
(1964) 04 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2324 of 1963

Gopi Chand

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 30-04-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1964) 04 P&H CK 0037

Hon'ble Judges : Harbans Singh, J;Dulat, J

Bench : Division Bench

Advocate : Anand Sarup and B.S. Dhillon, for the Appellant; H.S. Doabia, Additional Advocate-General, for the Respondent

Judgement

Dulat & Harbans Singh, JJ.—This writ petition which was directed by the Motion Bench to be heard by a Division Bench, has been filed by Gopi Chand under Articles 226 and 227 of the Constitution of India challenging a notification of the State Government dated 26th of November, 1963, issued u/s 22 and clause (e) of sub-section (1) of section 16 of the Municipal Act removing him from the office of the President and membership of Municipal Committee, Faridkot and further disqualifying him from seeking election for a period of two years from the date of the publication of the notification under sub-section (2) of section 10.

2. It is admitted that Municipal Committee, Faridkot, owns all the shops in Grain Market, Faridkot and a number of other buildings and shops situated in different parts of the city. In the year 1957 a number of these shops were auctioned and the highest bidders were leased out these shops on a monthly rent for a period of one year which period, was subsequently extended from time to time Shop No. 60. in the Grain Market was leased to Shri Asa Nand, father of the present petitioner, on a monthly rent of Rs. 25/-. Subsequently, the Municipal Committee was superseded and Shri Harnam Singh, Administrator, extended the lease on the same terms, and the lease so extended expired in the year 1961. By that time fresh elections of the Municipal Committee had taken place and the

petitioner was one of the members, who was elected along with nine others and was later on elected as the President. By a notification of the Punjab Government dated 3rd of June, 1959, the properties owned by local bodies were exempted from the provisions of the Rent Restriction Act, 1959. Thus there was no statutory control, inter alia, over the increase of rent or over the right of the Municipal Committee to eject existing tenants. However, by a circular letter addressed by the State Government, which is put as annexure "A" to the petition, the Punjab Government issued instructions to all the Deputy Commissioners that, notwithstanding this exemption they should ensure that the local bodies charged only reasonable rents from their existing tenants and safeguard their interests and for this purpose, inter alia, instructions were issued that there should be no bidding for letting out of their properties and that increase in rent should be fair and reasonable in accordance with the local conditions and, as far as possible, should be uniform in all cases and that for this purpose the increase should be made in consultation with the tenants. In other words the increase should be by negotiation rather than by imposition and that the local bodies should be directed to inform the Deputy Commissioner wherever they enhance the rent and the Deputy Commissioners were directed to ensure that the increase in each case, is fair and reasonable. It is alleged that as a result of these instructions, the tenants under the Municipal Committee were as secure from enhancement of rents and eviction as tenants of land-owners, to whom the provisions of the Rent Restriction Act applied. In pursuance of these instructions, the Municipal Committee on 9th of June, 1961, by a resolution No. 87 authorised the petitioner in his capacity as the President to make the renewals of allotments of buildings and shops belonging to the Municipal Committee. Consequently the tenancies in favour of previous allottees of all shops, with such increase in rent as was fair under the circumstances prevalent, were renewed. Inter alia, the note put up by the secretary Bawa Dharam Singh, so far as shop No. 66 was concerned, was to the following effect :

Shop No. 66 may be allotted in the name of Shri Asa Nand s/o. Himat Rai @ Rs. 26-00 p.m. with effect from 1-4-61 for a period of three years. The rent may be charged without penalty, provided he agrees to abide by the terms of the attached karayanama and proper sanction is obtained.

Thereupon the petitioner wrote as follows :

I agree with the Secretary.

On the following day a formal application was put in by Asa Nand addressed to the President praying that the period of allotment of shop No. 66 had expired and that the same may be extended by a period of five years and that he was willing to pay to the committee such rent as may be fixed by (sic). It is stated that no karayanama was actually got executed by the office but there is no suggestion that the rent as fixed, which it may be noted was one rupee more than the rent at which the shop was on lease earlier, had not been paid regularly. Move to obtain the sanction of the Deputy Commissioner was, for the first time,

made on 22nd of June, 1963, by the Executive Officer explaining the fact that the shop was on lease with Asa Nand since 1st of April, 1952, that the allotment had been extended and that Gopi Chand son of Asa Nand had been elected as the President. These papers were returned to be submitted through the Sub Divisional Officer (Civil), Faridkot and this was done on 27th of July 1963, and it is common case that the Deputy Commissioner has not dealt with this matter so far, apparently due to subsequent developments and the pendency of this writ petition. By a letter dated 24th of August 1963, annexure "I" the State Government directed the petitioner to show cause why he should not be removed from the office of the President and membership of the committee under sections 22 and 16(1)(e) for the reason that he was a partner of the firm Asa Nand and Sons, Faridkot, to whom, on 3rd of July, 19(sic), shop No. 66 had been allotted on a monthly rent of Rs. 26/- without obtaining the sanction of Deputy Commissioner, Bhatinda, as required u/s 48 of the Punjab Municipal Act. In his explanation, he inter alia, stated that the shop is not allotted in the name of the firm but is allotted in the name of his father who is in possession of the same since 1957 and that all that he did was to continue his possession in pursuance of the instructions contained in the letter of the Government dated 3rd of June, 1959, referred to above. Furthermore, he stated that all that he did was to authorise the continuance of allotment subject to obtaining of the sanction from the Deputy Commissioner and that the delay in obtaining sanction by the office cannot be treated to be a default by him.

3. The facts detailed above, which are hardly in dispute, go to indicate that the shop was with Asa Nand since 1957 and had continuously been in his possession since then. The question for determination, therefore, is whether in approving the suggestion of the Secretary that the lease of the shop should be renewed for another three years, the petitioner was guilty of any misconduct within the meaning of section 48 of the Punjab Municipal Act.

4. The relevant portion of sub-section (1) of section 48 is as follows :

If any member, officer or servant of a committee * *, without the previous permission in writing of the Deputy Commissioner voluntarily renders himself interested in any contract made with that committee, or if within one month of his becoming interested in any such contract he neither resigns nor obtains the permission in writing of the Deputy Commissioner for his remaining a member * *in spite of his interest in such contract, he shall be deemed to have committed an offence u/s 168 of the Indian Penal Code.

According to this section, if a member of the committee voluntarily gets interested in any "contract made with the committee", without previously obtaining the permission of the Deputy Commissioner in writing he commits an offence u/s 168 of the Indian Penal Code, which prohibits trading by a Government servant. Similarly, if not of his own volition but by some other process, say by operation of law or otherwise, he becomes interested in such a contract, he should either resign within one month of his becoming so interested or obtain the permission

of the Deputy Commissioner for continuing as a member. If he does neither of these two things, he is again guilty u/s 168 of the Indian Penal Code.

5. In the present case, all that can be urged is that the petitioner, after becoming a member of the committee, renewed a lease in favour of his father and, as given in the notice to show cause, his father was holding the lease on behalf of the family firm in which the petitioner was interested. The learned counsel for the petitioner did not challenge the fact that the petitioner was in this manner interested in the business that was carried on by his father in the aforesaid shop. It has, however, to be noted that the petitioner was interested to the same extent even before he became a member because, if leasing of the shop or renewing the lease amounts to entering into a contract with the committee as contemplated in this section, then the lease being in existence since 1957, he was interested in such a contract even at that time. It is, however, admitted that simply because the petitioner or any of his relations has taken any immovable property of the Municipal Committee on lease, is not a disqualification for his becoming a member of the committee. Clause (c) of rule 7 of the Municipal Election Rules is the relevant rule in this respect and is as follows :

No person shall be eligible for election as a member of Municipal Committee, who
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(a) * * * * *

(b) * * * * *

(c) is under contract for work, to be done for, or goods to be supplied to, the Municipal Committee.

Taking the shop belonging to Municipal Committee or getting some other transfer of immovable property from the Municipal Committee is not a contract for work to be done for or goods to be supplied to the Municipal Committee and would, therefore, not disqualify such a person. The learned Additional Advocate General, however, urged that the word "contract", as used in section 48 is not limited to contracts of the type mentioned in rule 7(c) reproduced above and that a contract taking lease of immovable property of the Municipal Committee would be a contract which is hit by section 48. If this view be correct, it would mean that although the petitioner was not disqualified to be elected as a member but as soon as he became a member, he should have resigned, (if he does not obtain permission in writing of the Deputy Commissioner to continue) as a member because he was interested in a contract as envisaged by section 48. This would be an absurd position. On the other hand, it was urged on behalf of the learned counsel for the petitioner that the word "contract" is used in section 48 in the same sense as in clause (c) of section 7, as distinct from a transfer of any interest in the immovable property, and, in any case, this word is used in contradistinction to transfer of an interest in an immovable property. This interpretation seems to be a reasonable. The wording of section 47 in a way, lends support to the same. Section 47 deals with the mode of execution of

contracts and transfer of property. Sub-section (1) deals with contracts and it is provided that "every contract made by or on behalf of the committee of any municipality of the first class whereof the value or amount exceeds one hundred rupees, * * shall be in writing, and must be signed by two members, of whom the President or a Vice-President shall be one, and countersigned by the Secretary." Sub-section (2) deals with transfer of immovable property belonging to any committee and provides "every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the President or Vice-President and by at least two other members of committee, whose execution thereof shall be attested by the Secretary." Thus, sub-sections (1) and (2) make a clear distinction between "contracts made by or on behalf of the committee" and "transfer of immovable property belonging to the committee". If transfers of immovable property were to be treated as only a class of contracts, there was hardly any necessity for dealing with this matter in a separate sub-section and it could have been provided in sub-section (1) that contracts of transfer of property would be dealt with in a particular manner. Sub-section (3) again uses the word "contract" as distinct from "transfer of property" and is to the following effect :

No contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the committee.

In my view, the word "contract" used in section (sic)8, which immediately follows section 47, must be taken to have been used in the same sense as in section 47... as distinct from transfer of an interest in an immovable property.

6. It can, however, that even if the action of the petitioner in allotting the municipal property to the firm of his father, in which he was interested, did not, u/s 48, require sanction in writing of the Deputy Commissioner either previous to the entering of the contract or within one month thereof, it may well be that in certain circumstances such an act may amount to misconduct or abuse of his position. This would however, be the case if there are allegations of the petitioner having misused his position as a member or President in conferring any undue advantage on his father. In view of the instructions of the Government, the Municipal Committee was not expected to turn out these existing tenants so long as they paid a reasonable rent fixed by the committee and there is no suggestion that the increased rent, as fixed and proposed by the Secretary, was not reasonable. In fact, it was suggested on behalf of the counsel for the petitioner that since the filing of this petition, the Municipal Committee has been superseded and the Administrator appointed by the State Government has reduced the rent of this shop to Rs. 25.50 nP. in view of a general procedure adopted by him of reducing the increase in rent effected from the time of the petition to one-half. As the increase made was Re. 1/- p.m. in the case of the shop in question, the same was reduced to Re. 00.50 nP. there by fixing the rent at Rs. 25.50 nP. Thus, there is no allegation much less proof of the petitioner

having misused his position even apart from the alleged contravention of section 48.

7. Two other points were urged by the learned Additional Advocate General; first, that, according to the petitioner himself, the renewal of allotment required sanction of the Deputy Commissioner and, therefore, he cannot be heard to say that his act did not fall within section 48, and, secondly, that, even according to the allegations of the petitioner himself, no karayanama had actually been executed and that this, by itself, amounted to misconduct or neglect of duty for which he was liable to removal u/s 22.

8. With regard to the first point, the mere fact that the Secretary made a suggestion that sanction may be obtained from the Deputy Commissioner, is no ground for holding conclusively against the petitioner that contract of renewal of lease required previous sanction of the Deputy Commissioner. In as much as the President was himself interested in this allotment, it was discreet on the part of the Secretary to suggest that the matter may be brought to the notice of the Deputy Commissioner and if the petitioner as the President agreed with this suggestion that cannot go against him.

9. With regard to the second point, it has to be borne in mind that there is no suggestion that any loss has occurred to the Municipal Committee from the non-execution of the karayanama or that the petitioner deliberately omitted to get the karayanama executed by his father, whereas karayanamas were got executed from all the other tenants. In the absence of such a suggestion in the show cause notice, in the order removing him or even in the return filed in this Court, I am afraid, it does not lie with the State Government to urge that the fact that no karayanama was executed, by itself, amounted to misconduct or neglect of duty. Prima facie, the duty of pursuing the orders passed by the President and getting the karayanamas executed in accordance with the orders, lies with the office rather than with the President personally, and unless and until there is an allegation that the omission to get the karayanamas was malafide or done at the instance of, or with the active connivance of the petitioner, he cannot be held liable in any manner for such omission.

10. The last argument of the learned Additional Advocate General was that inasmuch as the Municipal Committee has already been superseded, this writ has become infructuous. Obviously there is no force in this contention. The operation of the order was stayed by the Motion Bench pending the hearing of this writ and the impugned order must necessarily be quashed to give the petitioner a legal right to continue as a member and President till the supersession took place and, in any case, the impugned order imposes a disqualification on the petitioner to seek re-election for a period of two years. The writ, therefore, cannot be said to have become infructuous.

11. For the reasons given above, therefore, the rule is made absolute and the impugned order quashed. The petitioner will have his costs in this court which

are assessed at Rs. 100/-.