

RAJASTHAN HIGH COURT

Mahavir Prasad Saini

Vs.

State of Rajasthan

Civil Writ Petn. No. 2459 of 2000

(R.R. Yadav, J.)

18.07.2000

ORDER

R.R. Yadav, J.

1. The instant writ petition has been filed by the petitioner, questioning his suspension order dated 16-10-99, Annexure-4 to the writ petition, from the office of Chairman of Municipal Board, Laxmangarh, District, Sikar, and order of judicial re-enquiry dated 11-5-2000, a copy whereof is filed and marked as Annexure-5 to the writ petition with a prayer to quash the aforesaid two orders passed by State Government.
2. The present writ petition is posted today, for admission. Counter- rejoinder has been exchanged between the parties. Although, the present petition is posted today for admission, but with the consent of the learned counsel for the parties, I propose to decide it on merits.
3. Heard the learned counsel for the parties. Perused the suspension-order dated 16-10-99, Annexure-4 to the writ petition; and the order dated 11-5-2000, Annexure-5, directing judicial re-enquiry under Section 63 (3) of the Rajasthan Municipal Act, 1959 (Act No. 38 of 1959) (hereinafter to be referred as "Act No. 38 of 1959")
4. It is conceded by the learned counsel for the parties that the present writ petition can be easily disposed of finally without delineating the facts averred in the writ petition and reply filed by the answering respondents in detail.
5. As a matter of fact, in the present writ petition, the interpretation of sub-section (3) of Section 63 of Act No. 38 of 1959, is involved. It is further to be noticed that an

identical question came up for consideration before me, in the case of *Ram Niwas Saini v. State of Rajasthan, reported in*¹ wherein, the aforesaid sub-section has been interpreted and it is held that if State Legislature, while enacting a statute-making provision to act in a particular manner to effectuate a legal right to a citizen, then, it is to be presumed that State Legislature has prohibited to act in any other manner to effectuate the same legal right. Since it was held in the case of Ram Niwas Saini (supra) that under sub-Section (3) of Section 63 of Act No. 38 of 1959, the State Legislature commanded the State Government, to pass orders in conformity with findings received from Judicial Enquiry Officer of rank of District Judge, appointed by it under sub-Section (2) of the said section, then, it is not possible to hold that the State Government is entitled to defy the mandate of State Legislature, contemplated under the aforesaid sub-Section (3) of the said Act, by passing an order of judicial re-enquiry into the same charges, from which, a member or office bearer of Municipal Board is exonerated by a judicial officer of a rank of District Judge. It is further to be noticed that in the case of Ram Niwas Saini (supra), the ratio of decision rendered by the learned Judges, constituting Division Bench in the case of *Gega Ram v. State of Rajasthan*² was relied upon wherein it was held that a suspension-order, if found by the Court to be arbitrary, unjust and illegal, then, it cannot be allowed to continue for indefinite period. It is further to be noticed that in case of Ram Niwas Saini, the petitioner was exonerated by judicial enquiry done by a Judicial Officer of a rank of District Judge, but instead of revoking the suspension of the petitioner in conformity with the report received from a Judicial Enquiry Officer, in the case of Ram Niwas Saini (supra), the State Government has ordered judicial re-enquiry, one after another. The act of the State Government, directing re-enquiry, in the case of Ram Niwas Saini (supra) was held to be arbitrary, unjust and illegal.

6. It is submitted by the learned counsel for the petitioner that the controversy involved in the present writ petition, is squarely covered by the decision, rendered in case of Ram Niwas Saini (supra), therefore, the present writ petition deserves to be allowed on the basis of proposition of law, propounded by this Court, in the aforesaid case.

7. The learned Additional Advocate General, Sri Mohammad Rafiq, appearing on behalf of the answering respondents, urged before me that an identical question had arisen before a learned Single Judge of this Court, in the case of *Ram Prasad Mali v. State of Rajasthan reported in*³ wherein, order of judicial re-enquiry was questioned,

but the learned Single Judge did not interfere in the order for judicial re-enquiry, passed by the State Government. It is submitted by the learned Additional Advocate General that in the case of Ram Prasad Mali (supra), the writ petition was dismissed by the learned Single Judge, with direction that the pending judicial enquiry before the enquiring authority, be conducted expeditiously, after affording the petitioner full opportunity of hearing.

8. I have given my thoughtful consideration to the rival contentions raised at the Bar. I am of the view that there is substance in the submissions made by the learned counsel for the petitioner, Sri S. N. Kumawat. The argument, raised by the learned Additional Advocate General, Sri Mohammad Rafiq, seems to me, has been raised merely to be rejected, and it is hereby rejected for the reasons given herein below.

9. A close scrutiny of the decision, rendered by the learned Single Judge, in the case of Ram Prasad Mali, (supra), reveals that in that case, it was found by the learned Single Judge, in paragraph-9 of the judgment that the petitioner in that case, had failed to adduce any evidence on record to prove his contention that he was exonerated from all the charges by the enquiring authority, in its report. It is to be noticed that in paragraph-9 of the judgment rendered in case of Ram Prasad Mali (supra), it is observed by the learned Single Judge that inquiry report exonerating the petitioner from all charges, was not produced before the court for his consideration that the petitioner in that case was exonerated from all the charges leveled against him, whereas, in the present case, the learned Advocate General himself has filed the judicial enquiry report, conducted by a Judicial Officer of rank of District Judge, exonerating the petitioner from all the charges leveled against the petitioner, a copy whereof, is filed and marked as Annexure-R/1 to the reply filed by the answering respondents.

10. For the reasons stated hereinabove, it goes without saying that the facts and circumstances of the decision rendered in the case of Ram Prasad Mali, (supra), are not applicable to the facts and circumstances of the present case. The facts and circumstances of the present case are distinguishable from the facts and circumstances of the case of Ram Prasad Mali (supra), which are not applicable to the present case, whereas, the facts and circumstances of the present case are similar to the facts and circumstances of decision rendered in case of Ram Niwas Saini (supra).

11. From the discussions, made here-in above in the preceding paragraphs of the judgment, I have no hesitation to hold that controversy involved in the present writ petition is squarely covered by the decision rendered in case of Ram Niwas Saini (supra) and the decision rendered in case of Ram Prasad Mali (supra) is not applicable to the facts and circumstances of the present case.

12. Upshot of the aforesaid discussion, is that the present writ petition is allowed, with cost, and the suspension order dated 16-10-99, Annexure-4, is quashed, with a direction to the respondents, to reinstate the petitioner as Chairman of Municipal Board, Laxmangarh, District Sikar, forthwith. What has been discussed hereinabove, the judicial re-enquiry order dated 11-5-2000, Annexure-5, is also hereby quashed, with a direction to the respondents, to drop the proceedings, initiated against the petitioner, under Section 63 of Act No. 38 of 1959.

Petition allowed.

Cases Referred.

1. (2000) 2 Raj LR 10
2. (DB Civil Writ Petition No. 355/99, decided on 28-7-99)
3. AIR 2000 Raj 37