

Amroo Ram, Chairman of Municipal Board, Shri Dungargarh Vs. State of Rajasthan and anr.

LegalCrystal Citation : legalcrystal.com/752351

Court : Rajasthan

Decided On : Oct-23-1956

Reported in : AIR1957Raj87

Judge : Wanchoo, C.J. and; Dave, J.

Acts : Rajasthan Town Municipalities Act, 1951 - Sections 15; [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\)](#), 1908; Rajasthan Panchayat Act; Rajasthan District Boards Act

Appeal No. : Civil Writ Petn. No. 124 of 1956

Appellant : Amroo Ram, Chairman of Municipal Board, Shri Dungargarh

Respondent : State of Rajasthan and anr.

Advocate for Def. : L.N. Chhangant, Govt. Adv.

Advocate for Pet/Ap. : B.N. Purohit, Adv.

Disposition : Application allowed

Judgement :

Wanchoo, C.J.

1. This is an application under Article 236 of the Constitution by Shri Amroo Ram who is Chairman of the Municipal Board Shri Dungargarh, for a writ, direction or order in connection with an order passed by the State of Rajasthan on the 6th of September, 1956, with respect to the term of the Municipal Board.

2. The facts, on which this application is based, are these-

General election to the Municipal Board took place on the 8th of September, 1953, and the Returning Officer declared the result of the election on that date. But the oath of office was administered to the applicant and other members of the Board on the 12th of December, 1953, by the Sub-divisional Magistrate, Ratangarh, and it is from that date that the Board began to function. The applicant's case is that the Board is en-titled to function up to the 11th of December, 1956, for a period of three years under Section 15 of the Rajasthan Town Municipalities Act (No. XXIII) of 1951, read with Rule 45 of the Rajasthan Town Municipal Election Rules 1951.

The Government of Rajasthan, however, by its notification dated 6th of September,

1956, took the view that the term of the members of the Municipal Board expired on the 8th of September, 1956. It consequently ordered that the Board was no longer competent to function after that date, and made certain interim arrangements for the administration of the Board, and provided that fresh election should take place by a certain date. It is this order of the Government which is being challenged by the applicant, and his contention is that the view taken by the Government that the term of the Municipal Board expired on the 8th of September is incorrect.

3. The relevant section, with which we are concerned, in Section 15 of the Rajasthan Town Municipalities Act (No. XXIII) of 1951, and reads as follows -

'Members elected at a general election or nominated under this Act shall, save as provided in the next following section, or unless they become in the meantime disabled or are removed from office under Section 14 or Section 203, hold office for a term of three years, extensible by order of the Government to a term not exceeding in the aggregate four years if on any occasion the Government shall think fit, for reasons which shall be notified together with the order in the Rajasthan Gazette, so to extend the same.'

It will be at once clear that this section is very unhappily drafted. In the first place, it speaks of the terms of office of members instead of the Board. In the second place, when it fixes the term of three years, it does not specify the starting point when the three years begin, and it is this vagueness which is responsible for the present trouble. We have, however, to interpret this section along with the rules which have been framed to give a meaning to it, which will be in consonance with the principles which apply to local I bodies of this type.

4. Before we do this we may refer to certain other provisions of a similar kind in other Acts passed by the Rajasthan Legislature in Inter years 'relating 'to local bodies. One such Act is the Rajasthan Panchayat Act, 1953. In Section 7 of that Act, there is the marginal note 'Term of office', and we find the following provision -

'The term of a Panchayat shall be for a period of three years computed from the date of its first meeting :'

Here we find that the term is of the local body, and not of its members, and the starting point is also mentioned. In such a case, there can be no question as to when the members of a Panchayat begin to function, and when their term of office expires, for that term must be coterminous with the term of office of the Panchayat itself.

5. The next Act to which we may refer is the Rajasthan District Boards Act (No II) of 1954. We understand that this Act has not yet been put into force; but it is on the Statute Book, and makes a provision for the term of the Board. In Section 26 the marginal note is 'Term of Office of District Board', and the section provides as follows--'Every District Board, unless sooner dissolved, shall continue for three years from the date, appointed for its first meeting by the Government :'

Here again we find the starting point of the term of office, and also the fact that the term of office is of the Board which automatically fixes the term. of office of the members also, for as we have said already in connection with the Panchayat Act the term of office of the members is coterminous with the term of the office of the Board of which they are members.

6. We need not refer to similar provisions in similar Acts of other States, for these provisions are more or less similar to those contained in the Rajasthan Panchayat Act and the Rajasthan District Boards Act. Unfortunately Section 15 of the Rajasthan Town Municipalities Act has not followed this pattern, though it is abundantly clear that this is the section which fixes the term of office of the Municipal Board. It could not be the intention of those who framed the Rajasthan Town Municipalities Act that there should not be a term of office for the Municipal Board, and that there should be only term of office for the members, and that this term should vary with each member.

This is evident from the fact that Section 16, which provides for the term of office of those elected in casual vacancies, makes it clear that that term is only for the remaining period of the term of the member who is replaced, though, here again the happier phraseology should have been to indicate that it would be for the remaining period of the term of the Board. We are, however, quite clear that the term of office fixed by Section 15 of the Town Municipalities Act is the term of office of the Board, and that term is three years subject to extension by the Government.

7. Again unfortunately Section 15 does not indicate from which date this three-years-period of the term of the Board should begin. The Government in its order of 6th of September, 1956 has taken this period to begin on the date on which the Returning Officer declared the result of the election; but we find that even in the analogous Acts in force in Rajasthan the date on which the Returning Officer declares the result of the election is not the date on which the term of office of either a Panchayat or a District Board begins.

The reason for this is that there are some nominated members also on these bodies, and it would be always to the detriment of the nominated members if the term of the local body was to begin from the date on which the Returning Officer declares the result of the election, and such members are nominated sometime after the declaration of the result by the Returning Officer. That is why in all similar Acts it is either the date of the first meeting or the date on which the Government notifies that the Board has been constituted that the term of the Board begins. In the present case, we have to find out the most convenient date for the beginning of the term of three years after looking into the rules if we can justly do so.

8. We may in this connection refer to Rule 45 of the Rajasthan Town Municipal Election Rules 1951. That rule is as follows -

'Every person who is elected or nominated to be a member of any Municipal Board shall before taking his seat take an oath (or affirmation) of his allegiance to the [Constitution of India](#) in the form prescribed before the District Magistrate or his nominee.'

It shows that a member takes office only after he has taken the oath of allegiance. But it is clear that the period of three years would not run differently for each member according to the day on which he chooses to take the oath of office. We have, therefore, to find out whether there is any rule which directly or indirectly provides for taking the oath of office by members generally on a particular day, and if there is such a rule, that should, in our opinion, be the date on which the term of office of a Municipal Board under the Rajasthan Town Municipalities Act should in the circumstances begin in view of the faultiness of the drafting of Section 15 of the Act.

Such a date, in our opinion, can be fixed if we turn to Rules 2 and 3 of the Rules regarding the election of Chairman of Town Municipalities issued in January, 1952. Rule 2 provides that when a Municipal Board has been formed after a general election, the members thereof shall elect a Chairman for the Board. Rule 3 provides that the District Magistrate shall fix a date, place and time for a special meeting of the Municipal Board for the purpose of electing a Chairman. Now if members of a Municipal Board have just been elected, it stands to reason that the first thing that they would do would be to elect their Chairman. Before however they can proceed to elect the Chairman they must take the oath of office.

It seems to us therefore that the first meeting of the Municipal Board must be the meeting called by the District Magistrate, fixing a date, place and time for the election of the Chairman. On that date the members would take the oath of office and thereafter proceed to elect the Chairman. Of course, we realize that if on some later date the Chairman resigns or dies and a new Chairman has to be elected, another meeting would be called by the District Magistrate; but this meeting would be during the term of the Board which must be deemed to have commenced after the oath of office on the first date on which the Board is called to meet.

It may also be that for some reason or the other the Chairman may not be elected in the first meeting, and may have to be nominated by the Government under the law. But this being the first meeting, and members having taken oath and having assumed office, it must be the date on which the term of the Board must be deemed to have begun. Reading therefore Section 15 of the Rajasthan Town Municipalities Act, Rule 45 of the Rajasthan Town Municipal Election Rules, 1951, and Rules 2 and 3 of the Rules regarding the Election of Chairman of Town Municipalities, together, we come to the conclusion that the starting date for the term of the Board (which is for three years) must be the first date on which the members are called to meet and take the oath of office. But the fact that a particular member may not be present at that meeting and may not take the oath of office would not make any difference to the term of the Board having commenced on that date. As we have said already, Section 15 really fixes the term of the Board, and the term of the members must be coterminous with the term of the Board.

9. In these circumstances, we are of opinion that as in this case the first meeting was apparently held on the 12th of December, 1953, on which the members generally took oath of office, the term of the Municipal Board of Shri Dungargarh began on the 12th of December, 1953 and must come to an end on the 11th of December, 1956. The order of the Government declaring that the term of the Board came to an end on the 8th of September, 1956, is illegal and must be set aside along with all the consequential orders passed by the Government in that behalf.

10. We, therefore, allow this application, set aside the order of Government dated 6th of September, 1956, and direct that the Municipal Board of Shri Dungargarh should continue to function till the 11th of December, 1956, or such later date as the Government may choose to fix in case they think it desirable to extend the term in order to allow fresh elections being held. In view of the rather vague provisions of Section 15 of the Town Municipalities Act, we order parties to bear their own costs. Let a copy of this judgment be sent to Government with the remark that sooner the Section 15 is properly amended, the better it is.