
(1970) 03 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 319 of 1969

Des Raj and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 03-03-1970

Acts Referred:

Punjab Municipal Act, 1911 — Section 238(1)

Citation : (1970) 03 P&H CK 0030

Hon'ble Judges : R.S. Narula, J; Mehar Singh, J

Bench : Division Bench

Advocate : Harbans Lal, for the Appellant; Ajit Singh Bains, for the Respondents
No. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—Notice, dated May 18, 1968 (Annexure "A" to the writ petition), to show cause as to why the Municipal Committee, Goniana, district Bhatinda (hereinafter referred to as the Municipal Committee) should not be superseded u/s 238 of the

Punjab Municipal Act, 1911 (hereinafter called the Act) was served by the Punjab Government on the President of the Municipal Committee in the following terms:-

It has been brought to the notice of Government that the Municipal Committee, Goniana, in the Bhatinda district, is incompetent to perform its statutory duties within the meaning of Section 238(1) of the Punjab Municipal Act, 1911, for the following reasons:-

(1) Till May 7, 1968, the Committee had not passed its budget for the year 1968-69, and was incurring expenditure without any authority.

(2) The Committee has failed to maintain the minimum cash balance as required under rule XVII 16. of the Municipal Account Code, 1930. On May 7, 1968. the Committee had a cash balance of Rs. 2,413.53, which was not only below

statutory minimum, but was insufficient even for meeting the day-to-day expenditure not to say of carrying out any development programme. The monthly expenditure of the Committee comes to Rs. 6,631.66. This means that the Committee is not in a position to run its administration.

(3) As per position on May 7, 1968 except in the case of sweepers, the Committee had not been able to pay salaries to its employees for the last many months.

(4) Orders regarding suspension of Shri Ram Singh, Secretary, Municipal Committee, were passed and the Committee was called upon by Government to enquire into the allegations of embezzlement against him. The Committee has failed to carry out the Government orders.

(5) A sum of Rs. 1,00,000 was sanctioned as a loan from the Life Insurance Corporation for sewerage and water works for the Goniana Mandi. The works were to be got executed through the Public Works Department (Public Health Branch), but the Committee did it itself, which is irregular and against instructions issued from time to time.

2. In view of the above position, Government are of the opinion that the present Municipal Committee has failed to deliver goods and there appears every justification for its supersession. Accordingly they have decided to give an opportunity to the Municipal Committee to explain its position in respect of the above mentioned charges, before taking final decision about its supersession.

3. The Municipal Committee, Goniana, is, therefore, called upon through you to show cause why it should not be superseded u/s 238 of the Punjab Municipal Act, 1911, in view of the above charges. The explanation of the Municipal Committee should reach Government by the 10th June, 1968, without fail. In case the Municipal Committee fails to do so "it will be presumed that it has no explanation to offer and Government will be at liberty to decide the case on its merits. The Municipal Files is returned here with.

4. Please acknowledge receipt of this communication. The Municipal Committee submitted its detailed reply, dated June 7, 1968 (Annexure "B" to the writ petition), controverting the various charges levelled against it. After considering the abovesaid representation, the Municipal Committee was superseded by the order of the Punjab Government contained in notification, dated June 29, 1968 (Annexure "D"), leading as follows: -

Whereas the Municipal Committee, Goniana, in the Bhatinda district, for the reasons given in the subjoined schedule has been found to be incompetent to perform and has persistently made default in the performance of duties imposed on it by or under the Punjab Municipal Act, 1911.

Now, therefore, in exercise of the powers conferred by Sub-Section 238 of the Punjab Municipal Act, 1911, the Governor of Punjab herein directs that the said Municipal Committee of Goniana in the Bhatinda district, shall be superseded

with immediate effect and further directs that all powers and duties of the said Committee shall until the Committee is reconstituted, be exercised and performed by an Administrator and hereby appoints the Executive Officer, Municipal Committee, Bhatinda, as Administrator of Goniana Municipality in addition to his own duties till the appointment of a whole-time Administrator.

SCHEDULE

(1) Till 7th May, 1967, the Municipal Committee had not passed its budget for the year 1968-69.

(2) On 9th May, 1968, the cash balance with the Municipal Committee was below the minimum limit prescribed under rule XVII.16 of the Municipal Accounts Code, 1930. Thus the Committee has violated the provisions of the aforesaid rules.

(3) The Municipal Committee failed to pay in time salaries of its office and octroi staff for the month of April, 1968.

(4) The Municipal Committee was directed under the provisions of Section 41 of the Punjab Municipal Act, 1911, to suspend Shri Ram Singh, Secretary, but the Committee failed to comply with this direction.

(5) A loan of rupees one lac from Life Insurance Corporation was sanctioned to the Municipal Committee for sewerage and water works. The works were to be got executed through the Public Works Department (Public Health Branch), but the Committee failed to do so.

2. The above quoted notification superseding the Municipal Committee was impugned by Des Kaj and Naib Singh, ex-President and Member respectively of the Municipal Committee in Civil Writ 2087 of 1968, under Articles 226 and 227 of the Constitution. P. C. Jain, J., by his order, dated April 28, 1969, dismissed the writ petition on two grounds:-

(i) that it is not for this Court to see whether the explanation given by the Municipal Committee against the show-cause notice was satisfactory or not, as it is the exclusive jurisdiction of the State Government to consider the explanation and to arrive at a finding which it thinks proper, appropriate and justified in the circumstances of the case ; and

(ii) that the allegation of mala fides made in the writ petition against Shri Faqir Chand the then Minister in charge of Local Bodies Department of the Punjab Government, having been vehemently denied by the Minister concerned, and no material having been found on the record to arrive at a conclusion about the order having been passed at the instance of the Minister there was no ground of interference by this Court in the order of the State Government.

3 Not satisfied with the judgment of the learned Single Judge, the writ Petitioners have come up to us in an appeal under Clause 10 of the Letters Patent. Sub-section (1) of Section 231 of the Act states:-

Should a Committee be incompetent to perform, or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the State Government may, by notification, in which the reasons for so doing shall be stated declare the committee to superseded.

(2)

(3) * * *

On the authority of a Division Bench judgment of this Court (I. D. Dua, J. and myself) in the Municipal Committee and Ors. v. The State of Punjab 1966 Curr. L. J. (P&H.) 290., counsel argued that a notification u/s 238 of the Act is as much subject to the scrutiny of this Court under Article 226 of the Constitution as an order u/s 16(l)(e) of the Act removing a person from membership of the Municipal Committee as held by an earlier Division Bench (Dulat and Harbans Singh, JJ.) in the State of Punjab v. Sugna Ram (1966) 66 P.L.R. 828.. In the State of Punjab v. Sugna Ram (Supra) it was held by this Court that an order of the State Government under Clause (c) of Sub-section (1) of Section 16 of the Act is subject to scrutiny by this Court with a view to check two matters, viz. (i) whether the grounds of removal are not extraneous to the conduct of the member as such, and (ii) if the grounds are not extraneous, to see that the act or acts done by the members in disregard to his duty are such as can shock a reasonable mind. There is no quarrel with the propositions of law laid down in the two Division Bench judgments of this Court. We are, however, unable to hold that the acts or defaults of the Municipal Committee which have been made the basis of the impugned order are such as can shock a reasonable mind. It has been disputed by counsel that if those facts were to be held to be proved and the Municipal Committee could be held to be responsible for the same, the case would squarely fall within the ambit of Section 238 of the Act, The only other purpose for Which the grounds of superseding the Municipal Committee are open to scrutiny of this Court being to see whether the same are extraneous to or not germane to the requirements of the relevant provisions, we were taken by the learned Counsel at length through the various grounds, the replies of the Municipal Committee thereto, and the findings of the Government. The argument of learned Counsel was that none of the grounds is within Section 238 of the Act as none of the acts complained of could be brought within the purview of persistently making default in the performance of the duties of the Municipal Committee. By persisted default, counsel submitted not without justification is meant repetition in making a default though the repetition may not relate to the same default. But this consideration is irrelevant in the present case as the Municipal Committee has not been superseded on account of persistently making default in the performance of its duties, but on the other alternative ground mentioned in the section, i.e , that the Municipal Committee was found to be incompetent to perform duties imposed on it by or under the Act. The two grounds mentioned in Section 238(1) of the Act for superseding a Municipal Committee may overlap each ether in certain cases and are certainly not

mutually exclusive. Persistent default in performance of its duties would certainly render a Municipal Committee to be charged with incompetency to perform its functions. The reverse of that proposition is, however, not necessarily correct. Despite absence of persistency in making defaults in the performance of its duties, a Municipal Committee may still be pronounced to be incompetent to perform the same for various other reasons. Incompetence may in a fit case be inferred by the Government even from a single act or default. The truth and correctness of at least one of the charges levelled against the Municipal Committee was not disputed before us. This relates to ground No. 4 mentioned in the impugned notification. The finding of the Government against the Municipal Committee in this respect is that though the Committee was directed under the provisions of Section 41 of the Act to suspend Shri Ram Singh, Secretary, yet the Committee failed to comply with this direction. It has not been disputed that such a direction could be given by the Government, that the direction was in fact given, and that the Municipal Committee really failed to comply with it. The only form which the reply of the Committee took to the abovesaid charge was of some kind of justification. It is not for this Court to sit in appeal over a matter of this type. We are, therefore, unable to hold that the order of the State Government, which was duly supported by reasons is in any manner outside the scope of Section 238(I) of the Act.

4. No other argument having been addressed in this case by Mr. Harbans Lal, the learned Counsel for the Appellants, the appeal fails and is dismissed though without any order as to costs.

Mehar Singh, C.J.

5. I agree