

(1978) 03 MP CK 0039

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 515 of 1977

Srikrishna Jagram

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) MPLJ 426

Hon'ble Judges : A.P. Sen, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : C.L. Kotecha, for the Appellant; S.L. Saxena, Govt. Advocate for Respondent No. 1 and P.C. Pathak, for Respondents Nos. 2, 3, 5 to 10, 12 and 13, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, J.

By this petition under Article 226 of the Constitution of India, the Petitioner Dr. Srikrishna Rajoria, a medical practitioner residing in the town of Harsud and a voter and tax-payer of Harsud Notified Area, seeks a writ of certiorari to quash the State Government Notification No. 590-XVIII-11-77, dated Bhopal the 30th September 1977 (Annexure C) by which the State Government has constituted a Notified Area Committee consisting of nominated-members only, in exercise of the powers conferred by the Second Proviso to Clause (d) of Sub-section (1) of Section 341 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961).

In the year 1971, the State Government, by a notification issued u/s 340 of the Madhya Pradesh Municipalities Act, 1961 (here-in-after referred to as "the Act") declared as "Notified Area, "the area which earlier existed as a Gram Panchayat at Harsud. At the same time, the State Government, by another notification dated 3rd November 1971 constituted a Notified Area Committee consisting only of nominated members in exercise of the powers conferred by the Second

Proviso to Clause (d) of Sub-section (1) of Section 341 of the Act. That notification was challenged in this Court by a similar writ petition which was *Idan Dass v. State of M.P. and Ors.* M.P. No. 905 of 1973 decided on 1.5.1974. The challenge in that petition was on the ground that the impugned notification did not state any reasons for constituting the committee of nominated members only, on account of which it was invalid. The Division Bench dismissed that writ petition taking the view that the State Government had shown from the material contained in the office file that reasons for such an action were contained in the file. Some of these reasons were also stated by the Division Bench in paragraph 4 of its order which were, inter alia, that some interim arrangement had to be made till holding of elections was feasible and that the action was taken on the basis of the report of the Collector sent in this behalf. Taking the view that the requisite reasons existed when the impugned notification was issued and that the reasons were stated in writing in the office file perused by the Division Bench, that notification was found not to be defective. It was also stated by the Division Bench that inordinate unexplained delay in filing that petition was a further ground to refuse relief to the Petitioner. The Division Bench, at the end of its order also observed as follows:

We may, however, observe that the nominated body, which is not the normal rule, has continued for almost 21 years, a very long time for an emergency to continue; and the Government, we hope, shall examine the expediency of its further continuance in preference to an elected body.

Notwithstanding the above facts, the Harsud notified Area has continued to have till now only a committee consisting of all nominated members and the first election has yet to be held. The State Government, by the next Notification No. 819-XVIII-II-75, dated Bhopal the 22nd November 1975 (Annexure A) constituted a fresh committee, once again consisting only of nominated members, in exercise of the power conferred by the Second Proviso to Clause (d) of Sub-section (1) of Section 341 of the Act. This committee continued till it was replaced by a committee of single person, viz., the Tahsildar of tahsil Harsud, district Khandwa, in exercise of the power conferred by Section 341(1)(d) by the notification dated 8-9-1977 (Annexure B). This arrangement was for a very short period and then the impugned Notification No. 550-XVIII-II-77 dated 30-9-1977 (Annexure-C) was issued by the State Government, once again constituting a committee only of nominated members in exercise of the power conferred by the Second Proviso to Clause (d) of Sub-section (1) of Section 341 of the Act. It is this notification which has been challenged by this petition filed on 23-11-1977.

In the impugned notification dated 30-9-1977 (Annexure-C) admittedly there is no statement of the reasons which led to the Constitution of a committee consisting only of nominated members in exercise of the extraordinary power conferred by the Second Proviso to Clause (d) of Sub-section (1) of Section 341 of the Act. It only states the conclusion that "the circumstances of the Harsud Notified Area are such that it would be in the public interest to appoint a

committee of persons consisting of nominated members only." Learned Counsel for the Petitioner contends that for the valid exercise of the extraordinary power conferred on the State Government by the Second Proviso to Clause (d) of Sub-section (1) of Section 341 of the Act, compliance with the mandatory requirement of "stating the reasons therefor" in the order, has to be made. It is urged that this mandatory requirement not having been complied with, the impugned notification dated 30-9-1977 (Annexure C) must be quashed.

It is not the case of the State Government that the reasons which led to the issue of the impugned notification, Annexure-C dated 30-9-1977 are stated in writing even in the office file although they are not in the impugned notification. At the hearing of the petition, we specifically asked the learned Government Advocate to tell us if the requisite reasons, which led to the exercise of this power and issue of the notification, had even been stated in the office file or elsewhere. The learned Government Advocate was unable to show us the requisite reasons in writing anywhere and he was unable to even say that such a writing was in existence with (be State Government in any record. The main ground on which the validity of a similar notification dated 3-11-1971 was upheld by this Court in Idan Doss's case (supra), as earlier stated, is, therefore, not available in the present case. Since the existence of reasons in writing anywhere in the record is not set up on behalf of the State Government, it is also not necessary for us in the present case to express our opinion on the question whether the "stating of reasons" in any record and not in the notification itself, to support the exercise of this power, amounts to compliance of this requirement, which was the view taken in Idan Dass's case (supra). We are concerned only with the question whether the impugned notification can be upheld when it was issued without "stating the reasons" either in the notification itself or anywhere else in the record.

Having heard Shri C.L. Kotecha, learned Counsel for the Petitioner, the learned Government Advocate Shri S.L. Saxena for the Respondent No. 1 and Shri P.C. Pathak counsel for the Respondents 3 to 13 the nominated members of the committee we are satisfied that this petition must be allowed and the impugned notification dated 30-9-1977 (Annexure C) must be quashed.

The relevant portion of Section 341 of the Act is as under:

341. Power of State Government to impose taxation and regulate expenditure of proceeds thereof:

(1) The State Government may-

(a) x x x

(b) x x x

(c) x x x

(d) appoint, for the purposes of Clause (b) and (c), a single person or a

committee of persons elected and nominated of such number and in such proportion as the State Government may fix:

Provided that a majority of the members shall be elected:

Provided further that where, in the opinion of the State Government the circumstance of any notified area are such that it would be in public interest so to do, it may by order, stating the reasons therefor, direct that in any notified area such Committee shall consist of nominated members only;

x x x x

This provision, read as a whole, clearly shows that the Committee so appointed by the State Government should ordinarily consist of a majority of elected members as laid down in the First Proviso to Clause (d). It follows necessarily that Constitution of a committee consisting only of nominated members is undoubtedly an abnormal course to be adopted as a last resort. It is for this reason that the Second Proviso to Clause (d) has been inserted, its object being to confer an extraordinary power to deal with an unusual situation and at the same time to provide a check against arbitrary or capricious exercise of that power. The Second Proviso lays down that a committee consisting of nominated members only is to be constituted only where "in the opinion of the State Government the circumstances are such that it would be in public interest so to do" and that this action has to be taken by the State Government in such a situation "by order stating the reasons therefor." It is, no doubt, the State Government which has to form such an opinion. All the same, the exercise of the power is permitted in "public interest" and "by order, stating the reasons therefor." The manner of exercise of this extraordinary power by the State Government, which permits a deviation from the ordinary course of constituting a committee consisting mostly of elected members, is prescribed obviously to check any possible abuse of the power. In case exercise of this power by the State Government is challenged, its validity has to be tested in the light of the stated reasons, to the extent judicial review of subjective satisfaction of a public authority is permitted in a proceeding for a writ of "certiorari": *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , Para 8. These limits are well settled by now and it is not necessary for us to re-state them here. Moreover, it is well known that the requirement of "stating the reasons" itself acts as an internal check against any possible abuse of the power.

In *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, it was held that the action of the Collector u/s 5A of the Bihar Private Irrigation Works Act (B and O 5 of 1922) was rendered invalid if the same was done without recording reasons for the exercise of that emergency power and that the requirement in that provision of reasons being recorded by the Collector was a mandatory requirement. It was held that even assuming the Collector's power under that provision to be administrative, his subjective satisfaction to act u/s 5A permitted him to exercise the power validly only in the manner stated therein,

that is, by recording the reasons in writing and not merely his conclusion or finding. A writ of certiorari was held to be available where the Collector exercised the power u/s 5A without recording the reasons as required by the provision. That decision continues to hold the field. Following this decision, in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, the effect of failure to record reasons in writing where it is prescribed as a requirement for the valid exercise of the power was considered in the context of Regulation 5(5) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955. That regulation provides that if in the process of selection etc any member of the State Civil Service was to be superseded by the Selection Committee, "it shall record its reasons for the proposed supersession." The requirement of recording reasons was held to be mandatory and in that context their Lordships observed as follows:

Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached.

In *Suresh Seth v. State of Madhya Pradesh* 1969 MPLJ 327 an order of supersession of a Municipal Corporation made u/s 422 of the Madhya Pradesh Municipal Corporation Act, 1956, was quashed by a writ of certiorari for two defects, viz., (i) that the Corporation was not given a fair opportunity to show cause before the order was made, and (ii) that the reasons for making the order were not stated. In the present case, we are concerned with the view taken by the Division Bench for finding the second defect in the order. One of the requirements of Section 422 of the Madhya Pradesh Municipal Corporation Act, 1956, was that "such order shall be published in the gazette and the reasons for making it shall be stated therein." This requirement of stating reasons in the order not having been complied with, the Division Bench held that the noncompliance was of a mandatory requirement which rendered the order a nullity. Singh, J., speaking for the Division Bench, has discussed the point elaborately with reference to the Supreme Court decisions. With respect, we are in full agreement with the view of that Division Bench of which one of us (A.P. Sen J. as he then was) was a member, on this point.

From these authorities, it follows that the impugned notification dated 30-9-1977 (Annexure-C) suffers from the defect of non-compliance with the mandatory requirement of stating reasons as required by the Second Proviso to Clause (d) of Sub-section (1) of Section 341 of the Act, and it must, therefore, be quashed. However, the learned Government Advocate Shri S.L. Saxena as well as the learned Counsel for Respondents Nos. 3 to 13 Shri P.C. Pathak contend that a writ of certiorari cannot be issued to quash an administrative act like the present. They rely on two decisions, viz., *Idan Doss's case* (supra) and *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, . We shall presently

show that none of these two decisions is of any assistance to the Respondents.

In Idan Dass's case (supra), as earlier stated, the requirement of "stating the reasons" was found to be complied with, while in the present case admittedly there is a total non-compliance with this mandatory requirement. On this conclusion, no further question arose for decision in Idan Dass's case. It may also be mentioned that in Idan Dass's case, it was further held that "the petition deserves to be thrown off on the ground of unexplained delay." That Division Bench referred to the decision of an earlier Division Bench in Suresh Seth's case (supra) and their Lordships' decision in Radeshyam Khare's case (supra). Suresh Seth's case was distinguished merely on the ground that it related to supersession of a Municipal Corporation and the second defect found in the impugned order in Suresh Seth's case, to which we have already referred, was not even discussed. An extract from Radeshyam Khare's case was quoted but nothing more was said about the manner in which that decision applied. Later decisions of the Supreme Court and enlargement of the area in which "certiorari" is available after the decision in Radeshyam Khare's case was not even noticed. It is, therefore, necessary to examine whether in the present case, "certiorari" can be refused merely because the impugned act is administrative and not "quasi-judicial".

In Radeshyam Khare's case (supra), action was taken by the State Government in exercise of the powers conferred on it by Section 53-A of the C.P. and Berar Municipalities Act, 1922, in issuing a notification appointing an Executive Officer of the Municipal Committee, Dhamtari, for a period of eighteen months with certain powers mentioned therein. Section 53-A of that Act required, inter alia, "the stating of reasons" while exercising the power. This requirement was admittedly complied with and several reasons which led to the exercise of the power were mentioned in the impugned notification itself. The validity of that notification was challenged on the ground of breach of rules of natural justice in not giving an opportunity to the persons affected before exercise of that power. The challenge to the validity of the notification in that case was not on the ground of absence of reasons obviously because that defect was not present in that notification. In the case before us the challenge is only on the ground of failure to state reasons and not on the ground of breach of rules of natural justice. It was, therefore, in that context that their Lordships considered the nature of power exercised by the State Government u/s 53-A of the C.P. and Berar Municipalities Act, 1922 for the purpose of deciding whether a duty was cast on the State Government to give a reasonable opportunity to the persons affected and to follow the rules of natural justice before issuing the impugned notification. The conclusion reached was that the exercise of State Government's power u/s 53-A of the C.P. and Berar Municipalities Act was a purely administrative act and not quasi-judicial act, more so, when there was another more drastic provision in that Act which was not resorted to, on account of which it could not be challenged on the basis of absence of reasonable opportunity to explain. The distinction is pointed out in Suresh Seill's case (supra). As earlier

stated, we are, in the present case, not concerned with this question. Their Lordships in *Radeshyam Khare's case* (supra) also gave an additional reason stating that "certiorari will not lie to correct the errors of a statutory body which is entrusted with purely administrative function" and that "for the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie." These observations in the judgment of Das C.J., are relied on by both the learned Counsel appearing on behalf of the Respondents.

In view of a catena of Supreme Court decisions subsequent to *Radeshyam Khare's case* (supra) in which writ of certiorari was held to be available to quash administrative acts of the State Government or public authorities done in excess of jurisdiction, and that being a common feature now in the High Courts and Supreme Court, it is too late to contend that a writ of certiorari cannot be issued to quash a notification issued by the State Government in exercise of statutory power without complying with a mandatory requirement laid down therein. *Radeshyam Khare's case* is treated as an authority for the view that "for the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie" (see Seervai's *Constitutional Law of India*, Second Edition, Volume 11, pages 886, 899 and 900). It has also been noticed by Seervai on the basis of subsequent Supreme Court decisions that "contrary to the view expressed by Das C.J., it has been held that a writ of certiorari will lie." We need not dwell on this point any further and it is sufficient to refer to the decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, on the basis of which such an objection cannot now be sustained. *Kraipak's case* (supra) took notice of this trend and also held that even in an administrative proceeding, which involved civil consequences, the doctrine of natural justice must be held to be applicable. This has very recently been again reiterated in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . Thus, the earlier classification of functions as "judicial" or "administrative" for applying the doctrine of natural justice only to the former, has long been discarded. Enlargement of the scope of "certiorari" to quash an administrative act done in excess of jurisdiction, by a public authority, has not been in doubt for several years. The only argument advanced on behalf of the Respondents is, therefore, rejected.

The result is that we allow this petition and issue a writ in the nature of Certiorari and quash the impugned Notification No 590-XVIII-II-77, dated Bhopal the 30th September 1977 (Annexure-C) issued by the State Government. The Petitioner shall get "his costs from Respondent No. 1. Counsel's fee Rs. 100, if certified. The other Respondents will bear their own costs. The outstanding amount of security deposit shall be refunded to the Petitioner.