
(1973) 07 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 90 of 1970

Laxminarayan

APPELLANT

Vs

State of Madhya Pradesh, Bhopal and Others

RESPONDENT

Date of Decision : 27-07-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 35, 38, 38(1), 41, 41(2)

Citation : AIR 1975 MP 71 : (1978) ILR (MP) 346 : (1974) JLJ 639 : (1974) 19 MPLJ 314

Hon'ble Judges : G.G.Sohani, J;A.P. Sen, J

Bench : Division Bench

Advocate : G.M. Chafekar, for the Appellant; S.S. Sharma and R.C. Mukati, for the Respondent

Final Decision : Dismissed

Judgement

Sen, J.

This is a petition by Shri L.N. Trivedi, under Article 226 of the Constitution, directed against an order of the State Government dated the 25th June, 1970, for his removal as a councillor of the Municipal Council, Mahidpur, under the provisions of Section 41 (2) of the Madhya Pradesh Municipalities Act, 1961.

Shortly stated, the facts are these: The petitioner is an Advocate of this Court, practising at Mahidpur. He was appearing as counsel against the Municipal Council in a suit wherein the plaintiff had claimed the relief of perpetual injunction against the Council. That suit was eventually decreed and the petitioner, as counsel, had put the decree into execution. He was elected as a councillor in December, 1968. Despite his election as councillor, he continued to appear as a counsel for the decree-holder in the execution proceedings. These proceedings were taken by the decree-holder under the provisions of Order 21, Rule 32 of the Code of Civil Procedure. Meanwhile the decree-holder died and the petitioner applied for substitution of the names of his legal representatives under

Order 21, Rule 16 of the Code. He also filed a vakalatnama on their behalf on 5th April, 1969. While these proceedings were pending, the Collector Ujjain served the petitioner with a show-cause notice dated 22-12-1969, as to why he should not be removed from his office as a councillor under the provisions of Section 41 (2) of the Act. Upon service of the notice, the petitioner withdrew from the execution proceedings on 5-1-1970. He then submitted his answer to the show-cause notice on 9-1-1970. In due course, the State Government gave him a personal hearing on 22-6-1970, and eventually by the impugned order directed his removal.

The order of removal has been assailed before us on several grounds. In the first place, learned counsel for the petitioner contends that the provisions of Section 41 (2) of the Act were not attracted at all, because the petitioner did not act or appear "in a proceeding relating to a matter in which the Council was concerned", within the meaning of the section; and therefore, the State Government had no power to pass the impugned order. He urges that the proceedings under Order 21, Rule 32 of the Code were taken against the Administrator and not against the Municipal Council. It is pointed out that there was a breach of the decree for perpetual injunction on the part of the Administrator and his subordinates, and therefore, proceedings had to be taken for violation of the injunction. Such proceedings, learned counsel contends, cannot be construed to be proceedings against the Municipal Council; nor, according to him, was the Municipal Council in any way concerned with the proceedings.

The contention cannot be accepted. No doubt, learned counsel is right in contending that there is a distinction between the Administrator and the Municipal Council. But that distinction has no significance. The suit for perpetual injunction was filed against the Municipal Council. That suit was decreed against the Council and the decree was put into execution against it. The Council having been superseded, all powers and duties of the Council under the Act, until the Council was reconstituted, had to be exercised and performed by the Administrator. Although the Administrator was not the Municipal Council, the supersession did not mean that the Municipal Council as a corporate body ceased to exist. u/s 18 of the Act, the Municipal Council is a body corporate with perpetual succession. The documents on record clearly show that the proceedings under Order 21, Rule 32 of the CPC were commenced against the Municipal Council and not against the Administrator personally. The contention that Section 41 (2) of the Act was not attracted, therefore fails.

The construction placed by learned counsel for the petitioner upon the provisions of Section 41 (2) of the Act cannot also be accepted. The section reads as follows:

"41. (2) The State Government may, at any time, remove a Councillor if he, being a legal practitioner, acts or appears on behalf of any other person against the Council in any legal proceeding or against the State Government in any such proceeding relating to any matter in which the Council is or has been concerned, or acts or appears on behalf of any person in any criminal proceeding instituted

by or on behalf of the Council against such person."

The section clearly contemplates two distinct categories of legal proceedings; one against the Council, and the other against the State Government. The words "relating to any matter in which the Council is or has been concerned" qualify the second category of suits, i.e. instituted against the State Government. The petitioner here being a legal practitioner, not only acted but also appeared on behalf of the decree-holder and then for the legal representatives in the execution proceedings against the Council, after he was elected as a Councillor; and therefore, he came within the mischief of Section 41 (2) of the Act.

The second contention of learned counsel for the petitioner is that the State Government was in duty bound u/s 41 (2) to apply its mind before making an order of removal of a councillor. In support of the contention reliance is placed on the decision in Suresh Seth Vs. The State and Another, . The contention cannot be accepted. The decision in Suresh Seth v. State of Madhya Pradesh (supra) is distinguishable. There the Court was dealing with Section 422 of the Madhya Pradesh Municipal Corporation Act, 1956, under which the State Government was required to state reasons for the supersession of the Municipal corporation. The entire decision turned on the language of Section 422. u/s 41 (2) of the Madhya Pradesh Municipalities Act, 1961, the State Government, while ordering the removal of a councillor, is not required to state its reasons.

That brings us to the most crucial question urged by learned counsel for the petitioner. The contention proceeds on a construction of Section 38 (1) read with Sections 35 (k) and 41 (2) of the Act. It is urged that when a Councillor becomes subject to any of the disqualifications specified in Section 35 and that includes a disqualification u/s 41-- and such disqualification being removable is not removed, -- the Councillor does not cease to be a Councillor unless the State Government issues a notification u/s 38 (1) specifying a date with effect from which his seat shall become vacant. There is a fallacy in the argument. To appreciate this, it is necessary to set out the relevant provisions:

"35. Disqualification of candidates.--No person shall be eligible for election or selection as a Councillor if he--

(k) is disqualified ho be a Councillor u/s 41;

Provided that a disqualification under Clause(k) may be removed by an order by the State Government in this behalf:"

"38. Effect of subsequent disabilities.--

(1) If any Councillor,--

(a) becomes subject to any of the disqualifications specified in Section 35 and such disqualification is not removable or being removable is not removed; the shall subject to the provisions of Sub-section (,2) cease to be a Councillor and his seat shall become vacant with effect from a date to be notified by the State

Government."

The provisions contained in Sections 35, 38 and 41 operate in their respective fields. Section 35 deals with disqualification of candidates. No person shall be eligible for election or selection as a Councillor if he is a person specified in any of the Clauses (a) to (m). That provision, therefore operates at the time of election. When the petitioner was elected as a Councillor, he was not subject to any disqualification u/s 41(2). That disqualification was subsequently incurred when there was the order of removal passed by the State Government u/s 41 (2). The power of the State Government u/s 41 is an independent power not controlled by an adjudication u/s 38. The power u/s 38 (1) has been delegated by the State Government to the Collector, vide Notification No. 29-U-XVIII, published in the Madhya Pradesh Rajpatra dated 16th February 1962. In the very nature of things, when the State Government has passed an order of removal of a Councillor u/s 41, then the matter cannot be brought up before the Collector. The provisions contained in Section 38 (1) are subject to the provisions of Sub-section (2) thereof. Sub-section (2) contemplates an adjudication by the prescribed authority, i.e. the Collector. From an order of the Collector an appeal lies to the Commissioner u/s 38 (3). Under the scheme of the Act no subsequent adjudication is contemplated by the Collector u/s 38 (1), once the order of removal has been passed by the State Government u/s 41.

Lastly, learned counsel for the petitioner tried to challenge the impugned order on the ground that the action of the State Government was mala fide. He tried to draw that inference from a sequence of events. It appears that a meeting of the Municipal Council was scheduled to be held on the 26th June 1970, for the election of the President. It is urged that the Councillors belonging to the party in power and those opposed to it were evenly balanced. The object of the order, it is said was to tilt the balance in favour of the party in power. Learned counsel also pointed out that the order was communicated not in the usual manner but by a telephonic message by the Sub-Divisional Officer, which learned counsel characterized as rather unusual. When statutory powers are entrusted the exercise of such powers is not to be readily inferred as mala fide unless there are strong circumstances to support such an inference. There is nothing on record for us to find that the State Government did not act bona fide. The show-cause notice had been served upon the petitioner as far back as 22-12-1969. The petitioner had submitted his reply to the show-cause notice on 9-1-1970. The matter was then referred to the State Government which gave to the petitioner a personal hearing on 22-6-1970. Merely because the meeting of the Municipal Council was scheduled to be held on the 26th June, it cannot be said that the action of the State Government in passing the order of removal on the 25th was mala fide. The State Government having passed the order on the 25th June itself, its communication through a telephonic message by the Sub-Divisional Officer on the 26th morning became necessary in view of the meeting which was scheduled to be held on that day.

Before parting with the case, we think it desirable to draw the attention of the State Government to a lacuna in its order passed u/s 41 (2). When the State Government passes an order of this nature, whether it be under Sub-section (1) or Sub-section (2), the removal disqualifies such councillor from election, selection or appointment, to the office from which he is removed for such period as may be specified by the State Government not exceeding four years. That is by reason of Section 41 (4) which reads as follows:

"41. (4) Removal from office under Sub-section (1) or Sub-section (2) shall disqualify the person so removed for further election, selection or appointment to the office from which he is removed for such period not exceeding four years as may be specified by the State Government."

The power of removal of a Councillor is coupled with a duty to specify the period of his disqualification. Unless this is done, the Councillor removed may stand disqualified for all times. That would be against the letter of the section itself. The period of disqualification may vary; but such disqualification cannot, in any case, exceed four years. The discretion reposed in the State Government has to be exercised with due circumspection depending upon the facts and circumstances of each case. In the present case, the breach by the petitioner being of a technical nature we trust the Government would keep that in view in prescribing the period of his disqualification.

Subject to these observations, the petition fails and is dismissed. There shall, however, be no order as to costs. The security deposit be refunded to the petitioner after verification.