
(1981) 01 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3540 of 1980

Ashok Kumar Pandhi

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 07-01-1981

Acts Referred:

Citation : (1981) 3 ILR (P&H) 187

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : Chand Goyal and S.P. Jain, for the Appellant; A.S. Sandhu, Addl. A.G. and Vanita Sapra, for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—The Petitioner was elected as President of Municipal Committee, Fatehgarh Churian, Tehsil Batala, District Gurdaspur on August 10, 1979. An allegation was levelled against the Petitioner that he had tampered with minutes book of the committee. On that basis an enquiry was held which went against the Petitioner. Vide order dated September, 25, 1980, the Government held that by tampering with the official record, the Petitioner had flagrantly abused his position as a President of the Municipal Committee and ordered his removal from the said post.

2. The Petitioner has come up in challenge against that order in the instant petition.

3. It would be useful to give a brief background of the matter regarding which an enquiry was held against the Petitioner. On October 11, 1979, the Municipal Committee appointed a Sub-Committee to make a report about the appointment of two clerks. The Sub Committee met on November 20, 1979 and made its recommendations which were considered by the Municipal Committee on November 26, 1979. On that date, resolution No. 99 was passed by which two persons were appointed to the posts of clerks and two names were kept on the

waiting list. Vide annexure P-1 dated November 30, 1979 the Municipal Committee again constituted a Sub-Committee to fill up two other posts. It was decided that the Sub-Committee should invite applications from the employment exchange and by inserting citations in the newspapers should interview the candidates and then to make a recommendation. Vide his order dated January 24, 1980, the Deputy Director, Local Bodies placed restrictions on the operation of resolution No. 108 passed by the Municipal Committee on November 30, 1979. In other words, the Sub Committee appointed by the Municipal Committee was debarred from making appointments to the posts of two clerks by inviting application through the employment exchange etc.

4. On February 29, 1980, the Committee again considered the restrictions imposed by the Deputy Director, Local Bodies against the implementation of resolution No. 108 passed by it on November 30, 1979. On that date according to the proceeding book it was unanimously decided that clerks should be appointed with reference to the waiting list maintained earlier.

5. On March 22, 1980, the proceeding book of the Municipal Committee was sent for by the Petitioner. On that date, he allegedly scored over two lines and added the following note in the margin of the resolution book:

6. It has come to my notice that Resolution No. 31 as mentioned in agenda Book was not passed by the house. The house only noted the information of the item. There is Foul Play in the matter. The matter will be placed in the house for consideration. The Resolution passed by the house was on the lines now noted by me within Bracket. The scoring of Resolution under this item is just by slip.

This matter was considered in a meeting of the Committee on March 27, 1980 in the form of resolution No. 11 and action of the president was approved.

7. In other words, rightly or wrongly, the Petitioner entertained some doubts about the authenticity of the resolution passed by the Committee and recorded his own version about the same in the minute book. The action taken by him was brought before the whole house under his orders. It is therefore, apparent that the Petitioner did not want to conceal anything and specially invited attention of his fellow Municipal Commissioners to the action which he took. Since he had scored over a couple of lines and had also recorded a note, it was taken as if he had illegally tampered with the official record.

8. It cannot be disputed that it lies within the jurisdiction of the majority of the members of the Municipal Committee to pass a particular resolution. This implies that the body of the Municipal Commissioners as a whole have the implied power to rescind or amend the resolution passed by them. At best what can be said against the Petitioner is that he suggested that a resolution passed earlier should be changed and that suggestion of his met with the approval of the majority of the Municipal Commissioners. In this situation, I fail to understand how it can be alleged against the Petitioner that he had tampered with the official record. It is not a case in which he had torn away a leaf out of the proceeding book or had

destroyed a part of the same for ulterior purpose. Even if the action taken by him was considered to be improper, it had the stamp of approval of his fellow Municipal Commissioner. The change in earlier resolution if any made, in these circumstances, would be deemed to have been made by the members of the Committee as a whole and not by the Petitioner alone. In this situation, the matter should not have been stressed to the action of holding an enquiry and taking extreme action against an elected representative of the people involved in the process of local self Government.

9. The aforementioned considerations apart, it has also been alleged in the petition that the Petitioner was not supplied with the copy of the enquiry report, nor was he allowed to cross-examine the witnesses examined in support of the charge levelled against him. These allegations are in fact admitted. The justification offered for this course is that the enquiry was of an administrative nature and in such an enquiry the Petitioner was neither entitled to have a copy of the enquiry report, nor was he entitled to cross-examine the witnesses. In this connection I would like to observe that even in an administrative enquiry principles of natural justice have to be observed so that the person proceeded against cannot complain that he has been discriminated against. As an elected President, he came to be vested with important civic rights and he could not have been deprived of these rights save in accordance with law. Unless and until he is given the copy of the enquiry report, he would not be in a position to say anything against the findings recorded therein. Similarly if witnesses are examined in support of some charges against him he has to be allowed an opportunity of cross-examining them in order to show that they were not worth being relied upon.

10. In this connection Mr. Sandhu, brought to ray notice some observations made by a Full Bench of this Court in Jogindar Singh Vs. The State of Punjab and Another, , there in it had been laid down that an enquiry regarding removal of a Municipal Commissioner was administrative in character and the Municipal Commissioners concerned had no right to be given a copy of the findings of the Enquiry Officer. I might add that much water has since then flown under the bridge. In a large number of cases, it has now been authoritatively settled by the Supreme Court of India that even in administrative enquiries, principles of natural justice have to be complied with. In Union of India v. Col. J.N. Sinha and Anr. 1970 SLR 748, it was observed that:

It is true that if a statutory provision can be read consistantly with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But it on the other had a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provisions the principles of natural justice. Whether the exercise of a power conferred should be

made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of the exercise of that powers.

11. Similar view was taken in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, .I am, therefore of the considered opinion that no proper opportunity had been given to the Petitioner before he was ordered to be removed from the post of the president.

12. For the reasons mentioned, I allow this petition, set aside the order (Annexure P-3) dated 25th of September, 1980 passed by the State Government whereby the Petitioner was removed from the post of President. The Petitioner shall have his costs which are assessed at Rs. 300/-.