
(1958) 01 MP CK 0021
In the Madhya Pradesh High Court
Case No : L.P.A. No. 58 of 1957

Municipal Com. Kareli

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-01-1958

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 57, 57(2)

Citation : (1958) J LJ 589

Hon'ble Judges : M. Hidayatullah, C.J; B.K. Choudhari, J; B.K. Chaturvedi, J

Bench : Full Bench

Advocate : A.P. Sen, for the Appellant; M.P. Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

Hidayatullah C.J. & Choudhuri, J.—This is a Letters Patent Appeal from an order of Bhutt J. in Miscellaneous Petition No 552 of 1956 decided on 21st February 1957.

2. By an order u/s 57 (2) of the C. P. and Berar Municipalities Act, 1922, the State Government superseded the Kareli Municipality for a period of two years. Certain charges were framed and a notice was sent to the Municipal Committee to show cause why it should not be superseded. The Municipal Committee sent a detailed reply, but the State Government did not accept the explanation furnished and superseded the Municipality.

3. The present petition was filed by the Municipal Committee through its President for getting the said order quashed. When Bhutt J. declined to interfere the present appeal was filed. In doing so, Bhutt J. followed a decision of the Nagpur High Court in Ramchandra Rai vs. State of Madhya Pradesh, M P. 80 of 1950, decided on 10th August 1951. That decision was given on when on an earlier occasion also the Kareli Municipality was superseded.

4. Mangalmurti and Mudholkar JJ. in the cited case laid down the law in the following words:--

In the present case the complaint made by the applicant is that in dissolving the Municipal Committee u/s 57 (1) of the C. P. Municipalities Act of 1922, the State Government acted mala fide as there were in fact no grounds upon which the Municipal Committee could be properly dissolved. The action of the State Government is wholly administrative and though in taking it they had to satisfy themselves about the necessity of doing so, we do not think it appropriate to go behind the satisfaction of the State Government even though the satisfaction had to be, as the applicant's learned counsel contends, objective and not merely subjective. The reason for our placing this limitation up-(sic) ourselves is that it will lead to untold (sic)convenience and confusion if administrative decisions are subjected to review by Courts of law as a matter of routine. In cases where, for instance, the action is mala fide or arbitrary or without jurisdiction or in utter violation of the principles of law or natural justice, we may have to review the action. We do not however think that the present case is of a kind in which we ought to review the action taken by the State Government. Here, before dissolving the Committee, charges were framed and communicated to that body. Their explanation was called for and considered and it was after that that the order of dissolution was passed. We, therefore, decline to consider the sufficiency or adequacy of the material upon which the charges were regarded as proved. The application must, therefore, fail.

This statement of the law by the Division Bench is questioned before us. The law requires a reasonable opportunity of showing cause to the Municipality against the proposed action. The short question is whether the requirements of the law are satisfied by taking the explanation of the Municipality. If the standard is that much only, there can hardly ever be any interference by Courts. There is room for argument that by the words of the Act an objective standard is imposed. Not only is the State Government required to give an opportunity to show cause, but also it is required to record its reasons before superseding the Municipality. There is considerable force in the argument, and we think that the point was not adequately considered on the earlier occasion. Prima facie, the opinion prevailing may need a restatement even if it be found to be correct. We are accordingly of the opinion that the case be heard by a Full Bench, and we recommend accordingly.

OPINION OF THE FULL BEACH

Hidayatullah, C.J.

5. This appeal is against an order of Bhutt, J, in Miscellaneous Petition No, 552 of 1956, decided on 21st February 1957. It was referred to this Full Bench, but at the suggestion of counsel and with the concurrence of the learned Judges who made the reference, the decision of the Full Bench has been confined only to the examination of the decision in Miscellaneous Petition No. 80 of 1950, decided on 10th August 1951,

6. The Municipal Committee, Kareli was (sic) by an Order of the State

Government Certain charges were framed and explanation of: the Municipal Committee was called for. The State Government after calling for a report from the Deputy Commissioner decided supersede the Municipal Committee and passed an Order to that effect. The question in the miscellaneous petition was whether the action of the State Government in superseding the Municipal Committee was correct. The learned single Judge, who dealt with the miscellaneous petition, following the decision of a Division Bench in the above case (Miscellaneous Petition No. 80 of 1950), held that it was not open to this Court to question the decision of the State Government. The correctness of the Division Bench ruling, at least in one particular, was doubted by the Division Bench who made the reference. It is that point only to which we shall address ourselves.

7. In stating the law the earlier Division Bench of Mangalmurti and Mudholkar, JJ. observed as follows:-

In the present case the complaint made by the applicant is that in dissolving the Municipal Committee u/s 57 (1) of the C.P. Municipalities Act of 1922, the State Government acted mala fide as there were in fact no grounds upon which the Municipal Committee could be State Government dissolved. The action of the State Government is wholly administrative and though in taking it they had to satisfy themselves about the necessity of doing so, we do not think it appropriate to go behind the satisfaction of the State Government even though the satisfaction had to be, as the applicant's learned counsel contends, objective and not merely subjective. The reason for our placing this limitation upon ourselves is that it will lead to untold convenience and confusion if administrative decisions are subjected to review (sic) law as a matter of routine.

In cases where for instance, the action is mala fide or arbitrary or without jurisdiction or in utter violation of the principles of law Or natural justice, we may have to review the action. We do not; however think that the present case is of a kind in which we ought to review the action taken by the State Government. Here, before dissolving the committee, charges were framed and communicated to that body. Their explanation was called for and considered and it was after that that the order of dissolution was passed. We, therefore, decline to consider the sufficiency or adequacy of the material upon which the charges were regarded as proved. The application must, therefore, fail.

The objection is to the last but on sentence of these observations.

8. Under sub-section (2) of Section 57 of the Central Provinces and Berar Municipalities Act, 1922 it is provided as follows: --

If after fresh election the new committee continues to be incompetent to perform, or to make default in the performance of, such duties or exceeds or abuses its powers to a grave extent, the Provincial Government may, by an Order stating the reasons" therefor published in the Gazette, declare the committee to be incompetent or in default, or to have exceeded or abused its powers, as the

case may be, and supersede it for a period to be specified in the order.

Before making the order the State Government is required to give a reasonable opportunity to the committee to furnish an explanation (sub-section (5) of Section 57 *ibid*).

9. The short question is that where charges have been framed and the explanation of the municipal committee is in, whether the reasons given for superseding the committee can be examined by the Court. We agree with the learned Judges of the earlier Division Bench that the Court may in its writ jurisdiction interfere if the order is *mala fide* arbitrary, without jurisdiction, or is utter violation of the principles of law or natural justice. We are, however, not satisfied that the Court is incompetent to consider the sufficiency, or adequacy of the material upon which the charges were regarded as proved. We would like to restate this part of the law again. The learned Judges of the earlier Division Bench quite correctly gave the four reasons on which the Court may interfere, but they, however, took away the effect of much that they had said before by observing as follows:--

We, therefore, decline to consider the sufficiency or adequacy of the material upon which the charges were regarded as proved.

In our opinion, this dictum takes away the power of examining the reasons which may be entirely unrelated to the facts proved, and it is too wide and needs to be restated.

10. The Central Provinces and Berar Municipalities Act, 1922 requires that supersession of a Municipal Committee may be done when, one or more of the conditions laid down in sub-section (2) of Section 57 of the Act are found, to exist. The reasons must have relation to those conditions and must be sufficient for the exercise of the power conferred on the Government. The Court will not examine the reasons as in an appeal, but will certainly examine them with advertence to their reasonableness and, sufficiency for the legitimate exercise of the power granted to the Government. Whenever action has to be reasonable and the reasons for the action to be recorded, the test is not entirely subjective unless the law says that it should be so: See *Nakkuda Ali vs. M.F. De S. Jayaratne*, 1951 A.C. 66. The learned counsel for the Municipal Committee cited *Vishvanath vs. The State of Madhya Bharat*, 1954 M.B.L.J. 1, but that case also goes too far on the other side. We do not agree with all that has been said in the *Madhya Bharat* case. The issue of supersession is; of course, not to be tried as a law suit with a right of appeal to the High Court. At the same time, the action of the Governments has to be reasonable and the reasons for the action have to be stated, and the exercise of power can be examined to see whether in the circumstances under which it has been exercised the necessary power under the Act flows to the, :Government.

11. In a democratic society it is of the essence that democratic institutions are allowed to function and not superseded on trumped up charges inadequately

brought home or unreasonably accepted, The courts will be vigilant to see that such over-reaching powers are kept within the four corners of the statute granting them. We think that the fact that a reasonable opportunity to show cause has been made a condition precedent to the exercise of the power and that reasons for the supersession have to be notified to the electorate shows that there is not to be a subjective appraisal but that the reasons must be sufficient under the Act and an objective test is indicated. The requirements of the law are not satisfied by accepting insufficient or inadequate reasons for supersession. We think that the courts are at liberty to examine the reasons for this limited purpose in addition to the purposes which the learned Judges of the earlier Division Bench (Mangalmurti and Mudholkar jj.) have already indicated in their order.

12. Let the papers go back, to the Division Bench for the disposal of the case in the light of this opinion.

Choudhuri, J.

13. I agree.

Chaturvedi, J.

14. I agree.

ORDER OF THE DIVISION BENCH

Hidayatullah, C.J. and Choudhuri, J.

15. This is a Letters Patent Appeal from an order of Bhutt J. in Miscellaneous Petition No. 552 of 1956, decided on 21st February 1957.

16. The State Government declared the area under the Notified Area Committee, Kareli to be a municipality in the year 1948 under sub-section (2) of Section 5 of the Central Provinces and Berar Municipalities Act, 1922 (hereinafter referred to as the Act), Subsequently the Municipal Committee, Kareli was dissolved by the State Government under sub-section (1) of Section 57 of the Act by an order dated 24th June 1950. Thereafter, a fresh election of the members and president of the Municipal Committee was held in 1953, and new Committee Was Constituted. On 3rd September 1956 the State Government served a notice on the Committee framing certain charges against it and asking it to show cause why should not be, superseded. The president of the Committee, Shri Mahendra Singh Kiledar, sent a detailed reply explaining the charges. However, by an order, dated 30th October 1956, the State Government superseded the Municipal Committee for a period of two years.

17. The present petition was filed by the Municipal Committee through its president for getting the aforesaid order quashed. As the learned single Judge declined to interfere, the petitioner filed this Letters Patent appeal. The learned single Judge in declining to interfere followed the decision of a Division Bench of the Nagpur High Court in Ramchandra Rai vs.-State of M. P. Miscellaneous

Petition No. 80 of 1950, decided on 10th August 1951. That decision was given on an earlier occasion also the Municipal Committee, Kareli was superseded. The learned single Judge had taken: a contrary view in Deepchand Jain and another vs. The State of M. P. and another, Misc. Petition NO. 276 of 1955, decided on 27th December 1955. In doing so he had relied upon the decision in Nakkuda Ali vs. M. F. De S. Jayaratne 1951 A. C. 66. That was a petition filed by two members of the Municipal Committee Raipur, impugning the action taken by the State Government against them under clause (b) of sub-section (3) of Section 22 of the Act.

18. The statement of the law by the Division Bench in Ramchandra Rai vs. "State of M.P. (Supra) was questioned before us, and the matter Was referred to a Full Bench. The Full Bench observed:--

The Central Provinces -and Berar Municipalities Act, 1922 requires that supersession of a Municipal Committee may be done when One or more of the conditions laid down in sub-section (2) of Section 57 of the Act are found to exist. The reasons must have relation to those conditions and must be sufficient for the excise of the power conferred on the Government. The Court will not examine the reasons as in an appeal but will certainly examine them with advertence to their reasonableness. and sufficiency for the legitimate exercise of the power granted to the Government. Whenever action has to be reasonable and the reasons for the action to be recorded, the test is not entirely subjective unless the law says that it should be so; see Nakkuda Ali vs. M.F. De. S. Jayaratne (supra). The learned counsel for the Municipal Committee cited Vishvanath vs. The State of Madhya Bharat 1954 MBLJ 1 but that case also goes too far on the other side. We do not agree with all that has been said in the Madhya Bharat case. The issue of supersession is, of course, not to be tried as a law-suit with a right of appeal to the High Court. At the same time, the action of the Government has to be reasonable and the reasons for the action have to be stated, and the exercise of power can be examined to see whether in the circumstances under which it has been exercised, the necessary power under the Act flows to the Government.

We think that the fact that a reasonable opportunity to show cause has been made a condition precedent to the exercise of the power and that reasons for the supersession have to be notified to the electorate shows that there is not to be a subjective appraisal but that the reasons must be sufficient under the Act and an objective test is indicated The requirements of the law are not satisfied by accepting insufficient or inadequate reasons for supersession. We think that the courts are at liberty to examine the reasons for this limited purpose in addition to the purposes which the learned Judges of the earlier Division Bench (Mangalmurti and Mudholkar JJ.) have already indicated in their order.

19. The State Government had framed as many as twelve charges against the Municipal Committee [Annexure A-1 (a)]. The Committee submitted a detailed explanation, giving fact and figures refuting the charges. The State Government

appears to have accepted the report of the Sub-Divisional Officer dated 9th October 1956. We have perused the explanation of the Municipal Committee as well as the report of the Sub-Divisional Officer. The report of the Sub-Divisional Officer is incomplete and vague. It is abundantly clear that the State Government did not verify the detailed explanation submitted by the Municipal Committee in respect of each and every charge. Indeed, every charge stood completely explained and the basis was the orders of Government and its officers. The report of the Sub-Divisional Officer was not only vague but did not take into account the documents emanating from Government and its officers. There was a subjective approach to the problem in excelsis. In the light of the observations made by the Full Bench, we think that the action of the State Government in superseding the Municipal Committee without properly verifying the detailed explanation given by it was not reasonable. Under these circumstance we quash the order of the State Government dated 30th October 1956.

20. The appeal is allowed, but we make no order about costs.