

(1984) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 105 of 1971

Madan Lal Punga

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 17-10-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Municipal Act, 1968 — Section 15(1)

Citation : AIR 1985 HP 64 : (1985) ShimLC 98

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Advocate : D.D. Sood, for Chhabil Dass, for the Appellant; P.N. Nag, General, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, J.—The petitioner was elected as a member of the Municipal Committee, Chamba in 1967. One Miss Padma Vati, daughter of Mr. Amar Nath, submitted an application to the competent authority for the grant of eligibility certificate in 1968. A representation was made in the said application that Miss Padma Vati had resided in Mohalla Kashmiri, Chamba for more than 3 years prior to the date of the application. The aforesaid averment made in the application was verified to be correct by the petitioner. On the basis of the said application, duly verified by the petitioner, Miss Padma Vati was granted eligibility certificate by the Executive Magistrate, Chamba on March 15, 1969.

2. It appears that an enquiry came to be made subsequently into the circumstances leading to the grant of eligibility certificate to Miss Padma Vati during the course of which it transpired that she had passed the matriculation examination and the J.B.T. examination from Jullundur in 1967 and 1968 respectively. Besides, her parents resided at Chandigarh and not in Chamba. It thus transpired that the eligibility certificate was obtained by her on a misrepresentation.

3. A notice dt. April 20, 1971, Annexure PA, was thereupon issued to the petitioner to show cause why he should not be removed from the membership of the Municipal Committee and disqualified from contesting elections under the provisions of Section 15 of the Himachal Pradesh Municipal Act, 1968 (hereinafter referred to as the Act). The show cause notice mentioned that by verification of wrong facts contained in the application of Miss Padma Vati, the petitioner had flagrantly abused his position as a member of the Municipal Committee and rendered himself liable for removal u/s 15(1)(e) of the Act.

4. The petitioner showed cause by his reply dt. May 5, 1971, Annexure PB. The petitioner asserted that the verification made by him was correct. According to the petitioner, Miss Padma Vati was educated and maintained by her sister Smt. Swaran Lata at Chamba since 1966. The petitioner also pleaded that the verification of the application was an act which had no nexus or connection with his position as a member of the Municipal Committee and that no action for his removal u/s 15 of the Act could therefore, be initiated against him.

5 . By the impugned order dt. June 11, 1971, Annexure PC, the petitioner was removed from the membership of the Municipal Committee, Chamba, in exercise of the powers conferred by Section 15 on the ground that the verification done by the petitioner was "wrong" and that thereby he had flagrantly abused his position as a member of the Municipal Committee. The petitioner has challenged the said order in the present petition.

6 . Section 15, Sub-section (1), of the Act empowers the State Government, by notification to remove any member of a Municipal Committee if, in its opinion, any one or more of the ground(s) set out therein is made out. The ground which is relevant for the present purpose is found enumerated in Clause (e) which reads as under : --

"(e) if, in the opinion of the State Government, he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee;"

7 . In *Panna Lal v. Secretary to Government Haryana Local Government Department* (1968) 70 PLR 244, Section 16(1)(e) of the Punjab Municipal Act, 1911 (hereinafter referred to as the Punjab Act), which is in pari materia, fell for consideration before Tek Chand, J. The learned Judge, while construing the words "flagrantly abused his position as a member of the Committee", made the following pertinent observations at page 247 :

" flagrantly" means gkringly, notoriously, scandalously. Literally flagrant means blazing, burning, flaming, glowing. In respect of an offence or a misconduct, it is used in the sense of glaring, notorious, scandalous, that is to say, "flaming into notice". The framers of the statutory rules were drawing a distinction between a mere abuse of one's position and a "flagrant abuse" to which the epithets of "enormous", heinous" or "glaringly wicked" could be applied. A position is said to

be abused when it may be put to a bad use; or for a wrong purpose. In the sense of abusing one's position, the term has meaning varying in shades from irregular and improper use not necessarily with a bad motive, to an intended or deliberate corrupt practice. The statutory rule as worded clearly suggests that abuse of one's position, unless flagrant, would not result in removal of a member of the committee.

The word "flagrantly" before "abused his position" cannot be overlooked. It indicates a stress being laid upon the nature of abuse of position which must in the circumstances be glaring, notorious, enormous, scandalous or wicked."

8 . In *Jagjit Singh Marwaha v. State of Haryana* 1968 Cur LJ 643 Sarkaria, J. (as he then was), had an occasion to construe the relevant provision of Section 16(1)(e) and he has made similar observations. The learned Judge observed at page 652 :

"As pointed out by Tek Chand, J. in *Panna Lal v. Secretary to Government, Haryana, Local Government Department, Chandigarh* 1968 PLR 244 the word "flagrantly" in Section 16(1)(e) before "abused his position" cannot be overlooked. It indicates a stress being laid upon the nature of abuse of position which must in the circumstances be glaring, notorious, enormous, scandalous or wicked.

What the clause "flagrant abuse of his position as a member" means is the doing of such act or acts by a member of a committee in disregard of his duty as would shock a reasonable mind. See *Joginder Singh v. The State of Punjab* (1963) 65 Pun LR 267 : (AIR 1963 Punj 280) (FB).

There is ample authority in support of the proposition that every contravention of the Municipal Act or the rules framed there under by a member does not amount to abuse of his position by such member."

9 . In *Kartar Chand v. State of Punjab* (1970) 72 Pun LR 683, H. R. Sodhi, J. made the following pertinent observations while interpreting Section 16(1)(e) of the Punjab Act at page 686 :

".....What constitutes a flagrant abuse depends on facts and circumstances of each case..... 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 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."

10 . The decisions referred to above are ample authority in support of the proposition that any and every abuse by the member of a Municipal Committee of his position, even if undesirable, improper or unlawful, would not justify an action u/s 15(1)(e) of the Act. Before a member of Municipal Committee could be removed from his office u/s 15(1)(e) of the Act, the impugned misconduct of the member must be such as could be regarded as glaringly heinous, enormous, scandalous or wicked. Besides, the impugned misdemeanour must be by the member in disregard of his duty and the act must be such as would shock a reasonable mind. Unless the impugned misconduct of the member in this disregard of his duty is heinous, scandalous, notorious or wicked and amounts to abusing his position in a glaring and shocking manner, the power of removal u/s 15(1)(e) of the Act cannot possibly be exercised. The particular circumstances and conditions under which such misdemeanour was exhibited must be kept in mind before arriving at a decision whether or not to exercise the power of removal u/s 15(1)(e) of the Act.

11. Now, in the instant case, the sole allegation against the petitioner was that he was guilty of verification of "wrong" facts contained in the application of Miss Padma Vati which led to the grant of eligibility certificate in her favour. In the impugned order of removal also, what is found established is that the certification done by the petitioner was wrong. It is neither alleged nor held established that the petitioner knowingly or intentionally gave a false certificate or he verified facts which to his knowledge were untrue. Besides, it is neither alleged nor proved that the wrong verification was made by him to procure any personal benefit or gain. At the highest, the petitioner could be regarded as having acted without exercising due care and caution and such an act on the part of the petitioner could not be reasonably regarded as satisfying the condition of his having "flagrantly abused his position as a member of the Committee". This is apart from the question whether wrong verification by the petitioner amounts to an act which could be regarded as abusing his position as a member of the Municipal Committee in disregard of his duty on which aspect I am not called upon to express any opinion having regard to the view which I am inclined to take on the other aspect. It is thus apparent that the impugned order removing the petitioner from the membership of the Municipal Committee. Chamba could not have been legitimately passed in exercise of the powers conferred by Section 15(1)(e) of the Act.

12 . The learned Advocate General made two submissions for my consideration. First, the petition is rendered infructuous inasmuch as the term of the Municipal Committee has run out long time back and no disqualification from seeking election to the Municipal Committee is involved in the present case and, secondly, the decision of the State Government as to whether or not a member has flagrantly abused his position being subjective in nature was not open to judicial scrutiny. Both the submissions must be rejected as being without merit.

13 . True it is that the term of the Committee has expired long time back and

that, therefore, the impugned decision has lost its present and imminent impact on the exercise of his right by the petitioner as an elected member of the Municipal Committee. However, the impugned decision of removal, based as it is on the ground that he had flagrantly abused his position as a member of the Committee, has left an indelible stigma which would continue to attach to Him. The petitioner can, therefore, justifiably maintain the petition and seek quashing and setting aside of the impugned decision if on merits he has a good case.

14. The exercise of the power u/s 15(1)(e) of the Act is indubitably founded on the opinion to be formed by the State Government. However, as held in Panna Lal's case 1968 PLR 244 as well as in Jagjit Singh Marwaha's case 1968 CLJ 643 (supra), the decision of the State Government as to whether or not a member has flagrantly abused his position is always open to judicial scrutiny. It is the function of the Court to construe the language of a statute and to ascertain whether or not, on the facts established, the exercise of the power by the competent authority is within the four corners of the statute. The law on the subject is succinctly stated in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, The Supreme Court was concerned in that case with a similar expression ("in the opinion of) and one of the questions was as to the extent to which the action based on such an opinion was open to judicial scrutiny. Hidayatullah, J. (as he then was) and Shelat, J. who were amongst the learned Judges who spoke for the majority, expressed themselves clearly on this point. Hidayatullah, J. observed as follows at page 309 :

".....No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out."

Shelat. J. said at pages 323, 324 and 325 :

".....Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.

Therefore, the words, "reason to believe" or "in the opinion of do not always lead

to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative.....There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in Sub-clause (i), (ii) or (iii). If these circumstances were not to exist, can the government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist?It is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded.

There must therefore exist circumstances which in the opinion of the Authority suggest what has been set out in Sub-clause (i), (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion there from suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute."

The exercise of power u/s 15(1)(e) is thus always open to judicial review so far as it is confined within the aforesaid limits.

15 . For the foregoing reasons, the petition succeeds and it is allowed. The impugned decision Annexure PC is quashed and set aside. No costs.