

(1955) 10 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 476 of 1955

Bhagwan Das Barnwal

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 17-10-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 48, 48(2)

Citation : AIR 1956 All 213 : (1956) 26 AWR 435 : (1955) 25 AWR 628

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; V.K.S. Chowdhry, for the Respondent

Final Decision : Dismissed

Judgement

Mehrotra, J.—The applicant was elected as President of the Municipal Board. Mirzapur in the general elections held in October, 1953. On 17-1-1955, a notice of intention to move a no confidence motion against the applicant was made to the District Magistrate of Mirzapur. 17-2-1955, was fixed for the meeting for the consideration of the no-confidence motion. The motion was voted and lost. The meeting was presided over by the Civil Judge.

Two of the members of the Board alleged that they were forcibly abducted and detained and consequently could not participate in the meeting for no-confidence held, on 17-2-1955. Investigation was started against the applicant by the police on the statement of the two members. On 1-3-1965 at about 3:00 p.m. the applicant received a communication from the District Magistrate, Mirzapur purporting to contain the charge-sheet against the applicant. He was called upon to furnish an explanation to the charges.

The charges indicated that the applicant was asked to explain the conduct which was considered as an act of gross misconduct in the discharge of his duties as President of the Board by the Government. On the same date an order of the

Governor suspending the applicant with immediate effect dated 25-2-1955 was communicated to the applicant. A petition under Article 226 of the Constitution was filed challenging the aforesaid order of the State Government as well as the order of suspension passed by the Governor and was finally allowed by this Court on 12-4-1955.

The proceedings u/s 48 initiated by the State Government against the applicant were quashed and an order was issued by this Court prohibiting the State Government from proceeding with the proceedings u/s 48, Municipalities Act. The ground on which the petition was allowed was that the allegations, made, against the applicant did not amount to misconduct in the discharge of his duties as the facts alleged had nothing to do with the duties of the applicant as the President of the Municipal Board.

2. Fresh proceedings u/s 48 (2) (b) (vi). Municipalities Act have been started against the applicant. On 28-4-1955 the applicant received a copy of a fresh charge-sheet dated 25th April with a covering letter to the District Magistrate asking the " applicant to give an explanation to the acts of misconduct alleged against him. An order of suspension was also communicated to the applicant.

After the applicant had been served with! a charge-sheet and an order of suspension had been passed, the present petition was filed in this Court under Article 226 of the Constitution praying that a writ in the nature of certiorari be issued to the opposite parties , quashing the proceedings initiated by the Government against the applicant and the suspension order dated 25-4-1955, and a writ of mandamus or a direction in the nature of mandamus be issued to the opposite parties directing them not to conduct any inquiry on the basis of the charge-sheet.

The main contention of the applicant is that the Charges on which proceedings have been taken against the applicant u/s 48 (2) (b) (vi), Municipalities Act do not come within the ambit of Section 48. They, on no reasonable interpretation, amount to misconduct u/s 48.

3. A counter affidavit has been filed in the case and it is urged that the acts alleged against the applicant can amount to gross misconduct and it cannot be said that they bear no relation to acts which may constitute gross misconduct u/s 48 and consequently it is not open to this Court to interfere with the proceedings at this stage.

4. A preliminary objection has been taken that unless final orders are passed by the State Government, this Court, in the exercise of its"" discretionary powers under Article 226 of the Constitution, should not quash the proceedings and issue a writ of prohibition.

I have already discussed this question in Writ No. 517 of 1955 and in my judgment, if the charges on which proceedings have been initiated u/s 48 against the applicant and regarding which the applicant is required to give an

explanation, do not come within the ambit of Section 48 and they are not gross misconduct done in the discharge of the applicant's duties as the President, it is open to this Court to interfere even before the final orders are passed by the State Governments. In the light of my judgment in the writ petition referred to above, it is necessary to examine the charges framed against the applicant and to see if they come within the scope of Section 48 or not. The charges are set out in Annexure B to the affidavit and read as follows :

"That he Irregularly sanctioned leases of Municipal land to a number of persons knowing fully well that the power to sanction these leases vested in the Board. He did so with sinister motive and was thus guilty of gross misconduct in the discharge of his duties. The following are some of the instances.

1. He granted lease of a plot of land in Mohalla Mukert Bazar to Sri Gulab Chand;
2. He granted lease of land in Gali Mahadeo Singh Baghal in Mohalla Wellesleyganj to Sri Panna Lal;
3. He granted lease of land at Purani Kotwali to. Sri Mahabir Prasad;
4. He granted lease of land near the Urinal of the Town Hall to Sri Satya Narain.
5. He transferred in favour of Sri Heera Lal Gupta the lease of land in Mohalla Dankinganj, which had been leased put to Sri Basantey ;
6. He transferred in favour of Sri Ranjtt Singh Punjabi, a plot of land in Mohalla Mukeri Bazar which had already been given on lease to Sri Mohammad Husain, Tailor, without even formally dispossessing Sri Husain, with the result that Sri Husain was forcibly ousted from the land.

Further, in this case Sri Barnwal realised arrears of rent for the land in question from Sri Mohammad Husain, although the said amount had already been realised from Sri R. S. Punjabi."

It is not specified in the charges what sinister motive behind this act of the applicant was. If any unauthorised act is done by a President with certain motive of personal gain or favour to other individuals, it may be said that such an unauthorised act amounts to gross misconduct but without specifying the specific motive underlying" the acts done by the President, it cannot be said that ,the motive was necessarily sinister. The charges, therefore, in effect amount to an act having been done by the President which he was not authorised to do under the Municipalities Act.

It is alleged against the applicant that he granted leases of land without the sanction of the Board and in one case he leased out a land in favour of Sri Ranjit Singh Punjabi which had already been given on lease to Sri Mohammad Husain without even dispossessing Sri Mohammad Husain and the result was that Sri Husain was forcibly ousted from the land. Arrears of rent were also realised by him from Mohammad Husain. With regard to the first Charge, on 1-4-1954, one Gulab Chand made an application to the President for giving on rent a municipal

land.

A report was called for from the Revenue Superintendent who called for a report from the Rent Clerk and the Rent, Clerk submitted his report on 3-4-1954. Thereupon the applicant ordered the matter to be placed before the Nazul Committee and the Chairman of the Nazul Committee recommended that the land be provisionally given to the applicant. The matter was, however, again put up before the Nazul Committee on 2-11-1954 and a resolution was adopted sanctioning the grant of the land to Gulab Chand on his payment of rent for the past 6 years and the matter was to be placed before the Board for sanction.

The matter was then ordered to be put before the Board by the Executive Officer and the applicant ordered the arrangement of the land to be made with Gulab Chand if he paid rent of the past 6 years and deposited rent in advance of one year. On 16-4-1955 the matter was put up in the agenda for the sanction of the Board, It was ordered to be sent back to the Nazul Committee for its opinion. (5) As regards the second charge, an application was made by one Panna Lal on 20-2-1954 for the grant of land in his favour. The Revenue Superintendent was asked to give his report and on 14-5-1954, he recommended that the land be granted. ,On 14-5-1954 the applicant passed the following order :

"It should be given on schedule rate of rent and the rent may be deposited."

The matter was then put up before the Board in its meeting dated 16-4-1955 and the "Board decided to refer the matter to the Nazul Committee.

6. The third charge relates to a land being given on lease to one Mahabir Prasad. In the beginning of 1955 Mahabir Prasad made an application for arrangement of the land in his favour. The Revenue Superintendent's report was called for and on 18-1-1955 a report was made by the Revenue Superintendent, to the effect that the land was occupied by urinal and after the removal of urinal, the land is lying vacant and the land was in front of the house of Mahabir Prasad.

On 8-2-1955 an order was passed by the applicant that after getting rent of one year deposited the land may be given. This matter was again put up before the Board in its meeting on 16-4-1955 and it was referred to the Nazul Committee.

7. The next charge relates to the grant of land to Sri Satya Narain. In the middle of 1954 Sri Satya Narain made an application for the grant of certain municipal land to the Executive Officer who on 16-7-1954 asked for a report from the Revenue Superintendent. After he had submitted his report, the Executive Officer recommended that temporarily the land may be given to him and the applicant sanctioned it on 16-7-1954. This matter was again put up on 16-4-1955 before the Board.

8. The fifth charge relates to the transfer of the land in favour of one Sri Hira Lal Gupta. On 17-3-1955 Sri Hira Lal Gupta made an application to the President for some small piece of land in Mohalla Punkinganj. A report from the Revenue Superintendent was called for who reported that Basante, its previous lessee, is

dead; the place is vacant and recommended that the land may be given. The applicant accepted the recommendation on 17-3-1955 and this matter was also put up before the Board on 16-4-1955. It was referred to the Nazul Committee and arrangement of the land was made with Sri Hira Lal Gupta.

9. The next charge refers to the grant, of land to Ranjit Singh Punjabi. One Mohammad Husain tailor was the tenant of the Board and he was occupying certain land and had put up certain temporary structures on the land. On 4-2-1955 Ranjit Singh . made an application for the allotment of the land to him. The report of the Revenue Superintendent was called for and the applicant thereupon ordered that if Ranjit Singh was prepared to pay the arrears of rent due from Mohammad Husain, the land may be given to him.

Thereafter Sri Mohammad Husain, who, was ejected by Ranjit Singh, made an application on 7-2-1955 offering to pay rent due from him. and an advance rent for six months. Ranjit Singh was not in possession and the matter was still pending. This "matter was also put up before the Board on 16-4-1955 and then the mat-ter was referred to the Nazul Committee.

10. Along, with the counter affidavit, copies of applications made by various persons together with the orders of the President on those applications have been produced. From a, perusal of these applications it appears that in some cases some times in 1954 and in some cases in the early part of 1955, applications had been, made for grant of certain lands and after calling for the reports from the Revenue Superintendent, the president sanctioned the grant of the lands to the applicants.

The matters were ultimately put up before the Board on 16-4-1955 and the Board sent back the cases to the Nazul Committee for consideration. The question, therefore to be determined is whether the act of the President in sanctioning the grant of leases to various applicants without the sanction of the Board was an act permissible within the provisions of the Municipalities Act and the second question which will have to be determined is if the act was not permissible under the Municipalities Act, whether temporary permission granted by the applicant to the various applicants to take possession of the land without the previous sanction of the Board amounted to gross misconduct within the meaning of Section 48 (2) (b) (vi), Municipalities Act.

Mr. Khare, who appeared for the applicant, has contended that it was open to the applicant to grant temporary permission under the bye-laws of the municipality and the President has not exceeded his powers in giving temporary permission to persons to occupy the land.

In my judgment the bye-law does not give any power to the President to permit persons to occupy the land on payment of rent before the actual execution of the, leases after the sanction of the Board. What is contemplated by the bye-law is that the President can grant temporary licenses to persons to use the municipal land but there is no provision in the bye-law which authorises the

President to permit a prospective lessee to occupy the land on payment of rent before the Board's sanction.

11. The next contention of the petitioner, as I have already indicated, is that even if the action of the President was unauthorised, it did not amount to gross misconduct. Gross misconduct, as contended by the petitioner's counsel, implies some act involving moral turpitude or any unsocial act. If the act has been done by the President himself, which is not permissible under the provisions of the Municipalities Act. "bona fide" in anticipation of the proper sanction of the Board in the interest of the Board it cannot be regarded as a misconduct much less a gross misconduct.

Reliance was placed by the applicant on the case of -- "Moore v. High Bailiff of Brompton County Court" (1894) 69 LT 140 (A), where it was held that the act of the high bailiff in selling the implements of the debtor's trade, not being with a wrongful intent, was not an act of "misconduct" within the meaning of Section 50 of the Act. In that case the Queen's Bench had to interpret the word "misconduct" in Section 50, County Courts Act, 1888 and having considered the entire language of the section, it was held by the Bench that certain acts done by the bailiff did not amount to misconduct under the section. At page 144 of the Report the following observation was made :

"To my mind, these words "misconduct" and "extortion", followed by the word "offence", show that this section meant to deal with offences which were of a penal character --that is to say, acts of misconduct of such a character that they indicate an intentional abuse of the authority possessed by the high bailiff. .

I do not here use the word "criminal" or the words "indictable offence", and I do not even use the term "mens rea", because these words have well-known legal effects given to them which might create a difference. It seems to me there is a difference between the conduct of a bailiff which is of an intentionally wrong kind, and the conduct of a bailiff, which is merely that of negligence, whether the negligence be great or small."

That case is, therefore, distinguishable from the "facts of the present case. The word "misconduct" has not been defined anywhere. It has no fixed legal connotation. The act may in certain circumstances amount to gross misconduct and may in other set of circumstances not amount to gross misconduct. Whether those circumstances exist in the present case or not is a matter which will be considered by the State Government after the petitioner has submitted his explanation with regard to the conduct alleged against him but it cannot be said that the grounds on which the State Government has proposed to take action against him do not fall within the scope of Section 48 (2) (b) (vi). It cannot be said that the acts which are attributed to the applicant bear no reasonable relation to the word "misconduct". Unless it is held by this court that the conduct, on which the State Government has come to the "prima facie" conclusion that the charges have been made out against" the petitioner and has

proposed to take action, does not come within the scope of Section 48 (2) (b) (vi), it cannot be said that the proceedings were without jurisdiction and could be quashed before the final order is passed by the State Government.

The State Government, after consideration of the circumstances which the petitioner may place before the State Government, may come to the conclusion that the "conduct does not amount, to gross misconduct and quash the proceedings but it is not possible for this Court at this stage to hold that the conduct attributed to the petitioner can. in no circumstances be within the scope of Section 48 (2) (b) (vi) and the proceedings which have been started against the applicant are without jurisdiction.

Section 50, U. P. Municipalities Act enumerates the duties of the Board which are to be discharged by the President and Section 51 gives the additional duties of the President. Clause (b); of Section 51 provides that one of the duties Of the President is to watch over the finances and superintend over the administration of the Board and bring to the notice of the Board any defect therein.

A lease is to be sanctioned by the Board and if the President, without the previous sanction of the Board, grants leases persistently, it cannot be argued that such an act amounts to a mere omission to perform some duty. The grant of permission is a positive act and. it may in certain circumstances, amount to a gross mis-conduct.

12. The last point which has been urged; by the applicant was that the order of suspension passed by the opposite party and the proceedings started against the petitioner are "mala fide" and should be set aside. It has been made-without any reasonable basis and has been made in a spirit of vindictiveness. It is urged that the petitioner was opposed by the Congress which is the opposition group In the Board.

Since the election, the congress party is making every "effort to oust the applicant and when the no-confidence motion was lost, the applicant was first suspended by the State Government on the ground of a certain report made by two of the members that they were forcibly removed on the date when the no-confidence-resolution was moved and proceedings u/s 48, U. P. Municipalities Act were started against him on that ground.

The suspension order and the proceedings were quashed by an order of this Court on a petition being filed by the petitioner under Article 226 of the Constitution and the present proceedings were a second attempt on the part of the congress party to oust the applicant. The facts that there are two, rival groups in the Board and that some times back an. attempt was made" by the opposition group to oust the applicant are facts which are not material for the determination of the question whether the present proceedings were without jurisdiction.

If the present proceedings have been validly started and the order passed by the

State Government is within its competence, whatever may, be the motive which influenced their decision is not a question which can be gone into by this Court in this writ petition and it cannot be said that the act of the State Government proposing to start" proceedings u/s 48(2) (b) (vi) against the applicant is "mala fide" which can be quashed by this Court on that ground.

13. There is, therefore, no force in this petition and it is rejected with costs. The stay order is vacated.