viz., whether the resolutions of dismissal and suspension of the plaintiff passed by the Board on 29th January 1940 were illegal and ultra vires of the Board, the learned Civil Judge recorded these findings. He held that the allegations of the plaintiff about fraud, coercion, undue influence or improper inducement were wholly unfounded. He further held that both the resolutions of dismissal and suspension of the Secretary were properly passed and that there was no irregularity, impropriety or illegality of any sort or kind in the procedure observed before the passing of the resolutions. The learned Civil Judge then proceeded to consider the question whether after passing the resolution of dismissal the Board was legally competent to pass a resolution of suspension with effect from the same date viz 29th January 1940 till the disposal of the appeal by the Provincial Government Finally he recorded his finding that the resolution of suspension of the Secretary was illegal and ultra vires and therefore not binding on the [Secretary. In substance, therefore, the findings of the learned Civil Judge come to this that the resolution of dismissal of the Secretary passed on 29th January 1940 was legal and binding on the Secretary, but that the resolution of suspension passed against him on the same day could not be legally passed even though in procedure it had been properly passed. In this view of the matter, the learned Civil Judge held that the Secretary must be deemed, in the eye of law, to continue - as the Secretary of the Board up to 19th December 1940 when his appeal was dismissed by the Provincial Government Accordingly the plaintiff was held to be entitled to his pay for the period from 29th January 1940 to 19th December 1940 at the rate of Rs. 550 per month the salary of the Secretary. For this period the Secretary was also held entitled to get the Board's contribution to his provident fund at the rate of one anna per rupee. Interest on the amount of pay considered to be wrongly withheld during the period of suspension at 6 per cent, per annum was also allowed to the plaintiff. In the result, therefore, the claim to the extent of Rs. 6629-4-0 was decreed with proportionate costs, while the rest of the claim was dismissed.

7. AS mentioned above, the defendant Board has come up in appeal against the portion of the claim decreed and cross-objections have been filed on behalf of the plaintiff-respondent in respect of the portion of the claim which has been dismissed.

8. Elaborate arguments have been addressed to us by the learned Counsel for the parties. From all this discussion, three main points emerge for decision in this case : (1) Whether there was any irregularity or illegality in the procedure followed before the two resolutions in question were adopted at the meeting of the Board on 29th January 1940. (2) Whether, under the law, it was competent to the Board to pass the resolution of suspension of the Secretary after it had passed

the resolution of dismissal under Section 71, District Boards Act, and (3) What is the legal effect of the Government order dismissing the appeal of the Secretary and ordering that the dismissal shall take effect from the date of the Board's resolution dated 29th January 1940?

9. The last point may be dealt with first as, in our judgment, it admits of a short answer. It has been urged on behalf of the appellant that in view of this order of the Government the dismissal of the Secretary, although finally determined by the appellate authority on 19th December 1940 must be deemed to have come into force on the date when the resolution was passed viz., 29th January 1940. An examination of the provisions of Section 71, U.P. District Boards Act, (1922); particularly Proviso 2 to it, would make it clear that the 'special' resolution of the Board inflicting any 'punishment' or even 'dismissal,' on the Secretary cannot take effect until the period of one month has expired or until the Provincial Government have passed orders on an appeal preferred by the Secretary. It follows, therefore, that in a case where a District Board passes a special resolution of dismissal of the Secretary but takes no other step the resolution cannot take effect immediately. It has to be kept in abeyance for one month, obviously to enable the Secretary to make up his mind whether he will go up in appeal against the resolution to the Provincial Government. If an appeal is actually filed, the resolution is kept in abeyance until orders have been passed upon it by the Provincial Government. In a case of this character, normally the Secretary would continue to be the Secretary and would be discharging his duties as such till orders of the Provincial Government on the appeal are passed and communicated to him. If the appeal is finally dismissed and thus the resolution of the Board is confirmed, it would be the date of the decision of the appeal, and not the date when the resolution was passed, that the dismissal of the Secretary would come into effect. The ingenious argument of the learned Counsel for the appellant that the resolution of dismissal, after the dismissal of the appeal on 19th December 1940, must be held to come into effect from the date when it was passed i.e., on 29th January 1940 is, in our judgment, not substantiated by the provisions of Section 71, District Boards Act nor has the learned Counsel been able to support his argument by invoking any other rule or principle of law. If that were the intention of the Legislature, one would expect to find a clear provision to that effect in the proviso to Section 7 to which deals with this matter. There is no such express provision, nor is such an intent deducible by necessary intendment from the language used in the statute. We have not found any provision in the Act, and none has been brought to our notice, which would empower the Provincial Government, while deciding the appeal, to fix the precise point of time when the resolution of dismissal can come into effect. We are, therefore, clearly of the opinion that in the face of the provisions of Section 71 of the Act the direction contained in the Government order that the dismissal shall take effect from the date of the Board's resolution, cannot have any legal effect.

10. As regards the question whether there was any irregularity, or illegality, practised in connection with the passing of the two resolutions by the Board, we may say at once that this question has been very carefully and elaborately discussed by the learned Civil Judge where he has reviewed the entire circumstances in which these resolutions came to be passed. He has

shown, in the first place, that the evidence led to establish that there was any previous enmity, between the Chairman and Pt. Deo Narain on the one hand and the Secretary on the other, such as might induce the former to manipulate the removal of the Secretary, is utterly unreliable. On a careful consideration of the materials on the record and the circumstances of the case, we are clearly of the opinion that there was no impropriety, inducement or undue influence practised, for influencing the voting on the two resolutions on 29th January 1940. In the second place, the learned Judge has carefully considered and summed up the events as they happened from 9th November 1939, when the resolutions were drafted and were embodied in the requisition of six members of the Board calling upon the Chairman to call a meeting for consideration of the two resolutions in question, to 29th January 1940 when they were eventually passed. A bare narrative of the events which admittedly took place from 9th November 1939 onwards is, in our judgment, sufficient to demonstrate that the Secretary adopted all conceivable tactics to delay the consideration of the two resolutions by the Board. Sometimes he himself took steps for that purpose and at other times he acted through Mahir Hasan Khan who was apparently one of his partisans in the Board. From the evidence, it is perfectly clear that the Secretary was shown every consideration and given every reasonable facility for putting up his defence before the Board and his allegations about the mala fides of the Chairman are entirely unfounded. A technical objection was raised on behalf of the plaintiff that the resolution of his dismissal must be deemed to have fallen through when it was not taken up on 17th December 1939. This is, in our judgment, a futile argument. On 17th December 1939 the Board decided to frame charges against the Secretary and no fault can be found with the framing of the charges on that date at that meeting. The mere fact that the resolution for the dismissal of the Secretary was also on the agenda but was not taken up on that day, simply with a view to afford the Secretary one further chance for giving his explanation with respect to the charges, cannot obviously lead to the inference that the resolution either fell through or was negated. As a matter of fact, ten days' time for reply to the charges was given to the Secretary. The correspondence exchanged between the Chairman and the Secretary between 17th December 1939 and 20th January 1940 clearly shows that the Chairman was very fair in his dealings with the Secretary and that he endeavoured to give every conceivable facility to the Secretary to prepare for his defence before the Board and to put it forward for the consideration of the Board before the resolutions in question were actually passed. On 20th January 1940 a special meeting of the Board was held to consider the charges against the Secretary and his reply, if any. On this date the Secretary filed his written reply. After some of the items on the agenda had been disposed of, four of the members left the meeting and the quorum became insufficient for disposal of any other business. The meeting of the Board, therefore, had to be adjourned for want of the prescribed quorum. It is clear from Section 49 Sub-clause (3), District Boards Act, and regulation 16 of the Regulations made by the District Board of Shahjahanpur, that no fresh notice of the adjourned meeting was necessary. The meeting was adjourned to 29th January 1940 when the two resolutions in question were considered and passed by the Board. On 29th January 1940 twenty-five out of twenty-seven members were present. The charges and the Secretary's replies thereto appear to have been thoroughly considered by the Board and eventually the two resolutions were passed by a two-

thirds majority of the members of the Board. Some arguments have been addressed to us on the question whether the minutes of the meeting of 20th January 1940 were properly written and sent to the Collector as required by the rules. Another contention urged by the Secretary was that the meeting of 20th January 1940 was "closed" and not actually "adjourned" to 29th January 1940. We have not been able to appreciate the force of this contention. It is obvious that before these resolutions came up for discussion some of the members had left the meeting and it was discovered that the quorum was incomplete for disposal of any other business on that date. Section 49, Sub-clauses (3), District Boards Act, provides that under such circumstances the Chairman shall adjourn the meeting to another date. It is hardly likely in the circumstances of this case to suppose that the Chairman would "close" the meeting rather than "adjourn" it when as is alleged by the Secretary, the Chairman was ill-disposed towards the Secretary and was anxious to get the resolutions passed. On the evidence before us, it is quite clear that there was no question of the Chairman's "closing" the meeting. It must, therefore, be held that the meeting on 20th January 1940 was adjourned to 29th January 1940 and for the adjourned meeting the issue of a fresh notice was not necessary.

11. On consideration of the whole matter, in the light of the evidence and the circumstances of this case, we are fully in agreement with the finding of the learned Civil Judge and hold that there was no irregularity, impropriety or illegality in the procedure followed and the steps taken before the meeting or at the meeting, of the Board when the two resolutions were considered and passed.

12. Lastly, the third and the most important question which we have to consider is whether in law the Board was competent to pass the resolution of suspension with effect from the date of the resolution, after it had passed the resolution of dismissal of the Secretary on 29th January 1940. On this question, on a consideration of the provisions of Sections 71 and 90, District Boards Act, the learned Civil Judge came to the conclusion that the Board had no power in law to pass this resolution. He, therefore, held that it was illegal, ultra vires and not binding on the Secretary. According to his interpretation of Section 90, the two kinds of suspension mentioned therein were exhaustive and the resolution of suspension passed by the Board in this case according to him, did not fall under any of the two categories of suspension mentioned in Section 90. He was further opinion that the power of suspension "pending enquiry or orders" being an ancillary power, which flowed from the power of dismissal, it could not be wider or greater in extent and scope than the parent; power, i.e., the power of dismissal. He, therefore, held that the resolution of suspension could not be brought into operation from the time of the passing of that resolution on 29th January 1940. According to the learned Judge, to allow immediate operation to the resolution of suspension in a case like the present would be tantamount to taking away from the Secretary the protection which was given to him under Section 71 of the Act.

13. We have heard elaborate arguments on this question from the learned Counsel for the parties. learned Counsel who have appeared for the plaintiff respondent have repeated many of the

arguments advanced by the learned Civil Judge in support of his finding. On the contrary, the learned Counsel for the defendant-appellant have strenuously contended that, on a proper interpretation of the relevant provisions of the District Boards Act read with Section 16. U.P. General Clauses Act, it would be clear that the District Board had the power of passing the resolution of suspension with immediate effect after it had passed the resolution of dismissal which, under Section 71, District Boards Act, could not come into operation for a certain period of time.

14. Section 71, District Boards Act, (U.P. Act 10 [x] of 1922), as it stands after the amendment in 1983, empowers a District Board to punish or dismiss its secretary by passing a special resolution. There are, however, two conditions prescribed which must be satisfied before such a resolution can become operative and effective in law : (i) The resolution of punishment, or dismissal, must be passed by a vote of not less than two-thirds of the total number of members of the Board, (ii) The resolution shall not take effect until the period of one month has expired, within which the Secretary can exercise his right of appeal, or until the Provincial Government have passed order on an appeal, if any, preferred by him. It would be clear from the provisions of Section 71 that it is only a special resolution of "punishment" or "dismissal" - and not a resolution of mere suspension otherwise than by way of punishment of the Secretary that has to be kept in abeyance for a period of at least one month in any case and for a longer period i.e., till the decision of the appeal if one is filed by the Secretary. Prior to the amendments introduced into Section 71 by U.P. Act 1[I] of 1933 it stood thus:

A board may by special resolution punish or dismiss its secretary, provided:

(a) that such a resolution is passed by a vote of not less than two-thirds of the total number of members of the Board for the time being, or

(b) that it is passed by a vote of not less than one half of the total number of members and is sanctioned by the Local Government.

15. It is obvious that prior to the amendments in 1933 there was no question of keeping in abeyance or the suspension of a special resolution to punish or dismiss a secretary. Whether it was a resolution of suspension or dismissal it came into effect immediately such a resolution was passed provided it was passed by a vote of not less than two-thirds of the total number of members of the Board, If it, was passed by only one half of the total number of such members it was necessary that it should be sanctioned by the Local Government before it came into effect.

16. Section 90(1) provides:

Suspension may be of two kinds:

(a) suspension as a punishment, and

(b) suspension pending enquiry or orders, (2) Where a general power to punish is conferred by this Act, it shall be deemed to include a power to suspend as a punishment for a period not exceeding three months (3) Where a power of dismissal, whether subject to the sanction of any other authority or not is conferred by this Act, it shall be deemed to include a power to suspend and person against whom the power of dismissal might be exercised pending enquiry into his conduct or pending orders of any authority whose sanction is necessary for his dismissal "Suspension" as defined here is of two kinds. With regard to suspension as a punishment it is provided that a general power, to punish (as given by Section 71 of the Act) includes a power to suspend as a punishment for a period not exceeding three months. Similarly, a general power of dismissal (conferred on the Board by Section 71) is deemed to include a power of suspending any person...pending enquiry into his conduct or pending the orders of any authority whose sanction is necessary for his dismissal. In the present case, obviously we are not concerned with any suspension as a punishment. Therefore it is not necessary to consider the scope of Sub-section (3) as such. Sub-section (3) has, however, to be carefully considered. It is clear that by reason of this sub-section the District Board has an implied power to suspend a person against whom it has the power, of dismissal, pending enquiry into his conduct or pending the orders of any other authority whose sanction is necessary for his dismissal. The provisions of this section were unfortunately not considered at the time when the provisions of Section 71 were amended in 1933. Section 71 as it stood prior to the amendment and Section 90 as it stood then and stands now were quite consistent and complementary to each other, but by reason of the amendments introduced in that year the rule about keeping the resolution of punishment or dismissal in abeyance for a certain period was introduced into Section 71 but Section 90 which deal with the kinds of suspension was kept intact. The provisions of Section 90 assume that there is no gap between the passing of a resolution of punishment or dismissal and its coming into force whereas the provisions of Section 71 as they stand today clearly necessitate that there shall be a period of one month at least, if not longer, which must elapse between the passing of the resolution and its taking effect.

17. We are thus faced with the situation that Section 90, as it has stood all along, has now, after the amendment of Section 71 in 1933, to be interpreted in such a way as to make it consistent with the amended provisions of Section 71. It would thus appear that the two kinds of suspension dealt with in Section 90(1)(b) and to a certain extent elaborated in Section 90(3) are the two kinds of suspension any one of which can be resorted to by a District Board when it has to provide for the period during which its resolution of dismissal is kept in abeyance by proviso 2 to Section 71 Again, in this particular case, there was no suspension pending enquiry into the conduct of the Secretary as it had already been made before the passing of the resolution of dismissal. The resolution of suspension was meant to cover the period during which the appeal, if any, filed by the Secretary would be pending before the Provincial Government for decision The crucial question, therefore, is whether this resolution of suspension falls within the four corners

of the expression in Section 90(1)(b) viz., "suspension pending orders" or the expression "pending the orders of any authority whose sanction is necessary for his dismissal" in Section 90(3) of the Act. It seems to be fairly obvious that the resolution in question was in terms a resolution of "suspension pending orders." The question, however, remains whether the expression "pending orders" must necessarily be confined to the orders of any authority whose sanction is necessary for 1 is dismissal" as provided in Sub-section (3) to Section 90. The reference to a sanctioning authority in Section 90(3) was clearly referable to the old Section 71(b) of the Act but chap. 4 of the Act which embraces Sections 70 to 90 nowhere makes any reference to any authority whose sanction is necessary for giving effect to a resolution of dismissal. If, therefore, the last words of Sub-section (3) of Section 90 quoted above be taken literally they would not fit in with the words "orders passed by the Provincial Government on an appeal filed by a secretary of the Board" for in case no appeal is filed by the secretary, the resolution would automatically come into force after the expiry of one month. In order to harmonise the provisions of Sections 71 and 90 it is necessary to put a liberal construction on the expression "the orders of any authority whose sanction is necessary" in Section 90(3). In this view of the matter, it can be reasonably held that it was competent to the Board to pass the resolution of suspension in question. The contention that the power of suspension being an ancillary power derived from the power of dismissal, the resolution of suspension must also be held to be subject to the limitation, that it must be kept in abeyance for a certain period of time as provided in Section 71, is, in our judgment, without any substance. The whole object of the power of suspension pending orders is to provide for the period during which the resolution of suspension is not to take effect. To postpone the operation of such a resolution of suspension would be to frustrate that very object. Such a resolution of suspension must, therefore, come into force as soon as it is passed.

18. There is yet another way in which the validity of this resolution, of suspension can be considered. Section 70(1), District Boards Act, enjoins on a District Board to appoint a Secretary by a special resolution.

19. Section 16, U.P. General Clauses Act, 1904, provides that, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power. It is, therefore, clear that unless a different intention appears from the District Boards Act, the District Board has a general power to suspend or dismiss its Secretary. The question, therefore, is:

Q. Is there anything in Sections 71 and 90, District Boards Act, which negatives or is inconsistent with the general power of suspension pending a future event i.e., pending orders of the Provincial Government on an appeal by the Secretary? Section 71 is silent on the point and we do not find anything in Section 90 which controls or negatives an intention to sustain the general power of suspension i.e., suspension pending orders on an appeal. In our judgment, no contrary intention is either expressed or implied by necessary intendment. On the contrary, such a

form of suspension pending orders is clearly indicated by Section 90(1)(b) of the Act.

20. Learned Counsel for the respondent has not been able to point out any other provision in the District Boards Act which would negative the existence of this general power of suspension inherent in the District Board as the appointing authority. In our judgment, therefore the resolution of suspension passed by the District Board on 29-1-1940 to take effect forthwith and to continue till orders were passed by the Provincial Government on the appeal filed by the Secretary was perfectly valid in law and binding upon the Secretary.

21. No other points have been urged before us by the learned Counsel for either of the parties

22. In the result, therefore, we dismiss the cross-objections. We allow the appeal, set aside the decree of the Court below and dismiss the suit with costs throughout.

Cases Referred.

1(33) 20 A.I.R. 1933 Pat. 144

24 A.I.R. 1917 L.B. 12

34 A.I.R. 1917 L.B. 11