

SRI AMIR AHMAD AND ORS.

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v.

RAM NIWAS AGRAWAL AND ORS.

NOVEMBER 19, 1993

[MADAN MOHAN PUNCHHI AND B.P. JEEVAN REDDY, JJ.]

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U.P. Municipalities Act, 1916—Section 87A(11) (12)—Municipal Board—President—Motion of non-confidence duly passed in a properly convened meeting presided over by a judicial officer—Held, cannot be declared void on vague and half-hearted findings.

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S.9(d)—Composition of Municipal Board—Members of Council of States and State Legislative Council to be ex-officio members—Held, place of residence as mentioned in notification of election or nomination is relevant and determines membership in a Municipal Board and change of residence after election or nomination is not relevant.

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Words and Phrases—Expression 'residence' occurring in Explanation to s.9(d) of U.P. Municipalities Act, 1916—Interpretation of.

Respondent no.1 was the President of a Municipal Board. A no-confidence motion was moved against him. An Additional District Judge was nominated to preside over the meeting to consider the motion. As per the minutes of the meeting sixteen members including the President were present, besides an M.L.C. who claimed to be an *ex-officio* member of the Board and whose claim was rejected by the Presiding Officer; these nominated members whose right to participate in the meeting was disputed on the ground that they had not taken the oath of allegiance, were allowed by the Presiding Officer to participate in the meeting and vote on the motion; seventeen members, including the three nominated members voted in favour of the motion and one, the President himself, voted against it; the Presiding Officer declared the motion to have been passed by the majority inasmuch as the total membership of the Board was twenty seven. The respondent filed a writ petition before the High Court. Challenging the validity of the proceedings of the meeting.

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The High Court allowed the writ petition holding that (i) the M.L.C. must be deemed to be member of the Board (ii) though in determining the total membership of the Board the three nominated member must be taken

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A into account, but since they had not taken the oath of allegiance, they were not entitled to take their seats in the Municipal Board and vote and, therefore, their votes were liable to be excluded and (iii) the presence of two Executive Officers vitiated the proceedings as no acceptable reason for their presence in the meeting hall was given.

B The appeal filed by the appellants challenging the correctness of the reasons given by the High Court was allowed by this Court's order dated 12.8.1993, indicating that reasons therefor would follow.

Giving the reason for allowing the appeals, this Court

C **HELD : 1.1** By virtue of s.9(d) of the U.P. Municipalities Act, 1916, members of the Counsel of States (Rajya Sabha) and the State Legislative Council "who have their residence within the limits of the Municipality" become the members of the Municipal Board. For the purpose of the U.P. Municipalities Act, 1916, the place of residence of a member of the State
D Legislative Council" shall be deemed to be the place of his residence mentioned in the notification of his election or nomination, as the case may be", and it is the said residence which is relevant and determines his membership in the particular Municipal Board, as envisaged by the Explanation to
E clause (d) of s.9. This elucidation was thought necessary not only to obviate any room for confusion but also to prevent such persons from claiming membership of different Municipal Boards at different times to suit their convenience of political objectives by changing their residence. [820-E-H]

1.2 Even if member mentioned in s.9(d) of the Act changes his residence after his election/nomination, it is irrelevant for the purpose of
F his membership in a Municipal Board. If he becomes an *ex-officio* member of a particular Municipal Board by virtue of the place of residence mentioned in the notification of his election/nomination he does not lose it by changing his residence to a place outside the limits of that Municipal Board. Similarly if he did not become in *ex-officio* member of any
G Municipal Board because his place of residence mentioned in the Notification of his election/nomination did not fall within the local limits of a Municipal Board, he does not and cannot gain such membership by shifting his residence to a place within the local limits of a Municipal Board. [821-H, 822-A-B]

H **1.3** In the instant case, the place of residence of the M.L.C. concerned

in the Notification of his election is shown to be his village, which is not within the Municipal Limits of the Municipal Board in question. He claims to be a member of the Board on the basis of a notification issued by the Secretary to the State Legislative Council about ten days prior to the meeting of the Board, notifying the change of address from his village to a place within the Municipal limits of the Board. The said notification not being relevant for the purpose of the Section 9 of U.P. Municipalities Act, the Presiding Officer was right in not allowing him to participate in the said meeting and in rejecting his claim of membership of the Board.

[822-A-D]

2. Once the M.L.C. concerned is not treated as a member of the Municipal Board, the total membership of the Board has to be treated as twenty-seven, even counting the three nominated members as the members of the Board as on the date of the meeting and even if the votes of the said three nominated members are excluded, still the number of voters cast in favour of the motion would be fourteen which would be more than half the total number of members of the Board, as required by Sub-Section (12) of s.87-A of the Act. In this view of the matter, the question of membership of the three nominated members for the purpose of strength of the Board and their entitlement to vote, need not be gone into. [822-E-F]

3.1 The 'minutes of the meeting' recorded by the Presiding Officer as required by sub-section (11) of Section 87-A does not refer to or order the presence of the two Executive Officers at the meeting much less does it speak of any interference by them in the deliberations of the members or with the voting. It is highly unlikely that the Presiding Officer - a judicial officer, against whom, fortunately, no allegation is made - would not have recorded the interference by these officials, if, indeed, there was any. The High Court has not adverted to this important feature in its judgment.

[823-E-F]

3.2 The motion of non-confidence duly passed at a properly convened meeting - that too presided over by a judicial officer - cannot be declared void on vague and half hearted findings. A Municipal body is an instance of local self-government. It is a statutory body. Its actions are governed and regulated by a statute. In the absence of a clear finding that the proceedings of the said meeting convened under Section 87-A have been vitiated by unauthorised interference, duress or undue influence, as the case may be, this proceedings could not have been declared 'vitiated' - i.e. void. [824-A-B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6006 of 1993.

From the Judgment and Order dated. 12.8.93 of the Allahabad High Court in W.P.No. 12911 of 1990.

B Arun Jaitley and Devendra Singh for the Appellants.

Gopal Subramaniam and Ms. Sandhya Goswami for the Respondents.

The Judgment of the Court was delivered by

C **B.P. JEEVAN REDDY, J.** On February 1, 1993 we granted leave to appeal in the Special Leave Petition and allowed the Civil Appeal setting aside the Judgment and Order of the Allahabad High Court dated 12th August, 1993 in writ petition 12911(M/B) of 1990. We indicated that the reasons for our order will be given later. The following are the relevant facts and reasons for our order :

E First respondent, Ram Niwas Agarwal, was the President of the Nagar Palika, Sultanpur in the State of Uttar Pradesh. A motion expressing want of confidence in him was moved by the requisite number of members. A meeting of the Nagar Palika was convened on December 14, 1990 to consider the motion. As required by Section 87-A(4) of the U.P. Municipalities Act, 1916, the District Judge, Sultanpur nominated Sri Vishram Singh, First Additional Civil Judge, Sultanpur to preside over the meeting. The minutes of the meeting recite the following facts :

F When the meeting commenced, sixteen members including the President were present besides, Sri Ram Dular Yadav, M.L.C., who claimed to be an *ex-officio* member of the Nagar Palika. His claim was considered and rejected by the President Officer. Three woman, nominated as members by the government on the previous day, presented themselves and sought participation in the meeting. A dispute was raised with respect in their right to participate in the meeting on the ground that by the date they had not taken the oath of allegiance. The Presiding Officer allowed the said nominated members to participate in the meeting and to vote on the motion. The voting figures were seventeen (including three votes of three nominated members) in favour of the motion and only one, viz., that of the

H President himself against the motion. The Presiding Officer declared the

motion to have been passed by the majority inasmuch as the total membership of the Board (Nagar Palika) was twenty-seven. He opined that even if the total membership is taken as twenty-eight (including the membership of aforesaid M.L.C.) still the motion must be deemed to have been passed.

The President of the Nagar Palika (first respondent in this Appeal) challenged the validity of the said proceedings by way of a writ petition in the Allahabad High Court, Lucknow Bench. A Division Bench allowed the writ petition on the following three grounds:

(1) The votes of three nominated members are liable to be excluded because they had not taken the oath of allegiance till then. Unless they took the oath of allegiance, they were not entitled to take their seat in the Nagar Palika or to vote. However, for the purpose of total membership, the said three members must be counted, which means that in determining the total strength of the Nagar Palika on that day, these three members must also be taken into account.

(2) The Presiding Officer was in error in rejecting the claim of Sri Ram Dular Yadav, M.L.C. to be a member of the Nagar Palika. He must be deemed to be a member. With him, the total membership goes upto twenty-eight.

(3) At the meeting convened to consider the motion of no-confidence, two Executive Officers, viz., Additional district Magistrate (F&R) and Additional District Magistrate (E) were present. No acceptable reason has been assigned for their presence within the hall where the meeting was going on. "It was done with *mala fide* intention which would vitiate the proceeding."

The correctness of the above grounds is questioned in this appeal.

This first question is whether Sri Ram Dular Yadav was and could be treated as a member of the Nagar Palika on the relevant date? This issue is of crucial importance, inasmuch as if he is not treated as a member, the total membership would be twenty-seven in which event the motion would succeed even if the three votes of nominated members are excluded. For a proper appreciation of the question, it is necessary to notice Section 9 of the Act which deals with the composition of the Board. In so far as it is relevant, Section 9 reads:

A "9. Normal composition of the Board :- Expect as otherwise provided by Section 10, a Board shall consist of :-

(a) the President;

B (b) the elected members who shall not be less than 10 and not more than 40, as the State Government may by notification in the Official Gazette specify;

C (c) the *ex-officio* members comprising all members of the House of People and the State Legislative Assembly whose constituencies include the whole or part of the limits of the Municipality;

(d) the *ex-officio* members comprising all members of the council of State and State Legislative Council who have their residence within the limits of the Municipality.

D Explanation :-For the purpose of this clause, the place of residence of a member of council of State or the State Legislative Council shall be deemed to be the place of his residence mentioned in the notification of his election or nomination, as the case may be."

E By virtue of Section 9(d), members of the Council of States (Rajya Sabha) and the State Legislative Council, "who have their residence within the limits of the Municipality" become the members of the Board (Nagar Palika). The Explanation to clause (d) elucidates the meaning of the expression 'residence'. It says that for the purpose of the said clause, the

F place of residence of a member "shall be deemed to be the place of his residence mentioned in the notification of his election or nomination, as the case may be". Evidently, the object and purpose of the Explanation is to fix the residence of a member of the Rajya Sabha or State Legislative Council as the one mentioned in the notification of his election (if he is an elected member) or in the notification of his nomination (if he is a

G nominated member). For the purpose of the U.P. Municipalities Act, it is the said residence which is relevant and determines their membership in a particular Municipal Board (Nagar Palika). This was thought necessary, it

H is obvious, not only to obviate any room for confusion but also to prevent these persons from claiming membership of different Municipal Boards at different times, to suit their convenience or political objectives, by changing

their residence. A member of Council of States elected from a State has A
no territorial constituency as such, since he is elected by the members of
the Legislative Assembly (Article 80(4)). So does a nominated member
have no territorial constituency. Similar is the situation in the case of most
of the members of the Legislative Council (See Article 171 regarding the B
composition of the Legislative Council). A comparison of the language
employed in clause (c) of Section 9 with that employed in clause (d) thereof
also illustrates the reason for engrafting the said Explanation to clause (d)
alone. So far as Sri Yadav is concerned, he is a member of the State
Legislative Council. It is an admitted fact that in the notification of his
election, his place of residence is shown to be his village Sakaura, which is C
not within the Municipal limits of Sultanpur. It, however, appears that
about ten days prior too the said meeting, a notification was issued by the
Secretary to the Legislative Council, Uttar Pradesh (on December 4, 1990)
notifying the change of address of Sri Yadav from village Sakaura to House
No. 914, Civil Lines No. 1, Sultanpur. It is by virtue of the said change of
address that Sri Yadav claimed to be a member of the Municipal Board, D
Sultanpur. The High Court opined, disagreeing with the Presiding officer,
that the said change of address makes Sri Yadav a member of the Sultan-
pur Board. The High Court opined that the notification changing his
residential address of the said Sri Yadav was a valid one and was not under
challenge by anyone and, therefore, the said Sri Yadav had validly become E
a member of the Sultanpur Board. We find it difficult to agree with the
High Court in view of the aforesaid Explanation. It is true that the
Secretary to the Legislative Council had issued a notification changing the
place of residence of the said Sri Yadav from village Sakaura to a residen-
tial house at Sultanpur and that the said notification was not challenged by F
anyone, but the question is whether the said notification was relevant at all
for the purpose of the U.P. Municipalities Act and whether Sri Yadav
could claim to be a member of Sultanpur Municipal Council by virtue of
the said change of residence. As explained hereinabove, the very idea
behind the Explanation to Section 9(d) was to fix the place of residence of
a member of Rajya Sabha or a member of State Legislative Council, as the G
case may be, for the purpose of his membership in a particular Municipal
Board. It is the place of his residence mentioned in the notification of his
election of nomination, as the case may be. Even if he changes his residence
after his election/nomination, it is irrelevant for the purpose of his mem-
bership in a Municipal Board. If he becomes an *ex-officio* member of a H

- A particular Municipal Board by virtue of the place of residence mentioned in the notification of his election/ nomination he does not lose it by changing his residence to a place outside the limits of that Municipal Board. Similarly, if he did not become an *ex-officio* member of any Municipal Board because his place of residence mentioned in the Notification of his election/nomination did not fall within the local limits of a Municipal Board (as in the case of Sri Yadav) he does not and cannot gain such membership by shifting his residence to a place within the local limits of a Municipal Board. Any other construction would enable three persons to shift their membership from one Municipal Board to another to suit their political objective and strategies by shifting their residence from time to time. Such a course would render the Explanation aforesaid redundant. We cannot adopt any such interpretation. We are, therefore, of the opinion that the notification issued by the Secretary to the Legislative Council changing the place of residence of the said Sri Yadav was not relevant for the purpose of the Section 9 of the U.P. Municipalities Act, which meant that by virtue of the said change of place of residence, Sri Yadav did not and could not become a member of the Sultanpur Municipal Board. The Presiding Officer was, therefore, right in not allowing him to participate in the said meeting and in rejecting his claim of membership of Sultanpur Municipal Board.
- E Once Sri Yadav is not treated as a member of the Municipal Board, the total membership of the Board has to be treated as twenty- seven, even if we count the three nominated members as the members of the Board as on the date of the meeting held on December 14, 1990. Even if we exclude the votes of the said three nominated members, still the number of votes cast in favour of the motion would be fourteen which would be more than half the total number of members of the Board, as required by sub-section (12) of Section 87-A of the Act. Sub-section (12) reads as follows : "The motion shall be deemed to have been carried only when it has been passed by a majority of more than one half of the total number of members of the Board." Fourteen is certainly a majority of more than one half of twenty-seven members.

We may now take up the question whether the presence of two officials as vitiated the proceedings of the said meeting. The High Court is of the view that by virtue of sub-section (4) of section 87-A, only the officer nominated by the District Judge shall preside over the meeting "and no

other person shall preside there at". The said sub-section means, according to the High Court, that no other person except the Presiding Officer (and the members of the Board) shall be present at the meeting. The High Court has observed that the respondents in the writ petition have not properly explained the presence of the said two officers in the meeting hall. The Explanation that they were posed to meet the and order situation was rejected as unacceptable. The conclusion of the High Court on this aspect reads: "We think, in such circumstances, it will not be necessary to go into fact as to whether they actually participated in the discussion and what was canvassed by them. The whole attitude itself by positing Executive officers in a meeting, which is supposed to be presided over only by a Judicial Officer, on the pretext of handling of law and order situation in the absence of any thing to indicate as to what kind of apprehension existed there, is enough to show that it was done with *mala fide* intention which would vitiate the proceedings." At an earlier stage, the High Court had observed: "we have no reason to disbelieve the case that the two officers sitting on the either side of the Presiding Officer had been interfering in the proceedings", but it has not recorded or found what precise interference did they cause. Indeed, the concluding portion of their judgment quoted above shows that in the opinion of the High Court the very presence of these officials was the vitiating factor - without anything more. We find extremely difficult to agree with the High Court. Firstly, it may be noted, the 'minutes of the meeting' recorded by Sri Vishram Singh (First Additional Civil Judge, Sultanpur, nominated by the District Judge, Sultanpur) as required by sub-section (11) of Section 87-A does not refer to or record the presence of the said officers at the meeting much less does it speak of any interference by them in the deliberations of the members or with the voting, as the case may be. It is highly unlikely that the Presiding Officer - a Judicial Officer, against whom fortunately, no allegation is made - would not have recorded the interference by these officials, if, indeed, there was any. The High Court has not adverted to this important feature in its judgment. It also does not appear that anyone had objected to their presence there. It is not even suggested that the said officers were interested in the group seeking to remove the President or that they had any reason to be so interested. The officials are fairly of a high rank (Additional District Magistrates) and in the absence of a specific allegation against them, we cannot presume either that they had interfered with the proceedings of the meeting or that they had influenced the voting on the motion.

- A It is also not clear as to who posted them there and what interest the person posting those officials at the meeting had. The motion of no-confidence duly passed at a properly convened meeting - that too presided over by a judicial officer - cannot be declared void on such vogue and half-hearted findings. A Municipal body is an instance of local self- government. It is a statutory body. Its actions are governed and regulated by a statute. In the absence of a clear finding that the proceedings of the said meeting convened under Section 87-A have been vitiated by unauthorised interference, duress or undue influence, as the case may be, the proceedings could not have been declared 'vitiating' - i.e., void.

- C In view of our opinion on the above two questions, it is not necessary for us to go into the correctness of the other ground given by the High Court, viz., that the three nominated members were not entitled to participate in the said meeting or to vote on the motion inasmuch as they had not taken the oath of allegiance before such participation. In is equally unnecessary to go into the question whether they should be deemed to the members of the Municipal Board as on December 14, 1990 for the purpose of ascertaining the total strength of the Board on that date even though they were not entitled to participate in or vote at the said meeting. Assuming that both the above premises are correct, the motion still got the majority votes.

- E It is for the above reasons that the Judgment of the High Court was set aside by our Order dated November 1, 1993.

R.P.

Appeal allowed.