K. NARASIMHIAH

v.

H. C. SINGRI GOWDA

[K. SUBBA RAO, K. C. DAS GUPTA AND RAGHUBAR DAYAL, JJ.]

Municipality—No confidence resolution against President—Enactment providing three clear days notice for holding special general meeting—Provision if mandatory—Failure to give such notice—Effect—Validity—Mysore Town Municipalities Act, 1951, ss. 23(9), 24(1) (a), 24(3) and 27(3).

The appellant was the elected President of the Municipality. In a special general meeting of the councillors a resolution expressing no confidence in him as President was moved and passed. In the High Court as well as in this Court, the legality of the proceedings of the meeting and the validity of the resolution was challenged by the appellant on the grounds, (i) that the requisite three days notice under the Act was not served on all the members and so the meeting was not validly held, (ii) that the meeting was not properly held as the appellant was not allowed to preside and thus s. 24(1) (a) of the Act was contravened and (iii) that the requisition for moving the resolution did not comply with the proviso to s. 23(a) of the Act as fifteen days notice was not given of the intention to move the resolution. The last two contentions were rejected by the High Court. On the main contention it held that as the notices were sent to the councillors on the 10th October 1963, they must be held to have been given on that date even though they were actually served on the 11th, 12th and 13th; but, apart from that it was of opinion that the provisions about three days notice was only directory and not mandatory and so the omission to give notice would not affect the validity of the resolution.

Held: (i) The High Court was wrong holding that "sending" a notice amounts to "giving" the notice. There is no authority or principle for the proposition that as soon as the person in the legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. Therefore, it must be held that the notice given to some of the councillors was of less than three clear days.

(ii) The provision as regards any motion or proposition of which notice must be given in s. 27(3) of the Act is only directory and not mandatory. Therefore the fact that some of the councillors received less than three clear days notice of the meeting did not by itself made the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. In the present case, nineteen of the twenty councillors attended the meeting and of these 19, 15 voted in favour of the resolution of no confidence against the appellant. There is thus no reason for holding that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice".

State of U.P. v. *Manbodhan Lal Srivastava*, [1958] S.C.R. 533, referred to.

(iii) On a consideration of the material on the record, it must be held that it was after the appellant left the meeting that the Vice President took the chair and thereafter the no confidence resolution was moved and passed. There could therefore

be no question of any contravention of the requirement under s.24(1) (a) of the Act that the President shall preside.

(iv) The proviso to s.23(9) of the Act was not contravened. All that is required is that before the resolution is actually moved, the President has got fifteen days notice. In the present case, the meeting was held on October 14 and the appellant received the notice on the 25th September. There was thus more than 15 days notice given to him.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 223 of 1964. Appeal by special leave from the Judgment and order dated December 6, 1963 of the Mysore High Court in Writ Petition No. 2273 of 1963.

S.K. Venkataranga Iyengar and *R. Gopalakrishnan*, for the appellant.

N.S. Krishna Rao and *Girish Chandra*, for respondents No. 1, 2, 4—10, 12—15.

April 1, 1964. The Judgment of the Court was delivered by

DAS GUPTA, J.—Is the requirement of three clear days' notice for the holding of a special general meeting as embodied in s. 27(3) of the Mysore Town Municipalities Act 1951, a mandatory provision? That is the main question which arises for decision in this appeal.

The appellant was elected as the President of Holenarsipur Municipality on September 11, 1962. At a special general meeting of the Municipal Council held on October 14, 1963, a resolution was passed in the following terms:—

> "This Council has no confidence in the Municipal President of Holenarsipur Municipality."

On November 2, 1963 Mr. Narasimhiah, the President of the Council applied to the High Court of Mysore under Art. 226 of the Constitution praying for the issue of an appropriate writ quashing the proceedings of the meeting which culminated in the resolution of no confidence against him. Prayers were made also for some consequential reliefs.

Holenarsipur Municipality has twenty Councillors. Thirteen out of the them sent a request to the President to convene a special general meeting to discuss a resolution expressing no confidence in him as President. This request was handed over to the President on 25th September 1963. As however he did not take any steps for convening the meeting the Vice President acted in the matter—calling a meeting to discuss the resolution to express no confidence in the President. A notice under the Vice-President's signature stating that it was proposed to hold a special general body meeting

of the Municipality on the 14th October 1963 at 10 A.M. in the office premises and asking the members to be present in time was served on the Councillors. One copy of the notice was also posted up at the Municipal Office as required by 27(3) of the Mysore Town Municipalities Act, 1951 (hereinafter referred to as "the Act"). The notice bore the date 10th October 1963. On fifteen of the twenty Councillors the notice was personally served on that very date, i.e., the 10th October. On three of the Councillors, viz., the President Narasimhiah, Mr. Dasappa and Mr. Sanniah, the notice was served on the 13th October. It was served on Councillor Mirza Mohammad Hussain on the 12th October and on the Councillor R. G. Vaidyanatha on the 11th October 1963.

When the meeting was held on October 14, 1963, nineteen of the twenty Councillors were present. The President, Mr. Narasimhiah was among them. He claimed to preside over the meeting. But, ultimately, he appears to have left the meeting. The meeting was then held under the presidentship of the Vice President Mr. Singri Gowda. The no-confidence motion against the President was moved and was passed, fifteen members having voted for it.

In challenging the legality of the proceedings of this meeting of 14th October and the validity of the resolution of no confidence passed there, the petitioner urged three principal grounds. The first is that the requisite three days' notice was not served on all the members and so the meeting was not validly held. The second ground urged was that the meeting cannot be said to be properly held as he was not allowed to preside and the Vice-President presided, and thus s.24(1)(a) of the Act was contravened. Thirdly, it was urged that the requisition for moving the resolution of no confidence did not comply with the proviso to s.23(9) of the Act as 15 days' notice was not given of the intention to move the resolution.

The High Court held that on the materials before it, it was not possible to pronounce as to the circumstances under which the Vice-President presided at the meeting. So, the High Court rejected the contention that there was any contravention of s.24(1)(a) of the Act. The case made in the petition that 15 days' notice had not been given of the intention to move the resolution does not appear to have been pressed at the hearing; as there is no mention in the judgment of any such argument. On the question regarding the failure to serve three days' notice of the meeting on all the Councillors, the High Court followed its own decision in another Writ Petition No. 2280 of 1963 and rejected the petitioner's contention. The judgment in Writ Petition No. 2280 of 1963 which was produced before us shows that the High Court took the view that

as the notices were sent on the 10th October they must he held to have been given on that date even though they were actually served on the 11th, 12th and 13th; but, apart from that the High Court was of opinion that the provision about three days' notice was only directory and not mandatory and so the omission to give notice would not affect the validity of the resolution.

All the three grounds raised in the petition were urged before us in support of the appeal. As regards the petitioner's contention that the meeting was not held in accordance with law as he was not allowed to preside, we are of opinion, on a consideration of what material there is on the record, that it was after he left the meeting that the Vice President took the chair and thereafter the no confidence resolution was moved and passed. There can therefore be no question of any contravention of the requirement that the President shall preside.

There is, our opinion, no substance also in the contention that the proviso to s.23(9) was contravened. The proviso runs thus:—

> "Provided that no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the whole number of the Councillors and at least fifteen days' notice has been given of the intention to move the resolution."

Admittedly, the notice was signed by more than one-third of the whole number of Councillors. It is said, however, that fifteen days' notice of the intention to move the resolution was not given. This argument which Mr. Iyengar addressed to us, but which does not appear to have been urged before the High Court—proceeds on the assumption that fifteen days' notice of the intention to move the resolution has to be given not only to the President but also to the other Councillors. We do not think that that assumption is justified. In our opinion, what is required is that fifteen days' notice of the intention to move the resolution has to be given to the President. In other words, all that is required is that before the resolution is actually moved the President has got fifteen days' notice. In the present case, the meeting was held on October 14 and the President received the notice on the 25th September. There was thus more than 15 days' notice given to him.

This brings us to the main contention that three days' notice of the special general meeting was not given and so the meeting is invalid. We find it difficult to agree with the High Court that "sending" the notice amounts to "giving" the notice.

"Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however giving is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th October. In our opinion, the notice given to five of the Councillors was of less than three clear days.

The question then is: Is the provision of three clear days notice mandatory, ie., does the failure to give such notice make the proceedings of the meeting and the resolution passed there invalid? The use of the word "shall" is not conclusive on the question. As in all other matters of statutory construction the decision of this question depends on the ascertainment of the legislature's intention. Was it the legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what is done invalid in law? That is the question to be answered. To ascertain the intention the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part. In the *State of U.P. v. Manbodhan Lal Srivastava* (1) where the question arose whether the provisions of Art. 320(3)(c) of the Constitution are mandatory (which provides that the Union Public Service Commission or the State Public Service Commission shall be consulted on certain disciplinary matters), this Court laid stress on the fact that the proviso to the Article contemplates that the President or the Governor as the case may be make regulations specifying the matters in which either in general or in any particular class or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted. Speaking for the Court Sinha J. observed:—

> "If the provisions of Art. 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Excutive Government to undo those provisions by making regulations to the contrary."

This appears to have been the main reason for the court's decision that the provisions of Article 320 (3)(c) are not mandatory. Naturally, strong reliance has been placed on this decision on behalf of the respondents. It is pointed out that while providing that three clear days' notice of special general meeting shall be given to the Councillors, the legislature said in the same breath that "in cases of great urgency, notice of such shorter period as is reasonable should be given to the Councillors of a special general meeting." The decision of what should be considered to be a case of "great urgency" was left entirely to the President or the Vice-President on whom the duty to call such a meeting is given under s.27(2). It is urged by the learned Counsel that if the intention of the legislature had been to make the service of three clear days' notice mandatory it would not have left the discretion of giving notice for a shorter period for some of the special general meetings in this manner. We see considerable force in this argument. The very fact that while three clear days' notice is not to be given of all special general meetings and for some such meetings notice only of such shorter period as is reasonable has to be given justifies the conclusion that the "three clear days", mentioned in the section was given by the legislature as only a measure of what it considered reasonable.

It is necessary also to remember that the main object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period—of three clear days'—is considered sufficient for "special general meetings" generally. The obvious reason for providing a shorter period for such meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period of even less than three clear days' notice would be sufficient.

A consideration of the object of these provisions and the manner in which the object is sought to be achieved indicates that while the legislature did intend that ordinarily the notice as mentioned should be given it could not have intended that the fact that the notice is of less than the period mentioned in the section and thus the Councillors had less time than is ordinarily considered reasonable to arrange his other business to be free to attend the meeting, should have the serious result of making the proceedings of the meeting invalid.

It is important to notice in this connection one of the provisions in s.36 of the Act. It is in these words:—

> "No resolution of a municipal council or any committee appointed under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any councillor or member provided the proceedings of the municipal council or committee were not prejudicially affected by such irregularity."

It is reasonable to think that the service of notice mentioned in this provision refers to the giving of notice to the Councillors. Quite clearly, any irregularity in the manner of giving the notice would be covered by the words "irregularity in the service of the notice upon any Councillor". It appears to us however reasonable to think that in making such a provision in s.36 the legislature was not thinking only of irregularity of the mode of service but also of the omission to give notice of the full period as required.

It is interesting to notice in this connection that the English law as regards meetings of borough councils and county councils contain a specific provision that want of service of a summons to attend the meeting (which is required to be served on every member of the council) will not affect the validity of the meeting. It may be presumed that the legislature which enacted the Mysore Town Municipalities Act, 1951, was aware of these provisions in English law. It has not gone to the length of saying that the failure to serve the notice will not make the meeting invalid. It has instead said that any irregularity in the service of notice would not make a resolution of the Council invalid provided that the proceedings were not prejudicially affected by such irregularity. The logic of making such a provision in respect of irregularity in the service of notice becomes strong if the fact that the notice given was short of the required period is considered an irregularity

The existence of this provision in s.36 is a further reason for thinking that the provision as regards any motion or proposition of which notice must be given in s.27(3) is only directory and not mandatory.

We are therefore of opinion that the fact that some of the Councillors received less than three clear days' notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is

thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice."

We have therefore come to the conclusion that the failure to give three clear days' notice to some of the Councillors did not affect the validity of the meeting or the resolution of no confidence passed there against the appellant.

In the result, we dismiss the appeal with costs.

Appeal dismissed.