
(2000) 07 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 4631 of 1998 and 2348 and 2965 of 2000

Nathu Lal Jangid and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan Municipalities Act, 1959 — Section 63(1), 63(2), 63(3)

Citation : AIR 2001 Raj 119 : (2000) 4 RLW 256 : (2001) 4 WLC 255 : (2001) 3 WLN 626

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Naina Saraf, G.S. Katela and K.N. Gupta, for the Appellant; Mohd. Rafiq, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

R.R. Yadav, J.—Heard.

2. Perused the materials available on record in these three writ petitions, common questions of law and facts are involved and as such these petitions can be disposed off by a common judgment without narrating the facts in detail averred in each of the writ petition.

3. As a matter of fact, in these writ petitions, pure question of interpretation of sub-sections (2) and (3) of Section 63 of Rajasthan Municipal Act, 1959 [hereinafter referred as Act No. 38 of 1959) and the rules framed thereunder relating to procedure in holding inquiry into the charges against members/ councillors or office bearers of a Municipal Board is Involved.

4. As regards the case of Nathulal Jangid. It is posted today for admission but with the consent of learned counsel for the parties. I propose to decide the aforesaid writ petition today on merit at admission stage along with other two petitions which are posted for final hearing.

5. In these three writ petitions, distinct charges were framed in exercise of power under Sub-section (2) of Section 63 of Act No, 38 of 1959 by State Government and after framing distinct charges. Judicial Inquiry Officers of the rank of District Judges were appointed to make enquiries and remit their findings on each charge embodied in the statement as well as on every other matter they consider relevant to the charge.

6. The rules framed by State Government in exercise of its power under Sub-section (3) of Section 63 of Rajasthan Municipal Act, 1959 lay down procedure for holding inquiry into the charges against a member/councillor or office bearer of a Board which is published in Rajasthan Gazette (Extraordinary) Part IV (c) dated 26-11 -1959. In Rule 2 of the aforesaid rules it is provided that if the member/council for admit the charge in his written statement and shows no sufficient cause why he should not be removed from the post, Judicial Inquiry Officer shall record his findings on each matter embodied in the statement of the charge after hearing him if he makes appearance and send to the record to State Government for passing necessary orders. The aforesaid procedure is also inferable from the language with which Sub-section (3) of Section 63 of Act No. 38 of 1959 is couched with.

7. Although in these three cases, distinct articles of charges were framed by the State Government but in support of those charges no evidence was disclosed either oral or documentary which was intended to be adduced in proof of those distinct articles of charges before the Judicial Enquiry Officers of the rank of District Judges appointed by State Government. In all these petitions except in S.B.C. Writ Petition No. 2965/ 2000, the Judicial Inquiry Officers had shirked their responsibilities to record findings on each articles of charge as envisaged under Sub-section (3) of Section 63 of Act No. 38 of 1959 and Rules framed thereunder for the reason best known to Judicial Inquiry Officers causing serious prejudice to the petitioners. It is true that Judicial Inquiry Officer in S.B.C. Writ Petition No. 2965/ 2000 has recorded findings on each charge but he failed to make reference about the explanation submitted by the petitioner. The Judicial Inquiry Officer ignored the explanation submitted by petitioner while recording finding of guilt against him causing serious prejudice to him.

8. I record my appreciation for State Legislature for meticulously making just, reasonable and fair procedure under subsections (2) and (3) of Section 63 of Act No. 38 of 1959 for holding inquiry into the charge against member/councillor or office bearer of the Board relating to their removal, suspension and debarring them from contesting re-election for a period of five years from the date of order of their removal or recording of adverse findings as the case may. I further record my appreciation for State Government for framing just, reasonable and fair procedure for removal, suspension and debarring a member of Board from re-election for a period of five years in consonance with the principle of natural justice and fair play in exercise of its power under Sub-section (3) of Section 63 of Act No. 38 of 1959 published in Rajasthan Gazette (Extraordinary) Part IV(c)

of 26-11-59.

9. It is well to remember that if an order is amenable to writ jurisdiction, then, an aggrieved person or institution as the case may be is entitled to know the reasons, which persuaded an administrative authority exercising Judicial power to believe the case of his adversary in order to enable him to demonstrate before this Court in judicial review that the reasons which persuaded the authority to believe the case of his adversary are either erroneous or based on nonexistent ground, or based on no evidence. It is now well settled law that the power of Judicial review is basic feature of the Constitution and this Court being bulwark for the protection of the rights of the citizens poor or rich has to evolve same objective criteria in the light of sub-sections (2) and (3) of Section 63 of Act No, 38 of 1959 and Rules framed thereunder to check vagaries, negligence, mistakes or high handedness of the State and Judicial Enquiry Officers relating to removal, suspension and debarring a member of Board for a period of five years from contesting re-election of the Board,

10. Here, in these cases, quasi judicial power is invested upon a Judicial Enquiry Officer of a rank of District Judge, to make impartial enquiry under Sub-section (3) of Section 63 of Act No. 38 of 1959, against an elected person, and State Legislature has expressed its implicit faith upon such Judicial Enquiry Officer's, findings and it mandated the State Government only to pass order in conformity with the findings sent by the Judicial Enquiry Officer under sub-section (3) of Section 63 of Act No. 38 of 1959. Thus, while performing his duty as a Judicial Enquiry Officer, he is required to disclose reasons, in support of his findings so that the aggrieved party, in a proceeding before this Court, under Article 226 of the Constitution of India, may be able to demonstrate that the reasons, which persuaded the Judicial Enquiry Officer to accept the case of State were either erroneous or based on no ground, or based on no evidence- To my mind, to record reasons in support of findings, by Judicial Enquiry Officer, under Sub-section (3) of Section 63, will deter the Judicial Enquiry Officer, to record an arbitrary finding and it will further work as deterrent to the State Government either, to remove a member of Board or disqualify him from contesting election of Board, on a perfunctory enquiry report of a Judicial Enquiry Officer, in utter breach of faith, reposed by State Legislature, on such judicial Enquiry Officer, to record impartial finding, judiciously. It is to be imbibed that from the perusal of the finding on each charge, sent by the Judicial Enquiry Officer, to the State Government, under Sub-section (3) of Section 63 of Act No. 38 of 1959 must inspire confidence of this Court that Judicial Enquiry Officer has analysed the evidence adduced by the department, in support of each charge and defence evidence adduced by the delinquent, in support of his innocence, impartially and judiciously with reference to salient features of law and procedure prescribed in this regard. It is well to remember that even though, charge is admitted by the delinquent, even then, the Judiciary Enquiry Officer, is to follow the procedure, prescribed under Rule 2 of the Rules framed under Sub-section (3) of Section 63 of Act No. 38 of 1959, by recording finding on each charge with reference to

evidence adduced in proof of each charge, what is true in case of admission of charges by a delinquent elected member of Board and his failure to prove his innocence under Rule (2) of the Rules published on 26-11-1959, the same principle is applicable in these cases where a delinquent elected member of Board fails to appear on the date fixed before the Judicial Enquiry Officer and he proceeded to record his findings on each charge ex parte.

11. A conjoint reading of proviso to subsection (1)(d) of Section 63 read with subsection (2) and Sub-section (3) of aforesaid Section reveal that where a member is proposed to be removed from his membership or he is proposed to be debarred to contest elections for five years from date of his removal or of recording adverse finding as the case may be, a preliminary inquiry is to be held either by State Government itself or through such officer or authority as it may direct in this regard. The delinquent elected member is entitled to submit his explanation at this stage of preliminary enquiry. To my mind, holding of preliminary enquiry under Sub-section (1)(d) of Section 63 of Act No. 38 of 1959 by the State Government itself or through such officer or authority as it directs is meant to collect definable evidence against delinquent member and after taking into account his explanation with reference to those evidence collected during preliminary enquiry if the State Government still proposed to remove a member on any of the ground as specified in Clause (c) or Clause (d) of Sub-section (1) as result of the preliminary Inquiry mentioned herein above after hearing explanation of the member concerned it can draw up a statement setting out distinctly the charge against a member and shall send the same for inquiry and findings of Judicial Officer of the rank of a District Judge to be appointed by the State Government for the purpose of holding inquiry under Sub-section (3) of Section 63 of the Act No. 38 of 1959.

12. A close scrutiny of the aforesaid provisions further lead me to believe that the State Government is not entitled to initiate a final judicial inquiry against a member of Board after conclusion of preliminary inquiry merely on basis of gossip, rumour and hunch but it has to initiate final Judicial Inquiry against a elected member of Board in which it is objectively satisfied with the definable evidence in support of the articles of charges proposed to be framed against a delinquent member. The State Government is required to disclose material evidence in support of each distinct charge, below each charge which it Intends to adduce before Judicial Enquiry Officer in proof of such charge. Unless in support of each charge evidence is disclosed to the delinquent elected member, he will not be able to defend himself effectively. It will not be possible for him to ask for inspection of document or a copy of evidence which is sought to be relied upon against him. I am of the view that State Legislature has made its intention clear by using expression setting out distinctly the charge against the member which means that whenever and wherever charges are levelled against a member of a Board by State Government and it proposes a final inquiry by Judicial Enquiry Officer within the meaning of Sub-section (3) of Section 63 of Act No. 38 of 1959, it must disclose oral or documentary evidence or both below

each charge which it intends to adduce before Judicial Enquiry Officer giving a reasonable opportunity to the delinquent member to defend himself effectively. I have no hesitation to hold that disclosure of oral or documentary evidence or both below each charge levelled against a delinquent either in a judicial enquiry or under a disciplinary inquiry is an integral part of principle of natural justice and fair play and an argument contrary to it is hereby repelled. It is held that delinquent is entitled to claim copies of oral and documentary evidence along with service of charge sheet upon him.

13. All of us know that in criminal cases the evidence sought to be relied upon by prosecution in proof of the guilt of an accused is collected by investigating agency and these evidence collected during investigation are disclosed in charge sheet and evidence in support of those charges are made available to an accused. To my mind in the present case" holding of preliminary Inquiry against a delinquent officer is akin to investigation for collecting evidence against a delinquent member for holding full fledged judicial inquiry against him under Sub-section (3) of Section 63 of Act 38 of 1959 by a Judicial Officer of a rank of District Judge. It is true that present proceedings are not criminal proceedings but these proceedings have civil consequences. The law must now be taken to be well settled that even in administrative proceedings which involves civil consequences the doctrine of natural justice must be held to be applicable. Disclosure of evidence in support of each charge levelled against a delinquent elected member of Board seems to be an Integral part of principle of natural justice. It is to be imbibed that the principles of natural justice are in the process of evolution and its components are increasing day in and day out by judicial pronouncements to suit the social conditions prevailing in our democratic polity. Now, the principles of natural justice do not only include reasonable opportunity of hearing to a delinquent person but it also casts a duty upon the inquiry officer to disclose the evidence and reasons in support of his findings of misconduct or guilt. The inquiry officers are also required to analyse the oral and documentary evidence adduced by the administration and delinquent in support of their respective claims conscientiously with reference to salient features of law. Reasons are link to the conclusions which indicate application of mind of the inquiry officer to the facts and circumstances of the each case with reference to the evidence adduced by the parties and salient features of law.

14. It is urged by the learned counsel for the petitioners that in these petitions not only the principles of nature justice have been violated by the State Government at the time of framing distinct article of charges but Judicial Enquiry Officer upon whom the State Legislature and State Government has reposed implicit faith to have fair, free and independent impartial inquiry by recording findings have acted in a laconic manner without referring to what explanation have been given by the petitioners to the charges levelled against them. In these petitions except writ petition No. 2965/2000, the Judicial Inquiry Officers have miserably failed to record finding on each charge levelled against the petitioners against the mandatory provisions of Sub-section (3) of Section 63 and Rules

framed thereunder. From the reading of the findings recorded by Judicial Inquiry Officers in these cases do not inspire confidence of the Court that the Judicial Inquiry Officers have applied their mind judiciously to the evidence before them. Suffice it to say in this regard that reasons are link to the conclusion and Judicial Inquiry Officers in these cases while recording findings against the petitioners failed to give reasons as to how and on what material evidence charges levelled against the petitioners are found to be proved.

15. It is contended by Mr. M. Rafiq learned Additional Advocate General that that in all the three writ petitions, sufficient opportunities were afforded to the petitioners but they deliberately avoided to avail it before Judicial Inquiry Officers, therefore, the Judicial Inquiry Officers have no option, except to proceed ex parte against them. There is no quarrel, with the arguments advanced by the learned Additional Advocate General Mr. M. Rafiq but even if the Judicial Inquiry Officers were recording findings ex parte, they were required to keep in mind mandatory provisions envisaged under Sub-section (3) of Section 63 of Rajasthan Municipal Act. 1959 which mandates to record finding on each distinct charge separately even in those cases where petitioners would have admitted the charges levelled against them in their written statement and they after giving their explanation failed to show sufficient cause as to why they should not be removed even then the Judicial Inquiry Officers in these cases were required to record their findings on each matter embodied in the statement of charges separately within the meaning of Rule 2 of the Rules framed under Sub-section (3) of Section 63 of the Act No. 38 of 1959. Thus, even in those cases where charges are admitted by delinquent even then Judicial Inquiry Officer is required to record findings on each charge with reference to the evidence adduced in support of each charge, by Administration. Similarly, where Judicial Inquiry Officers have proceeded ex parte, that were required to record findings on each charge disclosing the material evidence in support thereof. Judicial Enquiry Officers are to record reasons as the State Government has to pass only consequential orders on the basis of findings remitted by Judicial Enquiry Officer to State Government. The order passed by State Government is amenable to writ Jurisdiction, hence, the petitioners are entitled to know reasons and evidence which persuaded the Judicial Enquiry Officer to hold the charges proved against them to demonstrate before this Court that reasons given in support of findings are erroneous or based on no evidence. From the reading of the findings of the Judicial Inquiry Officer in these cases the petitioners have succeeded to establish that the Judicial Enquiry Officers have recorded finding of guilt against than against the principle of natural justice without applying their minds to the facts and circumstances of each case and without disclosing evidence adduced in proof of each charge which had resulted in miscarriage of justice in their cases. The Judicial Inquiry Officers in these cases fail to disclose on which evidence their findings are based and on what evidence charges levelled against the petitioners are found to be proved. The petitioners have succeeded to establish violation of principle of natural justice and violation of Sub-section (3) of Section 63 and

Rules framed thereunder.

16. Lastly, it is urged by Mr. M. Rafiq learned Additional Advocate General that if the Court arrived at a conclusion that principle of natural justice are violated and judicial inquiry initiated in these cases are found to be not completed in accordance with Rajasthan Municipal Act and rules framed thereunder then the case may be remanded to the State Government to follow the procedure from the stage at which fault was pointed out and to take action according to law. It is submitted by Shri Rafiq that suspension of the petitioners should be allowed to be continued till conclusion of enquiry afresh by Judicial Inquiry Officers in support of his aforesaid contention, learned Additional General Mr. M. Rafiq placed reliance on a decision rendered in the case of State of Punjab and Others Vs. Dr Harbhajan Singh Greasy,

17. It is to be imbibed that suspension of a Government servant cannot be equaled with the petitioners who are elected members of Board. It goes without saying that suspension in the case of Government servant is not a punishment. It is further true that if the Government servant is exonerated in the disciplinary proceedings, he is entitled for all consequential benefits even without attending his works but in case of petitioners who are elected members of the Board it will affect their reputation and their public life causing irreparable injuries to them which cannot be compensated in terms of money, hence, their suspension can not be allowed to remain operative after setting aside the orders passed by State Government based on the findings remitted by Judicial Inquiry Officers without reference to any evidence in support of their findings. However, if the State Government found material definable evidence in support of charges levelled against the petitioners after remand it would be free to place them under suspension by passing a fresh orders of suspension against them.

As a result of aforementioned discussion, the instant writ petitions are allowed, orders removing the petitioners from membership of the Board and debarring them to contest re-election of Municipal Board for a period of five years are hereby quashed with a direction to the State Government to frame distinct charges against each of the petitioners disclosing the evidence sought to be relied upon in support of each article of charges levelled against each petitioner and then thereafter it would be free to appoint a Judicial Inquiry Officer to enquire into the matter in accordance with law. The State Government will also be free to pass fresh orders of suspension in accordance with law after commencement of disciplinary inquiry as discussed in the body of this judgment.

Parties are directed to bear their own costs.