

(1955) 10 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 604 of 1955

Lokesh Chandra

APPELLANT

Vs

Commissioner, Rohilkhand Division, Bareilly and Others

RESPONDENT

Date of Decision : 11-10-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 40(1), 40(4), 82

Citation : AIR 1956 All 147

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that the order of removal of the applicant from the membership of the Municipal Board of Bisalpur in the district of Pilibhit, passed on 9-5-1955 by the Commissioner be quashed. In the alternative, it is also prayed a writ of mandamus be issued to the State Government directing them to decide the appeal pending before the State Government at once.

2. The facts set out in the affidavit Bled in support of the petition are that the applicant was elected a member of the Municipal Board, Bisalpur in the district of Pilibhit in the elections held in October, 1953. On 1-3-1954 the services of the Secretary of the Board were terminated and the Secretary was asked to hand over charge to Sri S. S. Dube, the Sanitary Inspector of the Board from 3-3-1954 till 13-10-1954. Sri S. S. Dubey, Sanitary Inspector, acted as the Secretary.

On 30-9-1954, one Sri S. S. Jaiswal was selected as the permanent Secretary of the Board. On 13-10-1954 the President of the Board sent a letter to Sri S. S. Dubey asking him to hand over charge of his office as acting Secretary to the applicant as Sri S. S. Dubey was himself a candidate for secretaryship and he did

not like the selection of Sri S. S. Jaiswal as Secretary. The applicant was asked by the President to look after the work of the Secretary of the Board in an honorary capacity.

On 22-10-1954 a meeting of the Board was held and the arrangement made by the President requesting the applicant to work as the honorary Secretary of the Board till the permanent Secretary took over charge, was approved. Till 12-12-1954 the applicant worked as the Secretary of the Board.

On 6-11-1954, the District Magistrate, Pilibhit wrote to the President pointing out to him that the appointment of the applicant as the honorary Secretary was against the Rules and the President did not act properly in getting the appointment of the applicant as the honorary Secretary approved by the Board.

On 18-1-1955, the Collector Incharge of the Rohilkhand Division sent a communication to the President, Municipal Board, Bisalpur, requesting him to ask the applicant to show cause why he should not be removed from the membership of the Board u/s 40, Municipalities Act. It is necessary to quote certain passages from the communication. The letter said that

"the applicant should be asked to show cause why he should not be removed from the membership of the Board because he accepted the job of the honorary Secretary without the previous sanction of the Commissioner and further he abused his position as a member of the Board in casting his vote in his favour in the meeting of the Board on 22-10-1954."

An explanation was given by the applicant in which he pointed out that he was only working in an honorary capacity till the permanent, man came and took over charge as Secretary and as such he did not violate any of the Rules. As regards the abuse of his position casting his vote, it was expressly mentioned that he never cast his vote in the meeting in favour of the resolution sanctioning his appointment on 22-10-1954 as the question of taking votes did not arise. An order of the Commissioner dated 9-5-1955 was communicated to the applicant on 16-5-1955 which reads as follows :

"It is hereby notified u/s 56 Municipalities Act, 1916 that a vacancy of a member has occurred in the Municipal Board Bisalpur, district Pilibhit, consequent on the removal of Sri Lokesh Chandra, member, u/s 40 (1) (c) of the Act." This is the only order which was communicated to the applicant and from this it appears that he was removed u/s 40 (1) (c), Municipalities Act. The necessary inference which can be drawn from this is that the charge of the abuse of his position as a member casting his vote on 22-10-1954 does not appear to have been accepted by the Commissioner. We are, therefore, concerned with the charge of the applicant having accepted the appointment as the Secretary.

3. Notices were issued to the Commissioner, Rohilkhand Division, the State of Uttar Pradesh and the Municipal Board, Bisalpur and no counter-affidavit has been filed on behalf of any of the opposite parties. The facts, therefore, alleged

in the affidavit filed in support of the petition have to be accepted as true.

The question, therefore, which arises for consideration is whether the applicant's acting as the honorary Secretary till the permanent Secretary took over charge, really amounted to his having knowingly acquired or continued to hold, directly or indirectly, or by a partner, any share or interest in any contract by, or on behalf of the Board.

In my opinion, on the request of the Board, the applicants consenting to temporarily look after the work of the Secretary without any remuneration does not amount "to having acquired or continued to hold, directly Or indirectly or by a partner, any share or interest in any contract by, or on behalf of the Board." What Section 40 (1) (c) contemplates is that the members should not have any interest in any of the contracts with the Board.

In the present case when he only undertook to discharge the duties of the Secretary without payment of any remuneration, he got no benefit out of the employment and acquired no share or interest in any contract. The contention of the Standing Counsel is that Section 40 (1) (c) provides that a member has within the meaning of Section 82 of the Act knowingly acquired or continued to hold, directly or indirectly any interest in any contract, and by referring to Section 82, the entire provision of Section 82 has been brought in Section 40.

Section 82 provides that a member of a Board who, otherwise than with the permission in writing of the Prescribed Authority knowingly acquires or continues to have, directly or indirectly, by himself or his partner, any share of interest in any contract or employment, with, by, or on behalf of the Board shall be deemed to have committed an offence u/s 168, Penal Code. Section 82 expressly provides that any member having any interest or share in any contract or employment with, by, or on behalf of the Board will be regarded to have committed an offence.

The words "any share or interest in any em-ployment with the Board" have been omitted from Section 40 (1) (c) and consequently it cannot be said that by merely referring to Section 82, the whole section also has been brought in Section 40 (1) (c). From the letter, of the District Magistrate it appears also that he has fallen into similar error because the charge which he has made out in his letter is that the applicant accepted the job without the sanction of the Prescribed Authority.

Previous sanction of the Prescribed Authority can only Validate an act u/s 82 and no previ-ous sanction u/s 40 (1) (c) could validate an act. In my opinion, therefore, the charges did not make out a case u/s 40 (1) (c) against the applicant. Apart from this, Section 40 (1) further provides that the State Government in the case of a city, or the Prescribed Authority in any other case, may remove a member of the Board on any of the following grounds.

4. Sub-section (4) of the said section provides that

"Provided that when either the State Government or the Prescribed Authority, as the case may be, proposes to take action under the foregoing provisions of this section an opportunity of explanation shall be given to the member concerned, and when such action is taken the reasons therefore shall be placed on record."

The order passed by the Prescribed- Authority is not before me and the allegation made by the applicant that no reasons were given by the Prescribed Authority has not been controverted by the opposite parties. In these circumstances it has been rightly argued by the applicant that the order passed by the Prescribed Authority did not comply with the provisions of Section 40 (4) of the Act and even on that ground the order of removal is invalid.

5. It was lastly contended by the opposite parties that as an appeal has been filed by the applicant before the State Government which is still pending, the applicant cannot be allowed the relief of certiorari. The contention of the applicant is that the order passed for his removal is without jurisdiction and it is invalid and in these circumstances even if the appeal is pending, it is no bar to the applicant to come to this Court for a Writ of certiorari against the order of the Prescribed Authority.

Apart from that, it is for some time now that the applicant has been removed and the State Government has not yet disposed of the appeal. In the circumstances, the applicant could not have waited indefinitely for the decision of the State Government before coming to this Court under Article 226 of the Constitution. There is, therefore, no substance in the preliminary objection.

6. I, therefore, allow this petition and quash the order of removal of the applicant and direct that he be permitted to function as a member of the Municipal Board, Bisalpur.