

(1987) 04 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 885 of 1986

Sukh Dev Ahluwalia

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-04-1987

Acts Referred:

Himachal Pradesh Municipal Act, 1968 — Section 25(2), 252, 253, 253(1), 253(2)
Punjab Reorganisation Act, 1966 — Section 67(3)

Citation : (1987) ShimLC 258

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; P.N. Nag, General for Respondent No. 1, M.L. Sharma, for Respondent Nos. 2 and 3 and R.K. Gautam, for the Respondent

Judgement

P.D. Desai, C.J.—The Petitioner is a practising advocate at Bilaspur. He has a standing of about thirty three years at the Bar. The Administrator of the Municipal Committee of the New Bilaspur Township offered him appointment as Municipal Advocate on monthly emoluments of Rs. 220, including Munshiana, with effect from July 10, 1980 vide Annexure PA, dated July 9, 1980. The Petitioner accepted the offer and started functioning as Municipal Advocate from July 10, 1980. Be it stated that the Petitioner's appointment, as such, really amounted to a retainership on behalf of the Municipal Committee for conducting the cases for and against it and that the relationship between the two was not that of master and servant. The monthly emoluments of the Petitioner were later on enhanced to Rs. 300 per month vide order, dated September 15, 1981, Annexure P-B. Prior thereto, the Petitioner was already holding appointment as part-time Legal Adviser-cum-Lawyer for the Municipal Committee, Shri Naina Devi Ji on a monthly honorarium of Rs. 110, including Munshiana, on and with effect from June 1, 1976 vide Annexure P-G. The said appointment also was a retainership offered to and accepted by the Petitioner for conducting cases for and against the said Municipal Committee and involved no employment in the

traditional sense.

2. The State Government in the Local Self Government Department sent a communication, dated June 12, 1986 Annexure P-D, to the Administrator of the Municipal Committees of New Bilaspur Township and Shri Naina Devi Ji, stating that it had been "decided by the government" to engage Respondents No. 3 and 4 as counsel for both those Municipal Committees and requesting that the case for fixing reasonable honorarium for them be moved for the approval of the Government. The Administrator of the New Bilaspur Township Municipal Committee vide his communication, dated July 21, 1986 Annexure P-E, pointed out to the State Government that the Petitioner, who was the senior-most counsel, was engaged by the then Administrator of the Municipal Committee as a part-time legal adviser and Advocate after considering the names of different Advocates and that he had been attending to the legal work of the Municipal Committee with utmost satisfaction and no case of the Municipal Committee was lost during the period of his retainerhip. The Administrator stated that there was no justification to make any change in the existing arrangement and that if any junior counsel were to be appointed in his place, the Municipal Committee was likely to suffer. The State Government sent a brief reply, dated August, 23, 1986 Annexure P-E, stating that the Administrator should comply with the Government decision communicated to him earlier and send the proposal for fixing a reasonable remuneration for the Advocates whose names were suggested earlier. Further correspondence was exchanged between the Government and the Administrator seeking and making clarifications. Ultimately, on October 27, 1986 the third Respondent was appointed as part-time Municipal Counsel of the Municipal Committee of New Bilaspur Township vide Annexure P-J. The Petitioner has challenged the said appointment in the present petition.

3. The main ground of challenge to the impugned appointment is that the Administrator, who is a statutory officer, has not acted on his own judgment or in his individual discretion while revoking the existing arrangement and making the fresh appointment and that he acted at the behest or under the dictates of the State Government which had no power, authority and jurisdiction to issue a direction to the Municipal Committee through its Administrator to act accordingly. It has been expressly stated in the petition, however, that the Petitioner "is not very anxious to continue with the assignment/retainerhip" but has filed the petition in view of the fact that the manner in which the retainerhip was terminated and the new arrangement was forced upon the Municipal Committee through its Administrator did not disclose a "healthy trend" and it was "a reflection on the class of Advocates as a whole". In other words, the petition is in the nature of a test case. In view of the ground of challenge as aforesaid, the State Government was specifically directed to file an affidavit-in-reply tracing the source of power and the reason which had weighed in issuing the impugned directions in the public interest, if any, to the Administrator of the Municipal Committee.

4. The affidavit-in-reply filed on behalf of the State Government relies upon Section 252 of the Himachal Pradesh Municipal Act, 1968 as the source of power and also points out that it was decided to discontinue the Petitioner's appointment as Municipal Advocate since he was too busy a Counsel who found very little time to attend to the work of the Municipal Committee. The Administrator of the New Bilaspur Township Municipal Committee has also filed an affidavit stating in substance that the Petitioner, who was a senior Advocate, used to keep busy with his other professional work and that taking into consideration the volume of the legal work of the Municipal Committee, it was considered necessary to appoint as Municipal Counsel, an Advocate who could devote more time and attention to the work of the Committee and that the appointment of the third Respondent was made after taking into account all the relevant factors. In terms, it is found stated in the affidavit that; "There is" absolutely no reflection on the efficiency of the Petitioner; it is earnestly felt that due to his professional engagement and due to the increase of litigation by and against the Committee, it was thought expedient to engage a counsel who could spare more time for the work of the Committee". The Administrator has relied upon the provisions of Section 252 read with Section 37 (2) of the Act to justify the directive of the State Government to engage the third Respondent as the Municipal Counsel. Be it stated that the affidavit is filed by the new Administrator who was not in office when the proposal for the appointment of the third Respondent was mooted by the State Government and when his appointment was made.

5. Sections 37 and 252 of the Act read as follows:

37. Appointment of Secretary. -- (1) Every committee shall, from time to time at a special meeting, appoint, subject to the approval of the State Government, one of its members, or any other person, to be its secretary, and may, at a like meeting, suspend, remove, dismiss or otherwise punish any person so appointed.

(2) The committee may, and shall when so required by the State Government, appoint at a special meeting, a person or persons approved by the State Government to be its Medical Officer or Health or Engineer, and may assign to him or them such remuneration as it may think fit, and may, at a special meeting, remove or dismiss any person so appointed;

Provided that a Medical Officer of Health towards whose emoluments a contribution is made by the State Government shall not be appointed or dismissed without the previous sanction of the State Government.

(3) When a member of the committee is appointed secretary, he shall receive no remuneration in respect of his services. When any other person is appointed secretary, the committee may, with the previous-sanction of the State Government, assign to him such remuneration as it may think fit.

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252. General powers of State Government over officers. Notwithstanding anything contained in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act, the State Government shall exercise over its officers all powers of superintendence, direction and control.

6. It is difficult to comprehend the relevance of Section 37 or subsection (2) of Section 37 in the context of the controversy in hand. The said section is a part of the fasciculus of sections in Chapter III and it occurs in the group of sections under the heading "Officers and Servants". The sections grouped under the said heading deal with the matters concerning the recruitment and appointment of municipal officers and servants and their conditions of service. An advocate, who is engaged on a fixed retainer or honorarium or remuneration and who is not a full time employee of the Municipal Committee, is neither an officer nor a servant of such committee. There is no relationship of master and servant between him and the Municipal Committee. His function ordinarily being to conduct the municipal litigation and to tender advice on legal matters to the Municipal Committee, if and when required, his professional status is no different than any other counsel employed on payment of regular fees to render such services to the Municipal Committee as and when occasions therefore arise. The difference, if any, is ordinarily found in the conditions which are attached to such office and which usually postulate that an Advocate retained as Municipal Counsel will not tender advice or act or plead against the Municipal Committee and may not charge fees for conducting each individual case or giving professional advice on each matter but will be paid a fixed retainer or honorarium or remuneration. Section 37, therefore, has no direct or indirect bearing or relevance in the resolution of the present controversy and the State Government's inter-position in the appointment or termination of Municipal Advocate cannot be justified by reference thereto.

7. Coming next to Section 252, the State Government is thereunder enabled to exercise the power of "reversing or modifying any order of any officers of the State Government passed or purporting to have been passed under this Act" in cases where the conditions for exercise of such power are satisfied. It is difficult to appreciate how this statutory provision is attracted on the facts and in the circumstances of the present case. The engagement of the Petitioner as Municipal counsel was not by any order of an officer of the State Government. The appointment was made by a statutory officer, who is generally known as "the Administrator" and in whom were vested all powers and duties of the Municipal Committee at the material time, since the Committee was superseded in exercise of the powers conferred by Section 253. In other words, the appointment was

made by the Municipal Committee acting through the Administrator who was, at the relevant time, exercising all powers and performing all duties of the Municipal Committee by virtue of his appointment as such u/s 253, Sub-section (2) clause (b) of the Act. While exercising such powers and performing such duties, the Administrator was acting as a designated or specified officer and was deriving his authority from the Statute and he was not only entitled but was also required to act in his individual discretion and independent judgment keeping in view the public interest and the interest of the Municipality. The fact that the Administrator for the time being happens to be an officer of the State Government does not make the office of the Administrator a limb or an agency or instrumentality of the State Government nor does it render a decision taken or an order passed by him in such capacity an order of the officer of the State Government. Although he may be a Government servant, as the Administrator of the Municipal Committee he fills distinct office and exercises powers and performs functions and discharges duties vested in the Municipal Committee by law but which, for the time being, are entrusted to him. Section 252 did not, therefore, empower the State Government to direct that the appointment of the Petitioner be terminated and/or that the third Respondent be appointed as Municipal Counsel in his place and stead.

8. The learned Advocate General advanced an ingenious argument based on Section 253, Sub-section (2), Clause (c), and submitted that the office of Municipal Counsel was the property of the Municipal Committee, which, upon the supersession of the Municipal Committee, vested in the State Government alongwith the incumbent and that, as such, the State Government had dominion over the same and that they, therefore, had the power and authority to terminate or to direct the termination of the retainerhip of the Petitioner and further to appoint or direct that the appointment of the third Respondent be made in his place and stead. In support of the above submission, the learned Advocate General relied on a Full Bench decision of the Delhi High Court (Himachal Bench) in *Mohammed Yaqub v. Union of India and Ors.* AIR 1971 Del 45.

9. Before dealing with this submission, it is necessary to have a look at Section 253 of the Act. Sub-section (1) of Section 253 empowers the State Government to declare, by notification, that a Municipal Committee is superseded on the fulfilment of and subject to the conditions therein laid down. Sub-section (2), which is material for the present purposes, reads as follows:

(2) When a committee is so superseded, the following consequences shall ensue:

(a) all members of the committee shall, from the date of the notification, vacate their seats;

(b) all powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such persons as the State Government may appoint in that behalf;

(c) all property vested in the committee shall, until the committee is re-constituted, vest in the State Government.

Sub-section (3) empowers the State Government to constitute at any time another committee in the place of any Committee superseded under the section.

10. It will be seen, in the first place that two out of the three consequences which follow upon the supersession of a Municipal Committee are set out in Clauses (b) and (c) of Sub-section (2) of Section 25, and that they cover two distinct fields or subjects which are mutually exclusive. Whereas, under Clause (b), all powers and duties of the Municipal Committee are to be exercised and performed, till the Committee is reconstituted, by such person or persons as may be appointed in that behalf by the State Government, under Clause (c) all the property vested in the Municipal Committee is vested in the State Government till such Committee is reconstituted. These two sub-clauses, read together and in juxtaposition, clearly mark out the respective fields in which they operate and they confer upon two separate authorities distinct powers, functions, duties and rights. Having regard to the scheme of the statute and the context and the collocation, it is manifest that one cannot encroach upon the field of the other. Since the appointment and/or termination of appointment of Municipal Advocate is a matter which falls within the domain or purview of the Municipal Committee and since the same is to be made or effected in exercise of the powers and in the performance of the duties of the Municipal Committee, Clause (b) and not Clause (c) is attracted, when the Committee is superseded and the Administrator alone is, therefore, empowered to act in that regard.

11. In the next place, even assuming that Clauses (b) and (c) of Sub-section (2) of Section 253 do not carve out distinct fields in each of which the concerned authority exclusively operates, it is preposterous to urge that the office of Municipal Advocate is the property vested in the Municipal Committee which, alongwith its incumbent, vests in the State Government, when the supersession takes place. The word "property", in its ordinary meaning, signifies that which a person owns and which can be the subject of sale, exchange, bargain, heritance etc. The word is generally used to denote the right of Ownership, possession, enjoyment and disposal over something. Property may consist of personal estate (money, Valuables, securities, chattels, goods etc.) or real estate (land and buildings). It may also comprehend every possible interest which a person may have in anything and also includes things in action and other intangible property. Even the right to an office can be regarded as property provided the holder has therein any personal interest of beneficial character, all the more if the indicia of ownership, namely, possession and transmission, is found to exist. Applying these tests, the office of Municipal Counsel would constitute property, if at all, for the holder thereof and not for the Municipal Committee and the question, therefore, of the vesting of such property in the Municipal Committee and in the State Government upon the supersession of the Committee does not arise.

12. In the last place, the cardinal rule of construction that the Court will adopt

the interpretation which is just, reasonable and sensible and eschew that which leads to absurdity, anomaly or ridicule, has to be kept before the mind's eye while interpreting Clause (c) of Sub-section (2) of Section 253. It is legitimate to assume that the law makers enact laws which the society considers as honest, fair and reasonable. If offices like those of Municipal Advocate are to be regarded as property vesting in the Municipal Committee and in the State Government, when the Municipal Committee is under supersession, the incumbents will be treated as no more than chattels and they will be victims of power politics and subjected to hire and fire. The doctrine of spoils of office, which holds a sway in the United States of America, will overtake such offices in our country and they will be viewed as the emoluments and advantages won by the political party in power and their incumbents will be chosen not on the basis of merit and competence but on wholly extraneous considerations thereby causing harm to the public interest. The Court is apparently loathe to interpret Clause (c) in a manner which brings about such result.

13. The decision in Mohammed yaqub's case is of no assistance or relevance. In that case, the question was whether the employment of employees of the erstwhile Punjab Electricity Board constituted the "liability" of the said Board within the meaning of subsection (3) of Section 67 of the Punjab Reorganisation Act, 1966. The statutory language which fell for construction as well as the context and the collocation in which it was required to be interpreted there are not comparable nor are the circumstances similar here. The expression "liability shall be apportioned between the successor States", which fell for construction in that case, is by no means similar to or comparable with the expression "all property vested in the Committee shall -- ...vest in the State Government" which we are required to interpret. It is trite saying that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not (c)very observation found therein nor what logically follows from various observations made in it. Every judgment must be read as applicable to the particular facts proved or assumed to be proved against the relevant statutory background. It is not a profitable task to extract a sentence here and there from the judgment and to built upon it. The decision relied upon is, therefore, wholly inapplicable on the facts and in the circumstances of the present case.

14. The legality and validity of the termination of the retainerhip of the Petitioner as Municipal Counsel and the appointment of the third Respondent in his place and stead under the directions of the State Government (and not in the exercise of the independent judgment and individual discretion of the then Administrator) is required to be judged against the aforesaid background. Judged in that light, no conclusion other than that the said termination and the said appointment are both illegal and invalid is possible, since the exercise of the power in that regard was founded on extraneous dictates. The then Administrator of the New Bilaspur Township Municipal Committee, although he initially offered resistance, ultimately capitulated and abdicated his statutory powers, functions and duties in favour of an outside agency, namely, the State Government, and

the State Government, in its turn unlawfully encroached upon the field which was reserved solely and exclusively for the Administrator and compelled him to act against his own better judgment. The resultant termination and appointment are, therefore, both vitiated and deserve to be quashed and set aside.

15. For the foregoing reasons, the impugned termination of the appointment of the Petitioner as Municipal Advocate and the impugned appointment of the third Respondent in his place and stead are both quashed and set aside. The Petitioner will be deemed to have continued to occupy the office of the Municipal Advocate and he is held entitled to all the consequential benefits flowing therefrom. The Court would like to observe, however, that the quashing of the appointment of the third Respondent will not invalidate any action taken by him by virtue of his purported appointment as such nor will it affect the remuneration received by him by virtue of the services rendered by him consequent upon such purported appointment. Besides, the Administrator will be at liberty, in the exercise of his own discretion and independent judgment, to make such fresh arrangement as he considers just and proper and in the public interest and in the interest of the Municipal Committee as regards the appointment of Municipal Counsel. Till and so long as the new appointment is made, however, the Petitioner will function as Municipal Advocate.

16. Rule made absolute accordingly. The second Respondent will pay the costs of this petition to the Petitioner which are quantified at Rs. 250.