
(1955) 09 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 3 of 1955

R.L. Gupta and Others

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 02-09-1955

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 16, 238

Citation : AIR 1956 HP 7

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : Rup Chand Chaudhary, for the Appellant;

Final Decision : Dismissed

Judgement

Ramabhadran, J.C.

1. In this petition under Article 226 of the Constitution, I am requested to issue a writ against respondent 1 (State of Himachal Pradesh) directing it to withdraw an order u/s 238, Punjab Municipal Act (as applied to Himachal Pradesh) superseding the Nahan Municipal Committee, of which petitioner 1 was the President/ petitioner 2, Vice-President and other petitioners, members.

2. Learned counsel for the petitioners argued that the order of supersession was "mala fide" and was passed due to political differences between the petitioners & the party in power and further with a view to shield the Secretary of the Committee from departmental action. Mr. R.C. Choudhary further contended that before passing the order of supersession, it was incumbent upon the Himachal Pradesh Government to serve a notice upon the petitioners and give them an opportunity of showing cause against the action proposed to be taken.

3. In this connection, he invited my attention to the provisions of Section 16, Punjab Municipal Act (which has been applied to this State), whereby, before a member is removed, from the Committee, the reasons for his proposed removal

have to be communicated to him and he is to be given an opportunity of tendering an explanation in writing.

4. The order of supersession was passed u/s 238 of the Act, which is one of the sections comprised in Chap. XII of the Act. The procedure for removal of an individual member (or more than one member) is laid down in Section 16, which is covered by Chap. III of the Act. When one or more members are removed u/s 16, the Committee does not cease to exist, whereas, when the Committee itself is superseded u/s 238, as in the present case, all the powers and duties of the Committee are transferred to a person appointed in this behalf by the State Government.

Here, Sri Devki Nandan, Magistrate first class, Nahan, has been appointed Administrator to perform, the functions of the Committee. Consequently, it cannot be said that the procedure laid down for removal of one or more members should be followed, when the entire Committee is superseded u/s 238, Punjab Municipal Act, especially when there is no provision in Section 238 as to prior notice, corresponding to the proviso to Section 16.

5. Learned counsel for the petitioners cited the following rulings.: (a)--"Kundan Lal v. State of Pepsu" AIR 1954 Pep 186 There, the facts were that the President and Vice-President of the Municipal Committee, Jind, were removed by the State Government in exercise of their powers under Ss. 16 and 22, Punjab Municipal Act, as applied to Pepsu.

Their Lordships of the Pepsu High Court held that the notice issued to the President was indefinite and defective and, consequently, the mandatory provisions of the Statute had not been complied with. This ruling is not applicable to the present case, because, as already stated, it is not the question of one or more members having been removed; on the other hand, the entire Committee has been superseded.

6. (b)--"Bhikulal Balbhadrasao v. State of Madhya Pradesh" AIR 1953 Nag 125 There, the President of the Municipal Committee, Balaghat, was held as being disqualified under the provisions of C. P. and Berar Municipalities Act, 1922, and as such, declared to be no longer President. It would appear that the State Government had called for the explanation of the President, but he was not given an opportunity of showing cause against the proposed action. Under those circumstances, the Nagpur High Court quashed the order of the State Government. The facts of the present case, as already shown, are totally different.

7.(c) B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others, There, the facts were that the Governing Body of the State Medical Faculty cancelled an examination holding that 51 candidates had used unfair means in answering questions. Their Lordships of the Calcutta High Court felt that:

"Where the Governing Body gave no notice at all to the candidates of the charges

against them and no opportunity whatsoever of showing that the allegation was not true or that even if the allegation was true, the punishment should not be what the Governing Body proposed, and there was not a fair consideration of the cases, as cases of the different candidates were not individually considered."

Consequently, the order cancelling the examination was held to be bad in law. This ruling again, in my opinion, is not applicable to the facts of the present case.

8. The bone of contention between the parties is whether the Committee had, or had not, persistently made default in the performance of the duties imposed on it and whether it had, or had not, abused its powers. Learned counsel pointed out that the order of supersession merely copied the language of Section 238 and did not indicate which particular duty had been neglected by the Committee, or which power had been abused by it. As was pointed out by me in an earlier ruling, of this Court reported in--"Ramesh Chandra v. State of Himachal Pradesh" AIR 1955 HP 11

"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, obviously, that can be done only in a regular suit."

9. On the same analogy, I would say that the matter at issue cannot be disposed of summarily in this writ petition. It can be done only in regular suit after recording the evidence of the parties.

10. With these remarks, the petition is rejected. It would be open to the petitioners, if so advised, to seek their remedy by a regular suit.