

(1958) 09 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2002 of 1958

Mehar Chand Mehta

APPELLANT

Vs

The City Board, Shahjahanpur and Another

RESPONDENT

Date of Decision : 30-09-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 69A, 69A(1), 73

Citation : AIR 1959 All 230 : (1959) 1 LLJ 460

Hon'ble Judges : J. Sahai, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; P.C. Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

J. Sahai, J.—The petitioner was appointed as the Education Superintendent of the Municipal Board, Shahjahanpur, in a permanent capacity on 29th April, 1956. According to his allegations he has been working very satisfactorily and every one who had occasion to see his work was pleased with it. The present President of the Municipal Board, Shahjahanpur (hereinafter referred to as the President) took charge of his office about a year back.

The petitioner's case is that there is strong party feeling in the Municipal Board. One party is of Sri Bishan Chand Seth, an ex-President, and the other is of the present President. It is alleged by the petitioner that since he was appointed by "Sri Bishan Chand Seth the present President is prejudiced against him and wants to harm him.

It is also alleged that the Executive Officer of the Board was suspended by Sri Bishan Chand Seth during his term of office but after Sri Bishan Chand Seth resigned from the office of President of the Board the Executive Officer was reinstated. It is also alleged that the Executive Officer is ill disposed towards the petitioner.

On 1st July, 1958 the present President ordered the suspension of the petitioner u/s 69-A of the U. P. Municipalities Act. That order was communicated to the petitioner on 2nd July, 1958 by the Chairman, Education Committee. The present writ petition is directed against that order of suspension.

The prayer in the petition is for the issue of a writ of certiorari or order or direction in the nature of certiorari quashing the order of suspension of the petitioner dated 1st July, 1958 conveyed to him by the order of the Chairman, Education Committee, dated 2nd July, 1958. There is also the usual prayer for the issue of such other writ, order or direction as the petitioner may be found entitled to under the law.

2. The grounds on which the present petition has been pressed before me are three. The first submission of the learned counsel for the petitioner is that a person can be suspended only after charges have been framed against him and inasmuch as no charges had been framed against the petitioner on 1-7-1958 the order of suspension is illegal and without jurisdiction.

The second submission is that the President has no power to suspend the petitioner because his case will be governed not by the provisions of Section 69-A but by the provisions of Section 73 of the U. P. Municipalities Act and it is only the Chairman of the Education Committee who is entitled to take disciplinary action including suspension against the petitioner. Lastly it is submitted that the order of suspension is mala fide and actuated by private grudge and prejudice and is illegal.

3. A counter affidavit has been filed on behalf of the respondents which is sworn by Sri H. J. Lambert, Octroi Superintendent and officiating Executive Officer of the Board. It is not necessary to narrate all the allegations made in the counter affidavit and I shall mention only those of the allegations which are material for the decision of the case.

According to the counter affidavit the Board did not appoint the petitioner permanently but only in a temporary capacity. It is further stated that there are definite charges against the petitioner and a charge sheet has been drawn up against him on 15th July, 1958. It is further alleged that it was sent to the petitioner by registered post at his permanent address but was not delivered to him.

4. I will take the first submission of the learned counsel for the petitioner first. Section 69-A of the U. P. Municipalities Act runs as follows :

"69-A. (1) If the President has reasons to believe that the Executive Officer or the Secretary or any of the other officers of the Board appointed u/s 68, is corrupt or has persistently failed in the discharge of his duties or is otherwise guilty of misconduct, he may frame charges against him and where he is satisfied that it is so necessary, he may, for reasons to be recorded, suspend him pending the completion of the enquiry.

(2) Whenever the President takes action under Sub-section (1) he shall inform the State Government and also forward to it a copy of the charges framed.

(3) The enquiry under Sub-section (1) shall be carried on in such manner as may be prescribed by rules.

(4) After the inquiry is completed, the president shall submit the record with his own recommendation to the State Government or to the Board as he may consider fit. The State Government or the Board, as the case may be, shall thereupon, notwithstanding anything contained in Sub-section (1) of Section 58, or 67 or 69, proceed to consider the report and may, after such further inquiry as it may deem necessary, punish, dismiss, remove or exonerate the Executive Officer or the Secretary or such other officer to whom Section 69 applies, as the case may be.

(5) Whenever the Board acts under Sub-section (4) the condition prescribed in Section 58 shall apply and an appeal shall lie to the State Government in the manner and to the extent provided in the said section."

It is not disputed that the petitioner was appointed u/s 68 of the U. P. Municipalities Act. The learned counsel for the petitioner has contended that the words

"he may frame charges against him and where he is satisfied that it is so necessary, he may, for reasons to be recorded, suspend him pending the completion of the enquiry"

in Section 69-A of the Act tend to show that the framing of the charges must precede the suspension. It would lie noticed that a suspension is permissible only pending completion of the enquiry. There must therefore be an enquiry started before a person can be suspended. To my mind the enquiry contemplated by Section 69-A is initiated by the framing of the charges. Both for this reason as also because of the grammatical construction of Section 69-A, I am of the opinion that the framing of charges must precede or at any rate synchronise the suspension.

The learned counsel for the respondents has argued that the power to suspend and the power to frame charges are two different powers and the one is not dependent upon the other. He further contends that an enquiry is not necessarily started after the framing of the charges. The word "enquiry" has not been defined in the U. P. Municipalities Act. There is no section or rule which defines an enquiry. As to when an enquiry starts has to my mind to be gathered from the language of Section 69-A of the Act itself.

To my mind the enquiry contemplated by Section 69-A is started with the framing of charges and no suspension order can be passed in a case where no enquiry has been started i.e., no charges have been framed though it may be contemplated to start an enquiry or to frame charges. There is no other section in the Municipalities Act which authorises either the Board or the President to

hold an enquiry in connection with the officers mentioned in Section 69-A.

Therefore the right to hold an enquiry has been given to the President only by virtue of Section 69-A of the Municipalities Act and he can act only within the four corners of that section. That section does not provide for an enquiry being started before the framing of the charges and in fact to my mind requires that the framing of the charges must be either anterior to the passing of the order of suspension or at any rate simultaneous with it. What I am saying is supported by Sub-section (2) of Section 69-A which says :

"Whenever the President takes action under Sub-section (1) he shall inform the State Government and also forward to it a copy of the charges framed,"

It will be noticed that the words "if any" are not to be found after the words "copy of the charges framed" in Section 69-A (2). If the idea was that the framing of the charges was not necessary before the suspension order could be passed, the words "if any" would have found place at the end of subsection (2) of Section 69-A and that sub-section would have run as follows :

"Whenever the President takes action under Sub-section (1) he shall inform the State Government and also forward to it a copy of the charges framed, if any."

But this sub-section clearly requires that if a person has been suspended u/s 69-A(1) not only the information that he has been suspended shall be communicated but a copy of the charges framed shall also be sent to the State Government. If it was not the intention that there could be no suspension if there was no charge sheet, Sub-section (2) of Section 69-A would not have been worded as it is.

Inasmuch as that sub-section requires that along with the information about suspension a copy of the charges framed should also be sent, it appears to me that the intention of the Legislature was that the framing of the charges and the suspension must come together and the framing of charges could not take place 15 days after the suspension. I am therefore of the opinion that the first submission of the learned counsel for the petitioner is correct.

5. The second ground of the learned counsel for the petitioner is that u/s 73 of the U. P. Municipalities Act (which is reproduced below) any person on the educational establishment of the Board can be punished only by the Chairman of the Education Committee, and he can also be suspended by the Chairman of the Education Committee and not by the President. Section 73 runs as follows:

"73. Appointment, etc., of servants on the educational establishment.-- (1) Subject to the provisions of Sub-section (2), the appointment of persons on the educational establishment of a board shall be made by the Chairman, Educational Committee, or such other authority as may be specified in this behalf by the State Government, and different authorities may be specified for different classes of posts on the establishment.

(2) The State Government may make rules regulating the recruitment, punishment, dismissal, appeal and other conditions of service of persons appointed to the educational establishment of a board."

6. The learned counsel for the petitioner has contended that Section 73 has come on the Statute Boole much later than Section 69-A and therefore it must be held that so far as Section 73 provides the provisions of Section 69-A will be deemed to have been repealed. As a second string to the bow the learned Counsel submits that in any case the provisions of Section 73 deal with the special class of servants of the Board i. e., persons on the educational establishment, and therefore the special provisions of Section 73 would apply to the exclusion of the general provisions of Section 69-A. I am unable to agree with either of the two submissions of the learned counsel. It would be noticed that Section 73 as it originally stood read as follows:

"The power to appoint, grant leave of absence, to punish, dismiss or control any servant on the educational establishment of the board other than a superintendent or lady superintendent of education shall, in any municipality where a resolution is passed in this behalf, be exercised by the execution committee of the board, but shall be subject to any conditions or restrictions imposed by resolution in respect of the delegation of these powers by the committee or in respect of any other matter; and shall also be subject in case of dismissal or removal of servants on a monthly salary exceeding Rs. 50/- or in a city Rs. 75/-, to an appeal to the State Government which must be presented to the State Government, within one month of the date on which the order of dismissal or removal is communicate 6! to the person in respect of whom the order is made."

It is true that the words "other than a superintendent or lady superintendent of education" occurring in the original Section 73 have been deleted and now Section 73 applies to all the persons on the educational establishment including the Superintendent and lady superintendent of education.

But to my mind Section 73 is not in conflict with Section 69-A. Section 73 deals with the power to appoint and the power to punish and dismiss an employee of the Board on the educational establishment. Suspension can be of two kinds -- suspension pending enquiry and suspension by way of punishment. Section 69-A contemplates suspension pending enquiry and therefore that suspension cannot be deemed to be a punishment. If it cannot be deemed to be a punishment the provisions of Section 73 would not apply and the provisions of Section 69-A remain unaffected by the provisions of Section 73.

In the first place Section 73 does not at all deal with the kinds of suspension contemplated by Section 69-A and in the second place inasmuch as Section 69-A deals, so far as the educational establishment is concerned, only with the case of the superintendent or lady superintendent of education and not with other classes of employees of the educational establishment it will be Section 69-A

which will be the special provision and not Section 73. I am therefore unable to accept this argument of the learned counsel for the petitioner.

7. The third submission of the learned counsel for the petitioner is that the order of suspension is mala fide and actuated by private grudge and prejudice. I am not satisfied on the material on the record of the case that the order of suspension is either mala fide or based on any private grudge or prejudice. I therefore overrule this contention also.

8. The question that still remains for consideration is that as the position stands today a charge-sheet has been framed against the petitioner and will it now be proper to quash the order suspending the petitioner on the ground that at the time when it was passed no charge-sheet had been framed. Mr. P. C. Chaturvedi the learned counsel for the respondents has submitted that the order of this Court quashing the order of suspension may become infructuous inasmuch as the President of the Board can again suspend the petitioner and the order which he may now pass will not be open to the objection that it was passed without a charge-sheet having been framed because now a charge-sheet has already been framed on 15-7-1958.

In my opinion the order of suspension having been passed before the charges were framed, was in excess of jurisdiction and was wholly an illegal order and it cannot be legalised by the framing of the charges 15 days after the suspension order was passed. In my opinion if an order is without jurisdiction it must be quashed by a writ of certiorari and the mere fact that a similar order may later on be passed after legalising the proceedings should not stand in the way of the Court quashing that order. I am aware of the case of *Rex v. Mayor etc. of London* reported in (1787) 100 ER 96 where a writ was refused on the ground that the conduct of the person suspended was highly objectionable even though it was held that the order suspending him was illegal.

There is no material before me in the affidavits filed in the case to show that the petitioner is prima facie guilty of serious offences or that his conduct is reprehensible or at any rate so reprehensible as to disentitle him to get any relief from this Court or that there were good grounds for suspending him. In the English case, on the admission of the person suspended himself it was clear that his conduct was highly reprehensible. That is not so in the present case. The English case therefore is clearly distinguishable.

9. I therefore allow this petition and quash the order dated 1-7-1958 suspending the petitioner. In the circumstances of the present case however, I make no order as to costs.