

# RAJASTHAN HIGH COURT

Sita Ram

Vs.

State of Rajasthan

Civil Writ Petition No. 343 of 2003

(B. Prasad, J.)

08.05.2003

## ORDER

**B. Prasad, J.**

1. Heard the learned counsel for parties.
2. The case of learned counsel for the petitioner is that the order impugned by the petitioner was signed and issued by the State Government on 24-10-2000 and after this date, on 25-10-2000, a meeting of Municipal Board was held. As required by law under Section 61, the nominated members were required to take oath within three months. The respondent Nos. 4 and 5 have taken oath on 27-1-2000, which is a date after passing of three months from the date of first meeting, therefore, they have ceased to be the members.
3. Learned counsel for the respondents have submitted that the order nominating was passed on 24-10-2000. It was published in Official Gazette on 30-10-2000 and oath was taken on 27-1-2001 which is within three months from the date of nomination.
4. Now the basic question is whether the nomination should be taken to be effective from 24-10-2000 or 30-10-2000. According to learned counsel for the petitioner, the relevant date for considering the nomination to be effective is from 24-10-2000, the learned counsel for the respondents has drawn my attention to section 9(a) of the Rajasthan Municipalities Act, 1959 which reads as under :-

"(a) the following shall be represented on the board, council or corporation, as the case may be,

(i) a member of the Rajasthan Legislative Assembly representing a constituency

which comprises wholly or partly the area of a municipality; and

(ii) three persons or ten per cent of the number of elected members of the municipality, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the State Government by notification in the Official Gazette;

Provided that-

(i) the provisions contained in Section 26 and Section 59 of this Act shall be applicable to the persons to be nominated or nominated under sub-clause (ii);

(ii) the State Government shall power to withdraw a member nominated under sub-clause (ii) at any time;

(iii) the term of co-opted members, if any, who were co-opted and are continuing as such on the date of commencement of the Rajasthan Municipalities (Second Amendment) Act, 2000 (Act No. 22 of 2000) shall come to an end upon such commencement :

Provided further that a member referred to in sub-clause (ii) shall not have the right to vote in the meetings of a board, council or corporation as the case may be;"

5. According to the learned counsel for the respondents, the nomination of the member takes place from the publication of notification in the Official Gazette. That being 30-10-2000, the argument of the learned counsel for the petitioner is invalid as the law stands.

6. I have considered the rival submissions.

7. Section 61 speaks of disqualification if the member fails to take oath within three months of the first meeting. The question remains as to when the member becomes member. In relation to respondent Nos. 4 and 5, the State Government passed the order on 24-10-2000 which is a notification but then this notification of 24-10-2000 was published in Official Gazette on 30-10- 2000. There is nothing on record to suggest that this nomination was known to the respondent Nos. 4 and 5 before 30-10-2000 or there was any constructive knowledge to the members. Knowledge can be presumed to have come to the member only after its publication in Gazette as a presumption of law. That being the position, the nomination would take effect only from the date of knowledge i.e. 30-10-2000. 30-10-2000 being the date of publication

thus would be the day presumed to be of the knowledge.

8. Section 9(a)(ii) of the Rajasthan Municipalities Act provides that a nomination will come into being only after publication in Official Gazette. That being the position, the argument of the learned counsel for the petitioner is of no consequence to hold that the members have not taken oath within three months of the first meeting because for the purposes of Section 61, the meeting of 25-10-2000 cannot be considered to be the first meeting. Any meeting after 30-10-2000 will be the first meeting and if that date is taken into consideration, the members have taken oath within time.

9. The writ petition has been filed in January, 2003 and the members have taken oath on 27-1-2001. It is too late in the day to examine such matters when the members have taken oath and the State Government has considered the nomination valid. The question was not raised forthwith and with the delayed awakening of the petitioner, he has disintitiled him to raise any question in writ petition under Article 226 of the Constitution of India.

10. In view of the above, the writ petition cannot succeed and held to be not maintainable and is hereby dismissed.

Petition dismissed.