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referred to arbitration. It seems to us that every allegation tending suggest or imply moral dishonesty or moral misconduct in the matter of keeping accounts would not amount to such serious allegation of fraud as would impel a court to refuse to order the arbitration agreement to be filed and refuse to make a reference. Looking to the allegations which have made in this case we are of opinion that there are no such serious allegations of fraud in this case as would be sufficient for the court to say that there is sufficient cause for not referring the dispute to arbitration. This contention of the appellant must also therefore fail.

The appeal therefore fails and is hereby dismissed with costs.

*Appeal dismissed.*

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September 20.

MOOL CHAND SHARMA

v.

STATE OF UTTAR PRADESH

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR and  
RAGHUBAR DAYAL, JJ.)

*Municipal Board—Member—Incurring of disqualification—  
If and when becomes incompetent to exercise his right—U.P.  
Municipalities Act, 1916 (U.P. II of 1916), ss.13 D(8), 87A,  
sub-s.2.*

The appellant was the President of a Municipal Committee. A written notice of the intention to move a motion of no confidence in the President signed by nine members of the Board was delivered to the District Magistrate under s. 87-A sub-s. (2) of the U.P. Municipalities Act, 1916. The District Magistrate duly convened a meeting of the Board, but before the date of the meeting the appellant moved a writ petition in the High Court and questioned the validity of the notice. The writ petition was dismissed *in limine inter alia* as being premature. The Meeting of the Board was held on the due date and all the members present, voted for the motion of no confidence and the Munsif of the area who had presided declared the motion to have been carried. The appellant by his second writ petition before the High Court desired that the

proceeding of the meeting be quashed and the resolution expressing no confidence in the appellant be not given effect to by the State and the District Magistrate, for the reason that two of the members of the Board who had signed the notice and subsequently taken part in the proceedings of the meeting and voted, had incurred disqualification under s. 13-D (g) of the U.P. Municipalities Act, 1916, inasmuch as they were in arrears in the payment of municipal tax and other dues to which s. 166 of the Act applied.

*Held*, that an order, dismissing a writ petition *in limine* not on merits but for the reason that it was premature, could not operate as *res judicata* in subsequent proceedings.

*Held*, further, that a member of the Municipal Board does not automatically come under suspension, or lose his rights to take part in the proceeding of the Board, or perform the duties of a member or cease to be a member of the Board merely on his incurring any of the disqualification mentioned in s. 13-D of the U.P. Municipalities Act, 1916. A member of the Municipal Board, merely, by incurring the disqualification under cl. (g) of s. 13-D of the U.P. Municipalities Act, 1916, was not incompetent to exercise his rights as a member of the Board.

*Election Commission, India v. Saka Venkata Subba Rao*, [1953] S.C.R. 1144, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 401 of 1961.

Appeal by special leave from the judgment and order dated May 24, 1961, of the Allahabad High Court in Civil Misc. Writ No. 846 of 1961.

*M. C. Setalvad* Attorney-General for India and *J. P. Goyal*, for the appellant.

*C. B. Agarwala* and *C. P. Lal*, for respondents Nos. 1 and 2.

*C. K. Daphtary*, Solicitor-General of India, *R. K. Garg*, *S. C. Agarwala*, *D. P. Singh* and *M. K. Ramamurthi*, for respondents Nos. 3 to 13.

1961. September 20. The Judgment of the Court was delivered by

RAGHUBAR DAYAL, J.—This appeal, by special leave, is directed against the judgment of the High Court of Allahabad dismissing a writ petition filed

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by the appellant praying for the issue of a writ in the nature of mandamus directing the State of Uttar Pradesh and the District Magistrate, Meerut, not to give effect to the resolution passed in the meeting of the members of the Municipal Board, Pilkhuwa, dated February 6, 1961, and for the quashing of the proceedings of that day.

The appellant was the President of the Municipal Board, Pilkhuwa, in January-February, 1959. On January 4, 1959, a written notice of the intention to make a motion of no confidence in the President signed by nine members of the Board, including Ram Nath and Kesho Ram Gupta, was delivered to the District Magistrate, Meerut, in pursuance of sub-s. (2) of s.87-A of the U.P. Municipalities Act, 1916 (U.P. Act II of 1916), hereinafter called the Act. The District Magistrate, Meerut, duly convened a meeting of the Board on February 6, 1961.

The appellant moved writ petition No. 367 of 1961 in the High Court on February 2, 1961, and questioned the validity of that notice. That petition was dismissed *in limine* on the same day. It was held that unless and until an order of removal is passed actually by the State Government there could not be any removal of a member or anything which would disentitle a member to take part in the proceedings of the meeting and that the application was also premature.

The meeting of the Board took place on February 6, 1961. Mr. Agarwala, Munsif, Meerut, presided over the meeting all the ten members who were present, voted for the motion of no confidence and the Munsif declared the motion to have been carried. The appellant, by his writ petition, desired the proceedings of the meeting to be quashed and the resolution expressing no confidence in the appellant be not given effect to by the state of U.P. and the District Magistrate.

It was urged before the High Court that the notice of motion delivered to the District Magistrate was invalid and so were the proceedings of the meeting. Ram Nath and Kesho Ram Gupta who had signed the notice and also Raghunandan Prasad who, along with them, took part in the proceedings of the meeting and voted in support of the 'no confidence' resolution, had incurred, prior to January 4, 1961, disqualification under s.13-D (g) of the Act inasmuch as they were in arrears in the payment of municipal tax and other dues in excess of one year's demand to which s. 166 of the Act applied. The contention was that on account of their having incurred the aforesaid disqualification, they were disqualified from being members of the Board and, consequently, were not competent to exercise the rights of a member of the Municipal Board.

The High Court held that Ram Nath had been proved to be in arrears in payment of house tax on February 6, 1961, and that Kesho Ram Gupta and Raghunandan Prasad were not in arrears in payment of the *Tekhzarai* tax for the year 1959-60 and house tax respectively. It held that a member of the Board did not cease to be a member on his incurring the disqualification under s.13-D(g) and that he became disqualified merely to exercise office and to act as a member. The learned Judges observed :

"During the continuance of the disqualification the person's right to act as a member falls into a state of suspension. On removal of the disqualification the state of suspension disappears and his right to exercise office as a member of the board revives unless he has been removed by Government from membership of the board under section 40 of the Act during the continuance of disqualification."

Holding that the motion of no confidence was valid as it had been passed by the vote of nine members

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who constituted the majority of more than half the total number of members of the Board, that being seventeen, and that those nine members of the Board being qualified and duly elected members of the Board, Ram Nath's taking part in that meeting did not vitiate its proceedings in view of the provisions of sub-s. (2) of s. 113 of the Act, the learned Judges dismissed the writ petition. The learned Judges did not consider the validity of the notice on merits as they were of opinion that the order on writ petition No. 397 of 1961 operated as *res judicata*, though in view of their opinion the notice of motion of no confidence would have been invalid if the name of Ram Nath be excluded from the signatories as in that case the number would be eight and so one short of the number required by the provisions of sub-s. (2) of s. 87-A of the Act. The meeting held in pursuance of a bad notice would also have been invalid.

The learned Attorney General, appearing for the appellant, has raised the following contentions :

(i) The order dismissing writ petition No. 397 of 1961 could not operate as *res judicata* as it had been dismissed mainly on account of its being premature and not on merits.

(ii) A member of the Municipal Board, on incurring a disqualification under s. 13-D, ceases to be a member of the Board so long as the disqualification exists and therefore he cannot act as a member of the Board for any purpose.

(iii) Kesho Ram Gupta was also a disqualified member of the Board and the resolution of the Board dated February 6, 1961, holding that no *Tehbazari* tax was due from Kesho Ram Gupta and that the amount deposited by him under protest on February 9, 1961, be refunded, was *ultra vires* the power of the Board which had no power to review or revise the imposition of tax.

(iv) Due to the disqualification incurred by Ram Nath and Kesho Ram Gupta, both the notice of motion of no confidence and the proceedings of the meeting were bad as, excluding their signatures and votes, the number of members signing the notice and of those voting at the meeting becomes less than half the total of the members of the Board.

(v) The proceedings of the meeting were vitiated even if Ram Nath alone, who was a disqualified member, had taken part in the meeting and were not saved by the provisions of sub-s. (2) of s. 113, as the meeting held in pursuance of the provisions of s. 87-A of the Act is not a meeting of the Board to which the provisions of sub-s. (2) of s. 113 can apply.

The learned counsel for the respondents conceded that the order dismissing writ No. 397 of 1961 could not operate as *res judicata* in these proceedings on the question whether the notice of no confidence was a valid notice or not.

We do not agree with the second contention for the appellant, or with the view expressed by the learned Judges that a person who incurs disqualification under cl. (g) of s. 13-D of the Act becomes disqualified to exercise office and to act as a member.

Section 13-C of the Act lays down the qualifications for membership of the Board and s. 13-D lays down the disqualifications for membership. Of its ten clauses, the relevant clause of s. 13-D for our purpose is cl. (g). It reads :

“A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being, a member of a Board if he is in arrears in the payment of municipal tax or other dues in excess of one year’s demand to which section 166 applies”.

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Second proviso to this section is:

“Provided further that in the case of (g), the disqualification shall cease as soon as the arrears are paid.”

If a member of the board falls in arrears in the payment of tax, he incurs this disqualification. The provisions of s. 13-D do apply to members of the board incurring disqualification during the period of their membership and are not confined in their application to the stage previous to the election as, in that case, the expression ‘and for being’ in the section would have been unnecessary. This expression has been interpreted in *Election Commission, India v. Saka Venkata Subba Rao* (1) in connection with the interpretation of Art. 191, whose relevant provision is “a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State.....”. It was observed at page 1157 :

“Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member, and article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both pre-existing and supervening disqualifications.”

There is nothing in s. 13-D or in any other section of the Act which provides for the suspension or cessation from membership of a duly elected member on his incurring any of the disqualifications under s. 13-D. On the other hand the provisions of s. 40 of the Act lead to the inference that a member incurring such a disqualification, continues to be entitled to take part in any proceedings of the Board or to perform the duties of a member. Section 40 deals with the removal of members and empowers the State Government

(1) [1953] S.C.R. 1144.

in the case of a city or the Prescribed Authority in any other case, to remove a member of the board on any of the grounds mentioned in cls. (a) to (f) of sub-s. (1). The ground for removal mentioned in cl. (b) is that a member has incurred any of the disqualifications mentioned in ss. 12-D and 13-D. Sub-sections (3), (4) and (5) of s. 40 read :

“(3) The State Government may remove from the board a member who in its opinion has so flagrantly abused in any manner his position as a member of the board as to render his continuance as a member detrimental to the public interest:

(4) Provided that when either the State Government or the Prescribed Authority, as the case may be, proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned, and when such action is taken the reasons therefore shall be placed on record.

(5) The State Government may place under suspension a member, against whom proceeding under sub-sections (3) and (4) has been commenced, until the conclusion of the enquiry and any member who has been so suspended shall not so long as the order of suspension continues to remain in force, be entitled to take part in any proceedings of the board or otherwise perform the duties of a member.”

The State Government is empowered to suspend a member against whom proceedings under sub-s. (4) had commenced, *i.e.*, against whom action for removal is being taken on one of the grounds mentioned in cls. (a) to (f) of sub-s. (1). A member so suspended is not entitled to take part in any proceedings of the board or otherwise perform the duties of a member during the period of suspension. It can be legitimately inferred from the provisions

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of sub-s. (5) that in the absence of an order of suspension the member who had not only incurred any of the disqualifications mentioned in s. 13-D, but against whom the Government might have started proceedings, was entitled to take part in the proceedings of the board or to perform the duties of a member so long as the Government does not place him under suspension. We are therefore of opinion that a member of the Municipal Board does not automatically come under suspension or lose his right to take part in the proceedings of the board or perform the duties of a member or cease to be a member of the board merely on his incurring any of the disqualifications mentioned in s. 13-D. It may be mentioned that any other conclusion can have very unstable effect and can indefinitely make the validity of the proceedings and action of the board uncertain as one cannot predicate at any moment of time as to which of the members of the board has incurred a disqualification, a matter which must be dependent mostly on the proof of the allegations made. Such could not have been the intention of the Legislature.

The result therefore is that even if Ram Nath, Kesho Ram Gupta and Raghunandan Prasad had incurred the disqualification under cl. (g) of s. 13-D of the Act, they were not incompetent to exercise their rights as members of the board and could therefore validly sign the notice of motion of no confidence and take part in the proceedings of the meeting held in pursuance of the provisions of s. 87-A of the Act on February 6, 1961. It follows that the proceedings of, and the resolution passed at the meeting of February 6, 1961, are valid and that the order of the High Court dismissing the appellant's writ petition is correct, though for different reasons.

In view of this opinion, it is not necessary to deal with the other contentions for the appellant. We therefore dismiss the appeal with costs.

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*Appeal dismissed.*