

(1958) 02 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 235 of 1956 (O.J.)

Gaya Prasad Azad

APPELLANT

Vs

Commissioner Faizabad Division and Another

RESPONDENT

Date of Decision : 11-02-1958

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 48

Citation : AIR 1958 All 466

Hon'ble Judges : Tandon, J

Bench : Single Bench

Advocate : N. Banerji, R.S. Dingar and C.P. John, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Tandon, J.—Gaya Prasad who was President of the Notified Area Nawabganj in the district of Gonda was removed from that office by the Commissioner, Faizabad Division on 13-7-1956. This order removing him from the office was served upon him on 11-8-1956. Prior to that on 23-5-56 he was served with a charge-sheet dated 19-5-56 by the District Magistrate asking him to submit his explanation within 15 days on the several charges therein stated.

Sri Gaya Prasad submitted his explanation on those charges and his reply in brief was that they were all false and groundless and had been engineered by his enemies. He also suggested that an inquiry might be held on them against him. The petitioner's contention is that in spite of the offer made by him no inquiry into the matters was held nor was he allowed to be present at the inquiry, if any, done by the District Magistrate or to cross-examine the witnesses heard or to produce his own evidence.

He is accordingly challenging the order of the Commissioner dated 13-7-56 removing him from the office on the ground, inter alia that it is against the principles of natural justice as no reasonable opportunity was given to him to

disprove the charges levelled against him. He is further attacking it on the ground that no opportunity was allowed to him to cross examine the witnesses etc. or to produce his own evidence.

2. The relevant portion of Section 48 of the U. P. Municipalities Act, 1916, is that the Commissioner may, at any time, if he is satisfied that the President has been guilty of gross misconduct in the discharge of his duties remove him from office. The section, however further requires that before removing him from office under the said provisions the Commissioner shall give him an opportunity of explaining the conduct on which it is proposed to take action against him and shall in the event of taking such action place on record the reasons therefore and the decision of the Commissioner thereon shall not be questioned in any court.

Admittedly the petitioner was in this case handed over the charges levelled against him and was also asked to send his explanation on them. This again is not disputed that the petitioner was not allowed any opportunity to make a personal representation or to cross examine any witnesses or to produce any witnesses in support of his explanation. The question which, therefore arose in this case was whether Section 48 aforesaid required that an opportunity as above should also have been given to the petitioner.

3. Learned counsel for the petitioner has urged that the provision for giving an opportunity of explaining the conduct in Section 48 impliedly required that the person proceeded against shall be afforded not only an opportunity to account for the charges made against him but further to challenge by cross-examination etc. the evidence on which the charges were framed and also to produce any evidence which the person affected may find necessary.

So far as the plain language of the section is concerned all that the Legislature has required is that the person proceeded against shall be given an opportunity of explaining his conduct. Unless, therefore, the expression "explaining the conduct" can be said to include these other rights asked by the petitioner it cannot be said that there was non-compliance of the provisions of the section.

The word "explain" means "to account for" and is not the same thing as is usually understood by the expression "to show cause". The scheme of Section 48 itself also is that the charges are served upon the defaulting President if the Commissioner is satisfied that he has been guilty of gross misconduct. When he is so satisfied the proviso requires that he shall before taking decision give an opportunity of explanation to the President concerned.

The proviso does not contemplate any inquiry at that stage. It merely requires that the authority concerned shall give an opportunity of explanation to the person concerned, i.e. it will ask the person concerned as to what he himself has to state on those charges. The proceedings relating to the explanation are not as such in the nature of an inquiry requiring evidence etc. to be heard and taken. This proviso came up for consideration in *President, Municipal Board Shahjahanpur Vs. District Magistrate, Shahjahanpur*, and the learned Judge laid

down that

"It does not contemplate an opportunity to the State Government to act as a prosecutor and to produce further material or evidence in support of the charge. The President has also not been given any opportunity under the proviso to produce oral evidence or to demand personal hearing."

I entirely agree with the interpretation placed by the Learned Judge.

4. The petitioner has, however, relied on another decision of a learned single Judge in Mohar Singh v. President, Notified Area Committee Colonelgan 1956 All LJ 759 (B) in which Sub-sections (3) and (4) of Section 40 of the U. P. Municipalities Act were considered. Sub-section (4) of this section, which is in the nature of a proviso like the proviso to Section 48, has likewise provided that whenever it is proposed to take action against a member of a Board under Sub-section (3) an opportunity of explanation shall be given to the member concerned.

Action under Sub-section 3 can be taken against a member when his continuance as a member is considered detrimental to the public interest. In interpreting the words "opportunity of explanation" in Sub-section (4) above the learned Judge observed that an opportunity of giving explanation to a member implied the right to examine the witnesses against him and to cross-examine the witness and to produce evidence in defence.

This decision which supports the contention of the learned Advocate for the petitioner was considered in Civil Misc. Appl. No. 100 of 1957 (O. J.) (Lucknow Bench) (C) and dissented from in view of an earlier decision of this Court reported in Dr. Pyare Lal v. State of U. P. Lucknow AIR 1933 All 195 (D). This last mentioned case was a Division Bench decision and was with reference to Section 30 of the U. P. Municipalities Act, 1916 which also used the expression "explanation" in very much similar context.

According to this decision also opportunity of explaining does not contemplate an opportunity to cross-examine witnesses or to adduce evidence in defence. With great respect I am unable to share the view expressed in 1956 All LJ 759 (B). It was not incumbent on the Commissioner to give an opportunity to the petitioner to cross-examine witnesses or adduce his own evidence. The section required that an opportunity shall be given to the petitioner to account for the charges made against him which he was undoubtedly given.

5. In view of what has been said above this petition should fail. It is accordingly dismissed with costs.