
(1994) 11 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10137 of 1994

Niranjan Dass

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 07-11-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311(2)
Punjab Municipal Act, 1911 — Section 238

Citation : AIR 1995 P&H 113 : (1995) 109 PLR 186 : (1995) 1 RCR(Civil) 404

Hon'ble Judges : K.S. Kumaran, J; Ashok Bhan, J

Bench : Division Bench

Advocate : P.S. Patwalia and Arjun Jain, for the Appellant; Ms. Charu Tuli, AAG, J.R. Mittal and K.K. Garg, for the Respondent

Judgement

1. Challenge in this writ petition is to the suspension of Municipal Committee, Patiala without affording any opportunity to it to show cause as to why it be not suspended. Shortly stated, the facts are:-

Elections to the Municipal Committee, Patiala were held in Sept. 1992. Petitioner was elected as President of the Municipal Committee, Patiala on 9-10-1992 unanimously. Notification appointed the petitioner as President of the Municipal Committee, Patiala for a period of five years was issued on 20-10-1992. On 10-2-1994, notification, An-nexure P-1, was issued placing the Municipal Committee Patiala, under suspension, which has been impugned in this writ petition.

2. The plea taken in the writ petition that the impugned notification, Annexure P-1 has been issued without application of mind; that there are three situations under which action can be taken against the Municipal Committee u/s 238 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act"); they are:--

1) not competent to perform its duties;

2) has persistently made default in the performance of duties imposed on it, and

3) has abused its powers;

that all these three situations are different situations and reasons for these three situations would be altogether different and the authority issuing the notification has failed to record any specific reasons for suspending the Municipal Committee; and that whatever reasons have been recorded are not reasons in the eye of law. Another point raised is that no opportunity of hearing was given to the Municipal Committee, Patiala before passing the impugned order which is a serious violation of the principles of natural justice. Relevant provisions of Section 238 of the Act reads as under:--

"238(1). If, in the opinion of the State Government a Committee is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this Act or any other law or exceeds or abuses its powers, the State Government may, by an order published, together with the statement of reasons thereof, in the Official Gazette, declare the Committee to be incompetent or in default or to have exceeded or abused its powers as the case may be, and suspend it for such period, not exceeding one year, as may be specified in the order.

(Provided that the State Government may by notification for reasons to be specified therein, extend the aforesaid period of suspension, from time to time, for a period not exceeding one year in aggregate.)

(3) Before making an order of suspension or supersession, opportunity shall be given to the Committee to show cause why such an order should not be made.

(Provided that it shall not be necessary to give such opportunity where it is not reasonably practicable to do so.)"

3. We propose to dispose of this writ petition on the second point regarding violation of the principles of natural justice. Supreme Court of India in S.L. Kapoor Vs. Jagmohan and Others, , while dealing with the right to be heard in a similar situation under the Act, observed as under (at p. 142 of AIR):--

"A Committee as soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem, is certainly to visit the Committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the Committee to serve its full term of office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

4. S.L. Kapoor Vs. Jagmohan and Others, pertains to the State of Delhi to which

the Punjab Municipal Act was applicable. For the State of Punjab, proviso to sub-clause (3), Section 238 of the Act was added by Punjab Act 38 of 1973. While conferring the right of being heard before an order of suspension or supersession is passed against the Municipal Committee, a proviso has been added that it would not be necessary to give such opportunity where it is not reasonably practicable to do so. We have perused the notification Annexure P-1 and the only reason given for not affording an opportunity of hearing to the Municipal Committee, Patiala before its suspension is "Government is, therefore, of the considered view that it is necessary in public interest to take, immediate preventive steps and ensure safety of the municipal records from being concealed or tampered with mala fide intentions and as such it is not reasonably practicable to afford the Municipal Committee an opportunity to show cause against its suspension.

5. In our view, the reasons given in the order are not reasons in the eye of law for withholding the right of being heard to the Municipal Committee. Right to be heard has been provided statutorily in the Act but with a condition that wherever it is not reasonably practicable to do so, then the same can be dispensed with. Right to be heard can only be denied in rare cases and the reasons have to be stated in the order itself while denying the opportunity of being heard. Reasons have to be such which can stand the scrutiny of judicial review. Right to be heard is one of the basic principles of natural justice and is a right against any arbitrary action. It is the statutory duty of the authority to afford an opportunity of hearing to an elected body before it is superseded or suspended. Apprehension with regard to the tampering of the record of the Municipal Committee could be ensured by ordering that the same be kept in the safe custody with the Deputy Commissioner or the executive officers of the Municipal Committee and the right to be heard cannot be denied to the elected body simply because the authority concerned apprehended that the record may be tampered with especially when steps could be taken to ensure that the same is not tampered with. Apprehension on that account especially under the circumstances of the present case where the action was being taken after considerable lapse of time, was no ground for withholding the right to be heard to the elected body before its suspension. In *S.L. Kapoor Vs. Jagmohan and Others*, , the Supreme Court has observed that the expectation of the Committee to serve its full term of office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded, would entail civil consequences and observance of the principles of natural justice before an order of supersession, is passed, should be insisted upon.

6. Another argument raised by Shri J.R. Mittal, Senior Advocate, appearing for respondent No. 3, is that refusal to grant opportunity of hearing in a particular case for the reason that it is not reasonably practicable to do so was not justifiable. We do not find any substance in this submission. Right to be heard has been statutorily provided under the Act and if the opportunity of hearing is denied, then the authority is supposed to record its reasons for doing so. In this

case reasons have been recorded although no further appeal or review is provided against the satisfaction recorded by the authority with the departmental authorities but it is not beyond the judicial review. In exercise of jurisdiction under Art. 226 of the Constitution of India, the High Court can certainly go into the validity of the reasons for denying the opportunity of hearing to the party concerned. While interpreting a similar provision under Art. 311(2) of the Constitution of India, Supreme Court of India in *Union of India and Another Vs. Tulsiram Patel and Others*, , has held that such a provision is not beyond the judicial review. We, therefore, hold that the authority under the Act has violated the principles of natural justice in denying the right of opportunity of being heard to the elected body.

7. For the reasons recorded above, we quash the notification, Annexure P1 and leave it open to the authority concerned to pass a fresh order after affording an opportunity of hearing to the Municipal Committee, Patiala, in accordance with law. No costs.

8. Order accordingly.