
(1947) 09 AHC CK 0016
In the Allahabad High Court

U.P. Government

APPELLANT

Vs

Redhey Lal

RESPONDENT

Date of Decision : 11-09-1947

Acts Referred:

Citation : AIR 1947 All 179 : (1947) 17 AWR 415

Hon'ble Judges : Malik, J; Bind Basni Prasad, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Bind Basni Prasad, J.—This judgment will govern First Appeals Nos. 10 and 288 of 1945. Both the appeals have been filed by the Provincial Government against Lala Radhey Lal who was a member of the City Board, Mussorie, from the year 1929. By the order, dated 8-2-1941, the Provincial Government acting under Sub-section (3) of Section 40, U.P. Municipalities Act, 1916 (2[ii] of 1916) removed him from the membership of the Board. The reliefs claimed by the plaintiff respondent in the plaint were : (a) A declaration that his removal from the membership of the City Board, Mussorie, was illegal, misconceived and inoperative and that the plaintiff was not subject to the disability of non-eligibility for election in accordance with the provisions of Sub-section (3) of Section 41 of the said Act; (b) an award of a sum of rupee one as damages; (c) any other relief which under the circumstances the Court deemed the plaintiff to be entitled.

2. The learned Civil Judge held that on a true construction of the provisions of Sub-section (3) of Section 40 the suit was not maintainable in the civil Court. In the result he dismissed the suit with costs. The plaintiff preferred an appeal before the learned District Judge. The appeal was heard ex parte. The learned District Judge held that the civil Court was barred from forming its own opinion about the truth or otherwise of the allegations which were made against the plaintiff and which were considered" by the Provincial Government to justify the inference that he so flagrantly abused his position as a member of the Board as to render his continuance detrimental to public interest, but the civil Court was

not barred from considering whether the Provincial Government did exercise its mind about those allegations and the explanation, and whether it acted after due consideration or it acted in a capricious or arbitrary manner. In the result he held that the suit was not absolutely barred from the jurisdiction of the civil Court. He accordingly allowed the appeal and remanded the case for further proceedings according to law. From this order, F.A.F.O. No. 288 of 1945 has been preferred against the plaintiff-respondent. Subsequent to the decision of the case by the District Judge, the Provincial Government applied for the setting aside of the ex parte decree. By the order, dated 11-11-1944, the District Judge rejected that application, F.A.F.O. No. 10 of 1045 is an appeal against that order.

3. Briefly the facts are as follows : Lala Radhey Lal was a member of the City Board, Mussorie, from 1929, and he continued as a sitting member upto 1941, because from time to time the Government extended the term of the Board. Certain facts having been brought to the notice of the Provincial Government, against the City Board, an inquiry committee was set up by the Government to investigate into the affairs of the Board. The Committee submitted its report which was considered by the Provincial Government. On a consideration of the report, the Provincial Government acting under Sub-section (4) of Section 40, U.P. Municipalities Act, 1916, called for an explanation from the respondent and three other members of the Board to show cause why they should not be removed from the membership of the Board under Sub-section (3) of Section 40. The specific charges against each of the four members were mentioned by the Government in its letter, dated 22-11-1940, to the Commissioner Meerut Division. It will be proper to quote here the relevant portion of that letter from the Government. It runs as follows:

I am directed to refer to Government Resolution No. 5821/XI-359, dated 17-11-1938, appointing the Mussorie City Board Inquiry Committee to inquire into the affairs of the Board. The report of the said Committee has been considered by His Excellency the Governor, and, it appears therefrom that Messrs. Johnson, Darshan Lal, Mohd. Siddiq and Radhey Lal members of the City Board, have so flagrantly abused their position as members of the Board as to render their continuation as members detrimental to the public interest.

I am to request you therefore to ask the said members to explain and show cause why they should not be removed from the membership of the Board u/s 40(3), U.P. Municipalities Act, 1916, on the charges shown against them below :

4. Mr. Radhey Lal. That from time to time he borrowed money from Municipal employees and Municipal contractors, namely (i) Ashoor and Murad contractors: Rs. 230 on 16-12-1933, Rupees 200 on 18-7-1934, a cheque of Rs. 1452 endorsed in favour of Mr. Lal and collected by him. (ii) Rajab Ali "Contractor, Rs. 9000. (iii) B. Jagannath Assistant Secretary of the Board Rs. 1000. (iv) B. Bankoy Lal, clerk of the Municipal Engineer Rs. 6000. (v) Shiv Das contractor, Rs. 2000 in circumstances which raise the presumption that these transactions were more in the nature of a bribe for his support of the "Lender" in securing jobs

"and appointments in the Board.

2. All the four members mentioned above should be directed to submit their explanations to you within fifteen days of the receipt of this order by them. The explanations together with your comments and recommendations thereon should be forwarded to Government as early as possible.

4. The Commissioner forwarded this letter to the Superintendent Dehra Dun, for compliance and the latter sent a copy of it to the respondent asking him to furnish the explanation by 13-12-1940. On 11-12-1940, the respondent submitted the explanation to the District Magistrate. It runs into five typed pages. The respondent admitted his indebtedness to all the five persons mentioned above. The explanation which he gave is succinctly expressed in para. 8 of the plaint which runs as follows:

8. That with regard to (a) Ashoor and Murad - the plaintiff and his firm had business dealings with these contractors since long. The balances mutually due are duly entered in the plaintiff's account books which are regularly kept and the transactions are not any new loans contracted for the purpose or on the understanding of helping the aforesaid contractors for securing any job in the Board.

(b) With regard to Rajab Ali - a sum of Rs. 9000 was borrowed in May 1939, (during the sitting of the Enquiry Committee) in ordinary course of business on the security of mortgage. During the plaintiff's tenure of office no matter of any kind whatsoever concerning this gentleman ever came before the board. The plaintiff seriously denies any support to this man at any time.

(c) With regard to B. Jaggan Nath the aforesaid loan was a paying proposition for him. His deposit in bank which carried no interest was invested with the plaintiff on a very fair rate of interest.

Far from ever helping this man, the plaintiff gave his casting vote against him when the question of his retirement came up before the board and it was on account of the plaintiff's just action that he had to lose his job.

(d.) With regard to B. Bankey Lal he had dealings with the plaintiff's firm since about 1920 and during the plaintiff's tenure of office there was not even one occasion when any matter concerning this gentleman ever came before the board.

Out of the Rs. 6000 borrowed, a sum of Rs. 4500 has already been paid up.

(e) With regard to Shiv Das, this gentleman is a petty contractor and out of the Rs. 2000 borrowed a sum of Rs. 1800 has already been paid up. Matters concerning petty contractors do not come before the board. The plaintiff emphatically denies any support of whatsoever kind to this man as well.

5. On 8-2-1941, the Provincial Government informed the Commissioner that after full consideration of the explanation submitted by the respondent, His

Excellency the Governor was pleased to remove the respondent from the membership of the Mussorie City Board u/s 40(3), U.P. Municipalities Act, 1916, for having so flagrantly abused his position as a member of the City Board as to render his continuance detrimental to the public interest. A notification to the same effect followed in the U.P. Gazette. The Commissioner was asked to communicate this decision of the Government to the member concerned. It is important to note here that of the four members from whom explanation had been originally called by the Government only two were removed. As regards the other two, the Provincial Government did not take any action. In other words, their explanation was accepted.

6. On 6-5-1941, the respondent sent the notice as required by Section 80, Civil P.C. to the Provincial Government and on 11-7-1941 he brought the suit. It was alleged in the plaint that there was no misconduct on the part of the plaintiff, that there was no real cause for his removal and that the Provincial Government acted in a capricious and arbitrary manner in the exercise of its discretion in removing him.

7. The Provincial Government resisted the suit and inter alia it pleaded that the suit was not maintainable because - (a) the jurisdiction of the civil Court was impliedly barred u/s 9, Civil P.C.; (b) the discretion of the Provincial Government in the matter of removing the plaintiff from the Board was final and could not be questioned in a civil Court; (c) the Government having acted after adopting the procedure as prescribed in Sub-section (4) of Section 40, there was no cause of action for the plaintiff to bring the suit; (d) the Government acted in the exercise of its sovereign powers and (e) the Government acted in good faith and in public interest in removing the plaintiff from the Board.

8. Before considering the contentions advanced on behalf of the parties, the provisions of Sections 40 and 41, U.P. Municipalities Act, 1916, may be set out. Sub-section (1) of Section 40 empowers the Provincial Government in the case of a city, and the Commissioner in any other case to remove from the Board any member for certain causes specified therein. Sub-section (2) empowers the Commissioner and the Provincial Government in certain circumstances to cancel the order of removal and to reinstate the member. Sub-sections (3) and (4) provide as follows:

3. The Provincial Government may remove from the Board a member who in its opinion has so flagrantly abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interest.

4. Provided that when either the Provincial Government or the Commissioner, as the case may be, proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned, and when such action is taken, the reasons therefor shall be placed on record.

9. It will be seen that under Sub-section (3) it is the Provincial Government alone

which has the power to remove a member. The words "in its opinion" appearing therein are important and convey the idea that the sole judge of the fact whether or not a member has flagrantly abused in any manner his position is the Provincial Government. The only restriction imposed upon the Provincial Government in the exercise of its powers under Sub-section (3) is that before taking action it must give the member concerned an opportunity of explanation and when such action has been taken, the reasons there for shall be placed on record. It is not the plaintiff's case before us that the reasons were not placed on record by the Provincial Government.

10. Section 41 prescribes the disabilities which a member who has been removed u/s 40 incurs. Sub-section (3) of Section 41 prescribes that a member removed under Sub-section (3) of Section 40 shall not be so eligible for a period of three years from the date of his removal.

11. It is argued for the appellant that having regard to the language of Sub-section (3) of Section 40 and to the consideration which the Provincial Government bestowed upon the matter before removing the respondent he cannot maintain a suit questioning that order of the Provincial Government. On the other hand, learned Counsel for the respondent argues that in view of his allegations in the plaint the Court should give him an opportunity to show that the Government acted in a capricious and arbitrary manner. In the present case it cannot be said, having regard to the materials on the record that the Provincial Government acted in a capricious and arbitrary manner. Prior to the action against the plaintiff it appointed a Committee of Inquiry and on a consideration of the report of that committee it proposed to take action against four members, including the plaintiff. It framed specific charges against all these four members and gave them opportunities of explanation. The explanations were duly considered by the Government. It accepted the explanations of two of the members, but did not consider satisfactory the explanations submitted by the remaining two members, including the plaintiff. It was after so much consideration that the Provincial Government took action against the plaintiff and removed him from membership. It cannot be said that the action was taken against him arbitrarily or without the Government applying its mind to the case. It is true that where by any Act something is left to be done according to the discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute. In the present case, however, it is abundantly clear that the Provincial Government has properly exercised the powers conferred upon it by the Act.

12. Counsel for the respondent contends that in Section 40 there is no provision that the order of the Provincial Government shall be final and shall not be questioned in any Court. Hence it is argued that the suit brought by the plaintiff is maintainable. Where the statute provides that the sole judge of a certain fact will be a certain authority, no suit can lie to question the decision of such authority in respect of such matter. The phrase "in its opinion" appearing in Sub-

section (3) of Section 40 has the effect of making the Provincial Government the sole judge of the fact whether a member has flagrantly abused his position so as to render his continuance in the "Board detrimental to public interest. In this connection it may also be mentioned that out of the five specific charges drawn up by the, Provincial Government against the respondent he did not altogether deny any of them. His attempt was only to explain them away. For example, he admitted having borrowed Rs. 1000 from Babu Jagannath, Assistant Secretary of the Board, but contended that it was more to the interest of Jagannath than of him to have lent the money to the plaintiff. Similarly, he admitted having borrowed Rs. 9000 from Bajab Ali, contractor but said that it was in the ordinary course of business. In the leading case in *Vijaya Raghawa v. Secy. Of State* (1984) 7 Mad. 466 (F.B.), it was observed at p. 471 that by the use of appropriate language it was possible for the Legislature to make the Governor in Council the sole judge of the question whether the acts done by a Commissioner justified his removal or not. In Section 9, Town Improvement Act. which was the subject of interpretation in that case, the phrase "in its opinion" did not occur and so their Lordships of the Madras High Court held that it was open to a Municipal Commissioner who had been removed to prove that he was not guilty of misconduct. It was, however, not disputed that by the use of a proper language in one enactment it was possible to make an authority an exclusive judge of a certain fact. I may also refer to AIR 1943 36 (Federal Court) in which it was held that the question whether or not an emergency existed at the time when an Ordinance is made and promulgated by the Governor-General is a matter of which the Governor-General is the sole judge and where the Governor-General has declared that an emergency has arisen and passes an Ordinance, the question that an emergency did not arise cannot be inquired into by Courts.

13. A number of authorities have been relied upon by learned Counsel for the respondent in support of the proposition that where a local authority exercises the discretionary power in a capricious, wanton and arbitrary manner or in an unreasonable way, a civil Court can interfere. They are *Thakur Govind Deoji Maharaj Vs. Municipal Board*, , *Lalbhai Tricamlal v. Municipal Commr. For the City of Bombay* (1909) 33 Bom. 334, *Nagar Narsi v. Municipality of Dhandhuka* (1988) 12 Bom. 490 *Brindaban Chander v. Chairman and Vice-Chariman of the Municipal Commrs, of the Town of Serampore* (1973) 19 W.R. 309 and *Chatar Bhuj v. Municipal Commmittee, Bhawani* AIR 1937 Lah. 252. No one disputes this proposition. In the present case the Provincial Government has not acted arbitrarily. It has acted after due deliberation. It is impossible to say that the "action of the Provincial Government was capricious, wanton and arbitrary. Once it is held that the action of the Provincial Government was bona fide, the removal of the respondent by it under Sub-section (3) of Section 40 cannot be questioned in the civil Court.

14. For the reasons given above I am of opinion that the remand of the case to the trial Court by the learned District Judge was not proper. The appeal should be allowed with costs, the order passed by the lower appellate Court should be set

aside and that of the trial Court should be restored.

15. As F.A.F.O. No. 288 of 1945 is being allowed, F.A.F.O. No. 10 of 1945 becomes in - fructuous and it is rejected, but the parties will bear the costs in that case.

Malik J.

16. I have had the advantage of reading the judgment of my learned brother and I fully agree with his conclusion that First Appeal from Order No. 288 of 1945 should be allowed and the plaintiff's suit should be dismissed. It is not alleged by the plaintiff that the Provincial Government had not followed the procedure laid by the statute, or had not acted strictly within the limits of its authority; nor is there any charge of malice or want of good faith. The Provincial Government having acted in accordance with the procedure laid down and having in good faith considered that the plaintiff had so flagrantly abused his position as a member of the Board as to render his continuance as such detrimental to the public interest, the civil Courts cannot substitute their own opinion for the opinion of the Provincial Government. I, therefore, agree to the order proposed.

Per curium

17. First Appeal Prom order ho. 288 of 1945 is allowed with costs and the plaintiff's suit is dismissed with costs.