
(1982) 06 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5417 of 1981

Sohan Lal Verma

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-06-1982

Acts Referred:

Punjab Municipal Act, 1911 — Section 16, 16(1), 173, 22

Citation : AIR 1983 P&H 62

Hon'ble Judges : S.S. Sandhawalia, C.J;I.S. Tiwana, J

Bench : Division Bench

Judgement

I.S. Tiwana, J.—The petitioner impugns his removal from the office of President of the Municipal Committee, Barnala--to which office he was elected in August, 1979--by respondent No. 1, the State Government, in exercise of its powers u/s 22 of the Punjab Municipal Act, 1911(for short, the Act). The undisputed facts leading to the passing of this order dated Oct. 29, 1981(Annexure P-3), are as follows :

2. On a complaint dated Jan. 16, 1981, received by the Minister Incharge, Local Self Government, Punjab, Mr. K. K. Sayal, Deputy Director (Headquarters) Local Government, Punjab, was directed to conduct a preliminary or fact finding enquiry to ascertain the truth of the allegations contained in the complaint. The petitioner was duly associated with this enquiry which was conducted during the month of Feb, 1981. Later in May,. 1981, in terms of the proviso to Section 22 of the Act, he was served with a show cause notice containing nine charges to submit his explanation to the same. He submitted a detailed explanation to the same denying all the charges on the basis of the facts stated therein. He was called for a personal hearing by the Director, Local self Government, Punjab, on Sept. 30, 1981. The petitioner did avail of this opportunity and explained his case to his satisfaction to the Director. On Oct 29, 1981, the impugned order (Annexure P-3) was passed and was later notified in the Official gazette on Nov. 24, 1981.

3. The petitioner impugns this order on the grounds that though it is a quasi judicial order, yet it is non-speaking and is violative of the principles of natural justice in as much as copy of the report submitted by Mr. K. K. Sayal, Deputy Director, to the Government, was never supplied to him before calling for his explanation. Besides this certain allegations of mala fides to were levelled against respondent No. 2, Smt. Rajinder Kaur Bhathal who was Congress M. L. A. from an adjoining constituency of the town of Barnala and is now a Minister of State, but at the time of the hearing of the case the said allegation were not adverted of the case the said allegations were not adverted to and probably for the reason that no factual foundation had been laid for those allegations in the petition. In order to appreciate the contentions raised, it is imperative to notice the contents of the impugned order, Annexure P-3, which is reproduced as under :--

"Whereas the Governor of Punjab, after giving an opportunity to Shri Sohan Lal Verma, President, Municipal Committee, Barnala of tendering an explanation under proviso to Section 22 of the Punjab Municipal Act, 1911, is satisfied that the said Shri Sohan Lal Verma has abused his powers as President of Municipal Committee, Barnala, in the following cases:--

(i) That on 4-8-1980 one Shri Shanti Swaroop brought within the limits of Municipal Committee, Barnala articles as per 5 transport receipts by paying Octroi in respect of articles of 3 transport receipts only. Articles of 2 transport receipts thus brought within limits of the Municipal; Committee without paying Octroi were checked by Octroi evasion could be impose d to the extent 20 times of Octroi chargeable. Keeping in view the nature and merits of the case it is established that Shri Sohan Lal Verma has not used discretion judiciously in the interest of Municipal Committee;

(ii) that in another case, the octroi staff detected the case of Shri Ramjit Dass, L-2 licensee of English Wine. The octroi chargeable on the consignment of English wine brought in the Municipal limits amounted to Rs. 787.56. Shri Sohan Lal Verma, President compounded this offence by charging only one time fine i.e. Rs. 787.56. The penalty is totally disproportionate with the gravity of the offence committed by Party particularly when earlier a similar offence was compounded by charging a penalty of Rs. 5,000/- from the same license. As such, it is established that Shri. Sohan Lal Verma President has not used his discretion judiciously in the interest of Municipal Committee.

(iii) That on 8-9-1980 Shri Jiwan Parkash, nephew of the President who is appointed as Octroi Moharir in Municipal Committee allowed a vegetable truck of M/s. Mohan Lal Raghbir Singh (in which firm brother of Shri Jiwan Parkash works) by charging less octroi on it. The Executive Officer conducted enquiry into the case and found Shri Jiwan Parkash, Octroi Moharir responsible for irregularities in this case. The Executive officer, however, referred this case to the Municipal Committee for consideration and decision on the ground that the case related to close relation of the President. Shri Sohan Lal Verma took one month and 18 days to pass orders for placing the matter before the Committee and

delayed this case because of his vested interests and thus abused his powers.

(iv) That he allotted some land at the Bus Stand on Tehbazari u/s 173 of the Punjab Municipal Act, 1911. He passed these orders although he was not competent to do so.

(v) That vide resolution No. 357 dated 30-1-1980 Shri Sohan Lal Verma, President deprived 2 members of Municipal Committee from exercising their votes for electing 2 members of Municipal Committee to Improvement Trust Barnala whereas until any Municipal Commissioner of a Committee is removed by the Government u/s 16 of the Punjab Municipal Act, 1911, no authority vests in the President to deprive any member from exercising his vote. This again constitute abuse of his powers.

Now, therefore, in exercise of the powers conferred u/s 22 of the Punjab Municipal Act, 1911, the Governor of Punjab is pleased to remove the said Shri Sohan Lal Verma from the presidentship of the Municipal Committee, Barnala, in the Sangrur District, from the date of publication of this notification in the official gazette."

Though the learned counsel has failed to explain as to what are the attributes of a "speaking order" yet it is clear to me that a "speaking order" is one which speaks the mind of the authority which passed it. In case it discloses the process of reasoning with reference to the facts on which the conclusion recorded in such an order is based, it certainly is a speaking order. This is not dependant on what a party wants that authority to say in that order. In the light of this I find that the abovenoted impugned order which after making a reference to the representation or explanation submitted by the petitioner in reply to the show cause notice, Annexure P-1 and the detailed facts on which the ultimate conclusion of removing the petitioner from the office of the President of the Municipal Committee, Barnala, is based, cannot be styled as a non-speaking order.

4. Faced with this situation, the learned counsel then had a tactical retreat by submitting that this order does not contain the reasons for rejecting the detailed explanation submitted by him. In a nutshell, the learned counsel contended that as all the contentions, factual and legal raised by him in his explanation, Annexure P-2, have not been discussed or met with in the impugned order, the same is an order either without reasoning or arbitrary. This contention of the learned counsel again appears to be futile in the light of the Full Bench judgment to five learned Judges of this Court in the The State of Punjab Vs. Bhagat Ram Patanga, which judgment later met the approval of the Supreme Court in appeal (Bhagat Ram Patanga Vs. The State of Punjab,). In that case the petitioner had been removed by the State Government from the membership of the Municipal Committee, Phagwara, in exercise of its powers u/s 16(1) of the Act. The operative part of the proviso to this sub-section making it incumbent for the calling of an explanation of the member to be removed is *pari materia* with the

proviso to Section 22 of the Act, under which section the impugned order has been passed by respondent No. 1.

5. The precise question referred by the Division Bench to the Full Bench was :--

"Whether an order of the State Government u/s 16 of the Punjab Municipal Act is or not to be struck down because it does not give reasons for its making by the State Government, even though no other flaw can be pointed out in it ?"

The Full Bench, after noticing the contents of the impugned order which ran as "whereas the Governor of Punjab after giving an opportunity to Shri Bhagat Ram Patanga, Member Municipal Committee, Phagwara of tendering an explanation under the proviso to Section 16 of the Punjab Municipal Act, 1911, is satisfied that the said Shri Bhagat Ram Patanga has flagrantly abused his position as a member of the aforesaid Committee. Now, therefore, in exercise of the powers vested (in) to him under Clause (e) of sub-section (1) of Section 16 *ibid*, the Governor of Punjab is pleased to remove the said Shri Bhagat Ram Patanga from the membership of the Municipal Committee, Phagwara, from the date of publication of this notification in the official gazette and is further pleased to disqualify the said Shri Bhagat Ram Patanga for a period of three years from the aforesaid date under sub-section (2) of Section 16 *ibid*", observed thus :--

"The State Government while removing a municipal commissioner u/s 16(1) may be expected to give an outline of the process of reasoning by which they reached their decision In these matters the executive files do not contain judgments in such cases in the manner in which the same are prepared and written in Courts of law, but the executive file in the present cases leaves not the least doubt, as in the words of their Lordships in *Bharat Raja Vs. The Union of India (UOI) and Others*, that an outline of the process of reasoning by which the Home Minister reached his decisions with regard to the respondents is to be found in this executive file There appears the broad outline of the manner in which the State Government in the cases of the respondents reached its decisions."

As already pointed out earlier, this judgment of the Full Bench met with the approval of the Supreme Court in appeal. When this question was again raised before the Supreme Court in appeal *Bhagat Ram Patanga Vs. The State of Punjab*, , by the learned counsel for Bhagat Ram Patanga, their Lordships, after observing that the Full Bench had rightly agreed with the appellant by holding the order of removal to be a quasi judicial order, further observed (at p. 1577 of AIR 1972 SC):--

"The appellant raised in consequence the further contention that the order dated September 11, 1962, has to be struck down in as much as it does not give an reason. So far as this last aspect is concerned, we have already referred to the fact that the Full Bench of five Judges went through the file produced before it by the State and has come to the conclusion that there is a clear indication that the representations of the appellant were taken into account and considered by the

Government before the order dated Sept. 11, 1962 was passed."

Thus the above noted observations of the Full Bench of this Court and the Supreme Court clearly indicate that what is required to be disclosed in an order of the type of the impugned order is the "outline of the process of reasoning" by which the government reached that conclusion. This of course is true as has been observed in Patanga's case (Supra) that when such an order is challenged, the State Government must place before the Court the necessary materials which were available before it and which were taken into consideration for forming the opinion to remove the person concerned as a Member of the Committee or form the office of President or Vice President. At the instance of the learned counsel for the petitioner, we have actually gone through the relevant files of the Government dealing with the explanation or the representation made by the petitioner in reply to the show cause notice issued to him and we are more than satisfied that the Government has dealt with the same in an exhaustive and judicious manner. Various notings on that file made at different levels indicate that the explanation of the petitioner was considered in the light of the record of the Municipal Committee--which was duly sent for--and it is only after that careful consideration of the entire matter that the impugned order was passed. The very fact that out of the 9 charges which had been levelled against the petitioner only 5 were found to have been established against him as a result of the scrutiny of the relevant record in the light of his explanation is indicative of the fact that the Government fully applied its mind to the explanation offered by the petitioner and took an independent and just decision in the matter. I, therefore, find no merit in this stand of the leaned counsel.

6. Equally meritless to my mind is the second contention of the learned counsel for the petitioner that in case in hand the principles of natural justice stood violated inasmuch as a copy of the report submitted by the Deputy Director was not supplied to the petitioner before calling for the explanation. It is not disputed that rules of natural justice are not embodies rules nor can they be elevated to the position of fundamental rights. Their sole aim is to secure justice or to prevent miscarriage of justice. It is further conceded that these rules can operate only in areas not covered by any law. In the light of this conceded legal position, it is patent that if a statutory provision specifically or by necessary implication excludes or curtails the application of any rules of natural justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision anything more on the basis of the principles of natural justice. The applicability and scope of these principles to my mind is clearly codified and regulated by the proviso to Section 22 of the Act when it lays down that before the State Government notifies the removal of a President or a Vice President of Municipal Committee the reason or reasons for his proposed removal shall be communicated to him by means of a registered letter inviting his explanation in writing within 21 days of the receipt of the said communication. This provision of law further lays down that in case no such explanation is received in the office of the appropriate Secretary to the

Government within the stipulated period of 21 days of the despatch of the said registered letter, the State Government may proceed to notify his removal. In the light of this clear cut provision of law, to my mind, no scope is left for the argument which the learned counsel for the petitioner sought to advance. The maximum to which the petitioner was entitled to was that could ask the State Government to make to him available the material on the basis of which the State Government had levelled charges against him. In other words, he could ask for the material forming the basis of the charges enumerated in the show cause notice. It has been specifically averred by the respondents in their return that the report submitted by the Deputy Director was the result of a fact finding enquiry conducted by him after duly associating the petitioner. Further, according to the respondents, this report was not made the basis of the show cause notice or the charges mentioned therein; rather the show cause notice was based on the material which was otherwise available from the records of the Committee of which the petitioner was the President. As a matter of fact, the petitioner never even asked for a copy of the report made by the Deputy Director and in the absence of the same the provisions of Section 22 the Act did not make it obligatory on the respondents to supply a copy of that report to the petitioner. It is not in dispute that during the preliminary or the fact finding enquiry conducted by the Deputy Director the petitioner was associated with that enquiry and not only that the petitioner was provided a personal that the petitioner was provided a personal hearing in the matter before the passing of the impugned order. In support of his contention, the learned counsel for the petitioner has made a reference to certain observations made by some learned Judges of this Court in single Bench judgments such as *Rajinder Singh v. Punjab State* (1970) 72 PLR 732 , *Nanoo Mal Saxena Vs. State and Another*, and *Ashok Kumar Pandhi v. State of Punjab* (C. W. P. No. 3540 of 1980) decided on 7th of Jan., 1981,* but I find it unnecessary to examine those judgments in detail; Firstly, for the reason that those observations appear to have been made in the context and in the peculiar circumstances of those cases and secondly, in view of the following question raised and answered by the Full Bench in *The State of Punjab Vs. Bhagat Ram Patanga*, :--

"The statutory procedure in the proviso to Section 16(1) of the Act (this proviso, as already indicated, is parallel to the proviso to section 22 of the Act) having been literally and completely complied with, was there anything more left to be done by the appellant (State Government) for taking action according to Section 16(1)(e) of the Act."

When this aspect of the matter was again highlighted before their Lordships of the Supreme Court, it was observed thus :--

"When once the Letters Patent Bench has held that the order passed by the State Government is of a quasi-judicial nature, it is obligatory on the part of the State Government to make available before it and on the basis of which the show cause notice is issued. Even if those materials are not referred to in the show

cause notice in any great detail, it is open to the member concerned to request the State Government to furnish him the materials on which the show cause notice has been issued so that he may give an effective answer not only to the averments contained in the show cause notice but also to the materials, on the basis of which the show cause notice has been issued."

It is not the case of the petitioner here that he had either asked for a copy of the report submitted by Shri K. K. Sayal or any other material. The content of the show cause notice Annexure P-1 do not make even a slightest reference to the abovesaid report. As already indicated, the detailed facts mentioned in this show cause notice all through make a reference to the records of the Municipal Committee of which the petitioner himself was the President. Thus he cannot possibly now plead that either he was not aware of that material or had been denied any access to the same, much less that he requested for the supplying of any copies and the same was declined. In the light of the above noted observations of the Full Bench and the Supreme Court and the actual position already pointed, I do not find that there has been any violation of any principles of natural justice or any prejudice has been caused to the petitioner. In case the abovenoted single Bench judgments referred to by the learned counsel for the petitioner are taken to mean anything more than what has been observed by the learned Judges of the Full Bench and the Supreme Court already referred to above, then those judgments obviously do not lay down the correct law and to that extent have to be overruled.

7. No other contention having been raised, we find, in the light of the discussion above, the petition to be wholly devoid of merit and, therefore, dismiss the same but with no order as to costs.

S.S. sandhawalia, C.J.

8. I agree.

9. Petition dismissed.