

(1963) 04 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 92 of 1962

Gopal Chandra Pandey

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-04-1963

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 57(2)
Orissa Municipal Act, 1950 — Section 195(6), 401, 401(1), 401(6), 402

Citation : (1964) 30 CLT 222

Hon'ble Judges : Narasimham, C.J; Misra, J

Bench : Division Bench

Advocate : Asoka Das, L. Rath and B.B. Rath, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition by the Chairman of Jharsuguda Municipality (now under supersession) challenging the validity of the order of the Government of Orissa, in the Health (L.S.G.) Department, No. 3463 L.S.G. dated the 29th March 1962, superseding the said Municipality with effect from the 31st March 1963 on the ground that the Municipal Council was incompetent to perform, and that it persistently made default in the performance of the duties imposed on it by law and also exceeded and abused its powers.

2. On 18-11-1963 the Government of Orissa in the Local Self Govt. Department issued notice on the Chairman of Jharsuguda Municipality (Annexure B) calling upon him to show cause why the Municipality should not be superseded for a period of one year u/s 402(1) of the Orissa Municipal Act 1950. In the show cause notice 5 specific instances of incompetence, abuse of powers, exceeding statutory powers and persistent default in the performance of its duties were mentioned in detail, and the Municipal Council, through its Chairman was called upon to show cause within fifteen days. Eventually cause was shown but it was found to be unsatisfactory and the Municipality was superseded.

3. Though in this application under Article 226 allegations of malafide and political bias were made only two points were urged in support of this petition:

(i) On a construction of Sections 401 and 402 of the Orissa Municipal Act, it should be held that the first notice should be to show cause why the Municipality should not be dissolved and reconstituted and if the cause shown is found to be unsatisfactory and if the Government eventually decides on supersession a further notice u/s 402(1) of the Act should be issued.

(ii) Sub-section (2) of Section 402 of that Act confers unfettered discretion on the State Government to supersede a Municipality "for any period which they may deem fit". This extensive power of delegation without fixing any time limit for the period of supersession would amount to excessive delegation and an abdication of its functions by the Legislature.

4. Sub-section (1) of Section 401 and Sub-section (1) of Section 402 of the Orissa Municipal Act 1950 may be quoted:

401(1) If in the opinion of the State Government a municipal council is incompetent to perform or persistently makes default in performing the duties imposed by on it by law or exceeds or abuses its powers, they may by notification published in the prescribed manner direct that the municipal council be dissolved and immediately reconstituted. The notification shall specify the time within which the council shall be reconstituted:

xxxx.

402(1) If the State Government decides not to dissolve the municipal council and reconstitute it u/s 401 or if after fresh election held thereunder the Council continues to be incompetent to perform its duties or abuse its powers the State Government may, for all or any of the reasons specified in Sub-section (1) of the said section, by notification published in the prescribed manner supersede it for any period which they may deem fit.

It will be noticed that the grounds for dissolution and reconstitution are the same as the grounds for supersession though the latter is a more drastic step. Sub-section (1) of Section 402 says "If the State Government decides not to dissolve the- municipal council and reconstitute it". Mr. A. Das says that these words mean that the Government must first tentatively decide to dissolve and reconstitute the municipal council under Sub-section (1) of Section 401, issue show cause notice accordingly, and after hearing the explanation submitted by the municipality, again decide not to dissolve or reconstitute it; and then only they can proceed to supersede it u/s 402(1) after issuing a second notice as required by that sub-section. We are not satisfied that such a construction follows from the language of these sub-sections. On the other hand the very fact that the reasons for dissolution or reconstitution and those for supersession are the same shows that the State Government have discretion to, exercise either the former power or the latter power. Once it comes to the notice of Government

that a municipal council is incompetent to perform its duties or has exceeded or abused its powers, or has persistently defaulted in performing its duties, it may decide either to proceed u/s 401 or u/s 402. The words quoted above mean only this and nothing more. Some support for this view may be obtained from a Division Bench decision of this Court, in O.J.C. No. 96 of 1963, decided on 4-11-1954 (unreported). In that case their Lordships were construing Sections 401 and 402 of the Orissa Municipal Act prior to the amendment made by the amending Act of 1955. In the old Act there was a separate Sub-section (6) in Section 401 which was as follows:

(6) For all or any of the reasons specified in Sub-section (1) the State Government may by notification, published in the prescribed manner, instead of dissolving the Municipal Council and reconstituting it, supersede it for any period which they may deem fit. Thereupon the relevant provisions of Section 402 shall apply.

In view of this express provision in Sub-section (6) of Section 401, Sub-section (1) of Section 402 did not contain the opening words "If the State Government decides not to dissolve the municipal council and reconstitute it u/s 401" and contained only the remaining words (as quoted above). Hence, while construing the old sections as they stood their Lordships said that the Government had unfettered discretion to exercise their powers of dissolution and reconstitution or of supersession. After the amending of Section 195, Sub-section (6) was deleted from Section 401 and the words quoted above were inserted in Sub-section (1) of Section 402. But I think the same idea was intended to be conveyed because Sub-section (6) which dealt with supersession was rightly considered to be not properly inserted in Section 401 which dealt with dissolution and reconstitution. That sub-section was incorporated in Sub-section (1) of Section 402 by inserting the words quoted above. Hence the aforesaid decision would apply with equal force here. I must therefore hold that the State Government had unfettered discretion to proceed either u/s 401 or u/s 402. It is true that even after dissolution and reconstitution, if the Municipal council continues to be incompetent the Government have the power to supersede the reconstituted council by virtue of the remaining portions of Sub-section (1) of Section 402 of the Municipal Act. But that does not mean that every order of supersession must invariably be preceded by a preliminary decision of dissolution or reconstitution.

5. Mr. A. Das replied on AIR 1958 M. P. 323 and urged that the reasons for supersession should be clearly stated in the final order so that the High Court may be in a position to examine whether there has been legitimate exercise of the power given to Government by the statute. But this decision of the Madhya Pradesh High Court may not apply here because in the corresponding section (Section 57(2)) of the Central Provinces and Barer Municipalities Act Government were required to state their reasons while superseding a municipal council. In the Orissa Municipal Act however the statute does not require them to state reasons. But from the show cause notice it can be easily inferred what the reasons were.

Government were apparently not satisfied with the explanation given by the Municipal Council. In exercise of our writ jurisdiction we cannot obviously sit in judgment over the view taken by Government on the explanation submitted by the Municipal council. The first point taken by Mr. A. Das must therefore fail.

6. As regards the second point also he could not cite any authority in support of his extreme proposition that the omission to fix the period of supersession in the statute itself renders it invalid as amounting to excessive delegation. It is true that in some statutes where discretionary power is conferred on an authority, a time limit is fixed for the exercise of that discretionary power. But there are many statutes where no such time limit is fixed. It is ordinarily expected that the Government would exercise their discretion reasonably. It may be inconvenient for the Legislature itself to fix the maximum period because the period of supersession must depend on several factors. But it is implicit that the period of supersession should not be of very long duration. Sub-section (5) of Section 402 expressly confers on the Government the power to reconstitute a Municipal Council even before the expiry of the period notified in the order of supersession.

7. It was then contended that as no time limit is fixed in Sub-section (1) of Section 402 of the Orissa Municipal Act Government may supersede a Municipality for say a whole generation (of 20 to 25 years) and thereby practically repeal the provisions of the Municipal Act in its application to a particular municipality. Doubtless if such an order is passed by Government that order may be struck down as unreasonable exercise of statutory power, but on this ground alone the statute itself cannot be held to be invalid as amounting to excessive delegation. In this connection the decision of the Supreme Court in AIR 1956 S.C. 519, may be referred to. There one of the grounds for attacking the Constitutional validity of Section 4(3) of the East Punjab Public Safety Act was that it gave unfettered discretion to the Executive Government to extend the order of externment passed by the District Magistrate for an unlimited period. No time limit was prescribed by the Legislature for the duration of the order of Government. Their Lordships of the Supreme Court held that the conferment of such statutory power on the Government was not unreasonable, first because the Act was a temporary Act and secondly because one should not start with a presumption "that the Provincial Government when making the order will not perform its duty and may abuse the provisions of this Section". Kania C.J. observed:

In my opinion, it is improper to start with such an assumption and decide the legality of the Act on that basis. Abuse of the power given by a law sometimes occurs but the validity of the law cannot be contested because of such an apprehension.

It is true that the Orissa Municipal Act is not a temporary Act but the other observations of their Lordships, cited above, apply with full force here. In a later decision of the Supreme Court reported in *The State of West Bengal Vs. Anwar Ali Sarkar*, Patanjali Sastri C.J. while citing the aforesaid decision observed:

It is to be presumed that a public authority will act honestly and reasonably and added that if the discretion was exercised improperly or arbitrarily, the administrative action can be challenged as discriminatory but it cannot affect the constitutionality of the law. But it is academic to discuss this aspect further, because here the very fact that the Government notified the period of supersession to be one year only in the first instance, shows that the discretionary power was not intended to be used unreasonably or arbitrarily.

The application is dismissed with costs. Hearing fee is assessed at Rs. 100/-.

Misra, J.

8. I agree.

9. Application dismissed.