

SUPREME COURT OF INDIA

State of U.P.

Vs.

Nand Kumar Agarwal

(S.B. Majmudar, D.P. Mohapatra and Y.K. Sabharwal JJ.)

31.01.2000

ORDER

S.B. Majmudar, J.

1. Delay condoned.
2. Leave granted.
3. We have heard learned Counsel for the parties finally in this appeal by their consent.
4. The Respondent who was the President/Chairman of Municipal Council, Tanakpur, District Champavat, U.P. , was ordered to be removed from his office after serving him notice as required by Sub-section (2) of Section 48 of the U.P. Municipalities Act, 1916 (for short 'the Act'). The said removal order was challenged by the Respondent before the High Court. The High Court has quashed the said removal order on two grounds - (1) that the said order is not a reasoned order ; and (2) that personal hearing was not given to the respondent before passing the said order. Having obtained special leave to appeal the appellants have moved this Court for consideration of the order of the High Court.
5. A mere look at Section 48(2-A) of the Act-shows that after issuing show cause notice to the concerned alleged delinquent and after considering the explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, pass the orders of removal of the President from his office. A copy of the order of removal dated 15th July 1999 was shown to us. On a perusal of the said order we found that it could not be said that it was not a reasoned order. That part of the order of the High Court cannot be sustained. So far as the question of giving personal hearing is concerned, on the express language of Section 48 it must be held that personal hearing is not contemplated in the said provision, though of course, if the authorities think it fit, they may give the opportunity of personal hearing while holding appropriate enquiry. In the present case, however, the impugned order cannot be voided on the ground that personal hearing was not given. However, one aspect of the matter has to be kept in view. A look at the impugned order of 15th July, 1999 shows that so far as charge No. 2 is concerned the explanation of the respondent was not at all considered by the authorities. Consequently, the final order passed by the High Court directing fresh enquiry deserves to be maintained subject to the following modification :

1. In the removal proceedings no personal hearing is required to be given to the respondent, if the authorities do not think it fit to do so.
2. After appropriate enquiry under Section 48 of the Act and after considering the explanation offered by the respondent in connection with both the charges leveled against him the authorities may pass a fresh reasoned order.
6. Subject to these modifications this appeal is disposed of.
7. No costs.