
(1970) 07 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2924 of 1969

Lila Krishan and others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-07-1970

Acts Referred:

Punjab Municipal Act, 1911 — Section 28

Citation : (1970) 07 P&H CK 0001

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

Bench : Single Bench

Advocate : Anand Sarup with Mr. Mohinderjit Singh Sethi, for the Appellant;
C.D. Dewan, Additional Advocate-General Haryana, for the Respondent

Final Decision : Allowed

Judgement

H.R. Sodhi, J.—This writ petition preferred by 10 Municipal Commissioners and Municipal Committee, Fatehabad. purporting to act through its President, challenges the validity of the order of the Governor of Haryana as published in extraordinary issue of Haryana Gazette dated 12th September, 1969, whereby the Municipal Committee was superseded u/s 28 of the Punjab Municipal Act, 1911 thereafter called the Act) with immediate effect and sub-divisional Officer (Civil) appointed as Administrator in addition to his own duties till the appointment of a whole time success jr. The interest of respondents 4 to 6 is identical with that of the petitioners but attempts to serve them failed. The learned counsel for the petitioners made a statement that he gave up these respondents as they were only proforma and their presence was not necessary for decision of the writ petition Respondents 2 and (sic) were served but they have not filed any written statement. An affidavit on behalf of the State, respondent (sic) by way of reply to the writ petition has been filed by Shri L.R. Mago, Officer on Special Duty, Local Government, Haryana.

2. Elections to that Municipal Committee, Fatehabad (hereinafter called the Committee) were held sometime in March, 1968, in which the petitioners and

respondents 4 to 6 were elected as members. The total strength of the Committee is 13. The case of the petitioners is that the impugned order has been made because of the influence with the State Government of respondents 2 and 3, one of whom Shri Pokar Ram Godara is a Congress MLA from Fatehabad constituency and the other is his brother who is Chairman, Zila Parishad, Hissar both having their alignment with the Congress party which is the ruling party in Haryana. It is alleged that petitioner No. 1 contested mid-term Assembly elections in May, 1968, from Fatehabad constituency against respondent 2 who was a Congress nominee and this created a lot of hostility between the two though the petitioner lost the election. According to the petitioners, there has been an attempt on the part of respondents 2 and 3 to get petitioner No. 1 removed from Presidentship of the Committee and at one time a show-cause notice was served on him, though later withdrawn, because the charges levelled against him were virtually against the Committee. It was then that the show-cause notice was served on the Committee for superseding the same. Further allegation of the petitioners is that one Shri Milkha Singh, Station House Officer, Rattia, was assaulted by Sat Pal, Pirthi Singh and Ors. and a case under Sections 323, 353, 148 and some other offences under the Indian Penal Code, was registered against the accused but no action was taken, Sat Pal and Pirthi Singh being the sons of respondents 2 and 3, respectively. petitioner No. 1 states in the writ petition that he organised public meetings and addressed conferences at Rattia to protest against the acts of lawlessness in Haryana State on that score the said respondents were influencing the Government against him and other members of the Committee. A proposal for supersession of the Committee was processed at the Secretariat level and the Secretary, Local Government Department, relying on the inspection reports of Sub Divisional Officer (Civil), Fatehabad, who had inspected the Committee twice-once in August, 1968, and then in May, 1969, served a notice, Annexure A-2, on the Committee calling upon it to show cause why it should not be superseded under sect on 238 of the Act and the statement of allegations was appended to this notice. This statement shows that there were as many as eleven charges based on the inspection reports of the Sub-Divisional Officer (Civil), it being generally alleged that there was party faction prevailing in the Committee First inspection was made in August, 1968, and then another in May, 1969. The allegations, briefly stated were as under:

1. That the Committee advanced from time to time sums of money to its employees for carrying out various works but no attention was paid towards recovering those amounts.
2. That the objections taken in audit and inspection notes had not been met.
3. That more than the amount fixed by the Government was being spent on payment of salaries to the staff. and no action was taken to reduce the expenditure in this behalf.
4. That the financial position of the Committee was unsound inasmuch as it was

spending money on works other than those sectioned. The closing balance, according to the statement of allegations, as on 31st March, 1968, was v. 67,831, against Rs. 568/- for the year 1968-69.

5. The Committee in spite of the objections raised by the Sub-Divisional Officer (Civil) in his earlier inspection did not deposit the amount for payment towards provincialised schools, though every year a sum of Rs. 43.50/- was being sanctioned in the budget for this purpose.

6. That there were taxes and arrears due to the Committee but no action was taken to recover them. It was stated that the arrears included those for the years 1961-64 and onwards till the inspection by the Sub-Divisional Officer (Civil). The arrears covered various heads, such as, house-tax, rents, Tehbazari, profession-tax, and evasion of octroi.

7. That no attention was paid by the Committee towards increasing the length of the roads in its jurisdiction nor had it metalled two toads going from Dharamshala Rattia Gate to Model Town and link road from Dharamshala to Rattia Road gate The unauthorised constructions had gone up to 275 and the Committee was not taking steps to stop such constructions There were cases pending. It was alleged that during the year 1966-67, there were 19 cases of unauthorised constructions and not even one of them had been disposed of and subsequently when some of them were decided the fines imp-(sic) were meagre. The cases of encroachments were also on the increase particularly because of the Committee not taking action against encroachments. The year-wise details commencing from 1950 were given in the statement of allegations. An acquisition was made on the ground that the Committee allowed construction of some shops though the High Court had declared such a construction to be illegal.

8. That the Committee was accused of having spent Rs. 71, 1(sic)4 under the head Works" though only a sum of Rs. 45,000/- had been sanctioned in the budget for the year 1968-69.

9. & 10. That the water supply into town was considered to be not satisfactory and so was the sanitation.

11. that the street light was inadequate and half the number of bulbs were fused and replaced after months 3 The Committee furnished a detailed reply covering almost 27 pages denying all the allegations describing them as vague, fals(sic) frivolous and malicious, actuated by personal, motives because of the enmity of the ruling party with petitioner No. 1 who was President of the Committee and had been supported by most of its members in the last general elections to the State Assembly It was pleaded that the advances made to the members had been adjusted but for a sum of Rs. 3800/- lying with Shri Bhagirath Lal. ex-Municipal Commissioner, whose case could not be disposed of since the file remained with the Government in connection with tn inquiry against him Advances to the employees were made for essential purposes and it was permissible under the rules. In regard to the amount advanced to one Shri

Banwari Lal, ex-member, the case of the Committee was that no recovery could be made and that it was not possible to take up surcharge proceedings against him at that stage. The amount had, therefore, to be adjusted by persuasion and that it was difficult to realise the same through litigation similarly. an attempt was made to explain every charge by giving details. No specific charge was given in the statement of allegations in respect of non compliance of audit objections and all that was said was that the objections were pending for over 14-15 years and no proper action had been taken by the Committee. The reply was to the effect that the outstanding objections related to a period when the present members did not constitute the Committee, It was however, stated that the objections raised by the Sub-Divisional Officer (Civil) in his inspection note had been fully attended to and appropriate action taken by the Committee. In the matter of financial position of the Committee, it was stated in the reply that the present Committee came into office on 2nd April, 1968, when the pending balance was only Rs. 668/-, as compared to the closing balance on 31st March, 1969, which was Rs. 10,137/. Rs 10,000/- were said to have been invested by the Committee in the Haryana State Development Loan scheme and Rs. 11,540/ deposited in the Post Office Saving Bank account. It was further claimed that Rs. 25,000/- had been invested in the shape of National Defence Certificates. The plea of the Committee was that the Sub-Divisional Officer who was probably working at the behest of the Government some how did not take into account, at the time of inspection, the investments made by the Committee. The Committee, according to its reply, had in fact total balance of Rs. 56, 677/- at the time of inspection and could not in any way be said to be facing a financial crises. A statement giving details of income and expenditure for the year 1967-68 was attached with the written explanation The Committee admitted that no amount had been paid to provincialised school but its plea was that its representation for remission of the amount was pending with the State Government and for earlier non-payments it was not responsible As we find from the statement of allegations charge No 6 related to non-recovery of arrears due to the Committee on account of taxes. The alleged arrears included assessment of house-tax as determined in February 1963, amounting to Rs. 1,50,000/- which the State Government thought should have been finalised in time and the demand made by 1st April. 1969. The reply was that the other arrears were hardly Rs. 13,681.82 and that the amount of Rs. 1,50,000/- which was only a provisional assessment and had yet to be finalised was being included as arrears thereby raising the figure to Rs. 1,63,581.82. The amount of Rs. 13,581.82 had accumulated as arrears from the year 1963-64 and in regard to that the charge, was that the recovery proceedings, were not pursued. The Committee stoutly denied these charges it being urged by it that the proposed assessment could not be treated as arrears. The final assessment, it was stated, could be effected bearing the objections and the amount finally assessed came to only Rs. 6(sic)000/-. Further, the stand taken up by the Committee was that 20 per cent of this amount had to be given to the Assesseees as rebate which would still reduce the amount of arrears much below Rs. 60,000/, assuming that this tax

constituted arrears. Reference was made to the provisions of the Municipal Act in support of the plea that the final assessment of Rs. 60,000/- could not legally constitute arrears. Out of a total Rs. 13,81.82 the Committee had, it was stated, recovered Rs. 744.45 and that cases instituted under Sections 80 and 81 of the Act against the defaulters, including Government itself, for the recovery of Rs. 9471.90 were pending in the Court of Sub Divisional Officer (Civil), Fatehabad. It was claimed that an amount of Rs. 3060.45 was due from the Government itself. In the matter of loans, some amounts treated as recoverable arrears were stated by the Committee to have been written off by the previous Committee and copies of the resolutions were attached and the amounts so written off came to Rs. 7052.42 For the balance of rents due, the case of the Committee was that it had filed execution application and they were still pending in Court. The net result, according to the explanation, was that only Rs. 193.12 remained as arrears. The charge that the Committee was not paying attention towards increasing the length of the roads and constructing link roads was denied. It was stated that the Committee had deposited an amount of Rs. 58472/- with the Public Works Department for the re-conditioning and re-metalling of the metalled roads about two years back and representations had also been made to the Superintending Engineer and also to the Minister but no action was being taken. It was stated that a deputation met the Executive Engineer was well but to no avail. As regards connecting Dharamshala and Model Town by a link road, the reply was that the Public Works Department had been requested many a time but it would not prepare even the estimate. The department of the Government were indeed sought to be made responsible for their failure to lend a helping hand. The charge of permitting encroachments covered the period 1950 onwards and the allegation was that whenever the matter came up for consideration in the meeting, it was postponed. The total number of pending encroachment cases, in the opinion of the Government, was 153. The Committee explained this charge by saying that 119 cases pertained to the previous Committee for which the present one could not be held responsible. Their case was that for the year 1968-69 during which term the present Committee functioned, only 34 cases had been reported by the Sub Divisional Officer in his inspection note and the Committee had resolved to demolish them by police help which was being awaited. In some cases, it was alleged that the question of title was involved and there was a decision of the High Court which went against the Committee. They had been seeking legal advice in regard to all these matters, the charge of permitting unauthorised constructions was denied and also of party factions, it being stated that all the resolutions were passed unanimously. The charge that the Committee spent in excess of its sanctioned budget on different items was strongly denied. It was stated that the total expenditure of the Committee remained within the sanctioned budget and that the amount had been spent in completing works of water supply and other amenities for the general public. The charges for not making arrangements for water supply or of failure to maintain good sanitation were not admitted. It was pleaded that public urinals and latrines had been constructed.

4. Be that as it may, the salient features of some of the charges and replies thereto have been stated above only to point out that in such a state of controversy having arisen between the Committee and the Government, it was necessary to have the facts and figures verified with a judicial approach. What we really find is that on receipt of explanation of the Committee the Officer on Special Duty prepared his comments reiterating the charges and the replies as given by the Committee and in the end while dealing with every charge what he ultimately said was that the explanation was not satisfactory and that the charge stood proved. There was generally no attempt on his part to scrutinise the facts as stated in the explanation. The comments of this officer were then placed before the Minister Incharge who passed the following order:

I have carefully gone through the noting from pages 9 to 22 ante, the statement of allegations and the reply given to the show-cause notice. I also met a deputation of the Committee which met me on the 5th September, 1969. The representationists had nothing to add to the reply given by them to the show-cause notice. The Committee is guilty of several irregularities mentioned in the noting on pages 9 to 22 ante and I am firmly of the view that it should be superseded for incompetence to perform or persistently making default in the performing of the duties imposed on it by or under the Punjab Municipal Act 1911.

2. The orders regarding supersession of this Committee should issue and the Sub Divisional Officer (Civil), Fatehabad, should take charge of the duties of the Administrator of the Municipal Committee in addition to his own duties till the appointment of a whole time Administrator.

Sd/- H.D.M.

Dated the 12th September, 1969. A copy of this order was not placed on the record by either of the parties but was produced by the learned counsel for the State in the course of arguments. It has now been marked as Annexure "X". This order led to the impugned notifications Annexure A-4, superseding the Committee.

5. Mr. Anand Sarup, learned counsel for the petitioners, has raised the following contentions:

1. That the Minister in passing the order, Annexure "X", did not make a judicial approach as was incumbent on him when exercising quasi-judicial functions and that the order is also not a speaking one based on any evidence.

2. That the material in the shape of comments of the Officer on Special Duty, and Director, Local Bodies, was taken into consideration when the same had not been made available to the Committee and that such a course violated the well established norms of natural justice.

3. That the charges were vague.

4. That action u/s 238 of the Act could be taken only in the Committee was incompetent to perform or persistently made defaults in the performance of duties imposed on it by and under the Act or any other Act, or exceeded or abused its powers, and that no such pre conditions for the exercise of power under the said provision of law have been found to exist. To put this argument differently, the contention splits itself into two parts, namely:

(i) that the commission of several defaults over a long period of time alone can amount to a persistant default; and

(ii) that the acts or omissions attributed to the Committee referred to in the statement of allegations did not, within the meaning of Section 238, constitute duties under the Act or under any other statute so as to render a Municipal Committee liable to supersession far the violation thereof.

6. After bearing the learned counsel for the partes at length, I am of the view that there is substance in the first two contentions of the learned counsel and the impugned notification has to be quashed on these grounds alone. A perusal of the order, Annxure "X", passed by the Minister in whom the powers of the Mate Government vested, indisputably shows that he was influenced by the comments of the Officer on Special Duty and office noting when that material had not been disclosed to the members of the Committer who were to be attected by the order of supersession As indicated above, the Officer on Special Duty, who processed the explanation of the Committee, did not endeavour to verify the truth of the assertions made by the Committee in its explanation There were several facts and figures stated by the Committee in support of its defence and it was not enough to brush them aside in a casual may without making a real effort to shift the truth. Some of the charges related to a period before the present Committee came into being and the members of the present Committee could not be visited with a penalty for the sins of their predecessors. Such a course, when adopted, would be shocking to the conscience and against the very scheme and object of Section 238 of the Act. No doubt that if encroachments had been made, arrears of taxes allowed to be collected, or any other irregularities capable of being remedied under the law committed by the Committee at a particular time, it is the duty of the successor Committee to take reasonable, legal and prompt steps to have the illegalities set right and the amounts recovered but the extent of responsibility of the new Committee has to be properly assessed and not that it is to be made liable for the initial wrongful acts on the part of its predecessor. There is required to be a clear approach in this regard and blame apportioned in a rational and reasonable manner. It is the Committee sought to be superseded which must be found to be incompetent to perform or having made persistent defaults in the performance of its duties and not that it can be made responsible for the acts of a previous Committee. Serious consequences ensue from an under of supersession and members lawfully elected by the inhabitants of a municipality, alter such an order, are required to vacate their public office. It is, therefore, all the more necessary that the drastic power of superseding a

Committee is exercised carefully, cautiously and after a proper scrutiny into the allegations, as made against the Committee and the explanation furnished by it so that the order can be termed as a just one. A municipality and its administration are beyond doubt creations of a statute but the municipal system is the very foundation of our democratic Republic. Factions in democracy are bound to exist at any level but what is needed is that they function in a manner so as to advance the rule of law and the object for which the Committee of which they are members had been constituted. Any arbitrary action taken in the matter of superseding a Committee will be contrary to the basic principles on which our Constitution is founded and may amount to throttling democratic institutions without allowing them to grow. In the instant case, the order of the Minister does not disclose an outline of the process of reasoning by which he arrived at the conclusion that the Committee was incompetent to perform or had persistently made default in the performance of its duties. He was functioning as a quasi-judicial authority and was bound, as such, to pass a speaking order with a judicial approach but both of these elements are absent. All that he states is that he has carefully gone through the noting, the statement of allegations and the reply to the show-cause notice and then he reproduces the wording of Section 28 so as to hold the Committee guilty. A judicial approach implies an attempt to find out truth by appraisal of facts and circumstances and not a mechanical adoption of the office noting or the comments to which the defaulting Committee had no opportunity to tender a reply. A duty is cast by law on the Minister himself to apply his mind and decide on a consideration of the statement of allegations and the explanation whether the charges stand proved or not. It is a function which cannot be delegated by him to his subordinates and there is nothing to indicate in his order as to what the contents of the charges were and how the explanation of the Committee raising several points was found by him to be unsatisfactory. There were as many as 11 charges and the explanation covered almost 27 pages. Keeping in view the multifarious activities of an administrative authority like a Minister, he cannot be expected to pass a judgment as is required of a law Court but at the same time he should not have been oblivious to the fact that his order which is penal and drastic in nature was going to produce far reaching consequences throwing out duly elected members of a Committee. The orders passed by him are subject to judicial review by this Court and the Supreme Court and how can it be possible to know the outline of the process of reasoning which led to the impugned decision unless he states reasons in the order itself. The mere mention of conclusions cannot take the place of reasons required to be stated in the order. The necessity for giving reasons has not to be repeated over again in view of the emphasis laid thereon by their Lordships of the Supreme Court in *Bharat Raja Vs. The Union of India (UOI) and Others*, and the observations of a Full Bench of this Court in *the State of Punjab v. Bhagat Ram Patanga* (1969) 71 P.L.R. 625. There is no dispute that the order superseding a Committee is a quasi-judicial one and the quasi-judicial authority could act only on the material before it making a judicial approach and that the question before it is not one of policy or expediency. The order appears to have been passed on

the comments of the Officer on Special Duty which could not legally be taken into consideration. Tek Chand J. in *Prem Swaroop Datta v. The State of Haryana* (1868) 70 P.L. R 542, held that the Government acting in a quasi-judicial capacity could not allow its judgment to be influenced by the comments of the local officers without intimating those comments to the members sought to be removed u/s 16(1)(e) of the Act for the alleged flagrant abuse of the position as Municipal Commissioners. I being in respectful agreement with the observations of the learned Judge adopted them in Civil Writ 6(sic)8 of 1969 (*Chander Parkash Angrish and Ors. v. The State of Punjab and Anr.* C.W. No. 608 of 1969, which was a case of supersession of a Municipal Committee. It must be borne in mind that after the explanation of the Municipal Committee is received, it is the Minister alone who has to apply his mind judicially to the merits of the case and decide whether the explanation furnished in respect of the charges as levelled against a Municipal Committee is satisfactory or not. He may in this regard have the facts verified but his judgment must not be influenced by the conclusions drawn or comments made by any one else and this is what has happened in the present case. In the result the order of the Minister suffers from legal infirmities inasmuch as it is not a speaking one made with a judicial approach nor does it give necessary reasons.

7. The second contention that the facts alleged against the Committee do not constitute violation of any duties under the Act or any other statute, is, however, devoid of force. A Municipal Committee performs functions almost similar to that of the State and is really speaking a State in miniature. An examination of the scheme and policy of the Act leaves no manner of doubt that the allegations made against the Committee if proved, would definitely amount to disregard of the obligations imposed thereunder. If the Committee has power to levy taxes or to lease out its property, or to provide for water supply, sanitation, street lights, construction of public streets etc in order to make available amenities to the inhabitants of the municipality, it casts an obligation on it to effectively do so, so that the inhabitants of that area are benefited and the Committee makes a real contribution towards the development of a welfare State which is the object of our Constitution. The discretion vesting in the Committee in all these matters is not its privilege but an obligation. When a Committee commits defaults, the State has been given a power of control over it in order to see that the Committee performs its duties in a proper manner and does not persistently make defaults in performance thereof. The State itself will be failing in its duty if, when the charges of maladministration are proved, it does not supersede the Committee.

8. The charges, in my opinion, are not vague. All essential details have been given in the statement of allegations so much so, in the matter of street lights, even this much is stated that half the number of bulbs were fused and that they were replaced after a long interval of time. It is stated in unambiguous terms that the Committee had made no arrangements for collection of filth by constructing dust-bins etc. and that the sanitation was not good. I do not think that any vagueness attaches to any of the charges and the contention of the

learned counsel is, therefore, wholly misconceived.

9. I have not been able to appreciate the argument of the learned counsel that even if the charges are proved, the Committee had not rendered itself incompetent to perform its duties or that it cannot be said to be persistently so defaulting within the meaning of Section 238 of the Act. The charges, if proved, clearly make out a case of persistent default on the part of the Committee. I find no force in this argument which must be rejected.

10. In view of my findings that the Minister exercising quasi-judicial functions did not pass a speaking order disclosing the development of the process of reasoning in his mind and that the impugned order does not indicate a judicial approach, the writ petition is allowed and the appropriate writ or direction quashing the impugned notification, Annexure A-4, superseding the Committee directed to issue There is no order as to costs.