

(1992) 08 AHC CK 0046

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24312 of 1991

Surinder Prakash Goel

APPELLANT

Vs

The State of U.P. and others

RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Municipalities Act, 1916 — Section 30, 48, 48(2), 48(2A)

Citation : AIR 1993 All 50

Hon'ble Judges : S.D. Agarwala, J;M. Katju, J

Bench : Division Bench

Advocate : Mr. Ravi Kant, for the Appellant;

Judgement

M. Katju, J.—The petitioner was elected President of Municipal Board, Ghaizabad in February, 1989. He belongs to the Congress-I party and it is alleged that ever since he assumed office attempts have been made by members of other parties to remove him from the office of President. It is alleged that one Sri K. C. Tyagi, Member of Parliament, who belongs to the Janta Dal and had animosity against the petitioner, made repeated efforts to dislodge the petitioner from office. Hence he initiated a no-confidence motion against him, but it failed. Thereafter Sri Tyagi wrote a letter to the then Chief Minister, Sri Mulayam Singh Yadav, true copy of which is Annexure 1 to the writ petition. On the basis of this letter, the Chief Minister directed the Commissioner, Meerut Division, Meerut to hold an enquiry and the Commissioner appointed the Additional District Magistrate (City), Ghaziabad to hold an enquiry who held an enquiry and found the petitioner to be innocent. True copy of the report of the Addl. District Magistrate is Annexure 2 to the writ petition.

2. Thereafter, the State Government issued notice under S.48(2) of the U.P. Municipalities Act (hereinafter referred to as "the Act"). True copy of the show cause notice dated 20-3-91 is Annexure 3 to the writ petition. By this notice the petitioner was called upon to show cause why he should not be removed from

the office of the President. The charges in the notice have been summarised in para 12 of the writ petition and hence they need not be repeated. The petitioner gave a reply dated 8-5-1991. In the meantime the petitioner was suspended on 4-5-1991 against which he filed Writ Petition No. 15567 of 1991, which was dismissed by a Division Bench of this Court on 21-5-1991. Against, this judgment relating to the petitioner's suspension he filed a SLP in the Supreme Court which was dismissed on 9-7-1991 with the observation that the State Government will not be influenced by the observations made in the judgment of this Court dated 21-5-1991.

3. In paragraphs 17 to 51 of the writ petition the petitioner has given in detail his reply to the charges which were levied against him. A true copy of the reply dated 8-5-1991 is Annexure 17. In paragraph 56 of the writ petition it is alleged that the statement did not consider the petitioner's reply to the show cause notice or the documents which he annexed along with the said reply and instead by an order dated 5-9-1991, the State Government removed the petitioner from office of the President. True copy of the impugned order dated 5-9-1991 is Annexure 18. Aggrieved, the petitioner has filed this writ petition.

4. We have heard Sri R. H. Zaidi and Sri S. K. Garg for the petitioner and Sri Rakesh Dwivedi for the respondent No. 3 and we have also heard the learned Additional Advocate-General, for the respondent No. 2 and we are disposing of the writ petition finally.

5. A counter-affidavit has been filed on behalf of the City Board, Ghaziabad. In paragraph 5 of the counter-affidavit it is alleged that enquiries had been held against the petitioner into the charges levelled against him and he manipulated the initial enquiry by Sri M. M. Mishra in his favour, but ultimately the report of the Addl. District Magistrate (City) Sri Tej Pal Singh found all the charges proved against the petitioner and he was issued a show cause notice and placed, under suspension and ultimately removed from the office of President. It is alleged that it is the report of the Addl. District Magistrate (City) Sri Tej Pal Singh which is the basis for suspension as also the removal. In paragraph 6 of the counter-affidavit it is alleged that the charges levelled against the petitioner have been proved and the petitioner has suppressed the report of Sri Tej Pal Singh, Addl. District Magistrate (City) which fully establishes the charges against him. Paragraphs 12 to 15 of the counter-affidavit is a reply to the factual allegations in the writ petition regarding the various charges against the petitioner. In paragraph 16 of the counter-affidavit, it is stated that the report of Sri Tej Pal Singh has established the fabrication, manipulation, alteration etc. in the minute book and the same has been corroborated by the District Magistrate, Ghaziabad in his letter addressed to the Government. Other paragraphs in the counter-affidavit have also denied the allegations in the writ petition and have alleged that the action against the petitioner was legal and valid.

6. A supplementary counter-affidavit of Harish Kumar has also been filed on behalf of the City Board, Ghaziabad. In paragraph 5 of this affidavit, it is stated

that the report of Sri T. C. Jain, Sub-Divisional Magistrate (Annexure 20 to the writ petition) was a procured document and it is virtually a verbatim repetition of the petitioner's reply. It is further alleged that Sri T. C. Jain submitted his report when he was on the verge of retirement. It is also alleged that this report does not deal with all aspects of the charges against the petitioner and Sri Jain did not make any enquiry from the members or record of the City Board. As regards the report of the Additional District Magistrate (E) Ghaziabad Sri Mukesh Mohan Misra, it is stated that Shri Misra held an enquiry into four charges which were substantially different from the charges on the basis of which the petitioner has been removed. In particular it is alleged that there was no charge of interpolation! in the minutes of the City Board and fabrication of the resolution pertaining to purchase of 1000 P.C.C.. Poles. There was also no charge with respect to grant of contract to an unregistered contractor without compliance with the tender conditions and rules. There was also no charge with regard to the grant made in favour of Kacheru Singh, or with respect to excessive expenditure in the matter of transport etc. for fogging machines from Delhi Air Port to Ghaziabad. It was denied that the removal has been done under political pressure. Paragraph 11 of this affidavit deals with the matter relating to payment for 1000 PCC Poles and it is alleged that the petitioner misused his position in this connection.

7. Rejoinder and supplementary rejoinder affidavits have been filed and we have perused the same.

8. The above facts reveals that there were three enquires against the petitioner. The first enquiry report is that of the Additional District Magistrate (City), Ghaziabad, Shri M. M. Mishra which is Annexure-2 to the writ petition. This report exonerates the petitioner in respect of the charges mentioned in the said report. The second report has not been annexed to the writ petition. This is the report of Shri Tej Pal Singh, District Magistrate (City) and it has been annexed as Annexure C.A I to the counter-affidavit of Bhawani Din Yadava. The third report is of Sri T. C. Jain, and this report is Annexure-20 to the writ petition in which the petitioner has been found to be innocent. A perusal of Annexure-S.A. 1 to the supplementary affidavit of the petitioner shows that the District Magistrate, Ghaziabad has agreed with Shri Jain's report.

9. We asked the learned counsel for the City Board as to what was the necessity of the second enquiry when the first enquiry report exonerating the petitioner (Annexure-2 to the writ petition) had already been submitted. In reply the learned counsel pointed out that the charges on the basis of which the first report was submitted are substantially different from the charges on the basis of which the second enquiry was made as is evident from a perusal of Annexure-3 to the writ petition. We have perused Annexures-2 and 3 to the writ petition and we are satisfied that several of the charges mentioned in Annexure-3 were not the subject-matter of the enquiry on the basis of which the first report (Annexure-2 to the writ petition) was submitted. Thus, for example, the very

first charge mentioned in the show cause notice (Annexure-3 to the writ petition) was not contained in the enquiry regarding which the report (Annexure-2) was submitted. This new charge in the show cause notice dated 20-3-1991 pertains to the purchase of the electrical goods worth Rs. 28 lacs and the allegation is that the tenders were invited for the same by publication in the daily newspaper Gau Ganga on 25-5-1989 and the tenders were to be submitted by 26-5-1989 by 3.00 p.m. It is alleged that giving only one day's time for such a large tender was improper, particularly when the Board had given its approval to inviting the tenders on 27-4-1989. The other new charges which had not been levelled in connection with the first enquiry have also been mentioned in the show cause notice dated 20-3-1991, e.g. alleged favour given to Kacheru Singh and the transport of fogging machines from Delhi Air Port to Ghaziabad. No doubt some of the charges in the show cause notice dated 20-3-1991 were the subject-matter of the earlier enquiry by Sri M. M. Misra in which the petitioner was exonerated, but it is open to the authorities to hold an enquiry into new matters which were not the subject-matter of the earlier charge and we are of the opinion that there was no illegality in this respect.

10. The allegation of the learned counsel for the petitioner, however, is that the enquiry by Shri Tej Pal Singh was only in the nature of a fact finding or preliminary enquiry and on the basis of this fact finding enquiry the show cause notice dated 20-3-1991 (Annexure-3) to the writ petition) was issued to the petitioner. The petitioner sent his reply to the show cause notice, true copy of which is Annexure-17 to the writ petition. It is alleged in paragraph 60 of the writ petition that after receiving the petitioner's reply to the show cause notice dated 20-3-1991 the State Government directed the District Magistrate, Ghaziabad to forward the reply with his own comments. In paragraph 61 of the writ petition, it is alleged that the District Magistrate got an enquiry made through the Officer-in-Charge, Local Bodies, Ghaziabad who submitted his report that the petitioner is innocent. True copy of the said report is Annexure-20 to the writ petition. However, despite this report the State Government by the impugned order dated 5-9-1991 removed the petitioner from the office of President, City Board, Ghaziabad.

11. After hearing the learned counsel for the parties, we are of the opinion that the impugned order of removal dated 5-9-1991 is illegal for several reasons, and hence, this writ petition deserves to be allowed.

12. The first illegality in the impugned order is that it totally ignores the report of Shri T. C. Jain, a copy of which has been annexed as Annexure-20 to the writ petition. The District Magistrate, Ghaziabad has agreed with this report vide Annexure S.A. 1 to the supplementary affidavit of the petitioner. A perusal of the said report shows that this report found the petitioner to be innocent of the charges levelled against him. For example, regarding the purchase of 1000 PVC Poles it has been found that the City Board, Ghaziabad had passed a resolution for purchase of these poles and it was not the petitioner who alone decided to

purchase the same. The explanation of the petitioner for the delay in inviting tenders has also been found to be acceptable by Shri T. C. Jain. No doubt, the Government could have differed from this report, but then it should have given cogent reasons for differing, and for holding that the findings of Shri T. C. Jain are unacceptable. The Government, however, ignored the report altogether. Since the State Government has totally ignored this report, this fact by itself makes the impugned order dated 5-9-1991 arbitrary and illegal.

13. The second illegality in the said order dated 5-9-1991 is that it has given findings regarding matters for which there was no charge against the petitioner. For example, as regards the matter of purchase of 1000 PVC Poles, a comparison can be made between the charges mentioned in the show cause notice dated 20-3-1991 (Annexure-3 to the writ petition), and the findings in the impugned order dated 5-9-1991 (Annexure-18). A perusal of the first charge mentioned in the show cause notice dated 20-3-1991 shows that there was no allegation that no resolution was passed by the City Board, Ghaziabad for purchase of 1000 PVC Poles, or that the petitioner fabricated and made false entries in the minute book of the City Board. Since there was no such charge in the show cause notice dated 20-3-1991 obviously no finding could have been recorded beyond the charge mentioned in the said show cause notice. A perusal of the impugned order dated 5-9-1991 (Annexure-18 of the writ petition) shows that a new charge has been introduced in the impugned order dated 5-9-1991 that the petitioner subsequent to the resolution for purchase of electrical goods worth Rs. 2,16,000/- fabricated an entry in the minute book of a resolution for purchase of 1000 PVC Poles. A further new charge has been introduced in the impugned order that there was no agenda regarding purchase of 1000 PVC Poles in the meeting held on 17-4-1989 and that the entry was fabricated in the minute book subsequent to the meeting. It is settled law that the finding cannot go beyond the charges and since in the present cases there was no charge against the petitioner regarding which findings have been given in the impugned order, the impugned order stands vitiated in law.

14. In *S.L. Kapoor Vs. Jagmohan and Others*, it was held that opportunity of hearing should be given to a Municipal Committee before superseding it. We are of the opinion that the ratio of this decision includes a case where there is no charge in respect of a finding.

15. The third ground which vitiates the impugned order dated 5-9-1991 is that it is arbitrary. It may be noticed that the petitioner had given a detailed reply dated 8-5-1991 (Annexure-17 to the writ petition) to the show cause notice dated 20th March, 1991. A perusal of the petitioner's reply shows that the petitioner had given a reply in great detail to the allegations against him, but his reply has been considered by the State Government in a very perfunctory manner. It may be mentioned that in case where no oral enquiry is being held, as in the present case, and the action is being taken merely on the basis of the written reply, then the least the authority concerned has to do is to deal properly with the reply

submitted by the charge-sheeted person. This is very important because such person is not being given opportunity of adducing his witnesses or cross-examining the witnesses against him (as is done in an oral hearing) and hence natural justice demands that his reply must be properly considered and dealt with. No doubt, the authority concerned may reject the explanation of such charge-sheeted person, but then it is incumbent upon the authority to give proper reasons for rejecting his version. A mere cursory reference to the reply of the charge-sheeted person in the impugned order is not sufficient. Of course, it is not necessary to give a detailed judgment which a Court of law has to give, but the authority must deal with the explanation given by such person and give proper reasons if it does not accept the same.

16. In this connection S.48(2A) of the Act may be referred to which states "After considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing remove the President from his office."

17. Thus, it can be seen that sub-sec. (2A) of S.48 specifically requires the State Government to consider the explanation offered by the President. This consideration of the explanation means that the State Government must, in its order, properly deal with the explanations given by the President in his reply, and give its reasons why it finds the same unacceptable. This requirement in sub-sec. (2A) of S. 48 was deliberately introduced into the Statute by the Legislature by an amendment of 1964 so as to ensure that the President, who is a democratically elected person, is not removed on flimsy grounds.

18. In the present case the petitioner had given a detailed reply dated 8-5-91 running into 25 pages and dealing with every charge against him, but this reply has been dealt with in the impugned order in a very casual and unsatisfactory manner. The few reference, to the reply in the impugned order are wholly inadequate and do not fulfill the requirement for giving reasons, as laid down by the Supreme Court in S.N. Mukherjee Vs. Union of India, For example, regarding the first allegation, the petitioner had in his reply dated 8-5-1991 clearly alleged that a unanimous resolution had been passed by the City Board for purchasing one thousand P.V.C. poles in the meeting held on 17-4-1989. The petitioner also alleged that he had not committed any illegality or irregularity in the said purchase and any further detail or explanation may be obtained from the Executive Officer or Accountant of the City Board. It was alleged that it was the Executive Officer who held the proceedings regarding the purchase e.g. the tender and the publication in the newspaper "Gau Ganga", and if there was any illegality in connection with the same it was the Executive Officer and not the petitioner who was to blame. In our opinion, if it is true that a resolution had been passed by the City Board for purchasing of one thousand P. V.C. Poles then if there was any illegality in this connection it was the entire City Board which was to blame and not the petitioner alone. Hence if any action was to be taken in this connection it would have had to be against the City Board under S. 30 of the

Act and not the petitioner individually under S.48. Moreover, this explanation has been hardly considered in the impugned order dated 5-9-1991.

19. As regards the grants to Khacheru, the petitioner stated in his reply that Khacheru is neither his friend nor relation nor of his caste and he had no personal connection with him. The allotment in his favour was subsequently cancelled and hence he did not benefit from the same. Even possession of the land was never given to Khacheru.

20. As regards the allegation regarding the transport of the fogging machine, the petitioner had given his explanation in detail in his reply dated 8-5-1991. The expenditure which had been allegedly incurred was sanctioned by the City Board in the meeting of 27-5-1989 and it was incurred in connection with the customs duty, handling, loading, unloading, insurance, etc. This reply has also been very cursorily and unsatisfactorily dealt with in the impugned order dated 5-9-1991.

21. The petitioner has also stated in his reply that he has not benefited personally in connection with the charges levelled against him and there is no finding that the petitioner got any financial or other benefit in this connection. This fact is also relevant because under the proviso to S.48(2-A) of the U.P. Municipalities Act, the State Government has an option to either remove the President or to give him a warning, and hence it is obvious that it is not in every case where some misconduct is found proved against President that he must be removed. Even assuming that the petitioner committed some technical irregularities but if he had not benefited from the same, financially or otherwise, it may not have been proper to remove him from the post of President, and instead a warning may have been sufficient. This aspect has also not been considered by the State Government.

22. It may be stated that the President of a Municipal Board is an elected functionary, and in a democracy any provision for removing an elected functionary should be strictly construed. An elected person in a democracy I should not be easily removed by the order of an executive authority, and it is only in clear cases of flagrant and gross misconduct that such removal should be resorted to.

23. No doubt S.48(2)(vi) enables the State Government to remove a President if he is guilty of misconduct in the discharge of his duties. However, this provision cannot be construed to mean that the President can be removed for any kind of misconduct in the discharge of his duties. We are of the opinion that S. 48(2)(vi) should be interpreted to mean that it is only for some flagrant and serious misconduct that the President can be removed, and not that he can be ousted for some slight or technical misconduct. The latter interpretation would undermine democracy and make elected persons easily removable by the executive. Such an interpretation is to our mind unacceptable.

24. It may be mentioned that in Mahabir Prasad Dwivedi v. State of U.P. Writ Petition No. 6313 of 1992 decided on 27-7-1992, which was a case relating to

removal of the Chairman of a Town Area under S. 7 A of the U.P. Town Areas Act, one of us (M. Katju, J.) has held that provisions for removing elected functionaries should be strictly construed, and cogent reasons should be given for passing the order of removal, and we endorse this view.

25. As regards the allotment of shops this matter had already been enquired into in the first enquiry held by Shri M. M. Misra whose report is Annexure-2 to the writ petition. The petitioner had been found innocent in respect of this charge in the first report. No doubt it was open to the State Government to differ from this report, but then it should have given cogent reasons for doing so, which has not been done. As such we are of the opinion that the petitioner cannot be again charge-sheeted in respect of allegations in connection with which the first enquiry report (Annexure-2 to the writ petition) was submitted.

26. A challenge was also made to the constitutional validity of S. 48 but we do not propose to go into this because we are of the opinion that the writ petition deserves to be allowed on other grounds.

27. In view of the above, the writ petition is allowed. The impugned order dated 5-9-1991 (Annexure-18 to the writ petition) is quashed and the petitioner shall be allowed to function as President of the Municipal Board, Ghaziabad. The respondents are restrained from interfering with the petitioner's functioning as the President of the Municipal Board, Ghaziabad. There is no order as to costs.

28. Petition allowed.