
(2011) 07 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 4780, 4781 and 4779 of 2011

Durga Ram Mali

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226(3)
Municipalities Act, 1959 — Section 63(4)
Penal Code, 1860 (IPC) — Section 332, 353
Rajasthan Municipalities Act, 2009 — Section 345, 39(1), 39(2), 39(3), 39(6)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) 4 RLW 3552

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Bhagwati, J.—Since all the aforesaid three writ petitions arise out of the same impugned order dated 30.3.2011, the arguments have been heard together and they are being disposed of by this common order.

2. By way of the instant writ petitions, the petitioners have sought the following relief:

i) by an appropriate writ, order or direction the impugned suspension order dated 30.3.2011 (annex.4) passed by respondent no.2 whereby the membership of the municipal board of the petitioner has been suspended, may kindly be quashed and set aside declaring the same as illegal, arbitrary, unjustified and against the provisions of law as well as evidence available on record.

ii) Any other appropriate order or directions, which this Hon'ble Court considers expedient, just and proper in the facts and circumstances of the case may kindly be granted in favour of the petitioners; and (iii) Cost of this writ petition may kindly be awarded in favour of the humble petitioners.

3. Adumbrated in brief, the facts of the case are that on 21st January, 2011, Collector, Churu asked Shri Ranjeet Singh Rathore, the Executive Officer, Municipal Board, Sardar Shahar to go to bus stand, Sardar Shahar and stop some persons who were likely to encroach upon the government land situated at the south east of bus sand. Collector, Churu also directed him to put the board of Municipality on the land. Collector had sent the S.I. of Municipal Board also who found there Inder Chand, Raj Karan and many other persons including the petitioners who were encroaching upon the govt. land by laying stone slabs and fencing the same with barbed wire. The complainant immediately approached Tehsildar and asked for help. He took the Municipality staff alongwith him on the spot where the staff of the Municipality prevented them from committing trespass, but in return, they started abusing the staff and insulted the sweepers of Municipality by calling generic or communal abuses. They also gave them beating and jostled with the staff. The complainant Ranjeet Singh lodged the FIR No. 25/2011 with Police Station, Sardar Shahar and the police commenced the investigation.

4. SDO, Sardar Shahar conducted the preliminary enquiry for the alleged act of the petitioners deterring the employees of Municipality, Sardar Shahar from discharging their official duties as public servants who had gone to prevent the encroachment to be made by some of the members of Municipal Board of Sardar Shahar and other persons. SDO, Sardar Shahar, having recorded the statements of 10 to 12 employees of Municipality and affording an opportunity of being heard to the petitioners and carefully perused the entire evidence collected by him, found the petitioners guilty of encroaching upon the valuable land of the Government and deterring employees of Municipality from discharging their official duty as public servant. SDO, Sardar Shahar also found that the petitioners and others abused the employees, gave a beating and jostled them when they prevented the petitioners from encroaching upon the government land and causing others also to commit trespass over the said land. On the basis of the preliminary report, the State Government vide its order dated 30th march, 2011 placed the petitioners under suspension, who happened to be the members of the municipal Board, Sardar Shahar.

5. Heard the learned counsel for the petitioners as also the learned Government counsel appearing for the State and carefully perused the relevant material available on record.

6 Learned counsel for the petitioners canvassed that the impugned orders of placing the petitioners under suspension are illegal, arbitrary and contrary to the provisions of the Municipal laws. The First Information Report lodged by the complainant Ranjeet Singh was totally misconceived. There was no order in writing given by Collector directing the complainant to go on the spot and prevent encroachment. The contents of First Information Report reveals that the complainant Ranjeet Singh went to the spot pursuant to the verbal directions of the Collector, which evinces that the story of encroachment and deterring the

employees of the Municipality, Sardar Shahar from discharging their official duty by the petitioners and others was concocted by the respondents, who were acting against the petitioners. The petitioners were neither given a show cause notice prior to passing an order of suspension nor was any preliminary enquiry conducted against them. The impugned orders with regard to suspension of the petitioners, are arbitrary and unjustified, which deserve to be quashed and set-aside. In support of his arguments, learned counsel has cited the following judgments:

- i) Ram Gopal Mishra Versus State of Rajasthan & Others 2000 (1) WLC (Raj.) 580
- ii) Jagdish Narayan Sharma & Others Versus State of Rajasthan & Others RLR 1994 (2) 113
- iii) Nauratan Mal Tak Versus The State of Rajasthan & Others 1999 (2) WLC (Raj.) 186
- (iv) Prem Prakash Versus State of Rajasthan & Others 1993 (1) WLC (Raj.) 567
- (v) Smt. S. Kanta Ranawat Versus The State of Rajasthan & Others 2000 (1) WLC (Raj.) 210
- (vi) Ashok Kumar Jain & Others Versus The State of Rajasthan & Another 1993(3) Western Law Cases (Raj.) 180

7. E-converso, the learned Government Counsel appearing for the State took me through the provisions of Section 39(6) of the Municipality Act and contended that u/s 39(6) of the Rajasthan Municipality Act, 2009, the State Government was competent to place a member of the Municipality under suspension against whom the proceedings had been commenced until the conclusion of the enquiry and: passing of the final order. Learned Government counsel further canvassed that it was wrong to say that no preliminary enquiry was conducted prior to passing the order of suspension by the State Government. The fact is that the preliminary enquiry was conducted by SDO, Sardar Shahar, who found the petitioners guilty of committing trespass and causing others also to commit trespass on the Government land situated near Bus Stand, Sardar Shahar. Not only this, the Enquiry Officer gave a notice to the petitioners and the petitioners not only voluntarily participated in the enquiry, but filed reply to the allegations and put their defense also before him. The State Government also issued a show cause notice to the petitioners before passing the suspension order. Hence, it cannot be said that the respondent-State Government passed an arbitrary order of suspension. On the contrary, the impugned orders are just and proper and the writ petitions deserve to be dismissed.

8. Having reflected over the submissions made at the bar and carefully scanned the relevant material including the enquiry report and the statement of the witnesses, it is noticed that prior to passing the impugned orders by the State, a preliminary enquiry was conducted by Sub Divisional Officer, who not only recorded the statements of about 12 to 13 witnesses, but gave a notice to the

petitioners, who finally participated in the enquiry. The petitioners put their defense before the enquiry officer and the enquiry officer having considered all the facts and circumstances emerging on record, found the petitioners guilty of committing trespass over the government land and preventing the employees of Municipality from discharging their official duty. Not only this, the petitioners were also found to have abused the employees of the municipality and called the sweeper employees by their caste names. They also gave a beating to the employees and officers of the Municipality, who had come on the spot to prevent the petitioners from committing trespass over the government land. The enquiry report along-with the statement of witnesses recorded by the enquiry officer was sent to the government and the government invoking its powers conferred u/s 39(6) of Municipality Act, 2009 placed the petitioners under suspension till the conclusion of the enquiry or passing of the final order.

9. A bird's eye view of some of the decisions of this Court throwing light on this issue needs to be taken into consideration.

10. In the case of Smt. S. Kanta Ranawat (supra), this Court held that suspension in violation of mandatory provisions of sub-sections (1), (2) and (3) was not sustainable.

11. In the case of Prem Prakash (supra), this Court observed that the issue of charge sheet was sine-qua-non before the power u/s 63(4) of Municipality Act, 1959 could be invoked. If the suspension of the petitioner was made before framing of charge, then the order of suspension was without jurisdiction and suffered from legal infirmity.

12. Similarly, in the cases of Ram Gopal Mishra; Jagdish Narayan Sharma & Others; and Nauratan Mal Tak, this Court consistently held that preliminary enquiry in respect of alleged misconduct and application of mind on report of such preliminary enquiry of material available with the State Government were sine-qua-non or condition precedent for passing suspension order u/s 63(4) of Municipality Act, 1959.

13. Here at this stage, it is relevant to record that the provisions of Section 63(4) of Municipality Act, 1959 are analogous to the provisions of new Municipality Act, 2009.

14. Mr. Jinesh Jain, learned Government Counsel contended that same issue of suspension of a member of Municipality came to be challenged before the Division Bench of this Court and the Division Bench of this Court held in the case of Jan Mohd. Versus The State of Rajasthan and others reported in 1992 (2) WLC (Raj.) 463 as under:

In view of the aforesaid discussion, we are firmly of the view that the proceedings against a Chairman or member of the Municipal Board commence when the preliminary enquiry report submitted to the Government is considered by the Government and the Government applies its mind to it and comes to the

conclusion that a further probe in the matter is essential. For the removal of the holder of an elected public office that is Chairman or member of the Municipal Board, if the Govt. decides to issue a notice to the incumbent under s. 63(2) of the Act to the delinquent Chairman or the Member of the Municipal Board to show cause why definite charges be not framed against him and be referred to a Judicial Officer, that is the stage where the proceedings start against the Chairman or the Member of the Municipal Board and the State Govt. has power to suspend the Chairman or a Member of a Municipal Board simultaneously when it decides to issue him a notice of show cause under s. 63(2) of the Rajasthan Municipalities Act. The suspension of a Chairman or a Member of a Municipal Board pending enquiry being an interim measure the suspension does not result in civil or evil consequences and it is not penal in character. Enough safeguards have been provided in the Section so that no arbitrary, capricious or malafide suspension may take place. However, we will like to add a word of caution that the holder of these elective public posts cannot be equated with Govt. servants and, therefore, before a holder of an elected post is suspended, the Government must have sufficient reasons to do so. Care should be taken that such suspension should be arbitrary and the suspensions of such elected representatives should not be brought about for political motives or consideration.

15. Adverting to the facts of the instant case, it is found that on the complaint of Executive Officer, Municipal Board, Sardar Shahar, one FIR came to be registered at Police Station, Sardar Shahar against the petitioners and others for the offences u/s 332, 353 of Indian Penal Code, Section 345 of Municipality Act, 2009 and Section 3(1)(x) of SC/ST Act. The petitioners were alleged to have abused the employees of Municipality, insulted some of the employees by calling their caste names, given beating to the public servants and deterred them from discharging official duty, who had come on the spot to prevent the illegal trespass having been committed by the petitioners and others. It is also found that the preliminary enquiry was conducted by the Sub Divisional Officer, Sardar Shahar, who recorded the statements of 10 - 12 persons and collected evidence with regard to the alleged charges against the petitioners and others. The SDO, having considered all the aspects, gave the preliminary report holding the petitioners guilty of the alleged charges. The petitioners were served with the charge sheet. Prior to passing the impugned order dated 30th March, 2011, the State issued a show cause notice to the petitioners and after affording them an opportunity of being heard, the State exercising its powers u/s 39(6) of the Municipality Act, 2009, placed the petitioners, who happened to be the members of the Municipal Board, Sardar Shahar, under suspension till the conclusion of the enquiry. The impugned orders dated 30th March, 2011 are found to be totally just and proper and in accordance with the provisions of law. They suffer from no infirmity. Placing reliance on Division Bench judgment of this Court rendered in the case of Jan Mohd. (supra), I am of the opinion that when the matter of suspension is left to the objective satisfaction of the Government, the normal rule is that it is not unnecessarily justiciable before the High Court and the Court

cannot look into the question as to whether the materials are adequate or inadequate from its point of view nor the Court should substitute its own satisfaction for that of the authority. The grounds taken by the learned counsel for the petitioners in their writ petitions are found to be contrary to the facts and law and the impugned orders thus, warrant no intervention.

16. In view of above, the writ petitions filed by the petitioners fail and the same being bereft of any merit stand dismissed.

17. Consequent upon the dismissal of writ petitions, all the three stay applications as well as the applications under, Article 226(3) of the Constitution of India, do not survive and they stand disposed of.