ALLAHABAD HIGH COURT

Bhaiya Lal

Vs.

Paras Nath Tewari

Civil Misc. Writ No. 2950 of 1969
(Jagdish Sahai and Yashodanandan, JJ.)

30.10.1969

JUDGMENT

Jagdish Sahai, J.

1. The petitioner, Bhaiya Lal, is the Senior Vice-President of the Municipal Board, Moghalsarai (hereinafter referred to as the Board) . The President of the Board is Paras Nath Tewari, respondent No. 1.

2. The composition of the Board for the present for the purposes of Sec. 9 of the U. P. Municipalities Act, 1916, (hereinafter referred to as the Act) is the President and fifteen members. On 15th of August, 1968, the Commissioner, Varanasi Division, acting under the provisions of Sec. 40 (1) (4) of the Act removed Sri Desh Raj from the office of the member of the Board. Sri Desh Raj filed an appeal before the State Government and that appeal has now been allowed. The exact date on which it was allowed is not known, but it is the admitted case (f the parties that it was in the neighbourhood of the 15th of October, 1969. On 18th of July, 1969, Servasri Hanuman Prasad, Chhote Lal, Tribeni Prasad, Lalla Ram, Bhai Lal, Janardan Prasad, Bechan Ram and Bhagwati Prasad, members of the Board, personally approached the District Magistrate and handed over to him a written notice of the intention to make a motion of non-confidence against Sri Paras.Nath Tewari, the President of the Board.

3. The District Magistrate convened a meeting of the Board for the consideration of that motion on 20th of August, 1969 and arranged to have the meeting presided over by Sri Ganesh Dutt Dube, First Additional Civil Judge. Varanasi. The meeting of the Board was held as scheduled at 11 a.m. on 20th of August, 1969. The President, Sri Paras Nath Tewari, and members other than Sri Desh Raj attended the meeting. The motion was put to vote. Out of the fifteen persons present (the President and fourteen members) eight voted in favour of the motion. The other seven including the President voted against it. Sri Ganesh Dutt Debe, however, treated the motion as lost and submitted a report to the District Magistrate in respect of the proceedings of this meeting.

4. The prayers contained in the petition are that writs of mandamus be issued directing Sri Paras Nath Tewari not to function as the President of the Board, the respondents other than respondent No. 8 not to interfere with the discharge of the duties of the President by the petitioner in his capacity of Vice-President and the Government to issue a notification under Sec. 56 of the Act declaring a vacancy in the office of the President. There is also a prayer for the issue of a writ or direction in the nature of quo-warrant calling upon Sri Paras Nath Tewari to show by what authority he is holding the office of the President of the Board. There is also the usual prayer for the issue of any other writ order or direction which this Court in the circumstances of the case deems fit and proper.

5. The short point involving decision in this case is as to what is meant by the words "the motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the Board" occurring in sub-sec. (12) of Sec. 87-A of the Act. Rival contentions have been advanced by the learned counsel for the parties with regard to the interpretation of the words aforesaid. Whereas it is contended on behalf of the petitioner that the expression "total number of members of the board" means total number of members of the board, who are functioning as such at the relevant time and does not include members or member, who have or has been 1emoved, on behalf of Sri Paras Nath Tewari, it has been contended that the expression "half of the total number of members of the board" means half of the total number of members of the board as constituted under Sec. 9 of the Act i.e. half of its normal composition.

6. The factual position admitted in the present case is that both on the Gate when the notice of the motion of non-confidence was handed over to the District Magistrate, Varanasi as also on 20th August, 1969, when that motion was put to vote Sri Desh Raj stood removed from the office of the member of the Hoard by the Commissioner Varanasi Division, who admittedly is a competent authority to pass that order.
7. Sec. 87-A was introduced in the Act by U. P. Act No. IX of 1933 and was not a part of the Act as it was originally passed. Sec. 9 of the At read;

> 'Normal composition of the Board-
> Except as otherwise provided by Sec. 10, it board shall consist of
> (a) The President, and
> (b) the elected members who shall be not less than 10 and not more than 40 as the State Government may,by notification in the official Gazette specify."

It is clear from the language of Sec. 9 of the Act that the Legislature itself has not fixed the total strength of any Board and it has left to the State Government to determine the number of members in every Board in this State subject to the condition that the number shall not be less than 10 and not more than 40 in any Board. It clearly follows from this provision that the strength of the Board can be changed and is changeable from time to time by the State

Government and such a change would be valid so long as the limit of 10 and 40 is not crossed.

8. It would be conducive to a proper understanding of the words used in sub-sec. (12) of Sec. 87-A of the Act if the provisions of sub-sec. (13) of that section are noticed. That provision reads :

> "If the motion .....which shall not be less than one-half of the total number of members of the board *for the time being*, no notice of any subsequent motion of non-confidence in the same President shall be received until after the expiry of a period of twelve months from the date of the meeting."

(Italics by us) .

Clearly the Legislature has used two different expressions in sub-sec. (12) and (13) of Sec. 87-A of the Act. Whereas sub-sec. (13) requires that in order to constitute the quorum not less than one-half of the total number of members of the Board for the time being is necessary, for the purposes of passing the resolution of non-confidence, half of the total number of members of the Board is required.

9. When the Legislature used two different expressions in sub-secs. (12; and (13) of Sec. 87-A of the Act, it must be taken as correct that they intended to provide for two different contingencies and there cannot be any manner of doubt that the expression "not be less than one-half of the total number of members of the board for the time being" is different in its contents from the expression "half of the total number of members of the board".

10. Sec. 56 of the Act requires that the "due constitution of the Board" and the election or nomination of members and President shall be notified in the official gazette. Sec. 10 (A) (2) of the Act provides that the term of a Board shall begin from the date of notification under Sec. 56 of the Act that the Board has been constituted. Therefore, once the constitution of the Board has been notified, a Board as distinct from its members comes into existence.

11. A Board would be a Board and no less than a Board even if its strength is short by one or two members on the ground of their removal. Its effectiveness or existence as a corporation would not be jeopardised by that circumstance. Even with the removal of Sri Desh Raj, the Board was a Board and could not be described by any other name. The word used in sub-sec. (12) is "Board" simplicitor without there being any qualifying words such as "full" or "whole" or "Board in its normal composition". To the word "Board" without there being any qualifying words only or k, meaning can be given, i.e., the Board with its composition at the relevant time. Therefore, giving the word "Board" its normal meaning the total number of members of the Board in sub-sec. (12) of Sec. 87-A in the context of the present facts would mean half of the total number of members of the board as it was composed at the time of motion of non-confidence i.e. without Desh Raj.

12. We are not impressed by Mr. Khare's submission that the expressions 'total number of members of the board" means total number of members of the full board or the total number of members according to its normal composition because in making such an interpretation, we would either be adding some words to the provision or altering places of the words already existing. Such a course is open to a court of law only when the language of the statute is not clear or free from difficulty. In our opinion, the language of sub-sec. (12) of Sec. 87-A of the Act is absolutely clear and unambiguous. We cannot give to the word "Board" any other meaning than what it would bear under the provisions of the Act and as already pointed out, a Board would be a Board and not any the less a Board or any the less effective a Board only because one or two of its members have been removed. We find support for this view from the circumstances that in sub-sec. (13), which relates to the quorum, the words used are "of the board for the time being". In our opinion the expression "for the time being" means as notified for the time being under Sec. 56 read with Secs. 9 and 10 of the Act i.e. the composition fixed for the time being by the State Government under Sec. 9 of the Act. The expression "for the time being" had necessarily to be used because the composition of the Board was not fixed and v. as changeable from time to time by the State Government under the provisions of Sec. 9 of the Act.

13. The further circumstance that, in our opinion, lends support to our view is that normally the number required to constitute a quorum should be larger than the number required to transact the business for which the meeting is held. Clearly and admittedly more than half of the total number of members of tire board are required to pass a motion of non-confidence. If we read the words "total number of members of the Board" as total number of members of the Board according to its normal composition, the result would be that in case where one or two members stood removed, the number required to transact the business relating to motion of non-confidence would be larger than the number of members required to constitute the quorum. Mr. Khare's argument is that the expression "for the time being" means total strength of the Board minus the member, removed. If that argument were accepted the inevitable result would be that the number required to constitute the quorum would be shorter than the number required to pass the motion of non-confidence, with the result that the motion would not be capable of being passed, a result which is not only wholly illogical but also inconsistent with the calling of the meeting.

14. We would also like to add that the words "for the time being" are not co-related to the members, but to the Board because if these words were co-related to the members the sub-section would have run as follows:

> ".....one-half of the total number of members for the time being of the Board", and not as it is actually worded. Inasmuch as the expression "for inc time being" is co-related to the Board, it clearly means the normal composition of the Board or its constitution under Sec. 9 of the Act."

We would like to notice here that the expression "the total number of members of the board"

occurs in Sec. 87-A (2) also as ~t occurs in sub-sec. (12) of that revision. In other words the legislative requirement for making a requisition for a meeting to consider the motion of non-confidence and for passing the resolution is exactly the same. If Mr. Khare's argument were accepted and the expression "members of the Board for the time being" is given the meaning the total strength of the Board minus such members as stood removed, the result would be that for requisitioning a meeting a larger number of person would be required than the quorum required for the purposes of the meeting itself a course which is wholly abnormal.

15. We may add that the expression "for the time being" also occurs in Secs. 88 (1) , 94 (6) (b) and 105 (1) of the Act, which, so far as relevant for our purposes, read :

> 88 (1) "It shall be necessary for the transaction of any business other than business which is required to be transacted by a special resolution that not lei i than one-third of the total number of members of the board for the time being shall be present."
> 94 (6) (b) "A resolution of a board shall not be modified or cancelled within six months after the passing thereof
> .....
> (b) except by a resolution supported by not less than one-half of the total "umber of members of the board for the time being."
> 105 (1) "Notwithstanding anything contained in this Act, it shall be lawful for a board by a resolution supported by no less than one-half of the whole number of members for the time being, to appoint as members of a committee any persons of either sex who are not members of the board, but who, in the opinion of the board, possess special qualifications for serving on such committee: .....
> Section 88 (1) relates to quorum, Sec. 94 (6) (b) relates to modification or cancellation of resolution already passed by a Board and Sec. 105 (1) relates to appointment of persons as members of the committees of the Board, who arc not members of the Board. It would be noticed that these words have been used in connection with matters which are the extreme importance to the affairs of a Municipal Board. The question of quorum is important for without ;.t the Board cannot act. The Legislature, therefore, insisted that in order to constitute the quorum a certain percentage of members of the Board according to its normal composition should be present. The matter relating to the cancellation of a decision already taken by a Board is also of considerable importance and is of an exceptional nature. Therefore, the Legislature thought it necessary as a proper safeguard to ensure that the decision of the resolution was rescinded or modified only by a larger voting strength i.e. by more than half of the number of members of the Board according to its normal composition instead of accepting the working rule of a majority in the existing members. Again, the appointment of a stranger to the committee of a Board is also a matter of extreme importance and delicacy requiring maximum thought because the normal rill, is that committees should be composed of the persons who are members of the corporation. Therefore, the Legislature again thought that a decision of this

magnitude should be taken by a larger voting strength and for that reason insisted on the requirement that not he majority amongst the existing members should be sufficient, but it should be the majority of the total strength of the Board.

16. It is an elementary rule governing all democratic institutions that a person elected to an office should cease to function as such no sooner he is left in the position that he cannot carry on business of the institution or loses the confidence of persons with whom he has to work or who have elected him. If it was:a members stood removed out of sixteen and a Board is left with fourteen members and the President, the President would not be able to function if eight members go against him. This circumstance also supports the view that the Legislature did not require that a voting strength larger than the one which would paralyze his working was required for his removal. It, therefore, appears to us that apart from the clear language of sub-sec. (12) of Sec. 87-A of the Act, logic, common sense, reason and accepted principles also lend support to the view we are taking. It would wholly be inconsistent with democratic nations and the scheme of the Act to hold that even though the President has lost the majority and he cannot function, he should still continue in office.

17. Mr. Khare has strenuously contended that the three expressions "total number of members", "whole number of members" and "full number of members" mean the same thing, that is, the total strength of the Board or its normal composition. All that we would like to say in this connection is that we find nothing on the basis of which this contention can be accepted as a general rule. Generally words get meanings from the context in which they are used. In any case the word "total" occurring before the word "number" in sub-sec. (12) of Sec. 87-A relates to number of members and not to Board. The words used are "half the total number of members of the board" and not "half the number of members of the total board" or "more than half of the number of members of the full board" or "more than half of the total number of members of the whole board". We have no doubt in our mind that the word "total" occurring in sub-sec. (12) of Sec. 87-A of the Act relates to total number of members and not to the Board. It only means that whatever be the composition of the Board at the relevant time, because of certain removals, more than half of the total number of members of the composition or residue would be enough to constitute the majority for the purposes of non-confidence motion.

18. Mr. Khare has placed reliance upon the following three single Judge decisions of this Court –

1. *Pyarelal v. State of Uttar Pradesh,* [1]
2. *Jamshed Ali v. State of Uttar Pradesh*[2], by Hon'ble Oak, J. (as he then was) .
3. *Mangla Prasad v. District Magistrate,* [3] is by Hon'ble Satish Chandra, J. Satish Chandra, J. did not lay down any law himself, but only followed the first two decisions. For the reasons given above, with great respect to the learncd judges who decided these cases, we are unable to agree with them in their interpretation of Sec. 87-A of the Act.

19. Reliance has also been placed upon *Newhaven Local Board v. Newhaven School Board*[4]. That case is clearly distinguishable and rests on the language of the statute that the learned Judges were considering. In that case the provision read as follows :

> "No business shall be transacted at any such meeting unless at least one third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger' quorum than seven members be required."

In that case the statute had not used two different expressions i.e. "total number of members" and "total number of members for the time being" and the learned Judges were not called upon to find out the differences between the two expressions. The English
judges had also not to consider provisions similar to Secs. 56 and 10 (2) of the Act from which we have derived much assistance.

20. The use of the words "at least one third of the full number of members be present thereat" without there being the word "council" also in the provision posed no question,as

[1] AIR 1988 N.U.C. (All) 6047 [3] Civil Misc. Writ No. 2924 of 19968 decided 19.05.1969
[2] Civil Misc Writ No. 2332 of 192 dated 04.10.1962 [4] XXX Chancrey Division 350

it does in our case as whether the word "total" related to "Members" or to the "Board".

Mr. Khare has also cited the following two cases :-
1. *Shyamapadda v. Abani Mehan*[5],
2. *Sukhdeo v. Arrah Municipality*[6],

In our opinion they are clearly distinguishable and do not relate to the provisions which we are interpreting.

21. For the reasons mentioned above we are of the opinion that the motion of non-confidence against Sri Paras Nath Tiwari was validly passed in the meeting held on 20th of August, 1969. It has been contended on behalf of the respondent, Sri Paras Nath Tewari, that even though our conclusion is that the motion of non-confidence was validly passed, no writ can be issued in the circumstances of the present case for the following two reasons :

1. Because Sri Desh Raj, who was removed from the membership of the Board by the Commissioner has now been restored to that office by the S.ate Government near about the 16th of October, 1969 and inasmuch he is a congress man and is likely to support Sri Paras Nath Tewari, it will be inequitable to issue a writ.
2. Because every member of the Municipal Board represents a section of the residents of that Municipality, that is, those who belong to his constituency and inasmuch as Sri Desh Raj was removed from the office of the member of the Board and could not participate in

the deliberation held in the meeting of 20th August, 1969, that section's voice went unrepresented.

In our opinion neither of these two grounds have any merits in them. The first one is purely conjectural. In the first place there is no material on the basis of which we can satisfactorily hold that Sri Desh Raj is a congress man. Secondly, we cannot be certain which way the sympathies of Sri Desh Raj would be. It is not infrequent that the members of a political party did not support its own partymen. The members of the constituency which Desh Raj represented has no common law right in respect of sending a representative to the Municipal Board of Mughalsarai. That right is the creature of the Act and if under the provisions of the Act Desh Raj stood validly removed on the date when the meeting was., held, it cannot be said that any of the right of the electorate of the constituency his been infringed.

22. For the reasons mentioned above we are of the opinion that there is a mistake of law apparent on the face of the record in the proceedings drawn up by the learned Additional Civil Judge. Relying upon *Laxminarayan Hegde v. Malikarjun Bhavanappa Tirumale*[7], the learned counsel has contended that inasmuch as there were long arguments in the case, a writ should be refused. That case, in our opinion, is
distinguishable.

5 AIR 1961 Cal. 420 7 AIR 1960 S.C. 137
6 AIR 1956 Pat 367

23. For the reasons mentioned above we allow this writ petition, quash the proceedings recorded by the learned Additional Civil judge and issue a writ of mandamus calling upon
him to draw fresh proceeding in the Light of observations made by us and in conformity with the law declared by us in this judgment. He shall forward a copy of the freshly drawn up proceedings to the District Magistrate for action under Sec. 87-A (11) of the Act and another to Sri Paras Nath Tewari. In the circumstances of the case the parties are directed to bear their own costs.
Petition allowed.