
(1970) 01 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1782 of 1969

Kartar Chand

APPELLANT

Vs

State of Punjab and other

RESPONDENT

Date of Decision : 28-01-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1970) 01 P&H CK 0046

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : Rajinder Sachar, for the Appellant; Dhan Raj Singh Boparai, Assistant Advocate-General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

H.R. Sodhi, J.

1. This petition under Articles 226 and 227 of the Constitution of India has been preferred by Shri Kartar Chand who was removed from membership of Municipal Committee, Amritsar, by the State Government u/s 16(1) (e) of the Punjab Municipal Act, 1911 (hereinafter called the Act), for his alleged flagrant abuse of position as a member of the Municipal Committee. The impugned notification dated 8th July, 1969, is appended as Annexure A. 4 with the writ petition.

2. A meeting of the Municipal Committee was held on 10th January, 1969, for which one of the items on the agenda was the consideration of the budget for the year 1969-70. It is not disputed that along-with the agenda a book-let of 9-10 pages, printed in English, giving the proposed estimates of income and expenditure of the Committee for the said year was circulated to the members of the Committee. Business of the meeting was transacted and several items considered. When President of the Committee presented the budget, the Petitioner, as alleged by the Respondents, abruptly stood up, started speaking and burnt a copy of the budget estimates that was with him and all this caused

annoyance to the other members. It is admitted by the Petitioner that he did so and his plea is that it was done only to lodge a protest against circulation of the budget estimates in English though Punjabi was the recognised regional language and, according to Rule 3 of the Punjab Municipal (General) Rules, 1918. as amended upto-date, a copy whereof has been filed as Annexure A. 1 with the writ petition, all business had to be transacted and proceedings recorded in Punjabi in Gurmukhi script. It appears, according to the averments in the writ petition which have not been denied by the Respondents in their return, that there are 45 elected members of the Municipal committee of which 23 at the relevant time belonged to the Jan Sangh party and 7 to the Congress party. The Petitioner claims to be General Secretary of the Mandal Congress Committee, Ram Bagh, Amritsar, and also a member of the District Congress Committee. He was elected to the Municipal Committee in October, 1967. It is pleaded by him that he has studied upto 5th/6th class only and is not much literate in English so as to be able to follow what was contained in the budget proposals. The allegation further is that the President of the meeting instead of accepting the valid objection of the Petitioner shouted at him to sit down and it was to symbolise his protest that he burnt a copy of the budget. The averment of the Petitioner that after burning a copy of the budget he took his seat and continued participating in the proceedings has not been denied by the Respondents. After the above incident, a proposal was moved by one Shri Mangat Ram Vij and seconded by Shri Vishwa Nath Sareen both of whom, according to the Petitioner, were Jan Sangh members, that in view of the misconduct of the Petitioner a resolution be passed asking the State Government to expel him from membership of the Committee. Some other members simultaneously moved another proposal supporting the Petitioner and asking for a resolution to be passed directing that in consonance with the sentiments of Punjabis all further proceedings, office notes, agenda, etc, be put up in Punjabi, and that the budget presented on that day not being in Punjabi should not be made a part of the proceedings. A true copy of the proceedings of 10th January, 1969, has been produced before me by Mr. Sachar on behalf of the Petitioner and correctness of the same has not been challenged by the counsel for the State. Shri Chaman Lal who was not a party to either of the two proposals raised a point of order that no other proposal could be put forward when the President had already put up the budget before the House. The President overruled the objection by saying that he had not put up the budget at that stage before the House. This objection was with a purpose to help the Petitioner so that the resolution by which he was sought to be condemned be not carried through. Voting was then held on the two resolution and the one impeaching the Petitioner was passed.

3. A show-cause notice was issued by Respondent 1 to the Petitioner on 11th March, 1969 a copy whereof is Annexure A 2. The grava men of the charge was that the Petitioner abruptly stood up, started speaking and burnt a copy of the budget estimates in the House and that the act of burning the copy apart from being irresponsible and malicious, amounted to gross contempt of the House and

flagrant abuse of position by the Petitioner as a member of the Committee within the meaning of Section 16(1)(e) of the Act. The Petitioner was called upon to show cause why he should not be removed from membership of the Committee. A reply was furnished by the Petitioner it being maintained by him that his conduct in protesting against the use of English language by burning an English copy of the budget when the State language was Punjabi did not amount to abuse of his position as a member of the Committee. According to the Petitioner, it was highly improper that a budget which most of the members did not even understand because of not knowing English language should be passed. In the words of the Petitioner, a mountain was being made out of a mole hill by the majority party composed of Jan Sangh members who as true representatives of the people should have themselves appreciated the patriotic sentiments of those who wanted proceedings to be conducted in Punjabi. The explanation of the Petitioner was submitted to the State Government on 28th March, 1969, and the impugned order was then passed on 8th July, 1969, whereby the Petitioner was not only removed from membership of the Committee but further disqualified for election for a period of two years. Hence the present writ petition which was admitted by a Division Bench of this Court on 5th August, 1969, after hearing the Respondents to whom a notice of motion had been Issued.

4. It is nobody's case that the Petitioner was guilty of any other reprehensible conduct except burning of a copy of the budget. He continued to take part in the meeting after the said incident. The State in its return does not say as to what words he uttered when a copy of the budget was burnt and the averment of the Petitioner that he only brought to the notice of the President that the budget estimates should have been circulated in Punjabi and that when he was asked to sit down he burnt the copy has to be accepted as correct. The contention of the learned Counsel for the Petitioner that no reasons have been given in the impugned order passed by the State Government as a quasi-judicial authority has no substance. I have looked into the executive file and find that the Minister Incharge agreed with an office note which is fairly exhaustive. There was no controversy about fact and the only thing that required consideration was as to whether the Petitioner be removed for the alleged misconduct. It cannot be said in these circumstances that the Minister who passed the final order of removing the Petitioner did not apply his mind.

5. The only question that survives for determination is as to whether the conduct of the Petitioner in the circumstances stated above amounts to a flagrant abuse of his position within the meaning of Section 16(1) (e) of the Act. Freedom of speech and expression is guaranteed in our democratic republic both in Legislatures, Local Bodies outside, and peaceful demonstration which does not offend any rule of law cannot be prohibited. Meetings of the Municipal Committee are privileged occasions and members thereof participating in the same can freely express their views in regard to what they think to be in public interest. These occasions are not, of course, meant to be abused and a legitimate exercise of the right of speech is also not to be throttled. The burning of a copy of the

budget by a Municipal Commissioner cannot, of course, be defended but at the same time if any such ill advised act is just a peaceful demonstration or misconceived method of protest, such conduct without any other attending circumstance which aggravates the same, cannot by itself fall within the mischief of flagrant abuse of position. If the Petitioner had in any way been instrumental in not allowing the proceedings to continue or had brought outsiders to disrupt the meeting or in any other way exhibited any heinous misconduct, it could possibly be said in view of the decision In Bhagat Ram Patanga's case 1969 Curr. L.J. 630. that he was guilty of flagrant abuse of his position, What constitutes a flagrant abuse depends on facts and circumstances of each case and I cannot persuade myself to agree with the learned Counsel for the State that the expression "flagrant abuse" as used by the Legislature was intended to cover such conduct of the Petitioner as is disclosed in the present case so as to deprive him of his right to continue in public office to which he had been duly elected. Incidents of improper use of language and non-observance of norms of decorum do take place in heated discussions amongst members of any association whether constituted by election or otherwise and sometimes particular ideology is sought to be propagated in a manner that cannot be favourably looked at. The fact, however, remains that it is not every reprehensible and undesirable conduct that has to be treated as a flagrant abuse of position. The ordinary dictionary meaning of the word "flagrant" is notorious, enormous, heinous glaringly wicked". There may be cases where an occasion is misused and a member of the Committee abuses his privilege in such a manner that one is irresistibly driven to the conclusion that the misconduct is so glaring that it cannot be overlooked and must be held to be a scandalous abuse of position so as to be styled as "flagrant" justifying removal of that delinquent member from membership of Committee. One has to keep in mind the particular circumstances and conditions in which the impugned conduct was exhibited and strike a balance between the rights of a member and his conduct.

6. The State counsel invited my attention to a Full Bench decision of this Court in The State of Punjab v. Bhagat Ram Patanga 1969 Curr. L.J. 630. where the learned Judges allowed the Letters Patent Appeal holding the conduct of Bhagat Ram Patanga to amount to a flagrant abuse. A meeting of the Municipal Committee, Phagwara, was held under the chairmanship of the Sub Divisional Officer (Civil) Phagwara, to elect its President and Vice-President so that the new Committee could take over charge and start functioning. Shri Patanga participated in the meeting along with a group of persons who were supporting a particular candidate. It appears that he and another member had decided to create disturbances inasmuch as his companion Shri Om Parkash Agnihotri became unruly and began to tear his clothes, beat his chest and create a big row. Shri Patanga brought some outsiders in the meeting hall to obstruct the meeting and did not care to obey the chair. This conduct of Shri Patanga in bringing outsiders and joining in creating disturbances was held by the Full Bench to be a glaring abuse of position by the former Facts of the instant case

are quite different and do not have even the semblance of analogy to the facts of Bhagat Ram patanga's case 1969 Curr. L.J. 630., As already observed, the only conduct attributed to the Petitioner is that he burnt a copy of the budget. There was nothing particular in this copy which was printed in English and circulated to all members. The original document must have been with the office. After the said incident, the Petitioner seems to have continued taking part in the proceedings as a law abiding citizen. In such a situation, it is difficult to hold that his conduct could be styled as a flagrant abuse of position. All that the Petitioner might have intended was to demonstrate his protest in a clumsy way and to gain publicity for his view point claiming to be wedded to the cause of regional language so that other members of the Committee be depicted before the public as not the genuine supporters of the said language. In my opinion, the Petitioner was illegally removed from membership of the Committee for reasons not contemplated by Section 16(1)(e) of the Act.

7. For the foregoing reasons, the writ petition is allowed and the impugned notification (Annexure A.4) of the State Government directing removal of the Petitioner from membership of the Municipal Committee, Amritsar, and further disqualifying him for election for a period of two years quashed. In the peculiar circumstances of the case, there is no order as to costs.