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(1968) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 132 of 1968

Balbhadra Prasad — APPELLANT

Vs

The State of Madhya Pradesh and Others — RESPONDENT

Date of Decision : 04-05-1968

Acts Referred:
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Madhya Pradesh Municipalities Act, 1961 — Section 3(18), 328, 328(1), 328(6), 332

Citation : AIR 1969 MP 15 : (1969) JLJ 135 : (1968) 13 MPLJ 651 : (1968) MPLJ 651

Hon'ble Judges : P.V. Dixit, C.J;G.P. Singh, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.A. Chitaley, General, K.K. Dubey, Government Advocate (for No. 1), R.K. Tankha and P.C. Pathak, (for Nos. 3 and 4), for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

The petitioner in this case, who was elected as a Councillor of the Municipal Council, Rewa, seeks a writ of certiorari for quashing an order made by the State Government on 23rd March 1968 rescinding its earlier order dated 4th January 1968 dissolving the Municipal Council.

On 5th May 1967 the Government Issued a notice to the Municipal Council, Rewa, u/s 328 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act) asking it to show cause why it should not be dissolved on account of its certain acts of commission and omission stated in the charges enumerated in the notice. The Council gave its explanation. After considering the explanation furnished by the Council in reply to the notice, the Government passed an order u/s 328 (1) of the Act dissolving the Council. The operative portions of that order ran thus:

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"The State Government after carefully considering the explanation furnished by the Council in regard to the above charges is of opinion that the Council has failed to meet the charges satisfactorily. The State Government accordingly, find that all the charges excepting charge No. 3 described above have been established.

The State Government, are, therefore, satisfied that the Council has exceeded and abused its powers to a grave extent and that it is not competent to perform the duties imposed by or under the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961).

The State Government, therefore, hereby order that the Municipal Council, Rewa in Rewa district be dissolved under Sub-section (1) of Section 328 of the said Act and that a fresh election be held."

It appears that subsequently the respondent No. 4 Sheikh Habib Monsur, former President of the Municipal Council, and two others moved the State Government for a review u/s 332 of the Act of the order dated 4th January 1968 dissolving the Municipal Council. The Government then reviewed the order dated 4th January 1968 rescinding it. The order passed by the State Government on review said:

"Whereas Shri Sheikh Habib and two others have filed an application dated 8th January 1968 requesting the State Government for the review of the orders passed by the State Government u/s 328 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961), (hereinafter referred to as the said Act) and published under this Department Notification No. 14-A-XVIII-Urban-II 68 dated the 4th January, 1968 for the dissolution of the Municipal Council, Rewa:

And whereas, it is found that the enquiry conducted by the Enquiry was not properly conducted inasmuch as (i) The report of enquiry is based on records and documents made available by the Municipal Council which have not been exhibited and proved by witnesses; (ii) witnesses whose evidence was material were not summoned and examined for accounting for the allegations;

Now, therefore, in exercise of the power conferred by Section 332 of the said Act, the State Government hereby:

(i) reverses the dissolution of Rewa, Municipal Council ordered on the 4th January, 1968;

(ii) restores the status quo prevailing on 3rd January, 1968, and

(iii) remands back the case for enquiry according to law and procedure.

As none appeared in the dock before the enquiry officer for accounting for and proving the allegations, it cannot be determined at this stage of review as to who are the parties interested in support of order of dissolution and as such the question of giving notices to such parties for appearance and being heard does not arise."

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Before stating the contentions advanced on behalf of the petitioner, it is necessary to refer to the material provisions of Sections 328 and 332 of the Act. Section 328 (1) is in the following terms:

"328. Power to dissolve or supersede Council.--

(1) If at any time upon representation made or otherwise it appears to the State Government that--

(a) the Council is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act or any other law for the time being in force, or exceeds or abuses its powers or fails to carry out any order passed by the State Government under this Act;

(b) the President of the Council or any of its committees is not competent to perform, or persistently makes default in the performance of the duties imposed on him or it by or under this Act or any other law for the time being in force, or exceeds or abuses his or its powers or fails to carry out any order passed by the State Government under this Act and the Council has failed or neglected to take action against the president or the committee; the State Government may, by an order stating the reasons therefore published in the Gazette, dissolve such Council and may order a fresh election to take place."

By Sub-section (4) of Section 328, it is provided that no order under Sub-section (1) or Sub-section (2) or Sub-section (3) shall be passed until a reasonable opportunity has been given to the Council to furnish an explanation. Sub-section (6) of Section 328 runs thus:

"(6) If the Council is dissolved or superseded as provided in the preceding sub-sections, the following consequences shall ensue:

(a) all the Councillors of the Council shall, as from the date of the order, vacate their offices as Councillors;

(b) all powers and duties of the Council under this Act may, until the Council is reconstituted, be exercised and performed by such person or a Committee of persons as the State Government may appoint in that behalf;

(c) all properties vested in the Council shall, until the Council is reconstituted vest in the State Government;

(d) when more than one person are appointed under Clause (b) any one of them, duly authorised in this behalf by a resolution passed by them, may sue or institute or defend any action-at-law by or against the Council.

Section 332 deals with "power of review". The material portion of that provision is as follows:

"332. Power of review.--(1) The State Government may, either on its own motion or on the application of any party interested, review any order passed by itself, and the Commissioner, the Collector, the prescribed authority or any other officer

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authorised under this Act may, similarly, review any order passed by himself and pass such order in reference thereto as it or he thinks fit:

Provided that--

(i) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in

support of such order. ** ** ** "

Shri Dharmadhikaree, learned counsel for the petitioner, submitted that as on the making of an order u/s 328 (1) dissolving the Council, the Council itself became extinct and the consequences mentioned in Sub-section (6) of Section 328 followed, so there could be no question at all of an order of the State Government dissolving the Council being set aside or reviewed, so as to revive the dead Council. He proceeded to say that the order of the Government dissolving a Council was an administrative or an executive order and the power of review conferred on the State Government u/s 332 was only with regard to review of quasi-judicial orders. In the alternative, he urged that assuming that an order dissolving a Council could be reviewed u/s 332, it could be varied or reversed after hearing the parties interested and only in the like manner and subject to the conditions in which an order superseding a Council could be made u/s 328. Learned Counsel suggested that the "party interested" to whom notice should have been given as prescribed by the first clause of the proviso to Section 332 (1) was "the constituency itself", that is to say, all the citizens residing in Rewa Municipality; and that in any case notices should have been given to all the Councillors including the petitioner on whose complaint the Council was dissolved. Learned Counsel attacked the order dated 23rd March 1968 of the Government restoring the Council also on the ground that the said order was based on extraneous grounds in that it referred to the report of an enquiry made when no enquiry was at all held and none was contemplated by Section 328.

In our judgment, all these contentions are without any substance. It will be seen from the language of Section 332 (1) that the power of review conferred on the State Government by the provision is not in any way qualified or limited or controlled by anything that is contained in Section 332 or in any other provision of the Act. There is nothing in Section 332 to show that under that provision only quasi-judicial orders can be reviewed and not an administrative or an executive order. Indeed, as is evident from Section 21 of the General Clauses Act, an executive or an administrative order can be amended, varied or rescinded in the same manner and subject to the like sanctions and conditions in which the order is made. An order of the Governor of the State Government after it has been duly authenticated under Article 166(2) of the Constitution and communicated to the party or authority concerned whose legal rights are affected by it cannot no doubt be reviewed or modified in the absence of a legal provision in that behalf, Bachhittar Singh Vs. The State of Punjab, . The legal provision for review of such an order is contained in Section 332 of the Act. The contention, therefore, that

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the order dissolving the Municipal Council being an administrative order could not be reviewed u/s 332 cannot be accepted.

The contention that in its very nature an order dissolving a Municipal Council cannot be rescinded because of the consequences specified in Sub-section (6) of Section 328 that ensue on the making of an order of dissolution also lacks substance. It is no doubt true that when a Council is dissolved, all the Councillors of the Council vacate their offices as from the date of the order of dissolution and the administration of the Council is taken over by a person or a committee of persons appointed by the State Government. But these are not consequences which make the restoration of the Council an impossibility. It cannot be denied that an order of the State Government u/s 328 superseding or dissolving a Council can be quashed by this Court in proceedings under Article 226 of the Constitution. If the order is quashed, then its effect is to restore the Council and the consequences mentioned in Sub-section (6) of Section 328 cease to be operative. The same result would have followed if the Act had provided for an appeal against an order u/s 328 giving to the appellate authority the power to vary or modify or rescind the order made by the State Government u/s 328. If the Council could be restored in the aforesaid proceedings, then it is difficult to appreciate why it could not be restored by the State Government itself in exercise of its power of review u/s 332. To support his contention learned counsel for the petitioner placed reliance on Akbarali Arif v. Govt. of Madhya Pradesh 1967 MPLJ 949. That decision does not in any way assist the petitioner. On the other hand, the observation in that case that statutory consequences of a decision of the Government cannot be arrested or discontinued so long as the decision itself stands, shows that when the order of the Government from which the statutory consequences flow is set aside, then the statutory consequences also cease.

In our opinion, the power of review conferred on the State Government u/s 332 is wide enough to enable it to review an order passed u/s 328. No doubt, as laid down in the first clause to the proviso to Section 332 (1) no order can be varied or reversed "unless notice has been given to the parties interested to appear and be heard in support of such order". The expression "parties interested to appear and be heard in support of such order" clearly means those parties who are interested in the maintenance of the order sought to be reviewed. As is clear from the last paragraph of the impugned order, notice was not given to any "party interested". But there was no such party. It stands to reason to think that the Councillors who were required to vacate their office as from the date of the order dissolving the Council were interested in seeing that the order of dissolution was set aside and the Council was restored. They were not parties interested in supporting the order which was reviewed u/s 332. That all the Councillors of the Rewa Municipal Council were interested in the order of dissolution being set aside is clear from the fact that the Council had itself requested the Government to withdraw the notice to show cause why it should not be dissolved which was issued to it on 5th May 1967. The petitioner was also

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one of the Councillors who had voted for the resolution of the Council requesting the Government to withdraw the "show cause notice". The petitioner no doubt complained to the Government against "mal-administration" by the Council. But he never went to the length of saying that the council should be dissolved. That being so, the petitioner cannot claim that he was a "party interested" in supporting the order dated 4th January 1968 of the State Government dissolving the Council.

Learned counsel referred us to Section 3 (18) and Sections 4 and 5 of the Act defining "Municipality" and dealing with the constitution of municipalities to support his contention that all the residents residing in the area of the municipality were persons interested. He also pressed into service the observations of Morris J. in the Tipperary case (1875) 3 O'' M & H. 19 at p. 25 reproduced by the Supreme Court in K. Kamaraja Nadar Vs. Kunju Thevar and Others, namely, that at p. 693 para 22 an election petition "is a proceeding in which the constituency itself is the principal party interested". It is difficult to appreciate how from the definition of Municipality" or the classification of municipalities given in Section 4 of the Act or the issue of a notification u/s 5, the conclusion follows that all the citizens residing in a municipality are parties interested for the purpose of the first clause of the proviso to Section 332 (1). Learned Counsel admitted that before the issue of notice it was not possible to know the citizens who would be interested in supporting dissolution and who would be in favour of the restoration of the Municipal Council. If that be so, then clearly notice to all citizens residing in the Municipal area cannot be given. The reason is that under the first, clause of the proviso to Section 332 (1) notice is required to be given to that party who is interested to appear and support the order sought to be reviewed. Learned counsel sought to get over this difficulty by saying that the expressions "the parties interested to appear" and "be heard in support of such order" should be read disjunctively. In our opinion, there is no justification whatsoever for such a reading. The observation of Morris J. has no bearing in the present case. Where the lis is an ''election'', then clearly in election proceedings the constituency itself is the principal party interested. But where the dispute is about the dissolution of a Council, then the principal party interested can be only the Councillors or the party who asked the Government to dissolve the Council. As we have pointed out earlier, in the present case the Councillors including the petitioner were interested in supporting the order of dissolution. Consequently, the order passed by the Government is not vitiated for want of notice to the Councillors including the petitioner.

The further argument of learned counsel that the impugned order is based on extraneous consideration is untenable. Section 328 no doubt does not contemplate or enjoin a regular formal enquiry into the allegations on which it is proposed to dissolve or supersede a Council. But such an enquiry is not barred by that provision. The enquiry mentioned in the impugned order has no reference to a formal regular enquiry into the charges on which the Council was dissolved. It simply means an enquiry conducted by an officer deputed by the

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Government to verify informally the charges made against the Municipal Council. On the basis of that enquiry the Government no doubt made an order dissolving the Municipal Council; but later on when it found that the charges had not been properly verified with reference to relevant records and documents, the Government passed the impugned order. Indeed, when it has been held by a Full Bench in Municipal Committee and Another Vs. State of Madhya Pradesh, , that if the State Government supersedes or dissolves a Municipal Council without properly verifying the charges and the explanation of the Council thereto, the action of the Government cannot be said to be reasonable, it cannot be contended that the State Government rescinded the order of dissolution on extraneous factors when it realised that the charges had not been properly verified with reference to the relevant records and documents. It must be noted that u/s 332 the State Government''s power to review does not depend upon the existence of any specific ground or grounds. It is open to the Government to review an order in the exercise of its power u/s 332 if it, thinks that the order is not reasonable or proper or legal.

We must add that though the Government has the power to review and order dissolving a Municipal Council and to restore the dissolved Municipal Council it is a power which should be exercised very sparingly and in extraordinary circumstances. We have not come across any case in which a dissolved Municipal Council was restored by the Government exercising its powers of review. It is clearly not conducive to efficient and stable municipal administration that a Council should be dissolved and then again restored only a few months after. The occasion for the exercise of review power for setting aside an order of dissolution will not arise if the order of dissolution is made not in a nonchalant manner but after a proper scrutiny of the charges against the Municipal Council and consideration of the explanation of the council thereto.

For the foregoing reasons, this petition is dismissed. The amount of the security deposit shall be refunded to the petitioner.

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