

RAJASTHAN HIGH COURT

Chandra Bose

Vs.

State of Rajasthan

Civil Writ Petn. No. 185 of 2000

(B.R. Yadav, J.)

20.07.2000

ORDER

B.R. Yadav, J.

1. Heard the learned counsel for the petitioner, Sri Rajendra Prasad, at length. Perused the suspension-order, dated 6-1-2000, Annexure-4 to the writ petition, whereby, the petitioner was suspended from the office of Chairperson, Municipal Board, Kishangarh, District, Ajmer; and also the amended suspension-order dated 24-2-2000, Annexure-6 to the writ petition, whereby, the petitioner was not only suspended from the office of Chairperson of the aforesaid Board but also as a member of the Board.

2. With the assistance of the learned counsel for the petitioner, Sri Rejendra Prasad, I have gone through the orders impugned, Annexures 4 and 6, together with the charge-sheet. Annexure-1 and the explanation given by the petitioner, Annexure-3 to the writ petition.

3. From a close scrutiny of the averments made in the writ petition and the averments made in the reply filed by the respondents, it is crystal clear that the State Government, in exercise of its power under sub-section (2) of Section 63 of the Rajasthan Municipal Act, 1959 (Act No. 38 of 1959), appointed an enquiry officer, to make preliminary enquiry into the facts brought to its notice. After receipt of the preliminary enquiry report from the authority appointed by the State Government, the petitioner was given an opportunity to submit her explanation. After taking into account the preliminary enquiry report, together with the explanation, submitted by the petitioner, the State Government drew up a statement, setting out distinctly the charges against the petitioner and sent the same for enquiry and findings by a Judicial Officer

of a rank of District Judge, appointed by it, for the purpose of holding a detailed enquiry, after giving an opportunity of hearing to the petitioner, within the meaning of sub-section (3) of Section 63 of Act No. 38 of 1959.

4. It is revealed from the materials available on record that during the pendency of the enquiry by a Judicial Officer of a rank of District Judge, the State Government placed the petitioner under suspension as Chairperson and also as a member of the Municipal Board, Kishangarh, District, Ajmer, against whom, proceedings had already commenced, as stated hereinabove.

5. The learned counsel for the petitioner, Sri Rajendra Prasad, meticulously urged before me that the charges leveled against the petitioner, are superficial in nature and the suspension-orders of the petitioner have been passed due to bias attitude of the State Government.

6. It is observed that it is very easy to allege bias, but it is very difficult to prove it. I have gone through the charges, leveled by the State Government, against the petitioner. Those charges cannot be said to be superficial, if analyzed in the light of Section 67 of Act No. 38 of Act of 1959. I restrain to make any comment on the merit of the allegations made against the petitioner, because, it is to be enquired by a Judicial Officer of a rank of District Judge, I do not consider it proper to deal with the arguments, raised by the learned counsel for the petitioner, because, it will adversely affect to the petitioner, if the learned Advocate General is also called upon to reply the same, as averred in the reply filed on behalf of the respondents.

7. At this stage, I have examined the statutory provisions of sub-sections (2), (3) and (4) of Section 63 of Act No. 38 of 1959, which reveal that the State Legislature has taken all precautions, to make procedure of suspension, against a member or chairman of a Board, just, fair and reasonable. In the present case, the State Government, before passing the impugned order dated 6-1-2000, Annexure-4 and the amended suspension order dated 24-2-2000, Annexure-6, has followed the statutory mandate, envisaged under sub-section (2) as well as sub-section (4) of Section 63 of the aforesaid Act.

8. I am of the view that the charges, leveled against the petitioner, raise disputed questions of fact, which cannot be gone into under Article 226 of the Constitution of India, therefore, I decline to make the suspension- order dated 6-1-2000, Annexure-4

and the amended suspension-order dated 24-2- 2000, Annexure-6 to the writ petition, ineffective, by issuing a writ of certiorari.

9. Lastly, it is submitted by the learned counsel for the petitioner, Sri Rajendra Prasad, that the petitioner has apprehension in her mind that since a proceeding for her removal under Clause (d) of sub-section (1) of Section 63 of Act No. 38 of 1959, is pending against her, therefore, she may be debarred to contest election of member of the Board. In reply, it is submitted by the learned Additional Advocate General, Sri Mohammed Rafiq that the apprehension of the petitioner, is misplaced in view of the mandatory provisions, envisaged under Section 64 of Act No. 38 of 1959, wherein, it is provided that a member, who has been removed under Clause (d) of sub-section (1) of Section 63, or against whom, adverse findings have been recorded under Section 63-A, shall not be eligible for re-election for a period of five years from the date of passing the order of his removal or from the date of recording of adverse finding, as the case may be. According to the learned Additional Advocate General, the petitioner cannot be debarred from contesting forthcoming election of member of Municipal Board, Kishangarh, due to pendency of removal proceedings under Clause (d) of sub-section (1) of Section 63 of the said Act.

10. I have given my thoughtful consideration to the contentions, raised by the learned counsel for the parties. I am of the view that in such a situation, in abundant caution, it is held that during the pendency of removal proceeding against the petitioner, under Clause (d) of sub-section (1) of Section 63 of Act No. 38 of 1959, she would be entitled to file her nomination-paper and she would be eligible for re-election in forthcoming election of Municipal Board, Kishangarh, District, Ajmer, if she so chooses. Her nomination-paper would not be rejected on the ground that a proceeding of removal against her is pending under Clause (d) of sub-section (1) of Section 63 of the aforesaid Act.

11. With the aforesaid observations, the instant writ petition is hereby dismissed on merit. In the circumstances of the case, both the parties are directed to bear their own costs.

Petition dismissed.