

(1954) 08 AHC CK 0007
In the Allahabad High Court
Case No : Civil Misc. Writ No. 487 of 1954

Purushottam Chandra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-08-1954

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Municipalities Act, 1916 — Section 40(3), 40(4), 40(5)

Citation : AIR 1955 All 106

Hon'ble Judges : V. Bhargava, J

Bench : Single Bench

Advocate : N.C. Vaish, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhargava, J.—This petition under Article 226 of the Constitution has been presented by Purushottam Chandra who was elected as a member of the Municipal Board of Ghaziabad on 1-11-1953.

2. It appears that some land within the limits of the Municipal Board of Ghaziabad was acquired under the Land Acquisition Act for the development schemes of the municipal board by a notification issued in the U. P. Gazette on 10-7-1947. On part of this land, the petitioner started constructions which he called a "Dharamshala". These constructions were started without complying with the provisions of S. 178, U. P. Municipalities Act, 1916. A statement about compensation payable to the owners of the land was prepared and sent with a report by the Land Acquisition Officer to the Collector. That report is dated 14-10-1952. The report mentions that, on this land, a building known as Dharamshala, constructed by the petitioner, was standing. The officer, sending the report, was of the opinion that since the constructions were made after the notification relating to acquisition of land, the petitioner was not entitled to any compensation in respect of this building. It was, however, suggested that it may not be necessary to have the building removed and the building may be taken

over without payment of any compensation whatsoever.

It was stated by learned counsel for the petitioner that this recommendation in the report was accepted by the Collector and was made a part of the award. Even subsequently, the petitioner obtained a permit for 200 bags of cement from the Planning Officer on 2-1-1953. There were thereafter some reports to the authorities and to the Government, as a result of which, on 27-12-1953, this site was inspected by Shri D. N. Tandon, Deputy Collector posted at Ghaziabad, who gave a report that the work on this "Dharamshala" had been started again from 23-11-1953. At the time when he went for inspection, he found that the building had already been constructed and the labourers were plastering the floor and roof of the building.

Thereafter, on 27-4-1954, a charge, which was communicated to the District Magistrate of Meerut by the Assistant Secretary to Government, U. P. Municipal Department, was served on the petitioner by the District Magistrate. The charge was that

"the petitioner had contravened the provisions of Section 178, U. P. Municipalities Act, 1916, and the building bye-laws made thereunder when soon after his election as a member of the Ghaziabad Municipal Board he re-started on 28-11-1953, the unauthorised construction of a building on plot No. 827 of land outside Sihani Gate, which land had been acquired by Government for the Ghaziabad Municipal Board for their development schemes. Being in full knowledge of these facts, he had, by his said action, so flagrantly abused his position as member of the Board as to render his continuance as member detrimental to public interest."

The Government also passed an order on 8-5-1954, suspending the petitioner from membership of the Ghaziabad Municipal Board pending enquiry into the charge mentioned above.

The petitioner on these facts moved this petition in this Court on 17-5-1954. In this petition, as originally moved and subsequently amended, the following four prayers have been made:

"(1) That the respondent No. 1 be ordered by a writ of "prohibition" (to refrain from passing any orders pursuant) to Section 40(3), U. P. Municipalities Act of 1916.

Note -- The part within the brackets does not occur in the original petition presented in this Court but learned counsel for the petitioner read out this part from his copy in order to explain what this prayer in the original petition was really to be as the prayer actually put in the petition appeared to be meaningless.

(2) That the order of suspension u/s 40(5) of the said Act be kept in abeyance pending the determination of this petition and the order of suspension be quashed.

(3) That the respondent No. 1 be further ordered to hold an enquiry into the allegations against the petitioner through a Judicial Officer.

(4) That the elections of Vice-President of the Municipal Board, Ghaziabad, held on 25-5-1954, and of the committees held on 25th and 26th May, 1954, be declared null and void and the persons so elected be restrained by an order from functioning as such Vice-President and Chairman and Members of the Committees."

The opposite parties in this petition are only three in number, viz., the State of Uttar Pradesh, the District Magistrate, Meerut District, Meerut, and Shri Ramanuj Dayal, President, Ghaziabad Municipal Board, Ghaziabad.

3. The first point, that has to be noticed, is that prayer No. 4 in the petition cannot be granted to the petitioner as the persons sought to be restrained from functioning as Vice-President, Chairman and Members of the committees, have not been impleaded as opposite parties in the petition. Obviously, no writ or direction can issue to them without impleading them as opposite parties to this petition. Therefore, so far as this prayer is concerned it need not be considered on merits at all.

4. Learned counsel for the petitioner has mainly argued that the first prayer should be accepted by this Court. It may be mentioned in this connection that, in this case, lengthy and numerous affidavits have been filed by the various parties and they contain a lot of material which appears to be entirely unnecessary for the purpose of this petition. In giving the above facts, I have only included those facts on which learned counsel for the petitioner based his argument in order to claim the relief sought by the petitioner and all other unnecessary facts have been completely omitted. Actually, in this judgment, I have only dealt with those facts which were necessary for dealing with the few arguments advanced by learned counsel for the petitioner in support of the petition and have not gone into other facts to see whether any other arguments could be advanced on the basis of those facts.

5. The main writ sought by the petitioner is the writ of prohibition, directing the State of Uttar Pradesh not to proceed with action u/s 40(3), U. P. Municipalities Act, 1916. A writ of prohibition issues only when a judicial or quasi-judicial tribunal exceeds its Jurisdiction or tries to exercise jurisdiction not vested in it. The facts given above as well as the contentions of learned counsel nowhere make out that the State of Uttar Pradesh has no jurisdiction to pass orders under Sub-section (3) of Section 40, U. P. Municipalities Act, 1916. In fact, the provisions of Sub-section (3) of Section 40 clearly show that the power to pass orders under that provision of law is vested in the State Government only and no other authority, except the State Government, can pass those orders. The provisions of this section indicate that the passing of the orders under Sub-section (3) of Section 40 is permissible only under certain circumstances.

Firstly, under Sub-section (4) of Section 40, whenever the State Government

proposes to take action under Sub-section (3) of that section, an opportunity of explanation shall be given to the member concerned. Thereafter the State Government is to form its opinion whether the member has so flagrantly abused, in any manner, his position as a member of the Board as to render his continuance as a member detrimental to the public interest. If the Government does form such an opinion, the Government can pass order, laying down what action has to be taken and, at the time of passing the orders, the reasons for taking the action have to be placed on record. It is, therefore, clear that whenever action has to be taken under Sub-section (3) of Section 40, U. P. Municipalities Act, 1916, the proceedings are initiated by a proposal of the State Government to take action under that sub-section. On that proposal, an opportunity of explanation has to be given to the member. In the present case, the annexures filed by the petitioner himself show that the Government did propose to take action and, in pursuance of that proposal, served a charge on the petitioner in order to give him an opportunity of giving his explanation. The procedure, which has been adopted by the State Government, is, therefore, the correct procedure prescribed by law.

The real grievance of the petitioner is that the acts, imputed to him, do not constitute a flagrant abuse of his position as a member of the board so as to render his continuance as a member detrimental to the public interest and it is urged that, on account of this, the State Government has no jurisdiction to take proceedings against the petitioner. Firstly, it must be noticed that, under Sub-section (3) of Section 40 of the Act, action can be taken if the Government is of the opinion that the member has flagrantly abused his position in the manner mentioned in that Sub-section. The basis for taking action is the opinion of the Government and not the actual existence of the fact that the position has been flagrantly abused. If the power of the State Government to take action had depended on the existence of the fact that the member had flagrantly abused his position, it might have been possible for the Courts to examine whether there was material for coming to such a view. When the law requires that the State Government has to form its opinion and empowers the State Government to take action on that opinion, the Courts cannot examine whether the opinion formed by the Government is correct or incorrect. It is only necessary to make sure that the Government has formed the opinion as required by law.

There may be cases where it may be possible for the Courts to interfere even if the opinion has been formed by the Government, when that opinion is based on reasons placed on record under Sub-section (4) of Section 40 of the Act which bear no reasonable relation to the formation of that opinion. That is, however, a point which need not be decided at this stage. At the present stage, the Government has not yet proceeded to pass orders under Sub-section (3) of Section 40. The Government is still at the intermediate stage of giving an opportunity to the petitioner of giving his explanation and of holding the enquiry contemplated by Sub-section (5) of Section 40 added to this section by the U. P. Municipalities (Amendment) Act 1952 (U. P. Act VII of 1953). An enquiry by the

State Government is instituted whenever the State Government proposes to take action under Sub-section (4) of Section 40. At this stage, the Government has only some "prima facie" material before it on the basis of which it considers that the enquiry should be held.

It is not made out in the petition that there was no such material, on which the Government could come to the conclusion that an enquiry should be held and propose to hold the enquiry and take action. While the enquiry is being held and the State Government is giving an opportunity to the petitioner to submit his explanation, no irregularity of procedure is being committed. Whether the State Government will ultimately pass an order against the petitioner under Sub-section (3) of Section 40, or, will cancel the proceedings cannot be anticipated. The proceedings at the present stage are clearly valid proceedings and any order passed u/s 40(3) in pursuance of those proceedings will be an order passed after following the Correct procedure. In these circumstances, it cannot be said that the State Government had no jurisdiction to pass an order under Sub-section (3) of Section 40. U. P. Municipalities Act, 1916, and, consequently, no writ of prohibition, as prayed for by the petitioner, can issue.

6. The second prayer is that the order of suspension under Sub-section (5) of Section 40 of the Act be kept in abeyance pending the determination of the petition and that order be quashed. The power of suspension is vested in the State Government at the stage when the State Government institutes an enquiry for the purpose of taking action under Sub-section (3) of Section 40 and the petition and the affidavits nowhere make out that, when the order of suspension was passed by the State Government, it was not within its powers to do so. The order of suspension has now been in force for more than three and a half months and its prolongation is obviously the result of acts on the part of the petitioner himself. The petitioner moved this writ petition and it was, probably, as a consequence of the pendency of this petition that the Government stayed its hands and did not proceed further with the enquiry. The petitioner approached this Court at the wrong stage because the proceedings at the stage, at which they were when this petition was filed, were clearly in accordance with the law and within the jurisdiction of the State Government.

7. The only other prayer by the petitioner is that the State Government be ordered to hold an enquiry into the allegations against the petitioner through a Judicial Officer. No power vests in this Court to give such a direction to the State Government. The State Government has to hold an enquiry in accordance with the provisions of the U. P. Municipalities Act, 1916, and as long as it does so, this Court cannot, in exercise of its writ jurisdiction give any order or direction as to the manner in which the enquiry should be held.

8. On behalf of the petitioner, allegations have been made that these proceedings against him are the result of "mala fide" action on the part of opposite party No. 3. That point is irrelevant so far as prayers in this petition are concerned. The writs are sought to restrain the State Government from taking action against the

petitioner and the petitioner nowhere alleges any mala fides on the part of the State Government itself. May be that the enquiry by the State Government started because opposite party No. 3 moved the State Government for that purpose but that point is to be considered by the State Government itself when it forms its opinion and decides to pass or refrain from passing orders of removal of the petitioner under Sub-section (3) of Section 40 of the Act.

9. The petition fails and is dismissed with costs which shall be Rs. 100/- for opposite parties Nos. 1 and 2 and Rs. 100/- for opposite party No. 3.

10. As prayed by cleared counsel for the petitioner, documents, which have been filed in original in this petition, may be returned to the petitioner in accordance with the rules.