
(2004) 02 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 51987 of 2003

Hazi Islam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 48(2A)

Citation : (2004) 3 AWC 2203

Hon'ble Judges : S. Rafat Alam, J; R.S. Tripathi, J

Bench : Division Bench

Advocate : Ajit Kumar, for the Appellant; Vishnu Pratap, S.C., Sudhir Agarwal, Addl. A.G., Amitabh Agarwal and Pramod Kumar Jain, for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam, J.—In the instant writ petition, the petitioner, an elected President of Nagar Palika Parishad, Kandhla, district Muzaffarnagar, has prayed for quashing of the order of the State Government dated 13.11.2003 passed u/s 48 (2A) of the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as the Act) removing him from the post of President and the consequential order of the District Magistrate, Muzaffarnagar dated 15.11.2003 intimating his removal.

2. The admitted facts, as appear from the pleadings of the parties, in brief are that the election of the office of the President of Nagar Palika Parishad, Kandhla, District Muzaffarnagar was held in the year 2000 wherein the petitioner was declared elected. Consequently, he took oath of the office on 1st December, 2000. However, some complaints alleging certain irregularities against the petitioners were received by the State Government whereupon the State Government vide letter dated 8.8.2001 (Annexure-1 to the supplementary counter-affidavit of the State), sent those complaints to the District Magistrate, Muzaffarnagar directing him to submit his report after making enquiry. The District Magistrate instead of conducting the enquiry himself, entrusted the same to the Sub-Divisional Magistrate, Kairana, who gave his report on 22.10.2001.

The District Magistrate, forwarded the report to the Secretary, State of U.P. Nagar Vikas, Lucknow through letter dated 30th October, 2001. The State Government thereafter having considered the report and having reason to believe that the President (petitioner) has failed to perform his duties, framed eight charges against him and called upon him vide show cause notice dated 3.1.2002 to give his reply in respect of those charges before the District Magistrate as to why he should not be removed u/s 48 (2A) of the Act. (Copy of the charges has been enclosed as Annexure-3 to the writ petition). The State Government asked the District Magistrate vide letter dated 16/18th March, 2002 (Annexure-4 to the writ petition) to send his report with recommendation. The petitioner thereafter submitted his reply of show cause notice before the District Magistrate on 27.8.2002, a copy whereof is enclosed as Annexure-8 to the writ petition. The District Magistrate having heard the petitioner and having considered the show cause found that none of the charges were proved and, therefore, through his report dated 11.9.2002 recommended to recall the show cause notice and drop the proceeding. It, however, appears that the State Government did not agree with the report of the District Magistrate and by the impugned order dated 13.11.2003 removed the petitioner from the office of the President of Nagar Palika Parishad (Municipal Board), Kandhla, which has been impugned in this writ petition.

3. We have heard Sri Ajit Kumar, learned counsel for the petitioner, Sri Sudhir Agarwal, learned Additional advocate General assisted by Sri Vishnu Pratap, learned standing counsel for the State-respondents and Sri Amitabh Agarwal, advocate holding brief of Sri Pramod Kumar Jain, learned counsel for respondent No. 3 and have carefully gone through the record.

4. Learned counsel for the petitioner made two contentions; viz., (i) that the District Magistrate in his report dated 11.9.2002, held that none of the charges are proved against the petitioner and, therefore, recommended to drop the proceedings, but the State Government without considering the explanation of the petitioner and without discussing the findings of the District Magistrate in the light of petitioner's explanation, in an arbitrary manner, passed the impugned order; and (ii) that in a proceeding under Sub-section (2A) of Section 48 of the Act recording of reasons in support of the order is mandatory while passing an order of removal of a President from his post and in the absence of reasons in writing, the order would be in the teeth of Sub-section (2A) of Section 48 of the Act and the same cannot be sustained. In support of the aforesaid contentions, he placed reliance on the Division Bench judgments of this Court rendered in the case of Rama Shanker Barnwal Vs. State of U.P. and others, ; Ismail Khan Vs. State of U. P. and another, ; Anwari Begum Vs. State of U.P. and others, and Nasiruddin Vs. State of U.P. and Another,

5. On the other hand, learned Additional Advocate General while opposing the writ petition sought to argue that before the report of the District Magistrate dated 11.9.2002 an enquiry was conducted by the Sub-Divisional Magistrate,

who found that all the charges were proved and accordingly through his report dated 23.10.2001 which also contain reasons, recommended for the removal of the petitioner and for appointment of an Executive Officer. The District Magistrate forwarded the report of the Sub-Divisional Magistrate, Kairana dated 23.10.2001 through letter dated 30.10.2001 (Annexure-C.A. 1 to the counter-affidavit). However, since the petitioner made a grievance that no personal hearing was given to him, the State Government directed the District Magistrate to send his comments after affording an opportunity of hearing to the petitioner. It is contended that in the report of Sub-Divisional Magistrate dated 23.10.2001 the documents in support of charges are referred and being an important material on the record, the State Government had full right to consider the same after receiving petitioner's reply to the show cause notice. Learned Additional Advocate General further submitted that the State Government after considering the entire material including the explanation offered by the petitioner passed the impugned order giving reasons and it is not necessary to give detail reasons like a judicial order and as such the same does not call for any interference by this Court.

6. To appreciate the arguments advanced by the parties, it would be apt to examine the provisions of Section 48 (2) and Sub-section (2A) of Section 48 of the Act, which provides for the removal of President of Municipal Board. It reads as under :

"48, Removal of President,--(1)

(2) Where the State Government has, any time, reason to believe that :

(a) there has been a failure on the part of the President in performing his duties;
or

(b) the President has :

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

(x)

- (xi)
- (xii)
- (xiii)
- (xiv)
- (xv)
- (xvi)
- (xvii)

it may call upon him to show cause within the time to be specified in the notice why he should not be removed from office.

(2A) After considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, remove the President from his office;

(2B) An order passed by the State Government under subsection (2A) shall be final and shall not be questioned in any Court."

7. From a reading of the aforesaid provisions, it is evident that the State Government has to act in a quasi-judicial manner in passing order u/s 48 of the Act. It provides that where the State Government has at any time reason to believe that there has been failure on the part of the President in performance of his duties, it may call upon him to show cause and after considering his explanation it may remove him from his office for the reasons to be recorded in writing. Sub-section (2A) requires recording of reasons and holding of enquiry and consideration of explanation. Therefore, before passing the order of removal of a President, the State Government has to comply with three conditions. Firstly, consider the explanation offered by the President, secondly hold enquiry and lastly; record reasons in the order of removal from the office of the President. Where the statute provides consideration and explanation for recording reasons in writing action cannot be taken simply on being satisfied without considering the explanation and without recording the reasons of such satisfaction. Mere stating that charges are proved is not enough but the reason, which led to reach that, must be recorded in the order failing which the exercise of power would be in excess of jurisdiction. The purpose and object for providing recording of reasons in writing is to safeguard the interest of an elected President from being subjected to an arbitrary action and to prevent the State Government from passing an order of removal in arbitrary fashion. Therefore, reasons must be justifiable, rational, germane to the content and scope of the power vested in the provision. If the reasons recorded are totally irrelevant as a justification for having reason to believe that there has been failure on the part of the President in performing his duties, the exercise of power under Sub-section (2A) of Section 48 of the Act would render invalid and defeat the very object of the provision to prevent arbitrary exercise of power. Therefore, recording of sound reasons based

on evidence and material on record is mandatory for passing an order of removal in exercise of power under Sub-section (2A) of Section 48 of the Act and failure to give reasons in writing render the action invalid and also defeat the object and purpose of the statute.

8. In the instant case, though the inquiry was conducted by the District Magistrate on the order of the State Government wherein the District Magistrate while recording his conclusion based on evidence on record and supported with reasons found that none of the charges could be established or proved against the petitioner, but the State Government while passing the impugned order without considering the reply offered by the petitioner in respect of the charges and without any discussions for not agreeing with the findings arrived at by the District Magistrate and without recording any reasons by a cryptic order held that the charges have been proved; and thus it failed to follow the prescription of law.

9. A proceeding u/s 48 of the Act being quasi-judicial, the State Government should have considered the explanation, appraise the evidence on record as well as finding of the District Magistrate objectively and if it was not agreeing with the finding of the District Magistrate, it ought to have given sound reasons based on evidence on record for its disagreement and failure to record reasons which is mandatory in view of the provisions contained in Sub-section (2A) of Section 48 of the Act, made the impugned order laconic.

10. In the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, , the Hon"ble Supreme Court observed that removal from an elected office is a serious matter. It further held that a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment, as it is a valuable statutory right not only of the returned candidate but also of the constituency or the Electoral College, which he represents. His removal not only curtails the statutory term of the holder of the office but it also casts stigma upon him and, therefore, the ground mentioned in the provisions must be clearly made out and the proceedings for removal must also satisfy the requirements of natural justice.

11. The President of Municipal Board is elected u/s 48 of the Act and his term of office, as President is co-terminous with the term of Municipality. However, he can be removed by the State Government u/s 48 (2A) of the Act provided he has been served with a notice calling upon him to show cause as to why he should not be removed from the office and after considering any explanation offered by the President and making such enquiry as it may consider necessary and for the reasons recorded in writing which implies that the reply furnished by the President is to be considered objectively and if the same is not found satisfactory, reasons are to be given in the order.

12. The argument of the learned Additional Advocate General that the State Government while passing the impugned order had taken into account the report of the Sub-Divisional Magistrate dated 23.10.2001 which is based on good

reasons and evidence on record, cannot be accepted mainly for the reason that admittedly in the so-called enquiry made by the Sub-Divisional Magistrate, the petitioner was not called upon to show cause as required u/s 48A of the Act nor he was served with any charges in respect of which he was expected to give his explanation and evidence in support thereof. It appears that neither the copy of the complaint nor the charges were communicated to the petitioner either before or after the enquiry was conducted by the Sub-Divisional Magistrate except the notice dated 22.9.2001 of the Sub-Divisional Magistrate, Kairana (Annexure-R.A. 1 to the rejoinder-affidavit), asking the petitioner to appear before him on 24.9.2001 at 3 p.m. along with his evidence. It was not disclosed in the said notice as to what are the allegations against the petitioner and what are the charges against which he was required to give explanation with evidence, if any. However, on that date no meeting was held and another notice dated 27.9.2001 (Annexure-R.A. 2 to the rejoinder-affidavit) was served on the petitioner on 1.10.2001 intimating that he had to appear at 11 a.m. in Nagar Palika Parishad Sabhagar (Hall) on 3.10.2001. In this notice also charges were not communicated to the petitioner nor copy of the alleged complaint was sent in respect of which the petitioner was expected to give reply and evidence in support thereof. For the first time the petitioner was served with the charges through notice dated 3.1.2002 (after the enquiry had been completed by the Sub-Divisional Magistrate) inviting his reply in respect of eight charges enumerated in the notice and, therefore, the proceedings u/s 48 of the Act was initiated only when the petitioner was called upon to show cause as to why he should not be removed from the office for the alleged charges. Besides that once the State Government did not proceed on the report of the Sub-Divisional Magistrate and decided to frame charges and asked the District Magistrate to submit report after inviting show cause from the petitioner pursuant to which the District Magistrate having examined the cause shown by the petitioner and having considered the material on record, gave his finding in favour of petitioner which, in our view, cannot be brushed aside without giving reasons for disagreeing with it.

13. From a perusal of the report of the District Magistrate dated 11.9.2002 it appears that the first charge against the petitioner was that he exerted pressure on the employees of the Municipal Board in its meeting dated 26.3.2001 to go on strike. The District Magistrate found that no evidence is on record to prove that the aforesaid decision for strike was taken under any pressure of the President. The District Magistrate, has recorded a finding that had the employees gone on strike at the instance of the President, in that situation he would have not been in a position to take stern action against the employees by treating their absence during the period of strike as earned leave.

14. The second charge was that he did not take steps for removal of unauthorised occupation of Devi Das Jayant over the grove of the Municipal Board. The District Magistrate having considered the show cause and having examined the evidence on record, found that Ext. 3 (report dated 31.12.2000) referred by the Sub-Divisional Magistrate, Kairana in his report dated 23.10.2001

was addressed to the Executive officer which does not bear any note by the Executive Officer for placing it before the President and, therefore, he found force in the submission of the President that when he assumed charge of the President, no employee or officer of the Board brought to his notice about the illegal occupation of the property of the Municipal Board by Devi Das Jayant. The District Magistrate, therefore, relying on the letters dated 25.4.2003, 23.5.2002 and 24.6.2002, found that the President/petitioner was vigilant for the removal of illegal occupation over the property of the Municipal Board, hence charge No. 2 also does not prove. The District Magistrate did not find any substance in this charge also.

15. The third charge against the petitioner was that he did not take approval of the District Magistrate in respect of auction for collection of Tahbazari for the period of February and March, 2001 and the amount of stamp duty on the aforesaid agreement has not been realised from the contractor on account of which State has suffered loss of amount of stamp duty. The District Magistrate having considered the reply of the petitioner and the evidence on record, found that the contract of earlier settlee (Naseem) was cancelled as he committed default in the payment of amount in terms of the contract and, therefore, for a period of two months, i.e., February and March right to collect Tahbazari was settled for a sum of Rs. 61,000 and, since the settlement was for two months only as a stop gap arrangement the approval of the District Magistrate was not required in terms of G.O. No. 919 (11)/Nine-9-98-76J/97. It was further found that no financial loss has been caused to the Board because of that settlement rather the District Magistrate has given letter of appreciation to the petitioner in the month of May, 2001, a copy of which was also enclosed with the reply of charges by the petitioner. Regarding stamp duty the District Magistrate recorded a finding that it was the duty of the office and of the Executive Officer to ensure that the amount of stamp duty is realised from the settlee and for that the President cannot be held responsible and, therefore, this charge was also not proved.

16. Charge No. 4 against the petitioner was that for the settlement of right to collect Tahbazari for the year 2001-2002, steps were not taken in time and for that reason delay occurred in finalising the settlement causing loss to the Municipal Board. The District Magistrate having considered the show cause and having examined the record, found that the date for auction was fixed on 31.3.2001 but the same could not be held on that date as the Sub-Divisional Magistrate, Kairana did not reach to hold the auction as per notice and, therefore, for the month of April, 2001 collection of Tahbazari was made by the Board itself through its employees and for the remaining period of 11 months auction was subsequently held in presence of the Sub-Divisional Magistrate for a sum of Rs. 3,35,000. It has also been found that in the month of April, 2001, a sum of Rs. 34,561 was collected by the employees of the Board against Tahbazari. It has also been found that if the amount collected by the employees in the month of April, 2001, is added with the amount of settlement, i.e., Rs.

3,35,000, it comes to Rs. 3,69,462 thus there was increase of Rs. 8,567 in the revenue of the Board as compared to the previous year and for this reason the District Magistrate found that charge No. 4 has not been proved against petitioner as the Municipal Board did not suffer any loss of revenue.

17. Charge No. 5 was that the President did not take any steps for removal of encroachments made on the land of the Municipal Board at the Bus Stand. The District Magistrate having considered the reply of the petitioner and having, examined the evidence on record, found that no encroachment has been made on the land of the Municipal Board at the Bus Stand, which is also established from the report of the Executive Officer dated 20.8.2002.

18. Charge No. 6 was that the Municipal Board has illegally granted permission for running 32 beef shops and 2 mutton shops. The District Magistrate having considered the reply of the petitioner and having examined the evidence on record found that the allegation that the petitioner or the Municipal Board has granted licence for the shops in question, has not been proved as no such licence was brought on record, which could establish that it was granted by the Municipal Board. Reply of the petitioner that it was granted by the Chief Medical Officer, Muzaffarnagar has been accepted by the District Magistrate.

19. Charge No. 7 against the petitioner was that on 22.6.2001, 389 illegal water connections were found, out of which only 102 connections have been regularised but no steps were taken for recovery of amount of water tax, as a result of which the Municipal Board suffered financial loss. The District Magistrate having considered the reply of the petitioner and having examined the evidence on record, found that the Board in its first meeting dated 21.12.2000 vide resolution No. 3 resolved to authorise the Executive Officer to take steps for regularisation of all illegal connections and, therefore, it is the executive officer who failed to take steps pursuant to the resolution and for that the President cannot be held responsible and as such charge No. 7 was also not proved.

20. The last charge, i.e., charge No. 8 against the petitioner was that the Municipal Board had to pay Rs. 48,486 instead of Rs. 40,387 against an amount of gratuity, as decreed by the Deputy Labour Commissioner in favour of wife of a deceased employee of the Board, due to inaction on the part of the petitioner for the payment of gratuity amount could not be made in time in terms of decree, as a result of which, the Municipal Board had to pay interest and as such suffered financial loss. The District Magistrate having examined the reply to the show cause and also having appreciated the evidence on record, found that the President directed Sri Nathu Ram Agarwal, Accountant of the Municipal Board, Kandhla to take steps in compliance to the order of the Deputy Labour Commissioner, but no step was taken prior to 2.8.2001 and the Accountant placed the file before the President only on 2.8.2001 and on that very day the President ordered for payment of the amount. He, therefore, found that the note of the Accountant dated 28.7.2001 was never placed before the President/petitioner and the amount of interest was paid due to the laches and negligence

on the part of the Accountant and for which the President cannot be held guilty.

21. The District Magistrate thus in his report dated 11.9.2002 has considered the reply to the show cause as well as record of the Municipal Board and evidence on record and, thereafter, gave his report supported with reasons holding that the charges are not established or proved against the petitioner, but the State Government without any discussion and holding that the finding recorded by the District Magistrate are perverse or contrary to the evidence on record and also without assigning any reasons for taking contrary view, passed the impugned order of removal. There is absolutely no discussion, in respect of the findings recorded by the District Magistrate, nor it is mentioned that the finding of the District Magistrate are contrary to the evidence on record and suffer from the vice of perversity and as such it could not be accepted. The State Government after narrating the charges recorded its conclusion while considering the reply/explanation offered by the petitioner and also failed to record reasons as to how the charges have been fully established, which are mandatory and essential requirement of law, as prescribed in Sub-section 2(A) of Section 48A of the Act.

22. Learned Additional Advocate General also during the course of argument could not point out to us the reasons mentioned in the impugned order, nor could successfully point out that the explanation/reply of the petitioner, vis-a-vis, charges have been objectively considered and the finding of the District Magistrate was in any view of the matter perverse or contrary to the evidence on record,

23. As referred earlier, Sub-section (2A) of Section 48 of the Act prescribes three conditions, which are to be complied with before passing an order of removal viz., (i) to consider the explanation offered by the President; (ii) to make such enquiry as it may consider necessary; and (iii) to record the reasons in writing for the removal of President from his office. Therefore, unless the aforesaid three conditions have fully been complied with, which are mandatory in nature, the order of removal cannot be held to be in accordance with law.

24. It is to be noted that the petitioner, being elected President of the Municipal Board, has a constitutional as well as statutory right to hold office for full term and his term cannot be curtailed unless his election is set-aside in accordance with law or he can be removed only after strict compliance of the procedure prescribed u/s 48 (2A) of the Act.

25. The Hon"ble Supreme Court in the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , held that recording of reason in support of the decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy on ground of policy or expediency.

26. A Division Bench of this Court in the case of Ishrat Ali Khan, President Municipal Board, Rampur v. State of U.P. and Ors. (1986) 2 UPLBEC 1114, quashed the order of removal on the ground of non-recording of reasons. It held

as under :

"..... the State Government failed to record reasons as contemplated by law. Instead it merely recorded its conclusion. Recording of reasons implies that the explanation furnished by the petitioner should have been considered objectively and if the same was not found satisfactory reasons should have been stated. The State Government has merely stated the charge, the explanation and then it has recorded its conclusions without recording reasons. The State Government was acting in a quasi-judicial manner, it was required to consider the charge and the petitioner's explanation and to state reasons as to why the petitioner's explanation was not satisfactory and that the charge is proved does not fulfil the requirement of recording reasons. Any order of a quasi-judicial authority which does not contain reasons is bad in law."

27. Following the aforesaid judgment similar view was also taken by another Division Bench of this Court in the case of Nasiruddin (supra) wherein it has been observed as under :

"In the case in hand also the principal Secretary of Nagar Vikas only jumped on the two conclusions without having discussions on the merits of the charges and the explanation offered by the petitioner. Obviously thus the Government has not proceeded to hold an enquiry in a quasi-judicial manner as a result of which the compliance of the provisions of Section 48 (2A) of the said Act were not carried out in letter and spirit. The petitioner's explanation which runs in detail spreading over 13 pages giving plausible reasons for the action taken by him was not referred in the impugned order."

28. Again a Division Bench of this Court in the case of Ismail Khan (supra), observed as under :

"There is another infirmity in the impugned order. Respondent No. 1 in its order has referred to the charges levelled against the petitioner as well as the explanation offered by him for coming to its own conclusion but it did not record any reasons for arriving at such conclusion. Section 48 (2A) itself provides that reason is to be recorded in writing for coming to a conclusion. The respondent should have considered each of the charges and the material evidence produced on such charges to come to the conclusion that those charges have been proved. The respondent had to appraise the evidence and record its reasons for taking the decision. The order, in the absence of recording of reasons is clearly in contravention of the provisions of Section 48 (2A) of the Act."

29. Therefore, because of non-consideration of explanation furnished by the petitioner and in the absence of discussion in the order for arriving to the conclusion and also in the absence of reasons which is absolutely mandatory in view of the clear provisions contained in Sub-section (2A) of Section 48 of the Act, the impugned order being contrary to the statutory mandate deserves to be quashed.

30. In the result, the writ petition succeeds and is hereby allowed. The impugned orders dated 13.11.2003 and 15.11.2003, contained in Annexure-Nos. 1 and 2 respectively, are hereby quashed. However, there shall be no order as to costs.