
(1968) 10 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2886 of 1968 and Civil Misc No. 4291 of 1968

Jugal Kishore

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 29-10-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Constitution of India, 1950 — Article 226 , 227
Punjab Municipal (Executive Officer) Act, 1931 — Section 3, 3(1) , 3(4)
Punjab Municipal Act, 1911 — Section 1(2), 26, 27, 38, 38(1)

Citation : (1970) 1 ILR (P&H) 315

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Advocate : H.L. Sarin, A.L. Bahri, A.L. Bahl and H.S. Awasthy, for the Appellant;
I.S. Saini, for A.G. for Respondent No. 1, G.P. Jain and G.C. Garg, for the
Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Jugal Kishore has filed this petition under Articles 226 and 227 of the Constitution of India, for quashing the order of Respondent No. 1, dated 10th June, 1968 (Annexure "F") and the resolution passed by Respondent No. 2, dated 27th August, 1968 (Annexure "H").

2. The facts as alleged in the petition are that the Petitioner was appointed as Executive Officer of the Municipal Committee, Panipat, for a period of five years, by Respondent No. 1, in the year 1948, and continued to hold this post till 16th March, 1952. Thereafter he was appointed as the Executive Officer of the Municipal Committee, Rewari, by the State Government u/s 3(4) of the Punjab Municipal (Executive Officer) Act, 1931 (hereinafter called the Executive Officer Act) for a period of five years and he assumed charge on 17th March, 1952. It is alleged that the Petitioner's appointment as the Executive Officer of the Committee was renewed on 17th March, 1957, for a period of five years and later on for the same period on 17th March, 1962. It is further stated that on

30th January, 1967, the Committee was superseded by Respondent No. 1, and on 1st February, 1967, the Sub-Divisional Officer (Civil), Rewari, took over as Administrator of the Committee. On super session, the Administrator appointed the Petitioner as Secretary of the Municipal Committee,--vide his order dated 1st February, 1967 (Annexure "B") on the same pay and allowances which he was drawing as Executive Officer and the appointment was made up to 30th April, 1967. Later on,--vide his order dated 1st May, 1967 (Annexure "C"), the Administrator allowed the Petitioner to continue as Secretary and these orders of the Administrator were duly recorded and confirmed in the proceedings book of the Municipal Committee,--vide resolution No. 43, dated 30th May, 1967 (Annexure "D"). It is averred that in the meantime, the Committee was reinstated on 6th June, 1967, and endorsed its earlier resolution dated 13th January, 1967 (Annexure "A"), renewing the term of the Petitioner as Executive Officer for a period of five years. Subsequently on 10th June, 1968, Respondent No. 1 asked the Committee to make fresh recommendation for the appointment of a new Executive Officer and allowed the Petitioner to continue as Secretary till the appointment of a new Executive Officer was made u/s 3(1) of the Executive Officer Act. In pursuance of the orders of Respondent No. 1, agenda dated 22nd August, 1968 (Annexure "G") was issued for a special meeting of the Committee convened especially for 27th August, 1968, for the appointment of the Executive Officer, u/s 3(1) of the Executive Officer Act. On 27th August, 1968, Respondent No. 2, in the said meeting, which was specially convened for the appointment of the Executive Officer, passed a resolution (copy Annexure "H"), relieving the Petitioner from the post of the Secretary from the date of the said resolution by giving him one month's pay and appointed Shri Ram Saran, Head Clerk, as temporary Secretary. The Petitioner by this petition has challenged the order of Respondent No. 1, dated 10th June, 1968 (Annexure "F"), in so far as it relates to the appointment of the new Executive Officer in place of the Petitioner and also resolution No. 1 dated 27th August, 1968 (Annexure "H"), passed by Respondent No. 2, as illegal, arbitrary, without jurisdiction, unconstitutional, against the provisions of the Executive Officer Act, the Punjab Municipal Act, the rules framed there under, and against the principles of natural justice and fair play, on the grounds as mentioned in the petition.

3. The Petitioner subsequently on 11th September, 1968, made an application under Order 6, Rule 17. read with Section 151 of the Code of Civil Procedure, seeking amendment of the writ petition. On this application, B.R. Tuli, J. issued notice and directed that the same be heard with the writ petition. The amendment sought to be made is to the effect that the Petitioner could only be removed from his post of Secretary by following the statutory procedure as prescribed by Section 38(1) of the Punjab Municipal Act (hereinafter referred to as the Act).

4. Separate returns have been filed on behalf of Respondent No. 1 and Respondent No. 2, in which all the material allegations have been controverted in reply to the paragraph sought to be introduced by amendment, it was averred

that the Petitioner's services as Secretary were terminated u/s 45 of the Act, in a special meeting, convened on 27th August, 1968, and that Section 38(1) of the Act did not apply. It was asserted that the order dated 10th June, 1968 (Annexure F), and resolution dated 27th August, 1968 (Annexure "H") were perfectly legal, constitutional, and according to the provisions of the law.

5. In the replication filed by the Petitioner, all the allegations in the petition were reiterated.

6. At the time of arguments, the application for amendment referred to above was not contested by the counsel for the Respondents. Accordingly the application for amendment is allowed.

7. Mr. H.L. Sareen, learned Counsel for the Petitioner contends that the Petitioner could only be removed from the post of Secretary by following the statutory procedure as prescribed in Section 38(1) of the Act; that the meeting dated 27th August, 1968, in which the impugned resolution (Annexure "H") removing the Petitioner from the post of Secretary of the Municipal Committee, was passed, had not been convened as enjoined by Section 38(1) of the Act but was specially convened u/s 3 (1) of the Executive Officer Act for the appointment of a new Executive Officer and that no resolution removing the Petitioner from the post of the Secretary, could be passed in the meeting.

8. In order to appreciate the contention of the learned Counsel, it is necessary to reproduce the relevant provisions of the Punjab Municipal Act and the Executive Officer Act.

PUNJAB MUNICIPAL ACT

38. Appointment of Secretary:

(1) Every committee shall, from time to time, at a special meeting, appoint, subject to the approval of the State Government, one of its members or any other person, to be its Secretary, and may, at a like meeting, suspend, remove, dismiss or otherwise punish any person so appointed.

(2) * * * * *

(3) * * * * *

45. Notice before discharge:

(1) In the absence of a written contract to the contrary, every officer or servant employed by a committee shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it.

2. * * * * *.

3. * * * * *.

4. * * * * *

PUNJAB MUNICIPAL EXECUTIVE OFFICER ACT

3. Appointment and pay of Executive Officer:

(1) Notwithstanding anything to the contrary contained in Sections 26 and 27 of the Municipal Act, the committee shall, by resolution to be passed by not less than five-eighths of the total number of members constituting the committee for the time being, at the meeting convened for the purpose of appointing an Executive Officer at which no other business may be transacted, appoint, within three months from the date of the notification issued under Sub-section (2) of Section 1, a person, with the approval of the State Government, as Executive Officer, for a renewable period of five years on such rate of pay not exceeding one thousand and five hundred rupees inclusive of all allowances, as it may deem fit.

Provided that if the appointment is renewed the maximum salary inclusive of all allowances shall not exceed Rs. 2,000.

2. to (9) * * * * *

9. From the perusal of the above-mentioned provisions, it is clear that Section 3(1) of the Executive Officer Act deals with the appointment of the Executive Officers while Section 38 of the Punjab Municipal Act deals with the appointment of Secretary. Both these sections have been enacted for the appointment of different persons to different offices. u/s 38 of the Act, in a special meeting, a Committee is empowered to appoint, subject to the approval of the State Government, one of its members or any other person to be its Secretary and if any person so appointed is to be suspended, removed, dismissed or otherwise punished, then for that purpose also, a special meeting has to be convened.

10. For the appointment of an Executive Officer, a specific procedure is provided u/s 3 of the Executive Officer Act. In Sub-section (1) of Section 3, it is provided that a meeting for the purpose of appointing an Executive Officer has to be convened and the Committee has to pass a resolution for the appointment of the Executive Officer by not less than five-eighths of the total number of members constituting the Committee. It is also provided that the purpose of appointing an Executive Officer "no other business may be transacted".

11. It is apparent from the record that the meeting called for the 27th August, 1968, was convened u/s 3 of the Executive Officer Act for the appointment of an Executive Officer and not u/s 38(1) of the Act. Now the question that arises for determination is whether any other business could be transacted in the meeting which had been specially convened u/s 3(1) of the Executive Officer Act.

12. Mr. Ganga Parshad Jain, the learned Counsel appearing on behalf of Respondent No. 2, contends that there is no prohibition to transact any other business in the meeting convened for the purpose of appointing an Executive

Officer and the words "no other business may be transacted" are only directory and not mandatory. The stress laid by the learned Counsel is on the word "may" and his argument is that in case the Legislature intended to prohibit the transaction of any other business, then it would have used the word "shall" and not "may". To my mind, there is no force in the argument of the learned Counsel. It is true that ordinarily the auxiliary verb "may" is used in permissive or discretionary sense as opposed to mandatory or imperative direction. But it is well settled that the word "may" is capable of meaning "must" or "shall" and the particular sense in which the word "may" has been used has to be gathered from the context. In the present case the context clearly shows that Section 3(1) of the Executive Officer Act was enacted only for the purpose of appointing an Executive Officer and passing a resolution in respect thereof. If the Legislature did not intend to prohibit the transacting of any other business, there was no need of adding the words "no other business may be transacted". Hence in my view, the word "may" has been used to mean "shall" in Section 3(1) of the Executive Officer Act and the Committee could not transact any other business except relating to the appointment of the Executive Officer.

13. Mr. Ganga Parshad Jain further contended that the service of the Petitioner was dispensed with u/s 45 of the Act in the special meeting held on 27th August, 1968, and that it was not necessary to follow the procedure as laid down in Section 38(1) of the Act. This contention of the learned Counsel is untenable. It may be that u/s 45, the services of the Petitioner could be terminated by giving one month's notice or one month's wages in lieu thereof, but it was never the case of Respondent No. 2 when resolution No. 1, dated 27th August, 1968, was passed. His service was terminated after considering the matter in the meeting called u/s 3 of the Executive Officer Act which could not legally be done as observed earlier. To me it is clear that even while exercising power u/s 41 of the Act, the procedure as provided u/s 38(1) of the Act had to be followed by the Committee which admittedly was not done. Accordingly I hold that the resolution dated 27th August, 1968, Annexure "H", removing the Petitioner from the post of Secretary, is illegal and void and cannot be upheld.

14. In this view of the matter, the other contentions of the learned Counsel for the Petitioner, need not be dealt with, as conceded by him at the time of reply.

15. For the reasons recorded above. I allow this petition with costs and quash the impugned resolution dated 27th August, 1968 (Annexure "H") in so far as it relates to the removal of the Petitioner from the post of the Secretary.