

(1999) 07 MP CK 0032

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2721 of 1999

Brijendra Mishra

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 17(2)

Citation : AIR 2000 MP 40 : (2001) ILR (MP) 1623 : (1999) 2 MPJR 322

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Rajendra Tiwari and R.N. Singh, s, R.K. Shrivastava and A.J. Pawar, for the Appellant; N.S. Kale and V.S. Dabir, Sr. Counsels, G. Jain, Yogesh Dhande and Tanu Tandon, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India challenging the order dated 15-6-1999 (Annexure P-6) and order dated 17-6-1999 (Annexure P-7) passed by the respondent No. 1 State of Madhya Pradesh.

The petitioner was Mayor of the Municipal Corporation, Kathni. He was absent in all the five meetings of the Corporation held on 30-4-1998, 5-5-1998, 3-7-1998, 26-12-1998 and 30-3-1999. Section 17(2)(c) of the M.P. Municipal Corporation Act, 1956 (hereinafter to be referred to as the Act) provides that if any Mayor absents himself during six consecutive months from the meetings of the Corporation except "with the leave of the Corporation" he shall be disabled from continuing to be a Mayor and his office shall become vacant. Sub-section (3) of Section 17 further provides that in every case the authority competent to decide whether a vacancy has occurred shall be the Government. The proviso to this sub-section provides that no order under this sub-section shall be passed against any Mayor without giving him a reasonable opportunity of being heard. The

respondent No. 1 issued the notice dated 29-5-1999 to the petitioner. In the reply dated 4-6-1999 (Annexure P-2) he took the plea that in one of the meetings which was held on 3-7-1998 he had taken leave of the Corporation. A copy of his leave application with a copy of the Medical Certificate were annexed to this application. It was shown that this application was received by respondent No. 3, the Speaker (Dy. Mayor) of the Corporation on 3-7-1998 and it was sanctioned by him immediately. He had made an endorsement on this application as ^izkIr ,oa Loh?r**-

It is then signed by the Speaker. He has put the date 3-7-1998 below his signature and affixed his seal. The petitioner submitted certain other documents with his reply.

The reply was considered by the Government and by the impugned order dated 15-6-1994 it has been held that the petitioner had not obtained the leave of the Corporation for his absence in the meeting on 3-7-1998. It is a reasoned and speaking order. The finding is that the plea of the petitioner is not supported by the documents furnished by him inasmuch as his application was neither received nor sanctioned by the Corporation. This application was neither produced in the meeting of the Corporation held on 3-7-1998 nor it was sanctioned. The plea of the petitioner was held to be not satisfactory and it was unacceptable. It was further held that the petitioner had incurred the disability and the office of the Mayor has become vacant. By order dated 17-6-1999 respondent No. 4 Shri Sandeep Jaiswal one of the Councillors, has been nominated to perform the duties of the Mayor.

In this petition and the rejoinder it has been contended that the decision of the Government is erroneous and illegal. The matter was not considered in right perspective. It has resulted into miscarriage of justice. It is reiterated that the leave was in fact granted by the speaker and it amounted to leave of the Corporation. It is also stated that in case the respondent No. 3 failed to put up the application in the meeting of the Corporation held on 3-7-1998 the petitioner cannot be blamed for that omission.

In the return filed by the respondent No. 1 it is stated that the authenticity of the leave application and the medical certificate are doubtful as these were not placed in the meeting of the Corporation held on 3-7-1998. Further, the leave even if granted by the Speaker does not amount to leave of the Corporation. The decision taken by the Government is correct. Respondent No. 2 Municipal Corporation, Kaini has stated that the application of the petitioner was not received in the office of the Corporation. It was not considered in its meeting nor it was granted. If the Speaker had received or sanctioned it he would have in the ordinary course placed it in the meeting held on 3-7-1998. In the meeting of the Corporation held on 23-4-1999 Shri Naval Kishore Gattani, one of the councillors brought to the notice of the councillors that the petitioner has been absent without the leave of the Corporation for more than one year and has incurred the disqualification to continue as Mayor. It was decided that this fact should be

brought to the notice of the State Government. The Speaker was not even otherwise competent to grant the leave. The conclusions of the facts reached by the State Government cannot be assailed by this petition. It is further revealed that the petitioner was at New Delhi from 1-7-1998 to 4-7-1998 as is evidenced by his T. A. bill and the vouchers submitted by him and, therefore, he could not be present at Katni on 2-7-1998 to submit his application before the Speaker. Thus the application and the sanction on it have been ante-dated. The respondent No. 3 in his return has supported the case of the petitioner but he has not mentioned therein the reason for his failure to place the application of the petitioner in the meeting of the Corporation on 3-7-1998. The return of the respondent No. 4 is also almost the same as that of the respondent No. 2.

In the rejoinder the petitioner has admitted that he was in New Delhi on 2-7-1998 and 3-7-1998. He has not explained how he could give the application on 2-7-1998 to the Speaker at Katni. In para 3 of the reply to the show-cause notice submitted on 4-6-1999 (Annexure P-2) it is mentioned by the petitioner that he was at Katni on 2-7-1998 and 3-7-1998.

The only point which has been debated during the course of the arguments is whether the petitioner had obtained the leave of the Corporation for his absence in the meeting held on 3-7-1998. After considering the arguments of the learned counsel for both the sides this Court is of the view that it was a question of fact whether the petitioner had obtained such leave. If the Government on the basis of the reply to the show-cause notice and the record of the Corporation has recorded the finding of fact that the petitioner had not obtained such leave the Court cannot interfere with that finding of fact. The Government has followed principles of natural justice and in its well reasoned order has given the grounds for its decision. There was sufficient material before the Government to arrive at the decision and therefore, its correctness cannot be examined by this Court in a petition under Article 226 of the Constitution. This Court cannot sit in appeal over the finding of fact recorded by the Government on the basis of the material on record. This finding cannot be said to be perverse or unreasonable. There was evidence to support the finding. It is not assailable by this petition. There cannot be Judicial review of the action based on the finding of fact.

In *H. B. Gandhi v. Gopi Nath and Sons* the Supreme Court has held that Judicial review is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

Again in Chandigarh Administration and another Vs. Manpreet Singh and others, , it has been observed that while acting under Article 226, the High Court does not sit and act as an appellate authority over the orders and actions of the subordinate authorities. Its jurisdiction is supervisory in nature. One of the main objects of this Jurisdiction is to keep the Government and several other authorities and tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function it does not overstep the well recognised bounds of its own jurisdiction. In Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another, , it is reiterated that the power under Article 226 is the power of Judicial review. The High Court can only examine the procedural correctness. It cannot go into the merits of the controversy like an appellate authority. There is no room for any benevolence under Article 226 of the Constitution. If the Court departs from law and enters the arena of benevolence the perils and pitfalls are too many to recount. The same view has been taken in AIR 1997 993 (SC) .

As already discussed the finding of fact arrived at by the Government that the petitioner did not obtain the leave of the Corporation is based on the evidence on record. Therefore, in view of the principles of law stated above this Court cannot reappraise or re-examine the evidence to test the correctness of that finding.

In case the material which has been brought on record before this Court to decide the question whether the petitioner absented himself with the leave of the Corporation is considered, the petitioner would be landing himself from frying part to the fire. The question is whether the petitioner in fact applied for leave on 2-7-1998. The respondent No. 2 has shown from the documentary evidence that the petitioner was at New Delhi during all the hours of 2nd and 3rd July, 1998 and therefore his assertion that he was at Katni on 2-7-1998 and applied for leave falls to the ground. In the rejoinder filed by the petitioner he has not been able to explain this catastrophe. His plea that he applied for leave on 2-7-1998 and it was granted by the Speaker on 3-7-1998 is factually incorrect. Had he done so his application must have been produced and considered in the meeting of the Corporation on 3-7-1998 as required by law. The Speaker could not be oblivious of this legal requirement. The petitioner has not come up with clean hands and that is the additional reason to dismiss his application. At any rate the finding reached by the Government cannot be said to be incorrect and the action based thereon is not open to review.

The petition is dismissed. Costs as incurred.