

(1971) 07 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 662 of 1970

Municipal Council, Kharsia and another	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 422
Madhya Pradesh Municipalities Act, 1961 — Section 328, 328(1), 43(2)

Citation : (1971) JLJ 854

Hon'ble Judges : Bishambhar Dayal, C.J.; S.P. Bhargava, J

Bench : Division Bench

Advocate : P. C. Pathak and H. C. Kohli, for the Appellant; M. V. Thamaskar Dy. Government Advocate for respondents Nos. 1 to 3, Y. S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

Bhargava, J.—The two petitioners (1) Municipal Council, Kharsia, and (2) Shri Gyaniram have filed this petition under Article 226 of the Constitution seeking a writ of certiorari for quashing the order of the State Government (respondent No. 1) dated 15-12-1970 (annexure N) published in the Madhya Pradesh Rajpatra dated 16-12-1970 whereby the Kharsia Municipal Council (hereinafter called the Council) was dissolved with effect from 16-12-1970 and further claiming a mandamus commanding the respondents not to give effect to the said order in any manner.

2. The following facts are not in dispute and it is necessary to state them for proper appreciation of the controversy between the parties.

3. The said Council is a Class IV Municipality constituted under the M. P. Municipalities Act, 1961 (hereinafter called the Act). The last general elections of this Council were held in June 1969 in which eleven councillors were elected. Six of the councillors elected belonged to the Jansangh Party and thus this party was

returned in majority. The election of the office bearers and co-option of councillors was made in the month of August 1969. The petitioner No. 2 Gyaniram was elected President for a term of two years u/s 43(2) of the Act. He was elected as a councillor on the Jansangh Party ticket. The term of the Council was four years from the date of the first meeting, which was held on 14-11-1969. Thus the term of the Council would have been upto 13-11-1973 if it had not been dissolved.

4. It is averred in the petition that as at the State level the party in power was the Congress Party, those members of the Council who were returned on the Congress ticket attempted from the very beginning to prevent smooth functioning of the Council. Many complaints were made to the Collector, Raigarh (respondent No. 2) by the councillor elected on the Congress ticket or at their instigation. The Collector got these complaints enquired into by the Sub-Divisional Officer and forwarded the report of the Sub-Divisional Officer to the State Government. A charge-sheet purporting to be u/s 328 of the Act was served on the Council to show cause against the thirteen charges specified therein. Along with the charge-sheet a statement of allegations was also sent to the Council. All these charges related to the various acts of commission and omission of the Council and the President and Senior Vice-President thereof. The Council in its meeting dated 30-8-1970 discussed the said charges and passed a resolution characterising them as incorrect, false and baseless and authorised the President Shri Gyaniram to prepare and submit a detailed reply to the charges. Ultimately, on 1-9-1970, vide annexure H, a detailed reply was sent by the Council to the Collector of Raigarh.

5. The State Government, vide annexure I, dated 2-11-1970, sent the report of the Sub-Divisional Officer, Raigarh, wherein eleven out of those thirteen charges were held to have been proved against the Council and called upon it to submit its reply to the enquiry report of the Sub-Divisional Officer within fifteen days. The Council sent its reply denying those charges. It was also urged that the Sub-Divisional Officer was not competent to make the enquiry and that the principles of natural justice were violated as no proper opportunity had been afforded to the Council to meet the charges and the report had been made after making enquiries without affording any opportunity to the Council of being heard. It was also urged that copies of necessary documents and certain complaints, which the Sub-Divisional Officer received during the enquiry and to which he also referred in his report, were not supplied by him in spite of the Council having made a request for supplying those documents. Ultimately the State Government by the impugned order (annexure N) dated 15-12-1970 dissolved the Council u/s 328(1) of the Act holding that it was not competent to perform or persistently made defaults in the performance of the duties imposed on it by or under the Act or exceeded or abused its powers.

6. The third respondent Shri K. R. Mehre, Additional Tahsildar, Kharsia, was appointed Administrator on the dissolution of the Council with a direction to take

charge of the Council immediately. The Chief Municipal Officer of Kharsia, vide annexure K dated 16-12-1970, issued a memo informing the councillors that the State Government had dissolved the Council with effect from 16-12-1970 and the Collector (respondent No, 2) also forwarded a copy of the telegram dated 15-12-1970 received by him from the State Local Government Department to the same effect. All these orders are desired to be quashed in the petition.

7. The first contention raised by the Learned Counsel for the petitioners is that the order of the State Government dated 15-12-1970 does not contain any reason why the explanation submitted by the Council failed in the opinion of the State Government to meet the charges. It is urged that the order of dissolution made by the State Government does not satisfy the statutory requirement of stating the reasons and on this short ground itself it should be quashed.

8. For appreciating the point at issue, it would be relevant to reproduce section 328 of the Act, which runs thus :

328. Power to dissolve or supersede Council--(1) If at any time upon representation made or otherwise it appears to the State Government that-

(a) the Council is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act or any other law for the time being in force, or exceeds or abuses its power or fails to carry out any order passed by the State Government under this Act;

(b) the President of the Council or any of its Committees is not competent to perform, or persistently makes default in the performance of the duties imposed on him or it by or under this Act or any other law for the time being in force, or exceeds or abuses his or its powers or fails to carry out any order passed by the State Government under this Act and the Council has failed or neglected to take action against the President or the Committee;

the State Government may, by an order stating the reasons therefor published in the Gazette, dissolve such Council and may order a fresh election to take place.

(2)...

(3)...

(4) No order under sub-section (1) or sub-section (2) or sub-section (3) shall be passed until reasonable opportunity has; been given to the Council to furnish an explanation.

(5)....

(6) If the Council is dissolved or superseded as provided in the preceding sub-sections, the following consequences shall ensue :-

(a) all the Councillors of the Council shall, as from the date of the order, vacate their offices as Councillors;

(b) all powers and duties of the Council under this Act may, until the Council is reconstituted, be exercised and performed by such person or a Committee of persons as the State Government may appoint in that behalf;

(c) all properties vested in the Council shall, until the Council is reconstituted, vest in the State Government;

(d) when more than one person are appointed under clause (b) any one of them, duly authorised in this behalf by a resolution passed by them, may sue or institute or defend any action-at-law by or against the Council.

(7)...

9. It is clear from the section, quoted above, that a Municipal Council may be dissolved (1) if it is not competent to perform its duties, or (2) it persistently makes defaults in the performance of its duties, or (3) it exceeds or abuses its powers, or (4) fails to carry out any order passed by the State Government under this Act. However, an order of dissolution cannot be made unless the Council has been given an opportunity of showing cause which implies that cause shown by the Council should be duly considered before the order of dissolution and supersession is made. Further, the provision made in section 328(1) mandatorily requires that the reasons leading the State Government to take the action in question have to be stated in the notification published in the Gazette dissolving the Council. The provision means that the premises on the basis of which an adverse decision against a municipal Council is desired to be reached must be found to have been established and those reasons must be stated in the order.

10. Section 422 of the M.P. Municipal Corporation Act, 1956, contains a provision which is analogous to the provision made in section 328 of the Act. In *Suresh Seth v. State of Madhya Pradesh* 1969 LJ 499 : 1969 MPLJ 327 a Division Bench of this Court was required to consider the question as to whether an order superseding Municipal Corporation was liable to be quashed if Corporation was not given fair opportunity to show cause before the order was made and reasons for making the order were not stated. The point was elaborately considered in paragraph 18 of the judgment where their Lordships held :

The statutory requirement of stating the reasons is not satisfied simply by narrating the charges and the opinion of the Government that the explanation of the Corporation has failed to meet the charges; in our view it is also necessary that reasons for that opinion should be stated.

11. In *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, it was held in the context of section 5-A of the Bihar Private irrigation Works Act, 1922, that statutory requirement of recording of reasons is not satisfied by merely recording conclusions. In that case it was stressed that "the recording of the reasons is the only protection which is afforded to the persons affected to ensure that the reasons which impelled the Collector were those

germane to the content and scope of the power vested in him... But if in those circumstances the section requires what might be termed a "speaking order" before persons are saddled with liability, we consider that the object with which the provision was inserted would be wholly defeated and the protection afforded nullified, if it were held that the requirement was anything but mandatory". The same view has been taken in *The Municipal Committee and Others Vs. The State of Punjab and Others*, and *Suraj Parkash Vs. State of Punjab and Others*,

12. In *The Stats of Maharashtra v. Babulal Kriparam Takkamore and others* AIR 1967 SC 1358 the subject-matter of consideration was section 408 of the City of Nagpur Corporation Act, 1950, which contained a provision on the same lines as section 328 of the M.P. Municipalities Act, 1961. There Lordships held that an order declaring the Corporation to be superseded and directing that all the councillors shall retire from the office must be published in the Gazette and the reasons for doing so must be stated therein, In a writ application the Court will not review the facts as an appellate body but the order is liable to be set aside if no reasonable person on a proper consideration of the material before the State Government could form the opinion that the Corporation is not competent to perform or persistently makes default in the performance of duties imposed on it by or under this Act or any other law for the time being in force or exceeds or abuses its powers. It was held that in such cases the order is in excess of the statutory power given to the State Government u/s 408 of the City of Nagpur Corporation Act and the order is invalid.

13. It cannot be seriously disputed that the activities of the Municipal Council should not be lightly interfered with. The power given to the State Government u/s 328 of superseding or dissolving a Municipal Council is a drastic power and the said power cannot be held to be properly exercised unless it was exercised strictly in conformity with the procedure laid down in section 328. The Learned Counsel for the respondents urged that section 328 of the Act did not necessitate a quasi-judicial approach and the satisfaction on the basis of which the order of dissolution or supersession could be passed only required to be the subjective satisfaction of the Minister concerned For advancing this plea, the Learned Counsel for the respondents placed reliance on the decision in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, . In that case, :their Lordships considered the nature of the power of appointment of an executive officer conferred by section 53-A of the C. P. and Berar Municipalities Act, 1922, and held that power to be administrative in nature. This view was taken on the basis that the said power was not drastic in nature as i did not result in the retirement of the members of the Municipal Committee and its effect was merely temporary. The C. P. and Berar Municipalities Act confers the power of appointing an executive officer u/s 53-A and gives the power of dissolution or supersession of the Municipal Committee u/s 57. Both these sections differ materially in their scope and effect. The effect of an order made u/s 57 is extremely [drastic and puts an end to the very existence of the Municipal Committee itself while an order u/s 53-A is not so drastic inasmuch as it is of a temporary duration and

further does not threaten the existence of the Committee. u/s 57 the order of dissolution can be passed by the State Government only by making an order stating the reasons therefore and publishing it in the Official Gazette and no such order can be passed until a reasonable opportunity is given to the Committee to furnish its explanation. In our opinion, the decision in Radheshyam's case is of no avail to the respondents. Radkeshyam's case was considered in Suresh Seth v. State of Madhya Pradesh (supra) in paragraph 13 of the judgment where their Lordships pointed out that the considerations for holding that the power u/s 53-A of the C. P. and Berar Municipalities Act was administrative do not apply to section 422 of the M. P. Municipal Corporation Act, The same reasoning would hold good in the present case as section 328 is analogous to the provision made in section 422 of the M. P. Municipal Corporation Act and section 57 of the C. P. and Berar Municipalities Act:

14. On the basis of the cases referred to above, it is obvious that the State Government's power u/s 328 of the Act is quasi-judicial in nature and the power given to the State Government by statute was to determine questions affecting rights of various individuals. The very nature of the power implies a duty to act judicially requiring it to observe the principles of natural justice. It has been held in many cases that it is not necessary that the duty to act judicially should be separately imposed by the statute (see *Redge v. Baldwin* 1964 AC 40 and *Durayappah v. Fernando* (1987) 2 AC 337. The power conferred by section 328 is so drastic in nature that, in our opinion, a duty to act judicially will have to be implied even if this section did not in so many words state that the State Government may by an order stating the reasons therefor published in the Gazette "dissolve such Council" and even if it were not expressly provided, as has actually been done in sub-section (4), that such order "shall not be passed until reasonable opportunity has been given to the council to furnish explanation". Such a duty was implied in *Durayappah's* case (supra) even though the words of the Ceylon Municipal Ordinance did not expressly require the Municipal Council to show cause against the proposed dissolution. As section 328 expressly provides for an opportunity being afforded to show cause and for recording the reasons, it is absolutely clear that section 328 lays down an objective test based on a quasi-judicial approach.

15. The impugned order of the State Government does not state any reasons which led the Government to take the action in question. The mere production of the words of the section into the notification merely amounts to notifying the conclusion of the Government and is no substitute whatever for the statutory requirement of notifying the reasons. It is pertinent to note in this connection that in the reply given by the Municipal Council for meeting some of the charges reliance was placed on the various resolutions and documents which formed part of the municipal record itself. In the order there is no reference made at all to these documents. It has not even been suggested that those documents do not support the stand taken by the Council in the written reply furnished by it. There is nothing in the impugned order to show on what grounds or basis eleven

charges were held proved and why the explanations offered by the Council were rejected. In the reply of the Council issues of fact and law were raised. They should have been suitably considered and decided by stating grounds on the basis of which the State Government held them proved after rejecting the explanation offered by the Council. We, therefore, hold that the order of dissolution suffers from the defect that the reasons for making the said order were not stated.

16. The next question for consideration is as to what is the effect of the omission to state the required reasons. In our opinion, due to the said defect, the order of dissolution must be held to be a nullity or void. This was the view taken in the case of *Suresh Seth v. State of M. P.* (supra).

17. In the view that we have taken, it is not necessary to examine the other pleas raised in the petition.

18. In the result, the writ petition is allowed and the order of the State Government dissolving the Municipal Council, Kharsia, issued by the State Government on 15-12-1970 (annexure N) is quashed. The other two orders made by the Chief Municipal Officer and the Collector (annexure K and M) in pursuance of that order are also quashed. We also issue a writ in the nature of mandamus directing the respondents not to give effect to the order of dissolution in any manner whatsoever. The petitioners will have their costs including counsel's fee which we assess at Rs. 100. The security amount shall be refunded to the petitioners.