
(2016) 09 AHC CK 0246
In the Allahabad High Court
Case No : Writ C No. 41706 of 2016

Naresh Kumar Jatav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-09-2016

Acts Referred:

Uttar Pradesh Municipal Corporation Act, 1959 — Section 554, 83

Citation : (2016) 9 ADJ 695 : (2016) 3 UPLBEC 2439

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Mukhtar Alam and Shahabuddin, Advocates, for the Petitioners;
C.S.C, Lal Sahab Yadav and Rakesh Dubey, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

1. Naresh Kumar Jatav is before this Court assailing the order dated 16.8.2016 passed by respondent no.1; for a direction to the respondents not to create any hindrance in the petitioner's functioning as Corporator Ward No.23, Nagar Nigam, Ghaziabad and for a further direction to the respondents to supply the copy of the show cause notice and documents annexed thereto.

2. As per record, this much is reflected that the petitioner belongs to Scheduled Castes (SC) category and was elected as Corporator of Ward No.23 of Nagar Nigam, Ghaziabad in the election held in the year 2012. It is averred that the petitioner made a complaint against the local leader of ruling Samajwadi Party namely Jyoti Tiwari regarding the irregularities being committed by the firm of her husband in the development work given by Nagar Nigam, Ghaziabad. Pursuant to the complaint made by the petitioner, an inspection was done by the Executive Engineer, Ghaziabad Nagar Nigam and a report was submitted indicating the irregularities committed by the firm of the husband of the said Jyoti Tiwari and action was taken against the firm. It is alleged that aggrieved with the same, Jyoti Tiwari made a complaint to the Minister, Urban Development, U.P. for taking action against the petitioner stating that the

petitioner has illegally encroached upon the property of the Nagar Nigam. On that complaint an endorsement was made by the Minister concerned and consequently a show cause notice dated 4.5.2016 had been issued to the petitioner calling upon to file reply within 15 days regarding the allegations. The said letter is alleged to have never been served upon the petitioner. Consequently a letter dated 21.7.2016 sent through speed post was served upon the petitioner on 2.8.2016 calling upon the petitioner to file reply within a week. In the said letter there was a mention of earlier show cause dated 4.5.2016 and as such first time the petitioner got the information of the show cause dated 4.5.2016. It is the case of the petitioner that the show cause notice dated 4.5.2016 has never been served upon the petitioner before the letter dated 21.7.2016, which was served on 2.8.2016 and meanwhile, the time, which was accorded to the petitioner had expired. Thereafter, the petitioner got necessary information regarding track event of the speed post and then he got the information that the letter dated 21.7.2016 was dispatched from Lucknow on 28.7.2016 and finally the same was delivered to the petitioner on 2.8.2016. The letter dated 21.7.2016, envelope of the speed post and the receipt of detail of track event have been brought on record collectively as Annexure No.5 to the writ petition. It is claimed that neither show cause notice dated 4.5.2016 by which 15 days" time was accorded to the petitioner to submit his reply nor the letter dated 21.7.2016 was received by the petitioner within time so that he could furnish his detailed objections and as such it is sought to be contended that the respondent authorities without ensuring that neither the show cause notice nor the subsequent letter had been served to the petitioner had passed the impugned order. At no point of time the petitioner was accorded any opportunity to controvert the allegations so levelled against the petitioner and as such the entire action so initiated against the petitioner is per se bad. Reliance has also been placed upon Section 554 of the U.P. Municipal Corporation Act, 1959 (in short "the Act of 1959") and as such it is sought to be contended that the entire proceedings are vitiated. The provisions contained under Section 83 of the Act of 1959, which deals with the removal of member of the Corporation had also not been adhered to and as such the order impugned is per se bad and the same is against the Principle of Natural Justice and thus this Court should come for rescue and reprieve of the petitioner.

3. Further submission of learned counsel for the petitioner is that it was obligatory upon the respondents to at least supply the copy of the initial show cause notice dated 4.5.2016 on the basis of which the order impugned was passed so that the petitioner could submit proper explanation as to whether the allegations so levelled against the petitioner is justified or not. The submission is that the impugned order deserves to be set aside for the reason that at no point of time the petitioner was accorded any opportunity in the matter and no application of mind was there while passing the impugned order.

4. On the other hand, learned Standing Counsel as well as learned Counsel for respondent no.5 has vehemently opposed the writ petition and submits that in

the present matter show cause notice was issued to the petitioner and admittedly once the petitioner had not submitted any response to the same, subsequent letter had been issued and in spite of that since the petitioner has not filed any reply, the present impugned order has been passed. As such the action of the respondents are justified and no interference is required in the matter.

5. Heard rival submissions and perused the record. The entire case has been set up by the petitioner that the show cause in question by which 15 days" time has been given to the petitioner had never been served to him. By subsequent letter dated 21st July, 2016, week"s time was accorded to the petitioner to submit his reply but the said letter has also been served by the postal department to the petitioner on 2nd August, 2016 and as such the petitioner could not be able to submit his reply.

6. In the aforesaid circumstances, we have proceeded to examine the record in question and we find that at no point of time the show cause notice was served to the petitioner as has been contended by the petitioner and only in this backdrop subsequent letter dated 21.7.2016 had been issued by the respondents according week"s time to file reply. Admittedly the said letter had been served to the petitioner on 2nd August, 2016. The entire track record of the said letter has been brought on record and as such this is admitted situation that the petitioner being elected Corporator had been denied to submit his response to the show cause notice and admittedly the entire proceedings have taken place ex parte.

7. We have also occasion to look into the provisions contained under Section 554 of the Act of 1959, which is extracted below:-

"554. Notices and their service. - (1) Notices, bills, schedules, summons and other such documents required by this Act or by any rule, regulation or bye-law to be served upon or issued or presented or given to any person, shall be served, issued, presented or given by Corporation Officers or servants or by other persons authorised by the Municipal Commissioner in this behalf.

(2) When any notice, bill, schedule, summons or other such document is required by this Act, or by any rule, regulation or bye-law to be served upon or issued or presented to any person, such service, issue or presentation shall, except in the cases otherwise expressly provided for in sub-section (3), be effected -

(a) by giving or tendering to such person the said notice, bill, schedule, summons or other document; or

(b) if such person is not found, by leaving the said notice, bill, schedule, summons, or other document at his last known place of abode in the City, or by giving or tendering the same to some adult member or servant of his family, or by leaving the same at his usual place of business, if any, by giving or tendering in the same to some adult employee, if any, of his at such place; or

(c) if such person does not reside in the City and his address elsewhere is known

to the Municipal Commissioner, by forwarding the said notice, bill, schedule, summons or other document to him by post under cover, bearing the said address; or

(d) if none of the means aforesaid be available, by causing the said notice, bills, schedule, summons or other document to be affixed on some conspicuous part of the building of land, if any, to which the same relates.

(3) When any notice, bill, schedule, summons or other such document is required by this Act, or by any rule, regulation or bye-law, to be served upon or issued or presented to the owner or occupier of any building or land, it shall not be necessary to name the owner or occupier therein, and the service, issue or presentation thereof shall be effected, not in accordance with the provisions of the last preceding subsection, but as follows, namely:

(a) by giving or tendering the said notice, bill, schedule, summons or other document to the owner or occupier or if there be more than one owner or occupier, to any one of the owners or occupiers of such building or land;

(b) if the owner or occupier or no one of the owners or occupiers is found, by giving or tendering the said notice, bill, schedule, summons or other document to some adult member or servant of the family of the owner or occupier or of any of the owners or occupiers. or

(c) if none of the means aforesaid be available by causing the said notice, bill, schedule, summons or other document to be affixed on some conspicuous part of the building or land to which the same relates.

(4) Whenever the person on whom any notice, bill, schedule, summons or other such document is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

(5) Nothing in this section applies to any summons issued under this Act by a Magistrate."

8. Section 554 categorically provides that notice is to be served by giving or tendering the same to the person to whom it has been issued and if he is not found then the same should be given or tendered to some adult member or servant of his family or by leaving the notice at his usual place of business by giving or tendering the same to some adult employee. The Section further provides that if none of the means as mentioned is available then the notice should be affixed on some conspicuous part of the building or the land to which the person resides.

9. As per provisions contained under Section 554, the notice dated 4.5.2016 or the notice dated 21.7.2016 had admittedly been served upon the petitioner on 2.8.2016 after the time limit fixed in the letter itself had expired and as such the petitioner had been deprived of from submitting his response.

10. We have also occasion to peruse the relevant Section 83 of the Act of 1959, which deal with removal of member of the Corporation, wherein exhaustive procedure has been given and for ready reference the same is reproduced hereunder:-

"83. Removal of members. - (1) The State Government may remove a member of the Corporation or of any Committee thereof on any of the following grounds:

(a) that he has acted as a Corporator or member of any Committee, as the case may be, by voting or taking part in the discussion of any matter other than a matter referred to in clause (e) of Section 25 in which he has directly or indirectly a personal interest or in which he was professionally interested on behalf of a client, principal or other persons;

(b) that he has become physically or mentally incapacitated for performing his duties as such member;

(c) that he has been guilty of gross misconduct in the discharge of his duty as such member:

Provided that no order of removal shall be made by the State Government under this section unless a Corporator or member of Committee to whom it relates has been given a reasonable opportunity of showing cause why such order should not be made.

(2) The removal shall be made by notification in the Official Gazette and shall become effective from the date of publication of such notification.

(3) The State Government may direct a member who is suffering from any of the serious infectious diseases to be specified by the State Government, by order not to attend any meeting of the Corporation or any Committee, Joint Committee or Sub-Committee thereof and any member who has been so directed shall not be qualified to attend any meeting of the Corporation or any Committee, Joint Committee or Sub-Committee thereof until upon his furnishing proof to the satisfaction of the State Government of his having been cured of the disease the State Government withdraw the direction.

(4) A person who has been removed from membership of the Corporation under sub-section (1) shall be disqualified for being elected and for being a member of the Corporation for a period of four years from the date of his removal, and a person who has been removed from the membership of any Committee of the Corporation shall be disqualified for being elected or for being a member of such Committee for a period of four years from the date of his removal: Provided that the State Government may at any time by order remove the disqualification."

11. Bare perusal of Section 83, clearly proceed to mention that no order of removal shall be made by the State Government under this Section unless the Corporator or member of the committee to whom it relates has been given reasonable opportunity of showing cause why such order should not be made

against him/ her. We have also occasion to peruse Section 83 (4) of the Act of 1959, which provides that a member, who has been removed from membership of the Corporation under sub-section (1) shall be disqualified for being elected and for being a member of the Corporation for a period of four years from the date of his removal.

12. Once this is the factual situation that the show cause notice dated 4.5.2016 and the subsequent notice dated 21.7.2016 have never been served on the petitioner within time and has been served after the expiry of period within which response was asked for, as such the impugned order is hit by principle of natural justice and cannot sustain. In view of this, the impugned order is set aside. The writ petition is allowed. It is made clear that the respondents would serve the copy of the show cause notice dated 4.5.2016 to the petitioner within four weeks from today through Municipal Commissioner, Ghaziabad and in case the petitioner is willing, he may respond to the said show cause notice in further two weeks" time and thereafter the authority concerned would be at liberty to proceed in accordance with law.