
(1967) 12 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 70 of 1967

Dr. Om Parkash and others	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 05-12-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1967) 12 P&H CK 0021

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Rajinder Sachar, for the Appellant; Anand Sarup, Advocate General and Messrs J.C. Verma, Harbhawan and R.L. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Sharma, J.—Dr. Om Parkash and 12 others in this writ petition under Articles 226 and 227 of the Constitution of India against (1) The State of Haryana; (2) Deputy Commissioner, Ambala and (3) Shri Gulab Singh, Ex-Minister for Transport, Haryana Government, have prayed for quashing of an order dated the 2nd January, 1967, issued by respondent No. 1 superseding the Municipal Committee, Jagadhri, in the Ambala district, hereinafter referred to as the Committee in exercise of their powers u/s 238 of the Municipal Act, 1911, hereinafter referred to as the Act, with immediate effect.

2. A few facts as alleged by the petitioners in support of their prayer may be noticed here. The petitioners were elected as members of the Committee in the elections held in the month of May, 1964. The Congress party was able to return only four out of the total of seventeen members. Petitioner No. 1 who contested as an independent with the support of others was duly elected as President of the Committee in a meeting held on 29th July, 1964, much to the dislike of the Congress Government in the unsympathetic attitude towards the working of the Committee and were trying to find ways to supersede the same. Respondent No. 2 in pursuance of this policy issued a show cause notice to the Executive Officer

of the Committee on 28th October, 1955, annexure A/1 to explain as to why the Committee should not be superseded. This he did u/s 238 of the Act. The Committee gave a detailed reply to the show cause notice, copy annexure A/2 as decided in a meeting held on 11th November, 1965. The matter remained pending for a considerable time in the Secretariat. Finally the Sub-Divisional Officer, Jagadhri, by his letter dated the 11th August, 1966, to the Executive Officer informed him that the Government had decided to give six months time to the Committee to remove the various defects pointed out in the show cause notice and that a report regarding the removal of these defects should be sent every fortnight in order to watch the progress, copy annexure A/8. Subsequently the petitioners declined to attend a function held in the honour of respondent No. 3 in the Harijan Colony which annoyed him and also jeopardised his interest in the coming elections to the State Assembly. He, therefore, exercised influence with respondent No. 1 and got the orders of the supersession of the Committee passed on 2nd of January, 1967.

3. The petitioners urged that the aforesaid order (A-15) was unconstitutional, ultra vires, without jurisdiction, mala fide, arbitrary and against the principles of natural justice inter alia on the following grounds :

(a) That the Government having taken a decision (vide annexure A/8) not to supersede the Municipal Committee and to watch its working for a period of six months, there is no jurisdiction in respondent No. 1 to review the said order and to pass an order of supersession more especially when the petitioners had not been given any opportunity whatsoever nor they have been called by anyone to give explanation ever since they submitted their explanation in November, 1965;

(b) That there has been no communication from the Deputy Commissioner or the Government after 11th August, 1966 in which it was ever suggested that the Municipal Committee was not doing its duty properly or that it was failing to carry out its obligation. The said order of supersession therefore, is passed without any reasons and is clearly mala fide.

(c) That the power of supersession u/s 238 being a quasi-judicial act, the order of the Respondent No. 1, dated 28th October, 1965, could not have been reviewed subsequently as is being done by impugned order dated 2nd January, 1967 (annexure A-15).

4. The other facts and grounds mentioned in the writ petition in support of the petitioners' prayer were neither referred nor pressed at the time of the arguments; hence they have not been noticed here.

5. Respondent No. 3 stated that he had nothing to do with the passing of the impugned order and that it was never made at his instance. Respondent No. 1 pleaded that no pressure from the Congress members was put on the Government to supersede the Committee, that the show cause notice was issued through the Deputy Commissioner, who was representative of the Government and that the authority of the Deputy Commissioner to issue the show cause

notice was not objected to in the explanation given by the Committee, hence this objection could not be entertained at this stage. It was also explained that a show cause notice had already been given to the Committee- and as such it was not necessary to issue second show cause notice. The Committee is said to have been superseded due to persistent failure to perform its duties and not on any other grounds. The reasons which are said to have prevailed for superseding the Committee have been incorporated in the impugned order.

6. The learned Advocate-General informed me that next general elections of the Committee are scheduled to be held in the month of March, 1968. According to section 13 of the Punjab Municipal Act the term of office of elected members cannot exceed three years but they could continue in office until the date fixed for the meeting at which their successors are required to take oath of allegiance. The petitioners were elected as members of the Committee in the month of May, 1961. They have already done the normal tenure of their office.

7. There can be no doubt about the fact that respondent No. 1 through the Deputy Commissioner, Ambala, served a notice on 28th October, 1965, on the Executive Officer of the Committee to show cause as to why the Committee should not be superseded as provided in section 238 of the Punjab Municipal Act, annexure "A"/1. It also cannot be denied that the Committee did furnish explanation to this notice which was considered by respondent No. 1. It was then decided to give six months' time to the Committee to improve its state of affairs vide letter dated the 11th August, 1966, annexure A/8. It is equally true that respondent No. 1 before the expiry of this period of six months and without serving a fresh show cause notice superseded the Committee as is evident from the notification, copy annexure "A"/15. Indeed it would have been proper if respondent No. 1 had served a fresh show cause notice so as to enable the Committee to explain its position as the same developed after rendering of their explanation, annexure A/2 to the first show cause notice A/1. But for this omission alone I will not like to quash the impugned order in exercise of my extra-ordinary jurisdiction under Article 226 of the Constitution, because the fresh elections to the Committee are scheduled to be held in the month of March, 1968, and the petitioners who were elected more than three years back have already run their nominal term of office of three years.

8. The writ petition is dismissed. There will be no order as to costs.