
(1968) 01 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2316 of 1967

Sardari Lal

APPELLANT

Vs

The State of Haryana and another

RESPONDENT

Date of Decision : 05-01-1968

Acts Referred:

Punjab Municipal Act, 1911 — Section 16

Citation : (1968) 01 P&H CK 0004

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Rajinder Sachar, for the Appellant; Anand Swaroop, Advocate-General Haryana and Mr. J.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The Governor of Haryana by a gazette notification dated the 27th September, 1967, A 4, in exercise of his powers u/s 16 of the Punjab Municipal Act 1911, hereinafter referred to as the Act, removed Sardari Lal Shabharwal petitioner from the membership of the Municipal Committee, Kalka, with immediate effect and also disqualified him for election for a period of three years. The petitioner has impugned the propriety and validity of the above order in the present writ petition under Articles 226 and 227 of the Constitution of India against (1) The State of Haryana and (2) S. Lachhman Singh, Transport Minister, Haryana Government.

2. A few facts which are relevant for the disposal of this petition may briefly be noticed. The petitioner was elected as member of the Municipal Committee, Kalka in the year 1964 Respondent No. 2 contested against him from Ward No. 8 but was defeated. The Municipal Committee owns a vegetable shed, the lease of which is auctioned from time to time. Jainti Parshad and after him Narotam Das were lessees of the same in 1959-60 and 1960-61 respectively. The petitioner offered the highest bid for the year 1961-62 and obtained the lease of the vegetable shed. He executed a regular lease deed in favour of the Municipal

Committee. According to one of the terms, the lease could be renewed every year by the Municipal Committee and in pursuance thereof the petitioner was allowed to remain in possession of the vegetable shed as lessee. Respondent No. 1 served the petitioner with a show Cause Notice dated 27th/30th June, 1967, u/s 16(1) of the Act along with the statement of all allegations (A-2). The charges levelled against him were that he had encroached on vacant belonging to the Municipal Committee and adjacent to the vegetable shed, that had not been paying lease money on the due dates and that he continued to remain as lessee of the vegetable shed even after his becoming a member of the Municipal Committee without obtaining sanction of the Deputy Commissioner as was necessary u/s 48 of the Act. The petitioner submitted his reply on 19th July, 1963(A 3). Respondent No. 1 after considering his reply issued the impugned notification which the petitioner alleged was unconstitutional, ultra vires, mala fide and against the principles of natural justice inter alia on the following grounds :-

(1) That the impugned order annexure A-4 is a quasi-judicial order. The said order however, mentions no reasons and is not a speaking order. It is settled law that the authority passing a quasi-judicial order must give reasons for the same. No reasons have been given for passing the impugned order, annexure A-4. The said order is, therefore, not a legal order and is null and void.

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(iv) The impugned order has been passed as a result of the personal malice which respondent No. 2 member of the Haryana Cabinet bears to the petitioner. Respondent No. 2 who was defeated by the petitioner in the last Municipal Elections and who also failed to get him unseated through Election petition has used his position and influence and has prevailed upon respondent No. 1 to pass the impugned order on the extraneous grounds and to satisfy the personal mala fide of respondent No. 2;

(v) That the impugned order of removal is also mala fide and at the instance of respondent No. 2, because the petitioner had lodged a complaint with the Sub-Divisional Officer, against one Mr. Shankar Das who is the Vice-President of the Municipal Committee and who belongs to the party of respondent No. 2;

(vi) That the notice, annexure A-2 had been sent by the Assistant Secretary and was not on behalf of the Governor of Haryana, as the only competent authority which has to give notice to the member is the State Government. The Notice which was sent by the Assistant Secretary was not a notice contemplated under proviso to Section 16 of the Act. The said notice being illegal, all subsequent proceedings for the removal of the petitioner are also illegal;

(vii) That the petitioner has not in any manner flagrantly abused his position as a member of the Municipal Committee and none of the eventuality contemplated u/s 16(1)(e) are applicable to the case of the petitioner. The order, therefore, of the respondent No. 1 removing the petitioner on the basis of section 16(1) is

unsustainable in law;

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(xi) That neither the Government nor the Municipal Committee have up till now in any other case excepting the petitioner invoked the provisions of Section 48 of the Punjab Municipal Act. In this connection the case of Shri Bodh Raj a member of the Municipal Committee who also has a lease like the petitioner from the Municipal Committee, is worth mentioning. He has also not taken any prior approval u/s 48 of Act and yet no action has been initiated against him on the alleged ground of contravention of section 48 of the Act. This hostile treatment and singling out the case of the petitioner for taking action against him, while similarly situated persons like Bodh Raj are not proceeded against is violative of the equality clause and is infringement of the fundamental rights guaranteed to the petitioner under Article 14 of the Constitution of India. This action also shows the mala fide of respondent No. 2 and proves that the action being taken against the petitioner is to satisfy the personal mala fide of respondent No. 2. In this connection the case of Ram Avtar is also worth mentioning. The son of the said Ram Avtar in whom the said Ram Avtar would be obviously interested, has got on lease two shops of the Municipal Committee, Kalka, one of the shops was taken on lease after 1964 when Shri Ram Avtar was already a member of the Committee. Mr. Ram Avtar has not obtained any prior permission u/s 48 of the Act. No notice on these basis has gone to Shri Ram Avtar and no objection is being raised by the Government that he has violated section 48 of the Act. No action has also been taken against Shri Bodh Raj as yet on the alleged ground of contravention of section 48 of the Act. This clearly shows that the petitioner is being singled out for hostile discrimination;

(xii) That assuming section 48 of the Act has been violated by the petitioner, the same is punishable u/s 168 of the Indian Penal Code. In spite of this clear provision of taking action against the petitioner on the alleged violation of section 48 the Government has not proceeded against u/s 168, Indian Penal Code. Section 48 of the Act having provided for its violation by permitting the Government to resort to prosecution under the Indian Penal Code, it is not open to the Government to choose to exercise their power u/s 16 because in both the cases, the said power cannot be exercised on these basis and also because the Government cannot be permitted to take remedies at its unfettered discretion, as the same would be violative of Article 14 of the Constitution of India;

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(xv) That the impugned order is without jurisdiction as it assumes that the petitioner has trespassed on a place of Municipal Land and did not pay the rent of the said vegetable shed. The petitioner had clearly denied the said charge and had maintained that he had not trespassed on any such land. The petitioner had also pointed out that even notice sent to him u/s 173 of the Punjab Municipal Act had been withdrawn by the Municipal Committee because it could not support the

said notice. To use the powers of the respondent No. 1 u/s 16 to remove the petitioner on the basis of the alleged encroachment when the Committee itself had withdrawn the said notice u/s 173 of the Act, is nothing but a mala fide exercise of the power and is at the instance of respondent No. 2 and the order annexure A-4 is based on extraneous matters;

(xvi) That the petitioner also denied that any rent was outstanding against the petitioner and had given documentary proof in support of the same. The impugned order does not even refer to this and the order having been passed mechanically is unsustainable in law;

(xvii) That assuming, but without conceding that there is any infringement by the petitioner but this has no direct connection with the position of the petitioner as a member of the Municipal Committee. More especially when there is no allegation or suggestion that the petitioner has by his influence or presence in the Municipal Committee prevented any proper action to be taken in the matter. As a matter of fact the Municipal Committee was forced to withdraw the illegal notice issued by the Municipal Committee u/s 173 of the Act.

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3. Respondent No. 1 admitted that the lease was annual and that the right to renew after the expiry of one year was discretionary with the Committee although normally it had been renewing the lease of old lessees on annual basis from year to year. The Show Cause Notice is said to have been issued to the petitioner on the report of the Assistant Examiner, Local Fund Accounts, and so it was wrong to suggest that respondent No. 2 used his influence in that connection. The petitioner is alleged to have flagrantly abused his position as a Municipal Commissioner, since he got the lease renewed from year to year without obtaining permission of the Deputy Commissioner as contemplated in section 48 of the Act and further that he encroached on the Committee's land and also failed to deposit the lease money on due dates Respondent No. 1 further explained that action was being taken against the other members of the Committee who are alleged to have contravened the provisions of section 48 of the Act. According to them the impugned order was a speaking order as it explains the reasons also in support of the section taken against the petitioner. It was further maintained that the Government could prosecute the petitioner for offending the provisions of section 48 of the Act and also remove him from the membership of the Committee u/s 16 of the Act.

4. Respondent No. 2 conceded that his election petition against the petitioner was dismissed by the Court and added that it would be incorrect to say that he had any malice or ill against the petitioner. He is said to have no hand in the Show Cause Notice issued to the petitioner and the subsequent action taken on the basis of it.

5. There is nothing on the record to suggest that at the instance of respondent No. 2, respondent No. 1 passed the impugned order. The action was taken on the

report of the Assistant Examiner, Local Fund Accounts. It also cannot be urged with any show of justification that the impugned order is not a speaking order in as much as it gives the charges brought against the petitioner and the conclusions drawn by respondent No. 1 after going through explanation furnished by the petitioner. Similarly the petitioner was not correct in alleging as he did that the Assistant Secretary to Government Haryana, Local Government Department, without obtaining orders from the proper authority issued the Show Cause Notice annexure A-2. I consulted the file maintained by the Administrative Department and found that orders of the minister concerned had been obtained before issuing the Show Cause Notice.

6. Shiv Kumar, Assistant Secretary to Government Haryana, Local, Government Department in his affidavit in para 11 clause (xvi) admitted that the petitioner had paid the entire amount of rent but added that Rs. 150/- out of the rent due for the year 1984-65 were paid on 23rd April, 1965, and not before 31st March, 1965, as was required under the terms of the lease. This small delay in the payment of a portion of the rent was not worthy of any serious notice. As regards the encroachment on a part of the municipal land, the respondents' case is that the petitioner was given the shed only on lease and not the vacant site lying adjacent to it. The petitioner on the other hand maintained that the vacant land also was part of the leasehold. It is clear from a plan on the file of Sardari Lal Shabnam, Coal Depot-holder, Kalka, petitioner, that he laid claim to the possession of the site belonging to the Committee as a lessee as far back on 1961. Therefore it cannot be presumed and much less held that the petitioner encroached, on the vacant site belonging to the Committee after his election as member thereof in 1964. There appears to be some bona fide dispute between the petitioner and the Committee in regard to the former's right to possess the land lying adjacent to the shed. In any case he cannot be said to have encroached on the land subsequent to his election as member of the committee. It has not been indicated on the record that the petitioner in any manner frustrated the Committee's effort to take away the vacant site in dispute from his possession. In these circumstances the alleged act of the petitioner having trespassed on the Committee's land could not be categorised as flagrant abuse of his position as member of the Committee.

7. The petitioner obtained lease of the vegetable shed initially in the year 1961-62. Respondent No. 1 admitted in para No. 3 of their written statement that the lease was annual and the right to renew after the expiry of one year was discretionary with the Committee. It is also admitted that the Committee normally has been renewing the lease of old lessees on annual basis from year to year. It was in pursuance of this policy that the petitioner's lease was renewed for the subsequent years 1962-63, 1963-64, 1964-65, 1965-66, and 1966-67. The petitioner became member of the Committee in the year 1964. He was required u/s 48 of the Act to obtain sanction of the Deputy Commissioner after two months of his becoming a member of the Committee to continue as a lessee for the year 1964-65. He was also required to obtain permission of the Deputy

Commissioner for renewal of the lease for the years 1965-66 and 1966-67. It is common ground that the petitioner omitted to obtain the said permission. It is stated in part II clause (xi) of the writ petition that like petitioner, Bodh Raj a member of the Committee also was a lessee of the property belonging to the Committee and continued to be so without obtaining permission of the Deputy Commissioner. Respondent No. 1 has not denied the above fact. It appears that the petitioner's failure to obtain sanction of the Deputy Commissioner to continue as a lessee of the property belonging to the Committee after his election as a member was more due to ignorance than flagrant abuse of his position as a member. This inference is further fortified from the fact that he was not present in any one of the meetings of the Committee where the question of renewal of his lease was considered.

8. It is well nigh settled that every contravention of any one of the provisions of the Act or the bye-laws made thereunder by the member cannot be categorised as flagrant abuse of his power as a member of the Committee. In this connection reference may be made to *Purshotam Chandra v. State of Uttar Pradesh* 1957 All. L.J. 885 and *State of U.P. v. M.L. Yadav* 1961 A.L.J. 120. *Satya Dev v. State of Punjab* (1964) 66 P.L.R. 381 *State of Punjab v. Sugna Ram* (1964) 66 P.L.R. 828 and *Waryam Chand v. State of Punjab and others* C.W. 535 of 1961, decided by Grover, J. on 5th December, 1961 the decision of which was confirmed in *State of Punjab and others v. Waryam Chand* L.P.A No. 47 of 1962. Whatever misconduct was attributed to the petitioner was not of such a nature as could be classified as flagrant abuse of his powers as member of a committee.

9. The petition is consequently allowed and the impugned order is quashed. There will be no order as to costs.