

Ram Dial and Others

Vs

The State of Punjab (with connected writ petition)

Civil Appeals Nos. 300-302 of 1964

(M. Hidayatullah, J. C. Shah, S. M. Sikri, K. N. Wanchoo, J. R. Madholkar JJ)

03.02.1965

JUDGMENT

WANCHOO, J. -

These three appeals are against the judgment of the Punjab High Court on certificates granted by that Court. The writ petition has been filed by Uma Shankar appellant in this Court and raises the same question as in the appeals, namely, whether section 14(e) of the Punjab Municipalities Act, No. III of 1911 (hereinafter referred to as the Act) is unconstitutional inasmuch as it violates Art. 14 of the Constitution. The appeals and the writ petition will therefore be dealt with together. We may add that we are not concerned in these appeals with section 14(a) and (b) and that part of section 14(e) which provides for recall at the request of the majority of the electors, and express no opinion in that behalf.

The question arises in this way. The appellants were elected to the Municipal Committee, Batala in elections held on January 22, 1961. The result of the elections was notified in the Punjab Government Gazette on February 27, 1961. The new members took oath on March 16, 1961 and began functioning from that date. On August 4, 1961, notifications dated July 26, 1961 vacated accordingly, notwithstanding anything in the Act or in the rules made thereunder. Further sub-section (3) of section 16 provides that "a person whose seat has been vacated under the provisions of section 14(e) may be disqualified for election for a period not exceeding five years." There is no provision for giving notice to a member against whom action is taken under section 14(e) and he is not entitled to any hearing before action is taken against him. Further action can be taken against a member for any reason which the State Government may deem to affect the public interest.

Section 16 is another provision which gives power to the State Government to remove any member of a municipal committee. This power is exercised for reasons given in cl. (a) to cl. (g) of section 16(1). The proviso to section 16(1) lays down that "before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing." The proviso therefore requires a hearing before the State Government takes action under section 16(1). Sub-section (2) of section 16 provides for disqualification and says inter alia that any person removed under section 16(1) shall be disqualified for election for a period not exceeding five years. There is a slight difference here inasmuch as under this provision there must be disqualification for some period not exceeding five years, though if a member's seat is vacated under section 14(e) the disqualification is entirely in the discretion of the State Government and is not imperative. That however has no effect on the question whether the relevant part of section 14(e) is unconstitutional as it is hit by Art. 14.

Reference may now be made to section 24 on which reliance has been placed on behalf of the State. Section 24(1) inter alia prescribes the oath before a member can begin to function. Section 24(2) lays down inter alia that if a person omits or refuses to make the oath as provided in sub-section (1) within three months of the date of the notification of his election or within such further period as the State Government may consider reasonable, his election becomes invalid. Sub-section (3) of section 24 provides inter alia that where the election becomes invalid under sub-section (2), a fresh election shall be held. The proviso to sub-section (3) on which stress has been laid on behalf of the State lays down inter alia that the State Government may refuse to notify the election as member of any person who could be removed from office by the State Government under any of the provisions of section 16 or of any person whom the State Government for any reason which it may deem to affect the public interests may consider to be unfitted to be a member of the committee, and upon such refusal the election of such person shall be void.

The argument on behalf of the appellants is that section 16 which gives power to the State Government to remove a member provides that before that power can be exercised, reasons for the removal have to be communicated to the member concerned and he is to be given an opportunity of tendering his explanation in writing. So it is urged that before action can be taken to remove a member under section 16, the proviso thereof requires that the member concerned is to be given a hearing as provided therein. The argument proceeds that the relevant part of section 14(e) also provides in effect for the removal of a member though it actually says that the seat shall be vacated and that this removal has to be for any reason which in the opinion of the State Government affects the public interest. It is urged that when section 16(1) provides for removal for reasons given in cls. (a) to (g), that removal also is in the public interest. Therefore there are two provisions in the Act for removal of a member in the public interest, one contained in section 14(e) and the other in section 16. Where the State Government takes action under section 16(1), it has to give a hearing in terms of the proviso thereof to the member concerned, but if for exactly the same reason the State Government chooses to take action under section 14(e) it need not give any opportunity to the member to show cause why he should not be removed. Further it is submitted that though section 14(e) may be said to be wider inasmuch as cls. (a) to (g) may in a conceivable case not completely cover all that may be included in the term "public interests", the removal for reasons given in cls. (a) to (g) in section 16(1) is in public interest and therefore what is contained in section 16(1) is certainly all covered by section 14(e). In consequence there are two provisions in the Act for removing a member, one contained in section 16 where the State Government cannot remove the member without giving him a hearing in the manner provided in the proviso, and the other in section 14(e) where no hearing is to be given and the member is not even called upon to show cause. Finally it is urged that it depends entirely on the State Government to use its powers either under section 14(e) or under section 16(1), where the two overlap and therefore there is clear discrimination, as the provision in section 14(e) is more drastic and does not even provide for hearing the member concerned.

We are of opinion that these contentions on behalf of the appellants are correct. There is no doubt that the removal contemplated in section 16(1) for reasons in cls. (a) to (g) thereof, as there content shows, is in the public interest and the proviso to section 16(1) provides for a hearing in the manner indicated therein. On the other hand section 14(e) which also provides for removal in the public interest makes no provision for hearing the member to be removed. Even if section 14(e) is wider than section 16(1), there is no doubt that all the reasons given in cls. (a) to (g) are in the public interest and therefore even if the State Government intends to remove a person for any reasons given in cls. (a) to (g) it can take action under section 14(e) and thus circumvent the provisions contained in the proviso to section 16(1) for hearing. Thus there is no doubt that section 14(e) which

entirely covers section 16(1) is more drastic than section 16(1) and unlike section 16(1) makes no provision for even calling upon the member concerned to explain. In this view of the matter it is clear that for the same reasons the State Government may take action under section 16(1) in which case it will have to give notice to the member concerned and take his explanation as provided in the proviso to section 6(1); on the other hand it may choose to take action under section 14(e) in which case it need not give any notice to the member and ask for an explanation from him. This is obviously discriminatory and therefore this part of section 14(e) must be struck down as it is hit by Art. 14 of the Constitution.

Reliance in this connection is placed on behalf of the State on the proviso to section 24(3). Section 24(1) to (3) inter alia provides for what happens where a member omits or refuses to take oath as provided therein. Then comes the proviso to section 24(3), which gives power to the State Government to refuse to notify the election of a person elected on any of the grounds mentioned on section 16(1). It is not necessary for us to decide whether the State Government can take action under this proviso read with section 16(1) without giving notice as provided in the proviso to section 16(1). That question may have to be decided in a case where the State Government takes action under this part of the proviso to section 24(3) without giving notice to the person concerned under the proviso to section 16(1) and without giving him any opportunity of hearing as provided therein. The proviso to section 24(3) further provides that the State Government may refuse to notify the name of any person elected if in its opinion he is unfit to be a member of a municipal committee on ground of public interest. It is urged that there is no provision in this connection for notice and hearing of the person elected. That seems to be so, but again the question may arise in a proper case whether this provision would be constitutional. We see no connection between the proviso to section 24(3) and the provision contained in section 14(e). The proviso to section 24(3) is complete in itself and deals with a situation where the State Government refuses to notify the election of a person who has been elected. Section 14(e) on the other hand provides for vacation of the seat of a member after he has taken the oath of office. Therefore the constitutionality or otherwise of section 14(e) will depend upon its contrast with section 16(1) which also provides for removal of a member. As we have already indicated on comparing the two provisions both of which provide for removal of a member in public interest we find that the provision contained in section 14(e) as compared to the provision in section 16(1) is more drastic and arbitrary and denies the member concerned an opportunity being heard as provided in section 16(1) by the proviso thereof. Consequently we are of opinion that this part of section 14(e) is discriminatory and must be struck down as unconstitutional under Art. 14 of the Constitution.

In this connection our attention is drawn to *Shri Radeshyam Khare v. The State of Madhya Pradesh* ([1959] S.C.R. 1440.) on which reliance is placed on behalf of the State. In that case this Court was concerned with sections 53A and 57 of the C.P. and Berar Municipalities Act which to a certain extent were held to overlap. The argument under Art. 14 did not really arise in that case because the two provisions dealt with two different situations. Under section 57 the State Government had the power to dissolve a committee after giving it a reasonable opportunity to furnish its explanation. Under section 53A the committee was not dissolved, but the State Government had the power to appoint an executive officer and confer upon him such powers of the committee, its president, vice-president or secretary as it thought fit, though the reason for taking action under section 53A(1) apparently overlapped the reasons for dissolving a committee under section 57(1). Because of this difference in the scope of the two provision contained in sections 53A and 57, there could be no question of applicability of Art. 14 to that case.

In the present case, however, section 16(1) which deals with removal of a member for reasons given

in cls. (a) to (g) is completely covered by section 14(e) which deals with vacation of a seat in the public interest, and it is open to the State Government either to proceed under one provision or the other for exactly the same reasons. One of the provisions provides for notice and hearing while the other does not and is therefore more drastic and arbitrary. In these circumstances there is in our opinions a clear discrimination in view of Art. 14 and the State Government cannot take advantage of the decision in Shri Radeshyam Khare's case. ([1959] S.C.R. 1440.)

We therefore allow the appeals as well as the writ petition and declaring section 14(e) insofar as it gives power to the State Government to vacate a seat on the ground of public interest to be unconstitutional, set aside the notifications vacating the seats of the appellants. The direction as to disqualification therefore also fails. The appellants will get their costs from the State throughout. One set of hearing fee. No costs in the writ petition.

MUDHOLKAR, J. -

I have read the judgment prepared by my brother Wanchoo and while I agree with him that the appeals must be allowed I would prefer to give my own reasons for that conclusion.

The appellants in these three appeals were elected to the Municipal Committee, Batala in the elections held on January 22, 1961. On August 4, 1961, that is, after these persons started functioning as members of the Municipal Committee the Government of Punjab issued a notification under section 14, cl. (e) of the Punjab Municipalities Act, 1911 in which it was stated that the Governor of Punjab for reasons of public interest was pleased to direct that the seats of these appellants shall be vacated from the date of publication of the notification and further stated that they would be disqualified for election for a period of one year from the date specified. This notification is challenged by the appellants on the ground that the provisions contained in section 14(e) of the Act under which it was issued being discriminatory were rendered void by Art. 14 of the Constitution.

Section 14 of the Act as it now stands runs thus :

"Notwithstanding anything in the foregoing sections of this chapter, the State Government may at any time for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification, direct-

(a) that the number of seats on any committee shall be increased or reduced;

(b) that any places on a committee which are required to be filled by election shall be filled by appointment, if a sufficient number of members has not been elected;

.....

(e) that the seat, of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in this Act or in the rules made thereunder."

It would be clear from a perusal of the above provision that powers conferred by section 14 can be exercised by the State Government (i) for any reason which it may deem fit to affect the public interest or (ii) at the request of the majority of the electors. We are not concerned in this case with the second circumstance and, therefore, it is unnecessary to consider whether that part of section 14

which enables the State Government to take action at the request of a majority of electors is valid or not. Similarly we are not concerned in these appeals with the powers exercisable by the State Government under cls. (a) and (b). All that arises for consideration before us is whether the conferral of power upon the State Government to require that the seat of any specified member of the Committee shall be vacated "for any reason which it may deem to affect the public interest" is valid. The expression "public interest" is of wide import and what would be a matter which is in the public interest would necessarily depend upon the time and place and circumstances with reference to which the consideration of the question arises. But it is not a vague or indefinite ground, though the Act does not define what matters would be regarded as being in the public interest. It would seem that all grounds set out in section 16, which confers upon the State Government the power to remove any member of a Committee and sets out a number of grounds upon which this could be done, would be in the public interest. Section 14, however, apart from the fact that the power it confers upon the State Government is not limited to matters set out under section 16, confers upon the Government the power to determine not merely what is in the public interest but also what "for any reason which it may deem to affect the public interest." This would suggest that the power so conferred would extend to matters which may not be in the public interest. For, that would be the effect of introducing the fiction created by the words "for any reason which it may deem". There is no guidance in the Act for determining what matters, though not in public interest, may yet be capable of being deemed to be in the public interest by the State Government. In the circumstances it must be held that the power which conferred upon the State Government being unguided is unconstitutional. For this reason I hold that section 14 in so far as it confers power on the State Government to require a seat of a member of a committee to be vacated for any reason which it may deem to affect public interest as violative of Art. 14 of the Constitution and, therefore, unconstitutional. In the result each of the appeals is allowed with costs and I accordingly do so.

Appeals allowed.

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