

(1956) 11 AHC CK 0043

In the Allahabad High Court

Case No : Civ. Miscellaneous Write No. 1088 of 1956

The Town Area Committer

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 30-11-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Town Areas Act, 1914 — Section 36, 36(1), 36(2)
Constitution of India, 1950 — Article 226
Uttar Pradesh Town Areas Act, 1914 — Section 36, 36(1), 36(2)
Constitution of India, 1950 — Article 226
Uttar Pradesh Town Areas Act, 1914 — Section 36, 36(1), 36(2)

Citation : (1957) 27 AWR 215

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : Shanti Bhushan, for the Appellant;

Final Decision : Allowed

Judgement

Mehrotra, J.—This petition was filed on behalf of the Town Area Committee, Jansath, district Muzaffarnagar, through its Chairman Sri Jagat Prasad on 11-5-1956 under Article 226 of the Constitution praying that a writ of certiorari be issued calling for the record of the proceedings u/s 36 of the UP Town Areas Act against the Town Area Committee, Jansath, from the State Government and quash its order dated 5-4-1956. A further prayer was made that a writ of mandamus be issued directing the State of U.P. to withdraw its order dated 5-4-1956 superseding the Town Area Committee.

2. In the counter-affidavit a point was taken that after the Town Area Committee was superseded the Town Area Committee as such has no right to file the present petition. On 14-11-1956 therefore another application on behalf of the members of the Town Area Committee was filed in this Court in which it was prayed that the applicants be permitted to be joined as co-Petitioners in the writ petition and by my order dated 15-11-1956 I directed that the members should

be permitted to be impleaded as co-Petitioners in this case. The result therefore is that now along with the Town Area Committee the members who are mentioned in the application filed on 14-11-1956 are to be treated as co-Petitioners.

3. The facts which are set out in the affidavit filed in support of the petition are that on 23-10-1955 in pursuance of the direction of the State Government the Town Magistrate, Jansath, framed certain charges against the Town Area Committee and a copy of that was sent to the Chairman for necessary explanation. A detailed reply to the charges was sent by the Chairman on 30-11-1956 and no further explanation was called for from the Chairman. On 19-4-1956 a copy of the order passed by the Government on 5-4-1956 was handed over to the Petitioner under which the Town Committee was superseded by the State Government in the exercise of its powers u/s 36 of the Town Areas Act. It is this order of the State Government which has been challenged by means of this petition.

4. In order to appreciate the points raised by the Petitioner it is necessary to quote in extenso the order which admittedly was published in the Gazette and is the order passed by the State Government u/s 36 of the Town Areas Act. The order reads as follows:

Whereas the Governor is satisfied that the Town Area Committee, Jansath, District Muzaffarnagar, has persistently made default in the performance of the duties imposed on it under the UP Town Areas Act, 1914 (Act II of 1914) and has also abused its powers.

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 36 of the said Act, the Governor is pleased to declare the aforesaid committee to be in default and to have abused its powers and to supersede the same with effect from the date of this notification for a period of one year or till the next general elections in Town Areas, whichever is earlier and under sub-Section 36(2) (a) of the Act to appoint the District Magistrate Muzaffarnagar to perform all the duties and to exercise all the "powers" of the Town Area Committee during the period of supersession.

The Petitioner has canvassed two points before me. Firstly, he contended that the order which was published in the Gazette Notification and a copy of which has been filed by him as annexure "C" to the affidavit does not comply with the provisions of Section 36 of the Town Areas Act and as such must be quashed. Secondly, it is contended by the Petitioner that the materials which were placed before the State Government on which the present order has been passed are contained in the charges which were given to the Chairman and to which the Chairman gave his explanation and those charges have no relation to the grounds on which the action could be taken u/s 36 of the Town Areas Act. Section 36 of the Town Areas Act reads as follows:

36(1) If, in the opinion of the State Government a committee persistently makes

default in the performance of the duties imposed on it by or under this or any other Act for the time being in force, or exceeds or abuses its powers, the State Government may, by an order published, with the reasons for making it, in the Official Gazette, declare that committee to be in default, or to have exceeded or abused its powers; and supersede it for a period not exceeding two years to be specified in the order.

There are three necessary conditions embodied in Section 36 of the Town Areas Act. Firstly, it is that the State Government has to form an opinion on the material before it that the committee had persistently made default in the performance of the duties imposed upon it by or under this or any other Act for the time being in force or had exceeded or abused its powers. Secondly, after having formed that opinion the State Government may, by an order which is to be published in the Official Gazette with the reasons for making it, declare that the committee was in default or had exceeded or abused its powers. Thirdly, after having made such a declaration the Government may pass an order superseding the committee for a period not exceeding two years.

5. The contention raised by the Petitioner is that no reasons have been given in the order itself. The first para. of order which I have already quoted only suggests that the State Government had formed its opinion on the materials before it that the committee had committed persistent default in the performance of its duties. The second para. of this order only contains the declaration made by the State Government that the committee was in default and had abused its powers and further it contains the order superseding the Tower Area Committee; but no reasons have been given in the order itself by the State Government for making such an order. It was strenuously urged by the State Counsel in reply to this contention of the Petitioner that the words in Section 36 of the Act which say reasons are to be given for making an order only relate to the order of superseding the Town Area Committee and not to the declaration that is to be made by the State Government by publication in the Official Gazette. I do not think there is any force in this contention raised by the Standing Counsel. The words of Section 36 are clear to my mind. They clearly lay down that the State Government has got to make a declaration that the committee is in default or has exceeded or has abused its powers by an order to be published in the Official Gazette and it is that order for which the reasons are to be given in the order itself. Section 36 gives power to the State Government firstly to make a certain declaration and thereafter to make an order superseding the committee. The declaration itself is to be made in the form of an order to be published in the Official Gazette and when the Legislature requires that the reasons are to be given for making an order it necessarily applies both to the order containing the declaration and to the order superseding the Town Area Committee. It cannot be said that the order contemplated u/s 36 is only the order superseding the committee and not the order containing the declaration required u/s 36. In this view of the matter it is therefore clear from the perusal of the order, and it was conceded by the Standing Counsel, that if such an

interpretation is given to Section 36 then the order suffers from the defect of failure to give any reasons as required by Section 36 Therefore the order does not comply with the provisions of Section 36 and must be quashed.

6. It also appears reasonable that the order should give reasons for making a declaration that the committee has committed a default. There is no provision in the Town Areas Act under which any explanation need be called for from the Chairman for passing an order of supersession and consequently it is necessary that the order itself should contain reasons so that there may be sufficient material before this Court to examine whether the order is a proper order or not.

7. Apart from it, the reasons not having been given in the order in question, the question whether the reasons had any reasonable relation to the basis for the exercise of powers u/s 36 does not arise. The contention of the Petitioner is that the charges which were framed and a copy of which was supplied to the Chairman should be regarded as the reasons on which the action was taken by the State Government and this Court should consider whether those charges had any relation to the conditions laid down in Section 36. I do not think that having held that the reasons as required u/s 36 of the Act have not been given and the order is therefore invalid, it is necessary to decide the question whether the charges bear any relation to the conditions required for the exercise of the power u/s 36 or not.

8. I, therefore, allow this petition with costs and quash the order of the State Government dated 5.4.1956.