

(1962) 06 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 37 of 1961

Negi Balbahadur Singh

APPELLANT

Vs

Lt. Governor Himachal Pradesh

RESPONDENT

Date of Decision : 15-06-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Small Towns Act, 1921 — Section 7

Citation : AIR 1962 HP 68

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : L. Thakur Dass, for the Appellant; K.C. Pandit, for the Respondent

Final Decision : Dismissed

Judgement

C.B. Capoor, J.C.

1. This petition under Article 226 of the Constitution of India has been filed by Negi Balbahadur Singh against the Lieutenant Governor, Himachal Pradesh.

2. By a notification dated 21st July 1958, the respondent in the exercise of powers conferred by Section 4 sub-section (2) of the Punjab Small Towns Act, 1921, as applied to Himachal Pradesh, nominated the petitioner as a member of the Small Town Committee Rampur. By a subsequent notification dated 17th of June 1961, the respondent removed him from the membership of the aforesaid committee and a copy of that notification was forwarded to him by the Magistrate First Class Rampur vide his endorsement No. 501/61 dated 27th of June, 1961. No opportunity was afforded to him to show cause against the proposed action.

As a result of the order of removal he cannot seek election to the membership of a Small Town Committee for a period of 5 years, and his gravamen is that it was a violation of the principles of natural justice to take an action which had such drastic consequences without affording an opportunity to show cause against the proposed order, that no proper inquiry was held by the respondent and that

there were no prima facie grounds justifying the order of removal. On receipt of the endorsement from the Magistrate, First Class. Rampur, the petitioner made a representation to the respondent requesting for his reinstatement but that also was rejected. He, therefore, prays for the issue of an appropriate writ quashing the order of his removal from membership of the Small Town Committee Rampur and for a declaration that notification dated 17th of June, 1961 was void and ineffective and that he continued to be a member of the Small Town Committee Rampur.

3. The petition has been resisted mainly upon the grounds: (a) that the activities of the petitioner qua the Small Town Committee Rampur were injurious to the interest of the Committee and he was unfit to remain a member of the Committee, (b) that under law it was not necessary to issue any notice to the petitioner to show cause as to why the order of removal be not made, (c) that it was not necessary to hold any inquiry into his conduct, (d) that the order of removal was a purely administrative one and no writ could issue to quash it, and (e) that he has been guilty of laches and that an alternate and equally beneficial remedy is available to him and no case is made out for the issue of a writ in the exercise of extraordinary jurisdiction of this Court.

4. The following questions arise for decision:

1. Whether the impugned order is in violation of the principles of natural justice, and whether a writ of certiorari can issue to quash it?
2. Whether the petitioner is entitled to the declaration that the impugned order is void and ineffective?.
3. Whether the petitioner has been guilty of laches?

Findings.

5. Question No. 1 The Punjab Small Towns Act does not contain a provision that an opportunity should be afforded to a member of the Small Town Committee before ordering his removal from membership. The question as to whether the order of removal from membership in the exercise of powers conferred by Section 7 of the aforesaid Act is a purely administrative order and as to whether it is amenable to a writ of certiorari has been considered by me in detail in the Civil Writ Petn. No. Prithi Chand Vs. Lieutenant-Governor, and the conclusion then reached was that such an order is an administrative order and not a quasi judicial one and that it is not necessary to issue a show cause notice to the member affected thereby before removing him from membership. In arriving at that decision I had in the main relied upon the majority decision in the case of Province of Bombay v. Khushal Dass S. Advani AIR 1950 SC 221,

The questions that arose in the aforesaid case were as to whether an order of requisition made u/s 3 of the Bombay Land Requisition Ordinance No. 5 of 1947 was a quasi judicial or an administrative and as to whether a writ of certiorari could issue to quash the order of requisition. The majority of Judges composing

the Bench held that the order was an administrative one and could not be quashed by a writ of certiorari. The leading judgment was delivered by Kania, C. J. who made the following observations:

"Because an executive authority has "to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari."

(6) Das, J. expressed his conclusion in the following words:

"But, as I have already stated, the main body of Section 3, on a correct construction of it, expressly left the question of the existence of the public purpose along with the question of the necessity or expediency of requisitioning land to the subjective opinion of the Provincial Government and, therefore, its decision, if made in good faith could not be questioned at all."

7. The following observations of Lord Atkinson made in *Liversidge v. Anderson* 1942 AC 206 .

"If it is a condition to the exercise" of powers by A that X has a right of way or Y has a broken ankle the authority is charged with determining these facts and it must ascertain judicially whether the conditions are fulfilled or not. If on the other hand, the condition is that the authority thinks or is of opinion that X has a right of way or Y has a broken ankle the condition is a purely subjective condition and the act cannot be a judicial act, as the existence of the condition is incapable of being determined by a third party by application of any Rule of law or procedure."

were approved of in the majority decision of the Supreme Court case referred to above.

8. Section 7 of the Punjab Small Towns Act runs as below:

"The State Government may remove any member of a committee who is in its opinion unfit to act or persistently remiss in the discharge of his duties as a member and any person so removed shall not be eligible for election or appointment as a member of committee for a period of 5 years from the date of his removal."

9. It will have been noticed that in the aforesaid section also the words used are "who is in its opinion unfit to act" and according to the classic distinction pointed out by Atkin, L. J. the opinion formed by the State Government as to the unfitness of a member of the Small Town Committee will be subjective. The copies of decisions of the Hon^{ble} Supreme Court in *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*,

and in *The Board of Revenue, U.P. and Others Vs. Vidyawati and Another*, had not been received in this Court and those decisions were not considered in the case of *Prithi Chand Vs. Lieutenant-Governor*, It has been strenuously urged on behalf of the petitioner that in view of the aforesaid decisions of the Hon^{ble} Supreme Court the order of the removal from membership of the Small Town Committee should be held to be a quasi judicial order and a writ of certiorari should issue to quash it.

10. The facts of the former case were as below: The respondents were students of G. S. Hindu Intermediate College at Sikandarabad and appeared at the intermediate "Commerce" examination conducted by the Board of High School and Intermediate examination in the year 1954. The result of the examination was published in the newspapers and the aforesaid students were declared to have passed in the 2nd division. Thereafter they prosecuted further studies but in December 1954, their fathers and guardians received information from the Principal of the aforesaid college that the Examination Committee of the aforesaid Board had cancelled the results of those students for the examination of 1954 and they had also been debarred from appearing at the examination of 1955.

Thereupon the aforesaid students filed a writ petition in the High Court of Allahabad and challenged the order of the Examination Committee mainly on the ground that it was passed without affording to them an opportunity to show cause against the proposed order. The petition was opposed and was dismissed by a learned Single Judge of the High Court. An appeal was filed against the aforesaid decision and came up for hearing before a Division Bench consisting of Mr. Justice Dayal (now a Judge of the Supreme Court) and Brij Mohan Lal, J. Both the Judges were agreed that the order of the Examination Committee was an administrative order.

There was, however, a difference of opinion between them on the question as to whether it was incumbent upon the examination committee to have issued a show cause notice to the aforesaid students before cancelling the examination. Brij Mohan Lal, J. was of the opinion that even though the order was an Administrative one it was incumbent upon the Examination Committee to have afforded an opportunity to the students to have their say before cancelling the examination. Mr. Justice Dayal was of the opinion that as the order was an administrative one it was not necessary to give a hearing before making the order.

The case was referred to a third Judge namely Agarwala, J. He was inclined to the view that the order was not an administrative one but a quasi-judicial one but as that point was not referred to him he did not express any opinion thereon. On the question referred he was of the opinion that an opportunity should have been afforded to the students to show cause before cancelling the examination and he agreed with the view of Brij Mohan Lal, J. The matter was placed before the Bench and the appeal was allowed in accordance with the opinion of the third

Judge. Leave to appeal to the Hon"ble Supreme Court was granted and an appeal was filed, which was, however, rejected.

11. It has not been expressly provided in the U. P. Intermediate Education Act No. 2 of 1921 or in the regulations framed thereunder that the examinations committee of the Board shall act judicially when exercising its powers in considering the cases where examinees have concealed any fact or made false statement in their application forms etc. On an examination of the relevant regulations their Lordships held that the committee had to find the following facts before it could take any action:

(i) Whether the examinee has concealed any fact or made a false statement in his application form; or

(ii) Whether the examinee has made a breach of the Rules and Regulations to secure undue admission to an examination; or

(iii) Whether the examinee has used unfair means at the examination; or

(iv) Whether the examinee has committed fraud (including impersonation) at the examination: or

(v) Whether the examinee is guilty of moral offence or indiscipline.

12. They made the following observations:

"We thus see that the Committee can only carry out its duties under Rule 1(1) by judging the materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee: at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under Rule 1(1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under Rule 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in Courts. Considering, therefore, the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under Rule 1(1) it seems to us that the Committee must be held to act judicially in circumstances as these."

13. The other case, Civil Appeal No. The Board of Revenue, U.P. and Others Vs. Vidyawati and Another, was decided on the same day on which the aforesaid case was decided. The facts of the Board of Revenue case were as below: Certain decretal moneys were deposited in the then Chief Court of Oudh at Lucknow. The

respondents applied to the Chief Court for permission to withdraw the moneys on furnishing security and were permitted to do so. Thereupon a registered security bond was executed and registered in Simla in 1949 by which a house there was given in security for withdrawal of the money. Before however the money could be withdrawn the Inspector of Stamps reported on March 15, 1950 that the so-called security bond was in reality a mortgage deed without possession and was insufficiently stamped. He, therefore, reported that it should be impounded and the deficit stamp duty of Rs. 482/11/- and a penalty amounting to Rs. 4,826/14/- should be levied with respect to that document. Thereupon on April 5, 1950, the Deputy Commissioner, Kheri, acting as Collector passed the following order:

"In case the parties have any objection, they put it in writing which will be referred to the Board of revenue."

14. It seems that on July 5, 1950, the respondents objected that the document was not a mortgage deed and that no duty or penalty was payable, and further that as the document had not been till then accepted by the Court, it was only a tentative document. On August 3, 1950 the Judicial Officer before whom the security bond was filed impounded it under Section 33 of the Indian Stamp Act, No. II of 1899 and apparently forwarded it to the Deputy Commissioner, Kheri u/s 38 of the Act. Thereafter in November, 1950, the respondents filed further objections before the Stamp Officer (Treasury Officer) Kheri, from whom the Deputy Commissioner who acts as a Collector for the purposes of the Act had called for a report. In December, 1950, the Treasury Officer made a report to the effect that the view of the Inspector of Stamps was correct and duty and penalty as reported by the latter were due.

The respondents' case was that the Treasury Officer did not give them any hearing before making the said report. It seems that on this report the Deputy Commissioner made the order "realize". He also is said to have given no hearing to the respondents. In January, 1951 the respondents filed a revision against the order of the Deputy Commissioner before the Board of Revenue. It appears, however, that in March, 1951 the Deputy Commissioner referred the matter to the Board of Revenue u/s 56(2) of the Act. In July, 1951 the Board of Revenue disposed of the matter and upheld the order of the Collector but the respondents' complaint was that the Board of Revenue also did not give them any hearing. Consequently they filed a writ petition in High Court in November, 1951 which was dismissed by a learned single Judge on the ground that neither the Act nor the rules made thereunder provided that any hearing should be given to the person who was liable to pay the deficit stamp duty and the penalty.

He further held that in any case the Collector had given an opportunity to the respondents to urge their objections in writing, and that the Board of Revenue had also considered the grounds taken by the respondents in their revision petition and there was no provision in the law requiring the Board of Revenue to give a personal hearing or a hearing through a counsel in a case of this kind. The

respondents went up in appeal. The appeal Court seems to have treated the matter before the Board as if it were a reference u/s 56(2) of the Act. As the learned single Judge has pointed out, though the order of the Collector of December, 1950 would usually be final it appeared that he had chosen to make a reference to the Board of Revenue under Section 56(2). The Hon'ble Supreme Court proceeded on the assumption that this case had been disposed of by the Board under Section 56(2) and not by the Collector u/s 41, or by the Board u/s 56(1).

15. The main contention that was put forward on behalf of the appellant before the Supreme Court was that the High Court having held that the Board was acting merely administratively when proceeding u/s 56(2) of the Act went wrong in holding that it was bound under the principles of natural justice to give a hearing to the respondents. Their Lordships proceeded on the basis that the matter before the Board was u/s 56(2) on a reference by the Collector and not u/s 56(1) on the application filed by the respondents inviting it to exercise its power of control thereunder. On an examination of the scheme of Section 56(2) of the Indian Stamp Act their Lordships reached the conclusion that the point raised for the Collector's decision was a difficult point of law and from the very nature of the duty to be performed in such circumstances the Chief Controlling Revenue Authority had to decide the matter judicially and would thus be a quasi judicial tribunal.

The following further observations were made by their Lordships:

"Where, however, the provisions of the Act are silent, the duty to act judicially may be inferred from the provisions of the statute or may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used and other indicia afforded by the statute. It is true that in the present case the Act and the Rules framed thereunder do not provide for a hearing by the Board of Revenue, when it is dealing with a matter under Section 56(2) of the Act. But the question that is before the Board of Revenue under Section 56(2) is of the construction of an instrument and the application of the Act to it. In many cases the decision of the Board if goes against the person executing the instrument, may result, in payment of large amounts as deficit stamp duty and even larger amounts as penalties. The question is purely a question of law in the circumstances. It seems to us, considering the nature of the duty cast on the Board of Revenue u/s 56(2) requiring it to construe instrument submitted to it thereunder and the application of the Act to them which result in payment of heavy amount of deficit duty and even heavier amounts as penalty, that the legislature intended that the Board of Revenue should hear the person executing the document, before saddling him with large pecuniary liability. The question before the Board u/s 56(2) being one of construction of instrument and the application of the Act to it being a pure question of law which may result in payment of large amounts by the executants on the document, it would not in our opinion be improper to hold that for the

determination of such a question the legislature intended that the party affected by the decision of the Board of Revenue should be given a hearing and that the Board should act judicially in deciding a pure question of law. The fact that the decision will depend upon the opinion of the Board cannot in any way make any difference for the determination of questions of law must always depend upon the opinion arrived at judicially of the person or authority who has to determine it and that will not necessarily mean that the person determining it cannot possibly be required to act judicially because he has to act upon his opinion. Further Section 57 reinforces the above conclusion. That section provides that the Chief Controlling Revenue Authority may state any case referred to it u/s 56(2) or otherwise coming to its notice and refer such case with its own opinion thereon to the High Court and every such case shall be decided by not less than 3 Judges of the High Court to which it is referred. This provision shows that questions referred to the Board u/s 56(2) may be such complicated questions of law that the Board may not be able to make up its mind and may be in doubt and in such a case the Board has the power to refer the matter to the High Court along with its opinion and the question has to be decided by a Bench of 3 Judges, where undoubtedly the hearing could not but be judicial. If, therefore, the hearing u/s 57 is judicial it would in our opinion be proper to infer that the hearing u/s 56(2) which deals with similar questions must also be judicial. We are therefore of opinion that considering the totality of circumstances and the nature of the matter to be determined by the Board of Revenue u/s 56(2) the Board has to act judicially when proceeding u/s 56(2) and must, therefore, on principles of natural justice give a hearing to the other party namely the executants of the instrument."

16. On behalf of the petitioner stress has in particular been laid upon the observations made in the aforesaid cases that the consequences of the cancellation of examination in the former case and of the opinion regarding the payment of the :proper duty and penalty in the other were drastic and it has been contended that as the consequences of the removal of the petitioner from membership of the Small Town Committee were also drastic such an order should not be made without affording opportunity to the person to be affected by it to show cause against the proposed order.

A perusal of the aforesaid decisions will indicate that the drastic nature of the consequences that would ensue on the making of the orders sought to be impugned was not the only reason but one of the reasons which led their Lordships to hold that not to afford an opportunity to show cause against the proposed order would be a violation of the principle *audi alteram partem*. It is significant that no doubt was cast by their Lordships on the observation made in *Province of Bombay Vs. Kusaldas S. Advani and Others*, that merely because an executive authority has to determine certain objective facts as a preliminary step to the discharge of the executive function it does not follow that it must determine those facts judicially. On the other hand the decision in the aforesaid case was approved and followed. The principles laid down in that case, therefore,

still hold the field. The following points emerge with distinctness from the aforesaid decisions:

- (i) That a purely administrative order is not amenable to a writ of certiorari;
- (ii) That the question as to whether a body is required to act judicially or not, depends upon the totality of circumstances of each case.
- (iii) That the mere fact that an opinion has to be formed on certain material, it should not necessarily follow that the approach is objective and not subjective.

17. The Town Area Committee Sikandarpur District Alligarh was superseded by the State Government u/s 36 of the U. P. Town Areas Act. Shri Iqbal Ahmad one of the members of the superseded Committee filed a writ petition in the High Court challenging the order of supersession and seeking to quash it. It was held by Jagdish Sahai, J. in *Iqbal Ahmad Vs. State of U.P. and Others*, that a writ of certiorari would not lie to correct the errors of a statutory body which is entrusted with purely administrative functions and that the State Government while acting u/s 36 of the U. P. Town Areas Act only discharges administrative duties and does not perform any judicial or quasi judicial functions. Therefore, writ of certiorari to quash the order of the State Government superseding certain Town Area Committee u/s 36 of the U. P. Town Areas Act does not lie. Section 36 referred to above runs as below:

"If, in the opinion of the State Government a committee persistently makes default in the performance of the duties imposed on it by or under this or any other Act for the time being in force or exceeds or abuses its powers the State Government may by an order published, with the reasons for making it, in the official Gazette declare that the Committee to be in default or to have exceeded or abused its powers; and supersede it for a period not exceeding two years be specified in the order."

18. It will have been noticed that according to that section the State Government has to form opinion just as it has to do u/s 7 of the Small Towns Act.

19. Keeping in view the classic distinction pointed out by Atkin, L. J. in the case of *Liversidge* 1942 AC 206 (supra) there can be no doubt that the opinion which the State Government has to form u/s 7 of the Small Towns Act as to the fitness or otherwise of a person to continue as member of the Small Town Committee is subjective and not purely objective.

20. I am, therefore, of the opinion that the order of the State Government removing the petitioner from membership of the Small Town Committee Rampur is an administrative order and is not amenable to a writ of certiorari.

Question No. 2, The only ground on which the orders sought to be impugned is alleged to be void and ineffective is that it was passed without affording a "hearing to the petitioner. It has already been seen that it was, not incumbent upon the respondent to have afforded an opportunity to the petitioner to show

cause against the proposed order. The question is answered in the negative.

Question No. 3. In view of the finding on question No. 1 this question does not arise for a decision.

21. In conclusion the petition fails and is hereby dismissed with costs.