

Gyan Chand and Others

Vs

State of Haryana and Others

Civil Appeal No. 64 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

21.08.1970

JUDGMENT

GROVER, J. -

1. This is an appeal from an Order of the Punjab and Haryana High Court dismissing a writ petition in limini.
2. The Municipal Committee of Kaithal consists of 17 elected members. Prior to the election held on March 10, 1968, the previous Committee functioned from 1962 to 1968. According to the appellants the majority of members, constituting the Committee from 1962 to 1968 belonged to the Congress Party. On March 10, 1968 fresh elections were held. The new Committee which was elected was to remain in office for a period of three years. It has been alleged by the appellants that the majority of members constituting the new Committee belonged to the Jan Sangh Party. The members of the new Committee took oath of office on April 6, 1968. On February 27, 1969, a notice was served by the Secretary, Local Government Department, Haryana, on the President of the Committee inviting reference to the inspection note on the working of the Committee inviting reference to the inspection note on the working of the Committee recorded by the Sub-Divisional Officer, Kaithal, a copy of which was sent which contained serious complaints of irregularities committed by the Municipality. It was stated that the inspection note revealed that the civic administration had deteriorated, encroachments had not been removed, the income of the Committee was spent mostly on staff maintenance of Civil amenities, no development work had been done, there were heavy arrears of taxes, there was nepotism and party faction and that the various registers were not being properly maintained, etc. It was further stated that the inspection note clearly showed that the Municipal Committee was incompetent to perform and had persistently made defaults in the performance of duties entrusted to it. There was thus a prima facie case for superseding it under Section 238 of the Punjab Municipal Act, 1911, hereinafter called the 'Act' but the Committee was being given an opportunity to show cause as to why it should not be superseded by the Government under the provisions of that section. The explanation was to be sent by Committee within 21 days from the receipt of the communication and in case the Committee failed to send the explanation ex parte orders were to be made. The Vice-President sent a reply, dated March 19, 1969, saying that the allegations contained in the memorandum sent to the Committee were baseless and with-out any foundation. It was stated that the allegations had been levelled merely as a cloak to serve extraneous ends of somehow superseding the Municipal Committee. In this reply it was mentioned that Shri P. N. Bhalla who had been working as an Executive Officer of the Committee had been removed for the reasons which had been mentioned in the show cause notice. The charges which were levelled against him contained various matters which were common to the items mentioned in the show cause notice sent to the Committee. Shri Bhalla had challenged his removal in a petition which was

still pending. It was maintained that since the aforesaid matter was sub judice it was not proper and might amount to Contempt of Court to adjudicate upon the matters which were common to the show cause notice and the allegations against Bhalla. It was further pointed out in the reply that a detailed answer could not be given unless inspection was allowed of the various records and files relating to the allegations made. Inter alia, the most important document was the report made by Shri V. P. Dhir, Deputy Director, Urban Local Bodies, Haryana, who had inquired into the affairs of the Committee. It was essential to inspect the file containing his report before any reply could be given. It was requested that time be extended for giving reply to the allegations made in the show cause notice till the writ petition filed by Bhalla had been disposed of. No reply was apparently sent to this letter by the Government. An order was made on April 9, 1969, superseding the Committee under Section 238 of the Act and its powers were to be exercised by the S.D.O. Civil as Administrator. A schedule of the reasons was given in the notification which contained mostly the same allegations which were contained in the statement attached to the show cause notice.

3. The appellants filed a petition under Articles 226 and 227 of the Constitution in the Punjab and Haryana High Court challenging the aforesaid notification of supersession of the Committee. This came up before a Division bench consisting of Mehr Singh, C.J. and Prem Chand Jain, J., on April 16, 1969. The petition was dismissed in limine although the learned Judges recorded an order. It is some that unfortunate that a copy of the writ petition has not been produced in this Court. Presumably the allegations were on the same lines as made in the petition for special leave before us. But in the absence of a copy of the writ petition we need not refer in detail to the allegations made and the contentions raised by the appellants before the High Court. It is, however, apparent and is abundantly clear from the order of the High Court that allegations of mala fides had been made and it had been urged that the Government had not acted in a bona fide manner. The learned Judges were largely influenced by the fact that the Committee had not sent any explanation or reply to the show cause notice. It was therefore considered that the charges and allegations made against it stood un rebutted. A constitution bench of this Court has observed in *Ram Saran Dass v. The State of Punjab* as follows :

"As we have briefly indicated, the petition filed by the appellant makes serious allegations in support of his case that the impugned order amounts to punishment and had been passed mala fide. It appears that the High Court was not impressed by these allegations and so chose to dismiss the petition summarily. In our opinion, the High Court should not have adopted such a course in the present case. It may bound elementary to say so, but nevertheless, we ought never to forget that justice must not only be done, but also appear to be done. When a responsible public servant holding judicial office moves the High Court under Article 226 and contends that the termination of his services, though ostensibly made in exercise of the power conferred under Rule 23 of the Rules, really amounts to his dismissal, or that its exercise is mala fide, the High Court should have called upon the respondent to make a return and then considered whether the allegations made by the appellant had been proved, and if they were, what would be the result of the said finding on his argument that the impugned order amounts to dismissal, or has been passed mala fide."

In the present case the appellants are responsible persons. Appellant No. 2 is the President and Appellant No. 3 is the Senior Vice-President of the Committee which has been superseded. The other appellants had been elected members of that Committee. In our judgment in a case of the present kind the writ petition ought not to have been dismissed in the manner in which it was done

without obtaining any return from the respondents and considering the same.

4. Mr. M. C. Chagla for the appellants has pointed out that certain affidavits have been filed under the orders of this Court by the respondent and has urged that the legality and validity as also the mala fide nature of the impugned order could be examined in this appeal by this Court. We do not consider that that would be a proper course to follow. It is for the High Court to issue a rule and hear and dispose of the writ petition after returns have been filed by the respondents.

5. The appeal is therefore allowed and the matter is remanded to the High Court for disposal of the writ petition in accordance with law. Costs shall abide the event. We have no doubt that since the term of the Committee will expire in a few months, the writ petition will be disposed of with the utmost expeditious.

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