
(1970) 07 AHC CK 0020
In the Allahabad High Court
Case No : Writ Petition No. 3688 of 1965

Sohanlal Bajaj

APPELLANT

Vs

District Magistrate, Bulandshar and Another

RESPONDENT

Date of Decision : 06-07-1970

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 81

Citation : AIR 1971 All 137 : (1970) 40 AWR 546

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : S.S. Bhatnagar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The petitioner was President of the Municipal Board. Diba from August 18, 1957 until January 30, 1960. During the term of office he appointed one Mohd. Idris as a toll peon of the Municipal Board. Subsequently, it transpired that Mohd. Idris was not qualified for appointment to that post. The Examiner, Local Fund Accounts raised an objection to the payment of Rs. 703-02 to Mohd. Idris on account of salary and allowances. The petitioner was called upon to submit an explanation explaining the circumstances in which he had appointed Mohd. Idris. The explanation was found insufficient and was rejected. On March 27, 1965, the State Government directed the District Magistrate to take proceedings to recover the said sum of Rs. 703.02 from the petitioner as surcharge. The District Magistrate informed the petitioner that he was liable to deposit the said amount in the treasury of the Municipal Board. The petitioner now prays for relief under Article 226 of the Constitution.

2. The proceedings for recovery of the impugned surcharge are admittedly being taken under the Municipal Board Surcharge Rules, 1948. Rule 3(1) provides that in a case where the Examiner. Local Fund Accounts. U. P. considers that there has been a loss of any money belonging to the Board as a direct consequence of

the misconduct of the President of the Board, he may report the matter to the Government who may call upon the President to explain in writing why he should not be surcharged with the amount which represents the loss caused to the Board. Rule 4 empowers the Government if it considers that the explanation is inadequate, to make an order of surcharge. That order, by virtue of Sub-rule (2) of Rule 4 has been declared final and no appeal lies against it.

3. The principal contention of learned counsel for the petitioner is that the U. P. Municipal Board Surcharge Rules, 1948 are ultra vires inasmuch as there is no statutory sanction in the Municipalities Act for the enactment of those rules. Learned counsel has taken me through the provisions of the Act and it does appear that at the time when the rule was framed no such provision existed. Learned counsel for the respondents relies upon Section 31 of the Act. Section 81 provides that the President of the Board shall be liable to surcharge for the loss of any money if such loss is a direct consequence of his neglect or misconduct while acting as President In substance. Section 81 embodies what is provided by the U. P. Municipal Board Surcharge Rules. Section 81 was, however, substituted in the Municipalities Act by U. P. Act No. 27 of 1964. That amendment was not effected with retrospective effect. Inasmuch as there was no liability to surcharge upon the petitioner at the time when the loss to the Board is said to have been occasioned recourse cannot be had to Section 81. The President becomes liable to surcharge when the loss is occasioned to the Board.

4. As the U. P. Municipal Board Surcharge Rules, 1948 are ultra vires and Section 81 of the Municipalities Act cannot be, invoked, the proceedings against the petitioner for recovery of surcharge are without the sanction of law.

5. The petition is allowed. The proceedings for recovery of surcharge against the petitioner are quashed. The petitioner is entitled to his costs.