
(1954) 12 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 8 of 1954

Ramesh Chandra and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 22-12-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1913 — Section 16
Punjab Small Towns Act, 1921 — Section 49

Citation : AIR 1955 HP 11

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : Dina Nath, for the Appellant;

Final Decision : Dismissed

Judgement

Ramabhadran, J.C.

1. This is a petition under Article 226 of the Constitution, made by three former members of the Bilaspur Small Town Committee, wherein I am requested to issue a writ against the Respondent State of Himachal Pradesh, directing it to restore the petitioners and other members of the Committee to their former positions and restraining the respondent/ from interfering in the internal affairs of the Committee.

2. Learned Counsel for the petitioners pointed out that on 1-9-1954, an order was passed by the Lieutenant-Governor, Himachal Pradesh, purporting to be u/s 49, Punjab Small Towns Act, as applied to Himachal Pradesh, wherein it was stated that the Small Town Committee of Bilaspur was suspended, since it had persistently made default in the performance of its duties and abused its powers.

3. Learned Counsel urged that the order was illegal and ultra vires since the petitioners and other members were not given an opportunity of showing cause against the suspension order. It was urged that had such an opportunity been

given, the Committee could have proved, to the satisfaction of the Government, that they had neither abused their powers, nor committed default in the performance of their duties. In this connection, learned counsel invited my attention to a copy of the representation sent by the members of the Committee to the Lieutenant Governor, requesting him to withdraw the suspension order. An acknowledgment was received from the Secretary to the Lieutenant-Governor, who stated that the representation had been forwarded to the Chief Minister for disposal. So far, no reply has been received.

4. In my opinion, for reasons given below, the writ petition cannot be admitted.

5. I may point out that under Article 226, this Court could issue a writ for the enforcement of any of the rights conferred by Part 3 of the Constitution or for any other purpose. Part 3 deals with Fundamental Rights. Learned Counsel was unable to show which particular Fundamental Right of the petitioners has been infringed. It may be that the expression, "for any other purpose", may cover a case like the present one but then it seems to me that this particular case cannot be disposed of in a summary proceeding as in a writ petition.

The case of the respondent appears to be that the Committee has abused its powers and committed default in the performance of its duties. These allegations are, of course, denied by the petitioners. The matter cannot be decided one way or the other without recording evidence. Section 49, Punjab Small Towns Act, does not say that before a Committee is suspended, an enquiry should be held and an opportunity be given to the Committee to clear its position. It is significant that the proviso to Section 16, Punjab Municipal Act, distinctly provides that before a member of a Municipal Committee is removed, the reasons for his proposed removal shall be communicated to him and he shall be given an opportunity of tendering an explanation. The omission of a similar provision in the Punjab Small Towns Act appears to be deliberate.

6. Learned Counsel for the petitioners cited *Raj Krishan Vs. Chief Commissioner, Delhi and Another*, that relates to a case under the Punjab Municipal Act, with special reference to the proviso to Section 16 (1) of that Act, referred to earlier. Therefore, that ruling is not applicable here. Nor is *M.K. Govinda Reddi Vs. E.K. Pattabhi Rama Reddi and Others*, which arose out of a case under the Gwalior State Municipalities Act. Section 11 of that Act imposed a duty on the Government to give an opportunity to the Committee to show cause before action was taken against it. *Buddhu Vs. Municipal Board and Others*, relates to a case of a Municipal by-law prohibiting cow-slaughter and, therefore, has no application here.

7. To sum up therefore, the order passed by the respondent, *prima facie*, falls under Section 49, Punjab Small Towns Act, as applied to Himachal Pradesh. It is true that the order does not indicate which particular duty was neglected by the Committee or which power was abused by it. This fact alone, however, in my opinion, is not sufficient to invalidate the order. The real dispute between the parties is whether

the Committee was or was not guilty of the sins of commission or omission attributed to it. This can be decided only after recording evidence Of the parties and, bbviously, that can be done only in a regular suit. With these remarks the petition is rejec ted. The petitioners may seek their remedy, if so advised, by a regular suit.