

(1958) 02 MP CK 0006

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Petition No. 22 of 1957

Krishnachandra

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-02-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (1958) JLJ 637

Hon'ble Judges : M. Hidayatullah, C.J.; B.K. Choudhari, J

Bench : Division Bench

Advocate : S L. Jain, for the Appellant; H.L. Khaskalam, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Hidayatullah C.J.

1. This petition is filed by one K. C. Sharma who was the President of the Municipal Committee, Khurai, till 25th October 1955 when the Committee was suspended and Shri M. A. Faruqui, Naib-tahsildar was appointed as the Executive Officer to look after its business by a notification of the State Government u/s 53-A of the Central Provinces and Berar Municipalities Act, 1922 (hereinafter referred to as the Act). By this petition the petitioner challenges the action of the State Government and characterizes it as mala fide and proceeding on no ground.

2. u/s 53-A of the Act the State Government is required to notify the reasons for the appointment of a servant of the Government as the Executive Officer of a municipal committee Those reasons are contained in the notification issued by the State Government and they charge the Municipal Committee with improper conduct and mismanagement. The petitioner's contention is that much of the confusion and mismanagement took place when the Municipal Committee was suspended previously and Executive Officers were appointed to look after its business. He also contends that the Committee inherited a bad state of affairs

and was trying to put things in order when it was visited with the penalty of suspension for a second time. In the petition attempt has been made to answer all the charges which have been mentioned in the notification, and it was argued before us that none of the reasons really existed to justify the action of the Government, Reference was made to a decision given by a Full Bench of this court recently expounding section 57 of the Act: *Municipal Committee, Kareli vs. State of Madhya Pradesh* 1958 J. L. J. 589.

3. There is, however, a vital difference between the two sections, u/s 57, before action is taken to supersede a municipal committee, the State Government is required to call for an explanation of the Committee and to give it a reasonable opportunity to explain everything charged against it. u/s 53-A the action is to be of a temporary character and no explanation is required from the municipal committee, A Division Bench of this Court noticed this difference and observed that the omission in section 53-A appears to be deliberate: *S. B. Parsodkar vs. Deputy Commissioner Bhandara and others*, A. I. R. 1956. Nag. 56. We find nothing in the scheme of the Act or in the two sections to hold otherwise It appears therefore that the State Government is authorised u/s 53-A of the Act to act promptly when occasion demands it without waiting for an explanation from the municipal committee. No doubt, the reasons of the State Government have to be recorded in writing and notified, and to that extent we think it may be possible in a case of flagrant abuse of the power granted to the State Government by section 53A to examine the reasons for what they are worth. We feel, however, that the law does not contemplate that the Court should sit down and obtain an explanation from the Government in the light of the allegations of the Municipal Committee and to try the matter as if it were an issue in a civil case. Prima facie the opinion of the State Government is entitled to great respect, unless the matter appears to become justiciable in the light of the provisions of the Act concerned. u/s 57, the Full Bench held, the matter is generally justiciable, because an explanation of the municipal committee has to be called for and the State Government is required to give its reasons. Where there is an enquiry of this type it may be possible for this Court to find out in the light of the explanation whether the reasons given by the State Government lead to the inference that the necessary power was possessed by it But, where, as here, action has not only to be prompt but without waiting for an explanation, it would be wrong ex post facto to open up the opinion of the State Government and to sit in judgment over it in the absence of a flagrant abuse of its powers by the State Government.

4. We have examined the reasons which actuated the State Government to take the action, in the light of the explanation furnished by the petitioner in the petition. We find that though the Municipal Committee had a period of almost two years in which to put its affairs in order, if they were not so before, it failed signally to do many things which the statute required it to do. There are some instances of attempt to interfere with criminal cases pending in Courts against the President himself under Sections 409 and 420 of the Indian Penal Code. The

action of the President in withholding the resolution does not absolve the Municipal Committee from the responsibility of passing it. That resolution was to the effect that the cases should be withdrawn. This was directly an attempt to interfere with the administration of justice and, even though not carried out fully, does not redound to the credit of the Municipal Committee. There are also numerous audit objections which are explained away on the ground that the initial breach of the Financial Rules took place in the time of the Executive Officers. Here again, the action of the Executive Officers in breach of the law and the rules does not exonerate the Municipal Committee from the consequences of carrying on the breach. No doubt, the Executive Officers, who were guilty of such misconduct, would be answerable in their turn, but that does not leave any room for excuse on the part of the Municipal Committee that it should not be charged with the breach of the law and the rules and visited with the penalty u/s 53 A of the Act. We find numerous other irregularities which, in our opinion, have not been sufficiently explained, though attempt has been made to explain them. Having considered the matter from this angle, we are satisfied that the invocation of the power of this Court under article 226 of the Constitution is not open to the present petitioner, and we do not think that, even if it is, we should accede to his request.

5. The petition fails and is dismissed, but we make no order about costs