

Bhagat Ram Patanga

Vs

The State of Punjab

Civil Appeal No. 1709 of 1969

(C. A. Vaidialingam, P. Jagmohan Reddy, K. K. Mathew JJ)

07.04.1972

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, is directed against the judgment and order, dated April 10, 1969 of the Full Bench of the Punjab and Haryana High Court in Letters Patent Appeal No. 70 of 1964, dismissing Civil Writ Petition No. 22 of 1963, filed by the appellant to quash the order of the respondent, dated September 11, 1962.

2. The circumstances that led to the filing of the Civil Writ Petition No. 22 of 1963, may be briefly stated. In the elections held in October 1959, the appellant was elected as a member of the Municipal Committee, Phagwara. On June 20, 1960 a meeting was held for the elections of the President and Vice-President of the Committee. The meeting was presided by the Sub-Divisional Officer (Civil). According to the appellant the Presiding Officer conducted the elections of the President and the Vice President in an irregular and illegal manner and was favouring the party led by another committee member Bhag Ram. When the appellant and another member Om Prakash Agnihotri protested against this conduct of the Sub Divisional Officer (Civil), the group led by Bhag Ram brought into the Town Hall some unruly elements from outside who created panic and confusion and manhandled Om Prakash Agnihotri, who was also a candidate for the presidential office.

3. It may be stated at this stage that according to the respondent, Om Prakash Agnihotri created a scene in the meeting and the appellant who was a staunch supporter of Om Prakash Agnihotri brought into the Town Hall, a number of outsiders with a view to cause chaos and confusion in the meeting and that the appellant did not maintain decorum and did not care to obey the directions of the Chairman. Ultimately, Bhag Ram was elected as the President.

4. The appellant and certain other members of the Committee filed writ petition No. 1095 of 1960 in the High Court challenging the election of Bhag Ram as the President. But the said Writ Petition was dismissed on the ground that the disputed facts involved therein could not be gone into by the High Court in proceeding under Articles 226 of the Constitution.

5. While the writ petition No. 1095 of 1960 was pending in the High Court, the respondent State on December 5, 1960, served a notice on the appellant under the provisions to Section 16(1) of the Punjab Municipal Act, 1911 (III of 1911) (hereinafter to be referred as the Act) calling upon him to show cause within twenty-one days why he should not be removed from the membership of the committee under Section 16(1)(e) of the Act. The said notice charged all the appellant of having

brought outsiders into the Town Hall on June 20, 1960, to cause disturbance to the meeting that was being then held and that he did not maintain decorum nor did he care to obey the rulings of the Chairman. In consequence the appellant was charged of having flagrantly abused his position as a member of the Committee.

6. The appellant sent a reply on December 12, 1960, controverting the allegations made in the notice. In turn he averred that the Sub-Divisional Officer (Civil) who presided over the meeting was actively helping the party led by Bhag Ram and it was the latter who brought in outsiders to create confusion and disorder. He denied having brought any outsider into the hall as alleged in the notice. He further stated that the crowd that was brought into the hall by Bhag Ram manhandled Om Prakash Agnihotri. He further denied the allegation that he did not maintain decorum and that he did not obey the Chair. On the other hand, he stated that he was quite obedient to the Chair and that he was not responsible for the confusion that prevailed at the meeting. Finally he stated that even if all the allegations made in the show-cause notices were true, they will not bring the matter under Section 16(1)(e) of the Act justifying action being taken against him by way of removing him from the Committee.

7. On September 11, 1962, the Governor of Punjab passed an order under Section 16(1)(e) read with proviso to Section 16(1) of the Act removing the appellant from the membership of the Municipal Committee, Phagwara. By the same order the appellant was also disqualified for a period of three years under sub-section (2) of Section 16 of the Act.

8. The appellant challenged the above order of the State Government before the High Court in Civil Writ No. 22 of 1963. The main plea that was taken in writ petition appears to be that even if all the allegations contained in the show-cause notice of December 5, 1960, are true the appellant cannot be considered to have "flagrantly abused his positions as a member of the Committee" so as to attract the penal consequences under Section 16(1)(e) of the Act. According to the appellant the allegations made against him regarding his conduct at the meeting of the Committee held on June 20, 1960, have no relevancy for invoking the powers conferred on the State Government under Section 16(1)(e). In consequences he alleged that the order, dated September 11, 1962, removing him from the membership of the Committee and disqualifying him was null and void and an abuse of the power vested in the Government under section 16 of the Act.

9. The State contested the writ petition on the ground that when it was found at the Committee meeting that Om Prakash Agnihotri could not secure support for being elected as the President the appellant who was his ardent supporter went out and deliberately brought some hooligans into the Town Hall and created trouble at the meeting. Further the appellant behaved in a very disorderly manner and did not obey the rulings given by the Sub-Divisional Officer (civil) who was then presiding over the meeting for the purpose of conducting the election of the President and the Vice President. As the appellant conduct was such as to attract penal provisions of Section 16(1)(e) of the Act, the show-cause notice was issued under the proviso to the said section for which the appellant sent a very elaborate reply. As the explanation sent by the appellant was not found to be acceptable, the State Government passed the order, dated September 11, 1962 and it was well within its powers.

10. The learned Single Judge who dealt with the writ petition was of the view that the allegations made against the appellant in the show-cause notice, even if true, will not attract Section 16(1)(e) of the Act. According to the learned Judge it is only when a member of the Committee has shown favour or indulged in shelf agrandisement by virtue of his position as a member that the said provision will apply. On this reasoning, the learned Judge held that the grounds which led to the

making of the order, dated September 11, 1962, were neither germane nor relevant for the purpose of attracting Section 16(1)(e). However deplorable the conduct of the appellant as alleged may have been at the meeting held on June 20, 1960, that by itself will not enable the State Government to take action under Section 16(1)(e) of the Act. Ultimately, by his judgment, dated September 18, 1963, the learned Judge quashed the order of the Government, dated September 11, 1962, as being illegal and void.

11. The State carried the matter in Letters Patent Appeal No. 70 of 1964. The said appeal was heard, in the first instance, by a Division Bench. The Division Bench was not inclined to agree with the views of the learned Single Judge regarding the interpretation placed on Section 16(1)(e) of the Act. The view of the Divisional Bench is that the conduct of the appellant, as alleged in the show-cause notice amount to his having "flagrantly, abused his positions as a member of the Committee" so as to attract the penal positions of section 16(1)(e) of the Act.

12. Another point appears to have been taken before the Division Bench, mainly that the order, dated September 11, 1962, suffers from the vice of not giving reasons for the action taken by the State Government and on that ground it has to be struck down. The Divisional Bench felt that this aspect of the matter is a fairly important one and as such it required consideration by a larger bench. In the end by order dated August 7, 1968, the Divisional Bench referred the appeal to a Full Bench for consideration of all aspects.

13. The appeal came up before the Full Bench of three Judges. The Full Bench agreed with the view of the Division Bench regarding the applicability of Section 16(1)(e) of the Act and held that the conduct of the appellant amounted to "flagrantly abusing the position as a member of the Committee". Regarding the question whether the order, dated September 11, 1962, has to be struck down on the ground that it does not give any reason, the Full Bench felt and the said question should be considered by a larger bench of five Judges. Accordingly by its order, dated February 20, 1969, the Full Bench directed the appeal to be heard before a Full Bench of five Judges.

14. The Letters Patent Appeal in consequences was heard by a bench of five Judges. Three questions were posed for consideration -

(a) whether the decision and order of the State removing the appellant herein from his membership of the Committee under Section 16(1)(e) of the Act as quasi-judicial.

(b) if they are quasi-judicial, whether the State was required by law to state reasons for its decision; and

(c) if the State was bound to give reasons, whether as a fact reasons have been given for its decision by the State in the order, dated September 11, 1962.

15. After a fairly elaborate consideration of the matter, the learned Judges held on the points Nos. (a) and (b) that the order of the State removing a Municipal Committee member under Section 16(1)(e) of the Act is a quasi-judicial order and as such the State was bound to give its reasons for arriving at a decision. Regarding point No. (c) the Learned Judges, after a through examination of the note file produced before them by the State, ultimately held that the State had considered the explanation offered by the appellant and after applying its mind to the material before it was justified in passing the order removing the appellant from his membership of the Committee and also disqualifying him for a period of three years. In the result, the Full Bench of five Judges by its

order, dated April 10, 1969, allowed Letters Patent Appeal filed by the State and set aside the order of the learned Single Judges. The result was that the writ petition filed by the appellant herein was dismissed.

16. Before we advert to the contentions urged before us by the learned counsel, it is necessary to refer to the relevant provisions of the Act as well as the show-cause notice issued by the State as also the final order passed by it. We will of course refer also to the substance of the reply sent by the appellant to the show-cause notice.

17. The relevant provision is Section 16(1)(e), its provision and sub-section (2) of section 16. They are as follows :

"16(1) The State Government may, by notification, remove any member of the committee -

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(e) if, in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee.

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Provided 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.

(2) A person removed under this section or whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of Section 24, or whose election has been declared void for corrupt practices of intimidation under the provisions of Section 255, or whose elections the State Government or the Deputy Commissioner has under Section 24 refused to notify, shall be disqualified for election for a period not exceeding five years :

Provided that a person whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of Section 24, shall not be disqualified for election or appointment for a period exceeding two years from the date of disqualification."

18. No rules framed under the Act, having any bearing on the manner in which the Government has to deal with the matter have been brought to our notice.

19. The show-cause notice issued by the State on December 5, 1960, was as follows :

"It has been brought to the notice of the Government that on June 20, 1960, the Sub-Divisional Officer (Civil) Phagwara, convened a meeting of the newly elected members of the Municipal Committee Phagwara, after the election of the Committee, held on October 17, 1959 in order to administer the oath of allegiance and to conduct

the election of the President of the Committee to enable the new Committee to take over the charge, you also attended that meeting at the time of the election of the office of the President. You were supporter of the group headed by Shri Om Prakash Agnihotri, member of the Committee whose candidature was proposed for this office. During the course of the meeting when Shri Om Prakash Agnihotri became unruly and began to tear his clothes bat his chest and create a row you managed to bring some outsiders in the Town Hall to cause disturbance at the meeting. Moreover you did not maintain decorum or care to obey the chair. By the aforesaid action you have flagrantly abused your position as a member of the Committee within the meaning of section 16(1)(e) of the Punjab Municipal Act, 1911. I am directed to call upon you to show cause under proviso to Section 16(1) *ibid*, why why you should not be removed from the membership of the Committee under section 16(1)(e) *ibid* You should tender your explanation to Deputy Commissioner, Kapurthala with an advance copy to Government together with copy (copies) of documents, if any, so as to reach there within a period of twenty days from the date of the despatch of this letter. In case no explanation is submitted by you within the stipulated period, it will be considered that you have no explanation to offer and the Government may proceed ahead to notify your removal."

20. The appellatant sent a reply on December 16, 1960. No copy of the reply sent by the appellatant has been placed in the records available before us. But the nature of the reply can be gathered in the summary given by the High Court. In his reply the appellatant had denied the allegations made against him in the show-cause notice. On the other hand, he averred the Sub-Divisional Officer (Civil) who was presiding over the meeting was taking sides with Bhag Ram and it was the latter who brought hooligans in the Town hall and created chaos and confusions. He also denied the allegations that he did no obey the rulings of the Chair and that he behaved in a disorderly manner. He further averred that the hooligans who were brought into the Town Hall by Bhag Ram manhandled Om Prakash Agnihotri and created confusion at the meeting. He further averred that even assuming that all the allegations made against him in the show-cause notice are true, section 16(1)(e) of the Act was not attracted as he has not "flagrantly abused his position as a member of the Committee".

21. The order of the State, dated September 11, 1962, was as follows :

"Whereas the Governor of Punjab after giving an opportunity to Shri Bhagat Ram Patanga, member, Municipal Committee, Phagwara of tendering an explanation under the provision of Section 16 of the Punjab Municipal Act, 1911 is satisfied that the said Shri Bhagat Ram Patanga has flagrantly abused his positions as a member of the aforesaid committee, now, therefore, in exercise of the powers vested in him under the clause (e) of sub-section (1) of Section 16 *ibid*, the Governor of Punjab is pleased to remove the said Shri Bhagat Ram Patanga from the membership of the Municipal Committee, Phagwara from the date of publication of this notification in the Official Gazette and is further pleased to disqualify the said Shri Bhagat Ram Patanga for a period of three years from the aforementioned date under sub-section (2) of the Section 16 *ibid*."

22. It will be seen that section 16(1) of the Act gives power to the State Government to remove any member of the committee if he is guilty of one or other of the acts mentioned in clauses (a) to (g). In particular we are concerned to clause (e). To attract that provision the State Government must

form an opinion that the appellant has flagrantly abused his position as a member of the Committee". We are not concerned with the other grounds mentioned in the clause (e) for which also the removal of a member can be ordered. But before notifying the removal of a member from the Committee, there is an obligation on the State Government by virtue of the proviso to Section 16(1) to communicate to the member concerned the reasons for his proposed removal. There is also a further obligation to give the concerned member an opportunity of tendering an explanation in writing. Sub-section (2) gives power to the authority concerned when removing a member to disqualify him for election for a period not exceeding five years. In view of the proviso of Section 16(1) the show-cause notices was issued on December 5, 1960. The grounds for the action proposed to be taken we also indicated therein as coming under Section 16(1)(e) of the Act. The appellant was given an opportunity of tendering his explanation in writing. As mentioned earlier, he also availed himself of the said opportunity. But the point to be noted is that in order to attract Section 16(1)(e) of the Act, the appellant should be found to have flagrantly abused his position as a member in the committee. In the case before us the State Government has come to a finding that the conduct attributed to the appellant at the meeting held on June 20, 1960, amounted to having "flagrantly abused his position as a member of the Committee" and it was on this basis that he was removed from the committee. The conclusions arrived by the Government, though not approved by the learned Single Judge has been accepted as correct by the Division Bench in its order, dated August 7, 1968, in the Letter Patent Appeal. The view of the Division Bench has been approved by the Full Bench of three Judges as also of five Judges.

23. On behalf of the appellant Mr. J. C. Talwar learned counsel, raised two contentions : (1) The allegations made against the appellant in the show cause notice, dated December 5, 1960, even if true, are not such as to attract Section 16(1)(e) on the ground that the appellant has 'flagrantly abused his position as a member of the Committee', and (2) The larger bench of five Judges has held that the proceedings initiated by the State against the appellant are quasi-judicial and the State was bound to give reasons, erred in holding that the files produced before it disclosed that there has been a consideration of the appellant's explanation by the State. This view of the High Court is erroneous.

24. Mr. V. C. Mahajan, learned counsel for the State, has not challenged the findings of the High Court in the Letter Patents Appeal regarding the proceedings initiated against the appellant being of quasi-judicial nature and the State being bound to give reasons for the order. But the counsel urged that the appellant has nowhere raised the contention that there has been no consideration by the State Government of the explanation offered by him before the order dated September 11, 1962, was passed. He also pointed out that there has been a strict compliance of the provision of the statute by the State Government before passing the order, dated September 11, 1962. The counsel further urged that the conduct of the appellant as disclosed by the events that took place at the meeting of June 20, 1960, constitute a flagrant abuse by the appellant of his position as a member of the committee so as to attract Section 16(1)(e) of the Act.

25. We are not inclined to accept the contentions of Mr. Talwar that the allegations made against the appellant regarding his conduct at the meeting of June 20, 1960, do not amount to his having flagrantly abused his position as a member of the committee Mr. Talwar's contention appears to be that it is only when a person abuses his position as a member of the committee and shows favour to others or gains undue advantage to him that he can be considered to have flagrantly abused his position as a member of the committee. No doubt, such a contention has found favour at the hand of the learned Single Judge. But, in our opinion the Division Bench was right when it differed from this view of the learned Single Judge. The nature of the allegations made against the appellant is

self-evident from averments contained in the show-cause notice, extracted above. The allegations clearly show that the appellant had brought in outside elements in order to create confusion and chaos in the meeting. The expression "flagrantly" means glaringly, notoriously, scandalously. A position is said to be abused when it is put to a bad use or for a wrong purpose. No doubt it may vary with the circumstances. When the meeting of the members of the committee was being held, the appellant had no doubt a right to participate in the proceedings as a member of the committee. But he had no business, as a member participating in the meeting of the committee to go outside and bring hooligans for a purpose of creating confusion and chaos. This behaviour of the appellant was to say the least scandalous. If he would not been the member of the committee, he would not be entitled to be present inside the Town Hall at the time of the meeting. The appellant did flagrantly abuse his position as a member of the of the Committee while participating in the meeting of the committee when he brought in rowdies for creating disturbances so that the committee meeting may not be held peacefully and properly. Therefore, the State Government was perfectly justified in coming to the conclusion that the action has to be taken against the appellant under Section 16(1)(e) of the Act. Therefore the first contention of the learned counsel for the appellant will have to be rejected.

26. Coming to the second contention, it has to be noted that the appellant does not appear to have raised this contention before the learned Single Judge, nor even in his writ petition. It was only when the State went up in appeal, that the appellant raised the contentions that the proceedings initiated against him are quasi-judicial and as such the State was bound to give reasons in its order. To this limited extent the Full Bench has agreed with the appellant. The appellant raised in consequences the further contention that the order, dated September 11, 1962 has to be struck down inasmuch as to does not give any reasons. So far as this last aspect is concerned, we have already referred to the fact that the Full Bench of five Judges went through the file produced before it by the State and has come to the conclusion that there is a clear indication that the representations of the appellant were taken into account and considered by the Government before the order, dated September 11, 1962, was passed. At this stage we may say that inasmuch as very severe penal consequences result by removing a persons from the membership of a committee, to which he has been duly elected and as on appeal is provided under the statute against an order so removing him it is not only desirable but also essential that the State Government should indicate its reasons for forming the opinion as required under Section 16(1)(e) of the Act. When such an order is challenged, the State must place before the Court the necessary materials which were available before it and which were taken into consideration for forming an opinion to remove the person concerned as a member of the committee. In this case, it is not possible for us to know whether the State referred in its counter affidavit in the writ petition to the various matters contained in the relevant file, as the appellant has not placed before us either a copy of his writ petition or the counter affidavit of the State. Therefore, it is not possible for us to know the actual averments made by the appellant and the answers given by the State in the writ petition. The facts given by us, in the earlier part of the judgment regarding the plea of the appellant and the defence raised by the State were all gathered by us from the judgments of the learned Single Judge and the Letters Patent Bench.

27. When once the Letters Patent Bench has held that the order passed by the State Government is of a quasi-judicial nature, it is obligatory on the part of the State Government to make available to the member concerned the materials available before it and on the basis of which the show-cause notice is issued. Even if those materials are not referred to in the show-cause notice in any great detail, it is open to the member concerned to request the State Government to furnish him the materials on which the show-cause notice has been issued so that he may give an effective answer

not only to the averments contained in the show-cause notice but also to the materials, on the basis of which the show-cause notice has been issued. For instance, in the case before us, the High Court has referred to the information contained in the relevant file before it that there was the report of the Sub-Divisional Officer, who presided over the meeting held on June 20, 1960, giving his version of the part played by the appellant. In his answer to the show-cause notice the appellant had denied that he ever brought any outsider into the Town Hall and that, on the other hand, it was Bhag Ram, who had brought outsiders in the Town Hall and created the confusion. This raises a disputed question of fact on which the Government is not entitled to take a view rejecting the plea of the appellant without having disclosed to him the actual allegations made in the report. But it is unnecessary for us to pursue this aspect further because the appellant has not made a grievance either before the High Court or before us that the proceeding initiated against him suffer from the infirmity of not having made available to him the material that were before the Government when it passed the order removing him from the membership of the committee. As pointed out earlier, the only other contention in this regard raised by him and that too at the stage of Letters Patent Appeal was that the order of the Government does not show that his representation have been taken into account by the State. Again there is also the possibility that the term of the office of the appellant, who was elected to the committee, as early as 1959 may have expired long ago. If disputed question of fact arise for consideration by the Government, there is not provision, so far as we could see, in the Act as to how the State is to deal with the matter. Further no rules also have been brought to our notice laying down the procedure to be adopted by the State under such circumstances. These are all matters of considerable importance which should attract the attention of the State Government, so that suitable provisions may be made either in the Act or in the rules made by virtue of the rule-making power.

28. In the particular circumstances of this case, we are in agreement with the High Court that the file produced by the Government does disclose that the State has considered the appellant's representations as also the other relevant materials before it when passing the order, dated September 11, 1962.

29. The various reports that were before the State Government, notes made by the concerned department on the basis of the said reports and on the explanation furnished by the appellant as well as the jottings made from time to time by the Minister concerned, have all been very elaborately dealt with by the Full Bench of five Judges. We do not think it necessary to cover the ground over again. The learned Judges after a consideration of all those materials contained in the file, produced before them, have recorded a finding that the State Government was justified in rejecting the explanation offered by the appellant and passing the order under attack accepting the reports of the officers concerned. We are in entire agreement with the views expressed in this regard by the learned Judges in the Letters Patent Appeal.

30. From what is stated above, it is clear that there has been a proper consideration of the explanation furnished by the appellant and that there has been no violation of the principles of natural justice. The second contention of the learned counsel for the appellant also fails.

31. In the result, the judgment and order of the High Court in the Letters Patent Appeal are confirmed and the appeal dismissed. However, there will be no order as to costs.

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