

SUPREME COURT OF INDIA

Uma Shankar

Vs.

State of Punjab

C.A.Nos.300 to 302 of 1964

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

03.02.1965

JUDGEMENT

WANCHOO, J.

(On behalf of himself and **HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.**):

1. 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 S.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 S. 14 (a) and (b) and that part of S.14(e) which provides for recall at the request of the majority of the electors, and express no opinion in that behalf.

2. 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 were issued in which it was stated that the Governor of Punjab for reasons of public interest was pleased to direct that the seats of the three appellants shall be vacated from the date of the publication of the notifications in the State Gazette and to direct further that under sub-s. (3) of S. 16 of the Act, the three appellants shall be disqualified for election for a period of one year from the date specified. No notice was issued to the appellants to show cause why their seats be not vacated and no hearing was given to them before the action in question was taken by the Governor of Punjab. The appellants' case was that after the notifications vacating their seats and disqualifying them had been issued, they came to know that these notifications had been issued on the basis of a resolution passed by the out-going municipal committee on March 13, 1961 to the effect that the appellants had taken part in demonstration on March 10, 1961 and had broken some glass panes of the municipal building. The appellants further case was that the outgoing municipal committee had been dominated by members belonging to the Congress Party, but these members had mostly been defeated in the fresh elections held on January 22, 1961 and it was in consequence that the resolution was passed mala fide by these persons in order to harm the appellants. A number of grounds were taken in the petitions filed before the High Court challenging the order of the Governor of Punjab. Now, however, we are only concerned with one ground namely, that the provision contained in S. 14 (e) was discriminatory and hit by Art. 14 of the Constitution. It appears, however, that this ground was not urged before the High Court and that is why the writ petition has been filed in this Court specifically raising this point again; and thus in the present appeals and the writ petition we are only concerned with the question whether S. 14 (e) of the Act is bad as it violates Art. 14 of the Constitution.

3. We are of opinion that the appeals must succeed on this point, it is necessary in this connection to refer to Ss. 14 (e), 16 and 24 (3) of the Act. The relevant part of S. 14 (e) with which we are concerned provides that notwithstanding anything in the foregoing sections of Chapter III, which deals with constitution of committees, appointment and election of members, term of office of members of municipal committees, the State Government may, at any time, for any reason which it may deem to affect the public interest, by notification, direct 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 the Act or in the rules made thereunder. Further sub-s. (3) of S. 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 S. 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.

4. 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 S. 16 (1). The proviso to S. 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 take action under Section 16 (1). Sub-s. (2) of S. 16 provides for disqualification and says inter alia that any person removed under S. 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 S.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.

5. Reference may now be made to S. 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 take the oath as provided in sub-s.(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 S. 24 provides inter alia that where the election becomes invalid under sub-s. (2), a fresh election shall be held. The proviso to sub-s. (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 S. 16 of 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.

6. The argument on behalf of the appellants is that S.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 S. 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 S. 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 S. 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 S. 14 (e) and the other in S. 16. Where the State Government takes action under S. 16 (1), it has to give a hearing in terms of the proviso thereof to the member concerned, but it 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 S. 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 S. 16 (1) is in public interest and,

therefore, what is contained in S. 16(1) is certainly all covered by S.14(e). In consequence there are two provisions in the Act for removing a member, one contained in S.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 S. 14(e) is more drastic and does not even provide for hearing the member concerned.

7. We are of opinion that these contentions on behalf of the appellants are correct. There is no doubt that the removal contemplated in S 16 (1) for reasons in cls. (a) to (g) thereof, as their conten shows, is in the public interest and the proviso to S.16(1) provides for a hearing in the manner indicated therein. On the other hand S. 14 (e) which also provides for removal in the public interest makes no provision for hearing the member to be removed. Even if S. 14(e) is wider than S. 16(1), there is no doubt that all the reasons given in as. (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 S. 14(e) and thus circumvent the provisions contained in the proviso to S. 16(1) for hearing. Thus there is no doubt that S.14(e) which entirely covers S.16(1) is more drastic than S. 16(1) and unlike S. 16(1) makes no provision for even calling upon the member concerned to explain. In this view of the matter it is clear that or the same reasons the State Government may take action under S. 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 16(1), on the other hand it may choose to take action under S. 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 S.14(e) must be struck down as it is hit by Art. 14 of the Constitution.

8. Reliance in this connection is placed on behalf of the State on the proviso to S. 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 S. 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 in S. 16(1). It is not necessary for us to decide whether the State Government can take action under this proviso read with S. 16(1) without giving notice as provided in the proviso to S.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 S. 24(3) without giving notice to the person concerned under the proviso to S. 16(1) and without giving him any opportunity of hearing as provided therein. The proviso to S.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 S. 24(3) and the provision contained in S. 14(e). The proviso to S. 24(3) is complete in itself and deals with a situation when 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 S.14(e) will depend upon its contrast with S. 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 S. 14(e) as compared to the provision in S. 16 (1) is more drastic and arbitrary and denies the member concerned an opportunity of being heard as provided in S. (1) by the proviso thereof. Consequently we are of opinion that this part S. 14(e) is discriminatory and must be struck down as unconstitutional under Art. 14 of the Constitution.

9. In this connection our attention is drawn to *Radeshyam Khare v. State of Madhya Pradesh*, 1959 S R 1440 : (AIR 1959 SC 107), on which reliance is placed on behalf of the State. In that case this Court was concerned with Ss. 53A and 37 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 S. 57 the State Government had the power to dissolve a committee after giving it a reasonable opportunity to furnish its explanation. Under S. 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 S.53A(1) apparently overlapped the reasons for dissolving a committee under S. 57(1). Because of this difference in the scope of the two provisions contained in Ss. 53A and 57, there could be no question of application of Art. 14 to that case.

10. In the present case, however, S. 16 (1) which deals with removal of a member for reasons given in cls. (a) to (g) is completely covered by S.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 opinion a clear discrimination in view of Art. 14 and the State Government cannot take advantage of the decision in *Radeshyam Khare's case*, 1959 SCR 1440 : (AIR 1959 SC 107).

11. We, therefore, allow the appeals as well as the writ petition and declaring S. 14(e) in so far 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 falls. The appellants will get their costs from the State throughout. One set of hearing fee. No costs in the writ petition.

In Civil Appeals Nos. 300 to 302 of 1964.

12. 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.

13. 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 S. 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 S. 14(e) of the Act under which it was issued being discriminatory were rendered void by Art. 14 of the Constitution.

14. 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 elected :

* * * *

(c) 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".

15. It would be clear from a perusal of the above provision that powers conferred by S. 14 can be exercised by the State Government (i) for any reason which it may deem fit of 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 S.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 S. 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 S. 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 is conferred upon the State Government being unguided is unconstitutional. For this reason I hold that S. 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 is 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 and Writ Petition allowed.