

## **Abdul Wajid vs State Of U.P. And Ors. on 30 March, 1955**

**Equivalent citations: AIR1955ALL708, AIR 1955 ALLAHABAD 708**

### **JUDGMENT**

Agarwala, J.

1. This is a special appeal against the decision of a learned Single Judge of this Court dismissing the appellant's petition under Article 226 of the Constitution. The facts briefly are as follows:

2. In October 1953, the appellant was elected a President of the Municipal Board, Bareilly. On 15-12-1954, a notice of intention to move a non-confidence motion was given by twenty-seven members of the Board to the District Magistrate along with the motion of non-confidence. This was under Section 87A (2) of the Municipalities Act.

3. Thereupon the District Magistrate issued notice to the members of the Board that a meeting to consider the non-confidence motion would be held on 17-1-1955, at 11 A. M. in the Municipal Office. The notice, however, was not accompanied with a full copy of the non-confidence motion. On 17-1-1955 a meeting was held and the Chairman of the meeting was Mr. R.P. Saxena, Civil & Sessions Judge of Bareilly. He had no copy of the non-confidence motion with him. It was sent for from the office of the District Magistrate within five minutes and the proceedings were commenced by reading out the text of the motion of non-confidence. Thereafter discussions took place, and after discussions votes taken, and 32 persons are said to have voted for the motion, out of 38 that were present. The Presiding Officer thereupon declared the motion to be carried and sent intimation of the same to the District Magistrate and the appellant.

4. These proceedings are challenged by the appellant on several grounds. It is alleged that the meeting was neither properly convened, nor properly conducted, nor properly constituted. The appellant alleges that as the full text of the motion of non-confidence was not supplied to the members along with notice of the meeting, the meeting was not properly convened. It is further alleged that at the meeting one Om Prakash, a member of the Board, wanted to reply to the allegations made against the President, i.e., the appellant, but he was not allowed to speak by the Presiding Officer on the ground that he had already spoken once. It is alleged that as the discussion could be had for full three hours, and there was enough time and as every member had a right to reply to what had been stated by the other side, the meeting was vitiated because Om Prakash was stopped from replying. Then it is stated that the members of the public were allowed to sit amongst the members of the Board with the result that it was impossible to distinguish as to who was the member of the Board and who was a non-member, and when the recording of the votes was taken by show of hands it was not possible to say whether non-members had raised their hands or not. It was next alleged that when the result of the show of hands was declared by the Presiding Officer 'Om Prakash demanded a poll' which was, however, refused.

5. So far as the allegation that the full text of the motion for non-confidence was not supplied to the members of the Board along with the notice of holding the meeting is concerned, the law does not require that the full text of the motion should be sent along with the notice. It is enough that the substance of the motion is made known to the members in the notice circulated to them for the meeting to be held to consider the same. Section 87A (3) requires that "the District Magistrate shall convene a meeting for the consideration of the motion to be held at the office of the Municipal Board on the date and at the time appointed by him and he shall send by registered post a notice of such meeting and of the date and time appointed therefor, to every member of the Board."

6. Thus it would appear that under this section it would be quite in order if the substance of the motion is communicated to the members in the notice sent to the members.

7. At page 630 of the Municipalities Act are given rules for the manner of convening meetings and of giving notice thereof. Reliance is placed upon a rule made under Section 297 (1) of the Act for the manner of convening the meeting and of giving notice thereof. A model is printed at page 630 of the Act and it is alleged that this rule has been adopted by the Municipal Board of Bareilly. The rule provides:

"(1) Not less than three days before a meeting a notice to attend the meeting, signed by the secretary, or, in his absence, by the president or a vice-president, shall be circulated to each member of the Board.

(2) A notice to attend a meeting shall specify every motion or proposition to be brought forward at the meeting along with the case referred to in Sub-section (6) of Section 94 of the Act, the further particulars required by that sub-section and shall state generally any other business to be transacted thereat."

8. This rule certainly does require that the motion or proposition to be brought forward at the meeting shall be, "specified", which means that the full text thereof shall be given in the notice circulated to members. It is, however, doubtful whether this rule applies to the procedure prescribed for motions of non-confidence against the President. Section 87A (1) says, that subject to the provisions of this section, a motion expressing non-confidence in the President shall be made only in accordance with the procedure laid down below. The procedure to be followed for the form of notice is the procedure laid down in Section 87A (6) and above rule does not appear to apply to notices issued under Section 87A.

9. At the same time, however, it must be stated that it is highly desirable that the full text of the non-confidence motion is mentioned in the notice.

10. But even if we were of the opinion that the full text of the notice should have been sent to the members, we would have been unable to hold that, in the present case, the meeting was vitiated because of the omission to do so. It is not alleged that the text of the motion was not read at the meeting as stated on be-half of the opposite party. Therefore all the members knew of the text at the commencement of the meeting. But nobody raised any objection that because the text of the motion

had not been supplied to them they were not prepared to discuss the motion. The defect in the notice not having been pointed out by any member at the meeting, it would be too late for any one of them to make it a ground of attack against the validity of the meeting. It seems to us that every one knew what the motion was and whoever wanted to say anything had enough opportunity of ventilating his views. No harm was caused by the omission. In the circumstances, it cannot be said that the meeting was not properly or legally convened.

11. The allegation that Om Prakash, member of the Board, was stopped from replying, to the allegations made against the President by the speakers who spoke in favour of the motion of non-confidence is controverted in the affidavit of the Presiding Officer, Mr. R.P. Saxena, filed before us. Even assuming that Om Prakash asked for an opportunity to reply after he had already once spoken at the meeting, it does not appear to us that the action of the Presiding Officer in refusing an opportunity to him to speak a second time was, in anyway, improper. It may be noted that the time limit for such meetings under Section 87A is only three hours; There were 45 members of the Board and if everyone wanted to speak no member could be given more than four minutes. It would certainly be a wise procedure that so far as possible, a member was allowed to speak only once except the mover of the motion who would, in ordinary circumstances, be given an opportunity to reply to the debate. Om Prakash was not a mover of the motion. Ordinarily it is the privilege of the mover to reply to the debate and no other member can speak, as of right, twice except with the permission of the Presiding Officer. We, therefore, do not consider that there is any force in the allegation made by the appellant on this point.

12. The allegation, that non-members were allowed to sit along with the members and that it was not possible to distinguish the members from the non-members, with the result that nobody could say whether the members alone participated in the voting, is also denied in the affidavit sworn by the Presiding Officer. He has clearly stated that the non-members were sitting separately from the members and they were clearly distinguishable and there was no difficulty in ascertaining whether the members alone were voting or somebody else was also participating in the vote. There is, therefore, no force in this allegation.

13. It was then urged that when the result of the voting by show of hands was announced by the Presiding Officer, Om Prakash at once demanded a poll. This allegation also is denied by the Presiding Officer in his affidavit. Affidavits of some other persons have been filed on behalf of both the parties in which contradictory allegations have been made on this point. We see no reason, however, to disbelieve the statement of the Presiding Officer.

14. Lastly it was urged that Sub-section (3) of Section 47A, which prescribes the procedure after the motion of non-confidence has been carried out in the meeting held under Section 87A, is 'ultra vires'. Section 47A lays down that:

"If a motion of non-confidence in the President has been passed by the board and submitted to the State Government and communicated to the President in accordance with the provisions of Section 87A the President shall within ten days of such communication either resign or represent to the State Government to dissolve

the Board, stating the reasons therefor."

If such a representation is made the State Government "may after considering the same 'either ask the president to resign or dissolve the Board including the President'". (Section 47-A (2)). It is argued that this sub-section gives an unbridled power to the State Government either to ask the President to resign or to dissolve the Board and that no rule has been laid down to guide the discretion of the State Government in this respect.

15. Reliance has been placed upon the decisions of the Supreme Court in -- 'Saghir Ahmad v. State of U. P.', AIR 1954 SC 728 (A); and --'Dwarka Prasad Laxmi Narain v. State of U. P.', AIR 1954 SC 224 (B). We are of the opinion that there is no force in the contention of the learned counsel on this point.

16. Section 47-A gives the President a choice, either to resign at once when a motion of non-confidence has been passed against him or to ask the State Government to dissolve the Board. When he takes recourse to the latter alternative he has to give reasons why the Board should be dissolved.

The reasons may be multifarious. The State Government has been given power to consider those reasons and then to decide whether to act upon the advice of the President by dissolving the Board or to ask the President to resign. The State Government has to consider the reasons given, and to weigh the pros and cons of the request made, by the President and has to come to a decision either in favour of the request or against it. Obviously in such a case the State Government has to act reasonably as the circumstances of the case may require.

17. In such matters a discretion limited only to the two courses pointed out in the section is a discretion which cannot be said to be arbitrary or uncontrolled. It is controlled because the discretion is limited to the two courses pointed in the section; and no further rules for the guidance of that discretion are feasible because the reasons given by the President may be, as already stated, many and varied. It would be an impossible task to lay down rules in such matters as these. It is best to leave such matters to the State Government. The giving of such a discretion, in these circumstances, to the State Government cannot, by any stretch of imagination, be called the vesting of arbitrary power in the hands of the State Government.

18. The facts of the two cases cited by the learned counsel were quite different. In 'AIR 1954 SC 728 (A)', Section 3. U. P. Road Transport Act, II of 1951, authorised the State Government to declare that the road transport service in general or on particular routes should be run and operated by the State Government exclusively or by the State Government in conjunction with a railway or partly by the State Government and partly by others in accordance with the provisions of the Act. The whole question was how was the last part of that section to be implemented and carried out? The Supreme Court observed:

"If the State can choose any and every person it likes for the purpose of being associated with the transport service and there are no rules to guide its discretion,

plainly the provision would offend against Article 14 of the Constitution."

But the provision was held not to be 'ultra vires' because the discretion was to be regulated by the provisions of the Motor Vehicles Act. What was urged by the learned counsel was that in the present case the discretion is not to be regulated by any other provision.

19. In 'AIR 1954 SC 224 (B)', the provisions of Clause 4 (3), U. P. Coal Control Order, which related to the granting and refusing of licence were held to be 'ultra vires' on the ground that the licensing authority had been given an absolute power to grant, renew or refuse to renew a licence, suspend, cancel, revoke or modify any licence under this Order and the only thing he had to do was to record a reason of the action taken by him; and further that the power could be exercised by any person to whom the State Controller might chose to delegate the same, and the choice could be made in favour of any or every person. In these circumstances it was held that the Order committed to the unrestrained will of a single individual the power to grant, withhold or cancel licence in anyway he chose and there was nothing in the order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same.

20. The State Government in the present case has not been given such unfettered power. It has to weigh the reasons stated by the President for his request of dissolving the board and it is only then that the State Government is expected to come to the conclusion whether to grant the request or not grant it. We are not prepared to hold that these provisions can be termed to be discriminatory or uncontrolled delegation of power.

21. The result, therefore, is that this appeal fails and is dismissed with costs. We direct that the costs of the State Counsel shall be taxed at Rs. 160/-.