
(2008) 04 AHC CK 0096
In the Allahabad High Court

Smt. Swarn Prabha Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 AWC 2684 : (2008) 105 RD 171

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—The petitioner, who is elected Chairman/ President of Nagar Panchayat Sahatwar, district Ballia (hereinafter referred to as "Municipal Board") has challenged the order dated 27.3.2008, passed by respondent No. 1, a copy whereof is annexed as Annexure-"8" to the writ petition, whereby the petitioner was asked to show cause as to why for the charges mentioned in the aforesaid show cause notice she be not removed from the office of the Chairman/ President of the "Municipal Board" as contemplated u/s 48(2) of the U.P. Municipality Act, 1916 (hereinafter referred to as "the Act"). Petitioner is asked to submit reply within a period of one fortnight from the date of receipt of the notice, failing which the petitioner shall be removed from the office of the Chairman/ President of the "Municipal Board". The petitioner was also served with an order dated 29.3.2008, passed by respondent No. 3, a copy whereof is annexed as Annexure-"9" to the writ petition, whereby the respondent No. 3 has directed that pending finalization of the proceedings u/s 48 of "the Act" with regard to the show cause notice, the administrative powers of the office of the Chairman/President shall be exercised by Sri M.P. Saroj. Sub-Divisional Magistrate, Bansdih. It is these two orders, which are challenged by the petitioner by means of present writ petition under Article 226 of the Constitution of India.

2. In order to appreciate the arguments advanced on behalf of petitioner, it is

necessary to reproduce the provisions of Section 48 of U.P. Municipality Act, 1916, which reads thus:

48. Removal of President:

(1) ...

(2) Where the State Government has, at any time, reason to believe that:

(a) there has been a failure on the part of the President in performing his duties,
or

(b) the President has:

(i) incurred any of the disqualifications mentioned in Sections 12D and 43AA; or

(ii) knowingly acted as a President or as a member in a matter other than a matter referred to in Clauses (a) to (g) of subsection (2) of Section 32. in which he has, directly or indirectly, or by a partner, any share or interest whether pecuniary or of any other nature, or in which he was professionally interested on behalf of a client, principal or other person ; or

(iii) within the meaning of Section 82 knowingly acquired or continued to have, directly or indirectly or by a partner, any share or interest, whether pecuniary or of any other nature, in any contract or employment with, by or on behalf of the (Municipality) ; or

(iv) ...

(v) ...

(vi) ...

(vii) ...

(viii) ...

(ix) ...

(x) ...

(xi) ...

(xii) ...

(xiii) ...

(xiv) ...

(xv) ...

(xvi) ...

(xvii) ...

It may call upon him to show cause within the time to be specified in the notice

why he should not be removed from office:

Provided that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is prima facie guilty on any of the grounds of this subsection resulting in the issuance of the show cause notice and proceedings under this subsection he shall, from the date of issuance of the show cause notice containing charges, cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show cause notice issued to him under this sub-section and finalization of the proceedings under Sub-section (2A) and the said powers, functions and duties of the President during the period of such ceasing, shall be exercised, performed and discharged by the District Magistrate or an officer nominated by him not below the rank of Deputy Collector.

3. So far as the show cause notice dated 27.3.2008 is concerned, by the aforesaid show cause notice the petitioner has been asked to show cause as to why she should not be removed from the office of Chairman/ President of the "Municipal Board", therefore we are of the opinion that at this stage, since the petitioner has only been asked to show cause, this Court in exercise of jurisdiction under Article 226 of the Constitution of India should not interfere with the aforesaid show cause notice, as after the show cause is shown by the petitioner and an adverse order is passed, it is always open to the petitioner to challenge the order.

4. So far as the order dated 29.3.2008 is concerned, learned Counsel for the petitioner submitted that since the order has been passed on a complaint filed by the office bearers of Bahujan Samajwadi Party, which is based on incorrect facts, it was necessary for the respondents to have afforded an opportunity of hearing to the petitioner before passing the order dated 29.3.2008 directing that the administrative functions of the petitioner as Chairman/President of the "Municipal Board" to be performed by Sri M.P. Saroj, Sub-Divisional Magistrate concerned. In support of his contention, learned Counsel for the petitioner has relied upon a Division Bench decision of this Court in Mukesh Rajput Vs. State of U.P. and Others, wherein the Division Bench of this Court while dealing with the provisions of Section 29 of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 has held that "...the State Government can remove an Adhyaksha if in an enquiry he is found guilty of misconduct in the discharge of his duties" meaning thereby that unless the petitioner has been afforded an opportunity and her reply to the show cause notice is considered, no order removing the Chairman/ President of the "Municipal Board" could be passed. Learned Counsel for the petitioner further submitted that the order directing that the administrative power of the Chairman/President of the "Municipal Board" shall be exercised only by Sub-Divisional Magistrate concerned is, in fact, removal of the Chairman/ President from the office without finally adjudicating upon after consideration of the show cause notice by the petitioner. Learned Counsel for the petitioner

submitted that power of removal u/s 48 of "the Act" is akin to the power u/s 29 of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, therefore before passing of the order dated 29.3.2008 the respondents ought to have given an opportunity of hearing to the petitioner and that having not been done, the order deserves to be quashed. It is further submitted by counsel for the petitioner that exercise of power by the District Magistrate under the proviso to Sub-section (2) of Section 48 of "the Act", cannot be done unless the petitioner has been afforded an opportunity of hearing because for the exercise of power under Sub-section (2) of Section 48 of "1916 Act" an opportunity of hearing must be afforded to the petitioner. We do not find any such provision in the present proviso, which is the subject-matter of challenge in the present writ petition. In this view of the matter, the case relied upon by learned Counsel for the petitioner, i.e., the fact of the case of Mukesh Rajput (supra) is different than the facts of present case. Further we are unable to agree with the argument that before appointing the Sub-Divisional Magistrate concerned for exercise of administrative powers of the petitioner as Chairman/ President of the "Municipal Board" concerned during the pendency of the proceedings for removal u/s 48 of "the Act", it is necessary to afford an opportunity of hearing to the petitioner. In our opinion, neither it is the requirement of the Statute, nor principles of natural justice so necessarily warrants considering the nature of dispute because no rights of the petitioner are being adjudicated upon while power under proviso to Sub-section (2) of Section 48 of "the Act" is exercised. The scope of exercise of power under the proviso has been dealt with by the Apex Court in the case of S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, which reads thus:

42. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable ;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

5. Since the final order purporting to removal of the petitioner is yet to be passed, which in our view will be passed only after explanation submitted by the petitioner to show cause notice is considered, we do not find that for exercise of the power under the proviso to Sub-section (2) of Section 48 of "the Act", there is any requirement for affording an opportunity of hearing to the petitioner or for the observance of principles of natural justice even by implication. The exercise

of power u/s 48 (2) of "the Act" is only an interim arrangement pending final orders for removal of the petitioner as Chairman/ President of "Municipal Board" concerned. This view of ours find support from the decision of a Division Bench to which one of us, namely (Justice Anjani Kumar) is a member in the case in Rekha (Kinner) Vs. State of U.P. and Others, In view of what has been stated above, this writ petition has no force and is accordingly dismissed with costs.