
(1975) 03 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 189 of 1975

Narmadeshwar Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-03-1975

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 385
Constitution of India, 1950 — Article 226

Citation : AIR 1975 Patna 249

Hon'ble Judges : Birendra Prasad Sinha, J;B.D. Singh, J

Bench : Division Bench

Advocate : Basudeva Prasad, Radha Mohan Prasad and Renuka Sharma, for the Appellant; Balbhadra Prasad Singh, General and Surya Bhushan Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India by Sri Narmadeshwar Prasad Singh one of the Commissioners of Gaya Municipality who is also its Chairman. The petitioner has challenged Annexure "6" which is a show cause notice u/s 385 of the Bihar and Orissa Municipal Act, 1922 (hereinafter to be referred to as the "Act") from respondent No. 1 the State- of Bihar, asking the petitioner and the other Municipal Commissioners to show cause as to why the Gaya Municipality should not be superseded for the reason stated in the said notice at Annexure "6" dated 8th January, 1975.

2. The petitioner's case, inter alia, is that after a long period of supersession the election of the Commissioners of Gaya Municipality was held in July, 1972 at which 32 ward commissioners including the petitioner and one Kanhaiva Lal Chaurasia were elected and two more were later co-opted by the elected ward commissioners. Kanhaiva Lal Chaurasia was elected as the President and the petitioner as the Chairman of the Municipality. Bv a letter dated 26th August

1974, addressed to the petitioner, the said Kanhaiya Lal Chaurasia sent his resignation from the office of the ward commissioner. However, by another letter dated the 30th August, 1974. Chaurasia wanted to withdraw the aforesaid resignation-The said resignation letter of Sri Chaurasia was put up for consideration of the commissioners in accordance with Section 33 (3) of the Act on 25th November, 1974 and was accepted by a resolution passed at the meeting of the commissioners. According to the petitioner, the resignation was unconditional. Thereafter, Sri Chaurasia filed two petitions dated 5th December, 1974 and 13th December, 1974 before the District Magistrate, Gaya, Praying for stay of the operation of the aforesaid resolution which according to the petitioner, was still pending before the District Magistrate. On 19th December, 1974, the petitioner and some other commissioners filed a rejoinder to the aforesaid petitions of Sri Chaurasia before the District Magistrate. During the pendency of the aforesaid petitions. Sri Chaurasia personally approached Sri Rama Ashrav Prasad Singh, respondent No. 3, who is Minister. Urban Development. Government of Bihar and filed a petition before him to stay the operation of the resolution dated 25th November, 1974, whereby the resignation of Sri Chaurasiya had been accepted. It is alleged that respondent No. 3. Sri Ram Ashray Prasad Singh illegally and arbitrarily passed an order on the said petition of Sri Chaurasiya Staying the execution of the above-mentioned resolution dated 25th November, 1974 and the said order was communicated vide memo No. 7357/U. D. D. dated the 18th December, 1974 of the Under Secretary to the Government of Bihar, respondent No. 4 to the District Magistrate, Gaya -- vide Annexure "5". It has further been alleged that respondent No. 3 acted mala fide in passing the aforesaid order at Annexure "5" mainly because he was displeased with and biased against the petitioner for the following amongst other reasons, namely, that

1. the petitioner had worked against Sri Ram Ashray Prasad Singh in his election to the Bihar Legislative Assembly from Kurtha Assembly Constituency;
2. the petitioner had participated in a meeting to condole the death of one Sri Jaadeo Prasad, who had been killed in a police firing in 1974 and had strongly pleaded for an impartial probe into the facts and circumstances leading to the firing and killing of Sri Jagdeo Prasad; and
3. the younger brother of the petitioner, Sri Mahesh Prasad Singh had worked hard against Sri Ram Ashrav prasad Singh in his election to the All India Congress Committee and the petitioner refused to persuade his brother not to work against him.

The petitioner had challenged the aforesaid order dated the 18th December, 1974. contained in Annexure "5" in C. W. J. C. No. 30 of 1975 of this Court. The said petition was admitted on 17th January, 1975, and a rule was made returnable by 6th February 1975. In the meanwhile, according to the petitioner, respondent No. 3 mala fide and illegally got a notice for supersession of the Municipality issued and served by the State Government on the Commissioner of

the Municipality, which notice is contained in Annexure "6" and it has been challenged in this application, as stated above.

3. When this application was taken up for hearing, learned counsel appearing for the parties wanted that C. W. J. C. No. 30 of 1975 may also be heard along with this petition. Accordingly, both the applications were heard one after the other, as some of the questions involved were common.

4. A common counter-affidavit was filed by respondent No. 3. Sri Ram Ashrav Prasad Singh on 7-2-1975 in both these applications, wherein he has specifically denied the allegation of mala fide and has asserted that all the steps which were taken by him in regard to the affairs of the Municipality, were taken after consideration of the report placed before him and he had acted objectively in the best interest of administration of the Municipality without showing any favour to anybody. Another counter-affidavit has been filed on behalf of respondent No. 1 supporting the action of the Government in issuing the show cause notice -- vide Annexure "6".

5. Mr. Basudeva Prasad, learned counsel appearing for the petitioner, has submitted the following points for our consideration in this case:--

1. Sri Ram Ashray Prasad Singh. respondent No. 3 did not apply his mind to the question concerned for the purpose of issuing a notice u/s 385 of the Act;

2. Sri Ram Ashray Prasad Singh. Respondent No. 3, acted mala fide in issuing the said notice for the reasons stated in the application; and,

3. Since the decision to issue a show cause notice at Annexure "6" was the cumulative effect of a number of reasons stated therein, it is vitiated on the ground that some of the reasons are either non est or irrelevant.

5-A. I will take up point No. 1 first. Mr. Basudeva Prasad has referred us to Section 385 of the Act which reads as follows :--

"385. Power to supersede Commissioners in case of incompetency, default or abuse of powers.--If, in the opinion of the State Government, the commissioners of any municipality are not competent to perform, or persistently make default in the performance of, the duties imposed on them by or under this Act or otherwise by law or exceed or abuse their powers, the State Government may by an order published, with the reasons for making it in the office gazette declare such Commissioners to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order pr may. after giving notice to the Commissioners of its intention, by a like order, direct that the offices of the Commissioners shall be deemed to be vacant as from a date to be specified in the order and that a fresh election shall be held on or before that date".

He has submitted that the power u/s 385 of the Act is quasi-judicial. According to him, before issuing a show cause notice u/s 385 of the Act, the authority

concerned must apply his mind to the facts and circumstances of the case and come to his own conclusion. He has submitted that respondent No. 3 did not apply his mind at all as the notice is based only on falsehood and irrelevant grounds. He has referred us to a decision of the Calcutta High Court in *Ram Chandra Chaudhuri Vs. Secretary to Govt. of West Bengal and Others*, . In that case *Durgadas Basu, J.* held that although the plea of mala fide rarely succeeds, it was enough if the aggrieved party established "that the authority making the impugned order did not apply its mind at all to the matter in question" or "that the impugned order was made for a purpose or upon a ground other than what was mentioned on the face of the order," "When an authority was vested with a power but he was required to consult an advisory body before taking its decision, the responsibility for the decision or the final action that emerged was that of the authority who was entrusted with the power." The said authority "cannot simply act on the advice tendered by somebody without applying his own mind." If the authority failed to apply its mind and to exercise its discretion the order would be vitiated by mala fides.

He has also referred to a decision in *Ishwar Chandra v. State of Orissa* AIR 1966 Orissa 173. In the said case a Government servant had been reverted on the advice of the Public Service Commission. It was held that the power to revert a gazetted Government servant vested exclusively in the Government and not in the Public Service Commission though the Public Service Commission had to aid and advice the Government in their opinion. Therefore, where the Government passed its order of reversion exclusively on the basis of the opinion to that effect by the Public Service Commission without applying its own independent mind to the merit of the case, the order could be successfully challenged and was vitiated by mala fide.

Reference has been made to a decision of the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, . In this case, their Lordships were considering the scope and ambit of Section 43-A of the Motor Vehicles Act, 1939 inserted by Madras Amending Act 20 of 1948. Section 43-A of the Motor Vehicles Act reads thus :--

"The State Government may issue such orders and direction of general character only in respect of administrative matters relating to the State Transport Authority or Regional Transport Authority and such transport authority shall give effect to all such orders or directions."

It was held by their Lordships that Section 43-A authorises the State Government to issue orders and directions of a general character only in respect of administrative matters which fell to be dealt with by the State Transport Authority or Regional Transport Authority in their administrative capacity. The following observations was made by their Lordships :--

"In interpreting Section 43-A, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of

law, that in exercising their authority and in discharging their quasi-judicial function the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of such authority completely inconsistent with the well-accepted notion of judicial process...."

The principles enunciated in the decisions noted above are not applicable to the facts of the present case. In this case the decision of the authority directing to issue a show cause notice is not prompted by any extraneous consideration as consideration as may be found hereinafter. On the facts and circumstances of the instant case, the above cases are of no help.

6. On the other hand, the learned Advocate General appearing for the respondent has contended that at the stage of forming opinion for the issuance of notice u/s 385 of the Act, the power of the State Government is purely administrative but when it proceeds to give finding and record reasons, it becomes quasi-judicial. He has referred to the words "it appears"" occurring in Section 384 and the word "opinion" occurring in Section 385 of the Act and has submitted that in the case of any action u/s 384 of the Act, the State Government must come to the conclusion before passing any order. In case of any proposed action u/s 385 of the Act, it is sufficient if the State Government is prima facie satisfied before show cause notice is issued. According to him, the very purpose of issuing show cause notice is to come to a definite conclusion after considering the show cause and other materials. Thus, according to him, the power that was exercised at the time of issuing a show cause notice, is purely administrative and not quasi-judicial- He has relied on a decision of the Supreme Court in *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, .

In this case the Madhya Pradesh Government in exercise of its power u/s 53-A of the C. P. and Berar Municipalities Act, 1922 has appointed an Executive Officer of the Municipal Committee of Dhamtari for a period of 18 months to exercise and perform certain powers and duties of the Committee to the exclusion of the Committee, president and others of the said Municipality. It may be relevant to set out Section 53-A of the C. P. and Berar Municipalities Act, 1922 in extenso, because it has been argued that the said provision is very much similar to Section 385 of the Act:--

"(1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act. or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State

Government may, by an order stating the reasons therefore published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order.

(2) Any executive officer appointed under Sub-section (1) shall be deemed to be an officer lent to the committee by Government under Sub-section (3) of Section 25.

(3) When under Sub-section (1) an executive officer is appointed for any committee, the State Government shall determine from time to time which powers, duties and functions of the committee, president, vice-president or secretary under this Act or any rule or bye-law made thereunder shall be exercised and performed by such officer, in addition to, or to the exclusion of, their exercise and performance by the said committee, president, vice-president or secretary.

(4) The secretary of the committee shall be subordinate to the executive officer.

(5) The executive officer shall have the right to attend all meetings of the committee and any joint committee or sub-committee and to take Part in the discussion so as to make an explanation in regard to the subject under discussion, but shall not move, second, or vote on any resolution or other motion".

After considering various decisions, their Lordships observed as follows :--

....."The decision in the last mentioned case clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him. But that is quite different from the well-ordered procedure involving notice and opportunity of hearing necessary to be followed before a quasi-judicial action, open to correction by a superior Court by means of a writ of certiorari. can be taken. The difference lies in the manner and mode of the two procedures. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie".

In *Liversidge v. Sir John Anderson* 1942 AC 206 it was held that if the matter was one for executive discretion in the exercise of which the discretion of the authority was final, the Court of law cannot inquire whether in fact the authority had reasonable grounds for his belief. It has been contended that in the instant case if respondent No. 3 was of the opinion that it was necessary to exercise his discretion u/s 385 of the Act and has directed for issuance of a show cause notice, this Court will not act as a Court of appeal and consider and examine the facts for itself to import its own wisdom pursuant to whose judgment the matter in Question is entrusted by law.

In *Associated Provincial Picture House, Limited v. Wednesbury Corporation*, 1948-1 KB 223 when a local authority had granted leave for Sunday performances subject to the condition that no children under fifteen years of age should be admitted to Sunday performance either without an adult, it was held

that the local authority had not acted unreasonably or ultra vires in imposing the condition. Their Lordships observed as follows:--

"In considering whether an authority having so unlimited a power has acted unreasonably, the Court is only entitled to investigate the action of the authority with a view to seeing if it has taken into account any matter that ought not to be or disregarded matters that ought to be taken into account. The Court cannot interfere as an appellate authority to override a decision of such an authority, but only as a judicial authority concerned to see whether it has contravened the law by acting in excess of its power".

7. In the instant case a copy of the order of respondent No. 3 has been given at Annexure "D (2)", which is in Hindi. The English version of Annexure "D (2)" will read as follows:--

"From the letter of the District Magistrate, it appears that the condition of Gaya Municipality has become very serious. Therefore, show cause notice may be given.

Sd. Ramashrav Singh 28-12-1974."

It has been stated in paragraph 7 of the counter-affidavit filed on behalf of respondent No. 1 that the show cause notice was issued on the recommendation of the District Magistrate (Annexure "B"). The said report of the District Magistrate was examined by the Under Secretary on 24th December, 1974 and by the Secretary on 27th Dec., 1974 vide Annexures "D" and "D (1)", respectively, whereupon the Minister incharge Urban Development Department passed his orders on 28th December, 1974. On 7th December, 1974, the District Magistrate of Gaya had sent this report to the Government drawing Government's attention to the various irregularities of the Gaya Municipality and recommended for supersession.

8. In his separate counter-affidavit, respondent No. 3 has stated in paragraph 2 that the steps were taken by him in re-Sard to the affairs of the said Municipality on consideration of the report placed and facts represented before him and that he had acted objectively in the best interest of administration without any bias, prejudice or malice against the petitioner or anybody else.

9. It is manifest that respondent No. 3 on receipt of the report from the District Magistrate. Gaya had applied his mind and had ordered for the issue of a show cause notice. In his order dated 28th December, 1974, respondent No. 3 has stated that "it appeared" to him that condition of the Municipality had become very serious. While saying so, he was exercising his discretion after being satisfied for taking action u/s 385 of the Act. The question of his final opinion will come only after the show cause has been filed in response to the notice and the matter has been considered by him. The final opinion for the exercise of powers u/s 385 of the Act has yet to be formed and that stage has not come.

10. In my opinion, the power which has to be exercised by the Government u/s

385 of the Act is quasi-judicial in nature. Any action u/s 385 of the Act is bound to Prejudicially affect the Municipality. Section 385 of the Act provides for giving a notice to the Commissioners of the Government's intention to take an action u/s 385 of the Act but at the time of giving the notice it is enough if the authority is prima facie satisfied and is of the opinion that a show cause notice is required to be given to the Municipality u/s 385 of the Act. In doing so, the selective application of law u/s 385 of the Act is left to the opinion of the Government. It is the Government which has to take its decision on the materials available to it and the opinion it forms thereon. That, however, cannot be challenged in a writ application.

11. Having considered this aspect of the case. I am not inclined to hold that respondent No. 3 has not applied his mind to the question concerned or the purpose of issuing notice u/s 385 of the Act, as submitted by Mr. Basudeva Prasad.

12. As regards point No. 2, learned counsel appearing on behalf of the petitioner has submitted that action of respondent No. 3 in issuing the show cause notice (Annexure "6") is mala fide and has been prompted by extraneous considerations. He has further submitted that Annexure "6" is for a collateral purpose and this action was taken because the petitioner and some others had filed C. W. J. C. No. 30 of 1975 in this Court challenging a previous order of respondent No. 3 contained in Annexure "5". According to him, it is due to political ill-will and personal considerations. Learned counsel says that reference of certain litigations pending before the subordinate Courts as also the fact regarding resignation of Shri Chaurasia, which is the subject-matter of litigation in the High Court, amount to a contempt of Court and is, therefore, mala fide. To support this contention, learned counsel has relied upon a case of the Supreme Court in Govind Sahai and Another Vs. State of U.P. and Another, . In that case one V. P. Singh had filed an election case against one Badri Singh in the Court of a Munsif at Azamgarh for declaring the election of Badri Singh void and inoperative. Learned Munsif had granted ad interim injunction and a prayer had been made before him for vacating the order of ad interim injunction. The election was in respect of membership of the Parambik Congress Committee. A resolution had been passed by the Working Committee of the Congress to the effect that any Congress member having any grievance, in respect of any action taken, should take advantage of the tribunal provided to seek redress by way of appeal or reference and that such matters should not be taken to law Courts. The resolution further provides that initiating of such litigation and securing of ex parte order from the Courts against the Congress Committee was highly detrimental to the discipline of the organisation and its smooth working and that any member who did so, did at his own risk being considered guilty of gross indiscipline and expulsion from the membership. At a time when the application for vacating the order of ad interim injunction was still pending plaintiff V. P. Singh was expelled from the Congress organisation and he moved the learned Munsif for taking action in contempt proceeding on the ground that the order of

expulsion directly interfered with the normal course of justice for hampering progress of the suit. The High Court found that the action amounted to a contempt of Court. On appeal, their Lordships of the Supreme Court observed as follows :--

"In the instant case, the passing of the orders of expulsion, by the two appellants, against the second respondent, and the filing of a supporting affidavit, in the suit by the second appellant, clearly indicate that it was a deliberate attempt, by the appellants, to interfere with, or prejudice the second respondent, in the conduct of the litigation, instituted by him. It is no answer that the action, by way of expulsion was taken on the basis of the Resolution of the All India Congress Working Committee, and to enforce discipline, in the Congress Organization. As emphasized by Das. J., in *Pratap Singh and Another Vs. Gurbaksh Singh*, any conduct, which interferes with, or prejudices parties litigant, during the litigation, is undoubtedly Contempt of Court. The High Court, in this case, was justified in holding the appellants guilty of contempt. We agree with the said conclusion."

Learned counsel has further relied on *Pratap Singh and Another Vs. Gurbaksh Singh*, in which it was held that there are many ways of obstructing the Court and any conduct by which the course of justice was perverted, either by a party or a stranger was a contempt; thus the use of threats, by letter or otherwise to a party while his suit was pending or abusing a party in letters to persons likely to be witnesses in the cause, had been held to be contempt.

13. It is urged that the notice, contained in Annexure "6" is a threat to the commissioners of the Municipality that the municipality will be superseded due to several reasons including the litigations in which the commissioners have involved themselves. On the other hand, learned Advocate General appearing for the State has submitted that the notice is only for exploring into the reports bearing upon the conduct of the Municipal Commissioners and to find whether the facts exist or do not exist. According to him, it cannot amount to a contempt inasmuch as it refers to the suit from the point of view of the Municipality. He has drawn our attention to various provisions of the Act and the Municipal Account Rules which includes law charges. His submission is that the Government is entitled to know whether the Municipal funds are properly being utilised or are being dissipated in litigation. He has referred to a case of the Supreme Court in *Tukaram G. Gaokar Vs. R.N. Shukla and Others*, . In paragraph 3 to which our attention has been drawn, it was observed that

"the customs officers are empowered to confiscate smuggled goods and to levy penalties on persons concerned with the smuggling. They may initiate proceedings for confiscation of the goods and for imposition of the penalty though the trial of those persons in a Criminal Court for connected offences is imminent. The initiation and continuance of those proceedings in good faith cannot amount to contempt of Court, there must be involved some "act done or writing published calculated to bring a Court or a Judge of the Court into

contempt or to lower his authority" or something "calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts" The power of adjudicating penalty and confiscation under those sections is vested in them alone. The Criminal Court cannot make this adjudication. The issue of the show cause notice and proceedings thereunder are authorised by the Act and are not calculated to obstruct the course of justice in any Court. We see no justification for holding that the proceedings amount to contempt of Court."

14. It may be stated here that the Municipal Act authorises the State Government to issue notice to the Commissioners u/s 385 of the Act for various reasons which also include the disposal of Municipal fund. He has also referred to another case *Saibal Kumar v. B. K. Sen* AIR 1061 SC 633. This was a case relating to Calcutta Corporation. Certain proceedings were pending against officer of the Calcutta Corporation and an inquiry by a Special Committee was set up by the Corporation to discover malpractices on the part of Corporation Servants including the petitioners alleged to have been taking advantage of their offices in carrying on business in their own names. In the course of the enquiry the Committee sent a questionnaire to the Commissioners seeking to enquire whether he had made certain appointments of persons who were either related to the prosecution witness in the criminal case or were helping him in conducting his defence in that case. The question was whether such enquiry amounted to contempt of Court and whether the Commissioner was supporting the prosecution witnesses in the criminal case. It was held that the Committee did not tend to interfere in the course of justice and the members of the committee were not guilty of the offence of contempt of Court. Their Lordships were of the opinion that the Committee had embarked upon an enquiry on the directions of the Corporation in order to discover malpractices on the part of the Corporation's servants. The ascertainment of the motive for the appointments would be merely incidental to the main purpose of the enquiry. There was no parallel enquiry or, matters pending decision by a Court of law.

15. In the instant case the notice which has been issued is merely to ascertain the truth or otherwise of the report which has reached the State Government in respect of the omission and commissions of the Municipality and the Commissioners. There is no parallel enquiry in respect of the litigations pending before the subordinate Courts of which reference has been made in Annexure "6". As such, I do not find that Annexure "6" merely because it refers to certain litigations, amounts to a contempt of Court and, is, therefore, mala fide as submitted by learned counsel for the petitioner.

16. That it is for extraneous and collateral purpose and because of the earlier writ application (C. W. J. C. No. 30 of 1975) (Pat) filed in this Court is also not borne out from the facts of this case. C. W. J. C. No. 30 of 1975 was filed on 4-1-1975 and admitted on 7-1-1975. On 5-12-1974, Shri Chaurasia had made a representation to the District Magistrate about the affairs of the Municipality (vide Annexure "2") and on 6-12-1974 he also filed an application before

respondent No. 3. On 7-12-1974 the District Magistrate had sent a report to the Government which is contained in Annexure "B" to the counter-affidavit filed on behalf of the respondent. This report (Annexure (B)) was examined on 24-12-1974 and 27-12-1974 vide Annexures "D" and "D (1)" by the Under Secretary and Secretary to the Government. On 28-12-1974, respondent No. 3 passed the order contained in Annexure "D (2)" of the State's counter-affidavit. On the basis of this order the notice (Annexure "6") was issued. Therefore, it may be seen that respondent No. 3 had Passed the order much before C.W.J.C. No. 30 of 1975 had been filed in this Court, learned counsel is not correct in saying that respondent No. 3 was annoyed due to the institution of C. W. J. C. No. 30 of 1975 in this Court, and, therefore, had taken this action regarding supersession of the Municipality.

17. It has also been urged that Sri Chaurasia is personal friend of respondent No. 3 and that respondent No. 3 had certain political bias and ill will against the petitioner. This has been emphatically denied by respondent No. 3 in his counter-affidavit. Respondent No. 3 has categorically stated in his counter-affidavit that the assertion made in the writ petition had worked against him and had actively supported his rival candidate in the Kurtha election is not true and he was not aware of the petitioner's having acted at any stage in the election of the representative from Kurtha Assembly constituency and was not even an elector in the said constituency. As regards the allegation in the writ application about the petitioner's having participated in the meeting to condole the death of one Sri Jagdeo Prasad in the police firing and having pleaded for a probe, respondent No. 3 has stated that the decision to set up a commission of enquiry to enquire into the facts and circumstances that led to firing at Kurtha had been unanimously taken up by the Government in which he himself was a Minister. Respondent No. 3 has also denied any knowledge about one Sri Mahesh Prasad Singh, described to be the younger brother of the petitioner and, therefore, there was no occasion for respondent No. 3 to ask the said Mahesh Prasad Singh to work for him. About the proposal to constitute Barbigha Notified Area Committee it has been stated that idea was broached at a time when the department was in the charge of late Sri Khaderan Singh and it was later constituted under the order of Dr. Ram Rai Singh, the then Minister incharge of the department. As such, it is difficult to hold that respondent No. 3 had any bias or political ill-will against the petitioner and that he was prompted by any extraneous consideration in making the order contained in Annexure "D (2)". The contention of the learned counsel in this behalf is therefore rejected.

18. Now I advert to point No. 3. As earlier stated, it has been urged on behalf of the petitioner that Annexure "6" is the cumulative effect of the various grounds mentioned in it and if some of the grounds are found to be irrelevant or non est, the whole of it must 20.

19. It will be worth while to quote Annexure "6" for a proper consideration of this point. Annexure "6" is in Hindi, a translated copy of which reads as follows :--

"Annexure 6,

Letter No. 91 U. D. D. Government of Bihar Urban Development Department.

From

Sri Bishram Prasad. Secretary to the Government.

To

The Commissioner Patna Division. Patna. Patna, dated the 8th Jan., 1975.

Sub.:-- Proposal for supersession of Gaya Municipality.

Sir,

The Government is seriously watching the deteriorating condition of Gaya Municipality for the last several months.

The condition of the Gaya Municipality has now reached this stage that obstruction is caused in every transaction. Due to internal dispute in the Municipality thin Municipality is unable to do any work for the benefit of the public. The following are some of the examples of the mal-administration of the Municipality :--

1. After the election, the present Municipal Board was formed on 12-3-1973. Its first meeting was held on 29-3-1973. Since then all the meetings which were held, were adjourned on either in a very grim and tense situation or no tangible decision was arrived at therein.

2. Sri Kanhaiya Lal Chaurasia, the President of the Gaya Municipality had sent a confidential letter on 26-8-1974 for his resignation from the post of commissioner, stating therein that if Shri Santoshi Lal Bajaj, ward commissioner tendered his resignation, he would also tender his resignation. Later on he had given letter of withdrawal on 28-4-1974 and 30-8-1974. As the condition given in the letter of resignation was not fulfilled, the resignation of Chaurasia should have been automatically taken as rejected. The Government Pleader also clearly stated that a meeting for considering the letter of resignation will be illegal. Still the Chairman called an extraordinary meeting on 25-11-1974 and after great uproar, the Municipal Board was divided into two groups. The meeting of one group was held under the presidentship of Sri Chaurasia. in which there were only fifteen members and it was decided that the aforesaid meeting was illegal. Hence the present agenda for consideration was rejected. At the same time and on the same day and place, another meeting was also held under the presidentship of Purnanand Tarway. in which 18 members were present and the letter of resignation of Sri Kanhaiya Lal was unanimously accepted. In this way, two parallel meetings were held on 25-11-1974.

3. The adjourned meeting of September and the monthly meeting of November was to be held on 26-11-1974. Two parallel meetings were held on that day also Sri Kanhaiya Lal Chaurasia presided over one meeting and Sri Narmadeshwar

Prasad Singh, Chairman. Gaya Municipality presided over the other meeting. The decision of both the meetings were contradictory. It became a problem for the Executive Officer. Gaya Municipality as to which resolution should be given effect to. In such circumstances, no work of public interest is being done properly by the Municipal Board.

4. An extraordinary meeting was held on 22-12-1973 for removal of the Chairman, in which 18 members, in all were in favour of removal. Since then the Chairman is in minority and the situation always remains tense and the Municipality has to face several cases.

5. Some members had demanded to call an extraordinary meeting in the month of December, 1973 for removal of the resident. u/s 44 (2) of the Bihar and Orissa Municipalities Act. this extraordinary meeting was called by themselves on 18-1-1974, in which 19 ward commissioners were present and they unanimously passed the resolution for removal of the President, as a result of which a stalemate situation has arisen. An extraordinary meeting for removal of the Executive Officer was held on 20-9-1974 and only 12 votes were secured in favour of removal when it must be at least 23 votes.

6. The Municipality has been unnecessarily spending its resources and money in litigation.

(a) Some employees of the Municipality instituted case against Sri Birendra, the ward Commissioner for mal-treatment, in July 1973. On the day of "Bihar Bund" dated 21-1-1974, the driver of the jeep of the Chairman instituted a criminal case against some employees of the Municipality, and some employees were arrested too. A counter case was filed by the employees also.

(b) In December 1973. Sri Jay Kumar Palit, the ward commissioner filed a case against the Chairman, in which allegations of bungling of records and other papers were levelled against him.

(c) The chairman of the Municipality himself filed a case in the Court of the 1st Munsif against the ward commissioners of the Municipality in which he raised objections against the committees formed u/s 49 of the Municipal Act. The same was finally disposed of by the District Judge whereby the committees formed were declared valid. The Municipality uselessly spent Rs. 1,200.97 p. over it.

(d) With reference to the aforesaid case against the Executive Officer and several Commissioners of the Municipality by the Chairman, a criminal case is still pending and the Municipality has been bearing the cost.

(e) Internal disunity cropped up among the members of the Municipality over approval of annual settlement of the Kedarnath Market, regarding which a case was filed in the Hon'ble High Court. Patna in which the Municipality had to spend Rs. 9,905/-. A case was again filed by the Chairman himself in the 1st Court of the Munsif raising objections against the meeting of the member of the Municipality held on 27-8-1974. The municipality had to spend about Rs. 190/-

over this case.

7. The Committees which were formed u/s 49 of the Bihar and Orissa Municipal Act themselves took over the entire power of the Municipal Board and made the Municipal Board idle.

8. A Ward Commissioner has forcibly got a tractor of his close relative plied within the Municipality (area) and is demanding charges therefor.

9. complaints are also being received at time from the general public or other sources against the Municipality. No work is being done by the Municipality decently. Due to internal groupism within the Municipality, the Board is unable to take any decision. Due to contradictory resolutions of the groups, the Executive Officer has always to face difficulties in executing them. No concrete step is being taken in the interest of financial position of the Municipality, on account of which the financial condition of the Municipality has already deteriorated. Within the last six months the employees of the Municipality have already made demonstration before the District Magistrate in connection with their demand regarding salary, etc.

In the aforesaid circumstances, it clearly appears that the Municipal Commissioners are unable to perform their duties faithfully and efficiently. Hence, the Government asks the Commissioners of Gaya Municipality to explain as to why they should not be declared to be unfit u/s 385 of the Bihar and Orissa Municipalities Act on account of their inability to perform duties competently and efficiently or on account of misuse of their powers. The Municipal Commissioners may also be informed that they should send their explanations if any within two weeks of receipt of copy of this letter, to the Government through you and the District Magistrate, Gaya. They should send a copy of their explanation direct to the Government also. They may also be informed that if the Government will not receive any explanation from the Municipal Commissioners within the said period, the Government will take decision regarding supersession of the Municipality. Fifty copies of it are being sent directly to the District Magistrate.

Yours Faithfully Sd/- B- Prasad Secretary to the Govt.

XXX XXX"

Our attention has been drawn to the concluding portion of Annexure "6" wherein it has been stated: "In the aforesaid circumstances, it clearly appears that the Municipal Commissioners are unable to perform their duties faithfully and efficiently." Learned counsel has submitted that this is beyond the scope of Section 385 of the Act. He has further submitted that grounds NOS. 2, 3, 4 and 6 may be related to incompetency of the Municipality if they are permissible grounds. they are not valid grounds for the reason that they amount to contempt of Court. As regards grounds Nos. 1, 5, 7, 8 and 9, learned counsel has submitted that they are irrelevant, non est and vague and as such cannot form the basis for any action u/s 385 of the Act.

20. At the very outset I may state that in view of my earlier finding that the mention regarding certain litigations in Annexure "6" do not amount to contempt of Court, it cannot be held that ground Nos. 2, 3, 4 and 6 are not permissible grounds. So far grounds Nos. 1, 5, 7, 8 and 9 are concerned, they are, in my opinion, neither irrelevant nor non est for the purpose of issuing the notice.

21. In this connection. Mr. Basudeva Prasad has relied on a decision of the Supreme Court in Binny Ltd. Vs. Their Workmen, . In the said case certain Workmen had been dismissed on the ground of misconduct. The charge against one Kuppuswamy was that "on the 3rd of this month at about 9.15 a. m. Kuppuswamy had behaved in an insolent manner towards the Warehouse Master, Mr. Veeraraghavan by shouting at him and creating a disorderly scene in the Warehouse Office." KUPPUswamy was asked to submit his explanation. During an enquiry Kuppuswamy was stated to have misbehaved with the Warehouse Master. Ultimately his service was terminated on the around of misconduct. The Labour Court ordered his reinstatement although recording a finding that Kuppuswamy was guilty of misconduct. It was argued in that case that the Labour Court has accepted the finding of the domestic tribunal that delinquent was guilty of the misconduct alleged against him, the effect that the order of termination of service mentioned a similar conduct in the past on which no charge had been raised should not make any difference to the result. Their Lordships after considering the various facts and circumstances in that case observed as follows :--

"The language of the order leaves no doubt in our mind that it was the cumulative effect of the lapses on the part of the respondent (Kuppuswamy) that had resulted in the order of termination of service. It was not a case where two separate charges had been framed against the delinquent and they were of such a serious nature that the finding of guilt on any one would warrant the dismissal of the delinquent from service."

22. The facts of the instant case are quite distinguishable from the facts in the case mentioned above. In the instant case several charges have been framed against the Municipal Commissioners, and many of them are of serious nature. Moreover, in the present case the stage is of showing cause and no final order has yet been passed by the Government. It is still open to the Municipal Commissioners to show to the Government that any of the charges are irrelevant, vague or non est. It has been rightly stated on behalf of the State that the State Government has yet to form their opinion and arrive at the conclusion after holding a quasi judicial enquiry in respect of the matter and that it was, at this stage, premature and embarrassing for the Respondent State to form their own conclusion or refute or affirm the assertions made by the petitioner, the truth or falsehood whereof depended upon enquiry which was yet to be made.

23. In The State of Maharashtra and Another Vs. B.K. Takkamore and Others, where an order superseding the Municipality was based on two grounds, one of which was relevant and the other irrelevant, it was held that the fact that one of

those grounds was irrelevant did not affect the order inasmuch as the second ground showed that in the opinion of the State Government, the ground was serious enough to supersede the Municipality and was sufficient to establish that the Corporation was not competent to perform its duties under the Act. This case is a direct authority on the point which is under consideration. As stated above. Annexure "6" contains several grounds. The final opinion of the State Government is yet to be formed. The petitioner has ample opportunity to show that the grounds are irrelevant or non est. The State Government is acting in a manner which satisfies the principles of natural justice.

24. The principle that if one of the grounds is vague, irrelevant or non est, the whole order is vitiated, has been laid down in cases of detention, where the detention is based on the subjective satisfaction of the authorities. I do not think that the same principle will apply in the case at hand and more so at a stage when the authority is yet to form its opinion.

25. The conditions for the exercise of power u/s 385 of the Act are clearly stated in the Section. If it appears to the State Government that the Municipality is incompetent or or is persistently making default in performance of the duties imposed on it by or under the Act or exceeds or abuses its power, the State Government must give to the Municipality an opportunity to show cause why it should not be superseded. Upon a consideration of the show cause if the State Government consider that there is no ground for making the order. the State Government may drop the proceeding. On the other hand, if in the opinion of the State Government, there are good grounds, it may, by an order declare that the Municipality should be superseded. The order has to be a reasoned order- In a writ application, this Court will not review the. facts as an appellate body. That order can be set aside only in a case where no reasonable person on a proper consideration of materials before the State Government could form the opinion that the Municipality was not competent to perform or persistently makes default in the performance of duties imposed on it by or under this Act. The order can also be set aside if it was passed mala fide or in violation of principles of natural justice.

26. As has been held earlier, the show cause notice is not based on any extraneous consideration and satisfies the principles of natural justice. In my opinion, this Court cannot interfere with this show cause notice at this stage.

27. Having considered the facts and circumstances of this case and the submissions made by learned counsel appearing for the parties. I hold that this application has no merit. In the result, this application is dismissed. In the circumstances of the case there will be no order as to cost.

B.D. Singh, J.

I agree.