
(1964) 04 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1642 of 1963

Bachan Singh Jandoo

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 09-04-1964

Acts Referred:

Punjab Municipal Act, 1911 — Section 16(1)(e)

Citation : (1964) 04 P&H CK 0031

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : D.D. Khanna, for the Appellant; H.L. Soni, B.S. Wasu and H.S. Wasu, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—This is a petition filed by Bachan Singh Jandoo under Article 226 of the Constitution for quashing the order dated 9th August 1963 passed by the Punjab Government under sections 16(1)(e) and 22 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act), removing him from the Presidentship and Membership of the Municipal Committee, Barnala, and further disqualifying him for a period of two years under sub-section (2) of section 16 of the Act.

2. It is needless to give all the allegations made by the petitioner, because this writ petition is being accepted by me on the short ground that there has been no compliance with the proviso to section 16(1) of the Act in as much as no opportunity as envisaged in this proviso had been afforded to the petitioner.

3. The petitioner was the President of the Municipal Committee, Barnala, and on 4th September 1962 the Secretary, to Government, Punjab, Housing and Local Government Department, issued the following show cause notice to him (annexure "C" to the petition):

It has been brought to the notice of Government that,

(a) While vide resolution No. 10, dated 30th December 1961 it was resolved that the Committee should present a civic address to Shri Yagya Dutt, General Secretary, Jan Sangh Party, Punjab, on 1st January 1962 without incurring any expenditure from the Municipal funds, the Municipal sprinkling lorry, besides the Municipal truck was used for the purpose resulting in consumption of petrol etc. Even the Municipal staff of the Committee was also used for the construction of gates etc.

(b) While deciding the cases of house-tax, the original assessment was drastically reduced in various cases, particularly in the case of persons, who contributed towards the subscription for the Arya High School, Barnala.

(2) The above mentioned charges show that you flagrantly abused your position both as President and member of the Committee and have been responsible for loss to Municipal funds within the meanings of section 22 and 16(1)(e) of the Punjab Municipal Act, 1911.

(3) I am, therefore, directed to call upon you u/s 22 and proviso of section 16 ibid to show because why you should not be removed from the President ship and the membership of the Municipal Committee, Barnala. You should tender your explanation (with copies of the documents if any) to the Deputy Commissioner, Sangrur, with an advance copy to the Government so as to reach them within a period of twenty-one days from the date of despatch of this letter. In case no explanation is received by Government within the specified period, it will be assumed that you have none to offer and Government may go ahead to notify your removal.

It may be mentioned that in the return filed by the State, it has been specified that the removal of the petitioner was based only on charge (b) mentioned above. Therefore, we are not concerned with charge (a). In reply dated 24th September 1962 to the show-cause notice, the petitioner's position with regard to charge (b) was as under:

In regard to the charge, I have to submit that objection petitions regarding the tentative assessment of the rental value of the house property were heard and decided on the basis of individual merits of the objections raised and if after thorough consideration the Sub-committee consisting of myself, Shri Tej Ram and the Executive Officer, came to the definite conclusion that the objections merited acceptance, the reduction in the assessment was allowed accordingly. No drastic reduction indiscriminately was effected and the rate of reduction was uniform, as could be made by a human agency. Errors of judgment might have crept in certain rate cases but no reduction was deliberately made for any ulterior motives. The charge is vague inasmuch as it is not stated as to which case reference is made therein. Had the names of individual assesseees been incorporated in the notice, I would have been able to satisfactorily meet the charge. A general charge of this nature could only be met by giving a general reply as indicated above. No relation whatsoever can be established between the

reduction in assessment of the rental value and the contributions, if any, received towards the funds of the Arya High School, Barnala. None of the prospective assessee was ever approached by me with a request to subscribe to the funds of the Arya High School with a promise of making any reduction in the assessment of the rental value of his premises. Voluntary subscriptions are always solicited and accepted by the School management. If by coincidence any assessee happened to subscribe to the School funds, it could never mean that I was in any way instrumental in securing the contributions. If any mischievous assessee on his own initiative or at the instance of any one of my opponents made any subscription to the School funds with a dubious design to implicate me, it can never be sufficient to declare me a party to any design or a conspiracy to collect funds on the promise of showing consideration in deciding his objection petition.

It may not be out of place to mention that a clique whose nominee Shri Des Raj, Ex-President, M.C. was and who resigned in anticipation of the passage of "no confidence motion" against him is out to malign myself who happens to hold the office of the President, Municipal Committee, Barnala. This caucus is always busy in manufacturing false evidence to discredit me in every fair or foul means. If that is so, the motives of this group are also not above suspicion and a close scrutiny of the evidence on which these charges are based is called for under the circumstances.

The above reply will manifestly show that the charge of flagrant abuse of my position as President and member of the Municipal Committee, Barnala, is devoid of any force or substance.

I, therefore, do submit that there is no case for taking action against me on the basis of the aforesaid charges.

The proviso to section 16(1) of the Act is as under -

Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing.

4. It was conceded by the learned counsel for the State that before the impugned action could be taken against the petitioner an opportunity of tendering an explanation in writing was to be given to him. It is undisputed that before an explanation is called from a person, a definite charge should be made against him so that he can meet the same properly. In case charge itself is vague, then how can it be possible for such a person to give a suitable explanation? When he does not know what the specific allegations against him are, he cannot clarify his position. This was precisely what the petitioner stated in his reply to the show-cause notice. In spite of that, no definite allegations were conveyed to him before taking the impugned action. A reading of charge (b) would show that it was extremely vague. It was incumbent on the Authorities

to quote specific instances in which the petitioner had drastically reduced the original assessment of house tax. He should also have been informed about the persons, who had contributed towards the subscription for the Arya High School, Barnala, and in whose cases also the house-tax assessment had been drastically reduced. Until and unless this was done, the petitioner could not possibly have offered any suitable explanation. Suppose the specific allegation against him was that he had drastically reduced the house-tax assessment in case of "A", who had contributed towards the subscription for the Arya High School, Barnala, the petitioner in that case could have shown either that "A" had not, as a matter of fact, given any subscription to the said School or his assessment was not drastically reduced or not reduced at all or even if it was reduced, there were valid grounds for the same. Since charge (b) was extremely vague, therefore, it cannot be said that the petitioner was afforded an opportunity as contemplated in the proviso to section 16 (1) of the Act. Learned counsel for the State was unable to cite any decision reported or otherwise, in which a Member or a President of a Municipal Committee was removed u/s 16(1)(e) and section 22 of the Act on a vague charge of this kind.

5. In this view of the matter, it is needless to decide the other contentions of mala fides etc. raised by the petitioner to prove that the impugned order was liable to be set aside.

6. The result is that this writ petition succeeds and the impugned order dated 9th August, 1963 is hereby quashed. In the circumstances of this case, however, I will make no order as to costs in these proceedings.