
(1978) 12 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.P. No. 153 of 1977

Ramjilal Gupta

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 16-12-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipalities Act, 1961 — Section 332, 332(1)(iii), 41, 41(2)
Prevention of Food Adulteration Act, 1954 — Section 7

Citation : (1979) J LJ 397

Hon'ble Judges : S.J. Surana, J; K.K. Dube, J

Bench : Division Bench

Advocate : M.A. Shah, for the Appellant; J.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

K.K. Dube, J.—This petition is directed against the order of the State Government u/s 332 of the Municipalities Act, reviewing its earlier order in the matter of disqualification of the respondent No. 2.

2. The facts giving rise to this petition are these: Elections of the Councilors of the Municipal Council, Jaura were held in the year 1974. The petitioner was declared duly elected Councilor from ward No. 3 and the result duly notified and published. The respondent No. 2 Shantilal Agarwal was a practicing lawyer of Jaura. He was also declared elected. The respondent No. 2 was then elected as the President of the Council for a term of two years. It appears that the respondent No. 2 had appeared in a series of cases defending accused persons who were prosecuted under the Prevention of Food Adulteration Act, 1954 and the rules made there under. The criminal cases were initiated at the instance of Food Inspectors for the offences committed within the limits of the Municipal Council Jaura. A 1st of such cases is appended to the petition with the dates on which the respondent No. 2 appeared in those cases.

3. u/s 41. sub-section (2) of the M.P. Municipalities Act, it is provided that the

State Government may, at any time, remove a Councilor, if it finds that being a legal practitioner, such Councilor acts or appears on behalf of any other person against the Municipal Council in any legal proceeding or against the State Government in any proceeding relating to any matter in which the Council is or has been concerned or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Council against such person. The State Government followed the procedure prescribed and gave the respondent No. 2 an opportunity of defending himself against the disqualification, The State Government finding that the respondent No. 2 had incurred disqualification, by its order dated 2-11-1976 ordered removal of respondent No, 2 from the councillorship of the Municipal Council, Jaura in public interest. The disqualification was to continue for a period of 4 years and the petitioner was precluded from contesting further elections, selection and appointment during the period. The respondent No. 2 aggrieved by the order of the State Government, came up before the High Court in a writ petition being M.P. No. 288 of 1976 at Gwalior Bench. The High Court summarily dismissing the petition by its order dated 7-12-1976. observed as under 1977 (1) WN 92:

The petitioner was a legal practitioner at Jaura, District Morena. He was elected to the Jaura Municipal Committee in the year 1974 and became a Municipal Councilor on April 1975. He was also elected president of the Municipality. After giving a show cause notice in August 1976 he had been removed from the office of the councilor and also disqualified for a further period of four years. The charge against him was that the petitioner appeared on behalf of the accused in cases under the Prevention of Food Adulteration Act. challenged by the Food Inspector as authorised by the Jaura Municipal Committee, and thus acted against the interests of the Municipal Committee, Jaura.

Held : The contention is that proceedings in criminal cases are instituted u/s 7 of the Prevention of Food Adulteration Act by the State Government and not by or on behalf of the Municipal Committee. It is further contended that no opportunity was given to the petitioners as required by sub-section (3) of section 41 of the M.P. Municipalities Act. The order is challenged as most illegal, malicious, arbitrary and bad in law. It is wide enough to include criminal cases in which Municipality is concerned, although challenged on behalf of the State Government. Since the petitioner admits that he appeared on behalf of the accused in cases under the Food Adulteration Act, he was liable to be removed from the office of a Councilor. Petition is dismissed.

A.B. Mishra for petitioner.

4. The respondent No. 2 thereafter remained silent for 8 months and on 2-8-1977 applied to the State Government for review of the order passed on 2-11-1976. The application for review was admitted by the State Government and on the same day a stay order was passed suspending the operation of the order passed by it earlier i.e. on 2-11-1976. One Bhagwanlal Gupta challenged the order of stay thus passed by the State Government by a petition under

Article 226 of the Constitution before the Gwalior Bench of this High Court. This was Misc. Petition No. 87 of 1977. The High Court on 1-9-1977 passed the following order on a concession made by the parties to the petition. The two relevant paragraphs of the High Court order are reproduced as below:

It is conceded by the learned counsel for both the parties that they have no objection to the review being disposed of by the State Government on merits u/s 332 of the M.P. Municipalities Act, 1961.

Accordingly, we direct that the State Government may dispose of the review failed before it by the non-petitioner but the operation of the Government's order dated 2-8-1977 is so far as it permits the said non-petitioner to function as President of the Municipality shall remain stayed.

5. Now, the State Government on 24-10-1977 passed an order in the review matter allowing the application and setting aside the earlier order. The State Government mainly relying on the facts that the criminal cases in which the respondent No. 2 had appeared as a counsel were not instituted at the instance of the Municipal Council, Jaura but they had been instituted at the instance of the Public Health Department and, therefore, it could not be said that the respondent No. 2 had acted against the interest of the Municipal Council in appearing on behalf of the accused persons prosecuted for the offence punishable under the Prevention of Food Adulteration Act and rules framed there under. In the opinion of the State Government, the respondent's No. 2 had not incurred disqualification u/s 41 of the M.P. Municipalities Act, 1951.

6. The petitioner seeks to challenge the order of the State Government firstly, on the ground that the order of the State Government was in excess of the powers conferred under the Act inasmuch as the review u/s 332 of the Municipalities Act could not be entertained at the instance of the respondent No. 2 after a lapse of 90 days from the date of passing of the order; secondly, the State Government wrongly exercised its jurisdiction of review, thirdly, by virtue of the order of the High Court passed in Misc. Petition No. 288 of 1976, the jurisdiction to review the order of the State Government was wholly on a misapprehension of facts and there was an error apparent on the face of the record. The Municipal Council, Jaura was not only concerned in the prosecution but that it entrained interest in the prosecution as they receive fifty per cent of the fine imposed on the convicted accused persons.

7. Shri J.P. Gupta, learned counsel for the respondent raised a preliminary objection assailing locus-standi of the petitioner and contended that he was not a person aggrieved and the petition must be dismissed at the thresh hold.

8. Taking the preliminary objection we find that the petitioner has asked for relief in wide terms. He seeks an appropriate writ direction or order to quash the impugned order issued by the State Government, the effect of which is that the disqualification attaching to the respondent No. 2 is no longer attaching to him. The petitioner has also prayed that he may be granted such other relief as he

may be entitled. It is true that the petitioner, in terms, has not sought for a writ of quo-warranto but it would be clear from the petition that what is sought to be agitated is that the petitioner who was held to be disqualified by the State Government u/s 41(2) of the M.P. Municipalities Act, continues to hold the office of a councilor of the Jaura Municipality. The respondent No, 2 having been declared disqualified by the State Government, the disqualification subsists and he cannot assume the office of a councilor of the Municipality Jaura. The petitioner, undoubtedly, seeks to quash the order of the State Government by issuing a writ of certiorari and a prohibition restraining the respondent No. 2 from assuming the office of a councilor. At the bottom of all this, however, lies the question whether or not the petitioner is disqualified to assume the office of a Councilor of Jaura Municipality. In effect therefore, the challenge is as to the disentitlement of the petitioner to continue to hold the office of Councilor and this could be examined by finding out whether he has any legal authority to hold that office of a councillor. Though a writ of quo-waranto has not been, in terms, prayed for, the wider terms in which the prayer is sought, would include such a relief and it is in that light that we have to examine the question of locus-standi of the petitioner to maintain the petition.

9. It is now well settled that any inhabitant of a Municipal Corporation would be entitled to question the election of the Corporation even though he is not qualified to vote because every inhabitant has interest in the administration of the Municipal Corporation. The Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, observed that the quo warranto proceedings afford a juridical enquiry in which any person holding an independent substantive public office is called upon to show by what right he holds the said office. If the enquiry leads to the finding that the holder of the office has no valid title to it the issue of quo-warranto ousts him from that office. The procedure of quo-warranto confers jurisdiction and authority on the judiciary to control executive action in the manner of making appointments to public office against the relevant statutory provisions. The Supreme Courts observed as under:

Before a citizen can claim a writ of quo warranto he must state inter-alia that the office in question is a public office and is held by the usurper without legal authority and that necessarily leads to the enquiry as to whether the appointment of the enquiry as usurper has been made in accordance with law or not.

Though the existence of a legal right or its infringements is the foundation of jurisdiction under Article 226 yet, this rule has been modified in case of writ of quo-warranto, we are, therefore, of the opinion that we can proceed to examine whether Shantilal Agrawal who was disqualified by the state Government u/s 41(2) of the M.P. Municipalities Act, could continue as a councilor and whether the State Government in exercise of powers conferred u/s 332 of the Act could review the order of disqualification.

10. Section 41(2) of the Madhya Pradesh Municipalities Act, 1961, reads as under:

41. Removal of Councilor (1)....

(2) The State Government may, at any time, remove a councilor if he being a legal practitioner acts or appears on behalf of any other person against the Council in any legal proceeding or against the State Government in any such proceedings relating to any matter in which the Council is or has been concerned, or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Council against such person.

The word "may" generally does not mean "must" or "shall" but it is well settled that the word "may" is capable of the meaning "must" or "shall" in the light of the context. When a discretion is conferred on a public authority coupled with an obligation the word "may" denotes that the discretion would be construed to mean a command.

11. As pointed out by the Supreme Court in *The State of Uttar Pradesh v. Jogendra Singh* 1964 (1) SCR 399, that sometimes, the Legislature uses the word "may" if deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. It is the context which is decisive. The word "may" in sub section (2) must be interpreted as casting a mandatory duty. It casts an obligation on the Government to declare a person disqualified if such person being a legal practitioner acts or appears on behalf of other person against the Council in any legal proceeding or against the State Government in any such proceedings relating to any matter in which the Council is or has been concerned, or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Council against such person. Shantilal Agrawal had appeared in food adulteration offence committed within the territorial jurisdiction of the Municipality. The institution of such cases had undoubtedly not been at the instance of the Municipality but had been by the State Police. It would, however, be seen that the Municipality is interested in the criminal cases for "breach of the provisions of the Prevention of Food Adulteration Act as it gets 50 percent share of the fine imposed and realised on conviction of such offenders. Even if it does not come within the latter clause it would undoubtedly be said that the prosecution for offence of food adulteration is such in which the Municipal Council was interested. Shantilal Agrawal having appeared in a number for the accused person was hit by sub-section (2) of section 41. The State Government was mandatorily required to enquire and to remove a Councilor if he had appeared in cases in which the Municipality had interests. As already pointed out earlier, the State Government gave a declaration that the petitioner was disqualified.

12. We then come to section 332 of the M.P. Municipalities, Act which gives the state Government power to review any order passed by itself or by any subordinate authority. It would be necessary to quote the section:

332. Power of review-(1) The State Government may either on its own motion or on the application of any party interested, review any order passed by itself, and the Commissioner, the Collector, the prescribed Authority or any other officer authorised under this Act, may similarly review any order passed by himself and pass such order in reference thereto as provided that-

(i) no order shall be varied or reversed unless entice has been given to the parties interested to appear and be heard in support of such order.

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings, shall so long as such or appeal or proceedings, are pending, be reviewed.

(iii) no order affecting any question of right between persons shall be reviewed except on the application of a party to the proceedings and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.

(2) An order which has been dealt with by the State Government in appeal, revision or review shall not be reviewed by the Commissioner or the Collector or the prescribed Authority or the officer authorised under this Act and an order which has been dealt with in appeal or revision shall not be reviewed by any of such Authorities.

13. The first contention raised by Shri Shah, learned counsel for the Municipal Council is that the power is in excess of the jurisdiction vested in the Government by section 332. It is contended that the review of jurisdiction is subject to limitations as stated in Order 47, rule 1 of the Code of Civil Procedure. The review, in his opinion, could only proceed on the ground arising from the discovery or a new or important matter or evidence or no account of some mistake or error on the face of the record or for any other sufficient reason. Undoubtedly, if the above standards were applied, the State Government did not have such material before it to warrant interference in review as there is neither any apparent mistake nor any new matter which was not under consideration earlier. We do not think that the power of review u/s 332 is subject to such limitations as are contained in Order 47, rule 1. Section 332 is a self-contained provision.

14. The power to review is a special power bestowed by the statute and has to be construed only subject to such limitations as have been imposed by the statute giving the power. There is nothing in the Act to indicate that the power would be subject to a restriction as is contained in Order 47, rule 1 of the Code of Civil Procedure. In the nature of things, the power to review under the M.P. Municipalities Act had to be wide as the order passed by the State Government may be administrative, quasi-judicial or of judicial nature. In the interest of the functioning of the Municipalities, it would be necessary to keep the power with the State Government without any fetters as contained in Order 47, rule 1 of the Code of Civil Procedure. The review jurisdiction contemplated u/s 332 of the

Madhya Pradesh Municipalities Act is purposely kept wide. The jurisdiction however, has to be exercised bonafide for correction of the mistakes in the earlier decision and this power cannot be exercised malafide merely to change its earlier decision. As long as it could be shown that exercise of the jurisdiction is for rectifying an error in the decision, we think no exception could be taken if it results in the total reversal of its earlier decision.

15. Shri Shah, learned counsel for the appellant contended that the review u/s 332 by the State Government could not be permitted so as to over-reach the decision of the High Court passed in Misc. Petition No. 288 of 1976 on 7-12-1976. The effect of the decision of the High Court would be that the jurisdiction to review the order was ousted. Shri J.P. Gupta, learned counsel for the respondent No. 2 has contended that the decision of the State Government did not merge into the order of the High Court when the latter decided the writ petition. The High Court when the latter decided the writ petition. The High Court merely refused to interfere. It would have been another matter, it is urged, if the High Court had reversed the decision. The learned counsel relied on *Ganeshi Lal Kishna Lal Vs. Seth Mool Chand Nemi Chand*, In the Allahabad case, a revision petition was made to the High Court against the decree of a Small Cause Court. The High Court declined to interfere in revision. It was held that the lower Court which passed the decree was competent to entertain an application to review its earlier order. The High Court in Allahabad case appears to have held that the decree passed by the Small Cause Court was final and when the High Court declined to interfere with it on the revision side, there was no merger of the decree of the Small Cause Court in the order passed by the High Court. The Allahabad High Court had relied on *Sher Khan v. Muzaffa Khan* AIR 1920 Lah 321. We do not think that this analogy would be applicable in the instant case, more so, when there has been a decision by the High Court in respect of the matter. The High Court undoubtedly dismissed the case in motion hearing but there has been a speaking order and a decision on the issues in the case. Subsequently another writ petition had been filed being Miscellaneous petition No. 97 of 1977 in respect of the same subject-matter and in this case, High Court had impliedly permitted on a concession by both the parties that the State Government should dispose of the case in review. The High Court observed on 8-12-1977 that it was conceded by the learned counsel for both the parties that they had no objection to the review being disposed of by the State Government on merits u/s. 332 of the M.P. Municipal Corporation Act, 1961.

16. After the state Government had allowed the review petition, the petitioner in Misc. Petition No. 97 of 1977 moved the High Court for an amendment seeking to challenge the order passed by the State Government as ultra-vires and null and void. The High Court however, pointed out that the cause of action was changed and if the petitioner wants to challenge the validity of the order passed on the review application of the State Government he should file a fresh petition. Miscellaneous petition No. 97 of 1977 was thus dismissed as having become in fruituous as it was directed against the State Government's order dated

2-8-1977. The High Court, clearly laid down that the petitioner would be entitled to file a fresh petition challenging the order of the State Government. In our opinion whenever a High Court decides a matter in a writ petition under Article 226 of the Constitution it conclusively determines the rights of the parties in respect of that matter and they become final subject to the finality being disturbed by the Supreme Court. The state Government was not left with any jurisdiction to review the matter u/s 332 of the Madhya Pradesh Municipalities Act. The order made on concession by the High Court will not avail the State Government in giving them jurisdiction when there was none. The order of the High Court was made without deciding the question of jurisdiction or without deciding the power of the State Government to entertain the review petition u/s 332. In the earlier High Courts' order, the relief the petitioner was seeking was to get a direction to stay the proceeding to decide the review application by the Government we are, therefore, clear that the order in the review petition will not militate against the contention of the present petitioner to the effect that the State Government had no power to review after the decision of the High Court in writ petition. We think that Shri Shah's objection must prevail.

17. There was another difficulty in the way of respondent No. 2. The power of the State Government u/s 332(1)(iii) of the Act is subject to the review being maintained within 90 days from the passing of the order. This limitation of 90 days is prescribed when an order affecting any question or rights between private persons is to be reviewed by the State Government. The present question as to disqualification of the respondent No. 2 is in dispute affecting a private person only. The review by the State Government was clearly barred after the period of 90 days. In this view of the matter also, the State Government was not competent to review the order.

18. We are, therefore, clearly of the view that this petition must succeed. The order of the State Government removing the disqualification of the respondent No. 2 by its order dated 24.10.1977 (Annexure-D) is quashed. The petitioner will be entitled to costs. Counsel's fee Rs. 200/- if certified. The outstanding amount of security deposit shall be refunded to the petitioner.