
(1975) 12 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6849 of 1974

Veer Pratap Singh alias Gandhi, Member Municipal Board

APPELLANT

Vs

The Commissioner, Jhansi Division and Others

RESPONDENT

Date of Decision : 02-12-1975

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 40(1), 40(4)

Uttar Pradesh Municipalities Act, 1916 — Section 40(1), 40(4)

Uttar Pradesh Municipalities Act, 1916 — Section 40(1), 40(4)

Citation : (1976) AWC 151

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : S.C. Khare, V.N. Khare and N.B. Singh, for the Appellant; P.N. Tewari, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The Petitioner is an executive member of the Municipal Board, Orai. The President of the Board sent a complaint against him to the District Magistrate Jalaun alleging some misconduct against him. The District Magistrate, Jalaun forwarded the complaint to the Sub-Divisional Magistrate, Orai for enquiry. An enquiry was made" by the Sub-Divisional Magistrate and he made a report to the effect that the charges contained in the complaint had been proved. On the receipt of the report the Commissioner, Jhansi Division, Jhansi, served a charge-sheet on the Petitioner requiring him to submit his explanation within 15 days to show cause why he should not be removed from the membership under clause (h) of Section 40(1) of the U.P. Municipalities Act (hereinafter referred to as the Act). The Petitioner submitted his explanation. Thereafter, the Commissioner not being satisfied with the explanation by his order dated 9th October, 1974 ordered the removal of the Petitioner. The Petitioner is aggrieved and has challenged that order by means of the present writ petition.

2. The impugned order has been assailed on a number of grounds, viz.(1) that

no proper enquiry was held (2) that the enquiry was held behind his back and he was afforded no opportunity to cross-examine the witnesses and to lead evidence in defence and (3) that the charges attributed to the Petitioner do not attract the provisions of clause (h) of Section 40(1) of the Act.

3. The last contention of the Petitioner has no force. The first charge against the Petitioner was that he took away the draft assessment list from the office of the Board inspite of the protest from the clerk concerned and later on returned those list and under coercion obtained a writing from the clerk concerned that the file had not been taken. The second charge against the Petitioner was that he quarreled with the Octopi Moharrir in connection with payment of octroi of two carts of, cement and that he abused the Moharrir and beat him. The third charge against the Petitioner was that he asked Ram Sahai, Member of the Municipal Board to sign a motion of non-confidence against the President of the Board and on his refusal he abused and threatened to kill him.

4. Clause (h) of Section 40(1) of the Act provides for the removal of a member on the ground that he has been guilty of any other misconduct as a member. Now each one of the charges levelled against the Petitioner amounted to misconduct and the Petitioner could certainly be removed on the basis of misconduct attributed to him.

5. However, the Petitioner is entitled to succeed on the other contentions, inasmuch as, in my opinion, no fair enquiry was held against the Petitioner. It is true that the Sub-Divisional Magistrate issued notices to the Petitioner after the receipt of the complaint of the President from the District Magistrate asking the Petitioner to appear before him and the Petitioner also filed certain documents before him. But the enquiry was held by the Sub-Divisional Magistrate before the charge-sheet was served upon the Petitioner so that the Petitioner was not aware of the exact nature of charges against him. In these circumstances, he could not possibly put in proper defence. The charge-sheet was served later by the Commissioner on the receipt of the report from the Sub-Divisional Magistrate. After the service of the charge-sheet upon the Petitioner no enquiry of any kind was held either by the Commissioner or through an Enquiry Officer appointed by him. The Commissioner merely relied upon the report of the Sub-Divisional Magistrate for holding that the charges against the Petitioner had been proved. "Obviously, the enquiry held by the Sub-Divisional Magistrate was a preliminary enquiry & after the charge-sheet had been framed and served upon the Petitioner on the basis of the enquiry report, a regular enquiry should have been held in which the Petitioner should have been given an opportunity to participate, so that he could know of the material against him in respect of each charge and could lead evidence in rebuttal. Sub-section (4) of Section 40 merely provides that when the State Government or the Prescribed Authority proposes to take action against a member u/s 40(1) of the Act an opportunity of explanation shall be given to the member concerned and when such action is taken, the reasons there for shall be placed on record. An opportunity of explanation envisaged by

Sub-clause (4) of Section 40, in my opinion, contemplates an explanation to the charges with the right to be apprised of the material against him and to lead evidence in rebuttal. It includes an enquiry, if one is deemed necessary. An enquiry means a fair enquiry in the sense that the person enquired against is given an opportunity of meeting the material against him and of leading evidence in rebuttal. The procedure adopted in the instant case is obviously illegal inasmuch as the action has been taken against the Petitioner on the basis of the preliminary enquiry without holding any further enquiry after the service of the charge-sheet. For this reason the impugned order cannot be such stained and the same is hereby quashed.

6. In the result, the petition is allowed with costs.